

# VERIFIED TRANSCRIPT

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne—2 August 2007

#### Members

Mr B. Stensholt  
Mr G. Barber  
Ms J. Graley  
Mr M. Pakula  
Mr R. Scott

Mr K. Wells  
Mr R. Dalla-Riva  
Ms J. Munt  
Mr G. Rich-Phillips  
Dr B. Sykes

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

#### Staff

Executive Officer: Ms V. Cheong  
Assistant Executive Officer: Ms J. Nathan  
Office Manager: Ms K. Taylor

#### Witness

Mr B. Cooney.

**The CHAIR**—Welcome.

**Mr COONEY**—Thank you very much.

**The CHAIR**—Thanks very much, Barney, for coming along and for your three submissions. You have amplified what your views are. We have half an hour, so we will put it right over to you to make a presentation. You have probably seen more parliamentary committees than us combined.

**Mr COONEY**—I went to see *King Lear* the other night. Did anybody go?

**The CHAIR**—No.

**Mr COONEY**—Anyhow, King Lear says to Gloucester, who has had his eye put out:

Get thee glass eyes. And, like a scurvy politician, seem to see the things thou dost not.

It came to me that is 400 years ago and they are having a go at the politicians. This idea that somehow things are worse now than they used to be I do not think is quite borne out. In other words, when we look at the provisions you are looking at here, we have to be careful that we are not trying to do things that are really not needed. I am not saying that politicians are perfect people. Of course they are not, because they have to go through the political process. What I do say is that you have to get some reality about looking at the actual situation and just how bad we really are.

In that context, can I read something from a clerk. I will give you all a copy. I will read a paragraph or two and then carry on from there. This is by Peter Grundy, who was a clerk to a series of committees in federal parliament. It seems to me to sum up well a particular point of view which I happen to agree with. He says:

Despite what you may read from time to time in the media, let me assure you that Australian parliamentarians are talented people. Before coming into the Commonwealth parliament—

and I think the same goes for the state parliament—

some have been successful in commerce and industry. Others have been journalists, academics, doctors, teachers or lawyers. Some have progressed to the parliament through national leadership positions in the trade unions. Yet others have been self-employed. In most cases these are experienced people of considerable talent, and among their most important talents are their political instincts and the ability to understand people.

I will read one other paragraph:

Of course, no matter how talented you are, there is a limit to the amount and type of work that you can do. We want our parliamentarians to spend their time considering the most significant national issues. That should be their focus. So they must be provided with very considerable support services if they are to be effective in their most important work.

In my view of things, the best way to get proper accountability in the parliament—proper accountability in terms of both the executive and the legislature—is to provide parliamentarians with the resources they need. They just do not have the resources. What is it, one person at the moment and it is about to go to two?

**The CHAIR**—Two now.

**Mr COONEY**—Is that the same for the upper house?

**The CHAIR**—They have two as well.

**Mr COONEY**—Look what they have to do! The trouble is that the legislature is totally underresourced compared to the executive. Do you have any press secretaries? No! How do you get the things out to the community that you want to get out? This is a very central inquiry, a very important inquiry, and yet the resources that you have are limited. I was going to say that you should yell and scream about that, but my own record in this is not very good on that issue. Why shouldn't there be a career path through the legislature as well as through the executive? Everybody sits around and says, 'Look, I want to be a minister. When I

become a minister, I want to be a minister higher up the scale. When I become a minister higher up the scale, I want to be Premier,' or Prime Minister and what have you. So your concentration is taken away from another great duty you have, and that is to perform like parliament used to be performed before the 18th century. Instead of doing that, what do we say? We say, 'Look, we're going to have'—what is it?—'the commissioner—

**The CHAIR**—The commissioner for parliamentary accountability or—

**Mr COONEY**—Yes. So we are going to have somebody who goes around and looks at you and says, 'Look, so-and-so stepped beyond the mark, and we're going to make that public.' What happens then? We have to be a bit careful that we do not go into processes that are really laundering the situation. What I mean by that is that we do not want to go into areas where we appoint people or do this or that as a means of looking as if we do things but in fact are not doing what the reality demands. The other thing I would do, I think, is give chairs of committees more remuneration: ministers get a certain amount; why shouldn't chairs get the same amount and members get a division of that? Otherwise, it seems to me, we are not doing what we are meant to do. The committee system is clearly the best system for bringing accountability to Victoria. You people are elected. Bang, that is it. If you are elected, do your job. And to do your job, you want proper resources.

I do not know how people in the Legislative Council do it. They have a huge area and they get two staff now. One, I suppose, sits in the office as a receptionist. What is the other one going to be? A research person or somebody getting out there and developing policy or what have you? They are clearly underresourced. This committee has, what, three people?

**The CHAIR**—We got some extra funding this year from the Premier.

**Mr COONEY**—Can I ask how much?

**The CHAIR**—Three hundred and sixty thousand dollars a year.

**Mr COONEY**—I take it that has been spent.

**The CHAIR**—No, we actually had to give back \$240,000 because it was not spent last year.

**Mr COONEY**—In my view, that is bad. One of the great reforms Steve Bracks brought in—you might not agree with this—was the change in the upper house. That was a good change because in the end, if there is nobody in control of a chamber, nobody in control all the time of a chamber, then that chamber can bring some accountability to ministers and other parliamentarians, by negotiation preferably. That is that.

The other thing I wanted to talk about is that it is not as if members of parliament do not do a lot. You have to look beyond just the chamber. You have to look at what you do in the party room—I have put that down there—and what you do in the factions. I am not at this stage talking about whether factions are good or bad or whether party rooms are good or bad.

**Mr WELLS**—Feel free to speak on that issue, Barney.

**Mr COONEY**—But in the party room, you do do more. Members can get up and say 'I do not like this particular piece of legislation,' or 'I think so-and-so is full of himself.' So when you are looking at accountability or the issue of whether parliamentarians are bringing accountability, you cannot just look at the chamber. You have to look at what is said in the party room. If you have got up in there and said, 'I'm a bit worried about this,' you have introduced accountability. Even talk just amongst your parliamentary friends helps. When you are judging what parliamentarians do, you should not look just at the chamber. You should look at them right across the board. To a degree, factions are—or if they are not, they are capable of being—honourable; and party rooms are, by definition, honourable.

**Mr PAKULA**—An underutilised capability!

**Mr COONEY**—I am a bit worried. What I think I am saying is this: first of all, you have to look at the problem and how extensive it is. Secondly, you have to look at what the true cure is. I think the true cure is building up your committee system. Thirdly, when you are looking at what people do, you have to look not only at what they do in the chamber, but generally.

Now, my thoughts on question time: I suppose you have tactics committees down here? They are the ruination of question time in my view, because they get you to ask mad questions—I withdraw that—silly questions. You would be better asking the questions for yourself. I hope it would not happen down here where they tell you, 'Ask that question.' You might not know what the question is all about and this can prove an embarrassment.

Standards of parliamentary behaviour, I think, depend pretty much on the parliamentarians themselves. I think there is scope for doing it better. I was looking on the internet and there is a group in America called the Centre Aisle Caucus. Have you heard about that? It is made up of people on either side. There were Republicans and Democrats and they were arguing for civility of speech. That was what they were all about. That is not a bad idea, if you can get civility of speech. But when the tension comes on, you tend to get a bit carried away at times. I do not see why you should have some outside person looking over the balcony and looking at what is going on in the chamber and saying, 'You didn't act properly on that occasion and I'm going to make that public and that's it.'

If you do have a person who is appointed, are you going to give them parliamentary privilege? The other thing is, if you do set out standards, are you going to let the courts decide whether a parliamentarian has breached the standards? You do not want that. It is like that quote I have there from Sir Isaac Isaacs: 'we want a people's parliament, not a lawyers' parliament'. Can you see what he is worried about? If you have a list of standards and you are decent people, do you want the judges or magistrates to come along and say, 'Righto, you've done this'? You have been elected, after all, by the people. That is who you should be answerable to.

Overseas travel by members of parliament: if the travel is needed, why shouldn't it be taken? If you need to go to England to see how things work there, why should you apologise for that? After all, parliament is the only body elected directly by the people. It has duties. Why shouldn't you go over and look at it, if it is proper? If it is not proper, if it is a junket, then people will figure that out. With great respect to you all here, if you saw somebody on the other side or you saw action on the other side of the chamber which was untoward, you would get up and ask about it, I think. You would put a strong case against it. There is that accountability within the system already.

Modernisation of parliament? What is that about? It seems to me that the permanent abolition of wigs is neither here nor there. And the reform of the process of dealing with petitions: I am not sure how that is done down here. I think it would be good if there were a system to let the people know, or the people who led the petition at least, know what has happened to it or whether there is any action on it.

**The CHAIR**—Thanks very much, Barney, for that and your practical response in terms of your experience. That certainly comes through in what you have given us. Questions?

**Mr WELLS**—Barney, on your last point about people who lodge petitions, that they should have some acknowledgment at the table that it has been lodged, what action do you think should be taken? Should it come from the Speaker, that they should write to maybe the member who tabled it?

**Mr COONEY**—Or the lead petitioner.

**Mr WELLS**—Or the lead petitioner, yes.

**Mr COONEY**—Some people get thousands of petitions, don't they? You cannot answer all of them. It is a bit of a problem, isn't it? The clerk could write off to them, or perhaps the President and the Speaker if they have the resources. But they are pretty short of resources too, aren't they, when you think about it? The parliamentary side of things is pretty short of resources. I suppose it is up to the person that presents the petition—the member—as to what to do about that, but I would let them know.

**The CHAIR**—Barney, you talked about the need to look beyond the chamber and basically to look at the functioning within the individual parties, particularly the bigger parties. Each of the major parties has policy committees or caucus committees or whatever you call them. Do you think that should be more out in the open and that people should be more available?

**Mr COONEY**—I think people ought to know about that. I have no doubt that the parties would be quite happy to know that their committees are getting more publicity. This gets to a problem with the media, doesn't it, and what they are interested in. Does this committee have a press secretary?

**The CHAIR**—No. We have an executive officer and a chair, and they cook up press releases between them.

**Mr COONEY**—I reckon there ought to be a press secretary. It would be interesting to see how many press secretaries the executive has. They would have a whole band of them, I reckon. It is all about trying to get that headline at the end of the day. But parliament itself does not have that, and that is what I would insist on. The problem is how to get the money. The \$360,000—it is a bit of a shock to think that that was not all spent.

**The CHAIR**—There is a story behind that, but this is not necessarily the place to go into it. We are trying to recruit some more staff, and better staff, but it is proving difficult.

**Ms GRALEY**—Are you suggesting that we need more press about what we do or do we need more education about what we do? I think they are two different things but they can be helpful to each other.

**Mr COONEY**—Yes. Parliament is very important, isn't it?

**Ms GRALEY**—It is.

**Mr COONEY**—I thought about this for years: why isn't it given more profile. What the Premier does and what the Leader of the Opposition does gets a lot of profile. The cameras get down to Lorne every year! Why haven't we got the same for parliament? Edmund Burke said that if you did not have a party, then you were not doing the proper thing, but the party system is a bit against it. It should not be. We ought to demand that more prominence be given to this first arm of government. How do you educate people, unless it is put in the press? The press are not much interested. I do not know. Perhaps the press needs education. If the press needs education, that is why you need publicity officers or some media staff. You are understaffed, aren't you? I should not ask that question. I will make it a statement: you are shockingly understaffed, and understaffed not only at the committee level but at the practical level in the electorates.

**The CHAIR**—Barney, thanks very much.

**Mr COONEY**—I hope you do not take on an officer that looks at whether or not you are doing your job, even though that person is not elected. That seems to me to be a thing to be avoided. The other thing I should say before I go is that, in relation to codes of conduct, the reality is that the Premier or the Prime Minister is going to run those. First of all, if you made them law by statute and you made them judiciable, then you would have the courts looking at them, which you do not want to do. Other than that, it would be a matter for the Premier or the Prime Minister to decide what they are and whether or not they are enforced.

Just imagine going up to John Howard and saying, 'Listen, Mr Howard, we think that Minister So-and-so is wrong and we want you to sack him, because it is in the statute.' What is he going to say? He is going to say, 'Clear off.' That is your problem. It is up to the party and to the leader as to whether or not they are enforced. Take the newest party in the House—the Greens. I go along to Greg Barber and I say, 'Look, so-and-so has misconducted himself or herself.' Are you going to say, 'Oh yeah, look, I'll go and sack them now'? That is if you were leader. I know there is no established leadership in the Greens party. You have to have confidence in yourselves as parliamentarians and run it that way, and just be careful that you are, first of all, trying to cure something that has been there forever; and secondly, that what you do does not bring in something worse than what is already there. Be confident!

**The CHAIR**—Thank you, Barney. I think Essendon is looking for a new coach as well!

**Witness withdrew.**

**Hearing suspended.**

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Mr G. McGowan SC, International Commission of Jurists.

**The CHAIR**—Thanks very much, Glenn, for coming along and for your submission. You have now given us a supplementary one.

**Mr McGOWAN**—Whatever you like to call it, yes.

**The CHAIR**—Thank you for that.

**Mr McGOWAN**—Thank you for accepting it.

**The CHAIR**—On your own behalf or on behalf of the International Commission of Jurists?

**Mr McGOWAN**—On behalf of the commission.

**The CHAIR**—I invite you to make a statement to your submissions. You have half an hour or so.

**Mr McGOWAN**—Thank you. As I have just followed Barney Cooney, perhaps while it is fresh in our minds I will make some comments about what he had to say. No-one can undervalue the experience that he has in parliamentary affairs, and so his advice is always very valuable. But can I say, with respect, three things about what he said. The first is that I certainly agree with and support what he says about urging proper resources for parliamentarians generally. That goes without saying. Proper resources would help each of you to be braver about accepting a higher level of responsibility generally, because you might have the staff to better discharge your duties. So I agree with Barney Cooney's suggestion about resources is absolutely essential.

The second thing touches on his criticism of this idea of having an independent person appointed. He was opposed to that. I disagree with that. An independent person, in my submission, is essential for public confidence, otherwise it is seen as an incestuous club. My own organisation, the Victorian bar, has been through this, and a lot of organisations have. We used to have our own ethics committee, for example, determining whether someone had overstepped the mark. We took the view that it was working perfectly well and we were very tough on our own members, but the appearance was the problem: the public thought, perhaps with some justification, that you look out for your own. The problem with not having an independent person is that the whole process ends up being subject to political whim and that does not sell well with the public.

The third thing he said that I would like to comment on is that he was, I think, suggesting that, because parliamentarians are elected, they should be exempt from being examined by independent people or the courts or the like. I want to urge that election should not be a licence to misbehave. You all agree with that, I know, but it is the appearance that makes a big difference here. What I have tried to explain in today's written submissions that I have handed up is that in my submission there is a crisis of confidence. Barney Cooney has far more experience in politics than I have—I have none; I am a humble lawyer—but he says, 'Nothing's changed.' My view is that it has and I try to explain that in paragraph 3 of today's submissions, just giving you some examples of why we say that there is a crisis of confidence and deep cynicism in the public about parliamentary institutions that are controlled by politicians.

Let me begin. I only want to make three points this morning and I will be brief. First of all, I want to congratulate the parliament for openly addressing this issue of accountable government because it is important. As I have said in my submission, there is a crisis of public confidence and an inquiry is needed to bolster public confidence in government. I mention this in paragraphs 3 and 13 of my submissions.

There are three points I want to make: ministerial responsibility is not a quaint outdated notion from the 19th century but, rather, it is absolutely essential to a healthy, modern democracy. It has been reaffirmed very recently in other modern democracies, such as England and Canada, in its purest form—and I mention this in paragraphs 8, 9, 12 and 18 of the submissions. The point is that England has repromulgated its code of ministerial conduct on 3 July this year by the new Prime Minister, and it contains the classic pure statements of ministerial responsibility, unwatered down, undiluted. In Canada, in July as well, this year, they have enacted legislation going to cure problems concerned with conflicts of interest, so they have given teeth to the code of conduct.



The other reason why ministerial responsibility is essential for a modern democracy, and a healthy one, is because the principles are still sound and necessary, and the fundamental point is that unelected officials are not and cannot be answerable to the public or the parliament because they are not public figures, they do not sit in parliament being grilled, for instance, at question time or in parliamentary inquiries, and so making them responsible, even partially, would illegitimately starve the public of the information, the explanations and the redress that the public deserves. I deal with that point in paragraphs 10, 11 and 18 of the submissions.

The second point I want to make is somewhat related. This concerns the Prime Minister's *A Guide on key elements of ministerial responsibility*, which is the sort of framework that this committee is using for its review, in essence, and what the Australasian study group says is quite right about that guide—namely, it is seriously flawed for at least this central reason: it reduces ministerial responsibility. Contrary to how it was introduced and published at the time by the Prime Minister, it is not something that reinforces ministerial responsibility; it is the reverse. I deal with this in paragraph 18 of the submissions today. Can I take you to those to make the point good. The Prime Minister's guide provides:

Where Ministers neither knew, nor should have known, about matters of departmental administration which come under scrutiny, it is not unreasonable to expect that the Secretary or some other senior Officer will take the responsibility.

That is, with respect, a quite fundamental shift in the classic doctrine of ministerial responsibility. I know that a lot of people will say, 'Oh, that just recognises the realities that government departments are enormous and that a minister can't possibly be on top of everything.' I understand that. That might mean that the minister would not be sacked if he did not know or should not have known, but he is still responsible, and that means that he has to answer, he has to explain, and he has to provide information.

**Mr DALLA-RIVA**—There are 174,000 public servants in Victoria alone.

**Mr McGOWAN**—I know.

**Mr DALLA-RIVA**—So I just cannot rationalise your argument that the minister should be held to account for the actions of some bureaucrat in one of those buildings out there. I just cannot quantify it in a practical sense. It might be right in a small chamber where you have got three staff but not 174,000 public servants. I have heard it before; I just cannot rationalise it.

**Mr McGOWAN**—I understand that that is the natural reaction. What I have said in these submissions and tried to make clear is that it is embraced in England by the current Prime Minister, it is embraced in a number of other democracies and, what is more, it was, until not so long ago, embraced in Australia, and I have quoted from a fairly recent guide published by the federal government that reaffirms that principle. The reason why I say and we say that this is a fundamental shift is because it enables the minister, if he so chooses, to create a black hole of accountability or responsibility. If something goes terribly wrong, the minister can say, 'I didn't know and I shouldn't be expected to have known,' and then shoves responsibility onto some particular bureaucrat who is said to have cocked it up. Can the bureaucrat be called to account? Only if the minister allows him to be. Taylor, who is the author of the text, the only text in Victoria concerning the Constitution, confirms this. The trend has been for ministers to direct some of their public servants not to attend parliamentary inquiry hearings, for example. So if the minister chooses, he can prevent the public getting the information they need, and that provides a black hole of accountability. We say that that is, putting it differently, a barrier to openness because the public cannot get the information that we say it deserves.

The third point that I want to make this morning is that any code of conduct that you might recommend from this inquiry we say should be an enforceable one, otherwise it will be at the mercy of political whim. The only way to achieve it that I can think of—that is, enforceability—is by legislation and, as I have said in the paper, Canada has done this to some extent regarding conflicts of interest.

**Mr PAKULA**—Can I jump in. Legislation does not create enforceability; enforcement mechanism creates enforceability. The question is, 'What's the enforcement mechanism?'

**Mr McGOWAN**—The enforcement mechanism has to have teeth, and the only way I can think of giving it teeth is by legislation, and the legislation would need penalties, sanctions and the like.

**Mr PAKULA**—No, you misunderstand my question. The legislation would create an enforcement mechanism. My question to you is: what enforcement mechanism do you foresee?

**Mr McGOWAN**—Well, it can be all sorts of things.

**Mr PAKULA**—Well, it cannot really.

**Mr McGOWAN**—Well, it can. It can be anything that the parliament decides it to be. It could be this new independent person having enforcement powers; it could be courts having enforcement powers; it could have parliament having the enforcement powers.

**Mr PAKULA**—Let me stop you there. Are you seriously suggesting to this committee that the parliament could create an independent office holder who would have the authority to expel a member from parliament; an unelected individual who could override the will of the people and expel a member of parliament because of some perceived breach?

**Mr McGOWAN**—Your question is, 'Can it?' The answer is undoubtedly, 'Yes.'

**Mr PAKULA**—Should it?

**Mr McGOWAN**—The question is, 'Should it?' and that is more a political question. But we say that it is desirable that there be an independent person involved, because otherwise, as Barney Cooney said right here, not half an hour ago, it will end up being at the political whim of the person who has predominant power.

**Mr PAKULA**—With respect, I think that is disingenuous. I think the reality of what you are proposing is that it can only work if it is justiciable. You cannot have an independent person—whether that person is within the laws of the parliament or elsewhere—who has the right solely to determine whether someone stays as a member of parliament or not. Ultimately that would have to be determined by the courts. Do you agree?

**Mr WELLS**—But you could have a dictatorship. A dictatorship is one wherein you can tell who is behaving incorrectly.

**Mr McGOWAN**—Sure. But as soon as you establish or introduce it by legislation, it becomes justiciable, so of course—

**Mr PAKULA**—Early in your submission you talk about 'the strict separation of powers so that there is no political interference with the judiciary', yet you are more than happy to contemplate judicial interference with the political process.

**Mr McGOWAN**—But it goes both ways, with respect. Parliament interferes with the judiciary all the time, both legitimately and illegitimately. For example, there are plenty of examples of the parliament shaving off rights of review from the Supreme Court so that it cannot be reviewed by the Supreme Court. Legislation imposes or narrows discretions of judges. So there is interaction between the two arms all the time.

**Mr PAKULA**—But I would suggest to you that this is evidence of the mindset, and the mindset that I think it is evidence of is this—that you have got one approach which is this: if you have a government which routinely declines to sanction ministers for apparent breaches of ministerial responsibility, one way of dealing with that is that the public ultimately becomes so tired of that government's approach that it turfs it out of office. The other approach, which is the one that you are suggesting, is that in effect you do not leave it. You cannot trust the public. You cannot trust the public to make that decision, and in fact the decision has to be left in the hands of lawyers and judges. I am suggesting to you that your proposal is actually evidence of that mindset.

**Mr McGOWAN**—I will not say what my mindset is. I will say what my submission is—that is, to completely exclude some independent supervision of ministerial responsibility is undesirable, and to keep the system entirely in-house is undesirable and does not tend to give the public confidence that standards and supervision of standards are being maintained properly. Your point is that the media will do all the work necessary and the public can be relied upon to act appropriately. The ballot box is a rather limp solution to misconduct. It can achieve it but it does not always achieve it.

**Mr PAKULA**—I think you have proved my point. It is one thing if members of parliament behave corruptly or criminally. There are already sanctions in place for that. We are talking about something beyond that. We are talking about politicians not reaching a standard that certain people consider appropriate, and I think you have confirmed that you do not think that democratic processes can be trusted to deal with that.

**Mr McGOWAN**—The democratic process is there and it will continue to stay there, and the ballot box sanctions will always be there. The question is: does the public get enough say on the standards of parliamentarians for us to be confident that parliamentarians have the confidence of the people? We say that there is a crisis in confidence and that a code, supervised, enforced by a mechanism—supervised by an independent person, enforced by a mechanism—is desirable to give the confidence back to parliament that it deserves, because the parliament should have the full confidence of the people and not the cynical attitude that we figure it has at the moment.

**The CHAIR**—Can I shift the focus slightly. We have mechanisms in the parliament, and they are long-held mechanisms. We have the Privileges Committee, of course. In your proposal what role would you see for the Privileges Committee?

**Mr McGOWAN**—I understand that there are many mechanisms already in place. The point is that they are all in-house. As I have said, there are plenty of organisations that say, quite rightly, 'We're administering our standards ourselves for our members perfectly well, and we don't need anyone outside to judge us.' That could well be the case in this Victorian parliament—I think it probably is—but it is the public perception that is important. What I have been submitting is that, at least in the federal sphere, that public confidence has taken a battering. It could be improved if there were someone more independent calling the shots rather than merely relying on political will to impose standards.

**The CHAIR**—So in your proposal you would not see them as reporting through the Privileges Committee and therefore the action—

**Mr McGOWAN**—Of course it could. The way it might end up filtering up to this new independent person could be in all sorts of way. The Privileges Committee might be the filter.

**The CHAIR**—I am interested in the way it filters down. The argument has been put that it could be inappropriate for it to involve the judiciary.

**Mr McGOWAN**—Yes, I understand.

**The CHAIR**—The equivalent in the parliament to the judiciary is the Privileges Committee, which then makes recommendations to the parliament as a whole, after doing an examination.

**Mr McGOWAN**—Sure. Sorry, what is your question then?

**The CHAIR**—Have you considered this particular process, which is the process within parliament? Of course, there is separation between the parliament and the judiciary.

**Mr McGOWAN**—I understand. As I have said, I know this is a different type of organisation from any other, but many organisations have had to face this problem of having good standards but nevertheless being seen to be looking after their own, because it is all in-house. The public gets suspicious of that, and that is why this recommendation in the *Renewing accountable government* document has sensibly come up with some sort of improvement to that system. At the very least, this sort of recommendation could be touted by

each of you as a means of telling the public, 'We are being held to account by someone other than our own colleagues.'

**Mr PAKULA**—But we are held to account by the public.

**Mr McGOWAN**—Every four years, yes.

**Mr PAKULA**—Yes, but the difference between this organisation and every other organisation that you refer to is that they are not elected by the public at large. We are. So what you are in fact proposing is a mechanism that second-guesses the decision of the public.

**Mr McGOWAN**—No, that is overstating it, with respect. This proposal and the *Renewing accountable government* proposal, and any enforcement mechanism, are there when the existing processes to check misconduct and bad accountability do not work. It is a process that would give the public far more grounds for confidence in the transparency of government than one where members look after their own.

**Mr WELLS**—Would you suggest the same principle for the court system—that is, an independent person overseeing the court system?

**Mr McGOWAN**—If a judge has committed some sackable offence, for example, of course.

**Mr WELLS**—You put forward a position—and I think it is well worth a read—about an independent person supervising parliament. If you were able to do the same thing with the court system, so the public could go to that person and say, 'Look, the sentences being handed down are just far too lenient'—

**Mr McGOWAN**—Generally, do you mean, or in a particular case?

**Mr WELLS**—Generally or in an individual case. Would you see the same principle applying for the court system as for parliament?

**Mr McGOWAN**—I am open to that idea, although I have not quite got my head around what you are proposing for the courts. If it were, say, in a particular case—

**Mr WELLS**—You are suggesting an independent person to oversee the parliament, so looking at the same sort of system—an independent person—to oversee the court system and the judiciary. When people are fed up with light sentences, for example.

**Mr McGOWAN**—I am not talking about generalised things. In this proposal I am talking about particular conduct of a particular person. If you transpose that to the courts—if a judge, in particular, has handed down a ridiculous sentence, or a series of ridiculous sentences, I would be perfectly open to there being some person that the public could go to and say, 'This guy is no good. I want you to look at him and decide whether he's done something outrageous enough to be sacked or to be censured or something.' I have no problem with that at all.

**The CHAIR**—We need to finish up pretty quickly.

**Mr BARBER**—Sorry if this is stopping you from getting to other important points, but I think the New South Wales parliament is the only Australian parliament that itself can expel a member.

**Mr McGOWAN**—This parliament can, and Taylor describes it in his book. In fact, it has occurred at least five times, the last in 1915. It can occur, but I dare say only in extreme circumstances.

**The CHAIR**—Through the Privileges Committee.

**Mr McGOWAN**—Yes, indeed. So it can occur, yes. That is a right that has been inherited from England, and our Constitution incorporates that by section 19.

**Mr BARBER**—So the voters can put people in but it is not only the voters who can take people out.

**Mr McGOWAN**—Correct.

**Mr BARBER**—Parliamentarians collectively can take someone out.

**Mr McGOWAN**—Correct.

**Mr BARBER**—Which is a middle ground between what is going back and forth.

**Mr McGOWAN**—In a sense, but it is still the parliament. I am not suggesting that that power would be abused, because I am not aware of it ever having been abused, but it is still the members getting rid of one of their own. Yes, it is not anathema to concepts of democracy for there to be an expulsion.

**The CHAIR**—On the basis of whatever.

**Mr McGOWAN**—Yes, on appropriate bases. If the committee pleases.

**The CHAIR**—Any other comments? No? Thank you very much for that.

**Mr McGOWAN**—Thank you for your time.

**Witness withdrew.**

**Hearing suspended.**

# VERIFIED TRANSCRIPT

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne—2 August 2007

#### Members

Mr B. Stensholt  
Mr G. Barber  
Ms J. Graley  
Mr M. Pakula  
Mr R. Scott

Mr K. Wells  
Mr R. Dalla-Riva  
Ms J. Munt  
Mr G. Rich-Phillips  
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#### Witness

Mr L. Coutts.

**The CHAIR**—Louis, welcome. Thank you for coming along and for your submission. I invite you to say a few words about yourself and to make a statement, if you so wish, about your submission.

**Mr COUTTS**—It might have appeared in a letter that I sent to the secretariat that I am on the committee of the International Commission of Jurists, but I am not here in that capacity.

**The CHAIR**—Thank you for clarifying that. We do have you down as a member of the Victorian committee of the International Commission of Jurists. So you are here in your personal capacity?

**Mr COUTTS**—Glenn, who was here before, put the official position. I practised law for many years and in fact started law in government in Canberra in legislation. I am a management consultant, so I am here as a member of the electorate more than representing any body's point of view. What motivated me to put in the submission was an increasing concern that I had that parliaments were becoming more distant from the electorate and that there was a theme running through the political process, irrespective of people's political dispositions, that probably emasculated the democratic process quite a bit. So I suppose I have become cynical of politicians.

Before I came here, I did a bit of research and I got the Morgan poll that polls the extent to which the public rate the honesty and integrity of the different professions. I was disappointed but not surprised to notice that only 18 per cent of the population had a high regard for the integrity of people in my profession of business executives, but I was even more disappointed to note that, insofar as state MPs are concerned, only 16 per cent of people had a perception of the honesty and integrity of politicians, followed closely by union leaders and TV and newspaper reports.

**Mr DALLA-RIVA**—What were lawyers, as a matter of interest?

**Mr COUTTS**—I am pleased that you asked that because it is appallingly low. It is 36 per cent. However, it is interesting that that has increased four per cent in the last year, and I think that that is related to the fact that people have seen lawyers like Glenn McGowan, Peter Vickery and other people taking a public stance on issues of human rights. I do not think that people were aware of that. Normally lawyers get around 30 per cent. So I felt confident that it was not just me.

**Mr DALLA-RIVA**—Who was top of the list?

**Mr COUTTS**—Nurses. I can leave this with you, if you like.

**Mr DALLA-RIVA**—I am just curious.

**Mr COUTTS**—Nurses were 91 per cent.

**The CHAIR**—You shouldn't be so poll-driven, Richard!

**Mr DALLA-RIVA**—No, we are just trying to work out how far we've got to go, that's all! Sixteen to 91 is a long way.

**Mr COUTTS**—It is quite a way. I realised that in my submission it was just a recitation of my concerns, but it did not address the issue of what ought to be done, so I have prepared a supplementary submission. I can leave copies, but it will only take me a minute to read it, if you can tolerate going through that.

**The CHAIR**—Do you want to pass them around now? They are coming around here.

**Mr COUTTS**—I have got one copy. There should be one left and, if not, I can leave this with you. You can have that. So might I read this?

**The CHAIR**—Yes, you can. You have about another 20-odd minutes.

**Mr COUTTS**—It would only take a few minutes. My primary submission outlining my concern that the gradual erosion of the concept of parliamentary and ministerial responsibility from what was understood as the Westminster system to one of political expediency is basically a shift in the culture of the political process. It did not contain suggestions as to what can be done to address this decline. The trend has become so ingrained in the political process that the electorate has become cynical to the point of acceptance: 'So politicians lie. What's new?'

I move around the country a lot as a management consultant and talk to a lot of people in different walks of life and so what I am saying here I am pretty confident are widespread views. We can draft and adopt standards of conduct to which politicians are expected to conform, but the very fact that we decide that such a course is necessary is an admission that the culture of responsibility as evidenced by the likes of Lord Carrington and Willy Brandt no longer exists. Once the culture disappears, it cannot be resurrected by legislation. I have been involved heavily, in my past life as a lawyer, in legislation, and I can say that with confidence.

There has to be a pervasive and instinctive response by people as to the parties' political conduct. Somebody can confront you with a situation and you will instinctively know what is right and what is wrong. I am sure that people who come to politics bring with them the heritage of their upbringing and the concept that honesty is the best policy but we would be burying our head in the sand if we said that this philosophy was alive and well once a person gets into the political process. There is too much evidence of evasion, passing the blame to others or simply denial. I would have to say that I was just amazed at the Haneef case; how everybody was sort of passing responsibility off to everybody else and no-one was to blame.

**Mr BARBER**—Nobody was asking to be made accountable, were they?

**Mr COUTTS**—No.

**Mr BARBER**—No-one was saying, 'Bring it to me.' They were all saying, 'Turn to him.'

**Mr COUTTS**—'On our copy, it is him.' This suggests that to some extent the modern political process is corruptive of standards that would be expected of people in their ordinary lives. Regrettably, this corrupting process is also prominent in commercial and sporting life. The Tour de France is the most recent example. I am uncertain as to what education processes are required for the person entering politics. In my day, professional conduct was a compulsory subject for lawyers before they could apply for admission to the profession. If politicians are required to undertake a course in ethics of a politician, then such a course is not having the impact it should. If there is no such requirements for politicians entering the political process, then there should be, and it should be a repetitive requirement for the people, and constantly reminded through education.

One other issue that I did not raise in my submission was the concept of conflict of interest. Basically, a conflict of interest arises because of appearance. If a politician has a meeting with a lobbyist for a particular interest, when that interest is being considered at the parliamentary level, irrespective of the integrity of the parties, the appearance is the problem. The approach to government in relation to interest should be formal and documented. To the extent that personal submissions are relevant, they should be conducted in an environment of transparency. Conflict of interest arises where there is an appearance that a party who must act independently is seen to have an interest in the outcome. It is not a defence to an accusation of a conflict of interest that the party being accused is a person of great integrity and honesty. People have to act that way and should never put themselves in the position where there is doubt.

Rather than point the finger at any political process, we can use the example of the previous director of the AFL who also had an interest in the catering to the Melbourne Cricket Ground and Telstra Dome. The answer to the allegation of conflict of interest was that he was an honest man—and I think that is what they said about Brutus. Politicians cannot be too careful about their conduct. If they say that it is unfair to expect them to abandon friendships once they get into politics, the answer is that there are constraints placed upon people in the various professions: people who are answerable to the public have chosen that public status and it does impose upon them restrictions that might not be applicable to people who pursue a private role in society.



What I am saying is that you can have codes of conduct and you can have legislation and you can have parliamentary procedures, but, if the culture does not exist to accept them, then they are just words written on a piece of paper. In management, whenever we go into an organisation, we find consistently in every organisation there is what is called an informal organisation. There are the formal rules of the organisation where people are expected to do this, that and the other, but to the extent that people find that they are incompatible with their own beliefs or experiences, they form an informal organisation that is actually antagonistic to the dictates of management.

Sometimes that is fantastic because people's innate culture of honesty resents some of the things that management is telling them to do; at other times it is not so good. In any organisation, unless you can tap into that informal organisation and have it as a body that represents the true ethic of the person, it does not matter how many rules you have got, it is not going to make any difference. I know Glenn has come with, I think, some critical recommendations, but I always say that the solution to a problem is in the hands of the people who have the problem, not other people.

Forgive me if I sound as though I am lecturing, because it is just fantastic that we have a democracy and we have people who can give up probably lucrative professions in order to participate in the public wellbeing, but we have this huge problem of cynicism about politicians and I just ask you: what is in place? Is there a course of 'Ethics in politics'? As I said, you would not believe it, but in law we used to do—and I do not know whether they still do—professional conduct, the ethics of the profession. You could not get admitted until you did it. I do not know whether they teach it these days, but they teach you how to fill in time sheets I think.

We should be making people constantly aware of role models—and I use Lord Carrington, and Willy Brandt, who is just an incredible role model. Willy Brandt was the most popular chancellor of West Germany ever—not that there had been many. He was absolutely sensationally popular. He had come back from Egypt, he had done the thing with John F. Kennedy in Berlin, and they said, 'There is a mole in your secretariat. Look, that's okay.' He took advice: 'No, you don't have to resign. You don't have to wear responsibility.' He said, 'I do. I have to demonstrate that the buck stops here.'

I don't see that happening very often in politics. It happens in cricket—the opening batsman for Australia walks when he thinks he is out—but in politics I do not see the preparedness of people to get up and say, 'Look, I got it wrong. I'm sorry.' Sometimes the best way to send a message to the anonymous public servants that have got you into that strife is to say, 'This is what happens if you get me into this situation of embarrassment. My head rolls, not yours.' Then it creates the sense of accountability in the public service. I worked in the public service many years ago and I knew how precious the advice that you gave to politicians was, because their head was on the chopping block and not yours.

They have laws about theft, but people thief. They have laws about corporate governance, but people cheat. You can have laws about how politicians behave, but it is not going to change politicians. The only way you can do that is for somebody to build the culture in the organisation to say, 'This is what happens when the proverbial hits the fan. I take it on the chin,' and I think it is a long haul. I think that you have to have some institution dedicated to working constantly with politicians, to have this concept of the Westminster system and how it works, to constantly bring up role models and how people react to situations, instead of, really, insulting the public.

**Ms GRALEY**—As a management consultant, you obviously talk to firms about cultural change, and that is a very difficult thing for organisations to go through. I am interested to hear your views about how you think the parliament would undertake cultural change and if you have any ideas on that. I do not know whether it is because I am getting hungry before lunch or something, but I am getting this feeling that there are a lot of impressions out there of politicians that are not necessarily true. From the people that I know who are politicians, I can say that most MPs come in with a very strong set of values and have thought about those things for very long periods of time before they even put their hands up for public life, which is very much about living life in the goldfish-bowl, especially for those at a prominent level. Obviously you have some very strong opinions and perceptions about what politicians do, and I am wondering how you think we could engage the public in changing those things.

**Mr COUTTS**—I think that this is a great exercise. I was surprised. However, in management—I

would not say 'we' because people in business have all sorts of theories—I work constantly to the proposition that perceptions are reality. I had an argument with a lawyer the other day on behalf of a customer of mine that had been, I thought, grotesquely overcharged. I could not get across to the lawyer that the perception of the customer was that he had been poorly treated. Of course, the lawyer had this 'I did everything' attitude and charged more money.

We say that perceptions are reality. If you go into an organisation with a lot of people and talk to all of them on a confidential basis, you will get a view of that business and the management of that business that is the people's perceptions, but what is extraordinary is that, if you did a scattered diagram, you would get an incredibly dense spot in the middle of the page, because people's perceptions are roughly the same. I have not done that about politicians, other than getting around the country, and the fact that I consistently get this theme of politicians not being reliable—and it is reflected in the opinion poll—suggests to me that there is a perception out there of discontent with the political process and that the way to address it is to accept it.

I know how you feel: 'Look, I work damn hard.' I used to be a member of a political party and I know how hard politicians work. You get a sense of disgruntlement, that people cannot appreciate what you are doing for them and the commitment that you have for the community, but there is only one way that you can finally demonstrate to people that you are genuine. If a politician gets caught, he gets up and says—and forgive me for using this expression, but I did not finish reading it because it was full of mistakes—'Give us a break.' If, instead, that politician gets up and says, 'Look, I'm sorry, I made a mistake and I should have done this, that and the other,' that is all he has to do. People then think, 'Oh, is that what politicians do!'

We have the children overboard incident—which I know was not a Victorian matter—and weapons of mass destruction. Everybody knew the size of Saddam Hussein's underpants before we ever went into Iraq. They knew that they were not going to have weapons of mass destruction. If you could just get up and say, 'I made a mistake,' or even, 'I told a lie,' the impact that that would have on the public would be enormous. It gets back to bringing into politics the ethics that you had growing up. Somehow the political process seems to be, 'Oh gee, we have to be careful about that.' But it would win a lot of elections, whereas people think it would lose them.

**The CHAIR**—Any other questions? No. Thanks very much for that, Louis. Thanks for being very straightforward and clear and basically putting it right back on us.

**Mr COUTTS**—Congratulations on what you are doing. I think it is fantastic that you are prepared to open yourselves up.

**The CHAIR**—Thanks very much.

**Witness withdrew.**

**Hearing suspended.**

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## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne—2 August 2007

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#### Witness

Professor G. Hodge.

**The CHAIR**—Graeme, thanks very much for coming along today and for giving us a submission in regard to, particularly, parliamentary committees and the modernisation of parliament. I invite you to say a few words about yourself and speak to your submission. Then I will invite people to ask questions.

**Prof. HODGE**—Thanks very much, Chair. I am the director of the Centre for Regulatory Studies at Monash University. I have worked for several years on matters of governance, privatisation, contracting and, more recently, regulation in the state. I applaud the committee for their work in modernising parliament, and I think it is a golden opportunity to make some good steps forward.

The matters that I would like to address—and that were addressed in my formal submission—include, firstly, an observation that the terms of reference as drafted for the committee seem to me to be somewhat limiting. Part of my submission was really making an appeal that this is a golden opportunity for parliament to reassert its authority over what I would call a more managerial approach by most Westminster governments. So the first matter is an appeal to take a broader look at these terms of reference, particularly as they relate to parliamentary committees and the modernisation of parliament.

I believe there has been a tendency in the last decade perhaps for many parts of government, particularly treasury and finance departments, to gradually shift from what I would call a kind of neutral stewardship role, or a guardian role, towards a policy advocacy role. I think it is quite difficult for government departments to maintain both of those hats at the same time. When departments become clear policy advocates, I think they forfeit the role of remaining a neutral steward or a guardian. That means that there is more pressure these days on parliaments that oversee those departments to take on that role.

I give the example in my submission of public works committees. It is really tricky in this state to find out what our public works programs are. If you ask a simple question like, 'Where is the list of public works that we can debate?' I do not think there is one central list. It seems to be devolved and non-specific. When I look at public-private partnerships, for example, I see a conflict between the advocacy role and the stewardship role. I also see a knowledge deficit. I have sat at this table a few times before on PPPs and been amazed at the few people in parliament that can give me a concise summary of the deals that have been signed up for billions of dollars. I think the issue there is that we don't have a parliamentary committee that now oversees works. Those sorts of arrangements are done essentially through executive government and, as far as parliament is concerned, are really done on the basis of trust.

The third example that I gave in my submission was the place of parliament in overseeing major events. Whether you look at the daily newspapers, the press or whether you look at reports of the Auditor-General, there are some independent assessments but they are few and far between, and I guess my question there is: how is it that parliament could be better informed in the area of major events? And, again, I think there is a place for a parliamentary committee on that. Whether you look at public works, whether you look at major events or many other strategic areas of government, I do think that now is the time for parliament to reassert its authority and, through the parliamentary committee structure, make some strides forward.

The other single area that I made a reference to in my submission was the sense that in some areas of public infrastructure—electricity, for example, and water—we are very careful to regulate in the public interest and we set up independent state regulators to do that: Essential Services Commission and the like. In other areas of public infrastructure—and roads through private finance initiatives are an example—it is not subject to that same independent regulation. It is regulated by contract, I guess, and that runs the risk of some deals being, yes, in the public interest, and some deals being not within the public interest at all. So I do think that there is a place again in this committee's work to reconsider the role of independent regulators as part of this parliamentary system of governing today's regulatory state. Thank you.

**The CHAIR**—Thanks very much, Graeme. I must admit your submission has taken a quite different tack to some. This committee probably counts in estimates, of course. One of its roles is a very strong relationship with the Auditor-General, as I am sure you are well and truly aware.

**Prof. HODGE**—Sure.

**The CHAIR**—In fact, we have a role in looking at the budget in terms of questions on estimates as

well as in looking at outcomes and, if you read some of the reports, you will find a list of assets or asset programs which are in the budget. What do you mean when you are saying you are looking to strengthen the role of the Auditor-General in the context of your other recommendations? We have a strong relationship with the Auditor-General. We provide input into his program of both financial and performance audits. We get consulted on the details of the performance audits, and then, of course, we can if you like audit the Auditor-General insofar as it produces reports and then, from the parliamentary perspective, we can undertake our own investigation into the results of those. What more are you looking for, just given the context that I have very briefly described?

**Prof. HODGE**—There are probably two comments there. (1) for a number of years I have been calling for an independent audit to be done of PPPs, and I am yet to see a program on that. They are occasional. Yes, there are some PPP matters that are investigated, but they seem to me to be ad hoc rather than systemic. (2) I have observed in the last couple of years that, when the Auditor-General of the state comes out and reports their findings, they are subject to some sort of media commentary even by departments, and it is taking the role of the Auditor-General back into almost the political domain. I think the role between the Auditor-General and the parliament is a rather special one which has to be nurtured and supported and, I would say, resourced; so the greater the politicisation of that role, the greater the need for strengthening of that role.

**The CHAIR**—I must admit, in regard to resourcing the Auditor-General, we discuss with the Auditor-General his budget and comment on that to the executive, as to the adequacy or otherwise thereof. I am just trying to get some more specifics beyond the PPPs, Graeme, in terms of what you want us more to do with the Auditor-General or the Ombudsman or, indeed, the Essential Services Commission, as you have suggested.

**Prof. HODGE**—Okay. Just reading down my submission, a systemic audit of major events would be another example. I understand that is jumping smack into the middle of politics, but my question is: where else can parliament get independent assessment and independent evaluation? To the degree that the state is an 'events-led state' or an 'events-led economy', there is a conflict of interest between the advocates of that policy and the stewards of taxpayers' funds, so again I would appeal for a systemic audit of major projects.

**The CHAIR**—You have seen the Auditor-General's annual plan.

**Prof. HODGE**—Yes.

**The CHAIR**—You will notice that the annual plan is now a forward-looking plan, rather than just what he is doing in one year. You can see it out for the next few years. This is an innovation this year, and it does include quite a range of audits. Do you have any thoughts on that? You have now probably 50 or 60 audits which are going to be done by the Auditor-General.

**Prof. HODGE**—I would have to take that question on notice and go and look at that list. The philosophy that I am coming from is that we sometimes need more than independent project or program audits. I do think you need to look at a more systemic approach. I understand that auditors-general are not there to question policy—that is the mandate of government—but there will be occasions when auditors-general around the country have to think seriously about the way in which public funds are being expended and, in order to meet particular outcomes, whatever they are, to think of more intelligent and cost-effective ways of doing it and put that up for debate.

**Mr DALLA-RIVA**—You talk about the gradual transition of public sector officials from providing free and fearless advice towards a role better described as policy advocacy. How do you see us, the committee, changing that so that they go back to free and fearless advice?

**Prof. HODGE**—I am not sure if it is possible to turn back the clock in that respect. There has been a lot of discussion about this particular matter, particularly in, I guess, the federal Public Service. But it really has not been debated much, and my concern is around the implication of that. I mean, most public servants will argue that they do give free and fearless advice and that being on a contract of limited time with uncertainties does not have an effect on their advice. Putting that aside, the question, to me, is: what is the

implication of that? And the implication of that, to me, is that there is a greater need for parliament and its committees to be getting a broader range of advice, with veracity, than perhaps there ever was in the past.

I think in the past—and I am not referring here to some kind of romantic golden era of public sector bureaucracy—there has been an expectation that there will be a healthy debate between potential policy directions and directions that might look after public funds a bit better. If the observation is true that we have moved to this policy advocacy stage, which I think is the case, the implication is that parliament needs to take more care to get serious advice, and one sole place, I suspect, that you can get that from is the Auditor-General.

**Mr WELLS**—I would like you to expand on your views about PPPs. Are your main concerns surrounding the guidelines in regard to the terms of the tender process or is it to do with contract management and the way the PPPs are being handled or is it that there is not a rigorous process to determine whether it might be better being a public asset rather than a private asset or a PPP, where there is a joint submission?

**Prof. HODGE**—There are two aspects that I would home in on. One is the question of transparency. For example, I believe it was announced a little while ago that the state has offered to be more transparent about future PPPs than it has been in the past, but with no retrospectivity. If we were serious about being transparent about PPPs, we would make available details of EastLink, for example. That is a classic example where advocacy wins over stewardship, and advocacy even wins over any public debate. That is one question about transparency, and I think we could do a lot more for that.

The second question is in relation to evaluation. Perhaps it comes down to guidelines. An example comes to mind. One of the financial journals in the UK put out a report in a peer review academic paper entitled *An examination of the UK Treasury's evidence base for cost and time overrun data in UK value-for-money policy and appraisal*. The three authors of that report looked at the information that has been used by the UK Treasury that suggests PPPs delivered 70 per cent on time and on budget compared to traditional work that was delivered 30 per cent on time and on budget and so on. After they got past the refusal by the UK government to provide the data on commercial-in-confidence grounds, they got hold of the data, and what they have said is that it is particularly flawed and it is biased in favour of a private finance initiative assessment.

Leaving aside the technicalities, I am not sure that you will actually get that debate in Victoria because there is no-one sitting around asking, 'Where is the science in these guidelines?' It may well be that Victoria adopts different figures from this UK data, but I suspect not. My appeal is again for a neutral steward—and in this case perhaps I should be referring this to our Auditor-General—and an appeal for our guidelines to be as honest and as accurate as possible rather than being guidelines that come down in favour of one particular policy outcome.

**The CHAIR**—Any other questions? No. Thanks very much, Graeme, particularly for your comments on parliamentary committees, because that is one of the things we have to look at, and also your comments on the Auditor-General, which we have a particularly strong relationship with.

**Prof. HODGE**—Thank you, Chair.

**Witness withdrew.**

**Hearing suspended.**

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## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne—2 August 2007

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#### Witness

Ms A. Mancini.

**The CHAIR**—Anne, thanks very much for coming before our committee.

**Ms MANCINI**—I am very scared to be here but at the same time delighted. I have to say at the outset that I have no expertise at all in politics or the history of the Victorian parliament, but I do come from a line of people who are involved in day to day politics, starting from someone who was a republican on the goldfields and lost his job as a stationmaster because he hung the Governor in effigy at the station when it was opened.

I think the current parliament has a proud record. This is something very special to Victoria. The things that I have noticed are the reform of the upper house, which I do not think has been fully appreciated, the restoration of Auditor-General powers, the human rights legislation and the extension and empowering of some parliamentary committees. It is clear that Victoria is leading nationally in this area, and we have this unique, historic opportunity to build on this.

I think we need to establish further legal structures that recognise that politicians are now members of professions. We must bring our system of government into a more manageable, workable condition so that it can cope with the complexities that come. We need continued Victorian leadership in this field. We need laws and regulations that make it clear that politicians are members of a profession with standards, with authority, who work within an ethical and social framework and are deserving of respect. Other professions have their own regulatory authorities and are subject to laws, not just conventions.

I believe that without this kind of clarification we will continue to lose valuable people from politics through oversights, mishaps, misinformation, overwork and stress. I believe that it is the lack of clarity in the rules that creates a lot of this stress. The following reforms have been recommended by the Accountability Working Party of the Australasian Study of Parliament Group. 'Why doncha', as people say, adopt a code of ministerial conduct in a form that defines clearly ministerial responsibilities; provide a code of conduct to ministers' staff in a form that makes the areas of responsibility clear; create the office of a parliamentary standards commissioner, similar to the British parliament, supported by all parties. This officer could mentor new members of parliament and deal with the failures which occur in question time and investigate alleged breaches of the codes.

This parliament could make new laws to govern lobbying, including the setting of a time gap between resignation from parliament and commencement of lobbying careers. We all know that democratic government is a very fragile balancing act, and I believe there has been a corrosive loss of faith in our system which makes it an endangered democracy. I believe that we have this moment where we can restore that necessary faith by strengthening accountability.

Why does this issue matter? I cannot tell you how many times I have heard people say things like, 'People out there couldn't care less about all this.' I do not believe that that is true. The lack of accountability seems to me to affect the voting public in two ways. It creates both anger and cynical boredom. The anger and the frustration has so often been expressed in my workplace and at social gatherings around Melbourne and it convinces me that the demand for more accountability is not just an expression of a laughable, old-fashioned nostalgia for the good old days. Often, in the case of Australian friends of mine who have migrated here from undemocratic societies or have escaped from undemocratic societies—for instance, Hungary at the end of World War II—they express a fear that Australian democracy is in decline and endangered. I have heard this fear expressed at public forums and on political issues. Another remark I have heard is the 'Well, there's always New Zealand' comment.

It is true to say that our democracy has been badly damaged in recent years by voter anger, apathy and cynicism. It is inhibiting their involvement in the political system. In my workplace in adult education where I teach a VCE subject and have since 1995, I have the opportunity to observe the growing cynicism that the tolerance of dishonesty promotes. Lack of accountability is, I am sure, one of the underlying causes of the decline in the number of voters enrolled. I have been teaching adult classes with an age range of 17 to 70 since 1995. Apart from the dinkum Aussies, there are people there from the Ukraine, Croatia, Russia, Italy, Holland, China and Korea. They live in the inner and outer suburbs of Melbourne. I have just written down some of the remarks I hear in these classes.

'He's a politician, you can't trust him.' 'My vote won't make any difference.' 'What's the system ever done for



me?' 'This bugger's been having holidays at my expense and I'm running two jobs and I can't afford one holiday.' 'How can they let themselves stay silent on this one?' 'That's not an argument, that's just spin.' 'I'm sick of studying media issues'—which is part of the course content—'There's no point to it. No-one takes any notice of what we think anyway.' 'They're just a bunch of crooks, like any other politicians.' 'It's a mess. I don't want anything to do with it.' And, I think most important of all, 'If I don't enrol then I can't be fined for not voting.'

The accountability issue cannot be laughed off as a concern of the so-called urban elite. Now that we have the President established in another place of executive power, superseding legal process, it becomes all the more important for the Victorian parliament to lead the community to a more efficient, workable system of government that will protect this precious democratic tradition. I urge your committee to study the honest minister, consult the members of the Accountability Working Party of the ASPG and imagine this: voters once again involved in the democratic process with thoroughly professional politicians whose achievements are recognised. Democracy in Victoria could have a very long life and be a great influence on Australia's future if these things can be brought about.

I have ideas of my own about how we could maybe get schools and young people more directly involved in the system, but I do not think they are relevant to this committee, probably.

**The CHAIR**—Can I encourage you to develop those because we are interested in that.

**Ms MANCINI**—You are? Okay.

**The CHAIR**—We have had a number of people, and we have asked a number of people, to suggest that. You have, Anne, mentioned the cynicism, and the feeling is that there could be a better understanding, a better education process. We are also aware that there is almost a sclerotic understanding of parliamentarians. At a local level there is an acceptance that they are doing good: 'They're all crooks except my local member.' And, of course, that is the one they come into contact with.

**Ms MANCINI**—Yes.

**The CHAIR**—So we would be very interested if you could continue, yes.

**Ms MANCINI**—Okay. Well, try this one, which could be done with a bit of humour: a best and fairest award for the really industrious, effective member of parliament, named after a respected politician from the past perhaps, maybe involving the press so that it is guaranteed to get some coverage, and it would be a positive story about achievement in the political area. I have been thinking about schools and citizenship courses. I know the electoral office prepares fantastic material but I also know that teachers enthuse about it and then it sits on a shelf in the library or in the staffroom—and I know there are few teachers in this crowd, so you know how that happens to good material because there is not space on the curriculum. So I was wondering again, thinking along the lines of awards, whether there could be an award to a school for its citizenship training or its citizenship course. Schools would have to enter for it and it could be a prestigious award. It could be presented by the Governor.

**The CHAIR**—There is a thing called the Victoria Prize for export entrepreneurs.

**Ms MANCINI**—This would be for civic entrepreneurs.

**The CHAIR**—Yes.

**Ms MANCINI**—I guess you would have to balance it out between schools so that it did not seem to go to schools in one sector of the system.

**The CHAIR**—Sure.

**Ms MANCINI**—There are all sorts of political complications like that. The other idea I had was this notion of work experience. I know a lot of schools visit—there is a steady stream of schoolkids going there

now—but I wonder about the bright kids, the future leaders in years 11 and 12, whether schools could be invited to suggest students who might be interested in a mentoring system somehow or other. I do not know who would do the mentoring but they could stay for, say, a week and actually see at first hand what advisers are doing.

**The CHAIR**—Work experience type of thing.

**Ms MANCINI**—Yes, but it should be an award. It should not be something nobody applies for because politics is so boring. It should be an award and it should build on this celebrity cult that the young have, I think.

**The CHAIR**—That is a good idea. Excellent.

**Ms MANCINI**—I am happy to do more work on those.

**The CHAIR**—There may be some questions, Anne, if you are happy to answer some, if you could.

**Ms MANCINI**—Yes.

**The CHAIR**—I was particularly interested in some of the comments that you had from your students, which were fairly damning. Were there any positive ones, particularly about local members of parliament?

**Ms MANCINI**—No.

**The CHAIR**—Or interaction?

**Ms MANCINI**—None.

**The CHAIR**—None?

**Ms MANCINI**—I do not know that they know their local members.

**The CHAIR**—They probably do not see them.

**Ms MANCINI**—A lot of them are semi-nomadic and that is why they are not going to even get a vote, because they will not be enrolling. There are mixed motives for not enrolling. It is pretty sad. And they do not know the history of how people got the vote and what a struggle it was and how the extension of the franchise is a triumph. They do not know that—except maybe some of the Chinese and Korean and Ukrainians do.

**The CHAIR**—Because, having come here, therefore they have checked out on the struggle, which is interesting.

**Ms MANCINI**—They know where the democracies are.

**The CHAIR**—Yes, a fair point.

**Mr PAKULA**—When I hear those comments from the students, it makes me wonder how much of that perception problem is a matter of the absence of a ministerial code of conduct or the absence of a parliamentary standards commissioner—and how much difference any of that would make—versus the reality that we are in a combative profession where, by definition, the two majors parties' interests are served by seeking to tear the other party down in public as often and as comprehensively as possible. I do not think any standards or codes of conduct would deal with that, where the incentive is to take a small issue and to blow it up as big as you can and, in a parallel sense, the incentive of the media is to make as big an issue as they can out of every small offence.

For example, there was a four-page article in the *Herald Sun* a couple of months ago which detailed the

shareholdings of a whole range of MPs. It had no probative value. It was not suggesting any impropriety by any MP. As far as I could tell, it was simply voyeuristic. It was about saying, 'Look at these rich bastards,' and it was designed to create cynicism and a dislike of members of parliament. I do not know how any of the things that have been suggested—for instance, by the ASPG—would deal with any of that.

**Ms MANCINI**—I think the media has to accept responsibility for a lot of the negative cynicism around. I understand that it is a very combative life that you lead, but this committee is a great sign of how things have to be in the future. There is a limit to how much combat can go into solving the kinds of problems that you are legislating about.

**Mr PAKULA**—That is right. There is a limit to how much combat goes into problem-solving, but there is unfortunately no limit to how much combat goes into the contest of trying to win government. It is a different issue.

**Ms MANCINI**—If the rules are clearer, then maybe you can say, 'No, foul play,' or, 'You're out,' or something more easily. I do not know.

**The CHAIR**—You mentioned question time. I think the phrase you used was 'failures in question time'.

**Ms MANCINI**—Yes.

**The CHAIR**—Given what Mr Pakula has said, what do you mean by that?

**Ms MANCINI**—When questions are not really answered and when people behave horribly, in a style I recognise as schoolyard sort of stuff. It must be horribly demoralising to sit and listen to that and see effective, good people treated in that way. That is why people say, 'Oh, we don't want our kids to go into politics.' I agree, it is a huge ask, but the problem is huge. The set-up of this committee and the status of Victoria at the moment gives us just a little chance that we might be able to do something.

**The CHAIR**—I think behind what Mr Pakula is saying—and he will correct me, of course—is that there is a certain combativeness in politics between the ones in government and the ones not in government, or whatever alliances or non-alliances there may be between members and groups and parties in parliament.

**Ms MANCINI**—Yes.

**The CHAIR**—In terms of the suggestions, at one level they are saying, 'Let's reduce that antagonism; that struggle.' Is that what we are really asking for? The nature of our democracy is that it has been built on basically two-party parliaments and states.

**Ms MANCINI**—Again, I have no expertise in party history or any of those things, but it seems to me that there is a convergence going on and it seems to me that the problem is becoming more and more long term. The more our scientists learn, the more we know ahead of time, so governments have to look to long-term solutions. Yes, combat can be effective and can make people think that when it really degenerates, as has been happening in some areas of government in Australia, it is not doing what it did in the 18th century or the early 19th century. That is why I think this sort of committee is incredibly good.

**The CHAIR**—Any other thoughts before we move on? Thanks very much, Anne, for your time.

**Ms MANCINI**—Thank you very much. Best wishes for a great outcome.

**The CHAIR**—Thanks very much.

**Witness withdrew.**

**Hearing suspended.**

# VERIFIED TRANSCRIPT

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne—2 August 2007

#### Members

Mr B. Stensholt  
Mr G. Barber  
Ms J. Graley  
Mr M. Pakula  
Mr R. Scott

Mr K. Wells  
Mr R. Dalla-Riva  
Ms J. Munt  
Mr G. Rich-Phillips  
Dr B. Sykes

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

#### Staff

Executive Officer: Ms V. Cheong  
Assistant Executive Officer: Ms J. Nathan  
Office Manager: Ms K. Taylor

#### Witness

Dr R. Mathews.

**The CHAIR**—Thanks very much, Race, for coming along. On behalf of the committee, I welcome you and I thank you for your submission. I know that you have been involved in the work of other organisations also. You probably do not need too much introduction, but you might like to say a few words about what you are doing at the moment. Then presumably you would like to speak to your submission and I am sure you would be delighted to answer any questions.

**Dr MATHEWS**—Thank you, Chairman. At the outset, can I congratulate the committee on receiving this reference—I suspect one of the most important that will come before the committee in the course of the current term of parliament and one which gives the committee the opportunity to make a major contribution to the wellbeing of this parliament, to the health of democracy in this country and to set an example for parliaments elsewhere in Australia.

I also want to acknowledge at the outset the fact that this parliament has been at the cutting edge as far as reform in these respects are concerned: the first round of reform which occurred in the opening months of the first term of the Bracks government and reinforced the role of the parliamentary commissioners, particularly that of the Auditor-General, the Ombudsman; the introduction of the Privacy Commissioner and a whole clutch of other reforms which were brought in at that stage; and then the additional second round of reforms associated with the reform of the upper house in the second term of the Bracks government, which again marked a massive step forward as far as state governments in Australia are concerned. I do not believe that this government and this parliament can be too highly commended for the work that has been done in those respects, but it cannot be denied that the problem which those reforms have been designed to address is a very deep-seated and a very serious one indeed.

I refer you to point 2 in the submission that I put to you. It was asked in a 1995 Morgan poll whether federal politicians usually tell the truth. Sixty-seven per cent of respondents disagreed, 24 per cent agreed and nine per cent had no opinion. Seventy per cent of those polled agreed that politicians could not be trusted to keep election promises; 84 per cent that politicians lied at election time to win votes; and 94 per cent that politicians twisted the truth to suit their own arguments. I am not aware of that particular poll having been subsequently updated, but I am aware of another which the Morgan organisation does periodically update, namely one which asks respondents to rank in order of trustworthiness a number of professions and vocations, a poll which normally sees doctors, nurses and dentists come out as being the most trustworthy of the professions and which leaves members of parliament vying at the bottom of the scale with estate agents, used car salesmen and journalists.

I do not believe that that is a healthy standing for members of parliament and parliaments to have in the eyes of the public. It needs to be noted, of course, that these are not new developments, although I suspect they have become more devastating over time. If we go back in our history, it is plain that Australians have never held their elected representatives—whether state, federal or, for that matter, municipal—in particularly high regard, but that they should have high regard for their elected representatives and trust in them becomes the more important as the complexity of government and the demands of accountability on the part of government—the demands for transparency on the part of government and the demands, not least, for veracity on the part of government—become accordingly the more pressing in response to that complexity.

I want to endorse the proposals and the supportive reasoning which has been put forward in the document *Renewing accountable government* which was put forward late last year by the working party of the society for the study of parliament. Similarly, as the committee may be aware, a second document relating to the federal parliament is being released in Canberra today.

**The CHAIR**—It was presented to the committee and tabled yesterday.

**Dr MATHEWS**—It is already in front of you. I want to very strongly endorse the proposal set out in that document and, in particular, I want to stress one particular aspect, and that is the importance of the appointment of a commissioner for parliamentary standards. This, as members will be aware, is a reform which was brought in some years ago by the United Kingdom parliament and has been generally welcomed across the board—all parties; external observers—as having had a significant impact on the effectiveness of the parliament and, slowly but surely, an effect in terms of improving the standing which members of parliament and the parliament itself enjoy in the eyes of the public.

Now, why should that be so? The difficulties seem to me to be as follows—and I speak, in a sense, rather than as an outsider looking in, as a previous insider. Over time, I was chief of opposition staff in both the state and federal parliaments, a municipal councillor, a federal member of parliament and a state member of parliament and state minister, so I have had the opportunity to observe the system from a variety of standpoints and it has been clear to me over the years that this Office of the Parliamentary Commissioner was one sorely needed. Why should that be so? First and foremost, being a member of a parliament is a job for which there is no professional preparation. We are brought in, as it were, by favour of our electors and tossed in at the deep end and left to find our own way around the procedures of the parliament to decide what are the proper requirements of the parliament; what are the ethics and the proprieties which should apply to the conduct of members of parliament.

So an important role for this commissioner as it has developed within the United Kingdom parliament has been to provide training on the job, guidance, counselling and response to queries in all those aspects of how members of parliament discharge their professional duties. Secondly, anybody who has been associated with parliaments over time will be aware of how, on occasion, the privileges of the parliament are abused. Over the years I have had the opportunity to observe members of parliament up in their places at various stages of the day's proceeding saying things which, frankly, were untrue; that they knew to be untrue; and which, in many circumstances, were damaging to people outside the parliament who have had no effective opportunity for redress. That, of course, is a matter which theoretically can, in some circumstances, be referred to the Privileges Committee of the parliament, but again, as those of us who have been involved with the work of parliaments know, as a body it has become as adversarial as the parliament itself and is, accordingly, impotent for dealing with these matters other than on a partisan basis.

The need for an external, impartial person appointed through a properly impartial process is patent; a person to whom appeals against the abuse of privilege can be directed and who can provide appropriate redress through a process of investigation, of conciliation and of report to the parliament on the matters thereby referred. Secondly, the office of commissioner can deal with some of the improprieties which commonly are overlooked. To cite only perhaps what may seem a minor example, when I was myself a member of parliament, when I was a minister, I regarded it as a matter of elementary courtesy, as well as a professional obligation, to respond promptly and effectively to matters which were raised with me by members of the public through correspondence.

It was my view at the time that a minimum requirement should be that a letter addressed to a member of parliament or a letter addressed to a minister should be acknowledged within a period of no more than two weeks, should receive a substantive reply within no more than six weeks and, failing a substantive reply within a six-week period, receive an explanation for the delay in producing that reply. I think there has been a noticeable descent—a notable decline—in the observance of proprieties of that sort with regard to correspondence.

Secondly, another aspect of responsiveness to which I believe a commissioner for parliamentary standards would want to apply himself or herself is the matter of questions on notice. Questions on notice are one of the most important and valuable tools of trade available to members of parliament. The capacity of members of parliament to receive prompt and responsive replies to questions on notice is indispensable if members are to properly perform their responsibilities. Where replies to questions on notice are either denied on the grounds of excessive call on resources or are inordinately delayed, the whole effectiveness of the parliament and of the members of committee suffers accordingly.

The same, of course, is true of responsiveness under freedom of information. Freedom of information rules are of relatively recent introduction in this country, and it has been remarkable to observe how quickly, following their introduction, their effectiveness became impaired by an excessive unresponsiveness on the part of those to whom requests were referred. Again, we need a capacity on the part of the commissioner for parliamentary standards, or alternatively the Ombudsman, to be available to people who find themselves aggrieved as far as responsiveness to FOI requests is concerned.

If the reforms recommended in the two documents of the society for the study of parliament working group were to be implemented, I believe it is certain that there would be a significant, measurable, worthwhile

improvement in the efficiency and the effectiveness of the parliament. There would also be a significant enhancement in the standing of the parliament and its members in the eyes of the public and there would correspondingly be a gain for the wellbeing of Australian democracy.

In closing, I will say that changes of this sort require reciprocity. Those who seek accountability from members of parliament, from ministers and from the parliament itself must do so with an element of responsibility. It is plain that where abuses of process occur, where entitlements such as replies to questions on notice and requests under freedom of information legislation are abused frivolously or through casting too extensive nets—fishing I believe it has now come to be described as; we are in the poor situation where something like that needs a new word to describe it, so prevalent has it become—the whole institution is devalued and links are provided for abuse of the system by those who have a statutory obligation to respond.

I would be happy to go into other aspects of the document, Chairman, but, given the time available, the most important thing I can do before this committee is to emphasise the importance of the reference that has been given to it and to suggest that, as the committee's consideration of the reference progresses, members may feel the need to seek from the government a broadening of the immediate terms of reference which have been made available to them in order to more fully discharge this opportunity which has been provided. Thank you very much.

**The CHAIR**—Thank you, Race, for that. I should also note for your information that this year the parliament also passed an act which provided increased status for this committee and the SAR Committee and provided more resources for public accounts and estimates, which we are trying to use. So there is a continuation of some of the things that you mentioned earlier on. You focused very much in your submission, if I can turn to the general submission on the Study of Parliament Group, on recommending a parliamentary standards commissioner. Do you want to talk a bit more about that, because my understanding of a parliamentary standards commissioner is that it very much focuses on—and you have seen this thing issued today, I assume:

- Overseeing the maintenance and monitoring the operation of the register of members' interests.
- Providing advice on a confidential basis to individual members and to the Privileges Committee about the code of conduct and the rules relating to the conduct of members.
- Preparing advice and providing training for members on matters of ethics and propriety.
- Monitoring the operation of the code of conduct.
- Receiving and investigating complaints—

I presume almost like an ombudsman—

about members and reporting his findings to the committee.

Presumably that is the Privileges Committee. It very much focuses on members rather than on the executive. Do you want to talk a little bit more about how you see this as it relates to the Victorian parliament? You can probably elaborate on what you think this might actually offer Victoria, bearing in mind that the Privileges Committee works far better than you intimated in your evidence.

**Dr MATHEWS**—I am relieved to hear that the functioning of the Privileges Committee has improved. There was certainly in my own day almost infinite scope for improvement to occur. I do not remember in my own time on the Privileges Committee it ever conducting an inquiry for which it could have been said to have emerged with credit to itself.

**The CHAIR**—I think the exact opposite occurs these days.

**Dr MATHEWS**—As I say, I am relieved to hear it. But I do not believe that that obviates the need for a commissioner for parliamentary standards, whose obligations formally fall under three headings: education and training for members as far as the ethics and proprieties of their profession are concerned; monitoring of the conduct of the parliament as an institution and of members and ministers therein,

particularly with regard to the ministerial code of conduct which, as the document emphasises, is in need of substantial upgrading; and finally, as you say, an ombudsman type capacity to receive complaints or requests for redress, both from other members of parliament and, more particularly, from members of the public.

**The CHAIR**—As I mentioned, and as the paper says, it very much relates to the conduct of members, not of the executive. So you would see it operating, if it were to come in in Victoria, with a much wider mandate than it has in the United Kingdom. As I mentioned and as the paper says, it very much relates to the conduct of members, not of the executive. So you would see it operating and, if it were to come in in Victoria, that it has a much wider mandate than it has in the United Kingdom.

**Dr MATHEWS**—Correct. That is in fact so. Clearly there would be an interface between the work of the commissioner and the work of the Privileges Committee and there would be a need for certain supportive changes in standing orders. I would like to refer the committee to the work that was done by the Blewett committee of the federal parliament about 10 years ago and which resulted in the extremely important improvements to the way in which the federal parliament went about the conduct of its affairs. One in particular which seemed to me at the time to have been long overdue and to have been well worthwhile was the capacity for a member of the public who regards himself or herself to have been misrepresented by a member of parliament under the exercise of parliamentary privilege to obtain redress by the insertion of a statement in *Hansard*.

**The CHAIR**—We have that here.

**Dr MATHEWS**—An appropriate mechanism as an example of the sorts of things that a commissioner for parliamentary standards would want to emphasise and would want to be reinforced.

**The CHAIR**—How would such a commissioner relate to the executive? I can understand being appointed as a commissioner for parliamentary standards and relating to the parliament and the members but, insofar as you are looking to have it overseeing ministerial conduct, how would it formally relate to the executive when the executive—

**Dr MATHEWS**—The capacity for the commissioner to inquire into and report on to the parliament as regards breach of an agreed ministerial standard of conduct would seem to be the appropriate way into that proposition. You may recall that prior to the 1996 federal elections, the opposition of the day was extremely supportive, and rightly supportive, of the need for a code of ministerial conduct for the federal parliament, and a quite detailed draft code of ministerial conduct was brought forward as part of the opposition of the day's election policy proposals, and, for a year or two subsequent to the opposition's becoming the government of the country, there was fairly close adherence to the terms of that ministerial code of conduct and, indeed, some ministers lost their positions in the government as a result of breaches or perceived breaches of the code of conduct. Thereafter, the adherence to the code was less conspicuous and it may be the fact that one of the reasons that it was able to be less conspicuous was the absence of a commissioner for parliamentary standards who could officially have called attention to circumstances where breaches occurred and had been passed over.

Clearly, a commissioner for parliamentary standards is not empowered or has not been empowered under proposals to date to impose any sort of sanction other than that of its capacity to report publicly to the parliament and make the facts of any given matter and its relationship to any stated code the substance of a report.

**Ms GRALEY**—I have been very interested to listen to the submissions, many of whom mentioned this perception about the standing of MPs, and you introduced your discussion this afternoon with the 1995 Morgan poll results. What is the evidence—and you may have partially answered my question just then but I would like to hear more about it—for your statement that the parliamentary standards commission has been responsible for the improvement in the eyes of the public of the standing of parliament?

**Dr MATHEWS**—This is simply based on a fairly consistent attempt on my part to keep abreast of proceedings in the British parliament and the interaction between the British parliament and the British electorate at large, and there have been some expressions of satisfaction over very recent years with the



impact of the commissioner for parliamentary standards on the perceived, I suppose, integrity and propriety of the parliament, both of which were held in lower esteem prior to his appointment. His availability is also widely perceived as being important. It is not necessary for a person to actually invoke the assistance of the commissioner for parliamentary standards to take comfort from the fact that such a commissioner is available, and, similarly, a member of parliament tempted, perhaps, to malign a person outside the parliament through the exercise of parliamentary privilege will be less likely to do so if the scrutiny of a commissioner for parliamentary standards is available as a routine matter rather than only, as it were, the hammer as opposed to the nutcracker approach, which is the rarely invoked making of a reference to the Privileges Committee. In other words, we need a much more easily accessible and routinised procedure for dealing with episodes of abuse of parliamentary entitlement and privilege than that which the Privileges Committee would provide, even functioning, Chairman, at the highest conceivable standards.

**Mr PAKULA**—Race, just following up on Judith's point, is there any measurable change, whether it is by opinion poll or any other thing that you are aware of, of the public's perception of politicians in general in Britain? That would be my first question. Secondly, the poll that you referred to which put us down with real estate agents and journos: I wonder whether we are in any sense unusual in global terms in that regard. I suspect if you ran a similar poll in other Western democracies, you would get a similar result. I do not have any evidence for that, but that would be my sense. I do not think politicians are highly regarded in the USA or various other Western democracies. Thirdly, going to this issue of redress for privilege breaches, how widespread do you think that is? I must say, I do not recall in recent years too many examples of MPs breaching their privilege rights by slandering members of the public. It is certainly not something that happens in a routine sense. I would have thought it was very rare.

**Dr MATHEWS**—Again, I have been out of this parliament for a decade and I am delighted that that sort of improvement has occurred in my absence, but there were certainly, in my time in this parliament—and I was here for 14½ years—members of the parliament who were chronic offenders, repeated; almost, one might say, continuous offenders in those respects. There were those who occasionally slipped from grace and there were those who were models of propriety. I think parliaments need to be able to deal with the reality of that continuum, that gradient, and the public has a right to feel that there is a capacity and a willingness on the part of the parliament to take appropriate action where those proprieties and responsibilities are blatantly breached.

**The CHAIR**—What do you see as breaches? I do not want you to necessarily give individual examples in terms of so-and-so and so-and-so, but the sorts of actions that you see as breaches?

**Dr MATHEWS**—I have seen members of this parliament get up on the adjournment and make statements about people outside the parliament which I knew to be untrue and which I knew them to know to be untrue, and those people at the time had no redress available to them whatsoever, other than by getting another member of the parliament to get up and make a statement to the contrary, which just made the whole thing contestable.

**The CHAIR**—That is one example of what you see as inappropriate behaviour. What are other examples? Do we really need a commissioner for that when the Privileges Committee, as changed in the last few years, can adequately deal with it?

**Dr MATHEWS**—As I said, my observation of the Privileges Committee, as a member of that committee, was that it had become completely adversarial in the way it went about its affairs and that, as a result, you could never get a finding from it which would be accepted by both sides of the House as having been objectively and impartially reached. I take the point that was made in questioning of the previous witness, that parliament is traditionally, appropriately and maybe inevitably an adversarial institution.

**The CHAIR**—Sure. We understand slander is one example. What other examples are we looking at for this commissioner to provide advice on?

**Dr MATHEWS**—Advice from the commissioner to members of the parliament.

**The CHAIR**—Why do we need this commissioner if we are only dealing with slander, which is

currently dealt with by the Privileges Committee quite successfully at the moment?

**Dr MATHEWS**—No, we do not need this commissioner to deal exclusively with slander, although that is an important part of his or her responsibilities. We do need this commissioner to guide members of parliament through the intricacies of effectively performing their duties. What would we say by way of examples? The register of interests is an important aspect that we have seen in quite recent times: how members of this parliament can find themselves in difficulties as a result of aspects of the way in which they manage their entries in the register of interests. We have seen the wider issue of conflict of interest and the circumstances in which conflict of interest arise, and how readily members of parliament can expose themselves either to the reality of conflict of interest or to perceived conflict of interest or to the attribution of conflict of interest through the media.

I also referred earlier to those things which might be regarded as the common courtesies of members of parliament. I do not know how the custom became widespread of failing to acknowledge correspondence addressed to members of parliament and to ministers or, where acknowledgments are in fact provided, substantive responses either do not eventuate or are so long delayed as to be of no relevance or value, but that is another example of the sorts of proprieties that a member of parliament or a minister might be expected to observe but which are, in fact, observed more in the breach.

**The CHAIR**—Do you see it as a matter of the judgment of this commissioner as to what they might follow up, or could this commissioner be almost misused and set off on a whole lot of witch-hunts, insofar as they have to respond to any and every inquiry that they might get?

**Dr MATHEWS**—I do not think that there is any institution associated with a parliament which cannot be abused, if people take it into their minds to abuse.

**The CHAIR**—You mentioned fishing.

**Dr MATHEWS**—Yes. We have seen freedom of information massively abused. We have seen questions on notice significantly, if not massively, abused. Of course, the result of abuse of a facility leads to defensive behaviour on the part of those responsible for that sort of facility and you get a vicious downward spiral developing. A commissioner for parliamentary standards would have a valuable interventionist role in ensuring that that downward spiral was interrupted before it becomes irresistible.

**Mr RICH-PHILLIPS**—Dr Mathews, I would like to ask you about what dictated your behaviour as a minister in the Cain government. You spoke about certain practices as a minister, in correspondence et cetera. What drove that? Was there an edict from the Premier or was there, at that stage, an existing expectation on ministers to behave a certain way? Was there any underlying guide as to how ministers—

**Dr MATHEWS**—There was the *Cabinet Handbook*, which was a help, and in normal circumstances, where the cycle of changes of government occurs at what would be regarded to be two or, at the most, three terms, you have members of the parliament who have previously had ministerial experience who become mentors and guides. After the 27 years that Labor had been in opposition, when I became the minister that did not operate because, of course, none of the members of the parliament at that stage, much less those who went into the ministry, had had previous ministerial experience, and so to a very real extent we had to learn on the job.

There was some assistance, I suppose, as a result of the fact that we had all been members of a shadow cabinet over a number of years and that that shadow cabinet had quite consciously set out to operate along conventional cabinet lines on the basis of proper written submissions and all like aspects of a proper cabinet procedure. So we had done some training, I suppose, of ourselves, and we had consulted with cabinets around Australia about how we should go about our work and what were the reasonable expectations of us. For my own part, having had two stints as chief of opposition staff in both the federal and the Victorian parliament, and having been a federal member and chaired some federal committees, I had had the opportunity to observe at first hand how ministers operated and what was expected of them in a way which perhaps was not available to all my colleagues in 1982, and I think that the introduction of more formal or extensive opportunities for preparation for ministerial office would be a useful innovation for the parliament.

**Mr RICH-PHILLIPS**—Was there an expectation set by the premier of the day as to ministerial accountability?

**Dr MATHEWS**—Yes. The Premier at the first cabinet meeting spoke at length about what was expected of ministers in terms of proprieties under a whole host of headings, and the premier of the day had very high expectations of his ministers and was not backward in giving ministers who fell short of them the rounds of the kitchen.

**Mr RICH-PHILLIPS**—I want to follow up on your earlier comment about the Commonwealth code of ministerial conduct and how it worked for the first couple of years. You suggest it is perhaps less effective now, and we saw a similar thing with—

**Dr MATHEWS**—I do not recall that we had a similar code of conduct. I think the code of conduct has been a very significant innovation at the federal level, a very worthwhile one, for all that the observance of it in recent years seems to have slipped so drastically; and that it is important that a document of that sort should periodically be upgraded and amended in the light of the experience of its operation, and that there should be a person external to that code, as it were, who can oversee observance.

**Mr RICH-PHILLIPS**—That is the point I am getting to: at a state level—a similar vein—not a ministerial paper. There was the independence charter. When this government came to power in 1999, certain elements of that have since become less relevant. Should those codes, those charters, be set independently of government? Is it something that a parliament should be doing? Should the parliament, rather than the government of the day, be laying down a ministerial code of conduct or guidelines for ministers so that they are in the hands of the parliament, so that they cannot be diminished as is convenient by the government of the day?

**Dr MATHEWS**—I think, rather, that they should be entrenched by a vote of the parliament. That would not deny the government of the day the opportunity to have significant input, to be the originator of the document, but there should be an opportunity for the parliament itself to input into that document, and certainly my preference would be for the document to be in some sense entrenched. After all, we have seen guarantees introduced where the integrity of the Ombudsman and the integrity of the Auditor-General are concerned, and I think that the code of ministerial conduct should be seen as having a stature equivalent to those parliamentary commissioners.

**Ms GRALEY**—Race, this is mainly a logistical question. If, for example, there was this parliamentary standards commissioner, would you still see the need for a privileges committee?

**Dr MATHEWS**—Yes. Certainly parliament needs a body of its own, namely the Privileges Committee, to deal with formal complaints of a serious nature against members. One can have all the reservations in the world about how badly or how well the committee may be functioning.

**The CHAIR**—I am a member. I expect so!

**Ms GRALEY**—He is going to go and read all the proceedings when he gets home!

**Dr MATHEWS**—But that is not to gainsay the importance of it being there, and of the obligation on the part of every member of the parliament to take it seriously and to uphold it in every possible way.

**Ms GRALEY**—Thank you.

**The CHAIR**—Thanks very much, Race, for both your interest in putting a submission and for coming before us today—and, yes, even asking questions on your ministerial capability from the past.

**Dr MATHEWS**—Thank you.

**The CHAIR**—That concludes our hearings for the day. We have our next meeting, which will be a

private meeting, at two o'clock next Monday.

**Witness withdrew.**

**Committee adjourned.**