



LEGISLATIVE COUNCIL

OFFICE OF THE PRESIDENT

1 August 2011

The Secretary
Standing Committee on Administration and Procedure
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Sir

Inquiry into the feasibility of establishing the position of Officer of the Parliament

Thank you for your letter dated 19 May 2011 inviting me to make a submission to the Committee's inquiry concerning the feasibility of establishing the position of Officer of the Parliament in the Australian Capital Territory.

There is no established position of 'officer of Parliament' in New South Wales. While some Parliaments have adopted the concept of an 'officer of Parliament' to denote independent integrity or 'watchdog' officeholders who are deemed to possess a special relationship to Parliament such as the Auditor-General or the Ombudsman, no comparable framework or model has been developed in New South Wales.

One officer, the Parliamentary Budget Officer, has been declared an 'independent officer of Parliament' by the *Parliament Budget Officer Act 2010*. However, this officer supports the work of members of Parliament directly through measures such as technical briefings on budgetary matters and costing of election commitments rather than through broader watchdog functions. The officer forms part of the parliamentary establishment but is independent in the execution of his or her functions and accountable to Parliament under the Act.

However, while there is no general model of an 'officer of Parliament' in New South Wales, measures have been adopted to protect the independence of the State's independent integrity or 'watchdog' officeholders as discussed below.

The Auditor-General, the Ombudsman and the Electoral Commissioner

At the apex of the accountability regime, the Auditor-General's independence is reflected in mechanisms such as:

- an appointment process which is subject to veto by a parliamentary committee
- a dismissal process requiring an address by both Houses of Parliament

- oversight by a specialist standing committee (the Legislative Assembly Public Accounts Committee)
- a fixed and non-renewable term of office
- submission of reports to Parliament through the Presiding Officers rather than a minister
- exemption of Audit Office staff from aspects of wider public sector management legislation
- classification of the Audit Office as a non-budget dependent agency.

Following consultation with the New South Wales Auditor-General, I understand that neither he nor his predecessors have ever expressed the view that the independence and role of the position needs to be altered through designation of the office as an 'officer of Parliament'.

The Ombudsman and the Electoral Commissioner are also protected by provisions to ensure their independence, although the arrangements vary from those applicable to the Auditor-General.

For example, the Ombudsman's appointment is subject to veto by a parliamentary standing committee, the Joint Committee on the Ombudsman, which also has responsibility for overseeing the Ombudsman's functions. Further, the process for removing the Ombudsman from office involves an address of both Houses of Parliament, as with the Auditor-General. However, the *Ombudsman Act 1974* prescribes a maximum rather than a fixed term for the office and does not appear to limit eligibility for reappointment.

The Electoral Commissioner's appointment is a matter for the executive government alone with no provision for parliamentary involvement, and the Commissioner's functions are not subject to oversight by a specialist standing committee, although aspects of those functions may fall within the scope of inquiries by the Joint Standing Committee on Electoral Matters. Nevertheless the Commissioner's independence is protected by measures such as a requirement for a vote of both Houses of Parliament before the Commissioner can be removed.

Further details of the characteristics of these offices are provided in Attachment 1.

Other watchdog or integrity officers

Other independent officers with a role in monitoring the use of government power in New South Wales include:

- the Commissioner of the Independent Commission Against Corruption
- the Inspector of the Independent Commission Against Corruption
- the Commissioner of the Police Integrity Commission
- the Inspector of the Police Integrity Commission
- the Privacy Commissioner
- the Information Commissioner
- the Health Care Complaints Commissioner
- the Commissioner for Children and Young People

Each of these offices is subject to oversight by a joint parliamentary standing committee, there being five joint oversight committees in New South Wales.¹ In addition, almost all of the offices include requirements for parliamentary involvement in appointment and/or dismissal and various other accountability measures, as shown in Attachment 1. However, the relationship such officers have with the Parliament varies.

Certain commissions, for example, such as the Independent Commission Against Corruption, have extensive coercive and covert powers which arguably set their investigations apart from those of a traditional watchdog like the Ombudsman who has historically undertaken more of the 'grievance' role once belonging exclusively to members of Parliament. Other commissions have regulatory, education or research functions in addition to their watchdog or scrutiny roles. A strict interpretation of the concept of 'officer of Parliament' could potentially exclude offices with a quasi-judicial or pronounced regulatory role. However, a more flexible interpretation might be capable of encompassing offices at different levels of the accountability regime.

Conclusion

The question of whether formal recognition should be given to particular officeholders as 'officers of Parliament' has not been addressed by the Parliament or formed part of the public debate in New South Wales. However, there does not appear to be a pressing need to reinforce the mechanisms currently available to protect the independence of particular officeholders. Nor is there any consensus on the appropriate boundaries for defining an 'officer of Parliament' in New South Wales.

I would be happy to provide further details about officeholders in New South Wales should the Committee so desire.

Yours sincerely



The Hon. Don Harwin MLC.
President

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The Committee on the Independent Commission Against Corruption; the Committee on the Office of the Ombudsman and the Police Integrity Commission (which also covers the Information and Privacy Commissioners); the Committee on the Health Care Complaints Commission; the Committee on Children and Young People; and the Committee on the Office of the Valuer-General.

Significant statutory officeholders in New South Wales

Officer	Appointment subject to veto by parliamentary committee	Dismissal requiring address or vote of both Houses	Oversight by parliamentary committee	Fixed Term of office	Eligible for re-appointment	Remuneration (as stated in governing Act)	Special funding arrangements	Principal legislation
Auditor-General	Yes	Yes	Yes (Legislative Assembly committee)	Yes	No	Determined by SORT ¹	Non budget-sector dependent agency	Public Finance and Audit Act 1983
Ombudsman	Yes	Yes	Yes (joint committee)	Maximum term fixed	Yes	Determined SORT	Appropriation (Special Offices) Act	Ombudsman Act 1974
Electoral Commissioner	No	Yes	No (but functions may fall within scope of inquiries of Joint Select Committee on Electoral Matters)	Maximum term fixed	Yes (only one reappointment not exceeding 10 years)	Determined by SORT	Appropriation (Special Offices) Act	Parliamentary Electorates and Elections Act 1912
ICAC Commissioner	Yes	Yes	Yes (joint committee)	Maximum term fixed	Yes (up to maximum of 5 years in total)	As specified in instrument of appointment or by Governor	(ICAC) Appropriation (Special Offices) Act	Independent Commission Against Corruption Act 1988

¹ Statutory and Other Offices Remuneration Tribunal

Officer	Appointment subject to veto by parliamentary committee	Dismissal requiring address or vote of both Houses	Oversight by parliamentary committee	Fixed term of office	Eligible for re-appointment	Remuneration (as stated in governing Act)	Special funding arrangements	Principal legislation
ICAC Inspector	Yes	Yes	Yes (joint committee)	Maximum term fixed	Yes (up to maximum of 5 years in total)	As specified in instrument of appointment or by Governor	(ICAC) Appropriation (Special Offices) Act	<i>Independent Commission Against Corruption Act 1988</i>
Police Integrity Commissioner	Yes	Yes	Yes (joint committee)	Maximum term fixed	Yes (total terms not to exceed 5 years)	Determined by SORT	-	<i>Police Integrity Commission Act 1996</i>
Inspector of Police Integrity Commission	Yes	Yes	Yes (joint committee)	Maximum term fixed	Yes (total terms not to exceed 5 years)	As specified in instrument of appointment or by Governor	-	<i>Police Integrity Commission Act 1996</i>
Privacy Commissioner	Yes	Yes	Yes (joint committee)	Maximum term fixed	Yes (up to 2 terms)	Determined by SORT	-	<i>Privacy and Personal Information Protection Act 1998</i>
Information Commissioner	Yes	Yes	Yes (joint committee)	Maximum term fixed	Yes (up to 2 terms)	Determined by SORT	-	<i>Gov't Information (Information Commissioner) Act 2009</i>

Officer	Appointment subject to veto by parliamentary committee	Dismissal requiring address or vote of both Houses	Oversight by parliamentary committee	Fixed Term of office	Eligible for re-appointment	Remuneration (as stated in governing Act)	Special funding arrangements	Principal legislation
Health Care Complaints Commissioner	Yes	No (but removal only on specified grounds)	Yes (joint committee)	Maximum term fixed	Yes (total terms not to exceed 10 years)	-	-	<i>Health Care Complaints Act 1993</i>
Commissioner for children and Young People	No	No (but removal only on specified grounds)	Yes	Maximum term fixed	Yes (up to 2 terms)	-	-	<i>Commission for Children and Young People Act 1988</i>