



Parliamentary Integrity: an Oxymoron?

The establishment of the ACT Legislative Assembly's Commissioner for Standards

A paper presented by Vicki Dunne MLA, Speaker of the Legislative Assembly of the Australian Capital Territory, to the 45th Presiding Officers and Clerks Conference, Samoa, July 2014.

This paper asks:

- **What is integrity?**
- **Why are parliamentarians seen to have so little of it?**
- **How do we address breaches integrity, and the damage this does to trust and confidence in parliamentarians and the Parliament?**

Openness and accountability in the Westminster system

The evolution of the Westminster system, where the legislature has primacy, has led to high levels of accountability within a framework of responsible government. One element of accountability is the Parliament's ability to provide independent scrutiny of the role of the executive

Many Westminster parliaments have implemented specific measures to ensure the accountability of the government of the day. Measures like:

- inquiries into government initiatives;
- budget estimates;
- the auditing of financial accounts;
- performance audits;
- standing commissions such as ICAC in NSW or the CMC in QLD;
- integrity agencies like ombudsmen;
- protection of integrity agencies by making them officers of the Parliament;

all provide additional scrutiny of government, and in particular the executive.

This demonstrated collective commitment to honesty and transparency in government, however, has not translated into improvements in the reputation of members of Parliament.

The reputation of parliamentarians

As politicians, we don't expect to be universally loved – though it might be nice. This is not just about ethics. We do after all make decisions that affect people's lives, in ways they don't always agree with. Also, the dynamic of most Parliaments means that policy disagreements are often personalised, and presented as accusations of failures of competence or compassion – so we can be seen as petty and argumentative.

This is regrettable, but today I want to focus mainly on perceptions of integrity.

In the English-speaking world there are regular surveys of people's perceptions of the ethics and honesty of various professions. Almost universally, the most trusted or perceived most ethical professions are considered to be nurses and other caring professions such as paramedics and doctors (see below).

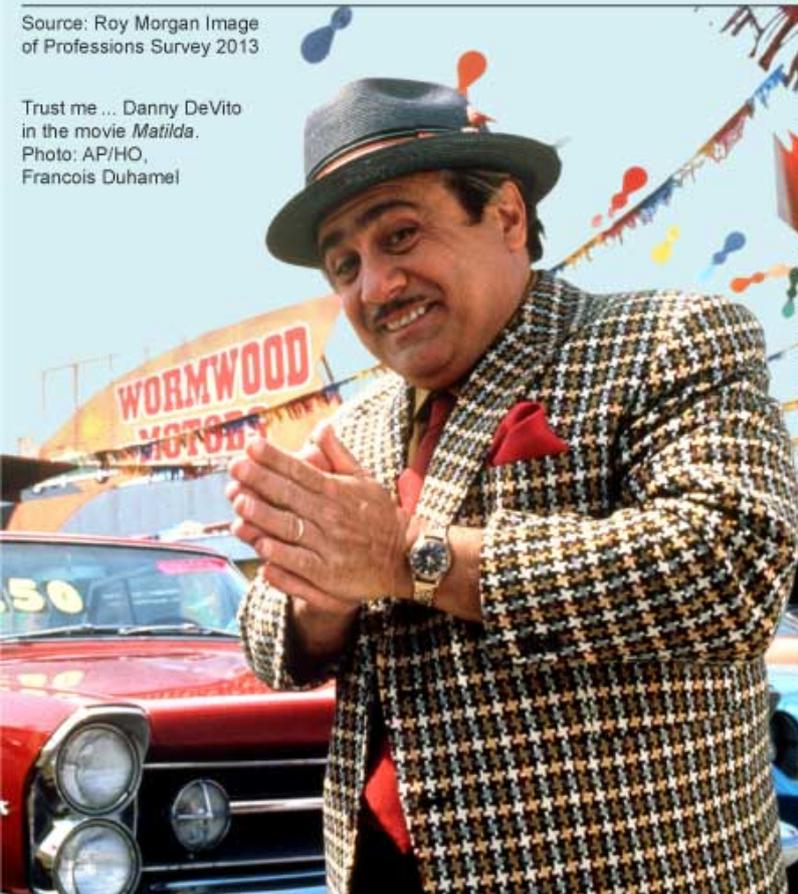
ETHICS AND HONESTY RATING		2013 RANK	RATING, PER CENT	% CHANGE FROM 2012
<p>Source: Roy Morgan Image of Professions Survey 2013</p> <p>Trust me ... Danny DeVito in the movie <i>Matilda</i>. Photo: AP/HO, Francois Duhamel</p> 	1	90	Nurses	-
	2	88	Doctors	+5
	3	84	Pharmacists	-4
	4	76	Engineers	+6
	4	76	School teachers	-
	6	74	Dentists	-1
	7	73	High Court judges	+3
	8	70	State Supreme Court judges	+1
	9	69	Police	-
	10	68	University lecturers	+3
	11	49	Accountants	-
	12	44	Ministers of religion	+1
	13	38	Bank managers	+1
	14	36	Lawyers	+6
	14	36	Public servants	+3
	16	33	Public opinion pollsters	+5
	17	26	Directors of public companies	+6
	18	25	Financial planners	-1
	19	22	Business executives	+4
	20	19	Newspaper journalists	+7
	21	18	TV reporters	+4
	22	16	Talk-back radio announcers	-1
	23	15	Stock brokers	+2
	23	15	Union leaders	-
	25	14	Federal MPs	+4
	26	13	Insurance brokers	+3
	26	13	State MPs	+3
	28	12	Real estate agents	+3
	29	9	Advertising people	+1
	30	4	Car salesmen	+2

Image: Sydney Morning Herald

While journalists and even public opinion pollsters bob around the middle, politicians continue to be bottom dwellers, along with real estate agents, advertising people and car salesmen.

Why, despite our collective fixation with separation of powers, rule of law, honesty in government, accountability in government, audits and setting up integrity agencies, does parliamentarians' own integrity get such a bashing?

Integrity means being complete, intact; with reference to persons, specifically having no *moral* defect. In positive terms, this means being principled, trustworthy, honest, and sincere. Integrity in public office is essential to ensure that all the democratic structures are not impaired or diminished by corruption or dishonesty, but remain trustworthy and trusted.

(This may be one reason parliamentarians are subject to more scrutiny than others: the risks of corruption are so much greater. Like Caesar's wife, we have to be above suspicion.)

Our democratic structures are only as strong as the weakest link. If one branch of government is underperforming, the entire system can be undermined. If one arm of government is seen not to be behaving with integrity, then public confidence is undermined. That confidence can be undermined by the actions of individuals or groups within any arm of government: a judge or magistrate in the judicial arm; individual ministers or officials in the executive arm; or an individual parliamentarian in the legislative arm.

Well, how do parliamentarians undermine the reputation and integrity of the legislative arms?

Let me count the ways:

- taking cash for questions;
- sending questionable "selfies" to your mistress while being the chair of the parliamentary ethics committee;
- using parliamentary privilege to deny using a corporate credit card to buy trips to brothels;
- trying to circumvent electoral donation laws through slush funds;
- using parliamentary allowances for private purposes;
- failing to list gifts on members' statements of interests;
- editing Cabinet minutes to say the opposite of what was agreed so as to provide a financial benefit to "mates".

(These are all drawn from Australian cases. I am in no position to say whether other Parliaments are better or worse, but I suspect the problems – and the remedies – may be similar.)

Resurrecting the reputation of parliamentarians

Well we've covered some of the reasons why members' reputation for integrity and trustworthiness is embarrassingly and consistently bad. So how do Parliaments improve their actual and perceived integrity?

Most of the issues above have emerged from large-scale star-chamber-style inquiries into parliamentary misconduct. Given that such problems exist among Parliamentarians, it is obviously better that they be revealed in this way than remaining hidden. However there are possible unsatisfactory outcomes:

- These enquiries, like the mills of God, grind slowly: the process is protracted, expensive and unedifying, and the outcomes distant and uncertain;
- The process is often politicised, as the accused's party seeks to maintain their numbers and reputation, and their opponents to attack these, regardless of their merits;
- A quasi-judicial approach to onus/burden of proof, and the difficulty of obtaining evidence especially after years have passed – and witnesses may not be disinterested - means that there is a sense that cases where there is a finding of misconduct may be the tip of the iceberg;
- In consequence, parliamentarians have their reputations damaged by merely being involved in public hearings even when they are finally exonerated.

The overall approach might be summarised as “too much, too late” – and with too little certainty.

Instead of the big, showpiece commissions, it might be better it to focus on the more modest approaches that create a culture of integrity through every-day vigilance. In this area, it seems to me self-evident that prevention, if achievable, is better than cure, whether considered from the perspective of public finance, trust in Parliament or the integrity of the political process.

Parliamentarians need to be vigilant to avoid damaging the institution. We need to build a culture where even small lapses are not tolerated. Bending the rules, even the smallest ones, can lead to an environment where misconduct thrives.

In this mode, David Blunt in his paper at last year's POCC, *A Parliamentary Commissioner for Standards for New South Wales?*, drew parallels between the 'no broken window' theory of

crime prevention and having a mechanism for addressing minor breaches of the rules before they become big breaches. David said:

Arguments continue as to whether the implementation of the theory explains the rapid reduction in crime rates in New York and other major US cities during the 1990s. However recent European studies have also demonstrated that an orderly environment free of graffiti or litter influences ethical behaviour: it “fosters a sense of responsibility not so much by deterrence... as by the signalling of a social norm: this is the kind of place where people obey the rules.” A Parliamentary Commissioner for Standards that resolves more common minor infringements quickly and effectively may help create a parliamentary environment where more serious corruption is inhibited.¹

This veritable tsunami of salacious evidence that has come since then from the NSW ICAC has only heightened the need to address the cultural dimension of parliamentary integrity.

A better approach

I agree with David that the better approach is the ‘no broken window’ model. This is the path taken by the ACT Legislative Assembly, through developing, adopting and refining a code of conduct.

The ACT Legislative Assembly has had a members’ code of conduct since 2005, and an ethics and integrity adviser since June 2008.

The Ethics and Integrity Adviser is appointed by the Speaker for the life of each Assembly, plus three months after each election, to allow for continuity. The current (and only) Ethics and Integrity Adviser has extensive public service, and legal experience in both the public sector and in private practice. After establishing and filling the position, the next logical step was to have the Adviser, as an independent apolitical expert, revisit the code of conduct.

During the term of the previous Speaker, the Assembly commissioned its Ethics and Integrity Adviser to review the members’ code of conduct, including looking at strengthening it. The review recommended that the Assembly:

- adopt an updated the Code of Conduct;
- re-affirm the Code at the beginning of each Assembly term; and
- appoint a Commissioner for Standards to inquire into reported breaches of the Code.

The content of this report was agreed to in 2013, and fully implemented in February 2014 with the appointment of the inaugural Commissioner for Standards, the Hon Ken Crispin QC, a former justice of the ACT Supreme Court and an eminent, scholarly lawyer.

¹ Blunt, David, *A Parliamentary Commissioner for Standards for New South Wales?* - Paper presented at the 44th Presiding Officers & Clerks’ Conference Canberra, 1-4 July 2013.
[https://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/AParliamentaryCommissionerforStandardsforNewSouthWales/\\$File/Paper+-+By+David+Blunt+-+A+Parliamentary+Commissioner+for+Standards+for+New+South+Wales.pdf](https://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/AParliamentaryCommissionerforStandardsforNewSouthWales/$File/Paper+-+By+David+Blunt+-+A+Parliamentary+Commissioner+for+Standards+for+New+South+Wales.pdf)

In accordance with the resolution², the Commissioner of Standards is independent, and is responsible for investigating complaints referred by the Speaker (or in very limited circumstances the Deputy Speaker), including possible breaches of the members' Code of Conduct³. The Commissioner is required to report any findings to the Standing Committee on Administration and Procedure, which will recommend action to the Assembly.

The newly appointed Commissioner for Standards is on a retainer, and is currently preparing protocols for the investigation of possible breaches of the code of conduct.

The Office of the Legislative Assembly has budgeted \$40,000 in the first year and \$20,000 annually thereafter to support the role of the Commissioner. The Assembly's Standing Committee on Administration and Procedure will review these arrangements in 2016. If we can avoid 'broken windows' in the ACT, then I'd say that was money well spent.

Finally I'd like to say a word about temptation.

It seems to me that corruption often starts with quite small, almost trivial examples, often connected with misuse of allowances. We should discourage these through creating a climate of integrity, as I've said – but we should also think about designing allowance schemes so as to minimise temptation. Grey areas, like a blurring of the distinction between remuneration and allowances for specific purposes, or the somewhat artificial distinction between campaigning and what are seen as the "legitimate" activities of parliamentarians like, say, informing electors on issues, can help to create the impression that the rules are arbitrary and not to be taken seriously.

We all saw the tremendous damage done to the Mother of Parliaments as a result of the scandal over allowances for "second homes". (As a Canberran, I've always thought it ironic that in the UK, MPs are paid an allowance for time spent out of London in their constituencies, whereas Australian MPs and Senators have to be compensated for putting up with Canberra!)

MPs were criticised for claiming for excessive or inappropriate expenditure (in one case, for moat cleaning!), for trivially small expenditure (in one case, a bath plug!) – as well as for claiming expenses for mortgages for houses they in fact owned outright, or didn't live in.

I wonder whether those guilty of the more blatant frauds may have started off with dubious characterisations of expenses – and getting away with it?

In any case, it seems to me that a scheme that paid MPs a standard allowance, possibly based on the location of their constituency, would have avoided these scandals, which in some cases may have been a "gateway drug" for large-scale corruption and untold damage to the integrity of politics – as well as being at least as fair, and much cheaper to administer.

² See Attachment 1

³ See Attachment 2

In conclusion, then, I think there are a few important lessons to be learned from recent experience:

- Parliamentarians are unpopular enough without the scandal of major breaches of integrity, and more importantly these undermine trust in the institution of Parliament.
- Inquiries into parliamentary integrity may remain necessary, but it's far better to prevent breaches wherever possible.
- This requires a culture of 'zero tolerance' of corruption: we need to put sufficient resources into monitoring behaviour to be confident of detecting breaches early, to avoid the sense of 'getting away with it'.
- This should be complemented by a system of allowances and reimbursement of expenditure which is transparent as well as just, avoids 'grey areas', and can be effectively policed.
- The motto should be "lead us not into temptation".

COMMISSIONER FOR STANDARDS FOR MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

That this Assembly requests the Speaker to appoint a Legislative Assembly Commissioner for Standards on the following terms:

- (1) The Speaker must, after each Assembly is elected or whenever the office becomes vacant, appoint a Commissioner for the life of that Assembly and the period of three months after each election. The initial appointment is for the term of the 8th Assembly and the period of three months after the election at the conclusion of that term.
- (2) Before appointing a Commissioner, the Speaker must consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.
- (3) The Commissioner may be dismissed only following a resolution of the Legislative Assembly resolving to require the Speaker to end the Commissioner's appointment—
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner's functions.

However, a motion for such a resolution may only be debated after the Standing Committee on Administration and Procedure ('the Committee') has reported to the Assembly that it is satisfied that the Commissioner is unfit for the office or unable to fulfil the Commissioner's functions.

- (4) The functions of the Commissioner are to:
 - (a) investigate specific matters referred to the Commissioner—
 - (i) by the Speaker in relation to complaints against Members; or
 - (ii) by the Deputy Speaker in relation to complaints against the Speaker; and
 - (b) report to the Standing Committee on Administration and Procedure.
- (5) Members of the public, members of the ACT Public Service and Members of the Assembly may make a complaint to the Speaker about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.
- (6) If the Speaker receives a complaint about a Member pursuant to paragraph (5) and the Speaker believes on reasonable grounds that—
 - (a) there is sufficient evidence as to justify investigating the matter; and
 - (b) the complaint is not frivolous, vexatious or only for political advantage;the Speaker may refer the complaint to the Commissioner for investigation and report.
- (7) Members of the public, members of the ACT public service and Members of the Assembly may make a complaint to the Deputy Speaker about the

Speaker's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.

- (8) If the Deputy Speaker receives a complaint about the Speaker pursuant to paragraph (7) and the Deputy Speaker believes on reasonable grounds that—
 - (a) there is sufficient evidence to justify investigating the matter; and
 - (b) the complaint is not frivolous, vexatious or only for political advantage;
the Deputy Speaker may refer the complaint to the Commissioner for investigation and report.
- (9) In exercising the functions of Commissioner the following must be observed:
 - (a) The Commissioner must not make a report to the Committee if the Member or the Speaker about whom the complaint was made has agreed that he or she has failed to register or declare an interest if —
 - (i) in the Commissioner's opinion the interest involved is minor or the failure was inadvertent; and
 - (ii) the Member concerned has taken such action to rectify the failure as the Commissioner may have required within any procedure approved by the Committee for this purpose.
 - (b) The Commissioner must not make a report to the Committee unless the Commissioner has—
 - (i) given a copy of the proposed report to the Member or the Speaker who is the subject of the complaint under investigation;
 - (ii) the Member or the Speaker has had a reasonable time to provide comments on the proposed report; and
 - (iii) the Commissioner has considered any comments provided by the Member or the Speaker.
 - (c) The Commissioner must report by 31 August each year to the Speaker on the exercise of the functions of the Commissioner.
- (10) The Committee must review the operation of the Commissioner after two years following the initial appointment of the Commissioner and report to the Assembly in the first sitting period in 2016.

CODE OF CONDUCT FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members undertake, to the community and to one another, that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- (3) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- (4) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- (5) Members should be transparent in, and accountable for, their decisions and actions, should avoid or appropriately resolve any actual or reasonably perceived conflicts of interest and should submit themselves to appropriate scrutiny.
- (6) Members should make only proper use of those public resources to which they have access.
- (7) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as permitted by law.
- (8) Members should observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (9) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they should:

- (10) Actively seek to prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
 - (a) comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth);
 - (b) declare their pecuniary interests and ensure that their declaration is kept up to date pursuant to the resolution of the Assembly 'Declaration of Private Interests of Members' agreed to on 7 April 1992 (as amended or replaced from time to time). Include in the Member's Statement of Registrable

Interests all gifts, payments, fees, rewards or benefits valued at more than \$100 received in connection with the Member's functions as a Member; and

- (c) disclose in a manner appropriate to the circumstances any other financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) which a reasonable observer, informed of that interest, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.
- (11) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person.
 - (12) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
 - (13) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information, or improperly for the private benefit of themselves or another person.
 - (14) In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members' Staff) Act 1989*:
 - (a) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
 - (b) not employ a family member as defined in that Act;
 - (c) direct their personal staff to be mindful of the Member's commitment to this Code of Conduct, and to assist the Member to comply with this Code of Conduct; and
 - (d) direct their personal staff to comply with any code of conduct applicable to those staff from time to time.
 - (15) In all their dealings with staff of the Assembly and members of the ACT Public Service:
 - (a) extend professional courtesy and respect; and
 - (b) recognise the unique position of impartiality and the obligations of Public Service officials.
 - (16) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
 - (17) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.

