



LEGISLATIVE COUNCIL

PRIVILEGES COMMITTEE

Review of Independent Complaints Officer system (2023)



Report 98

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Privileges Committee

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Review of Independent Complaints Officer system

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Chair: The Honourable Stephen Lawrence, MLC



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Terms of reference

- (1) That, in accordance with paragraph 10 of the resolution of the House establishing the Independent Complaints Officer, the Privileges Committee review the operation of the Independent Complaints Officer system and associated investigations protocol tabled on 17 November 2022, and whether any changes are needed, and in particular:
 - (a) the confidentiality provisions applying in respect of complaints and investigations under the system,
 - (b) the timeliness of complaints assessments and investigations conducted under the system, and
 - (c) the provisions applying with respect to standing for complaints and retrospectivity under the system.

- (2) That, in undertaking the review:
 - (a) the committee consider the recommendations of the Independent Review of Bullying, Sexual Harassment and Sexual Misconduct at NSW Parliament Workplaces, commonly referred to as the Broderick Review, in relation to the role of the Independent Complaints Officer, the Code of Conduct for Members, training for members and any other related matter,
 - (b) in accordance with Standing Order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and
 - (c) the committee consult the President, the Clerk and other key stakeholders as appropriate.

The terms of reference were adopted by the committee on 21 August 2023.¹

¹ *Minutes*, NSW Legislative Council, 22 August 2023, pp 374-375.

Committee details

Committee members

Hon Stephen Lawrence MLC	Australian Labor Party	<i>Chair</i>
Hon Natasha Maclaren-Jones MLC	Liberal Party	<i>Deputy Chair</i>
Hon Wes Fang MLC	The Nationals	
Ms Sue Higginson MLC	The Greens	
Hon Cameron Murphy MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	
Hon Peter Primrose MLC	Australian Labor Party	
Hon Rod Roberts MLC	Independent	

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Chair's foreword

I am pleased to present the Privileges Committee's first review of the Independent Complaints Officer (ICO) system since the role was established by resolution of both Houses of Parliament in 2022. Under this resolution, the committee is required to review the operation of the ICO system and associated investigations protocol, and to consider whether any changes are needed.

The development of the ICO has been a longstanding focus of this committee to make the parliamentary workplace safer and to ensure that there is an appropriate, expeditious and confidential forum to raise complaints of member misconduct.

In conducting this review, the committee met with Ms Rose Webb, the current and inaugural Independent Complaints Officer, to be briefed on the various issues she had identified in her submission to the inquiry. An Issues Paper was subsequently produced and sent to the parliamentary community and other relevant external stakeholders, inviting submissions on the issues identified, including the volume and nature of complaints received so far and the complexities of investigating complaints involving proceedings in parliament or corrupt conduct.

The committee acknowledges that there has been a lower volume of complaints reported to the ICO than would have been anticipated from the findings of the Broderick Review on bullying and harassment in the parliamentary workplace. We have explored potential reasons why this may be the case, but we hesitate to make conclusive remarks. Acknowledging that this inquiry itself may not represent the full views of the parliamentary community and their reflections on the ICO, the committee has recommended ongoing and tailored training about the ICO, and that the Parliamentary Executive Group review the volume and types of complaints on an annual basis. As well as conducting a comprehensive consultation with parliamentary staff as to their level of awareness of and confidence in the ICO role, functions and processes will assist better understanding of the current level of use.

The committee also considered whether the limits of the ICO's jurisdiction, is having an effect on the low number of complaints. For example, the resolution is clear that the ICO must not investigate complaints about 'conduct in parliamentary proceedings', but it is our opinion that there should be a clearer process for the ICO to determine if a complaint intersects with parliamentary privilege and to whom she can turn to for advice. Tighter drafting of the current clause covering this area will also provide clarity for investigation of future complaints.

The committee also examined the relationship between the ICO and the Independent Commission Against Corruption and whether a jurisdictional gap exists for complaints. We understand that ICAC only takes on approximately one per cent of investigations referred to it, meaning that there is clearly a greater role for the ICO to take on matters of lesser misconduct by members. The committee believes that there is also much to gain from a stronger reporting relationship between the ICO and ICAC.

The committee acknowledges that the ICO system is still in its early stages and that it is perhaps too soon to make a final qualitative assessment of it. In its next review, the committee can consider the issues raised in this report and that of the Legislative Assembly's inquiry.

The committee wishes to thank the Independent Complaints Officer, Ms Rose Webb and the Parliamentary Ethics Adviser, Mr John Evans, for their assistance to the inquiry.

Finally, I thank the members of the committee for their work on this review and the secretariat for their support and expertise.

The Hon Stephen Lawrence MLC
Committee Chair

Recommendations

- Recommendation 1** **12**
 That the Department of Parliamentary Services consult with the Independent Complaints Officer, the Department of the Legislative Council and Department of the Legislative Assembly to ensure ongoing and tailored training regarding the role of the Independent Complaints Officer is provided to the parliamentary community.
- Recommendation 2** **17**
 That the Clerk of the Parliaments advise the Independent Complaints Officer of a former Clerk or former Clerks (not including the current Parliamentary Ethics Adviser) from whom advice could be sought when a complaint against a member of the Legislative Council potentially involves conduct related to proceedings in parliament.
- Recommendation 3** **17**
 That the Legislative Council, with the concurrence of the Legislative Assembly, consider amending the resolution establishing the Independent Complaints Officer to clarify the restriction regarding investigating conduct related to proceedings in parliament.
- Recommendation 4** **21**
 That the Legislative Council, with the concurrence of the Legislative Assembly, amend the resolution establishing the Independent Complaints Officer to provide for a stronger discretionary reporting and referral arrangement with the Independent Commission Against Corruption, and to enable the Independent Complaints Officer and the Independent Commission Against Corruption to enter a memorandum of understanding (MOU).
- Recommendation 5** **23**
 That the President, in consultation with the Speaker, consider whether the Independent Complaints Officer should be a nominated disclosure officer under the *Public Interest Disclosures Act 2022*.
- Recommendation 6** **27**
 That the Parliamentary Executive Group, at least on an annual basis, review the volume and types of complaints received by the Independent Complaints Officer, and in light of this inquiry and that of the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics.
- Recommendation 7** **27**
 That the Parliamentary Executive Group, in conjunction with the Parliamentary Advisory Group, also conduct a comprehensive consultation with parliamentary staff as to the level of awareness of, and confidence in, the ICO role, functions and processes to address complaints about bullying, harassment and inappropriate conduct.
- Recommendation 8** **30**
 That the Legislative Council, with the concurrence of the Legislative Assembly, consider amending the resolution establishing the Independent Complaints Officer to strengthen reporting obligations to provide greater transparency and accountability, such as through the provision of annual reports and more detailed quarterly report which itemise by House the de-identified complaints.

Chapter 1 Review of the Independent Complaints Officer system

Background to the review

- 1.1 Under clause 10 of the resolution establishing the Independent Complaints Officer (ICO), the Privileges Committee (the committee) is required to review the Independent Complaints Officer system within 12 months of its establishment. The committee must examine how the system is operating in practice and whether any changes are needed, and in particular:
- the confidentiality provisions applying in respect of complaint and investigations under the system,
 - the timeliness of complaints assessments and investigations conducted under the system, and
 - the provisions applying with respect to standing for complaints and retrospectivity under the system.
- 1.2 Following this initial review, the committee is required to review the Independent Complaints Officer system once every parliamentary term, in consultation with key stakeholders, to examine how it is operating in practice and whether any changes are needed.

The Independent Complaints Officer position

Origins of the role

- 1.3 As early as 1996, the Legislative Council's Privileges Committee expressed interest in establishing a mechanism or role similar to the Independent Complaints Officer and in June 2014, the committee recommended the appointment of a Commissioner for Standards in New South Wales. The proposed role focused on the misuse of entitlements, inadequate disclosure of interests and minor breaches of the Code of Conduct, and did not cover bullying or harassment. The proposal aimed to provide a mechanism for the speedy investigation of less serious allegations of misconduct against members, given the Independent Commission Against Corruption (ICAC)'s focus on large-scale corruption, and to ensure that matters in which issues of parliamentary privilege were raised could be investigated more appropriately.²
- 1.4 In May 2021, the Privileges Committee took up matters from its 2014 report and outlined developments from 2016 through to the 2020 proposal for the appointment of a Compliance

² Privileges Committee, NSW Legislative Council, *Report 70 – Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator* (2014).

Officer.³ Separately, the Legislative Assembly Standing Committee on Privilege and Ethics tabled its report in July 2021, which also endorsed the establishment of a Compliance Officer.⁴

- 1.5 Following representations from 23 members across both Houses and all major political parties in 2020 in favour of the development of a mechanism to handle complaints about bullying or inappropriate behaviour by members, the then Presiding Officers requested that the Clerks and the Chief Executive of the Department of Parliamentary Services prepare a jointly agreed proposal for the establishment of a 'compliance officer' covering all of those matters.⁵
- 1.6 These developments led to a further report by this committee in November 2021 to resolve any differences between the reports of the two privileges committees.⁶ Following its publication, both the Legislative Council Privileges Committee and the Legislative Assembly Privileges and Ethics Committee subsequently recommended the appointment of an Independent Complaints Officer.

The Independent Complaints Officer resolution

- 1.7 The Independent Complaints Officer was established on 8 June 2022 by resolution of both Houses (the 'establishing resolution').⁷ The establishing resolution sets out the functions and powers of the ICO and requires the ICO to develop an investigation protocol document within three months of their appointment.
- 1.8 The Independent Complaints Officer was established to investigate complaints related to alleged breaches of the Members' Code of Conduct, as well as to monitor and assist in providing education to members on the Code. The ICO may receive and investigate complaints related to alleged breaches of the Code of Conduct that are not related to conduct in proceedings of the Houses or committees. This includes complaints related to the misuse of allowances and entitlements; low-level misconduct that does not amount to corrupt conduct; bullying, harassment and inappropriate behaviour; and minor breaches of the pecuniary interests disclosure scheme.
- 1.9 The ICO is appointed by the Presiding Officers halfway through each term of Parliament until halfway through the next term. The first and current ICO is Rose Webb, who was appointed in August 2022.

³ Privileges Committee, NSW Legislative Council, *Report 83 – Proposal for a Compliance Officer for NSW Parliament* (2021).

⁴ Standing Committee on Privilege and Ethics, NSW Legislative Assembly, *Report 1/57 – Review of the proposed resolution for the establishment of a Parliamentary Compliance Officer for NSW Parliament* (2021).

⁵ Submission 9, Clerk of the Parliaments, p 1.

⁶ Privileges Committee, NSW Legislative Council, *Report 83 – Proposal for a Compliance Officer for NSW Parliament No. 2* (2021).

⁷ Resolution establishing the Independent Complaints Officer available at: <https://www.parliament.nsw.gov.au/lcdocs/other/18451/Resolution%20establishing%20the%20Independent%20Complaints%20Officer.pdf>

The protocols document

- 1.10** The 'Independent Complaints Officer Protocols' was tabled in the House on 17 November 2022.⁸ As required by the resolution establishing the scheme, the protocols set out how the ICO will receive, assess and investigate complaints, the definition of low level, minor misconduct, and the ICO's communication with the ICAC.

Work to date

- 1.11** The ICO reports on complaints received and concluded in quarterly reports to the privileges committees of both Houses. To date seven reports have been received by the committee and tabled in the House by the Chair. They appear as an appendix to this paper.
- 1.12** At the time of her submission to this review, Ms Webb reported that 13 matters had been raised with her. Of the 13 complaints noted in her submission, seven of them were not investigated as they were outside the jurisdiction of the ICO. The remaining six complaints related to conduct that was alleged to be bullying, harassment or other types of inappropriate conduct.
- 1.13** By early December 2023, when the ICO briefed the committee, she had received an additional two complaints, making a total of 15. By June 2024, when the committee drafted its report, the ICO had received a total of 21 complaints over the 18 month-period since its establishment. Further detail about these complaints can be found in the ICO submission to the inquiry and quarterly reports.

Issues Paper

- 1.14** Following receipt of her submission to the inquiry, the committee met with the ICO to be briefed on the various issues contained in it. An Issues Paper was subsequently produced which canvassed the issues discussed, including the volume and types of complaints the ICO had received, the complexities of investigating matters potentially related to conduct in parliamentary proceedings, restrictions on investigating complaints potentially involving 'corrupt conduct', the appeal rights of complainants and the Broderick report recommendations. The Issues Paper also set out possible recommendations that the committee could make to address these issues.
- 1.15** The committee wrote to all members of the Legislative Council, all members' staff and parliamentary staff, as well as to the Independent Commission Against Corruption, Parliamentary Ethics Adviser, Ombudsman, Public Service Association, the Media, Entertainment and Arts Alliance and Ms Elizabeth Broderick, inviting their views on the Issues Paper and issues raised by the ICO.

⁸ Protocols document available at:
<https://www.parliament.nsw.gov.au/tp/files/83575/ICO%20Protocols%20-%202017%20November%202022.pdf>

- 1.16** A total of ten submissions were received. Of them, two submissions were received from members' staff and one submission from a member of the Legislative Council.
- 1.17** The issues raised in the Issues Paper and stakeholders' responses to them are explored in more detail in chapter 2.

Chapter 2 Key issues

- 2.1 The key issues raised by inquiry participants regarding the Independent Complaints Officer system related to:
- the volume and types of complaints received to date
 - the complexities of determining whether parliamentary privilege applies to complaints
 - restrictions on investigations potentially involving 'corrupt conduct'
 - the lack of appeal rights for complainants.
- 2.2 These issues are discussed in turn below.

Volume and types of complaints received

- 2.3 A key issue regarding the Independent Complaints Officer (ICO) system raised by stakeholders was that the ICO has received a relatively low volume of complaints over the initial 18 months since its establishment. In addition, despite the ICO's remit to investigate complaints of breaches of the Members' Code of Conduct regarding use of entitlements and similar matters, the types of complaints received has centred mainly around bullying, harassment and other unacceptable conduct. These issues are explored in the sections below, as well as considering whether there is sufficient awareness and understanding of the ICO's role amongst the parliamentary community.

Volume of complaints

- 2.4 As noted in chapter 1, 16 matters were raised with the ICO between 1 September 2022 and 29 February 2024. The ICO commented to the committee that she considered the complaints received to be a 'low number' considering the range and volume of concerns that had been raised in the 2022 Independent Review into bullying, harassment and sexual misconduct at the Parliament of NSW (the 'Broderick report')⁹.
- 2.5 Whilst acknowledging that the number of complaints were relatively low, the Clerk of the Parliaments, Mr David Blunt AM, highlighted that the Broderick report had considered and reported on experiences of members of Parliament and staff over a five-year period. He stated that it was therefore 'not expected' that the ICO would receive a similar volume of complaints in the 18 months of its operation.¹⁰

⁹ Elizabeth Broderick & Co., *Leading for Change – Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022*, <https://www.parliament.nsw.gov.au/about/Documents/Independent%20Broderick%20Report.pdf>.

¹⁰ Submission 9, Clerk of the Parliaments, p 2.

- 2.6** Mr Blunt also suggested that the Broderick report and the existence of the ICO may in themselves have had a deterrent effect on the sorts of behaviour which would otherwise have prompted complaint.¹¹
- 2.7** Conversely, the Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct (PAG) cautioned against considering the low number of complaints as an indication of a reduction in the level of misconduct, compared to the findings of the Broderick Review, and that potential complainants may currently be refraining from making a complaint to the ICO due to issues with standing, timeframes and other concerns.¹²

Standing of complainants

- 2.8** The Issues Paper identified that the limitations on the standing of complainants may have impacted the number of complaints received. The ICO Protocols specify that complaints may only be received from current members of the NSW Parliament; staff who work for members of the NSW Parliament in their capacity as members, including ministers (such as electorate office staff, advisers, researchers and assistants); and staff who work for the parliamentary departments. Former staff may lodge a complaint with the ICO up to 21 days following the end of their employment. Anonymous complaints may be made but given there is no ability to obtain further information or context from a complainant, the complaint may not be able to proceed further.¹³
- 2.9** The ICO stated that she did not investigate a number of complaints received because they fell outside of her jurisdiction, such as where the complaint was not about the conduct of a current member of Parliament, or where the complainant was not a member of the parliamentary community.¹⁴
- 2.10** The Independent Commission Against Corruption (ICAC) was of the opinion that the current limitations on the standing of complainants could be acting as an impediment, which in turn has had a direct effect on the number of complaints the ICO has received to date. As an example, ICAC commented that a range of people other than current members of Parliament and staff could have information that warranted an investigation by the ICO. It observed that 'the ICO will be in a difficult position if they cannot take action in response to compelling information about misconduct by a member, simply because it comes from an impermissible class of complainant.'¹⁵
- 2.11** The PAG also highlighted the discrepancy that exists between ministerial staff who work for members of the Legislative Council in their capacity as Minister, and have standing under the ICO Protocols to make a complaint, to their peers who work for members of the Legislative Assembly in their capacity as Ministers and are not listed in the ICO Protocols as having standing to make a complaint to the ICO. These staff currently have no pathway to make a

¹¹ Submission 9, Clerk of the Parliaments, p 2.

¹² Submission 10, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, p 5.

¹³ Sections 5.3 and 6, ICO Protocols.

¹⁴ Submission 1, Independent Complaints Officer, p 2.

¹⁵ Submission 8, Independent Commission Against Corruption, pp 4-5.

complaint to the ICO in order to address misconduct against them by a member who is not a Minister.¹⁶

- 2.12** Noting that the ICO has received a number of complaints that have fallen outside of her jurisdiction, the Clerk of the Parliaments highlighted that the limitations on the standing of complainants reflect the 'direct and specific' intentions of members and that these limitations could be loosened over time if members found it to be too restrictive:

In that regard, I would draw Members' attention to the extremely long gestation of this system and the fact that the prescriptive content of the resolution establishing the ICO, including limitations on jurisdiction, reflects the direct and specific intentions of Members during the 2021 consideration of the current model.

Perhaps some of those restrictions on the jurisdiction of the ICO will be loosened in time as the system matures, particularly if Members themselves become critical of the restrictions imposed the ICO's jurisdiction?¹⁷

Timeframes to make a complaint

- 2.13** Another factor that may impact the volume of complaints is the set time periods from when a complaint can be considered. This is set out in the ICO Protocols as 22 March 2022 in relation to members of the Legislative Council (and 29 March 2022 for members of the Legislative Assembly). A complaint must also be lodged within two years of the alleged events occurring, unless it would not be fair to a complainant or the member who is the subject of the complaint.
- 2.14** The ICO confirmed that in one instance, she was unable to investigate a complaint because the alleged conduct of a Legislative Council member (misuse of entitlements or allowances) had occurred prior to the ICO's establishment on 22 March 2022.¹⁸
- 2.15** The ICAC proposed that these restrictive time periods, including the 21-day limitation, were a further impediment and that there were various reasons why a complainant may require more time to make a complaint or may encounter issues with following correct procedure:

It is not uncommon for significant periods of time to elapse between an incident of misconduct and the relevant complaint. This can happen if the matter is initially lodged with a different complaint-handler or if it takes time for the complaint to identify the relevant evidence or summon the will to come forward. It is also the case that an investigation into conduct can identify relevant evidence and witnesses.¹⁹

- 2.16** The PAG shared the ICAC's concerns with the 21-day restriction on former staff members to lodge a complaint with the ICO, arguing that it did not reflect a trauma-informed process designed to avoid re-traumatising the complainant who may not feel ready or able to pursue a complaint until after the timeframe. Noting that the timeframe may have been selected so that

¹⁶ Submission 10, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, p 4.

¹⁷ Submission 9, Clerk of the Parliaments, p 2.

¹⁸ Submission 1, Independent Complaints Officer, p 2.

¹⁹ Submission 8, Independent Commission Against Corruption, p 5.

it is consistent with unfair dismissal claims, the group explained that it did not see this as a comparable process and stated, "It is common that complainants who have experienced trauma may need additional time to come to terms with the events that may be the subject of a complaint, or to develop enough confidence and trust in a process to pursue a complaint."²⁰

- 2.17** This was supported by a former member's staffer, who had made a complaint to the ICO regarding the member's conduct. In their confidential submission, the former staffer argued that the provisions applying to standing of complainants and retrospectivity were inconsistent with the Parliament's Draft Bullying, Harassment and Sexual Harassment Policy (the policy), which notes that historical allegations can be made (but not to the ICO).²¹

Concerns regarding confidentiality or potential repercussions

- 2.18** The ICO Protocols stipulate that complainants and others who are not members of Parliament who lodge a complaint, or who are aware of a lodged complaint, must keep the fact of the complaint having been lodged confidential. Members are expected to maintain confidentiality about complaints having been lodged, except in 'extraordinary circumstances' and nothing about this expectation affects parliamentary privilege, in particular the freedom of speech.²²

- 2.19** However, a current member's staffer, in a confidential submission to the committee, expressed their lack of faith in the ICO process and described the low number of complaints received by the ICO as not surprising. The staffer explained that confidentiality was a key concern for complainants and whilst not impugning the ICO's integrity, the staffer thought that the complaint resolution process may involve more people than the parties directly involved, and these people may not act in good faith and leak confidential information regarding the investigation.²³

- 2.20** The staffer elucidated that other reasons which could impact a staffer's decision to come forward with a complaint related to recriminations or pressures from outside Parliament, which fell outside the ICO's purview or control.²⁴

- 2.21** The PAG also suggested that members' staff are less likely to make a complaint to the ICO, particularly about their employing member, due to the job insecurity they experience under section 26 of the *Members of Parliament Staff Act 2013*, which effectively prevents staff from bringing an action for unfair dismissal if they had been terminated as a result of making a complaint to the ICO. The PAG also stated that under the legislation there appears to be no capacity for members' staff to be redeployed or placed on paid leave for the duration of an investigation or following the substantiation of a complaint.²⁵

²⁰ Submission 10, Parliament of NSW Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, pp 4-5.

²¹ Submission 4, Confidential, p 2. Refers to 4.3.3 of unpublished consultation Draft Bullying, Harassment and Sexual Harassment Policy, NSW Parliament (dated August 2023).

²² Section 10, ICO Protocols.

²³ Submission 3, Confidential, p 2.

²⁴ Submission 3, Confidential, p 2.

²⁵ Submission 10, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, p 7.

2.22 On this issue, the Broderick report had found that confidence in the reporting systems in place in parliamentary workplaces relating to bullying, sexual harassment and sexual misconduct was extremely low, in part due to the concerns about lack of confidentiality and associated retribution for making a report.²⁶ This is considered further in the 'Safe reporting' section in chapter 3.

Types of complaints

2.23 The ICO advised the committee that, to date, most of the complaints she had dealt with related to conduct that was classified to be bullying, harassment or other types of inappropriate conduct and that there had been almost no complaints involving the misuse of entitlements and resources²⁷ or breaches of the pecuniary interest disclosure scheme.

2.24 Stakeholders, including the ICAC and Clerk of the Parliaments, did not suggest that this was because there were no instances of members misusing their entitlements or resources, but rather, due to a lack of awareness and understanding in the parliamentary community regarding the ICO's role in dealing with these types of complaints.²⁸

2.25 In his submission, the Clerk highlighted that, after reviewing the ICO's reports to date, media reporting about the ICO and matters raised at the Legislature's budget estimates hearing on 4 March 2024, he observed that there were two complaints made by members against other members alleging bullying and harassment. The Clerk reflected that in these instances, had there been a finding of bullying and harassment, it would likely have been at the 'less serious end' of the scale of such matters.²⁹

2.26 The Clerk therefore suggested that given the opportunities that members have to raise such matters in their respective Houses, and the inherently politically contested nature of any such matters between members, the committee may wish to consider whether the threshold for a complaint by a member about the conduct of another member required an additional step or requirement. The Clerk noted that in contrast, staffers and other participants in the parliamentary workplace do not have the opportunity to use parliamentary proceedings to pursue their complaint and suggested, 'A member, able to use the forums of the House, is in a different position and perhaps the ICO's investigations protocol should take this into account.'³⁰

Awareness and understanding of the role

2.27 Stakeholders, including the ICAC and Clerk of the Parliaments, did not suggest that the volume and type of complaints received to date was because there were no instances of members misusing their entitlements or resources, but rather, due to a lack of awareness and

²⁶ Submission 6, Department of Parliamentary Services, NSW Parliament, p 1.

²⁷ Submission 1, Independent Complaints Officer, p 2.

²⁸ Submission 8, Independent Commission Against Corruption, pp 6-7, Submission 9, Clerk of the Parliaments, p 2.

²⁹ Submission 9, Clerk of the Parliaments, p 3.

³⁰ Submission 9, Clerk of the Parliaments, p 3.

understanding in the parliamentary community regarding the ICO's role in dealing with these types of complaints.³¹ The Clerk reflected that the ICO's role in dealing with misuse of entitlements may have been overshadowed by Parliament's recent focus on matters relating to bullying and harassment:

Perhaps the focus of the parliamentary community on issues of bullying and harassment since the Broderick report has meant the ICO's critically important role in dealing with complaints about misuses of entitlements is not as well understood as it should be.³²

- 2.28** In a similar vein, the PAG stated that apart from information about the ICO being included in induction materials for new members and staff, and there being a video about the ICO and her role in the recent RISE training (see more about this training in chapter 4), it appeared to the PAG that there had been 'very little, if any, direct contact between the ICO and members of parliamentary community'.³³
- 2.29** The ICO agreed that, despite ongoing communications to the parliamentary community and staff training materials about the existence and role of the ICO, there appears to be a lack of knowledge about its jurisdiction and role, and that this is an 'ongoing consideration'.³⁴
- 2.30** Advising that its members had received 'significant feedback' from their constituencies about a low level of awareness of and trust in the ICO role, its processes and outcomes, the PAG recommended that more opportunities therefore be created for the parliamentary community to have regular, direct and live contact with the ICO, with the objective of developing familiarity with the person holding the role and enhancing confidence in and understanding aspects of the system, including:
- (a) jurisdiction and role of the ICO
 - (b) impartiality of the ICO
 - (c) how complaints will be dealt with when received, including principles of how the process will be objective, fair and transparent
 - (d) safety of the process, including whether it is trauma-informed
 - (e) support mechanisms that will be available to complainants and those who are the subject of a complaint
 - (f) how information about the complaint will be shared and to whom
 - (g) possible actions or recommendations the ICO might use to address misconduct
 - (h) how recommendations from the ICO are considered and addressed
 - (i) appeal pathways.³⁵

³¹ Submission 8, Independent Commission Against Corruption, pp 6-7, Submission 9, Clerk of the Parliaments, p 2.

³² Submission 9, Clerk of the Parliaments, p 2.

³³ Submission 10, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, pp 5-6.

³⁴ Submission 1, Independent Complaints Officer, pp 2-3.

³⁵ Submission 10, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, p 7.

Committee comment

- 2.31** It is difficult to conclude exactly why more complaints were not received by the Independent Complaints Officer, with only 21 complaints received over 18 months. Perhaps so soon into its establishment, people with grievances are waiting to see how the system develops before making a complaint. The number and types of complaints received by the ICO suggest to the committee that there may also be a lack of awareness of the ICO and its function amongst the parliamentary community, or that people do not want to risk repercussions by coming forward with complaints when the scheme is new and untested. The committee notes here that it is unaware of any examples of breaches of confidentiality or retribution experienced by staff who have made a complaint to the ICO.
- 2.32** Certain restrictions on who can make a complaint to the ICO, or those who have standing under the ICO Protocols, may also be affecting the number of complaints the ICO has received to date. The committee also notes that there is a discrepancy between ministerial staffers of Legislative Council and Legislative Assembly ministers in the ability to make a complaint to the ICO. However, as this is more a matter for the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics, it will not be dealt with further in this report.
- 2.33** In addition to the restrictions on the standing of complainants, the committee acknowledges stakeholders' concerns with the timeframes complainants are subject to. However, the committee notes the advice from the Clerk that the standing of complainants and the timeframes on making a complaint were based on agreement reached between the two Houses. At this point in time, this committee does not wish to make a recommendation for changes to the current arrangements, but if the Legislative Assembly committee was to take a more expansive view, we would be willing to revisit the issues.
- 2.34** The relatively low number of complaints may also be a reflection of a reduced need for such complaints, particularly with the start of a new parliament and increased awareness of appropriate workplace conduct following the Broderick report.
- 2.35** Whatever the case, the ICO is the result of a longstanding focus of this committee to make the parliamentary workplace safer and to ensure that there is an appropriate and confidential forum to raise member misconduct. It is the committee's view that while it is too early to assess the value of the ICO system based on the number and type of complaints it has received thus far, there does appear to be more work to do to increase understanding and awareness of the ICO role and to reduce any obstacles currently in place to reporting breaches of the members' code of conduct.
- 2.36** The committee notes the concerns regarding protecting confidentiality of complainants and this may be a future role for the committee should such breaches occur.
- 2.37** It is essential that there is knowledge and understanding amongst the parliamentary community of the ICO's role as the correct pathway to report alleged breaches of the members' code of conduct. Currently there is a series of members' development training that takes place during lunchtimes in sitting weeks, aimed primarily at members but are also open to the rest of the parliamentary community. These members' development sessions are a collaboration of the three Departments of Parliament and is an ongoing series to be delivered

throughout 2024 and likely the most appropriate forum for where training about the ICO's role and processes could be integrated.

- 2.38** As the first point of contact for many staff when there is a problem with the member will be Human Services, the development of training most likely rests with the Department of Parliamentary Services, in consultation with the ICO and the House departments.

Recommendation 1

That the Department of Parliamentary Services consult with the Independent Complaints Officer, the Department of the Legislative Council and Department of the Legislative Assembly to ensure ongoing and tailored training regarding the role of the Independent Complaints Officer is provided to the parliamentary community.

Parliamentary privilege and the 'conduct in proceedings'

- 2.39** As noted in chapter 1, earlier iterations of the complaints officer role included scope to ensure that matters in which parliamentary privilege were raised could be appropriately investigated. However, the establishing resolution of the Independent Complaints Officer in 2022 is very specific in precluding the ICO from investigating complaints related to conduct in proceedings of a House or its committees. The Clerk of the Parliaments noted this clause eventuated as a 'direct result of the very specific intentions' of the members of the two Houses' respective privileges committees when the current system was considered in detail in 2021.³⁶
- 2.40** Noting its deliberate insertion, it is therefore important for the ICO to ensure that the matters she is investigating are not related to conduct in parliamentary proceedings, and that if there is ambiguity, for there to be a clear process in place to determine whether parliamentary privilege applies, including sources the ICO can turn to for expert advice. These issues are considered further in the following sections.

Categorising complaints 'related to conduct in proceedings'

- 2.41** In her submission to the inquiry, the ICO noted that the phrase 'not related to conduct in proceedings' is similar to words used in relation to the parliamentary privilege of freedom of speech, and so she has 'interpreted this part of the resolutions as reflecting an intention that the ICO should not consider any conduct that would attract parliamentary privilege immunity'.³⁷
- 2.42** Under the establishing resolution, the ICO may investigate complaints only if they are 'not related to conduct in proceedings of the Legislative Council or Legislative Assembly or their committees'. While it is specified that the ICO must not consider complaints about conduct

³⁶ Submission 9, Clerk of the Parliaments, p 3.

³⁷ Submission 1, Independent Complaints Officer, p 3.

that occurs in the Chambers during a sitting of the House or during a committee hearing, there may be some complaints that involve conduct or material where the question of whether the conduct or material is 'related to conduct in proceedings' is not as straightforward.

2.43 It is currently left to the ICO to determine and categorise whether a complaint is about conduct related to proceedings. The ICO flagged to the committee that this is a significant issue, assuming that it is the same as determining whether the relevant conduct attracts parliamentary privilege immunity. She highlighted that the question of whether privilege applies is a matter for the Parliament through its respective privileges committees,³⁸ and therefore the ICO may not be the best person to make that judgement.

2.44 As an example of the practical difficulty this can raise for the ICO as well as for potential complainants, a member of the Legislative Council, who had made a complaint to the ICO about another member's alleged bullying and harassing conduct, argued that the ICO had taken a 'very wide' interpretation of what conduct fell within parliamentary proceedings. The member, in their confidential submission to the committee, argued that the ICO had incorrectly categorised the other member's conduct as being related to proceedings, leading her to erroneously conclude that the complaint fell outside her jurisdiction to investigate.³⁹

2.45 In the absence of a specific definition of 'proceedings of parliament', the Parliamentary Ethics Adviser noted that the Commonwealth *Parliamentary Privileges Act 1987* contains a useful definition:⁴⁰

(2) For the purposes of the provisions of article 9 of the Bill of Rights 1688 as applying in relation to the Parliament, and for the purposes of this section, ***proceedings in Parliament*** means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.⁴¹

2.46 On a separate but related note, the Parliamentary Ethics Adviser raised that the wording of the establishing resolution regarding proceedings in parliament could be more clearly expressed in plain English. The Adviser also stated that 'the use of wording that the ICO "may receive and investigate complaints" of specified matters "not related to conduct in proceedings..." is contradictory.⁴²

³⁸ Submission 1, Independent Complaints Officer, p 3.

³⁹ Submission 2, Confidential, p 1.

⁴⁰ Submission 7, Parliamentary Ethics Adviser, p 2.

⁴¹ Section 16(2), *Parliamentary Privileges Act 1987* (Cth).

⁴² Submission 7, Parliamentary Ethics Adviser, pp 1-2.

2.47 The Adviser therefore suggested that the paragraph could be redrafted to specify the matters that the ICO can and cannot investigate, for example:

- (a) The Independent Complaints Officer can investigate:
 - (i) breaches of the Code of Conduct
 - (ii) misuse of allowances and entitlements
 - (iii) other less serious misconduct matters falling short of corrupt conduct
 - (iv) allegations of bullying, harassment and other types of inappropriate behaviour
 - (v) minor breaches of the pecuniary interests disclosure scheme.
- (b) The Independent Complaints Officer must not investigate complaints:
 - (i) involving proceedings in the Legislative Council or Legislative Assembly or a committee of either or both Houses, or
 - (ii) involving conduct that is a breach of the NSW Ministerial Code of Conduct.⁴³

2.48 The PAG also recommended it be made clear that the ICO cannot consider complaints about conduct that would ordinarily attract the immunity of parliamentary privilege, so that 'there are no incidents of the ICO making *ultra vires* determinations, which could undermine the role.'⁴⁴

A process for determining conduct related to parliamentary proceedings

2.49 Notwithstanding the issues caused by the absence of a set definition of conduct related to parliamentary proceedings, the establishing resolution also does not set out a clear process or mechanism for the ICO to determine what conduct is considered to be related to parliamentary proceedings (in other words, subject to parliamentary privilege).

2.50 Where the issue has arisen, the ICO told the committee she has taken two different approaches. One approach was to cease investigation of the complaint, with matters involving privilege to be a matter for the relevant privileges committee of either House. The other approach was to make a preliminary assessment about whether the conduct was 'related to conduct in proceedings' and if not, proceed with the investigation on the basis that the matter was within her jurisdiction.

2.51 However, the ICO highlighted that the approach she should take to such matters is not apparent from the wording in the establishing resolution:

It is not clear whether it was intended that the ICO should immediately cease consideration of a matter to refer questions about 'conduct in proceedings' (and therefore privilege) to the relevant privileges committees or alternatively whether the ICO should make an initial determination as to whether the exemption for 'conduct in proceedings' might apply with parties having an ability to appeal to the relevant committee if they do not agree with the ICO's interpretation.⁴⁵

⁴³ Submission 7, Parliamentary Ethics Adviser, p 2.

⁴⁴ Submission 10, Parliamentary, Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, p 5.

⁴⁵ Submission 1, Independent Complaints Officer, p 3.

2.52 Further, the ICO noted that, if it is intended for her to make an initial assessment of whether the complaint is within her jurisdiction, a clear process by which she may seek advice would be helpful:

If the latter course is considered appropriate and the ICO should make a first call on the issue of 'conduct in proceedings', it might be helpful for there to be a clear process by which the ICO can seek advice from an appropriate person to assist with this interpretation.⁴⁶

Sources of advice

2.53 The establishing resolution expressly allows for the ICO to engage the services of a person or persons to assist with or perform its services, and in the conduct of an investigation, within budget.⁴⁷ There is no mention of which sources the ICO should refer to in seeking advice.

2.54 The ICO told the committee in a briefing that where the issue of parliamentary privilege has arisen to date, she has sought advice from the Clerk of the relevant House. However, she acknowledged that this may place the clerks in a difficult position, as they may be called upon to provide advice to members and to the privileges committees on the same matter.

2.55 The Clerk of the Parliaments also expressed his discomfort with the idea that the ICO consult with the relevant Clerk. He explained that a member, who has either made a complaint or is subject to a complaint, will have sought or may seek his advice on the matter, putting him in an 'invidious position' to also be advising the ICO on her jurisdiction over the matter.⁴⁸

2.56 The Clerk raised that another possible source of external advice could be the Parliamentary Ethics Adviser, and that the current Adviser is uniquely placed to provide such advice, as a former clerk with extensive experience in providing advice on parliamentary privilege but who would not be directly involved in advising the Privileges Committee on such matters. The Clerk noted that the Adviser was an 'authoritative source' of such advice, but it would be important to resolve any potential conflicts of interest should a member also seek his advice regarding the complaint.⁴⁹

2.57 The Clerk's recommendation was for the ICO to identify another former Clerk or former Clerks from whom she could seek advice on these issues from time to time. He noted that he would be able to provide the ICO with details of former Clerks from whom she could seek such expert assistance and the arrangement would then ideally be formalised in writing between the ICO and former Clerk or Clerks who would be available to assist.⁵⁰

2.58 On the topic of seeking external legal advice to assist her with questions of parliamentary privilege – and in situations where the Clerk may identify a difficulty in providing advice – the ICO stated that it would be helpful for the establishing resolution be amended to expressly allow for this. The ICO recognised the potential resourcing implications of receiving external

⁴⁶ Submission 1, Independent Complaints Officer, p 3.

⁴⁷ Section 5(i), Resolution establishing the Independent Complaints Officer.

⁴⁸ Submission 9, Clerk of the Parliaments, p 3.

⁴⁹ Submission 9, Clerk of the Parliaments, p 4.

⁵⁰ Submission 9, Clerk of the Parliaments, pp 3-4.

legal advice, but advised that the cost of occasional advice could be accounted for in her current budget.

- 2.59** The Parliamentary Ethics Adviser cautioned against the ICO obtaining independent legal advice on complaints involving 'proceedings in Parliament' and suggested that if doubt arose following consultation with the Clerk of the relevant House and the Parliamentary Ethics adviser, the Clerk of the House should be the one to seek out legal advice.⁵¹
- 2.60** The relevant privileges committee of each House may make a determination on privilege if a member the subject of a complaint has appealed to that committee under clause 5(h) of the resolution establishing the ICO. This is currently the only way for the committee to provide advice to the ICO. The Privileges Committee could make this determination at the beginning of a complaint, but this risks fundamentally changing the role of the committee in the complaints process.

Committee comment

- 2.61** The committee acknowledges that while earlier iterations of the Independent Complaints Officer role may have envisaged being able to address complaints relating to parliamentary proceedings, the establishing resolution for the current ICO is clear in proscribing such complaints. We note that this restriction was deliberately included following consideration of the matter by the respective Privileges Committee inquiries in 2021. Regulation of member behaviour in the House is the responsibility of the Presiding Officer and in committees, this role falls to the chair, with the Privileges Committee as a point of referral for both types of parliamentary proceedings.
- 2.62** Freedom of speech is a fundamental privilege of members and so of the utmost importance. At the same time, the committee emphasises that an overly broad interpretation of parliamentary privilege risks weakening the capacity of the ICO to respond meaningfully to complaints, the key function of the role.
- 2.63** A clearer process for resolving these issues relating to the ICO's jurisdiction could be set out in the establishing resolution or protocol, in particular clarifying who has final responsibility for determining whether a complaint is related to conduct in proceedings, and when this assessment should be made. It could also specify how the assessment is to be made and communicated to the parties. Amendments would also need to identify from whom the ICO could seek advice.
- 2.64** It is also important to consider at what stage in the process external parties need to be involved, such as determining whether conduct is related to parliamentary proceedings or to provide advice to the ICO. This is critical because the ICO system has been built on the expeditious and confidential resolution of complaints. Unnecessarily involving others even before a complaint has begun to be investigated may risk drawing out the complaint handling process more than it was ever intended.

⁵¹ Submission 7, Parliamentary Ethics Adviser, p 2.

- 2.65** The committee therefore takes up the recommendation of the Clerk, who suggested that if the ICO needs to determine whether a complaint before her about a member of the Legislative Council involves proceedings in Parliament, the Clerk could advise her of the details of a former Clerk or former Clerks from whom she could seek advice. Clerks hold a wealth of knowledge and understanding about the complexities of the parliamentary environment and therefore are perhaps best placed to give advice on matters involving parliamentary privilege.
- 2.66** Former clerks would be able to provide impartial and expeditious advice to the ICO. In addition, we note that the establishing resolution already provides for the ICO to seek expert assistance, so there would be no need to amend the resolution on this issue.

Recommendation 2

That the Clerk of the Parliaments advise the Independent Complaints Officer of a former Clerk or former Clerks (not including the current Parliamentary Ethics Adviser) from whom advice could be sought when a complaint against a member of the Legislative Council potentially involves conduct related to proceedings in parliament.

- 2.67** The committee is also of the opinion that the wording of the resolution establishing the Independent Complaints Officer could be clearer on what can and cannot be investigated by the Independent Complaints Officer, particularly regarding conduct related to proceedings in parliament. We therefore recommend that consideration is given by the Legislative Council to amending the establishing resolution in similar terms to that suggested by the Parliamentary Ethics Adviser.

Recommendation 3

That the Legislative Council, with the concurrence of the Legislative Assembly, consider amending the resolution establishing the Independent Complaints Officer to clarify the restriction regarding investigating conduct related to proceedings in parliament.

Restrictions on investigations potentially involving 'corrupt conduct'

- 2.68** The establishing resolution sets out that the ICO may receive and investigate complaints in relation to alleged breaches of the members' code of conduct, including the misuse of allowances and entitlements, and other less serious misconduct matters falling short of corrupt conduct.⁵² Where the ICO has concerns that a complaint may potentially involve corrupt conduct, the ICO is to cease the investigation and invite the complainant to raise the matter with the Independent Commission Against Corruption.⁵³

⁵² Clause 2(a), Establishing resolution

⁵³ Clause 5(d), Establishing resolution

- 2.69** Under the ICO Protocols, the ICO is not required nor can be compelled to refer a complaint to ICAC, even if she has concerns that a complaint may potentially involve corrupt conduct, regardless of whether the complainant decides to raise the matter directly with the ICAC. However, if a matter is notably serious or substantial and there would seem to be a strong public interest in the ICAC being informed of a complaint, the ICO does have discretion to notify the ICAC as an 'exceptional circumstance'.⁵⁴
- 2.70** The ICO is also not to provide any material or information that has come into their possession through the lodging of the complaint, to the ICAC unless under legal compulsion.⁵⁵
- 2.71** Therefore, under the current system, the ICO is unable to investigate complaints that may potentially involve corrupt conduct and unlike other public agencies, is not required to refer matters of potential corrupt conduct to ICAC. Stakeholders raised concerns with these issues, flagging that these arrangements are creating a jurisdictional gap in complaints alleging corrupt conduct, and a weakened reporting relationship between the ICO and ICAC. These issues are explored in the following sections.

Jurisdictional gap in complaints alleging corrupt conduct

- 2.72** The practical effect of the provision that the ICO cannot investigate matters potentially involving corrupt conduct is that, once the ICO forms the view that a matter involves corrupt conduct, the ICO must cease her investigation and is under no compulsion to refer it directly to ICAC.⁵⁶
- 2.73** However, the ICAC may also choose not to investigate the complaint of alleged corrupt conduct if the complainant is anonymous or unwilling to contact it directly. Furthermore, the conduct in question may not be considered serious enough by ICAC to be prioritised for an investigation, with ICAC advising the committee that less than one per cent of the matters it receives are made the subject of an investigation. This effectively creates a 'gap' where a potential breach of the Members' Code of Conduct amounting to minor corruption is not investigated by either the ICO or the ICAC, because ICAC focuses on serious and systemic corrupt conduct, whereas the ICO only investigates less serious misconduct matters falling short of corrupt conduct.⁵⁷
- 2.74** In a similar vein, ICAC is unable to refer any of its matters to the ICO because the ICO is precluded from investigating any matters involving corrupt conduct. In its submission, ICAC explained that under section 53 of the *Independent Commission Against Corruption Act 1988* (ICAC Act),⁵⁸ it can refer a matter to 'any person or body considered by the Commission to be appropriate in the circumstances' and that in practice, most reported matters that involve reasonable suspicions of corrupt conduct are dealt with by the relevant public authority.

⁵⁴ Clause 15.3, Protocol

⁵⁵ Clause 5(d), Establishing resolution, s 15.4, Protocol.

⁵⁶ Submission 1, Independent Complaints Officer, p 4.

⁵⁷ Submission 8, Independent Commission Against Corruption, p 11.

⁵⁸ Section 53, *Independent Commission Against Corruption Act 1988*.

However, ICAC noted that given the ICO's inability to investigate corrupt conduct, 'there would be limited value in using this power'.⁵⁹

2.75 Therefore, ICAC suggested that the ICO's remit be broadened to be able to investigate matters that constitute corrupt conduct and that this would place the ICO in the same situation as any other investigator working in or for a public authority in New South Wales.⁶⁰

2.76 ICAC also flagged that a potential conflict may already exist within the remit of the ICO's jurisdiction, as the misuse of allowances and entitlements (within ICO jurisdiction to investigate) could amount to corrupt conduct (specifically falls outside jurisdiction).⁶¹

Reporting relationship between ICO and ICAC

2.77 As noted above, the ICO is not required to notify or inform ICAC of a complaint, even if the ICO suspects it involves corrupt conduct. ICAC submitted that the absence of a mandatory reporting mechanism meant that Parliament's overall controls were 'less robust' than other public sector agencies in New South Wales,⁶² and the Parliamentary Ethics Adviser described the present system as 'cumbersome' for complainants who may be reluctant to lodge a complaint themselves with ICAC.⁶³

2.78 Both the ICAC and Parliamentary Ethics Adviser recommended that the establishing resolution be amended to improve the reporting obligations placed on the ICO regarding corrupt conduct. ICAC suggested that options could include:

- inserting a mandatory reporting requirement into the ICO Protocols (similar to a requirement under section 11 of the ICAC Act, which places mandatory reporting function on the principal officer of a public authority⁶⁴)
- giving the ICO an unfettered discretion to report matters to ICAC
- developing a memorandum of understanding that better articulates the types of matters the ICO can or should refer to ICAC.⁶⁵

2.79 Similarly, the Parliamentary Ethics Adviser recommended that the ICO be able to report potential corrupt conduct to ICAC and refer to it any information obtained in the course of an investigation. The Adviser further suggested that should ICAC determine that conduct is not a substantial breach of the Code and refer it back to the ICO for investigation or other

⁵⁹ Submission 8, Independent Commission Against Corruption, p 11.

⁶⁰ Submission 8, Independent Commission Against Corruption, p 11.

⁶¹ Submission 8, Independent Commission Against Corruption, p 9. See clause 2(a) of the establishing resolution.

⁶² Submission 8, Independent Commission Against Corruption, p 9.

⁶³ Submission 7, Parliamentary Ethics Adviser, p 3.

⁶⁴ Section 11, *Independent Commission Against Corruption Act 1988* stipulates 'a duty to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct'.

⁶⁵ Submission 8, Independent Commission Against Corruption, p 11.

action, the ICO should have authority to deal with a matter referred to them under section 53 of the ICAC Act.⁶⁶

- 2.80** The ICO advised in her submission that she has liaised with ICAC to develop working relationships, including a discussion on the potential for ICAC to refer a matter to the ICO even when it falls within the definition of 'corrupt conduct'. Under an agreement, ICAC has indicated that currently, it would generally refer a matter to the ICO for information, not for investigation.⁶⁷
- 2.81** The ICO also stated only one matter has come to her that might have raised matters under the ICAC Act. In this case, the complainant had made the complaint simultaneously to ICAC so it was able to be discussed directly with ICAC.⁶⁸

Committee comment

- 2.82** Where complaints are referred to the ICAC by other public sector agencies, ICAC may refer complaints back to the agency for investigation. A potential amendment to the establishing resolution could allow the ICO to investigate a complaint about an alleged breach of the Code where ICAC has determined that the conduct does not warrant an ICAC investigation and has referred the matter back to the ICO. This would address the current gap that exists concerning complaints that the ICO has deemed to involve corrupt conduct and therefore is unable to investigate, and where the ICAC would consider that complaint not sufficiently serious to warrant an investigation.
- 2.83** An alternative amendment could allow the ICO to continue their investigation of a complaint raised with them even where the conduct in question potentially involves corrupt conduct and may be considered by ICAC, if it is considered too minor to be a matter for the ICAC.
- 2.84** Given the number of matters referred to the ICAC each year, adoption of either option (or both options) may potentially require significant additional investigatory resources if a number of matters are referred from the ICAC.
- 2.85** The committee also notes the evidence from the ICAC and the Parliamentary Ethics Adviser regarding the need to improve reporting pathways for the ICO to report matters to the ICAC.
- 2.86** After careful consideration of the positions put forward by stakeholders, the committee has formed the view that if the ICO determines a matter before her involves corrupt conduct, then she should have the discretion to be able to report the matter to the ICAC. If the ICAC decides not to investigate the matter and returns it back to the ICO, then the ICO should also be allowed to conduct her own investigation. We agree with the ICAC that a memorandum of understanding between the ICO and the ICAC would be helpful to better categorise and articulate the types of matters that the ICO can refer to it.

⁶⁶ Submission 7, Parliamentary Ethics Adviser, p 3.

⁶⁷ Submission 1, Independent Complaints Officer, p 4.

⁶⁸ Submission 1, Independent Complaints Officer, p 4.

- 2.87** The committee is of the view that amendments of this nature to the establishing resolution and the ICO protocol may also increase the volume of complaints received, particularly regarding alleged misuse of entitlements and allowances.

Recommendation 4

That the Legislative Council, with the concurrence of the Legislative Assembly, amend the resolution establishing the Independent Complaints Officer to provide for a stronger discretionary reporting and referral arrangement with the Independent Commission Against Corruption, and to enable the Independent Complaints Officer and the Independent Commission Against Corruption to enter a memorandum of understanding (MOU).

Appeal rights of complainants

- 2.88** Another key issue raised by stakeholders was the fact that a person making a complaint to the Independent Complaints Officer does not have recourse to appeal the findings, conclusions and recommendations, nor any action by the ICO in the course of investigating, or declining to investigate, a complaint.
- 2.89** Under the establishing resolution, a limited right of appeal exists only for a member who is the subject of a complaint. This arises if the ICO investigates a matter, recommends rectification action which the member fails to carry out, and reports on this failure to the relevant privileges committee. In such cases, the member has the right to lodge an appeal with the privileges committee.⁶⁹
- 2.90** The PAG expressed its concern about the lack of an appeals pathway and stated that it constituted a 'serious breach of procedural fairness principles for both complainants and those who are the subject of a complaint'. It flagged that it represented an 'unusual situation' whereas ordinarily, all parties would be given the opportunity to seek an internal review of a determination prior to seeking external review from a body such as a court or tribunal. However, the group also acknowledged that it was unclear which external body would be appropriate to have jurisdiction to review the determinations of the ICO.⁷⁰
- 2.91** The Clerk of the Parliaments acknowledged that under the current arrangements, there will be instances where complainants are dissatisfied with the outcome of their complaint. However, the Clerk explained that the current limited appeal right was intentionally drafted so that only the member who is the subject of a complaint was in jeopardy of having an adverse finding made public or being subject to some form of sanction. The Clerk also advised that this limited right of appeal has been in place from the establishment of the UK and ACT models, both of which have directly informed the development of the ICO system.⁷¹

⁶⁹ Section 5, Resolution establishing the Independent Complaints Officer.

⁷⁰ Submission 10, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, pp 7-8.

⁷¹ Submission 9, Clerk of the Parliaments, p 4.

Committee comment

- 2.92** The committee recognises that some, particularly dissatisfied complainants, may perceive an imbalance between a complainant's inability to appeal the findings, conclusions or actions of the ICO, with the appeal rights of a member who is subject to a complaint. The committee acknowledges that it has received two submissions from complainants who raised issues with the ICO's handling of their complaints, but do not have an appropriate avenue to appeal her decision. We have considered the matters raised in those submissions within the context of the systemic issues the subject of this inquiry.
- 2.93** The committee also acknowledges the views and concerns of the PAG on this issue but, at this time, does not support their recommendation to create an appeal pathway for all determinations made by the ICO. The Privileges committees of both Houses are the only appropriate forum for an appeal given that the subject of complaints will always be members, and there are many complications likely to arise should the committees have to regularly adjudicate on appeals from confidential investigations.
- 2.94** It is important to appreciate that not only the complainant but also a member's right to appeal is exceptionally limited, arising only when he or she declines to take rectifying action as recommended by the ICO. The committee also takes seriously the reputational risk of adverse findings about a member being made public, whereas in comparison, the confidentiality of a complainant is sufficiently protected in the current provisions. The current framework provides important protections against the complaints process being weaponised for political purposes.
- 2.95** We are therefore of the opinion that in order for the ICO system to consider complaints in a conclusive, confidential and expeditious manner, the current system for appeal rights strikes the appropriate balance, and we do not recommend any changes in this regard.

Public interest disclosures and application to complaints

- 2.96** The ICO Protocols specify that the ICO is not a disclosure officer for the purposes of the former *Public Interest Disclosures Act 1994* but suggests that this may change with the introduction of new legislation.⁷²
- 2.97** The new *Public Interest Disclosures Act 2022* (PID Act) came into effect on 1 October 2023, encouraging public officials to report instances of 'serious wrongdoing' and protecting public officials who report serious wrongdoings.⁷³
- 2.98** The ICO Protocols note that a complaint made to the ICO could also be classified as a public interest disclosure if the complainant previously made a public interest disclosure to a disclosure officer in respect of the same matter. In these circumstances, the protections provided under the legislation continue to protect the complainant.⁷⁴

⁷² Section 11, ICO Protocols.

⁷³ Submission 5, NSW Ombudsman, p 5.

⁷⁴ Section 11, ICO Protocols.

- 2.99** The NSW Ombudsman, who oversees the state's public interest disclosures scheme, explained that if the ICO became a nominated disclosure officer, any complaints brought to her by public officials (members of Parliament, their staffers and parliamentary staff) would appropriately be assessed as PIDs and complainants would be protected under the provisions of the PID Act, including against detrimental action being taken against them for having made their complaint.⁷⁵
- 2.100** Other inquiry participants, such as ICAC and a member's staffer who made a confidential submission, also expressed their support for Parliament to take steps in strengthening its complaint handling mechanism under the PID Act.⁷⁶

Committee comment

- 2.101** The committee considers that the footnote in the ICO Protocols indicate an intention to review the status of the ICO as a nominated disclosure officer under the new public disclosure legislation. Under the framework set up by the *Public Interest Disclosures Act 2022*, a nomination for the Independent Complaints Officer to become a disclosure officer would be a matter for the Presiding Officers.

Recommendation 5

That the President, in consultation with the Speaker, consider whether the Independent Complaints Officer should be a nominated disclosure officer under the *Public Interest Disclosures Act 2022*.

⁷⁵ Submission 5, NSW Ombudsman, p 1.

⁷⁶ Submission 8, Independent Commission Against Corruption, p 12; Submission 3, Confidential, p 2.

Chapter 3 Broderick Review recommendations

Safe reporting

- 3.1** In August 2022, the Independent Review on Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022 (Broderick report) was publicly released. Adjacent to the issue of public interest disclosures canvassed in chapter 2, the Broderick report highlighted the importance of a safe working environment for those who seek support and for the organisation as a whole. The Broderick report found that confidence in the reporting systems in New South Wales parliamentary workplaces relating to bullying, sexual harassment and sexual misconduct was extremely low. Some of this was due to variable knowledge and confusion about the existing reporting pathways. More fundamental, however, was the concern about a lack of confidentiality and associated retribution for making a report.⁷⁷
- 3.2** In December 2022 the Privileges Committee was asked by the President to respond to the specific recommendations arising from the Broderick report for which it was responsible.⁷⁸ Recommendations from the Broderick report related to the scope of the Independent Complaints Officer function, updating and expanding reporting pathways, an audit of activities to create safe and inclusive workplaces, as well as provision of training on bullying, sexual harassment and sexual misconduct. specifically in regards to safe reporting and training. These recommendations are explored in the sections below.

⁷⁷ Submission 6, Department of Parliamentary Services, NSW Parliament, p 1.

⁷⁸ Correspondence, the Hon Matthew Mason-Cox MLC, then President of the Legislative Council, to the Hon Peter Primrose MLC, then Chair of the Privileges Committee, dated 6 December 2022.

Scope of the Independent Complaints Officer function

Broderick Report Recommendations 5.3(b) and (c)

- b) PEG should review the number and nature of complaints made to the Independent Complaints Officer in the first year, in order to assess whether the function is being accessed for complaints relating to bullying, sexual harassment and sexual assault, and support the Independent Complaints Officer to make any adaptations needed to improve confidence in and access to the Independent Complaints Officer.
- c) The House Departments, in consultation with the PAG and the Independent Complaints Officer, should jointly develop principles and protocols regarding external investigations, including ensuring:
 - that investigators are suitably skilled; use a trauma-informed approach to investigations; and work appropriately with the other support people engaging complainants, respondents and witnesses
 - that investigators are politically independent
 - that there are transparent expectations regarding timeframes for investigation and reporting
 - that there are increased opportunities for the participation of survivors in the investigation (including consulting with survivors about who is to be interviewed and sharing the final report with survivors).

- 3.3** Recommendations 5.3(b) and (c) relate to the scope and resourcing of the Independent Complaints Officer function and recommends that the ICO role be reviewed within the first year to assess whether the function is being appropriately accessed for complaints relating to bullying, sexual harassment and sexual assault. It also recommends that the House Departments, in consultation with the Parliamentary Advisory Group on Bullying, Sexual Harassment and Sexual Misconduct (PAG) and ICO, develop protocols regarding investigations.
- 3.4** In its submission, the PAG expressed concern that the findings and recommendations of this inquiry will not benefit from 'the broad views of those with standing to make a complaint' and advocated for the Parliamentary Executive Group to undertake a proactive consultation process to 'gain an understanding of how the ICO is perceived' and general confidence in the system.⁷⁹
- 3.5** The PAG stated that the findings from such a review or consultation should then inform the 'full' implementation of the processes outlined in the Broderick Review recommendations 5.3 and 5.4 (see paragraph 3.11 for recommendation 5.4).

⁷⁹ Submission 10, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, pp 8-9.

Committee comment

- 3.6** ICO Protocols tabled in the House address a number of points in recommendation 5.3(c). The ICO is empowered to obtain expert assistance. The recommendation regarding consulting survivors about who to interview and sharing of the final report is viable if it refers to the complainant but the committee does not support it in the case of third parties not directly involved in the complaint as this would undermine procedural fairness and confidentiality to both the complainant and the member.
- 3.7** It is noted, however, that the Broderick Review indicated significant concern that the resolution establishing the Independent Complaints Officer was too narrowly defined, and that the ICO may not have sufficient structural authority to be fully independent of political processes. The committee questions whether these concerns have had a bearing on the volume and nature of complaints received by the ICO.
- 3.8** In conducting this inquiry, the committee emailed everyone in the parliamentary community inviting their views and submissions on the role and processes of the ICO. Four submissions from those with standing to make a complaint were received. The committee believes that more substantive qualitative work with parliamentary staff would better inform any assessment about the efficacy of the ICO function, including those concerns raised within the Broderick Review.
- 3.9** We recommend that if it hasn't already, the Parliamentary Executive Group (PEG) should, at least on an annual basis, review the volume and types of complaints received by the ICO as detailed in her quarterly reports, noting that the majority received to date has been in relation to bullying, sexual harassment and sexual assault and thus, relevant to the findings of the Broderick Review. This report and the inquiry by the Legislative Assembly will assist their review.
- 3.10** In addition, the committee is of the opinion that it would also be helpful for the Parliamentary Executive Group to regularly seek the PAG's perspective on how the ICO system is being used and report back to the Privileges Committee as necessary.

Recommendation 6

That the Parliamentary Executive Group, at least on an annual basis, review the volume and types of complaints received by the Independent Complaints Officer, and in light of this inquiry and that of the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics.

Recommendation 7

That the Parliamentary Executive Group, in conjunction with the Parliamentary Advisory Group, also conduct a comprehensive consultation with parliamentary staff as to the level of awareness of, and confidence in, the ICO role, functions and processes to address complaints about bullying, harassment and inappropriate conduct.

Update and expand pathways to reporting

Broderick Report Recommendation 5.4

PEG, in consultation with PAG, should redesign reporting pathways, ensuring that people experiencing bullying, sexual harassment or sexual misconduct have access to formal, informal and anonymous reporting options that are human-centric and provide support from the first disclosure. The reporting pathways should emphasise the agency of the individual in choosing the pathway that is most appropriate for them and the value of seeking advice and/or reporting early (that is, seeking advice regarding early intervention options).

- 3.11** Recommendation 5.4 stipulates that the Parliamentary Executive Group (PEG), in consultation with the Parliamentary Advisory Group on Bullying, Sexual Harassment and Sexual Misconduct (PAG) update and expand pathways to reporting, to ensure that people have access to formal, informal and anonymous reporting options that are human-centric and provide support from the first disclosure.
- 3.12** The Parliament's Department of Parliamentary Services explained in its submission that following the Broderick report, Parliament has established a 'no wrong door' policy for the making of complaints and that processes have also been established for complaints found to be outside the jurisdiction of the ICO. This is said to cover complaints such as those about a staff member. Should the complainant wish to formally proceed, consent is obtained for the ICO to make a 'warm referral' of the issue to the relevant person or area, such as the Workplace Relations and Support team, who have the ability to progress the matter.⁸⁰

Committee comment

- 3.13** In relation to reporting pathways, the committee notes that the ICO is able to receive complaints anonymously and that other formal, informal and anonymous avenues are also available. These include reporting alleged misconduct to the Independent Commission Against Corruption, making a public interest disclosure to a nominated disclosure officer (although currently not the ICO), and progressing a complaint with the Department of Parliamentary Services Workplace Relations and Support team.
- 3.14** Furthermore, the committee notes that for complaints not within the jurisdiction of the ICO, Parliament has implemented a 'no wrong door' policy with consideration of the complainant's wellbeing and agency at the forefront.
- 3.15** The committee is therefore satisfied that recommendation 5.4 has been adequately addressed, but its effectiveness will need to continue to be monitored by the Presiding Officers and PAG, including by our earlier recommendation for a regular review of the volume and types of complaints.

⁸⁰ Submission 6, Department of Parliamentary Services, NSW Parliament, p 3.

Audit of activities to create safe and inclusive workplaces

Broderick Report Recommendation 6.2

The Parliamentary Privilege and Ethics Committee (LA) and Privileges Committee (LC) should develop indicators to support an annual audit of the actions taken by MPs to create safe work environments, with an annual report produced and tabled in the Parliament.

- 3.16** Recommendation 6.2 of the Broderick report recommends that the respective privileges committees develop indicators to support an annual audit of MPs' actions to create safe work environments for their staff, including the provision and tabling of annual reports.
- 3.17** The Clerk of the Parliaments and the Department of Parliamentary Services highlighted that following recent legislative developments in both federal and state jurisdictions, additional responsibilities have been placed on persons conducting a business or undertaking (PCBUs), which also directly apply to members of Parliament as employers of their staff.⁸¹ For example, under the *Sex Discrimination Act 1984* (Cth), PCBUs have a positive duty to eliminate, as far as possible, sexual harassment in connection with work, sex-based harassment in connection with work and conduct creating a workplace environment that is hostile on the grounds of sex.⁸² Similarly, under the Work Health and Safety Amendment Regulation 2022, employers are required to manage psychosocial risks in the workplace.⁸³
- 3.18** The Clerk of the Parliaments further drew attention to a recent publication from the Commonwealth's Parliamentary Association regarding standards for codes of conduct for members of Parliament.⁸⁴ The document is an up-to-date set of benchmarks for use by Parliaments throughout the Commonwealth and draws on best practice across all regions. The Clerk highlighted that the content of the *Standards for Codes of Conduct* suggested that the NSW Parliament's ICO system is broadly consistent with developments in other Commonwealth Parliaments and benchmarks for best practices. However, he cautioned that in relation to its commitment to a safe and respectful workplace, the document would suggest that Parliament 'may have some more work to do if it wishes to catch up to other Commonwealth Parliaments'.⁸⁵
- 3.19** On a separate issue, but related to increasing the transparency of the ICO function in terms of accountability and reporting back to Parliament, the Parliamentary Ethics Adviser suggested that section 35 of the ICO Protocols (Regular reporting by the ICO) be amended to incorporate additional reporting requirements, such as:
- itemising complaints under the relevant House in quarterly reports to the respective privileges committees

⁸¹ Submission 6, Department of Parliamentary Services, p 3; Submission 9, Clerk of the Parliaments, p

⁸² *Sex Discrimination Act 1984* (Cth). See also, Submission 6, Department of Parliamentary Services, p 3.

⁸³ Work Health and Safety Amendment Regulation 2022.

⁸⁴ Commonwealth Parliamentary Association, *Standards for Codes of Conduct for Members of Parliament and the Parliamentary Workplaces: Minimum standards, additional resources and supporting structures* (2024).

⁸⁵ Submission 9, Clerks of the Parliaments, p 5.

- providing annual reports to both Houses, outlining for each House the subject and number of matters investigated and outcome
- in the instance of a member breaching the disclosure regulations, providing the name of the member confidentially in the report to the relevant privileges committee
- reporting on the number of hours spent in the course of duties.⁸⁶

Committee comment

- 3.20** The committee notes that there are now both federal and state legislative requirements which place a positive duty on members of Parliament to provide their staff with a safe workplace free from sexual harassment, and to manage psychosocial risks and hazards.
- 3.21** The committee notes that these legislative requirements are serious and binding in terms of members' duty to provide safe working environments. The recommendation for an annual audit of the actions taken by members may very well blur some of those accountabilities, as the members of the Privileges Committee collectively are not responsible for the compliance of members with their legal responsibilities under workplace legislation. Ensuring cooperation and compliance with any such audit would also be challenging.
- 3.22** This is not to undermine the fundamental importance of ensuring that everyone working at or for Parliament feels safe in their workplace, especially in light of the sobering findings of the Broderick review. Rather than the committee conducting an audit, a more practical way to achieve some of the aims of this Broderick recommendation would be to adopt some of the suggestions of the Parliamentary Ethics Adviser to enhance the information provided by the Independent Complaints Officer in her quarterly reports. For example, complaints could be itemised under the relevant House, annual reports provided to both Houses outlining the subject and number of matters investigated and their outcome, and in the instance of a member breaching the disclosure regulations, the name of the member could be provided confidentially to the relevant privileges committee. This may require amendments to the Independent Complaints Officer resolution. However it would alert both the committee and the Presiding Officers to possible trends and problem issues, providing a spur for further action.

Recommendation 8

That the Legislative Council, with the concurrence of the Legislative Assembly, consider amending the resolution establishing the Independent Complaints Officer to strengthen reporting obligations to provide greater transparency and accountability, such as through the provision of annual reports and more detailed quarterly report which itemise by House the de-identified complaints.

⁸⁶ Submission 7, Parliamentary Ethics Adviser, p 3.

Training

3.23 The Broderick report also made specific recommendations to improve the training and professional education for members of Parliament. These recommendations are canvassed and addressed in the committee's report into the recommendations of the ICAC arising out of Operation Keppel. However, the committee has decided to include some of the recommendations in the following sections of this report, particularly where stakeholders have raised it as an issue.

Provision of training on bullying, sexual harassment and sexual misconduct

Broderick Report Recommendation 4.1

- a) PEG should commission and resource a revised program of training that is highly interactive, delivered by an independent expert and in line with best practice adult education. This should include: assessing the cohort's learning needs and tailoring the training to those needs and key knowledge gaps (e.g. tailored training for MPs and for senior staff in each MP's office regarding their leadership and management responsibilities); encompassing a wider range of learning styles (including scenarios and storytelling); and requiring follow up discussions and action planning in each office as a result of key learnings coming from the training.
- b) As part of this suite of training, DPS should explore options for MPs and senior staff to hear survivors' stories in a psychologically safe environment, in order to deepen their understanding of the lived experience of those who have suffered harm in their workplace.

Broderick Report Recommendation 4.3 (a)

Access to and update of training

PEG should explore options for making training on preventing and responding to bullying, sexual harassment and sexual assault, as well as employer responsibilities, mandatory for all who routinely work in Parliamentary workplaces, including MPs.

The Houses should explore options for making the training mandatory for MPs.

3.24 Recommendations 4.1 and 4.3(a) are in relation to the provision of, access to and update of best practice training on bullying, sexual harassment and sexual misconduct for MPs and staffers, including exploring options for making training mandatory for MPs.

3.25 Following the release of the Broderick report, the Presiding Officers and parliamentary administration introduced a dedicated training program entitled RISE (Respectful, Inclusive, Safe and Effective) aimed at addressing bullying, sexual harassment and sexual misconduct in the workplace. This training is mandatory for parliamentary staff but optional for members.

3.26 In correspondence to the committee, the PAG recommended that the RISE training be mandatory for all who work at Parliament, including recurring training for members.⁸⁷

3.27 The Clerk of the Parliaments noted that while the feedback from participants regarding the RISE training program has been very positive, to date there has been a 'very disappointing participation rate' amongst members.⁸⁸

Committee comment

3.28 The committee commends the Presiding Officers and parliamentary administration for the introduction of the RISE training and understands that the various criteria outlined in recommendation 4.1 are incorporated. We are pleased to hear that the training has received positive feedback from participants to date.

3.29 However, as discussed in the committee's report on the Operation Keppel recommendations, we consider the alternative approach suggested by the ICAC to be an improvement on the Broderick recommendation. While we agree that training is undoubtedly helpful in raising awareness and understanding about member misconduct and hopefully reducing its incidence, the committee questions how mandatory training could be enforced amongst members and what the repercussions would be for non-compliance, hence the preference for the alternative approach.

3.30 Clearly more needs to be done and in this regard the committee notes that it has separately made a recommendation in its report regarding ICAC's recommendations arising out of Operation Keppel that member attendance at training be reported in the annual reports of each House Department or in the DPS annual report. If the reported numbers were particularly low overall, this would indicate a need for leaders of the major parties to take further steps to ensure their members make greater use of the training opportunities available.

⁸⁷ Correspondence from Dr Juliet Bourke, Chair, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, to Chair, 22 July 2024.

⁸⁸ Submission 9, Clerk of the Parliaments, p 4.

Appendix 1 Reports of the Independent Complaints Officer

Report from Independent Complaints Officer of the NSW Parliament to Legislative Council Privileges Committee and Legislative Council Parliamentary Privileges and Ethics Committee

Period: 1 September 2022 to 30 November 2022

Matters concluded during the period

	Complaints received during the period	Outcome
1	Matter referred from ICAC	No standing – complainant a NSW public servant
2	Complaint in relation to employment contract termination	No jurisdiction – complaint not related to conduct of a member
3	Complaint in relation to conduct during parliamentary proceedings	No jurisdiction – complaint during parliamentary proceedings
4	Complaint about conduct of committee member (not during committee proceedings)	No standing – complainant a member of public who was witness at proceeding
5	Complaint relating to workplace issues	Complainant already had workers compensation claim accepted and determined that would continue in that process rather than pursue matter with ICO

Complaints received during period and ongoing

	Complaint received	Current status
6	Complaint alleging bullying, harassment or inappropriate conduct	Investigation ongoing

Other

The protocols of the Independent Complaints Officer were drafted during the period and laid before each of the Houses on 17 November 2022.

Report from Independent Complaints Officer of the NSW Parliament to Legislative Council Privileges Committee and Legislative Council Parliamentary Privileges and Ethics Committee

Period: 1 December 2022 to 28 February 2023

Matters concluded during the period

	Complaints carried over from previous quarter	Outcome
6	Complaint alleging bullying, harassment or inappropriate conduct	Investigation commenced, draft findings made. Investigation suspended as claim of parliamentary privilege made in respect of the conduct.

Complaints received during period and ongoing

	Complaint received	Current status
7	Complaint alleging misuse of allowances or entitlements. Complaint (received 28 February) was made simultaneously to ICO and ICAC	Liaised with ICAC, was agreed ICAC would assess first
8	Complaint alleging bullying, harassment or inappropriate conduct (received 1 March so technically falls in next quarter).	Liaising with both parties with a view to resolving by mediation

Other

Information about the role of the ICO was added to the Parliament of NSW website and information on the intranet was updated.

Report from Independent Complaints Officer of the NSW Parliament to Legislative Council Privileges Committee and Legislative Assembly Parliamentary Privileges and Ethics Committee

Period: 1 March 2023 to 31 May 2023

Matters concluded during the period

	Complaints carried over from previous quarter	Outcome
6	Complaint alleging bullying, harassment or inappropriate conduct	Investigation commenced, draft findings made. Investigation suspended in January 2023 as claim of parliamentary privilege made in respect of the conduct. As ICO had no basis not to accept privilege claim, and has had no further contact from parties, the ICO has completed this matter.
7	Complaint alleging misuse of allowances or entitlements. Complaint was made simultaneously to ICO and ICAC	Had been agreed ICAC would assess first. ICAC and ICO liaised further in early March. General discussion about reporting of allowances. ICO indicated to ICAC that as the alleged conduct occurred before December 2021 this specific matter was unlikely to fall within ICO jurisdiction. No formal advice from ICAC as to whether they are pursuing but am treating matter as concluded from ICO perspective.
8	Complaint alleging bullying, harassment or inappropriate conduct.	Commenced liaison with both parties with a view to resolving by mediation. Due to election commitments unable to find a suitable date for meeting prior to 23 March. After election the complainant was no longer a member of the Parliamentary community and did not reply to question as to whether they wished to continue the complaint. Matter was formally closed in early April.

Complaints received during period and ongoing

No complaints were received in the period from 1 March to 31 May 2023.

Other

The ICO participated in induction sessions for new Members of Parliament in April 2023.

Report from Independent Complaints Officer of the NSW Parliament to Legislative Council Privileges Committee and Legislative Assembly Parliamentary Privileges and Ethics Committee

Period: 1 June 2023 to 31 August 2023

Matters concluded during the period

	Complaints received	Outcome
9	Complaint alleging bullying and harassment relating to allegations that a member was unreasonably restricting access to personal property of former staff	Allegations discussed with complainant and response obtained from member. Appeared that this was not bullying and harassment but instead dispute as to whether items were created during course of employment or were documents created by staff member in personal capacity. An arrangement to return one item of personal property that was not in dispute was negotiated. Matter concluded.
10	Complaint alleging bullying and harassment by member	Preliminary discussion held with complainant. Complainant decided to resign from position and not to go ahead with a complaint. ICO agreed to keep record of information provided in case it became relevant to another matter.

Complaints received during period and ongoing

	Complaint received	Outcome
11	Complaint alleging bullying and harassment and / or inappropriate conduct	Information received from complainant and respondent, drafting findings and recommendations

Other

The ICO provided an update to a meeting of the Legislative Assembly Parliamentary Privileges and Ethics Committee in August 2023.

The ICO will be on leave between 26 September and 26 October 2023. Arrangements will be made to respond to any complaints received during this period.

Report from Independent Complaints Officer of the NSW Parliament to Legislative Council Privileges Committee and Legislative Assembly Parliamentary Privileges and Ethics Committee

Period: 1 September 2023 to 30 November 2023

Matters concluded during the period

	Complaints received	Outcome
11	Complaint alleging bullying and harassment and / or inappropriate conduct.	Report finalised and provided to parties. Appeal made to Parliamentary Privileges and Ethics committee who determined that the conduct involved was subject to parliamentary privilege and therefore outside the jurisdiction of the ICO.
12	Inquiry made about alleged bullying and harassing conduct.	Conduct was not by member and therefore outside jurisdiction of the ICO.
13	Complaint alleging harassment or other inappropriate conduct.	Preliminary discussion held with complainant. Complainant decided not to go ahead with a complaint. ICO agreed to keep confidential record of information provided in case it became relevant later.

Complaints received during period and ongoing

	Complaint received	Current status
14- and 15	Complaints received separately from two former staff of the same member (both complaints received within 21 days of last day of employment) alleging bullying and harassment and / or inappropriate conduct and misuse of public funds.	Information obtained from complainants and was agreed with both that ICO would deal with the complaints together. Preliminary discussion held with member. Further information being obtained from Department of Parliamentary Services.

Other

The ICO provided submissions to the Review of the Independent Complaints Officer System (2023) inquiries of the Legislative Council Privileges Committee and the Legislative Assembly Parliamentary Privileges and Ethics Committee.

Report from Independent Complaints Officer of the NSW Parliament to Legislative Council Privileges Committee and Legislative Assembly Parliamentary Privileges and Ethics Committee

Period: 1 December 2023 to 29 February 2024

Matters concluded during the period

	Complaints received	Outcome
14- and 15	Complaints received separately from two former staff of the same member (both complaints received within 21 days of last day of employment) alleging bullying and harassment and / or inappropriate conduct and misuse of public funds.	Inquiries made of Department of Parliamentary Services and meetings held with complainants and a number of witnesses. Draft report supplied to Member and both complainants and comments and submissions considered. Final report did not make findings or recommend specific actions, but a number of possible improvements to administrative and personnel processes suggested.
16	Complaint about alleged bullying and harassing conduct.	Conduct may have fallen within the exceptions for "relating to proceedings of the Parliament". In any case conduct was determined not to amount to bullying or harassment.

Complaints received during period and ongoing

	Complaint received	Current status
	No ongoing matters	

Other

The ICO met with members of the Legislative Council Privileges Committee in early December 2023 as part of the Review of the Independent Complaints Officer System (2023).

Report from Independent Complaints Officer of the NSW Parliament to Legislative Council Privileges Committee and Legislative Assembly Parliamentary Privilege and Ethics Committee

Period: 1 March 2024 to 31 May 2024

Matters concluded during the period

	Complaints received	Outcome
17	General complaint about Member behaviour	Complainant not a member of the Parliamentary community, no jurisdiction for the ICO. (Complainant had found ICO details on NSW Parliament website)
18	Complaint about bullying and harassment	Complainant decided not to proceed with matter
20	Complaint about use of allowances	Determined that no breach of guidelines had occurred
21	Complaint about bullying or harassment	Parties resolved the matter between themselves

Complaints received during period and ongoing

	Complaint received	Current status
19	Complaint received about bullying and harassment	Investigation undertaken including speaking to witnesses and obtaining records. Draft report has been provided to Member and complainant for comment.

Other

The ICO met with members of the Legislative Assembly Parliamentary Privilege and Ethics Committee in late March 2024 as part of the Review of the Independent Complaints Officer System (2023).

Appendix 2 Submissions

No.	Author
1	Independent Complaints Officer
2	Confidential
3	Confidential
4	Confidential
5	NSW Ombudsman
6	Department of Parliamentary Services, NSW Parliament
7	Parliamentary Ethics Adviser
8	NSW Independent Commission Against Corruption
9	Clerk of the Parliaments
10	Parliament of New South Wales Advisory Group on Bullying, Sexual Harassment and Serious Misconduct

Appendix 3 Minutes

Minutes no. 3

Monday 21 August 2023, 3.32 pm

Room 1254, Parliament House, Sydney and via videoconference (Webex)

1. Members

Mr Lawrence (*Chair*)

Mr Fang (via Webex)

Ms Higginson

Ms Merton (substituting for Mrs Maclaren-Jones)

Mr Murphy

Mr Nanva (via Webex)

Mr Primrose

Mr Roberts

Secretariat in attendance: Stephen Frappell, Sharon Ohnesorge, Velia Mignacca, Madeleine Dowd, Monica Loftus, Maddie Hollins.

2. Previous minutes

Resolved on the motion of Mr Murphy: That draft minutes no. 2 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 29 June 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, to Chair, regarding the Commission's report "Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others: Operation Keppel", citing eight recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 7 July 2023 – Letter from the President of the Legislative Council to the Chair of the Committee referring terms of reference for a new inquiry into the recommendations of the ICAC arising out of Operation Keppel
- 12 July 2023 – Email from Federal Agent Georgia Gallagher, Special Investigations, Australian Federal Police, to Acting Deputy Clerk, regarding the report on the *Execution of search warrants by the Australian Federal Police No. 4*, including various annexure attachments
- 17 July 2023 – Letter from the President of the Legislative Council to the Chair regarding the recommendations of the Broderick Review
- 26 July 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption to the Chair regarding the Commission's report "Investigation into the conduct of local member for Drummoyne: Operation Witney", citing seven recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 26 July 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption to the President of the Legislative Council, regarding the Commission's report "Investigation into the conduct of local member for Drummoyne: Operation Witney", citing seven recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 26 July 2023 – Letter from Mr Dennis Miralis, Partner, Nyman Gibson Miralis to the Chair regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5

- 27 July 2023 – Letter from The Hon Shaoquett Moselmane to the Chair regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 1 August 2023 – Email from Lara Khider, Senior Solicitor, Nyman Gibson Miralis, to Chair - regarding decision to not provide a submission to the inquiry into the execution of search warrants by the Australian Federal Police No. 5.

Sent:

- 3 July 2023 – Letter from the Chair to the President of the Legislative Council regarding correspondence from ICAC in relation to its report entitled "Operation Keppel", requesting that the President refer terms of reference to the Privileges Committee
- 18 July 2023 – Letter from the Chair to Mr Dennis Miralis, Partner, Nyman Gibson Miralis regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 18 July 2023 – Letter from the Chair to The Hon Shaoquett Moselmane regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 18 July 2023 – Letter from the Chair to The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, regarding the ongoing educative role of the Privileges Committee in relation to ethical standards for members of the Legislative Council and the opportunity to address this further as part of a new inquiry referred to the Privileges Committee responding to the Report on Operation Keppel.

4. Inquiry into the execution of search warrants by the Australian Federal Police No. 5

4.1 Correspondence

The committee noted that:

- by email dated 12 July 2023, the committee received advice from Federal Agent Georgia Gallagher, Special Investigations, Australian Federal Police, regarding the page numbering issue raised by the committee in Report No 4 on this matter. The correspondence included annexure attachments in relation to the discrepancies in page numbers
- by correspondence dated 18 July 2023, the Chair wrote to Mr Dennis Miralis, Partner, Nyman Gibson Miralis, acting as legal counsel for Mr Zhang, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5 and claims of parliamentary privilege. The Chair invited Mr Miralis to make a submission by Tuesday 25 July 2023
- by correspondence dated 18 July 2023, the Chair wrote to The Hon Shaoquett Moselmane, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5 and claims of parliamentary privilege. The Chair invited Mr Moselmane to make a submission by Tuesday 25 July 2023
- by correspondence dated 26 July 2023, Mr Dennis Miralis, Partner, Nyman Gibson Miralis, acting as legal counsel for Mr Zhang, wrote to the committee clarifying the scope of the parliamentary privilege claim on behalf of Mr Zhang
- by correspondence dated 27 July 2023, The Hon Shaoquett Moselmane wrote to the Chair, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5, citing material over which he maintained a claim of parliamentary privilege.

Resolved, on the motion of Mr Roberts: That all correspondence related to the inquiry into execution of search warrants by the Australian Federal Police No. 5 remain confidential and available for inspection by members in the Clerk's Office on request.

4.2 Chair's draft report

Resolved, on the motion of Mr Murphy: That the committee note that the Chair's draft report has been circulated to members less than seven days prior to the report deliberative.

The Chair submitted his draft report entitled "Inquiry into the execution of search warrants by the Australian Federal Police No. 5", which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That:

- the draft report be the report of the committee, subject to an amendment to be drafted by the secretariat, circulated by the Chair and agreed to via email, regarding the return of privileged material by the AFP
- the committee present the report to the House on Wednesday 23 August 2023
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee.

5. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

The committee noted that:

- by correspondence dated 29 June 2023, the Chief Commissioner of the Independent Commission Against Corruption (ICAC) wrote to the Chair of the Committee in relation to the report "Investigation into the conduct of then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)" and a number of recommendations for reform relevant specifically to the Privileges Committee
- by correspondence dated 3 July 2023, the Chair of the Committee wrote to the President requesting a referral to inquire into the matters contained in the Chief Commissioner's letter
- by correspondence dated 7 July 2023, the President responded to the Chair's letter, granting the request to refer the matters for inquiry and providing terms of reference for the establishment of the inquiry, with a reporting date of the last sitting day in 2023.

The committee further noted that these terms of reference were reported by the President to the House on Tuesday 1 August 2023, as follows:

5.1 Terms of reference – Recommendations of the ICAC arising out of Operation Keppel

- (1) That the Privileges Committee:
 - (a) inquire into and report on the recommendations of the Independent Commission Against Corruption in its report entitled "Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel)", dated June 2023, and
 - (b) make recommendations for further action to be considered by the House, the President, the Clerk and the Government, as appropriate.
- (2) That in undertaking the inquiry:
 - (a) in accordance with standing order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and
 - (b) the committee consult the President, the Clerk and the Chief Commissioner of the Independent Commission Against Corruption as appropriate.
- (3) That the committee report by the last sitting day in 2023.

The committee also noted that by separate correspondence dated 26 July 2023, the Chief Commissioner of the ICAC wrote to the Chair of the Committee and President of the Legislative Council in relation to the implementation of corruption prevention recommendations made by the ICAC in the report "Investigation into the conduct of local member for Drummoyne (Operation Witney)".

By correspondence dated 18 July 2023, the Chair previously advised the Chief Commissioner of the referral of the terms of reference above for an inquiry into the recommendations arising out of the Keppel inquiry.

Resolved, on the motion of Mr Murphy: That the committee write to the Chief Commissioner of the Independent Commission Against Corruption in response to correspondence sent by the Chief Commissioner of 26 July 2023, to indicate that the recommendations arising out of Operation Witney

were previously considered by the committee as part of its 2022 Review of the Code of Conduct for Members, but will be further considered as part of the current inquiry into the recommendations of the ICAC arising out of Operation Keppel.

The committee further noted that there is certain overlap in recommendations arising out of both ICAC reports into Operations Keppel and Witney, as well as recommendations arising out of the Broderick Review that are specific to the Privileges Committee (as per the President's correspondence to the Chair of 17 July 2023).

Resolved, on the motion of Mr Murphy: That the secretariat be tasked with reviewing and reconciling the recommendations of Operations Keppel and Witney, and those recommendations arising out of the Broderick Review that are specific to the Privileges Committee (as per the President's correspondence to the Chair of 17 July 2023), for review by the committee at its next meeting.

6. Review of Independent Complaints Officer system (2023)

The committee noted that under the terms of paragraph 10 of the resolution establishing the ICO, the committee is required to review the Independent Complaints Officer system within 12 months of the establishment of the Independent Complaints Officer position, in consultation with key stakeholders.

Resolved, on the motion of Mr Primrose: That the committee adopt the following terms of reference, and that they be reported to the House on the next sitting day.

Terms of Reference – Inquiry into the review of Independent Complaints Officer system (2023)

1. That, in accordance with paragraph 10 of the resolution of the House establishing the Independent Complaints Officer, the Privileges Committee review the operation of the Independent Complaints Officer system and associated investigations protocol tabled on 17 November 2022, and whether any changes are needed, and in particular:
 - a. the confidentiality provisions applying in respect of complaints and investigations under the system,
 - b. the timeliness of complaints assessments and investigations conducted under the system, and
 - c. the provisions applying with respect to standing for complaints and retrospectivity under the system.
2. That, in undertaking the review:
 - a. the committee consider the recommendations of the Independent Review of Bullying, Sexual Harassment and Sexual Misconduct at NSW Parliament Workplaces, commonly referred to as the Broderick Review, in relation to the role of the Independent Complaints Officer, the Code of Conduct for Members, training for members and any other related matter,
 - b. in accordance with Standing Order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and
 - c. the committee consult the President, the Clerk and other key stakeholders as appropriate.

7. Next meeting

The committee adjourned at 4.04 pm, *sine die*.

Stephen Frappell
Committee Clerk

Minutes no. 4

Thursday 14 September 2023, 3.35 pm
Room 1136, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Mr Fang
Ms Higginson
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Stephen Frappell, Sharon Ohnesorge, Monica Loftus, Irene Penfold.

2. Previous minutes

Resolved, on motion of Mr Roberts: That draft minutes no. 3 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 5 September 2023 – Email from the Independent Complaints Officer to the Privileges Committee, attaching the Independent Complaints Officer quarterly report for June 2023 to August 2023.
- 8 September 2023 – Letter from Ian McCartney APM, Deputy Commissioner National Security, Australian Federal Police to the President of the Legislative Council, copied to the Chair of the Privileges Committee, regarding the notice of motion for the House to adopt the recommendations of the inquiry into the 'execution of search warrants by the Australian Federal Police No. 5'.

Sent:

- 24 August 2023 – Letter from Chair of the Privileges Committee to the Hon John Hatzistergos AM, Chief Commissioner, Independent Commission Against Corruption, advising on progress of Operation Witney recommendations to be considered with Operation Keppel recommendations.

4. Review of Independent Complaints Officer system (2023)**4.1 Conduct of the inquiry**

The committee noted the following documents:

- Resolution establishing the Independent Complaints Officer – agreed to by the House on 2 March 2022.
- Independent Complaints Officer Protocols – prepared by the Independent Complaints Officer and tabled by the former Chair of the Committee on 17 November 2022.
- Quarterly reports prepared by the Independent Complaints Officer under paragraph 8 of the resolution establishing the Independent Complaints Officer for the following periods:
 - 1 September 2022 – 30 November 2022
 - 1 December 2022 – 28 February 2023
 - 1 March 2023 – 31 May 2023
 - 1 June 2023 – 31 August 2023.

Resolved, on motion of Mr Fang: That the resolution establishing the Independent Complaints Officer and the protocol document prepared by the Independent Complaints Officer be published on the inquiry website.

Resolved, on motion of Mr Murphy: That:

1. the Chair write to the Independent Complaints Officer inviting her to provide a submission and briefing to the committee for the purposes of its current inquiry;
2. the Chair write to the Legislative Assembly Parliamentary Privilege and Ethics Committee to inform them of the current inquiry; and
3. the committee consider the further conduct of the inquiry following the briefing from the Independent Complaints Officer.

5. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

5.1 Comparison of recommendations

Resolved, on motion of Mr Murphy: That the secretariat prepare a briefing paper for the committee on the recommendations arising out of Operation Keppel and Operation Witney related to the Members' Code of Conduct and training and professional development for Members.

6. Next meeting

The committee adjourned at 3.39 pm, *sine die*.

Stephen Frappell
Committee Clerk

Minutes no. 5

Thursday 19 October 2023, 1.32 pm

McKell Room, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)

Mrs Maclaren-Jones (*Deputy Chair*)

Ms Boyd (participating)

Mr Fang

Ms Higginson

Mr Murphy

Mr Nanva

Mr Primrose

Mr Roberts (from 1.40 pm)

Secretariat in attendance: Steven Reynolds, Stephen Frappell, Sharon Ohnesorge, Monica Loftus, Irene Penfold.

2. Previous minutes

Resolved, on motion of Mrs Maclaren-Jones: That draft minutes no. 4 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 14 September 2023 – Annual Report of Parliamentary Ethics Adviser for 2022-2023.
- 22 September 2023 – Email from Ms Abigail Boyd indicating that she will be a participating member for the inquiry into provisions of the Parliamentary Evidence Act 1901.
- 26 September 2023 – Letter from the Commissioner of the Australian Federal Police to the President, in response to the resolution of the House dated 12 September 2023.
- 13 October 2023 – Letter from the Chief Commissioner, Independent Commission Against Corruption to Chair, acknowledging the Chair's correspondence dated 18 July 2023 and requesting to

be consulted in the course of the committee's inquiry into the recommendations of the ICAC arising out of Operation Keppel.

Sent:

- 20 September 2023 – Letter from Chair of the Privileges Committee to Ms Rose Webb, Independent Complaints Officer, inviting her to make a submission into the review of Independent Complaints Officer system (2023).
- 20 September 2023 – Letter from Chair of the Privileges Committee to Chair of the Legislative Assembly Parliamentary Privilege and Ethics Committee, to inform him of the committee's commencement of the review of Independent Complaints Officer system (2023).

4. Inquiry into the provisions of the Parliamentary Evidence Act 1901

4.1 Terms of reference

The committee noted the following terms of reference referred by the House on 20 September 2023:

That:

- (a) this House notes that in its report entitled "Allegations of impropriety against agents of the Hills Shire Council and property developers in the region", dated March 2023, Portfolio Committee No 7 – Planning and Environment recommended that, at the beginning of the 58th Parliament, the NSW Legislative Council refer an inquiry into the Parliamentary Evidence Act 1901 to the Privileges Committee, with a view to identifying amendments to ensure it is fit for purpose and modernised, including in relation to the summoning of witnesses, and
- (b) the provisions of the Parliamentary Evidence Act 1901 be referred to the Privileges Committee for inquiry and report, with a view to identifying amendments to ensure it is fit for purpose and modernised, including in relation to the summoning of witnesses.

4.2 Conduct of the inquiry

Resolved, on motion of Mr Fang: That the committee:

- engage Professor Gabrielle Appleby, Professor of Law, University of New South Wales, to prepare a discussion paper identifying issues for consideration regarding the operation of the Parliamentary Evidence Act 1901 by end of January 2024, through the external expert mechanism funded by the Parliamentary Research Service
- invite Professor Appleby to brief the committee on a draft of the discussion paper at a private roundtable
- publish the final discussion paper and seek submissions from relevant stakeholders.

5. Annual Report of Parliamentary Ethics Adviser for 2022-2023

The committee noted receipt of the Annual Report of the Parliamentary Ethics Adviser 2022-2023. The secretariat will circulate potential dates suitable for the committee's annual meeting with the Parliamentary Ethics Adviser.

6. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

6.1 Extension of reporting date

Resolved, on motion of Mrs Maclaren-Jones: That the Chair write to the President requesting that he extend the reporting date to the first sitting day in August 2024.

6.2 Discussion paper

Resolved, on motion of Mr Nanva: That the Chair write to the Chair of the Legislative Assembly Parliamentary Privileges and Ethics Committee proposing that the committees collaborate on the Operation Keppel and Operation Witney discussion paper with a view to publication of a joint discussion paper.

7. Review of Independent Complaints Officer system (2023)**7.1 Media report regarding complaint to the Independent Complaints Officer**

The committee noted issues arising out of the recent media report regarding a complaint made to the ICO about a member of the Legislative Assembly.

Resolved, on motion of Mr Primrose: That consideration of the matter be deferred until the committee's next meeting.

8. Next meeting

The committee adjourned at 1.47 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 6

Thursday 23 November 2023, 1.03 pm
Room 1043, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Mr Fang
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Stephen Frappell, Sharon Ohnesorge, Monica Loftus.

2. Previous minutes

Resolved, on motion of Mr Murphy: That draft minutes no. 5 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 25 October 2023 – Letter from the President to the Chair, extending reporting date for the inquiry into the recommendations of the ICAC arising out of Operation Keppel.
- 27 October 2023 – Email from Ms Rose Webb, Independent Complaints Officer, to the committee, providing submission for the review of the Independent Complaints Officer system (2023).
- 2 November 2023 – Email from a parliamentary staff member to the committee, requesting to make a submission to the review of the Independent Complaints Officer System (2023).
- 15 November 2023 – Letter from the Hon John Hatzistergos AM, Chief Commissioner, Independent Commission Against Corruption, to the Chair, regarding a memorandum of understanding to address procedures for material covered by parliamentary privilege and sought by ICAC.
- 21 November 2023 – Email from Mr Alex Greenwich MP, Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, to the Hon John Hatzistergos AM, Chief Commissioner of the Independent Commission Against Corruption, proposing to meet with ICAC to discuss the draft protocol.

Sent:

- 20 October 2023 – Letter from the Chair to the President, requesting extension of reporting date for the inquiry into the recommendations of the ICAC arising out of Operation Keppel.

- 20 October 2023 – Letter from the Chair to Mr Alex Greenwich MP, Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, requesting that the two committees collaborate on the publication of a joint discussion.

4. **Annual Report of Parliamentary Ethics Adviser for 2022-2023**

Under paragraph 10 of the resolution appointing the Parliamentary Ethics Adviser, the committee met with the Adviser, Mr John Evans, to discuss his Annual Report 2022-2023.

5. **Inquiry into the provisions of the Parliamentary Evidence Act 1901**

The committee noted that Professor Gabrielle Appleby is preparing a briefing paper according to issues provided by members.

6. **Inquiry into the recommendations of the ICAC arising out of Operation Keppel**

6.1 **Draft discussion paper**

The committee discussed the draft discussion paper prepared by the secretariat.

Mr Nanva and Mr Primrose left the meeting.

Resolved, on motion of Mr Murphy: That the discussion paper be revised to include alternative positions to some of the ICAC recommendations and the committee revisit a revised discussion paper at its next meeting.

7. **Review of Independent Complaints Officer system (2023)**

7.1 **Conduct of the inquiry**

Resolved, on motion of Mrs Maclaren-Jones:

- That the Independent Complaints Officer be invited to give a briefing to the committee on a date to be determined by the Chair in consultation with members.
- That, following the briefing from the Independent Complaints Officer, the committee invite submissions from nominated stakeholders, to be confirmed at a later date.

8. **ICAC memorandum of understanding**

Resolved, on motion of Mrs Maclaren-Jones: That the Chair coordinate with the Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics to provide a joint response to ICAC.

9. **Next meeting**

The committee adjourned at 1.35 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 7

Wednesday 6 December 2023, 3.01 pm

Room 1254, Parliament House, Sydney and via videoconference (Webex)

1. **Members**

Mr Lawrence (*Chair*)
Mr Fang (via videoconference)
Ms Higginson (via videoconference)
Mr Murphy
Mr Nanva (via videoconference)
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Stephen Frappell, Sharon Ohnesorge (via Webex), Monica Loftus, Irene Penfold.

2. Apologies

Mrs Maclaren-Jones

3. Review of Independent Complaints Officer scheme (2023)

3.1 Briefing from the Independent Complaints Officer

The committee met with Ms Rose Webb, Independent Complaints Officer, to discuss her submission. Ms Webb briefed the committee.

Ms Webb left the meeting.

4. Previous minutes

Resolved, on motion of Mr Primrose: That draft minutes no. 6 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received:

- 4 December 2023 – Independent Complaints Officer quarterly report for September to November 2023.

Sent:

- 28 November 2023 - Chair to the Hon John Hatzistergos AM, Chief Commissioner of ICAC, responding to correspondence regarding a revised MOU and interim protocol for privileged documents sought by ICAC.
- 28 November 2023 - Chair to Alex Greenwich MP, Chair of the Legislative Assembly Privileges Committee, noting the Legislative Assembly committee's response to correspondence from the ICAC regarding a revised MOU and interim protocol for privileged documents sought by ICAC.

6. Review of Independent Complaints Officer system (2023)

6.1 Conduct of the inquiry

Resolved, on motion of Mr Primrose:

- That the secretariat prepare a short issues paper canvassing issues discussed at the briefing and possible changes to the ICO resolution or protocols to address these issues.
- That, once the committee has agreed to the issues paper, the committee forward a copy of the paper to the following stakeholders and invite them to provide a submission to the inquiry:
 - Legislative Council members
 - Member's staff and parliamentary staff
 - Independent Commission Against Corruption
 - Parliamentary Ethics Adviser
 - Chief Executive, Department of Parliamentary Services
 - Clerk of the Parliaments
 - Ombudsman
 - Public Service Association and other relevant unions to be determined by the secretariat.

6.2 Submission request

Resolved, on motion of Ms Higginson: That a staff member [name redacted] be included in the list of stakeholders invited to make a submission to the inquiry on the issues in the discussion paper.

7. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

7.1 Draft discussion paper

The committee discussed the draft discussion paper prepared by the secretariat.

The committee is awaiting a reply from the Legislative Assembly committee on whether they will collaborate on a joint discussion paper.

Resolved, on motion of Ms Higginson:

- That, to assist the Legislative Assembly committee in its decision, the committee authorise the draft discussion paper to be sent to the Chair of the Legislative Assembly committee.
- That, once the position of the Legislative Assembly committee is finalised and the discussion paper is finalised, the committee authorise the publication of the discussion paper on the inquiry webpage and forward a copy to each of the stakeholders invited to provide a submission to the inquiry.
- That the committee meet to consider changes if the Assembly Committee requires significant alterations to the discussion paper to make it a joint document.

7.2 Stakeholder list

Resolved, on motion of Mr Roberts:

- That, once the discussion paper is published, the committee invite the following stakeholders to provide a submission to the inquiry:
 - Legislative Council members
 - Independent Commission Against Corruption
 - Parliamentary Ethics Adviser
 - Department of Parliamentary Services
 - Clerk of the Parliaments
 - Public Service Association.
- That members have until 10.00 am Monday 11 December 2023 to nominate additional stakeholders and the committee is to agree to the stakeholder list by email, unless a meeting is required to resolve any disagreement.

7.3 Closing date for submissions

Resolved, on motion of Mr Murphy: That the closing date for submissions be Monday 26 February 2024.

8. Next meeting

The committee adjourned at 3.53 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 8

Thursday 8 February 2024, 1.00 pm
Room 1136, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)
Mr Fang
Ms Higginson
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Monica Loftus, Irene Penfold.

2. Apologies

Mrs Maclaren-Jones

3. Previous minutes

Resolved, on motion of Mr Nanva: That draft minutes no. 7 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 6 February 2024 – Letter from the Hon Chris Minns MP, Premier, to the Chair, forwarding a copy of the draft Constitution (Disclosures by Members) Regulation 2024.

Sent:

- 7 December 2023 - Letter from the Chair to the Hon Alex Greenwich MP, Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, forwarding a copy of the draft discussion paper on certain recommendations arising out of Operations Keppel and Witney and the Broderick Review.

5. Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024**5.1 Terms of reference**

The committee noted the following terms of reference referred by the House this day:

Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024

That, under section 14A of the Constitution Act 1902, the draft Constitution (Disclosures by Members) Regulation 2024 be referred to the Privileges Committee for inquiry and report by Monday 2 September 2024.

5.2 Conduct of the inquiry

Resolved, on the motion of Mr Murphy: That the committee, jointly with the Clerk and Parliamentary Ethics Adviser, host an information session to explain the changes proposed, and that the Chair be empowered to invite any other agency he thinks appropriate to present at the information session.

6. Inquiry into the provisions of the Parliamentary Evidence Act 1901

The committee noted that the draft discussion paper being prepared by Dr Gabrielle Appleby is expected to be provided to the committee by the end of February.

7. Review of Independent Complaints Officer system (2023)**7.1 Discussion paper**

The committee noted the draft discussion paper prepared by the secretariat.

Resolved, on the motion of Ms Higginson: That members of the committee provide any comments on the draft discussion paper by 2.00 pm Thursday 15 February, with any issues to be resolved at a meeting if required.

7.2 Stakeholder list

The committee noted it had previously resolved to forward a copy of the discussion paper once finalised to the following stakeholders and invite them to provide a submission to the inquiry:

- Legislative Council members
- Member's staff and parliamentary staff
- Independent Commission Against Corruption
- Parliamentary Ethics Adviser
- Chief Executive, Department of Parliamentary Services
- Clerk of the Parliaments
- Ombudsman

- Public Service Association
- Media, Entertainment and Arts Alliance
- Elizabeth Broderick
- A staff member [name redacted].

7.3 Closing date for submissions

Resolved, on motion of Mr Nanva: That once the discussion paper is agreed to by the committee, stakeholders be given six weeks to make submissions.

8. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

8.1 Draft discussion paper

The committee noted it is awaiting a reply from the Legislative Assembly committee on whether they will collaborate on a joint discussion paper.

8.2 Stakeholder list

The committee noted it has previously agreed to, once the discussion paper is finalised, publish a copy of the paper on the inquiry webpage and forward it to the following stakeholders and invite them to provide a submission to the inquiry:

- Legislative Council members
- Independent Commission Against Corruption
- Parliamentary Ethics Adviser
- Department of Parliamentary Services
- Clerk of the Parliaments
- Public Service Association.

8.3 Closing date for submissions

Resolved, on motion of Mr Nanva: That, once the status discussion paper is resolved, stakeholders be given six weeks to make submissions.

9. Next meeting

The committee adjourned at 1.19 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 11

Tuesday 5 March 2024, 1.18 pm

Room 1043, Parliament House, Sydney and via videoconference (Microsoft Teams)

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Ms Higginson
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Sharon Ohnesorge, Monica Loftus, Irene Penfold.

2. Previous minutes

Resolved, on motion of Mr Roberts: That draft minutes no. 10 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

4. *Received:*

- 22 February 2024 – Email from Heidrun Blackwood, Senior Corruption Prevention Officer, Independent Commission Against Corruption, to the secretariat, seeking a two week extension on their submission to the review of the Independent Complaints Officer system.
- 22 February 2024 – Email from Heidrun Blackwood, Senior Corruption Prevention Officer, Independent Commission Against Corruption, to the secretariat, requesting a copy of various documents mentioned in the discussion paper for the inquiry into the recommendations of the ICAC arising out of Operation Keppel.
- 4 March 2024 – Letter from Mr Alex Greenwich MP, Chair, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics to the Chair, enclosing a draft interim protocol with the Independent Commission Against Corruption regarding the procedures for dealing with claims of parliamentary privilege where material is sought by the Commission under ss 22 or 35 of the Independent Commission Against Corruption Act 1988.

Sent:

- 20 February 2024 – Email from the Chair to stakeholders, inviting them to make a submission to the review of the Independent Complaints Officer system.

5. Disputed claim of privilege – Sydney Metro governance

5.1 Chair's draft report

Resolved, on the motion of Mr Murphy:

- That the committee note that the Chair's draft report was circulated to members less than seven days prior to the report deliberative.
- That the draft report be the report of the committee and that the committee present the report to the House.
- That the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling.

6. Request from Legislative Council member to appeal report of the Independent Complaints Officer

6.1 Consideration of member's appeal

The committee considered a request from a member to appeal a report of the Independent Complaints Officer. Copies of the relevant documents were distributed.

The committee noted the advice of the Committee Clerk that, as the requirements to be satisfied to lodge an appeal under s 5(h) of the resolution establishing the Independent Complaints Officer have not been met in this circumstance, the committee does not have jurisdiction to consider the member's appeal.

The committee deliberated.

Resolved, on the motion of Mr Primrose:

- That the committee consider the issues raised by this appeal at a future meeting.
- That the secretariat reply to the submission author acknowledging his appeal and submission and advising that the committee will contact him after further consideration.

7. Next meeting

The committee adjourned at 1.39 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 13

Tuesday 14 May 2024, 3.31 pm
Room 1136, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Ms Boyd (participating for *Parliamentary Evidence Act* inquiry) (from 3.38 pm)
Mr Fang
Ms Higginson
Mr Murphy
Mr Primrose
Mr Roberts
Mr Tudehope (substituting for Mr Fang for the duration of the *Parliamentary Evidence Act* inquiry) (from 3.39 pm)

Secretariat in attendance: Steven Reynolds, Stephen Fujiwara, Helen Hong.

2. Apologies

Mr Nanva

3. Previous minutes

Resolved, on motion of Mr Murphy: That draft minutes no. 12 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 2 April 2024 – Email from the Office of the Opposition Whip, to secretariat, advising that the Hon. Damien Tudehope MLC will substitute for the Hon. Wes Fang MLC for the duration of the Parliamentary Evidence Act inquiry.
- 2 April 2024 – Email from Ms Bridget Noonan, Clerk of the Legislative Assembly and Clerk of the Parliaments, Parliament of Victoria, to secretariat, advising that the Vic Legislative Assembly will not be making a submission to the Parliamentary Evidence Act inquiry.
- 30 April 2024 – Email from Ms Jackie Morris, Deputy Clerk, Department of the Senate, to secretariat, advising that the Senate will not be making a submission to the Parliamentary Evidence Act inquiry.
- ***
- 7 May 2024 – Letter from Ms Kate Boyd, Secretary, The Cabinet Office, to Chair, responding to letter with questions arising from the TCO briefing on proposed draft Constitution (Disclosures by Members) Regulation 2024.

Sent:

- 28 March 2024 – Correspondence from Chair, to Mr Matt Richards, Acting Deputy Secretary, General Counsel, The Cabinet Office, attaching a list of questions raised by members during the information session about the proposed draft Constitution (Disclosures by Members) Regulation 2024.

5. Review of Independent Complaints Officer system (2023)**5.1 Public submissions**

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of submission nos 1 and 5-9.

5.2 Confidential submissions

Resolved, on the motion of Mr Murphy: That the committee keep submission nos 2-3 confidential, as per the request of the author, as they contain identifying and/or sensitive information.

5.3 Publication of submission no. 4

Resolved, on the motion of Mr Primrose: That the committee keep submission no. 4 confidential, as it contains identifying and/or sensitive material.

5.4 Drafting of Chair's report

Resolved, on the motion of Mrs Maclaren-Jones: That the secretariat proceed to draft the Chair's report, with circulation to the committee expected in mid-June.

6. Briefing from the Parliamentary Ethics Adviser

Resolved, on the motion of Ms Higginson: That the committee accept the Parliamentary Ethics Adviser's offer to meet with the committee to discuss the points raised in his submissions for the Review of Independent Complaints Officer system (2023) and the Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024.

7. Recommendations of the ICAC arising out of Operation Keppel**7.1 Public submissions**

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of submission nos. 1-2.

7.2 Drafting of Chair's report

Resolved, on the motion of Mrs Maclaren-Jones: That the secretariat proceed to draft the Chair's report, with circulation to the committee expected in mid-June.

8. Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024**8.1 Public submissions**

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submission nos. 1-2.

9. *****10. Next meeting**

The committee adjourned at 3.57 pm, *sine die*.

Steven Reynolds

Committee Clerk

Minutes no. 16

Tuesday 4 June 2024, 3.08 pm

Room 1136, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)

Mrs Maclaren-Jones (*Deputy Chair*)

Ms Boyd (participating for *Parliamentary Evidence Act* inquiry) (until 3.18 pm)

Mr Fang (until 3.18 pm)

Ms Higginson

Mr Murphy (until 3.46 pm)

Mr Nanva

Mr Primrose

Mr Roberts

Mr Tudehope (substituting for Mr Fang for the duration of the *Parliamentary Evidence Act* inquiry) (until 3.32 pm)

Secretariat in attendance: Steven Reynolds, Helen Hong, Stephen Fujiwara.

2. Previous minutes

Resolved, on the motion of Mr Nanva: That draft minutes no. 15 be confirmed.

3. Correspondence

The committee noted the following item of correspondence:

Received:

- 3 June 2024 – Independent Complaints Officer quarterly report for March to May 2024.

4. ***

5. Briefing with the Parliamentary Ethics Adviser

The Parliamentary Ethics Adviser, Mr John Evans, joined the meeting at 3.19 pm.

The committee was briefed by the Parliamentary Ethics Adviser regarding its inquiries into the Review of the Independent Complaints Officer system (2023) and Draft Constitution (Disclosures by Members) Regulation 2024.

6. Next meeting

The committee adjourned at 3.49 pm, *sine die*.

Steven Reynolds
Committee Clerk

Draft minutes no. 17

Monday 26 August 2024, 2.02 pm

Room 1254, Parliament House, Sydney and via videoconference (Microsoft Teams)

1. Members

Mr Lawrence (*Chair*)

Mrs Maclaren-Jones (*Deputy Chair*)

Mr Fang

Ms Higginson (via videoconference)

Mr Murphy

Mr Nanva (via videoconference)

Mr Primrose

Mr Roberts

Secretariat in attendance: Steven Reynolds, Helen Hong, Robin Howlett and Stephen Fujiwara.

2. Previous minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes no. 16 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 6 June 2024 – Correspondence from Mr David Blunt AM, Clerk of the Parliaments, to Chair, attaching correspondence from the Clerk of the Senate concerning a new memorandum of understanding entered into with the Australian Federal Police

- 13 June 2024 – Email from Ms Shaza Barbar, Parliamentary Advisory Group on Bullying, Sexual Harassment and Sexual Misconduct (PAG), to secretariat, requesting that the PAG make a submission to the Review of the Independent Complaints Officer system (2023)
- 19 June 2024 – Letter from Ms Kate Boyd, Secretary, The Cabinet Office, to Deputy Clerk, responding to members' questions regarding the Draft Constitution (Disclosures by Members) Regulation 2024
- 22 July 2024 – Letter from Dr Juliet Bourke, Chair, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct (PAG), to Chair, attaching cover letter for the PAG submission to the ICO inquiry.

Sent:

- 13 June 2024 – Letter from Chair, to the Hon. Ben Franklin MLC, President, Legislative Council, requesting distribution of guidance materials on unauthorised disclosure to members of the Legislative Council
- 5 August 2024 – Letter from Chair, to the Hon. Ben Franklin MLC, President, Legislative Council, requesting further extension to reporting date for inquiry into ICAC recommendations arising from Operation Keppel.

Resolved on the motion of Mr Primrose: That the committee authorise the publication of:

- correspondence from Ms Kate Boyd, Secretary, The Cabinet Officer, responding to members' questions regarding the Draft Constitution (Disclosures by Members) Regulation 2024, dated 19 June 2024
- correspondence from Dr Juliet Bourke, Chair, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct (PAG), attaching cover letter for the PAG submission to the ICO inquiry, dated 22 July 2024.

4. Review of Independent Complaints Officer system (2023)

4.1 Public submission

Resolved, on the motion of Mr Fang: That the committee authorise the publication of submission no. 10.

4.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Review of Independent Complaints Officer system (2023)*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Nanva: That paragraph 3.6 be amended by omitting, 'Following the release of the Broderick report, the ICO Protocols were tabled in the House and the committee believes that this document adequately addresses most of the points in recommendation 5.3(c)' and inserting instead 'ICO Protocols tabled in the House address a number of points in recommendation 5.3(c)'.

Resolved, on the motion of Mr Nanva: That the following new paragraph be inserted after paragraph 3.6:

'It is noted, however, that the Broderick Review indicated significant concern that the resolution establishing the Independent Complaints Officer was too narrowly defined, and that the ICO may not have sufficient structural authority to be fully independent of political processes. The committee questions whether these concerns have had a bearing on the volume and nature of complaints received by the ICO.'

Resolved, on the motion of Mr Nanva: That paragraph 3.7 be amended by inserting at the end: 'The committee believes that more substantive qualitative work with parliamentary staff would better inform any assessment about the efficacy of the ICO function, including those concerns raised within the Broderick Review.'

Resolved, on the motion of Mr Nanva: That the following new recommendation be inserted after Recommendation 6:

'Recommendation X

That the Parliamentary Executive Group, in conjunction with the Parliamentary Advisory Group, also conduct a comprehensive consultation with parliamentary staff as to the level of awareness of, and confidence in, the ICO role, functions and processes to address complaints about bullying, harassment and inappropriate conduct.'

Resolved, on the motion of Mr Murphy: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The submissions, correspondence and discussion paper be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished submissions, correspondence and discussion paper be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on 2 September 2024.

5. Inquiry into the recommendations of the ICAC arising out of Operation Keppel**5.1 Consideration of Chair's draft report**

The Chair submitted his draft report entitled *Recommendations of the ICAC arising out of Operation Keppel*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That Recommendation 4 be amended by:

- a) inserting 'like' before 'benefits'
- b) inserting ', noting that electoral allowance is fundamentally different from other allowances and under law can become taxable income'.

Resolved, on the motion of Mr Murphy: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The submissions, correspondence and discussion paper be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished submissions, correspondence and discussion paper be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on 2 September 2024.

6. Inquiry into the Draft Constitution (Disclosures by Members) Regulation 2024

6.1 Public submission

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submission no. 3.

6.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Draft Constitution (Disclosures by Members) Regulation 2024*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That the following new paragraph be inserted after paragraph 3.35:

'The committee is unsure whether this interpretation offered by The Cabinet Office is correct.'

Resolved, on the motion of Mr Murphy: That paragraph 5.41 be amended by omitting 'Therefore, if recommendation 10 is agreed to, the regulation or a resolution of the House should specify the consequences if a member breaches the confidentiality of another member's disclosures that have been listed on the separate confidential register' and inserting instead 'The committee is not in favour of any member being able to inspect a register relating to another member's family member interests. We are of the view that a process similar to that used in the Australian Senate is preferable, where a family member's disclosures are kept confidential, with certain and reasonable exceptions to view applying. In any event there should, whether the register is able to be viewed by any member or only by certain members, be a specified consequence for a member who breaches the confidentiality of another member's disclosures that have been listed on a confidential register of interests.'

Resolved, on the motion of Mr Murphy: That the following new paragraph be inserted after paragraph 5.41:

'The committee believes that the Privileges Committee could take on the role similar to the Senators' Interests Committee in the Australian Senate. If the Independent Complaints Officer required access for an investigation, the Privileges Committee could determine the access upon request.'

Resolved, on the motion of Mr Murphy: That the following new recommendation be inserted after paragraph 5.41:

'Recommendation X:

That the Privileges Committee take on a role similar to the Senator's Interests Committee in the Australian Senate and consider access to the confidential register of interests, which contain the declarations of family members' interests, on a case-by-case basis.'

Resolved, on the motion of Mr Murphy: That paragraph 5.43 be omitted: 'We note the suggestion of the Parliamentary Ethics Adviser that he and other relevant officers such as the Independent Complaints Officer be able to review the confidential section of the online register and support this minor extension of access.'

Resolved, on the motion of Mr Murphy: That Recommendation 12 be omitted: 'That section 26 of the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to extend the list of people allowed to inspect the complete registers to those parliamentary officers with a legitimate reason, currently the Parliamentary Ethics Adviser and the Independent Complaints Officer.'

Resolved, on the motion of Mr Roberts: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The submissions and correspondence be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished submissions and correspondence be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on 2 September 2024.

7. Report from Legislative Council member to appeal report of the Independent Complaints Officer

The committee noted that it had received a request from a member to appeal a report of the Independent Complaints Officer and that the Committee Clerk had advised that, as the requirements to be satisfied to lodge an appeal under section 5(h) of the resolution establishing the Independent Complaints Officer have not been met in this circumstance, the committee does not have jurisdiction to consider the member's appeal.

Resolved, on the motion of Mr Nanva: That the Chair write back to the member, noting that the committee has no jurisdiction to consider an appeal of a decision made by the Independent Complaints Officer and refer to relevant parts of the committee's report into the ICO system.

8. Next meeting

The committee adjourned at 3.01 pm, *sine die*.

Steven Reynolds
Committee Clerk

