



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**SELECT COMMITTEE ON AN INDEPENDENT INTEGRITY  
COMMISSION 2018**

(Reference: [Inquiry into the establishment of an independent integrity commission for the ACT](#))

**Members:**

**MR S RATTENBURY (Chair)**

**MS E LEE (Deputy Chair)**

**MS B CODY**

**MRS V DUNNE**

**MR C STEEL**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 21 SEPTEMBER 2018**

**Secretary to the committee:**

**Mr H Finlay (Ph: 620 50129)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

**WITNESSES**

**COE, MR ALISTAIR, Leader of the Opposition.....1**

## **Privilege statement**

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

*Amended 20 May 2013*

**The committee met at 1.03 pm.**

**COE, MR ALISTAIR**, Leader of the Opposition

**THE CHAIR:** Good morning, everyone, and welcome to the first of the public hearings of the Select Committee on an Independent Integrity Commission 2018, mark 2. In these hearings the committee will look at the legislation, now that it has been drafted.

On behalf of the committee, I would like to welcome Mr Coe and thank him for attending today. Mr Coe, I am sure you are aware of the privilege statement, and that proceedings are being recorded by Hansard for transcription purposes and we are being webstreamed and broadcast live. I understand that Ms Woodhead is here today to advise you and is not appearing as a witness per se. Of course, the committee is fine with that. Mr Coe, would you like to make some opening remarks?

**Mr Coe:** Nothing other than to say that I appreciate the opportunity. I think it is a very important piece of legislation. I think so far it has been quite a collaborative process. I look forward to that continuing.

**THE CHAIR:** As you know, of course, Mr Barr has now tabled the exposure draft of his legislation as well. The approach the committee is taking is to examine both. Certainly the nature of my questions, and I imagine those of the committee today, will be to draw out some of those differences and also to explore why you have drafted things in particular ways.

**Mr Coe:** Sure. Along those lines, of course, I will have a much better grasp of my legislation than the government's. So whilst I may be able to point out the differences, it is probably going to be for the committee to find out the differences rather than assume that I have gone through and drawn them out myself.

**THE CHAIR:** Fair enough. We will jump straight into it. One of the questions I wanted to ask was about public hearings. The ethics and integrity adviser, in his submission, has noted that while both drafts provide a discretion on the conduct of public hearings and an ability for the commission to decide, his interpretation is that, in effect, public hearings would only take place when the accused or the witness or the person being examined agrees, because the decision to hold hearings could be legally challenged through the courts. Is that a view you would share?

**Mr Coe:** Obviously, I might be a bit brave to pit myself against somebody with his legal experience.

**THE CHAIR:** Yes; it is a bit of an unfair question in that sense.

**Mr Coe:** Yes. I am afraid I did not touch on this in my commerce degree. But that said, I do not think that is so. Given that so much of our proposed legislation is based on New South Wales, I do not think that that reality has been borne out in New South Wales. I would be surprised if our legislation resulted in very few public hearings. I would think quite the opposite. Based on the limited knowledge I do have of the

government's legislation, I think ours may well result in more, or a greater portion, of the investigations being public. But, yes, it is certainly not something that I agree with.

**THE CHAIR:** But in the broad, you are comfortable with the model. The committee flagged this last time and I think it is reflected in your bill. We want to give the discretion to the commission on whether to hold a public hearing, essentially a public interest test.

**Mr Coe:** That is very much a principle throughout the legislation: that the commissioner has a fair amount of discretion. I think that is required. Whilst that would, of course, have inherent risks, if the commission were actually able to reach findings of guilt, given that it is really a fact-finding exercise, I do not think the risks are as great by having so much discretion based in the commissioner. But it also requires the Assembly to be doing its job in making sure that the commissioner stays on message and stays on target.

**MS LEE:** Just as a supplementary, Mr Coe, your legislation does, however, also make provision for private hearings. The commission has the power to do that after a public interest test is satisfied, does it not?

**Mr Coe:** It does. Of course, there are preliminary investigations as well. The preliminary investigations take place. It may well be that, by definition, there must be more preliminary investigations than there are full investigations because many of the preliminary investigations will not lead to full investigations. It is only after that first hurdle has been overcome that a full investigation would be initiated. Then our default would be that there would be a public hearing. But there are circumstances where a public hearing would not be appropriate, and the commissioner has that discretion.

**MS CODY:** But you would see the public hearings being the default position?

**Mr Coe:** Yes, as per New South Wales legislation as well, and that is potentially a difference with the government.

**MS LEE:** I have another supplementary. Do not quote me on it, but I think read this in one of the submissions, the one by Mr Harris. He said that your legislation has public hearings as a default and the government's has private hearings as a default. I understand the government feel that they have drafted legislation in a way that is neutral. But do you think, given some of the relatively tightly worded provisions around the public interest test, that in essence it has the risk of making private the default?

**Mr Coe:** Yes, that is right. I think that the Harris submission is right in that sort of overview or almost the gist of the two pieces of legislation. It is worth noting, of course, that the previous select committee had a recommendation on this, recommendation 57. That was particularly regarding Justice Salmon's principles. We have tried to enshrine those in the legislation. For the committee's information, they are clauses 37 through 40 and 45.

**THE CHAIR:** If there is nothing else on this question of public hearings, I am going to change direction. Perhaps one other area of difference between the bill as drafted

and the bill by Mr Barr relates to retrospectivity. It starts the period from the beginning of self-government. You have not put that caveat on it. Do you see that as a substantive difference or is it just a stylistic one? It strikes me that the beginning of self-government is kind of the relevant period for the ACT, but do you have a substantive reason why that would not be the case?

**Mr Coe:** No, I do not have a problem with that. I do not think there is a need to put in an arbitrary date, noting that there is some significance about that 1989 start date. But I would find it very hard to believe that that start date is actually going to be of significance for a potential inquiry. I could not imagine there being a particular issue that would be investigated.

**THE CHAIR:** From 1984?

**Mr Coe:** From 1987 as opposed to 1992. If anything, it is more likely to be 2015 rather than 1985. To that end, I think that is at the margins. But if there is a view that having a start date or a range or scope is required, I think 1989 does make sense.

**MS LEE:** Mr Coe, could you provide to the committee your thinking around some of your provisions on the appointment of the commissioner?

**Mr Coe:** We have followed a similar process to what is in place for some of the other appointments. We have a two-thirds majority required in the Assembly. I do not expect that that is actually going to be too hard a benchmark to achieve.

**MS LEE:** In fact, that was the recommendation in the report, was it not?

**Mr Coe:** Two-thirds, was it?

**MS LEE:** Yes.

**Mr Coe:** I cannot recall that. But clause 96, I am pretty sure, is where it is in our legislation.

**MS LEE:** Yes.

**Mr Coe:** I would find it very hard to believe that there would be many instances where members of the Assembly would be in disagreement over the proposed commissioner, especially when you consider who is listed as being an appropriate commissioner in our legislation. It is obviously somebody who already has served in a prominent role. To that end, I think they have already passed a fair degree of testing by the community at large, by the nature of having held one of those previous positions.

**MS CODY:** I noted in, I think it was Mr Harris's submission—

**MS LEE:** They all start to blur into one.

**MS CODY:** I know. I noticed in a submission that was received that there were some differences about who would be appointed as a commissioner. You have gone a bit

broader than I think the government's exposure draft in that you talk about judicial officers that have been an SC or QC. Can you outline why you think it can be a little broader than just a magistrate or a judge?

**Mr Coe:** Clause 98 of the legislation covers this. The Speaker may appoint someone if they have been a judge of the Supreme Court, judge of a Supreme Court of a state, judge of the Federal Court, justice of the High Court or lawyer with at least 10 years of experience. Whilst that may still narrow it down, I think there is a reasonable field of people there that we could appoint from. Of course, being a lawyer for at least 10 years broadens it considerably.

**MS CODY:** Yes. I guess that is my point. You are making it broader. Do you think that is so that you can access a bigger pool of potential commissioners?

**Mr Coe:** Yes. Whilst the list may be fairly extensive, often these people are in high demand as well because there are many other pieces of legislation around the country that require similarly qualified people. As to whether we could narrow it by saying a lawyer with even more experience—go for 15 or 20 years or a lawyer who has practised for a certain number of years—yes, there are other options. But I do think we have to make sure that we are not just limiting it to very, very few people.

**MS CODY:** I may have missed this, but you do not have an upper age limit in your legislation?

**Mr Coe:** No.

**MS CODY:** Again, is that to keep the pool as broad as possible or were there other key reasons?

**Mr Coe:** These days I just do not think it is required. If someone is fit for the role, they are appropriate. It is not like the appointment of a judge or magistrate with tenure. We are talking about a seven-year appointment here. I do not think there is any real risk of someone not being appropriate because of their age.

**MS CODY:** I do not have an opinion one way or the other; I just wanted to understand your thinking.

**THE CHAIR:** I noted one of the other differences in the drafting. Mostly, the eligibility issue has been broadly drafted the same. But Mr Barr's bill does reference, when it comes to people who have been a member of the Assembly or a parliament, a five-year exclusion, whereas you have completely excluded them. It is a debatable point. I do not have a view on it at the moment, but how do you feel about what is being proposed by the government?

**Mr Coe:** Yes, I think it will be very hard for a former politician to shake perceptions of bias. Whether or not that is founded in truth, who knows? But I think still there is a real reputational risk attached to having an ex-politician in one of these roles.

**THE CHAIR:** I am struck by the fact that every now and then somebody comes out the other end of politics that has that reputation across the board where they probably

would pass a two-thirds majority. Again, I am just tossing around in my own mind whether we want to have some flexibility there, given that you then have the two-thirds test down the line as an insurance policy.

**Mr Coe:** Obviously, we have had many former politicians that have become judges or magistrates. I guess that while some of them have been regarded as being controversial, especially at the time, very few have been regarded as being controversial at the end of their career. I think most would have been regarded as being just as fair as every other member of the judiciary.

However, a difference here is that whilst the portion of work that a magistrate or judge would be perceived to be doing relating to politicians would be very low, the portion of work that an ICAC commissioner would be perceived to be doing relating to politicians would be very high.

**THE CHAIR:** Yes.

**Mr Coe:** I think most people would think that the role of ICAC is to make sure we do not have dodgy politicians. Regardless of whether that is actually true or whether that is actually the perception in the community, there is a real risk that, by having an ex-politician being the watchdog of politicians, this is not going to represent the best of an ICAC. To that end, I think you can avoid the whole problem and avoid the pressure that a government or political party might face internally by just not having that as an option on the table.

**MS LEE:** I want to ask about the breadth of the commission. You have chosen to leave judicial officers included, but the government has not. Can you explain to the committee your thoughts behind that?

**Mr Coe:** Again, I think it goes to the discretion of the commissioner. I am very concerned that if you exclude a cohort, you potentially have a gap that is not covered by the integrity commission, nor is it included by whatever other body is meant to be looking into that issue. Of course, there is the judicial council here that has the integrity function for the judiciary. What I would much rather see is that the commissioner would either negotiate or work with the other integrity bodies to ensure that there is no gap and that where there is a jurisdictional or overlap issue they can resolve it with one of them taking it over, rather than actually having a gap and it falling through the crack. That has been the principle with regard to the Federal Police as well. Otherwise, I think there is too great a risk that there will be a gap that will mean there is this loophole that prevents some things from being investigated.

**MS CODY:** I want to talk mainly about clause 36 of the bill, applying for arrest warrants. I notice that in the Human Rights Commission's submission on your bill they raise some concerns around the corresponding provisions, that there are no procedures for issuing or executing a warrant that would be compliant with the Human Rights Act. Do you have anything to say on that?

**Mr Coe:** Just give me one moment, please. Clause 36, did you say?

**MS CODY:** Yes, clause 36: "Commission may apply for arrest warrant".



**Mr Coe:** All that I would want to note is that, firstly, they have to apply for a warrant. So it does have to go to a court to issue. It is not like we are talking about a commissioner with extensive powers to override a court in that instance.

Just reading from my notes here, the relevant clause provides that an authorised officer of the commission may apply to a magistrate for a warrant to arrest a person who has been given notice to appear before the commissioner as a witness but who fails to appear. A person may be held in custody until the person is released by order of the commission. I note that they have concerns about the absence of any corresponding provisions.

**MS CODY:** Or safeguards.

**Mr Coe:** Yes, and there is no requirement for the magistrate to consider the impact of using an arrest warrant on the witness, no time limit for detention and no provision as to the manner of detention.

**MS CODY:** That is correct.

**Mr Coe:** Could we tighten it up? Yes, probably. But, again, I do not see that there is actually a genuine concern here, as the same concern could apply to many other cases where warrants are issued by a court.

**MS CODY:** There are some additional safeguards in place in some of the other instances, though.

**Mr Coe:** Yes.

**MS CODY:** Would you consider looking at some of those safeguards?

**Mr Coe:** Absolutely. If the committee or the Assembly wants to make recommendations as to why, then that could be so. We would certainly entertain that. I think there is also some criticism about warrants and examinations with regard to preliminary investigations.

**MS CODY:** Correct.

**Mr Coe:** However, the difference with preliminary investigations is that I think it is highly unlikely that the integrity commission would be seeking a warrant as part of a preliminary investigation. I would think the preliminary investigation would almost be open source information to determine whether there is a case to be answered. Then it would turn into a full investigation and at that point all the other rights and privileges afforded to witnesses kick in—Lord Salmon’s principles especially.

Yes, I take the criticism on board from the Human Rights Commission and I note that we could tighten it up if that is the view. But I think we are talking about so few circumstances that I do not think it is a big issue.

**MS CODY:** I note a difference between your bill and the exposure draft that the

government has released. It is that there are some tighter provisions and some further safeguards in place to protect witnesses.

**Mr Coe:** Yes.

**MR STEEL:** My question is in relation to the Public Interest Disclosure Act. How have you been able to sort of merge the objects of that act with the bill that you have presented? Do you think you have got that right or is there further work to do?

**Mr Coe:** To be honest, I think the Public Interest Disclosure Act has all sorts of other issues with it, especially with its application. I think it is quite vague. I do not think everybody who is captured by the PID act at present certainly knows they are captured by it or knows they have a role to play within the PID act. I would also include members of the Assembly as part of that.

We have not sought to make this legislation a silver bullet or an omnibus bill to fix everything. So, to the extent that the PID act operates, I do not see any impact, really, on how it operates. That will continue to function as it does, or not function as it currently does. But I think we have been fairly clear as to how the integrity commission would operate. If down the line there is a clean-up of the PID act that would have consequential amendments for the integrity commission act, then I think that would be a good way forward.

**MR STEEL:** Doesn't this go to the heart of what this committee has to do, which is basically to look at a private member's bill and a government bill which has been through the rigour of government processes and come to a conclusion about which bill can actually be operationalised? In relation to the PID act, the government bill takes this into consideration in both the definition of corrupt conduct but also in the provisions that are provided in relation to the existence of confidentiality notices as well, which your bill does not go to. Do you accept that in this area your bill does not address concerns around the interaction of the PID act and the new integrity commission?

**Mr Coe:** As I said, I think the PID act has got problems, so I do not think we should be necessarily recognising that boundary as being the appropriate boundary.

**MR STEEL:** But you accept that there is a need to have whistleblower legislation of that type?

**Mr Coe:** Of course. I actually do not think it is working as whistleblower legislation right now. That is the problem we have got. It is not that our legislation is going to encroach on whistleblower legislation; if anything, it is going to give additional powers for people to blow the whistle. My concern with the PID act is that it does not adequately protect people at the moment. If the government is of the view that the PID act is working effectively and should be ring fenced, I think that is a problem.

With regard to the definition of corruption, we have gone for a broader definition. We do include misconduct and we do think that codes of conduct, and breaches thereof, should be part of that definition. Obviously, the government has a different view, but I think we should be going for a broader definition, not banking on other bits of

legislation when the integrity commission is the obvious place for such breaches.

**MR STEEL:** Do you have any comments about the existence of confidentiality notices in the government's bill?

**Mr Coe:** No.

**THE CHAIR:** I want to ask you about clause 14 and the later provisions of your bill that allow a referral by the Legislative Assembly to the commission. Earlier in this part of your bill you basically state that any person can make a complaint to the commission. Why have you specifically sought to have the Assembly make a referral, rather than just allow an MLA, a member of their staff, a member of their party or whatever to make a referral?

**Mr Coe:** It is certainly something that we debated at some length internally. As we see with the operation of select committees but particularly privileges committees, the Assembly is mature enough and has strong enough conventions to form considered views on a lot of these issues. So I do think that having a function for the Assembly to be seeking integrity in a very definitive way is a good way to establish public confidence in an issue. Obviously, not every inquiry or every investigation is going to have its genesis in a motion or referral from the Assembly. But I think that having a defined procedure for that to happen is a good demonstration of the Assembly seeking integrity.

**THE CHAIR:** I have been reflecting on this one. There is a plus and a minus to the way I am about to describe this. Would you want to have a special majority? I think the risk of having an Assembly referral is that if it is done on a simple majority it can be seen as a political referral. That said, a special majority is unlikely. Presumably the party whose member is potentially being referred, out of solidarity, will stick with their own member. But I kind of cannot in my own mind resolve how one would deal with this. I wonder whether you have thought that through and whether you have any views to offer to the committee.

**Mr Coe:** Yes. I also point out that clause 11 states that any person may make a complaint to the commissioner about a matter that concerns, or may concern, corrupt conduct.

**THE CHAIR:** That is right.

**Mr Coe:** So people have that. People do have that opportunity. By saying that there can be an Assembly referral, that is another avenue. Yes, it could be abused, and coming from a minority party at the moment that is—

**THE CHAIR:** We are all minority parties in this Assembly.

**Mr Coe:** True. Minority party, perhaps; not a minority grouping. But, as I said earlier, the idea that you could actually have a proactive step that the Assembly could take to seek integrity I think is a good way forward. I think, regardless of whether you have this clause 14, it would not stop a member of the Assembly moving a motion, making an adjournment speech or using some other mechanism of the Assembly to try to

litigate an issue on the floor of the Assembly.

If you actually do accept that there is a political reality, you therefore try to manage it rather than pretend it does not exist. That is probably a better way forward. Yes, you could put a special majority in. Again, if the risk is that having the debate is the problem, a special majority is not going to change that. If it does get up and it goes to the integrity commission, and then it is upheld or there is a finding of corrupt conduct, then it was a good referral. If it is not, even with a special majority, then at least there is some closure to it. It will in part depend on what conventions develop in the Assembly as to whether this is a no-go zone or whether people are seeking to bring this up at every opportunity. But one way or another, I think the risk that you have identified exists regardless.

**MS LEE:** Mr Coe, in respect of the referral process as outlined in clause 14, are you limiting it to a circumstance where it is a motion against a certain MLA? Are you saying that it is only in those circumstances? Is that how you envisage that clause playing out?

**Mr Coe:** No, it could be absolutely anything—

**MS LEE:** Yes.

**Mr Coe:** within the scope of the integrity commission. It may well be that you have 25 members of the Assembly in complete agreement on a particular issue. That is actually a very strong statement, if there is a formal process, for 25 members of the Assembly to say, “We want this investigated.” However, yes, it could be abused. But, as I just mentioned, that could happen regardless.

**THE CHAIR:** The whole set-up gives an opportunity.

**Mr Coe:** Exactly right.

**THE CHAIR:** There is significant potential for this to be weaponised.

**MS CODY:** I note your bill does not necessarily seek to keep the complainant informed of what is going on. Can you outline why you think that is not important or why you have written the bill that way?

**Mr Coe:** Yes. There might be times when the commissioner feels it appropriate to keep the complainant updated, but then there will be other times when it is just not appropriate, especially for particularly sensitive cases or where the complainant could be a close associate of the person who has been complained about as well. There are many circumstances, I think, where it is not appropriate to keep the complainant updated.

There are similar situations with regard to how the Auditor-General operates at the moment. As is well known, I have made referrals to the Auditor-General before. The Auditor-General acknowledged my issue then contacted me a few weeks later saying that she was going to do a performance audit, and then communication ceased. I received two pieces of correspondence, one being, “I’ll look into it,” and two being,

“I’m going to do a performance audit,” and that was where the interaction ceased.

Yes, it would have been nice if I had got little tidbits along the way, but the reality is that when you make that complaint you are trusting the commissioner to do their job. I think that if we are going to give the commissioner that trust and that discretion then we have to apply those same principles to whether or not they think it is appropriate to keep the complainant informed.

**MS LEE:** I want to go back to the definition of corruption. I know that you sort of touched on it, but it was not brought up as a substantive question. I am wondering whether you could explain in a little more detail your definition of corruption that you have gone with in the bill so that you can give the committee an opportunity to compare it with the government’s definition.

**Mr Coe:** Yes. Obviously, clauses 7 and 8 in the legislation go into a fair bit of detail about potential instances. It is, of course, very hard to make a definitive definition that is going to have a black and white application. Of course, that point was included in the earlier select committee discussion as well.

We have gone for a broader definition than the government, noting that the object of the legislation is to uphold integrity but also to deter corruption from taking place in the first place. I think that having the broader definition will have the utmost deterrent but also will allow the commissioner to really apply the principle of upholding integrity to the full. Again, it could be abused, but every magistrate, every judge, every public official could abuse their positions as well, but we accept that we are going to trust people so long as there is appropriate oversight.

I think the broader definition is important. I think including codes of conduct is important. I think misconduct should be included. I expect that the commissioner will triage their case load and will not concentrate on the missing pens from the stationery cupboard, even if that does technically meet everyone’s definition of theft. We are trusting the commissioner to handle things with discretion.

**MR STEEL:** On page 33 of your bill you state:

A person cannot rely on any of the following to resist the exercise of a compulsion power:

Point (b) in the following is the common law privilege in relation to client legal privilege. Effectively, I understand that your bill is waiving client legal privilege in the case of an investigation by the integrity commission. Why do you think that is justified? What considerations have you given to the human rights concerns that are associated with that?

**Mr Coe:** I have some notes here.

**MS LEE:** It is clause 46(2).

**Mr Coe:** Yes, thank you. I think the key issue here, or the key distinction, is that because the integrity commission is not a court, because it is not making findings of

guilt or innocence, because it is simply establishing facts, I do not think that the same judicial rules are required. I think that if we do go too far down that path of requiring a judicial standard for everything, you have actually defeated the whole purpose of having an investigation or an investigative body.

As I said before, yes, it could be abused, but that is why the role of the inspectorate is important and the role of the Assembly is important, as is the initial appointment. But if we create a bar that is pretty much on par with the Magistrates Court, how does this differ from the Magistrates Court? We might as well just have the current legislation. It is also worth noting that the legislation that we are proposing does not create new offences. So there is no risk of somebody being tried or being charged as a result of this legislation.

**MR STEEL:** I do not know about you, Mr Coe, but the first thing I would do if I was hauled before a commission would be to seek legal advice. I am pretty sure that is what has happened in other jurisdictions as well—

**Mr Coe:** Sure.

**MR STEEL:** because it affects people's employment.

**Mr Coe:** Yes, I understand that.

**MR STEEL:** So you are saying that they should not have the right to get advice from lawyers and have that advice protected under privilege?

**Mr Coe:** Of course I have no problem with somebody seeking legal advice. But there is a real risk that, by somebody seeking legal advice, this will be used as a get-out for the commission doing its job. All that would lead to is the very issues that the integrity commission is meant to be investigating going straight into a court, which is what we are trying to avoid. I think there has to be a lower bar for the commission to do its job.

**MR STEEL:** I think there is a distinction to be made, though, around the fact-finding nature of a commission and what happens after the commission makes its findings or recommendations and what that leads to in terms of court process—whether there is a referral. There is a distinction between that and simply getting some legal advice about what your rights are in relation to the commission.

**Mr Coe:** And the person can still do that.

**MR STEEL:** But that advice would not be privileged. It would be open to the integrity commission to scrutinise that advice and any information that might have been provided in order for the lawyer to provide that advice.

**MS LEE:** But doesn't this clause only apply in the event that the commission exercises the compulsion power?

**Mr Coe:** Yes, and it is also worth noting that clause 46(2) states that the person cannot rely on this.

**MS LEE:** Yes, in the exercise of a compulsion power.

**Mr Coe:** It is not saying that all correspondence between someone being investigated and their lawyer is going to be published. But they simply cannot hide behind that as being a defence or a reason not to cooperate. Given that the person that we will be seeking to appoint to this position has, by definition, been a leading member of the legal fraternity, I do not think there is a risk of this being abused.

Again, it is the role of the Assembly to determine the legislation but also to ensure that the oversight mechanisms are there. If it was abused I would expect that there would be an amendment in the Assembly pretty quickly. But that is the same for all legislation.

**THE CHAIR:** I am conscious of the time, colleagues. Are there any other burning questions today? We did not use our whole time in the end, Mr Coe. Thank you for appearing before the committee today. You will, as normal, be sent a draft of the *Hansard* transcript for correction. The usual time limits will apply. In terms of follow-up questions on notice, I do not think we are going to use that process for this committee, but if the committee has further questions, we will be in touch.

**Mr Coe:** It is worth noting that we will be providing a revised explanatory statement as well, based on some of the feedback that we have received. I think that perhaps the Auditor-General or the Human Rights Commission had some questions. We think they could be addressed through amendments, but some of them could be addressed through additional information in the explanatory statement.

**THE CHAIR:** Do you have a rough time frame on that?

**Mr Coe:** I think probably late October, in the next month or thereabouts.

**THE CHAIR:** Probably not in time for the committee; nonetheless, that is fine. If we have any questions, we will let you know. Thank you for your appearance before the committee today. The hearing is now concluded.

**Mr Coe:** Thank you.

**The committee adjourned at 1.51 pm.**