

**Select Committee on a National Integrity Commission: inquire and report on the
establishment of a national integrity commission
Public Hearing – Wednesday 5 July 2017
Question Taken on Notice – PM&C**

Correction

HANSARD, p. 6

CHAIR: Rather than detail, at this stage what we are interested in is what sort of reporting we might anticipate by what type of time frame and how that fits with the broader Open Government Partnership.

Mr Story: Just to clarify, do you mean reporting on overall delivery of each of the commitments?

CHAIR: Yes

Mr Story: There are two things I can address. The first is that we have coordinated reporting on each of the commitments, which we have published and provided to the interim working group which was established by the government to help develop the National Action Plan. I can provide that reporting to you. The other point I can indicate, which will become more useful, is that we are developing a website, an initial version of which we expect to be released for public comment in coming weeks. That will include a dashboard which will have the most up-to-date and engaging information on the delivery of the 15 commitments. The other point that is worth noting in this context is that the government is establishing a new forum to replace the interim working group. This is pursuant to commitment 5.2. This forum, which will be called the Open Government Forum will have a role in doing three things. The first, though, which is relevant to your question, is driving delivery of commitments. We would expect to consult that forum, when it is established, about our reporting and how we can improve that.

ANSWER

The most recent public report on delivery of Open Government Partnership commitments is at:
<http://ogpau.pmc.gov.au/2017/05/15/interim-working-group-meeting-18-may-agenda-and-papers>.

While Mr Story refers to commitment 5.2 in his statement, PM&C would like to advise Commitment 5.1 refers to the Development of Australia's first Open Government Partnership multistakeholder forum.

Question 1

HANSARD, pp. 7-8

Senator KAKOSCHKE-MOORE: I am not sure whether you will be answer this because the selection process is still ongoing: what sorts of representatives from civil society have put their hands up to be part of this group?

Mr Story: The good thing about the Open Government Partnership is that it is consistent with the way we do things. All the nominations are public. We published the names and applications of all applicants on 23 June. That is available on our website. It is fair to say that there is a broad selection of civil society, legal interest groups, those interested in open data, those with an interest in anticorruption, integrity measures and accountability, and some expertise in international matters as well.

Senator KAKOSCHKE-MOORE: The purpose of this group is to report on Australia's delivery of the goals contained within the Open Government Partnership?

Mr Story: Yes. In very broad terms, it is threefold. The first object is to drive delivery of the current plan to hold government to account in delivering what we have committed to do. The second is to help develop the next national action plan, which will run from mid-2018 to mid-2020. The third is to help raise awareness of open government more generally. Of course, it will have a number of functions. For example, there will be an interim self-assessment process. We will work very closely with the forum in that respect. We want to get the forum's views on the website and how we publicly report. I expect there will be a range. I think we will have a very busy program of work and that is what we want to lay out before the forum when it first meets.

Senator KAKOSCHKE-MOORE: How often do you think the forum will meet?

Mr Story: The interim working group recommended that it meet every two months. Again, these recommendations are all public. We would be happy to provide a copy to the secretariat. The interim working group indicated that the forum should be empowered to decide its own ways of working. Again, that will be a matter for the forum's first meeting.

ANSWER

The Interim Working Group's recommendations to the Government on establishment of Australia's first Open Government Partnership multistakeholder forum are at:

<http://ogpau.pmc.gov.au/2017/05/29/outcomes-interim-working-group-meeting-18-may-2017>

Question 2

HANSARD, pp. 8-9

CHAIR: Then I think there are the provisions in the *Cabinet Handbook* around the declaration of private interests in cabinet considerations, where it quite specifically indicates that this could include pecuniary interests held by a minister or by members of their immediate family, and it runs through the process of what should occur in those instances. I am aware that in a particular case Senator McAllister asked questions in the last round of estimates about this process, but I was not particularly satisfied with the outcome of how that process can be accounted for. It was suggested that it may be too onerous to go through—I do not know—10 years worth of cabinet note taker notebooks to gain a sense of how often declarations may be occurring within cabinet, so I was hoping I could be a bit more specific and say: would it be too onerous to provide the committee with the number of instances of a declaration being made in cabinet over a two-year period?

Ms Lynch: I would need to take that on notice. I think it was Ms Cass, as head of the Cabinet Division, who was responding to that line of questioning from Senator McAllister, and those cabinet declarations would be done through Cabinet Division. So I will take that question on notice. I do not think I can help you there.

CHAIR: I understand you may need to take it on notice, but the context for this committee is that we want to see that these processes are working so that we can report that we are confident that such matters are being managed in the way that has been envisaged. The *Cabinet Handbook* is public.

ANSWER

Consistent with the 10th Edition Cabinet Handbook, declarations of private interests are recorded by the Cabinet note takers in their official Cabinet notebooks. As each Cabinet note taker has their own notebook, it would be a considerable task of reviewing each notebook held over the last two years.

Question 3

HANSARD, p. 9

CHAIR: The ministerial declarations, for good reasons, are not necessarily publicly available, but how would they be questioned? What are the transparency arrangements around those, for instance? Does that occur via the Prime Minister?

Ms Lynch: Perhaps I could take that one on notice, to reflect for a moment on that. Those returns would be provided to the Prime Minister or to the Prime Minister's office.

CHAIR: Yes, I understand. But I suppose what I am attempting to understand is: once you get past a member or senator and they are making their declarations, and most but not all—they are on the Open Australia website, for example—are transparent, when you move then into executive government, and, as I said, there are good reasons why that may not be the case, there are other ways to deal with transparency at that end. An example is how often certain types of declarations might be made, how often the cabinet process involves those declarations so that you can at least observe, even though you cannot see the full detail of it, that there is an active process occurring. That is the side of that situation that I am attempting to get to.

Ms Lynch: I note that ministers still do their parliamentary returns, but that is still on the relevant parliamentary registers.

CHAIR: That is right, yes. But that is their return as a member or senator. I am more interested in—and I think the public at large has been—the nature of returns that members of executive government might make—

Ms Lynch: As in the ministry, as opposed to senior executive officers?

CHAIR: Yes. And whilst the full detail of those you might not make open, there must be a way to at least understand that it is an active process that is doing the job that was originally intended.

Ms Lynch: Could I take that on notice and come back to you in writing as to how that process might be managed?

CHAIR: Yes. That would be very helpful. Thank you.

ANSWER

Paragraph 2.2 of the Statement of Ministerial Standards provides:

Ministers must declare and register their personal interests, including but not limited to pecuniary interests, as required by the Parliament from time to time. Ministers must also comply with any additional requirements for declarations of interests to the Prime Minister as may be determined by the Prime Minister, and notify the Prime Minister of any significant change in their private interests within 28 days of its occurrence.

The Prime Minister may request information that is supplementary to the material provided in the Parliamentary returns.

Ministers may, for example, be asked to provide more detail of their interests, such as information on blind trusts and interests where a conflict with a minister's public duties could foreseeably arise or be seen to arise.

Paragraph 7.4 provides that the Prime Minister may seek advice from the Secretary of the Department of Prime Minister and Cabinet on any matters within these Standards at any time.

The Prime Minister may seek that advice for the consideration of the Governance Committee of Cabinet. The Governance Committee provides advice and oversight of governance and integrity issues which include, but are not limited to, the Statement of Ministerial Standards and issues arising from the Lobbyist Code.

Question 4

HANSARD, p. 10

Senator GALLAGHER: The statement of ministerial standards was September 2015. What is the statement of ministerial ethics that is referred to in the Attorney-General's submission? I am not sure I have ever seen that.

Ms Lynch: There was a code issue that was developed under Prime Minister Rudd, which was then slightly amended under Prime Minister Abbott, and adopted again by Prime Minister Turnbull. That might be a reference to the old name. I think under Prime Minister Rudd it was called a—

Senator GALLAGHER: So that is a mistake in the Attorney-General's—

Ms Lynch: What paragraph are you looking at in the 2016 one?

Senator GALLAGHER: It does not have a paragraph number. It is on the third last page under 'Parliamentary processes and practices'.

Ms Lynch: It talks about the standard of ministerial ethics, which I think is—

Senator GALLAGHER: Actually the standard.

Ms Lynch: I assume that is the standard—I think it is now called the statement of ministerial standards. I do not have it with me. Then, the code of conduct for ministerial staff is the other one. I think it is based on or is very similar to the ones that I think were formulated originally by Senator Faulkner.

Senator GALLAGHER: So it is just incorrectly titled—based on the document that was in force at 2016 was the statement of ministerial standards.

Ms Lynch: I will just check. We are back here this afternoon, so I can give you the correct title. I think it is the one document or the one code—

Senator GALLAGHER: We are referring to the same thing.

Ms Lynch: Yes.

Senator GALLAGHER: So the statement of ministerial standards applies to all ministers and assistant ministers—and did PM&C draft this document?

Ms Lynch: I would need to take that on notice, because the document originally would have been developed in about 2008, under Prime Minister Rudd. So I would need to go back—

Senator GALLAGHER: This says September 2015.

Ms Lynch: The September 2015 one is based very closely on the previous ones under the Labor government. There were some changes in relation to shareholding, under Prime Minister Abbott. So in terms of whether that was originally drafted by PM&C, I am not aware as it was before my time when it was originally drafted.

ANSWER

The Attorney-General's Department submission provided in 2016 referred to the *Standards of Ministerial Ethics*.

The *Standards of Ministerial Ethics* were issued by Prime Minister Rudd in 2007. The *Standards of Ministerial Ethics* were issued again by Prime Minister Gillard in September 2010.

The *Statement of Ministerial Standards* were issued by Prime Minister Abbott in December 2013. The *Statement of Ministerial Standards* were issued again by Prime Minister Turnbull in September 2015.

Prime Minister Howard issued *A Guide on the Key Elements of Ministerial Responsibility* in April 1996 and December 1998. This Guide included Chapter 5 on Ministerial Conduct.

The Department provided support to the Prime Minister of the day in the development of these documents.

Question 5

HANSARD, pp. 10-11

Senator GALLAGHER: I will just ask some questions now around a recent case involving three ministers and assistant ministers. I think it is commonly known as the Yarra Three. Can you advise the committee whether the Prime Minister has sought any advice from PM&C around the conduct of those three ministers—Hunt, Tudge and Sukkar—and, specifically, around whether or not the Statement of Ministerial Standards applies to that case and, if so, how?

Ms Lynch: I am not aware of that. I would have to take that on notice. I am aware of the three ministers you are referring to, but I would need to take that question on notice.

Senator GALLAGHER: Would it not be your area?

Ms Lynch: It could be, but I would just need to go back and take that on notice. The standards refer to seeking advice through the secretary. I am not aware of any request.

Senator GALLAGHER: Would that have come through your area, or does it go directly to the secretary?

Ms Lynch: It would be a matter for the secretary what assistance he required to make that report.

Senator GALLAGHER: Do you know if the Prime Minister has taken any action against those ministers: Mr Hunt, Mr Tudge or Mr Sukkar?

Ms Lynch: I am not aware, Senator.

Senator GALLAGHER: Will this be part of, perhaps, what you would come back with?

Ms Lynch: I could take that on notice.

ANSWER

The Prime Minister has not sought any advice from PM&C in relation to this matter.

The Department is not aware of any action.

Question 6

HANSARD, pp. 11-12

CHAIR: Ms Lynch, perhaps if I expand on my earlier question. At the time we were talking about declarations of interest, but now I want to talk more broadly about the application of the ministerial standards. We have asked other public sector agencies, integrity agencies, to give us case appropriate descriptions—where details of matters that are not in the public interest, for ACLEI or the AFP for instance, and not to go into too much information about current matters. We had a closed hearing with the AFP to talk about the nature of their work.

Given that one of the main thrusts for those arguing for a National Integrity Commission is that members and senators, but particularly members of the executive, should be accountable to some body, it would be very helpful for us to have an understanding from PM&C of how the ministerial standards have been applied. Perhaps we can specify a particular relevant period—three years, say—and ask you to give us an appropriately worded description of how those standards have been applied in relation to any breach of them.

Ms Lynch: I will take that on notice.

CHAIR: As Senator Gallagher says, if it is not a live document or if it is not being applied, then that is potentially one of the main reasons the public at large have a view that members, senators and ministers are not accountable. You can take that on notice.

Ms Lynch: I will take that on notice.

ANSWER

Under paragraph 7.4 of the Statement of Ministerial Standards, the Prime Minister may seek advice from the Secretary of the Department of the Prime Minister and Cabinet on any of the matters within these Standards, at any time.

It is a matter of public record that, in the last three years (5 July 2014 to 5 July 2017), the Prime Minister has sought advice from the Secretary on the following matters:

1. December 2015 in relation to the Hon Jamie Briggs MP (Senate Estimates, Senate Standing Committee Finance and Public Administration, [February 2016](#), from p. 188).
2. February 2016 in relation to the Hon Stuart Robert MP (Prime Minister, House of Representatives Hansard, [8 February 2016](#) and [Statement on the Hon Stuart Robert MP](#), 12 February 2016).
3. January 2017 in relation to the Hon Sussan Ley MP (Media Release, 9 January 2017, [Travel Claims by the Minister for Health](#)).

The Prime Minister also sought advice under the Standards during that period on ministers' personal interests.

Question 7

HANSARD, p. 51

Senator KAKOSCHKE-MOORE: I want to go back to the issue of the open government partnership. I asked some questions earlier around Australia announcing its intention to join, or to sign up, and then when we were officially considered to have signed up. Mr Story, I think you might be able to help me with this one. I asked earlier what month of the year Australia announced its intention to sign up to the open government partnership.

Mr Story: In fact, the former, Labor, government announced its intention to join in May 2013. The Turnbull government joined formally in November 2015, and we released our action plan in December 2016.

Senator KAKOSCHKE-MOORE: And in terms of Australia's involvement in this process, compared with other jurisdictions, other countries, was it a three-year delay between announcing an intention to join and then the development of the first action plan? Did other countries also experience a three-year delay? Were we faster or slower than other member countries?

Mr Story: I do not think I can speculate, to be honest. I do not actually know. So, why don't I take that on notice and we can come back to you, perhaps very quickly, through the secretariat this afternoon.

ANSWER

The OGP Secretariat advises that generally a country submits a letter of intent in a given year, and then submits their first national action plan the following year - but also notes Australia's unusual situation where a new government was elected shortly after Australia submitted its letter of intent.