Code of practice for the provision of assistance by the Parliamentary Commissioner for the Environment to the House, select committees, and members of Parliament

Report of the Officers of Parliament Committee

Fifty-first Parliament
(Rt Hon David Carter, Chairperson)
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Presented to the House of Representatives
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Code of practice for the provision of assistance by the Parliamentary Commissioner for the Environment to the House, select committees, and members of Parliament

Recommendation

The Officers of Parliament Committee recommends to the House that it adopt the following revised code of practice for the provision of assistance by the Parliamentary Commissioner for the Environment to the House, select committees, and members of Parliament.

Introduction

1. Under Standing Order 395(2) we conducted a review of the Code of Practice for the Provision of Assistance by the Parliamentary Commissioner for the Environment to the House of Representatives, Select Committees, and Members of Parliament.¹ The code sets out how decisions on the nature and extent of assistance to be provided by the Commissioner are to be taken. Given that the code was implemented in 2007 and has not been reviewed since, we considered a review was necessary to ensure that it reflects accurately current practices. We also wished to ensure that the code establishes a sound framework for deciding the nature and extent of assistance to be provided to the House, its select committees, and members of Parliament by the Commissioner.

Comment

2. While this code of practice is not binding, we intend that it should be used as a guide to best practice. We consider it important that select committees and members of Parliament ensure that their interactions with the Parliamentary Commissioner for the Environment are appropriate to the specific circumstances, and that they respect the Commissioner's independence. On the other hand the Commissioner must recognise his or her part in assisting Parliament in discharging its functions.

General guidelines

3. The Parliamentary Commissioner for the Environment is an Officer of Parliament appointed under section 4 of the Environment Act 1986. The Commissioner's role exists to help Parliament to ensure that in the management of natural and physical resources full and balanced account is taken of

- the intrinsic values of ecosystems
- all values placed by individuals and groups on the quality of the environment
- the principles of the Treaty of Waitangi

• the sustainability of natural and physical resources
• the needs of future generations.

This gives rise to regular interaction between Parliament and the Commissioner.

4 The Commissioner presents reports to the House on the results of his or her reviews of the system of agencies and processes established by the Government to manage the allocation, use, and preservation of natural and physical resources.2

5 The Commissioner may also report to the House on the results of his or her investigations into the effectiveness of environmental planning and management carried out by public authorities, and on matters that may have led to the environment being affected adversely.3

6 The Commissioner may provide assistance to select committees and members of Parliament when they are considering a report of the Commissioner, any petition, bill, inquiry, or other matter the topic of which may impact significantly on the environment.4

7 The House may also direct the Commissioner to inquire into any matter that has had or may have a substantial and damaging effect on the environment, and to report the results of the inquiry to the House.5

8 The Commissioner collects and disseminates information relating to the environment.

9 As an Officer of Parliament, the Commissioner must be able to act independently in executing the office's functions, duties, and powers. This means the Commissioner must act without political bias or direction. It is therefore appropriate that a code of practice exists to guide the working relationship between the House, its select committees, and the Commissioner. This means that Parliament's needs can be effectively and appropriately addressed in a manner that respects the role and status of select committees and the Commissioner's independence. It also enables the resources of the Commissioner to be managed in an efficient and effective way.

10 To enable the resources of the Commissioner to be managed properly, the Commissioner must consult with the Officers of Parliament Committee before agreeing to provide assistance that may divert significant resources from other functions carried out by the Commissioner.

11 This code of practice therefore provides guidance for managing each of the main ways in which the Commissioner may interact with the House, select committees, and its members.

Definitions

12 Commissioner—For the purposes of this code of practice, references to the Commissioner should be taken to mean the Parliamentary Commissioner for the Environment, and include every person holding any office or appointment under the Parliamentary Commissioner for the Environment.

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2 Section 16(1)(a) and (b) Environment Act 1986.
3 Section 16(1)(c) Environment Act.
4 Section 16(1)(d) Environment Act.
5 Section 16(1)(e), (2), and (3) Environment Act.
13 Public authority—For the purposes of this code, a public authority is defined to mean a Minister of the Crown, government department, local authority, or any instrument of Executive Government.

Commissioner’s reports on reviews and investigations

14 The Commissioner reports regularly to the House in the exercise of his or her functions under the Environment Act and the Environmental Reporting Act 2015. The Commissioner’s reports contain the results of his or her reviews and investigations, and advice that the Commissioner believes warrants the attention of public authorities.

15 The Commissioner may also, where appropriate, ascertain and report to the House on responses made by public authorities to the findings and advice given by the Commissioner as a result of investigations.

16 Reports the Commissioner makes to the House on the results of his or her reviews and investigations stand referred by the House to the Local Government and Environment Committee for examination. That committee may decide to refer the report to another committee (Standing Order 396).

Consideration of reports by select committees and members

17 Once a report which contains the findings of a review or investigation carried out by the Commissioner has been presented to the House, the Commissioner may write to the relevant select committee, and members, about the report and offer to brief them on it.

Assistance by the Commissioner

18 Where such a report is to be considered by a select committee, the committee may ask the Commissioner to assist it with determining the key issues it might examine, and how such an examination could be carried out.

19 When assisting a select committee with its consideration of a report, the Commissioner will usually have the status of an adviser. The committee will decide this case by case. There may be circumstances where a committee, in reviewing a report of the Commissioner, wishes to take evidence from the Commissioner as a witness. A committee should therefore make it clear to the Commissioner what his or her status is when assisting with the review of a report.

20 Where a committee hears evidence from another organisation in its examination of a report, the select committee may ask the Commissioner to be present to advise it. Where the Commissioner is present as an adviser, the committee should direct its questions to the witness under examination for response, and not to the Commissioner.

21 In preparing advice, the Commissioner may need to consult with other parties to ensure such advice is correct. Unless specifically agreed with the committee, such consultation must not include disclosing the actual advice to be given to the committee (Standing Order 240(1)).

22 While section 20 of the Environment Act requires the Commissioner to withhold certain information from disclosure to other persons and bodies, this does not preclude the Commissioner from providing information to a select committee where the committee considers that the public interest warrants such disclosure.

23 In determining whether to ask the Commissioner to disclose certain information, a select committee will, however, be mindful of the need to ensure that it acts within the law.
24 The Commissioner may also provide such assistance as may be requested by a select committee with the preparation of the committee’s report to the House.

25 The Commissioner will notify relevant Ministers and spokespeople prior to presenting a report to the House.

26 The Commissioner will provide embargoed copies of reports and offer briefings to relevant Ministers and spokespeople prior to the report being presented to the House.

27 Members must regard embargoed reports as confidential and not make any public statements or publicly release a report before it has been presented to the House.

28 The Commissioner will notify the Speaker of the House of Representatives prior to presenting a report to the House.

29 On occasion, the Commissioner may release a report publicly prior to it being presented to the House if there is a good reason to do so (for example, the House being in urgency).

Select committee consideration of petitions

30 Petitions referred by the House to select committees may concern topics that could have significant implications for the environment.

31 A select committee may therefore request the Commissioner to report on any such petition.

Assistance by the Commissioner

32 When assisting a select committee with its consideration of a petition, the Commissioner will usually have the status of an adviser. The committee will decide this case by case. There may be circumstances where a committee, in considering a petition, will wish to take evidence from the Commissioner as a witness. A committee should therefore make it clear to the Commissioner what his or her status is when assisting with the consideration of a petition.

33 In preparing advice, the Commissioner may need to consult with other parties to ensure such advice is correct. Unless specifically agreed with the committee, such consultation must not include disclosing the actual advice to be given to the committee.

34 Where a committee hears evidence from the petitioner and other interested parties, the committee may ask the Commissioner to be present to advise it. Where the Commissioner is present as an adviser, the committee will direct its questions to the witness for response, and not to the Commissioner.

35 The Commissioner may provide such assistance as may be requested by a select committee in the preparation of the committee’s report to the House.

36 Where a committee requests a report from the Commissioner on a petition, the Commissioner will usually be accorded the status of adviser to the committee.

37 The Commissioner, when appearing at a select committee hearing where consideration is being given to a submission from the Commissioner, appears as a witness giving evidence.
Select committee inquiries

38 Select committees are empowered under Standing Orders to initiate inquiries and briefings into matters relating to their respective subject areas.

39 Some inquiries and briefings investigate highly specialised topics for which committees may reasonably wish to procure specialist assistance. Others call for more general investigative skills involving the analysis, evaluation, and synthesis of information. For this purpose, committees may wish to procure some general investigative assistance.

Assistance by the Commissioner

40 In considering options for assistance, a select committee may wish to utilise the specialist expertise of the Commissioner, recognising the Commissioner’s independence, expertise in environmental management matters, and investigative experience.

41 For such inquiries or briefings a committee may invite the Commissioner to
- advise on possible options or terms of reference
- advise on the approach the committee might take to conducting the inquiry or briefing
- act as an independent specialist adviser to the committee.

42 A select committee, in considering whether to conduct an inquiry, may ask that the matter be taken up as a special study by the Commissioner.

43 Since a select committee’s power of inquiry and the role of the Commissioner are both key mechanisms for holding accountable public organisations responsible for the management of the environment, liaison is desirable between committees (regarding the inquiries they conduct) and the Commissioner (regarding the special studies the Commissioner undertakes).

44 The Commissioner will agree with the select committee the specific terms and conditions of assistance to be provided.

45 A select committee may request the Commissioner to attend during its examination of witnesses. This may be particularly desirable if the committee believes the Commissioner could assist in interpreting and analysing the evidence given.

Select committee consideration of bills

46 Standing Order 288(1) provides that a bill is referred by the House to a select committee for consideration after its first reading.

47 The select committee to which the bill is referred examines the bill, and in accordance with Standing Order 291 determines whether to recommend that the bill be passed, and may recommend amendments in accordance with Standing Order 292.

48 A select committee considering a bill may wish to obtain advice that is independent of the advice given to it by the government officials.

Assistance by the Commissioner

49 Where a bill contains matters in which the Commissioner has responsibilities, knowledge, or expertise, a committee may ask the Commissioner to act as an adviser to it on the bill.
50 If the Commissioner agrees to provide assistance, then in accordance with Standing Order 211 the committee will appoint the Commissioner as an adviser.

Submissions by the Commissioner

51 On occasion, the Commissioner may decide to make a submission on a bill which may have a significant effect on the environment. In such cases the Commissioner would if necessary request to appear before the committee as a witness on the same basis as other submitters.

Treatment of submissions

52 The Commissioner will provide embargoed copies of submissions to relevant Ministers and spokespeople prior to submitting on a bill.

53 Members must regard embargoed submissions as confidential and not make any public statements or publicly release a submission before it has been made public by the Commissioner.

Other inquiries or requests for assistance by members of Parliament

54 The Commissioner may receive inquiries or requests for information from members of Parliament about environmental management concerns or risks regarding the system of agencies and processes established by the Government to manage the environment.

55 Members may request the Commissioner’s assistance in interpreting or understanding any matter of environmental management or accountability regarding which the Commissioner might reasonably be expected to have knowledge or responsibility.

56 The ability of members to make such inquiries is regarded as desirable and appropriate if the Commissioner is to have access to a comprehensive range of environmental management concerns and risks.

Assistance by the Commissioner

57 When deciding on the appropriate response to a particular inquiry or request for assistance from a member, the Commissioner must be satisfied that pursuing any inquiry is in the wider public interest and would not compromise the independence of the Commissioner.

58 The Commissioner will also assess the merits of pursuing a particular inquiry or request for assistance against his or her annual work programme.

59 The Commissioner will make the final determination of the appropriate response to all members’ inquiries or requests for assistance.

60 Members should regard their inquiries or requests for assistance to the Commissioner as confidential, and should not make any public statements about such requests until the Commissioner has considered and advised them of a course of action.

61 Where a member chooses nevertheless to make a public statement about their particular request to the Commissioner, the member should advise the Commissioner in advance of this and provide a copy of the statement to the Commissioner.

62 Where the Commissioner is concerned about the political or other consequences of the response to a request from a member, the Commissioner may discuss the matter with
the Speaker of the House of Representatives before deciding and advising on a course of action.

**Standing Orders**

63 This code of practice must be interpreted in the light of any changes to the Standing Orders, statutory provisions, or practices and procedures of the House.
Appendix

Committee procedure
The Officers of Parliament Committee met on several occasions to consider the review of this code of practice. The committee consulted with the Parliamentary Commissioner for the Environment and the Office of the Clerk of the House of Representatives about this review.

Committee members
Rt Hon David Carter (Chairperson)
David Clendon
Hon Te Ururoa Flavell
Tim Macindoe
Hon Trevor Mallard
Carmel Sepuloni
Barbara Stewart