

CLERKS.

Friendly to all but friends with no-one – a colonial UK experience.

He took utmost care and heed for his study.
Not one word spoke he more than was necessary;
And that was said with due formality and dignity
And short and lively, and full of high morality¹

It is worth noting that Chaucer's description of a clerk, written over 500 years ago, contains attributes that today's Parliamentary clerks could endorse; Particularly the controversy surrounding the appointment of the current Clerk of the House of Commons where emails were lively and full of morality.

There is no shortage of material on who Clerks are with their advisory and administrative roles² but the casual Parliamentary observer may be forgiven for overlooking them for they are neither flamboyant nor obvious. Indeed anyone showing those attributes would be unsuitable for the job.

To the uninitiated the words 'boring' or 'mundane' might seem appropriate. However this is to miss the vitally important role they carry out as minders of corporate history and providers, on a non-partisan and strictly confidential basis, of advice in Parliamentary law and procedure to all Members. And, just occasionally, we find that they are not boring or mundane and are willing to take steps to protect what they see as the corporate history and the institution of Parliament. When such an event occurs it is certainly 'short and lively and full of high morality'!

At this deeper level they fulfil a vital, but often unacknowledged role, in assisting to maintain the integrity of Parliament, responsible government and the doctrine of separation of powers. This short paper seeks to go beyond describing their basic role to consider the important democratic principal that Parliament should be supreme.

But first, the basics; the role of the clerk dates from 1315 when there was a need to provide the largely illiterate membership of the Parliament with information as to the proceedings. Essentially the main job qualification was that they could read and write.

Robert Melton became the first recorded clerk of the House of Commons in 1363, while the first clerks for the Australian Houses of Parliament were appointed in 1901.

The clerks of the House sit at the table of the House, to the right of the Speaker's chair. In the House of Representatives they wore wigs until the practice was discontinued at the Speaker's direction in 1995³ with the United Kingdom following

¹ Geoffrey Chaucer, The Canterbury Tales, General Prologue.

² 'The Clerk and other officials.' Parliament of Australia. House of Representatives Info sheet 21 http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_21_-_The_Clerk_and_other_officials

'The Clerk of the Senate and Other Senate officers.' Senate Brief 15. Parliament of Australia. http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief15

³ House of Representatives Practice. Ed I. Harris. Department of the House of Representatives Canberra 2005. P 206.

the practice in 2017, although they still wear academic gowns, mainly to distinguish themselves from the members.⁴

The main role of the clerk is to provide procedural support and advice to all Members, but most often to the Presiding Officer. It is common for the clerk to meet with the Presiding Officer on each morning that Parliament sits to consider the agenda for the day and possible problems that may arise.

Of course the clerk's role is more than advisory and includes administrative support to the appropriate House under the provisions of the relevant legislation (if any). However, in Australia, a clerk is not to be appointed unless they have "... *extensive knowledge of, and experience in, relevant Parliamentary law, practice and procedure*".⁵

Unlike the legislative requirement in Australia, a pre requisite for 'extensive knowledge' was not clearly stated when the position of clerk for the House of Commons was advertised in 2014. Instead the applicant required; '*... high level decision-making, political impartiality and an understanding of the practices and procedures of Parliament*'.⁶

It was the dual requirements of impartiality and extensive knowledge that embroiled the Speaker, John Bercow, in the ensuing controversy.

Who are Clerks?

If the clerk's role is so central to Parliament how are they to be classified? Are they Public servants or Officers of Parliament?

Could there roles be likened to Chief Executive Officers who report to the Chairman of the Board and then board members? To answer the classification question we must first consider the often-conflicting roles of the Government and Parliament and the vexed question of separation of powers.

Separation of Powers and responsible government.

The doctrine of the separation of powers refers to the three arms of government (the legislature, the Executive and judiciary) being separate. Whereby the legislature enacts law, the Executive (Prime Minister and Cabinet) applies these laws and the courts resolve disputes relating to the legality.

In Australia this doctrine is entrenched in the Constitution; Chapter 1 deals with Parliament, Chapter 2 deals with the Executive and Chapter 3 vests judicial power of the Commonwealth in the High Court and Federal Courts.

The vast bulk of debate on this doctrine appears to swirl around the notion of judicial independence where there is a more clear-cut separation. The doctrine becomes more confused when the Executive and Parliament are considered, for in Australia and the

⁴ 'The Role of a Clerk of the House of Representatives.' Address to Juris Doctor students of the University of Melbourne June 2002.

www.aph.gov.au/~media/05%20About%20Parliament/53%20HoR/.../juris.pdf

⁵ Parliamentary Services Act 1999 (Cwlth) Section 58(4).

⁶ Appointment Details. House of Commons. Job reference BETM. Closing date 23 Jun 2014

United Kingdom a complete separation of powers is not possible as the Ministers (or Secretaries of State), who constitute the Executive, must also be Members of Parliament⁷.

The Executive is therefore integrated into the legislature, often resulting in confusion over references to Parliament and Government⁸. In fact the Australian founding fathers did not believe a complete separation, such as the United States, was desirable if responsible government was to be achieved.

Sir Samuel Griffith, speaking during the Constitutional Convention of 4 March 1891 argued against such a complete separation of powers and supported the Executive residing within Parliament. To him the American system showed the “*unwisdom ... of having ministers dissociated and the Executive government entirely dissociated, from the legislature*”⁹.

Therefore, with no clear separation and there is a requirement for responsible government that Ministers are to be accountable to Parliament. This is against the background that, within a bi-cameral Parliamentary system, it is the Executive that has the most influence when a party majority occurs. The Executive sets government priorities, allocates resources to particular issues and makes the most important policy decisions. It is because of these powers that many regard the lower house as subordinate to the party-room of the governing Executive¹⁰.

Chalmers and Davis believe (a now widely held belief)¹¹ that power has become skewed in the Executive’s favour and that the primary forum for decision-making is now the party room. If the Government of the day forms the view that its role includes ‘managing’ the Parliament rather than being ruled by it then how it responds to the regulatory attempts of Parliament to ensure disclosure and accountability will be coloured by this perspective.

Similarly the Presiding Officers, whose role is, inter alia, to manage the business of Parliament, are still subject to Parliament. The previous UK Speaker, Michael Martin, found this when forced to resign in May 2009 in the face of a no-confidence motion (although being appointed a life peer was a reasonable consolation prize).

If the concept of responsible government is to have any meaning it is therefore of the utmost importance to ensure accountability of the Executive to Parliament.

But, with a strong government, what assistance can be given to Parliament, through the opposition and independent members to ensure accountability so central to

⁷ Commonwealth of Australia Constitution Act. Section 64.

⁸ Blackshield and Williams. *Australian Constitutional Law and Theory* 5th Edition Federation Press 2010 page 8.

⁹ Convention Debates Vol 1, p34 cited in Research paper 28 1995-96 ‘The Executive Power of the Commonwealth: its scope and limits’.

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9596/96rp28

¹⁰ Chalmers J and Davis G. ‘Power: Relations Between the Parliament and the Executive’. *Parliament of Australia Parliamentary Library. Research paper 14 2000-01* at 3.

¹¹ Loney, P. ‘Executive Accountability to Parliament – Reality or Rhetoric?’ *Australasian Parliamentary Review*, 2008 Vol 23(2), 157-65.

responsible government? It would appear that it couldn't be the public service for the following reasons;

The Australian public service accept the requirement for accountability (at least on paper) ¹², as they require departmental secretaries and heads of Executive agencies to assist the responsible agency minister to fulfil their accountability obligations to the Parliament by providing factual information about the operation and administration of the agency.

Public servants can thus be described as 'apolitical'. Apolitical does not mean that public servants provide information and advice which is not mindful of the Government's interests, existing policy frameworks, party platforms and election commitments. Senior state servants work at the political/bureaucratic interface – knowing the 'politics' is part of the job.

Impartiality does not mean that the APS gives equal treatment to all sides of politics. It is not the role of the APS to serve the Opposition. Employees should generally have limited contact with the Opposition and other non-government parties.¹³

Therefore public servants, unlike clerks, are subject to the government's agenda. Their advice provided to allow the Executive to be accountable to Parliament is neither independent nor unbiased. Not only must public servants provide advice to further the government's agenda, they must avoid contact with the opposition.

What about Parliamentary Clerks?

With the skewing of the powers of the Executive and the primary responsibility of the public service to the government rather than Parliament the role of the clerk becomes of vital importance in providing independent and confidential advice to Members to facilitate Parliament in its supervisory role.

If clerks are not public servants how should they be categorised? Are they best described as Officers of Parliament for, in practical terms, they act on behalf of Parliament and not the Executive or Government?

If so, what qualifies someone as an Officer of Parliament? When the term is used the offices of Auditor-General and Ombudsman are more often thought of than that of the position of clerk. There are some immediate differences in that the formers role is one of examining the actions of the Executive and reporting to Parliament; clearly the clerk has no reporting role, nor one in examining the actions of the Government.

A statement of the Victorian Public Accounts and Estimates Committee assists in further consideration;

¹² Public Service Act (1999) (Commonwealth) Sections 57(2) & 66(2)

¹³ The Australian Public Sector (APS) Commission's 2016 Values and Code of Conduct 1.2.22
<http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/government-and-Parliament>

...the categorization of officers of Parliament depends on whether the functions and responsibilities of a particular office-holder are primarily directed to serving the interests of Parliament rather than the Executive government.¹⁴

Although the clerks have no reporting role there can be no doubt that their responsibility is to Parliament and not the Executive. But are they sufficiently independent to be an Officer of Parliament?

One author¹⁵ includes as major factors of independence the following;

- Appointment – whether selection and appointment is by the Executive or Parliament.
- Tenure – the appointee must be secure in the knowledge that an unhappy Executive could not remove him or her from office.
- Statutory independence – this is a practical and highly symbolic way of asserting independence from the Executive.

A consideration of the three points leads to the conclusion that clerks do qualify as Officers of Parliament, even though a review of the Australian Parliaments¹⁶ does not disclose a coherent legislative approach to appointments. Some are statutory, involving a requirement for the Presiding officer to consult with Members while others are silent.

Some have clear limited tenure, such as a 10-year non-renewable term for the Commonwealth, while others have no set term. Some may be removed by the Speaker whilst others removal would require a motion of Parliament. In the United Kingdom they are appointed by the Sovereign by Letters Patent, giving them the same security as judges, only being able to be dismissed by an address to both Houses

Federally, the clerk is not subject to direction by the Chair in relation to advice sought by other members¹⁷. While in other jurisdictions, although it is not specified, clerks are independent of Speaker in confidential advice to all members.

The criterion on appointment, tenure and independence fits the role of the clerks in both Australia and the UK. The clerk of the House of Lords is specifically termed a 'Clerk of the Parliaments.' The title, coming into existence in Henry VIII's reign, is plural to signify that the position is permanent and remains through successive Parliaments¹⁸.

¹⁴ Victorian Public Accounts and Estimates Committee 'Report on a Legislative Framework for Independent Officers of Parliament'. Parliament of Victoria 2006, p8.

¹⁵ Coghill, K. (2004) 'Auditing the Independence of the Auditor-General', seminar paper presented to Political Science Program, Research School of Social Sciences, The Australian University, 11 February 2004.

https://www.researchgate.net/publication/237601993_AUDITING_THE_INDEPENDENCE_OF_THE_AUDITOR-GENERAL

¹⁶ 'Comparative Study: The Role of the Clerk or Secretary General' The Table. The Journal of the Society of Clerks-At-The-table in Commonwealth Parliaments. 2010, Vol 78, 114-153.

¹⁷ Parliamentary Service Act 1999 (Commonwealth) Section 19.

¹⁸ The Clerk of Parliaments (Lords) <http://www.Parliament.uk/clerkoftheParliaments>

But, in coming to this conclusion, there is a caveat that the Executive still has some elements of control. A majority government can amend legislation and Standing Orders. In the case of a breakdown in the relationship between the Speaker and clerk, such as with Sir Robert Rogers and Speaker Bercow, it is the clerk who will be forced to resign (albeit with dignity and discretion).

Professor Wanna, while commenting on a dispute between the then President of the Australian Human Rights Commission, Dr Jillian Triggs, and the Federal Government, issued a clear warning.

One of the dimensions of statutory independence is for the office-holder to retain the respect and confidence of the Parliament, and that includes the Executive in our Westminster system;'

Statutory office-holders and the commissions or authorities they head are primarily the creations of Executive government. This point is generally ignored by those who think these officers are free spirits able to criticize governments at will.¹⁹

Dr Solomon, in his review of Queensland developments relating to independent statutory offices, particularly the turbulent history of the Criminal Justice Commission, highlights the ability of the Executive to alter their roles and functions depending on the government of the day – true independence is not always guaranteed.²⁰ Indeed there is a common, although not publically spoken, view that the now limited tenure of 10 years for Commonwealth clerks had its genesis partly due to the desire of Government to rid itself of a too outspoken clerk.

The retention of the respect and confidence of the Parliament is something to which the clerks are vitally aware. McClelland points out²¹ that advice is to be provided independent of the Executive and that such advice is to be nonpartisan and impartial. clerks recognise that once they are no longer seen as non-political and independent their position is lost.

The position of clerk in the Australian Parliaments is therefore one where impartiality is an integral part of the role. This recognition colours, by necessity, how they interact with Members. The Members themselves, who do not understand the clerks requirement for independence, often make this more difficult.

‘The principal responsibility of and Parliamentary officer is to provide timely, accurate and apolitical support to the members in order that the member can effectively perform the duties of their office. It is not appropriate to allow a personal relationship with a member to affect the advice we give or the service we provide.

¹⁹ Professor John Wanna “How independent is statutory independence?” 19 June 2016 <http://www.canberratimes.com.au/comment/how-independent-is-statutory-independence-20150618-ghqygl>

²⁰ Solomon D, Parliament and Independent Statutory Officers. Australasian Parliamentary Review 2016 Vol 30.2, 20-30.

²¹ McClelland R. ‘Workshop 2 – Code of Conduct Ethics – Parliamentary officers’. ANZACATT 4th Professional Development Seminar. January 2002.

In the work sense, when Parliamentary officers are providing advice or assistance to members, they are not our mates, but our ‘clients’.²²

For the clerk's role to be properly executed the concept of a Member of Parliament as a client is uppermost. Both the NSW Legislative Council Usher of the Black Rod²³ and the past clerk of the Senate underline the client/advisor role and the need for frank advice.

An advisor who tells the client what the client wants to hear and supports every course of action suggested by the client is not only useless but dangerous.²⁴

Therefore the following can be distilled; clerks as officers of the Parliament have independence from the Executive and, in providing confidential advice to all members of Parliament, are not subject to the directions of Presiding Officers. Their position is protected from the government to some degree, but only as long as their work is held in regard by Parliament.

In this respect they fiercely protect their high standards and the recognition that experience is not gained overnight. With up to twelve years between staff movements in Australia the knowledge gained is comprehensive but also requires the attribute of patience²⁵. With the appointment of David Natzler as the 50th House of Commons clerk the UK average is, since 1363, over 13 years.

This also highlights the Parliamentary corporate knowledge they carry. In Australia, for example, in the 43rd Parliament 65% of the Members had less than 12 years' experience²⁶ and in the 44th Parliament 25% of the Members for the House of Representatives and 18% of Senators were new²⁷.

²² Hitchcock, G. ‘Members – are they your mates?’ Workshop 4A. 2014 Australian and New Zealand Association of Clerks-At-The-Table. Professional Development Seminar. Darwin Northern Territory. [http://www.anzacatt.org.au/Parliament/general/Anzacatt/Anzacatt.nsf/0/46F737041859FC0ACA257C98001C0F16/\\$file/77547662.pdf](http://www.anzacatt.org.au/Parliament/general/Anzacatt/Anzacatt.nsf/0/46F737041859FC0ACA257C98001C0F16/$file/77547662.pdf)

²³ Callinan, R. ‘Parliamentary officers and members: the professional relationship and its boundaries.’ Workshop 4. P1. . ‘Members – are they your mates?’ Workshop 4A. 2014 Australian and New Zealand Association of Clerks-At-The-Table. Professional Development Seminar. Darwin Northern Territory. [http://www.anzacatt.org.au/Parliament/general/Anzacatt/Anzacatt.nsf/0/46F737041859FC0ACA257C98001C0F16/\\$file/77547662.pdf](http://www.anzacatt.org.au/Parliament/general/Anzacatt/Anzacatt.nsf/0/46F737041859FC0ACA257C98001C0F16/$file/77547662.pdf)

²⁴ Evans, H. ‘Why Parliamentary Officers must advise MPs: The Role of the Parliamentary officers.’ The House Magazine, June 7, 1989, Vol8, No. 13, p5.

²⁵ Tunnicliffe, D. ‘Workshop report: Preparation of Life at the Table’. 6th Professional Development Seminar for Parliamentary Officers. Wellington, 26-27 January 2005. Australian and New Zealand Association of Clerks –At-The-Table. [http://www.anzacatt.org.au/Parliament/general/Anzacatt/Anzacatt.nsf/0/F2E55B924A6190F6CA256FF000072B50/\\$file/Preparation%20for%20life%20at%20the%20table%20workshop%20report.pdf](http://www.anzacatt.org.au/Parliament/general/Anzacatt/Anzacatt.nsf/0/F2E55B924A6190F6CA256FF000072B50/$file/Preparation%20for%20life%20at%20the%20table%20workshop%20report.pdf)

²⁶ M Lumb, *The 43rd Parliament: traits and trends*, Research paper, 2013–14, Parliamentary Library, Canberra, 2013.

²⁷ Parliament of Australia ‘Composition of the 44th Parliament’. Parliamentary Library. http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/Composition44th

Although they are not prone to public comments, the regard they have for the institution of Parliament sometimes enters the public domain. The following two disputes highlight the issues previously canvassed; the difference between public servants and clerks, the requirement to provide frank and sometimes-unwelcomed advice and the requirement of high levels of specialised skills.

The 1991-92 Senate Annual Report presciently noted a tendency for the participants in political debate to attack the advisers, not on the grounds of unsoundness of the advice but on the basis of the advice not being welcome.²⁸

In 2014 the then clerk of the Senate, Dr Laing, again noted a continued tendency for Members, who in the past would either adopt the clerk's advice as their own or ignore it, thereby preserving the anonymity of the advice, to now involve them in political disputes.²⁹

In 2014 she became herself involved in two very public altercations;

In the first she warned her staff not to tolerate "unacceptable behaviour" by the newly elected House of Representatives Member, Clive Palmer. Palmer had tried to have amendments distributed in the Senate that were effectively money bills and constitutionally could not originate there. The Dr Laing refused to have them distributed. Palmer was incensed, claiming that she should "get out of that job" if she wasn't prepared to act on his instructions.

In comments disclosing his complete lack of understanding of the independence of both Houses and the role of the clerk he said;

"She's not a member of our party, she hasn't been elected to Parliament, she's employed by the Parliament to draft legislation in accordance with instructions and she can't really refuse those instructions".

Dr Laing received the support of the Senate President and other Senators. In a staff bulletin with a clear reference to Palmer she warned against workplace bullying. "None of you need have any contact with the member in question if you feel at all threatened or intimidated by him"³⁰.

In January 2014 Dr Laing set out her view of the clerk's role;

*Defence of, and advocacy for, the integrity and rights of the Parliamentary institution is a central and legitimate function of clerks when the occasion demands it, including in public forums*³¹.

²⁸ Department of Senate, Annual Report 1991-92, p10 referenced in Laing, R. "Here Be Dragons": The Advisory Role of the Clerks.' ANZACATT Professional Development Seminar, Darwin 20-23 January 2014.

[http://www.anzacatt.org.au/Parliament/general/Anzacatt/Anzacatt.nsf/0/EA38F7384F3F92A7CA257C88007B00CD/\\$file/1A%20-%20Member%20Relations%20in%20the%20Chamber.pdf](http://www.anzacatt.org.au/Parliament/general/Anzacatt/Anzacatt.nsf/0/EA38F7384F3F92A7CA257C88007B00CD/$file/1A%20-%20Member%20Relations%20in%20the%20Chamber.pdf)

²⁹ Ibid 27

³⁰ <http://www.smh.com.au/federal-politics/political-news/clive-palmer-calls-for-clerk-of-senate-rosemary-laing-to-resign-20140724-3ciqh.html>

³¹ Laing, R. "Here Be Dragons": The Advisory Role of the Clerks.' ANZACATT Professional Development Seminar, Darwin 20-23 January 2014.

Her January statement was shown not to be idle comments for in August of that year she became involved in a second international dispute when she intervened in a dispute involving the Speaker of the House of Commons, John Bercow, and his choice to replace the highly respected clerk Sir Robert Rogers.

Speaker Bercow had been keen to modernise Parliament and the clerk's office. He and ensured the appointment was advertised for the first time since the position was created in 1363, wanting a person with strong managerial experience rather than Parliamentary experience.

Before the new clerk was formally appointed Dr Laing sent an email in August 2014 to the retiring clerk, Sir Robert Rogers, setting out her concerns and in doing so highlighted the independence of the clerk and the importance of such office holders to have appropriate experience.

At the stage of intervention a six-member panel to replace the retiring House of Commons clerk, Sir Robert Rogers, had approved Carol Mills, the Australian Secretary of the Department of Parliamentary Services.

A group of senior Commons MPs had fought her appointment; not only was she Australian but she lacked the necessary Parliamentary experience. Ms Mill's had managerial experience, including responsibility for the Australian Parliament's building services, security, broadcasting and Hansard and the library, but no background in procedural or constitutional matters.

Dr Laing claimed that Mills' role *"has no connection with the day to day business of a Parliament, other than in the maintenance of infrastructure and the provision of some ancillary services"*.³²

In her email to the retiring clerk Dr Laing said that both she and her colleagues had followed the events with "increasing disbelief and dismay". *"It seemed to us impossible that someone without Parliamentary knowledge and experience could be under consideration for such a role"*.³³

She continued that there was not one of her colleagues *"...who has not seen this candidacy as an affront to our profession and the professionalism of us all."*

Dr Laing specifically commented on the requirements of the role;

*"It (is) not a simple matter to move from serving the Executive government to serving the Parliament if there is a lack of understanding of what Parliaments are and what they do."*³⁴

Dr Laing expanded her comments to say that the Ms Mills did not have an appreciation of and/or respect for the roles and status of Members and Senators and

³² <https://www.theguardian.com/world/2014/aug/18/australian-senate-officials-warning-to-house-of-commons-clerk-full-email>

³³ *ibid* 35

³⁴ *Ibid* 35

had an overemphasis on the authority of the Presiding Officers. In essence she lacked the impartiality and independence so necessary to the role of a clerk.

Dr Laing's email to Sir Rogers was received in the midst of a dispute between him and Speaker Bercow. There were reports that Sir Rogers relationship with the Speaker had become untenable, with the Speaker becoming increasingly unpredictable, overbearing and rude to staff and MP's.³⁵

Unsurprisingly the email became public and was seized upon by senior MPs' who had concerns about Ms Mills suitability and by disgruntled Tory MP's as an excuse to continue their attack the Speaker and remind him of his role.

The email stirred a hornet's nest in both Australia and the UK. In Australia the Speaker of the House of Representatives and the President of the Senate appeared embarrassed. They were unaware of the email and had supported the appointment of Mills, saying it was "*a great honour that a senior officer from Australia has been chosen as the preferred candidate for the position of Clerk of the House of Commons*".³⁶

The Senate President said he was "*disappointed the email has been made public and disappointed at some of its content*".³⁷ He spoke to both Speaker Bercow and Dr Laing about the incident but, because of her independence, was unable to interfere with her submission.

Ms Mills name had already been passed to Downing Street which normally passed recommended names to the Queen for appointment but Sir Rogers asked for a delay in sending Mill's name as his proposed successor. David Natzler, the clerk assistant who was the runner-up consulted lawyers about challenging the appointment and a group of MP's challenged the decision of the appointment panel.

What was a decision by the Speaker became an opportunity by MP's disgruntled with his performance to remind him of the limitations of his role and led him to compromise to split the clerk's role in the future to defuse the situation.³⁸ One newspaper described it thus; 'Appointment of Bercow's choice for clerk terminated as MPs clip Speaker's wings'.³⁹

The Speaker was forced to announce a 'pause' in the appointment process in September and terminate the process in December (Mills was to later lose her

³⁵ Retiring clerk of the Commons makes a plea for Speaker to remain neutral.
<https://www.theguardian.com/politics/2014/jul/24/retiring-clerk-commons-speaker-sir-robert-rogers-john-bercow>

³⁶ Senate president 'disappointed' by clerk's email to House of Commons.
<https://www.theguardian.com/world/2014/aug/18/senate-president-disappointed-by-clerks-email-to-commons-australia>

³⁷ Ibid 35

³⁸ John Bercow 'willing to split Commons clerk role in future to defuse row.'
<https://www.theguardian.com/world/2014/aug/18/senate-president-disappointed-by-clerks-email-to-commons-australia>

³⁹ The Telegraph. 17 December 2014.
<http://www.telegraph.co.uk/news/politics/11298724/Appointment-of-Bercows-choice-for-clerk-terminated-as-MPs-clip-Speakers-wings.html>

Australian DPS position after she received high-level criticism of her performance).⁴⁰ A new appointment process was then implemented in line with “modern recruitment practice” that saw the current clerk, David Natzler, appointed.

The House of Commons Governance Committee did not criticise either Rogers or Laing but instead rebuked the Speaker, saying he has “*a position of leadership within the House, without being fully in charge. Indeed it would not be appropriate that he or she should be.*”⁴¹

It is therefore clear that one of the clerk’s roles is to provide frank advice, even if it is not what the recipient wants to hear.

What conclusions can we therefore draw?

Dr Laing’s email had a greater impact on a sovereign Parliament than she may have expected. In the UK it led to changes in the role of the clerk with recommendations for a separate clerk and director-general of Parliamentary services, fuelled an internecine spat between the Speaker and disgruntled MPs’ resulting in a reminder of the limitations of the role of Speaker.

In Australia it highlighted the Speaker and President of the Senates lack of understanding of the role of the clerks by their support of an unsuitable candidate. More importantly it underlined the independence of the clerks for, although their main role is advising the presiding officers, they are not subject to constant direction nor are they required to seek permission before commenting on Parliamentary matters of a non-partisan nature.

With the creeping power of an Executive that tends to regard Parliament as a hindrance rather than a force for accountability, the Opposition and independent Members must have complete faith that there is a source of independent, professional and confidential advice. The fact that the advice given may be counter to the agenda of any particular Member or the Government of the day is necessarily irrelevant. A properly operating Parliament ensures accountability of the Executive and Government.

Unlike public servants, clerks are beholden to Parliament and are clearly Officers of Parliament with elements of tenure, independence and Parliamentary rather than Government appointment; their role goes beyond the purely administrative and advisory. Although not immediately obvious to the casual observer they are vital in supporting the concepts of separation of power and responsible government.

They are the holders of Parliamentary corporate knowledge and providers of valuable advice to Members, many of who are newly elected. They contribute to the smooth operation of Parliament and individually advise Members so that the institution of Parliament and the concept of responsible government operate as efficiently as possible.

⁴⁰ <https://www.theguardian.com/australia-news/2015/apr/24/carol-mills-loses-job-as-Parliamentary-services-head-after-months-of-criticism>

⁴¹ House of Commons Governance Committee Report. December 2014. Paragraph 31. <https://www.publications.Parliament.uk/pa/cm201415/cmselect/cmgovern/692/69202.htm>

The advice can be given freely in the knowledge that the institution of Parliament protects the clerks' position. However this is not a protection granted without condition. To retain the respect of Parliament and all Members Clerks are reliant on their professionalism and the way they interact with members. Thus they must be at arm's length from Members and regard their interaction as one of client/advisor. As one retired Clerk described it they must be "Friendly to all but friends with no-one".