



LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES

Standing Committee on Parliamentary Privilege and Ethics

Report 1/55 — JUNE 2013

ELECTIONEERING, CAMPAIGNING AND DOORKNOCKING, AND THE ROLE OF ELECTORATE OFFICERS



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

Contents

Membership _____	ii
Chair’s Foreword _____	iii
ELECTIONEERING, CAMPAIGNING AND DOORKNOCKING, AND THE ROLE OF ELECTORATE OFFICERS _____	1
APPENDIX ONE – DEFINITIONS OF ELECTIONEERING, CAMPAIGNING AND DOORKNOCKING _____	6
APPENDIX TWO – EXTRACTS FROM MINUTES _____	8

Membership

CHAIR	Mr John Sidoti MP, Member for Drummoyne
DEPUTY CHAIR	Mr Andrew Fraser MP, Member for Coffs Harbour
MEMBERS	Mr Rob Stokes MP, Member for Pittwater Mr Glenn Brookes MP, Member for East Hills Mr Andrew Rohan MP, Member for Smithfield Mr Guy Zangari MP, Member for Fairfield
CONTACT DETAILS	Standing Committee on Parliamentary Privilege and Ethics Parliament of New South Wales Macquarie Street Sydney NSW 2000
Telephone	(02) 9230 2225
Facsimile	(02) 9230 2828
E-mail	ethics@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/laprivilegeandethics

Chair's Foreword

I am pleased to table this report on Electioneering, Campaigning and Doorknocking, and the Role of Electorate Officers.

This inquiry has examined a subject that was the focus of the Independent Commission Against Corruption's (ICAC) Operation Corinth which reported in July 2010. The Standing Committee on Parliamentary Privilege and Ethics of the 54th Parliament deliberated on this matter as has the Committee of the 55th Parliament. In formulating their responses to the ICAC's recommendations, both committees considered the experience of parliaments in Australia and overseas, as well as the experience that committee members brought to the table as Members of Parliament and community representatives.

In its recommendations the ICAC asked the Parliament to examine the role of electorate officers and prepare guidelines for Members and electorate officers to assist them clarify permissible activities. The Committee's report responds to the ICAC's recommendations by examining the role of Members of Parliament in the 21st Century, and modern political life and practice. The Committee acknowledges significant changes to the traditional role of Members and their staff in response to increasing community expectations and the growth of communications technology, which mean that Members' staff roles and the regulations which govern them cannot be static.

The Committee's recommendations, and particularly the identification of a pre-election period in which specified activities may or may not be undertaken, are consistent with longstanding and well understood conventions and practices, modern governance and the existing regulation of pre-election activity, and community expectations. At the same time the recommendations strongly uphold fundamental principles regarding the use of public funds and ensure that Members of Parliament can represent their constituents in the most effective and practical way.

I would like to thank the Committee members for their thoughtful contributions to this important and complex inquiry. I would also like to thank the Clerk of the Legislative Assembly and her staff for their intellectual and organisational input.

I commend the report for the information of Members.



John Sidoti

Chair

Electioneering, Campaigning and Doorknocking, and the Role of Electorate Officers

Electioneering, Campaigning and Doorknocking, and the Role of Electorate Officers

1. The Independent Commission Against Corruption (ICAC) has recommended that the Clerk of the Legislative Assembly review the duties performed by electorate officers and prepare written guidelines clearly defining permissible activities which can or cannot be performed in support of the parliamentary duties of elected Members.

Background

2. In its Operation Corinth report of July 2010, the ICAC recommended, in summary, that the Clerk:
 - Advise whether doorknocking engaged in by electorate officers is electioneering or campaigning;
 - Review the duties of electorate officers to determine whether any other activities are electioneering or campaigning; and
 - Prepare guidelines for Members and electorate officers which define electioneering and campaigning, clarify which activities are permissible for electorate offices, and emphasise that public funds are not to be used for electioneering and campaigning.
3. The Standing Committee on Parliamentary Privilege and Ethics of the 54th Parliament considered these recommendations and concluded that it was 'neither possible, nor desirable, to undertake a prescriptive approach for the purposes of directing electorate officers' and that the restrictions applying to campaigning in the electorate officers' Position Descriptions were well understood and appropriate.
4. In September 2011, the newly elected Speaker referred the ICAC's recommendations to the new committee of the 55th Parliament.
5. The committee sought comment from the Premier, the Leader of the Opposition and the Parliamentary Ethics Adviser, and has examined guidance provided to members' staff in Canada and the USA, there being no similar provisions currently applying to members' staff in Australian jurisdictions.

The function and purpose of electorate officers

6. Members are entitled to two full-time electorate officers to support their work in their electorate. The activities which electorate officers are paid to perform are listed in the Assembly's position descriptions which also state 'electorate officers are not permitted to engage in activities of a direct electioneering or political campaigning nature during ordinary hours of work or as part of their role as an electorate officer'.

7. To understand the role of electorate officers, however, and how to address the matters raised by the ICAC, it is necessary to understand the role of Members of Parliament and the context in which electorate officers are employed and discharge their responsibilities.

The traditional role of Members of Parliament

8. The role of Members is largely undefined in any statutory or regulatory context, but can be described as having a twin focus, ie political and representative. Both the Parliamentary Remuneration Tribunal (PRT) in its annual determinations of Members' entitlements and the Legislative Assembly in its Electorate Officer Position Descriptions recognise this twin focus. The PRT applies the statutory definition of 'parliamentary duties' - duties which attach to the office of a Member and which a Member is ordinarily expected to undertake - to its determinations of the activities for which a Member can use parliamentary resources, and the activities for which they cannot.
9. Electorate office staff are one of the resources allocated to Members to undertake their parliamentary duties.
10. In determining the resources required by Members to undertake their parliamentary duties and then defining what duties are permitted, and also listing those which are not permitted, the PRT has acknowledged that Members have both parliamentary and political duties, and that they are not easily separated. In its 2012 determination the PRT uses the term 'intermingling' to describe the relationship between Members' parliamentary and private activities.
11. Members are not permitted to utilise their parliamentary entitlements for non-parliamentary duties and this includes their staff. Hence, Members' staff are not permitted to electioneer and campaign, as these activities are not parliamentary activities. Members themselves, however, are permitted to electioneer and campaign so long as they do not use parliamentary resources to do so.

The role of Members of Parliament in the 21st century

12. The traditional representative role of Members has expanded as the community has become more diverse, community expectations for government services have both increased and broadened, and communications technology has become more complex and pervasive.
13. This is well illustrated by the way in which the communications entitlement for Members has developed. What was once termed the Electorate Mailout Allowance was devised to fund two newsletters per year in which Members communicated by way of a carefully constructed and edited printed newsletter sent by post to each household. Today, the Electorate Communications Allowance envisages that Members will communicate with constituents through multiple channels, many of them electronic such as Facebook and Twitter, and often immediate, where close editing is less important, and the community expects an instant response. Members' offices are bombarded by emails, the staff

compose and maintain websites and link to many others, and Members' tweets are available for instant reporting across multiple news and current affairs sites.

14. In line with the explosion of communications options, the community expects Members to be publicising events, and providing commentary on government policies and programs, both for and against. Members are expected to be available 24 hours a day, and not just during office hours on week days. Members are also expected to have a personal presence out of hours at community and party events, and some staff wish to attend, either as interested citizens in their own time or for the purposes of supporting their Members.
15. In effect, the community expects Members to campaign ie promote their platform, performance and achievements, as an integral part of their work as a Member of Parliament, if not, in fact, their core business. The community does not draw any distinction between the duties of a Member of Parliament and the activities ordinarily described as campaigning.
16. Yet the regime by which Members Entitlements are determined, awarded and scrutinised has not changed in line with community expectations. While the PRT has recognised the inevitability of Members' private and public roles intermingling, and that political parties and party responsibilities are an integral part of a Members' parliamentary work, the legislation and the auditing regime still require strict separations between the parliamentary and political aspects of Members' work, especially where the expenditure of public funds and resources comes into play.
17. The PRT expects Members and staff to understand the distinction between parliamentary and political aspects, and the Parliament to define these in clear and simple terms. But the intermingling of these aspects of Members' work makes distinctions often arbitrary and cumbersome, and prone to misinterpretation and transgression, whether deliberate or accidental. Members and staff are at risk of breaching rules and guidelines inadvertently, or making reasonable judgements in the heat at the moment which are criticised much later after close and laborious scrutiny.
18. The Members' Entitlements rules introduced in 2011 by the PRT are predicated on a self-assessment regime. Notwithstanding Members' certification of claims, parliamentary employees are asked to scrutinise the use of Members' Entitlements through a checklist approach, judging which activities are within or outside guidelines in a framework where fine distinctions are often difficult to make, and the intermingling of parliamentary and political activities is often without any discernible or practical boundaries.
19. The very scheme of modern entitlements, such as provision of a staffed office and a communications allowance, is predicated on the idea that information does not just flow from Members to the community, but that it is a dynamic two-way process in which Members and their constituents engage in dialogue regarding both the parliamentary and political aspects of Members' roles. While the PRT may draw an undefined distinction

between these two aspects, and approve funding for one and not the other, this is not a distinction the community makes philosophically and even less so in practice.

20. The Australian political system has a long tradition of recognising the party affiliation of Members. This is recognised in electoral laws and even in the Federal Constitution with regard to casual Senate vacancies. It comes as no surprise to any member of the community that a Member should be engaged in party political activity, should publicise this activity and their part in it, and should draw attention to the policies and achievements of the government of which they are a proud Member, or the shortcomings of the government and alternative policies where they are opposition Members.
21. As Members participate in these party political activities where distinction is not made between policy formulation, canvassing the constituents' views, and political campaigns, staff are inevitably and unavoidably drawn into campaigning and electioneering when they perform day-to-day parliamentary activities according to their Position Descriptions and in support of the Members they are employed to serve. These are community-based activities as much as they are political ones. Nevertheless, some activities, such as 'direct electioneering' in the context of an immediate campaign, can be distinguished as not permitted, and these activities are outlined in the appendix to this report.
22. However, rather than attempting to define a list of activities which fall within or outside the rules for the use of parliamentary entitlements, it might be more practical to use other conventions and regulations which apply to the political cycle and which are well understood by the community such as caretaker conventions and prohibitions on government advertising in pre-election periods. If, for example, staff are confined to the electorate office and Members are prohibited from certain well-defined activities during these periods, Members and staff might be delivered more practical arrangements for performing parliamentary services, parliamentary staff might be empowered to implement a simpler monitoring regime, and community expectations may be better met by a pre-election shutdown of normal and uncontroversial political activity.

Restrictions during pre-election periods

23. While campaigning is part of the work of Members, to ensure that Members and staff do not breach the prohibitions which apply to electioneering it may be sensible to recognise the special context of pre-election periods and adopt restrictions on certain activities in those periods. An example of such a restriction is contained in the *Government Advertising Act 2011* which prohibits government advertising being carried out after 26 January in an election year. Certain activities which might at other times be reasonable in the context of the ordinary role of Members could be restricted in the pre-election period and include such activities as doorknocking by electorate office staff, attendance at Members' mobile offices, and organising of volunteers. By adopting such a restriction in pre-election periods Members, staff and the community could be confident that no breaches of prohibitions, however subtle or minor, could occur.

The deliberations of the Committee

24. In considering the ICAC's recommendations and the discussion presented above, the Committee noted, with reference to Members' own experiences as elected representatives, the theoretical and practical difficulties inherent in distinguishing between activities which have drawn the attention of the ICAC and other regulators. Members noted that electorate officers are required in the ordinary course of their duties to provide information on the policies and platforms of political parties, and to be unable to do so would put staff in the position of being unable to answer commonly asked questions from constituents.

25. Unlike fundraising, which the Committee considered to be a clear cut example of an excluded activity, the Committee considered the situation where a constituent asked or was provided with information or advice by an electorate officer which had an electioneering or campaigning aspect. The only practical distinction which the Committee considered could be made about such a situation would be to define this activity in terms of whether information provided to constituents was solicited or unsolicited ie whether a constituent asked Members' staff for information which had an electioneering or campaigning aspect, or whether Members' staff offered it.

26. In putting forward the recommendations below the Committee emphasised that campaigning is what Members do every day and by extension, what their electorate office staff do in support of their Members.

Recommendations

27. It is recommended that:
 - the Clerk of the Legislative Assembly prepare a paper defining any activities about which there is complete agreement that they constitute electioneering and campaigning by electorate officers;
 - consideration be given to the introduction of a pre-election non-campaigning period for electorate officers in which the activities defined above are prohibited; and
 - the Clerk reviews the Position Descriptions for Electorate Officers and incorporates provisions consistent with the recommendations of this paper.

Appendix One: Definitions of electioneering, campaigning and doorknocking

28. These definitions have been prepared by the Clerk of the Legislative Assembly for inclusion into the Position Descriptions of Electorate Officers, in anticipation of the Committee agreeing to the recommendations in the Chair's Draft Report.
29. Clear and practical definitions of the terms electioneering, campaigning and doorknocking are essential in order that Members and their staff, and the public agencies which scrutinise parliamentary activities, can discharge their responsibilities and participate in ordinary political and parliamentary business in ways which meet statutory and ethical requirements, and community expectations.
30. The Committee notes that the PRT definition, which informs all use of Members' entitlements, uses the terms direct electioneering and political campaigning and that these terms are well understood by all Members to encompass the above definitions.
31. Electioneering means activity which encourages voters to cast their vote for or against a candidate or a party in the context of an election. Given that election dates are fixed in New South Wales, while electioneering can occur at any time, it is most relevant in the context of an election campaign which in light of the definition of 'pre-election period' below means electioneering during a pre-election period.
32. Direct electioneering, given the election context of the definition above, means the same as electioneering.
33. Campaigning means the activities of Members to promote their platform, performance and achievements. In referring to campaigning the distinction should be made between the provision of information concerning political policies and platforms in response to an inquiry, and actively promoting such information in the absence of any request.
34. Political campaigning means campaigning in the context of an immediate election campaign ie in light of the definition of 'pre-election period' below means campaigning during a pre-election period.
35. Doorknocking is the practice of going from door-to-door to gain direct access to people. It includes both face-to-face communication and the distribution of material to private addresses. Electorate officers should not be undertaking doorknocking for the purpose of promoting a Member or candidate in the context of an immediate election campaign, nor accompanying a Member doorknocking in a pre-election period.

36. Pre-election period means the period from 26 January in a State election year to the election date in which direct electioneering and political campaigning must not be undertaken by electorate officers during ordinary working hours in any circumstances. Pre-election period also means the period 8 weeks prior to any local government election, and the period between the issuing of the writs for a Federal election and the election date, during which the same prohibitions apply to direct electioneering and political campaigning by electorate officers in support of any candidate for election to Federal, State (eg by-elections) or local government office including their Member, and any electorate officer where he or she is the candidate. During the pre-election period these prohibited activities also include attendance at Members' mobile offices at any time, attendance at political party and political supporters' group meetings and functions during ordinary working hours, and organising of volunteers during ordinary working hours.

Appendix Two - Extracts from Minutes

MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS (NO. 2)

Thursday 15 September 2011
10.30am
Room 1254, Parliament House

MEMBERS PRESENT

Mr Fraser, Ms Moore, Mr Rohan, Mr Sidoti, Mr Zangari.

2. Correspondence from Speaker Hancock – ICAC recommendation

The Chair spoke to the letter dated 9 September 2011 from the Speaker, concerning ICAC recommendations to define "campaigning" activities for the purposes of electorate officer positions descriptions. The letter and a discussion paper prepared by the Committee of the 54th Parliament and forwarded to the former Speaker were circulated.

Debate ensued.

The Clerk agreed to prepare a note outlining the degrees of activities that might constitute campaigning.

The Committee resolved, on the motion of Mr Fraser, seconded Ms Moore, That the Chair write to the Premier and Leader of the Opposition to seek their views on defining "campaigning" activities for the purpose of electorate officer position descriptions.

6. Next meeting

Meeting adjourned at 10.53am, sine die.

MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS (NO. 4)

Wednesday 23 November 2011
10.00am
Room 1043, Parliament House

MEMBERS PRESENT

Mr Brookes, Mr Fraser, Ms Moore, Mr Rohan, Mr Sidoti.

4. Corruption prevention strategies: defining “electioneering” and “political campaigning” for Electorate Officers

The Committee noted correspondence from the Independent Commission Against Corruption, to the former Clerk, regarding recommendations for corruption prevention arising from the investigation into Operation Corinth.

6. Next Meeting

Meeting adjourned at 10.25am, sine die.

MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS (NO. 5)

Wednesday 22 February 2012

10.30am

Room 1043, Parliament House

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Brookes, Ms Moore, Mr Rohan, Mr Zangari.

3. Review of Position Descriptions for Electorate Officers – in response to ICAC’s response to Operation Corinth

The Committee noted that advice was awaited from the Federal Parliament concerning the roles and responsibilities of Federal Electorate Officers. It was further noted, that the Committee had not yet received replies to its letters of October 2011, seeking the views of the Premier and the Leader of the Opposition on the issue of guidelines or definitions for electorate officers on “campaigning activities”.

Resolved, on the motion of Mr Zangari, seconded Mr Rohan:

‘That the Chair write follow-up letters to the Premier and the Leader of the Opposition enclosing the previous letter, and referring to the comments made by Dr Robert Waldersee of the Independent Commission Against Corruption.’

7. Next Meeting

Meeting adjourned at 10.58am, sine die.

MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS (NO. 7)

Wednesday 9 May 2012
10.30am
Room 1043, Parliament House

The Chair commenced the meeting at 10.33am.

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Brookes, Ms Moore, Mr Rohan, Mr Zangari.

4. Review of Position Descriptions for Electorate Officers

The Chair noted that the Committee had received a response from the Premier to its request for his views on guidelines or definitions for electorate officers on 'campaigning activities'.

Discussion ensued.

Committee staff undertook to provide a briefing paper for the Committee's next meeting, setting out options as to how the Committee might progress the review.

7. Next Meeting

Meeting adjourned at 10.54am, sine die.

MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS (NO. 8)

Wednesday 30 May 2012
10.30am
Room 1043, Parliament House

The Chair commenced the meeting at 10.30am.

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Brookes, Mr Fraser and Mr Zangari.

3. Review of Position Descriptions for Electorate Officers

The Chair spoke to the item, noting that the briefing paper proposed that the Committee progress the review by writing to certain key stakeholders seeking their views.

Discussion ensued.

Resolved, on the motion of Mr Fraser, seconded by Mr Brookes:

'That the Committee writes to the Electoral Funding Authority, the ICAC, the Parliamentary Remuneration Tribunal and the Parliamentary Ethics Adviser to seek their views'.

5. Next Meeting

Meeting adjourned at 10.42 am, sine die.

MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS (NO. 9)

Wednesday 21 November 2012

1.00pm

Parkes Room, Parliament House

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Fraser, Mr Brookes, Mr Zangari.

The Chair commenced the meeting at 1.00pm.

2. Review of Position Descriptions for Electorate Officers – in Response to ICAC's response to Operation Corinth

The Chair drew the Committee's attention to the two items of correspondence, from the Leader of the Opposition and the Electoral Commissioner, and discussion ensued.

Resolved, on the motion of Mr Fraser, seconded Mr Zangari:

'That the item be resubmitted for discussion at the next meeting.'

4. Next meeting

The committee adjourned at 1.10pm, sine die.

MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS (NO. 10)

Wednesday 29 May 2013
10.15am
Parkes Room, Parliament House

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Fraser, Mr Stokes, Mr Zangari.

The Chair commenced the meeting at 10.15am.

2. Chair's Draft Report on Electioneering, Campaigning and Doorknocking, and the Role of Electorate Officers

The Chair distributed his Draft Report and an extract of the 2013 NSW Auditor-General's Report to Parliament, and discussion ensued.

Resolved, on the motion of Mr Stokes, seconded Mr Fraser:
'That the Members of the Committee review the Chair's Draft Report and it be made an item for discussion at the next meeting.'

5. Next meeting

The committee adjourned at 10.35am, sine die.

DRAFT MINUTES OF PROCEEDINGS OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS (NO 11)

Wednesday 19 June 2013
9.45am
Waratah Room, Parliament House

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Fraser, Mr Stokes, Mr Zangari (participated via telephone pursuant to Standing Order 295).

The Chair commenced the meeting at 9.50am

2. Chair's Draft Report on Electioneering, Campaigning and Doorknocking, and the Role of Electorate Officers

The Committee considered the Chair's draft report and schedule of proposed amendments previously circulated. Discussion ensued.

The Committee agreed to the following amendments, as circulated:

- i. That the words 'The Members' Entitlements rules introduced in 2011 by the PRT are predicated on a self-assessment regime. Notwithstanding Members' certification of claims,' be inserted at the start of paragraph 17.
- ii. That the words 'provision of' be inserted in paragraph 18;
- iii. That the sentence, 'Electorate officers should not be undertaking doorknocking for the purpose of promoting a Member or candidate in the context of an immediate election campaign, nor accompanying a Member doorknocking, in a pre-election period ', be inserted at the end of paragraph 31.

Discussion ensued.

Resolved, on the motion of Mr Stokes, that -

- i. The Committee consider further proposed amendments to the draft report, to include:
 - o reference to the need to distinguish between the terms 'electioneering' and 'campaigning', the latter being central to the role of a Member;
 - o consideration being given to whether the provision of information by staff to constituents was solicited or unsolicited, when interpreting these two terms in the context of excluded activity during the pre-election period;
 - o reference to electorate office staff being drawn into activity that might be termed 'campaigning' as part of their role in supporting their Member, for example, by providing constituents making enquiries to the Electorate Office with information about a Member's political platform and related policies; and
 - o the provision of information *in response* to such requests should not fall within the activity to be excluded during the pre-election period;
 - o clarification that the pre-election period applies to State by-elections.
- ii. the proposed amendments be circulated to the members of the Committee for consideration;
- iii. subject to the agreement of committee members to the further amendments, they be incorporated into the draft report;

- iv. the draft report, as amended, be the report of the Committee and that it be signed by the Chair and presented to the House;
- v. the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors;
- vi. after tabling, the Report be posted on the Committee's webpage.

6. Next meeting

The Committee adjourned at 10.00am, sine die.