

**Submission
No 2**

**RECOMMENDATIONS OF THE ICAC ARISING OUT OF OPERATION KEPPEL
AND OPERATION WITNEY**

Name: Mr John Evans
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Mr Alex Greenwich MP
Chair, Legislative Assembly Standing Committee on
Parliamentary Privilege and Ethics
Parliament House
Macquarie Street
Sydney NSW 2000.

Dear Alex

1. I refer to your letter of 13 May 2025 inviting me to make a submission to your Committee on the inquiry into the recommendations of the Independent Commission Against Corruption (ICAC) arising out Operation Whitney (2022) and Operation Keppel (2023) Reports.

2. I make the following comments on the recommendations in your letter.

Recommendation 3 – use of public resources to clarify the limited circumstances in which it is acceptable to intermingle parliamentary duties with personal or private activities.

3. The term “public resources” encompasses various items, including financial resources, goods, stationery, office equipment, office premises, telecommunication devices, computers and staff.

4. The appropriate use of public resources is fundamental to a member’s obligation under the Code of Conduct to act in the public interest.

5. Clause 3 of the Code of Conduct requires a member to “take reasonable steps to apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.”

6. The Parliamentary Remuneration Tribunal Annual Report and Determination 2024 (PRT Determination) at pages 90/91 prohibits the utilisation of additional entitlements in the following circumstances:

“2.2.2 Additional entitlements should not be used to fund:

- (i) activities such as those associated with party Membership drives;
- (ii) mail distributions for non-electorate or non-parliamentary activities;
- (iii) costs associated with election campaigning for an individual Member;

- (iv) party fundraising for a Member's own political use and/or other party political Members such as the purchase of raffle tickets, raffle prizes or tickets to attend functions etc.
- (v) costs previously borne by political parties which are not principally related to a Member's parliamentary or electorate duties; and
- (vi) costs associated with pre-selection activities.

2.2.3 The electorate office provided for a Member of the Legislative Assembly is not to be used as an election campaign office.”

7. Section 2.3 of the PRT Determination also outlines the circumstances in which some intermingling of non-parliamentary duties may be considered as parliamentary duties, such as (*my interpretation*):

2.3.1 incidental intermingling of non-parliamentary activity that is incidental to a Member's parliamentary duties

2.3.2 a Member's involvement in activities reasonably deriving from the Member's responsibilities as a parliamentary representative

2.3.2 activities of a Member as a parliamentary representative in the broader community outside the Member's electorate.

8. Section 2.4 outlines the general conditions that govern all additional entitlements provided to Members. Notably:

2.4.8 Expenditure is only to be incurred in connection with the parliamentary duties of Members.

2.4.9 The various allowances determined here, are for the sole use of the Member and are not to be transferred to other persons or organisations including Members.

9. The ICAC website recognises that “There is a general convention in NSW public sector organisations that limited personal use of certain public resources is permissible. This recognises that most public officials will at some stage make personal use of organisational resources, for example, to make personal telephone calls, use the internet, and send emails during work time. What is important is that personal use of public resources is clearly guided by a policy and communicated”¹

10. In a letter addressed to the Joint Clerks on 18 December 2024, (a copy of which was also sent to me), ICAC Chief Commissioner Hatzistergos referring to the intermingling of resources, stated that “Members may also find the following

excerpt from the Commission's 2023 Operation Keppel report at 14.53 of Volume 2 of assistance:

“The Commission accepts that in some cases it is difficult to avoid the intermingling of parliamentary duties and private activities. The pursuit of high ethical standards should not require that common sense be abandoned. Like most other workers, a politician should be able to make occasional limited personal use of publicly provided resources. This may include making some personal telephone limited internet use and running errands in circumstances where to do otherwise would be impractical and where it is not conducive to corruption and improper conduct. The relevant codes of conduct need to address this issue unambiguously.”

11. It is difficult to provide a simple solution regarding the permissibility of personal use of public resources.
12. In Victoria the Parliamentary Salaries, Allowances and Superannuation Act 1968 (Victoria) Part 2, Division 1, outlines several of guiding principles regarding the use of public resources by members, as follows:
 - 4A Fair and reasonable recompense for public duties**
 - (1) A Member should receive fair and reasonable recompense for performing their public duties.
 - (2) Public resources are provided to a Member to support them in performing their public duties.
 - 4B Good faith and integrity**

A Member must act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties.
 - 4C Personal responsibility and accountability**
 - (1) A Member must be responsible and accountable for their use of public resources.
 - (2) A Member must be prepared for their claims to be made publicly available.
 - (3) A Member must be able to publicly justify their use of public resources.”
13. In the Federal Parliament the Parliamentary Business Resources Act 2017 (Clth) establishes a framework for the use of public resources by members of Parliament in relation to parliamentary business.
14. The Act imposes obligations on Members in relation to the use of public resources. These obligations include the requirement to utilise those resources

for the dominant purpose of conducting parliamentary business² and the requirement to ensure that the resources are used in a manner that provides value for money³.

15. Contravention of a member's obligations may result in a penalty of 25% of the value of the public resources.⁴
16. Section 25 imposes obligations on members regarding the use of public resources for the conduct of their parliamentary business, as follows:

“25 Obligations in relation to the use of public resources for conducting parliamentary business

.....

Personal responsibility and accountability

- (2) Members are personally responsible and accountable for their use of public resources for conducting their parliamentary business.
- (3) Members must be prepared to justify publicly their use of public resources for conducting their parliamentary business.

Good faith

- (4) Members must act ethically and in good faith in using, and accounting for the use of, public resources for conducting their parliamentary business.”

17. The Parliamentary Business Resources (Parliamentary Business) Determination 2025 delineates the activities of a member within four distinct duty streams of parliamentary duties, electorate duties, party political duties and official duties.⁵
18. From the above discussion, I suggest the development of a guide for Members in the use of public resources under Clause 3 of Code of Conduct. The following is my thoughts on a draft for consideration:

Guide to the use of public resources

1. In this guide “public resources” means the expenses allowance, additional allowances and other entitlements, funding, resources or facilities, provided by the Parliamentary Remuneration Tribunal Annual

² Parliamentary Business Resources Act 2017 (Clth, section 26)

³ *Ibid*, section 27

⁴ *Ibid*, section 38.

⁵ Clause 6 and Schedules 1 to 4. Section 6 (4) of the Parliamentary Business Resources Act 3027 provides for the Minister to determine the activities of a Member that are parliamentary duties, electorate duties, party political duties and official duties.

Determination (PRT Determination), and the Parliament. These allowances and entitlement are provided to facilitate the efficient performance of the parliamentary duties of members and recognised office holders.

2. A member must comply with any PRT Determination, any other relevant law, and any rule or guide (such as the Legislative Assembly Members' Guide, Legislative Council Members' Guide and Department of Parliamentary Services Members' Entitlements Handbook), when using their public resources for the primary purpose of conducting their parliamentary duties as a member or office holder.

(**Note:** There are various prohibitions in the PRT Determination on the use of entitlements.)

3. It is recognised that in some cases it is difficult to avoid the intermingling of parliamentary duties and private activities.
4. While some “intermingling of a member’s parliamentary duties and non-parliamentary duties is in practical terms not always easily avoided” any unavoidable intermingling must be “incidental” or, if not, the member must personally cover the non-parliamentary expense.
5. A member may make occasional, limited personal use of publicly provided resources where alternative use would be impractical and where it is not conducive to corruption or improper conduct.

(**Note:** Members should refer to the ICAC publication “Annotated Code of Conduct for Members: A Guide for Members of NSW Parliament, 2nd Edition, 2024 for guidance on the appropriate use of public resources.)

6. A member is personally responsible and accountable for the effective, efficient and economical utilisation of public resources. They must act in the public interest with honesty and integrity in managing risks in the context of the Code of Conduct. A simple test is whether a reasonable person would agree that the action or expense was a proper use of public resources.
7. Contravention of a member’s obligations under this Guide may result in an adverse finding of improper or corrupt conduct.

Recommendation 7 - application of the Code of Conduct to parliamentary friendship groups.

19. The Preamble of the Code of Conduct could be amended to include a new paragraph at the end:

This Code applies to Members when participating in the activities of an approved parliamentary friendship group.

Recommendation 10 - ongoing professional education program for member.

20. This is a matter for the Parliamentary Administration.

Recommendation 11 - induction program and ongoing education development program for members address the obligations and duties of elected public official, including:

- principles and values that guide members in performing their public role
 - disclosing interests via registration
 - how to avoid, resolve and manage a conflict of interest
 - guidance on secondary employment or outside business interest
 - disclosing gifts and benefits
 - the prohibition on improper influence
 - guidance on the use of public resources
 - guidance on the proper use of confidential information
 - enforcement mechanisms
 - risks and processes relating to lobbying.
 - restrictions on post-parliamentary careers
 - procedures for reporting suspected corrupt conduct.
21. This is a matter for the Parliamentary Administration. During my presentations to new Members many of the above issues are covered. I make some comments on conflicts of interest and secondary employment.

Conflicts of interest

22. Conflicts of Interest are dealt with in section 7 of the Code requiring members to “to take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest”.
23. Section 7 of the Ministerial Code deals with conflicts of interest and it would be useful if there was a consistent definition in the members Code.
24. There are many useful guides and resources available on the Internet on managing of conflicts of interest in the public sector much of which similarly

applies to members of Parliament as a public office holder. The following are useful in the context of managing conflicts of interest:

Commonwealth Ombudsman – Conflict of interest guidelines, 2017

ICAC & Queensland Crime and Misconduct Commission Managing Conflicts of Interest in the Public Sector – Guidelines, 2004

ICAC - Managing Conflicts of Interest in the NSW Public Sector, 2019

ICAC - Managing conflicts of duties in the NSW public sector, January 2024

New Zealand Auditor General - Managing Conflicts of Interest in the Public Sector, 2005

OECD - Recommendation of the council on Guidelines for managing conflict of interest in the public service, 2003

OECD – Managing conflict of interest in public sector – A Toolkit, 2005

Victorian Ombudsman – Conflicts of interest in the public sector, 2008

Westminster Foundation for Democracy; GOPAC – Handbook on Parliamentary Ethics and Conduct -A guide for Parliamentarians, Global Task Force on Parliamentary Ethics, 2010

World Bank, OECD UNDOC - Preventing and Managing Conflicts of Interest in the Public Sector - Good Practice Guide, 2018

25. I support the development of guidelines for Members of Parliament on Managing conflicts of interest, with input from the ICAC and the Parliament. I could provide useful anonymous annotations on requests for my advice on conflicts of interest.

Secondary employment

26. With the exception of Ministers, there is no ban on secondary employment by Members.
27. On occasions when Members have sought my written advice on secondary employment, I have dealt with the following topics:
- relevant provisions of the Code of Conduct and the duty of Members
 - disclosure of pecuniary interests
 - secondary employment and conflicts of interest
 - disclosure of conflicts of interest in the House and Committee proceedings

- conflicts of interest generally
- prohibition on use of additional entitlements provided by PRT Determination

Recommendation 18 - the induction and ongoing education programs for ministers and members address the management of political interests when exercising public power.

28. This is a matter for the Parliamentary Administration.

Recommendations for further action to be considered by the House, the Speaker, the Clerk and the Government, as appropriate.

Review the Preamble to the Code of Conduct

29. The Preamble to the Members Code of Conduct is one paragraph and is followed by 5 paragraphs outlining the Purpose of the Code. It refers to public trust, honesty and integrity, while the Purpose refers to public interest, conflicts of interest and acting dishonestly.
30. It would be useful to revise the Preamble and Purpose under the one heading of Preamble and to encompass wording which also included the principles of public life not already included, namely - selflessness, objectivity, openness and leadership.
31. The NSW Ministerial Code of Conduct 2014 contains twelve points in its Preamble. I propose that the wording employed in both codes be, to the extent practicable, similar in context where applicable.
32. I also suggest that the paragraphs of the Code be appropriately numbered to facilitate easier reference and citation.

Examining any relevant matter arising from the ICAC's report on Operation Witney.

33. The recommendations of the ICAC in the Operation Witney report largely address matters already covered in my submission.
34. I would be pleased to meet with your committee to further discuss these issues.

Yours sincerely


John Evans
Parliamentary Ethics Advisor