



Parliamentary Ethics Adviser

Annual Report

2015 – 2016

The Honourable Don Harwin MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

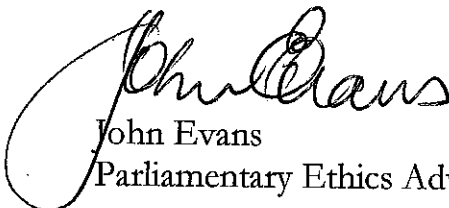
The Honourable Shelley Hancock MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Madam Speaker

I have much pleasure in providing my second annual report as Parliamentary Ethics Adviser for the year ended 30 June 2016.

The report is prepared in accordance with the resolution of the Houses of Parliament, June 2014, and the terms of the Agreement made with the Clerk of the Parliaments and the Clerk of the Legislative Assembly.

Yours faithfully


John Evans
Parliamentary Ethics Adviser

I was appointed as Parliamentary Ethics Adviser by resolution of the Legislative Assembly on 17 June 2014 and the Legislative Council on 18 June 2014. A copy of the resolution is attached as Appendix 2.

Role of the Parliamentary Ethics Adviser

The role of Parliamentary Ethics Adviser was first established by resolution of both Houses of the Parliament in September 1998.¹

The appointment of a Parliamentary Ethics Adviser was commensurate with the adoption by both Houses of the first Code of Conduct for Members of Parliament in 1998.² The 1998 Code remained in force until 2007 when both Houses adopted a revised Code of Conduct for Members. A copy of the 2007 Code of Conduct is attached as Appendix 1.

Under the 2014 resolution of the Houses, the role of the Parliamentary Ethics Adviser is to:

- provide confidential advice on ethical issues to Members of Parliament
- provide advice to Ministers and former Ministers on post-separation employment
- meet annually with the designated Ethics Committee of each House
- provide an annual report to Parliament.

Advice to Members

The role of the Parliamentary Ethics Adviser is to advise any Member (including Ministers) when asked to do so by that Member, on ethical issues concerning the exercise of his or her role as a Member, including the use of entitlements and potential conflicts of interests.

In providing advice to Members, my advice remains confidential. However, I may make advice public if the person who requested the advice gives permission for it to be made public.

A question arose during the reporting period regarding publication of advice provided to a Member. The manner in which I may make advice public is unclear. As mentioned in my 2014-2015 Report, a procedure should be implemented to

¹ Legislative Assembly Votes and Proceedings, 23/9/1998, p. 883; Legislative Council Minutes of Proceedings, 24/9/1998, p. 728

² Legislative Assembly Votes and Proceeding, 5/5/1998, p. 544; Legislative Council Minutes of Proceedings, 1/7/1998, p. 629

permit me to provide my advice to the Presiding Officer or Clerk of the relevant House. Once presented the advice could be made public forthwith. Such a provision is important to attract the privileges and immunities of the House.

Advice on post employment to Ministers and former Ministers

The role of the Parliamentary Ethics Adviser was expanded in June 2006 to include the provision of advice to Ministers and former Ministers in relation to post-separation employment.³

The requirement for former Ministers to seek advice from the Parliamentary Ethics Adviser is found in two sources:

- the resolution of both Houses, June 2014
- the NSW Ministerial Code of Conduct 2014.

My role is to advise any Minister, or former Minister, in relation to post-separation employment, engagement or provision of services to a third party which relate to the Minister's portfolio responsibilities (including portfolio responsibilities held during the previous two years of Ministerial office).

The requirement for a Minister to seek advice on post separation employment is to ensure that when a Minister or former Minister takes up an appointment, employment or engagement that there should be no cause for any suspicion of impropriety that the former Minister's conduct while in office was influenced by the prospect of employment or the former Minister might make improper use of confidential information to which they had access while in office

My role is limited to providing advice based on information provided to me by a former Minister. I am unable to make my own inquiries other than from the Member concerned.

In providing advice on post separation employment I am required include a general description of the position offered, the duties to be undertaken, or the services to be provided, based on material provided by the Minister or former Minister, but excluding any information that the Minister or former Minister indicates is confidential. I am also required to state my opinion as to whether or not the position may be accepted, or the services may be provided, either with or without specified conditions.

³ Legislative Assembly Votes and Proceedings 7/6/2006, p. 97; Legislative Council Minutes of Proceedings, 5/9/2006, p. 170

Once a Minister or former Ministers informs me of the commencement of employment or engagement, or an appointment is taken up, I am able to provide my advice to the Presiding Officer of the relevant House of Parliament for tabling and which becomes public information.⁴ It is through this method of transparency that former Ministers and my role in providing advice are accountable to the public.

The number of requests for advice from former Ministers on post-separation employment is shown below.

Ministerial Code of Conduct

Under the Independent Commission Against Corruption Act 1988, the Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014, implemented a new NSW Ministerial Code of Conduct from 20 September 2014. A copy of relevant portions of the new Code is attached as Appendix 3.

Meetings with designated Ethics Committee of each House

Under paragraph (10) of the resolution of my appointment, I am required to meet annually with the Standing Committee of each House designated for the purposes of Part 7A of the Independent Commission Against Corruption Act.

A meeting was held with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics on 28 October 2015, and also the Legislative Council Privileges Committee on 19 November 2015.

Advice provided to Members and former Ministers

Under paragraph (11) of the resolution of my appointment, I am required to report to the Parliament annually on:

- the number of ethical matters raised
- the number of members who sought advice
- the amount of time spent in the course of duties
- the number of times advice was given.

The following details are supplied in relation to advice provided to Members and former Ministers:

⁴ June 2014 resolution of both Houses, para. (6); 2014 Code, clause 25 (3).

Number of ethical matters raised: 20

Number of Members/former Ministers who sought advice: 17

Legislative Council – 3

Members – 3 (including 1 former Minister)

Legislative Assembly – 14

Ministers -1

Members – 9 (including 1 former Minister)

Former Ministers – 4 (7 advice in total)

Amount of time spent in the course of duties: 166 hours

Number of times advice given: 20

Number of advice to former Ministers submitted to Speaker for tabling: 6
(includes 2 advice provided in previous reporting period)

During the reporting period I had various meetings with the Clerk of the Parliaments, the Clerk of the Legislative Assembly and the Executive Manager, Parliamentary Services and staff dealing with Members entitlements.

Finally, I wish place on record my thanks to Mr David Blunt, Clerk of the Parliaments and Clerk of the Legislative Council, Ms Ronda Miller, Clerk of the Legislative Assembly and Mr Robert Stefanic, former Executive Manager, Parliamentary Services, and their staff, for their willing assistance in providing me with necessary information and facilities when requested.

Appendix 1

Resolution of both Houses adopting a Code of Conduct for Members

(Legislative Assembly Votes and Proceedings, 8/5/2007, p. 34; Legislative Council Minutes of Proceedings, 21/6/2007, p. 148)

1. That this House adopt, for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, the following code of conduct:

PREAMBLE

- The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.
- Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate has the right to dismiss them from office at regular elections.
- Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.
- Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.

THE CODE

1 Disclosure of conflict of interest

- (a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.
- (b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.
- (c) A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.

2 Bribery

- (a) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which the Member has received, is receiving or expects to receive.
- (b) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive:
 - (i) a member of the Member's family;
 - (ii) a business associate of the Member; or
 - (iii) any other person or entity from whom the Member expects to receive a financial benefit.
- (c) A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct.

3 Gifts

- (a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.
- (b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to improperly influence the Member in the exercise of his or her duties.
- (c) Members may accept political contributions in accordance with part 6 of the Election Funding Act 1981.

4 Use of public resources

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

5 Use of confidential information

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.

6 Duties as a Member of Parliament

It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.

7 Secondary employment or engagements

Members must take all reasonable steps to disclose at the start of a parliamentary debate:

- (a) the identity of any person by whom they are employed or engaged or by whom they were employed or engaged in the last two years (but not if it was before the Member was sworn in as a Member);
- (b) the identity of any client of any such person or any former client who benefited from a Member's services within the previous two years (but not if it was before the Member was sworn in as a Member); and
- (c) the nature of the interest held by the person, client or former client in the parliamentary debate.

This obligation only applies if the Member is aware, or ought to be aware, that the person, client or former client may have an interest in the parliamentary debate which goes beyond the general interest of the public.

This disclosure obligation does not apply if a Member simply votes on a matter; it will only apply when he or she participates in a debate. If the Member has already disclosed the information in the Member's entry in the pecuniary interest register, he or she is not required to make a further disclosure during the parliamentary debate.

2. That this resolution has continuing effect unless and until amended or rescinded by resolution of the House.

Appendix 2

Resolution of both Houses appointing Parliamentary Ethics Adviser

(Legislative Assembly Votes and Proceedings, Tuesday 17/6/2014, p. 2231; Legislative Council Minutes of Proceedings, Wednesday 18/6/2014, p. 2597)

PARLIAMENTARY ETHICS ADVISER

Mr Anthony Roberts moved, by leave, That this House directs the Speaker to join with the President to make arrangements for the appointment of Mr John Evans PSM as Parliamentary Ethics Adviser, on a part-time basis, on such terms and conditions as may be agreed from the period beginning 1 July 2014.

The Parliamentary Ethics Adviser shall have the following functions.

Advice to Members of Parliament

- (1) (a) The Parliamentary Ethics Adviser is to advise any member of Parliament, when asked to do so by that member, on ethical issues concerning the exercise of his or her role as a member of Parliament (including the use of entitlements and potential conflicts of interest).
- (b) The Parliamentary Ethics Adviser is to be guided in giving this advice by any Code of Conduct or other guidelines adopted by the House (whether pursuant to the Independent Commission Against Corruption Act or otherwise).
- (c) The Parliamentary Ethics Adviser's role does not include the giving of legal advice.

Advice to Ministers on post-separation employment

- (2) The Parliamentary Ethics Adviser must on request by a Minister provide written advice to the Minister as to whether or not the Adviser is of the opinion that the Minister's:
 - (a) acceptance of an offer of post-separation employment or engagement which relates to the Minister's portfolio responsibilities (including portfolio responsibilities held during the previous two years of ministerial office); or

- (b) decision to proceed, after the Minister leaves office, with a proposal to provide services to third parties (including a proposal to establish a business to provide such services) which relates to the Minister's portfolio responsibilities (including portfolio responsibilities held during the previous two years of ministerial office), would give rise to a reasonable concern that:
 - (c) the Minister's conduct while in office was influenced by the prospect of the employment or engagement or the proposal to provide services; or
 - (d) the Minister might make improper use of confidential information to which he or she has access while in office.
- (3) The Adviser must on request by a person who has ceased to hold ministerial office within the previous 18 months ("the former Minister") provide written advice to the former Minister as to whether or not the Adviser is of the opinion that the former Minister's:
 - (a) acceptance of an offer of employment or engagement which relates to the former Minister's former portfolio responsibilities during the last two years in which the Minister held ministerial office; or
 - (b) decision to proceed with a proposal to provide services to third parties (including a proposal to establish a business to provide such services) which relate to the former Minister's former portfolio responsibilities during the last two years in which the Minister held ministerial office,would give rise to a reasonable concern that:
 - (c) the former Minister's conduct while in office was influenced by the prospect of the employment or engagement or the proposal to provide services; or
 - (d) the former Minister might make improper use of confidential information to which he or she had access while in office.
- (4) If the Adviser is of the opinion that accepting the proposed employment or engagement or proceeding with the proposal to provide services might give rise to such a reasonable concern, but the concern would not arise if the employment or engagement or the provision of services were subject to certain conditions, then he or she must so advise and specify the necessary conditions.

- (5) The Adviser's advice must include:
 - (a) a general description of the position offered, including a description of the duties to be undertaken, or the services to be provided, based on material provided by the Minister or former Minister but excluding any information that the Minister or former Minister indicates is confidential; and
 - (b) the Adviser's opinion as to whether or not the position may be accepted, or the services may be provided, either with or without conditions.
- (6) Where the Adviser becomes aware that a Minister or former Minister has accepted a position, or has commenced to provide services, in respect of which the Adviser has provided advice, the Adviser must provide a copy of that advice to the Presiding Officer of the House to which the Minister belongs or to which the former Minister belonged.

Keeping of records

- (7) The Parliamentary Ethics Adviser shall be required to keep records of advice given and the factual information upon which it is based.
- (8) Subject to clause 6, the Parliamentary Ethics Adviser shall be under a duty to maintain the confidentiality of information provided to him in exercising his function and any advice given, but the Parliamentary Ethics Adviser may make advice public if the person who requested the advice gives permission for it to be made public.
- (9) This House shall only call for the production of records of the Parliamentary Ethics Adviser if the person to which the records relate has:
 - (a) in the case of advice given under clause 1(a), sought to rely on the advice of the Parliamentary Ethics Adviser; or
 - (b) given permission for the records to be produced to the House.

Annual meeting with committees

- (10) The Parliamentary Ethics Adviser is to meet annually with the Standing Committee of each House designated for the purposes of Part 7A of the Independent Commission Against Corruption Act.

Report to Parliament

- (11) (a) The Parliamentary Ethics Adviser shall be required to report to the Parliament annually on the number of ethical matters raised with him, the number of members who sought his advice, the amount of time spent in the course of his duties and the number of times advice was given.
- (b) The Parliamentary Ethics Adviser may report to the Parliament from time to time on any problems arising from the determinations of the Parliamentary Remuneration Tribunal that have given rise to requests for ethics advice and proposals to address these problems.
- (12) That a message be sent informing the Legislative Council of the resolution.

Question put and passed.

Appendix 3

Extracts from Schedule to NSW Ministerial Code of Conduct 2014

(The Code is contained in an Appendix to the Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014 made under the Independent Commission Against Corruption Act 1988. The Code is an applicable Code for the purposes of section 9 of the ICAC Act)

Part 2 Standing disclosure of interests

Note. This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

5. Disclosures to Parliament

A Minister must comply with their obligations as a Member of Parliament under section 14A of the Constitution Act 1902 and the Constitution (Disclosures by Members) Regulation 1983 in relation to the disclosure of their pecuniary and other interests to the Parliament.

Part 5 Employment after leaving Ministerial office

23 Offers of employment received while in office

A Minister who, while in office, wishes to consider accepting an offer of post-separation employment must, if it relates to any of their current portfolio responsibilities or any portfolio responsibilities held during the previous 2 years of Ministerial office, first obtain the advice of the Parliamentary Ethics Advisor.

Note. The receipt of an offer of post-separation employment is also a private benefit to which provisions of the NSW Ministerial Code of Conduct might also apply.

24 Offers of employment received after leaving office

(1) A Minister who, within 18 months after ceasing to hold office, wishes to consider accepting an offer of post-separation employment must, if it relates to any of the portfolio responsibilities held during the last 2 years of Ministerial office, first obtain the advice of the Parliamentary Ethics Advisor.

(2) This clause does not apply to any offer of post-separation employment by the State of New South Wales or any agency representing the State.
Note. The Lobbying of Government Officials Act 2011 imposes additional restrictions on the ability of a former Minister to engage in lobbying activities within 18 months after leaving Ministerial office.

25 Advice of the Parliamentary Ethics Advisor

- (1) The Parliamentary Ethics Advisor may advise against the acceptance of an offer of post-separation employment, either generally or unless certain conditions are met.
 - (2) A Minister must not, while in office, accept any offer of post-separation employment if the Parliamentary Ethics Advisor has advised against it.
 - (3) If a Minister accepts an offer of post-separation employment (whether or not against the advice of the Parliamentary Ethics Advisor), any advice obtained from the Parliamentary Ethics Advisor in respect of that offer is to be tabled in the House of Parliament to which the Minister belongs or belonged.
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