



Public Service Commissioner Return

SENSITIVE: NSW CABINET

BN from
Public Service
Commissioner

TRANSPORT DEPARTMENTAL LIAISON OFFICER MATTER AND TRANSITION OFFICE

1. DEPARTMENTAL LIAISON OFFICER (DLO) MATTER

DLO CIRCULAR

- The former Department of Premier and Cabinet issued a Circular containing guidelines applying to the assignment of DLOs to Ministers' offices.
- The Circular states the following regarding a DLO's role:
 - The role of DLOs is to provide the Minister's office with a readily accessible source of knowledge and skills regarding the operations of the agency
 - DLOs are primarily assigned to perform agency contact roles supporting the relationship and communication between the agency and Minister's office
 - DLOs may also be assigned to perform specialist advisory roles where they can remain politically neutral and to give advice regarding agency policy and procedures.
- The Circular makes it clear that DLOs must be politically neutral and impartial, and must avoid party political activities.
- DLOs sign a declaration stating that they agree to abide by their home agency's Code of Conduct, and that they understand they must remain politically neutral and impartial, and must avoid party political activities.

LEGISLATION

- As a government sector employee, a DLO is bound by the Ethical Framework in Part 2 of the *Government Sector Employment Act 2013* and any supplementary policies of their employer.

Document tendered by Mrs. Ward
Received by Arizona Hart
Date: 23/2/2024
Resolved to publish Yes / No

- The Ethical Framework sets out the core values for the government sector and the principles that guide their implementation (s.7)
 - The core values are integrity, trust, service, and accountability
 - Principles that guide their implementation include:
 - Act professionally with honesty, consistency and impartiality
 - Place the public interest over personal interest
 - Provide apolitical and non-partisan advice
- As a government sector employee, a DLO is also required to comply with a new s.8A in the GSE Act (within Part 2A of the Act and which commenced 1 July 2023). This requires that government sector employees must comply with the code of ethics and conduct adopted under that section.

KIEREN ASH

- I first became aware of issues around Mr Ash's appointment and activities as a DLO through media reports.
- On 4 November 2023, I spoke with Transport Secretary, Josh Murray.
- Mr Murray advised that the Minister had referred to him 'for all necessary action', in his employer capacity, emails written by Mr Ash. The emails came to light in the course of responding to a Standing Order 52 and raised questions about compliance with Transport for NSW's (TfNSW) Code of Conduct.

TfNSW investigation

- Mr Murray advised that TfNSW is undertaking a conduct investigation into Mr Ash.
 - The investigation is being undertaken at 'arm's length' from Mr Murray.
 - The Chief Legal Officer is overseeing the investigation.

- The Chief People Officer (CPO) will be the decision maker.
- The CPO will keep me informed of the progress of the investigation (to date, I have received 2 updates from the CPO).

Why the PSC is not investigating

- This is an employee conduct matter, and it is appropriate for the investigation to be undertaken by the employer.
- Under the GSE Act, a Secretary is responsible for the general conduct and management of the functions and activities of their agency in accordance with the government sector core values (s.25(1)).
- I do not have a general power to investigate complaints against an individual employee.
- Nor do I have a general power to investigate or oversee an investigation by an agency into alleged misconduct or breach of the DLO Circular or Code of Conduct. These are matters for the agency head to manage.
- Based on the information available, the matter does not appear to merit the use of my inquiry power under s.83 of the GSE Act, which relates to the administration of management of an agency.
- The PSC has published guidelines for the s.83 inquiry power, which provide that matters concerning a specific agency should be resolved internally where possible and appropriate.
- At this stage, there does not appear to be any reason why this matter cannot be resolved by TfNSW. There is no indication of any serious shortcomings in the administration or management of TfNSW, nor a systemic issue affecting the sector which requires an inquiry.
- If I am asked to undertake an inquiry, I will determine whether the matter merits a further inquiry under the GSE Act based on the information put before me.

- It is not appropriate for me to express an opinion on whether Mr Ash has breached the TfNSW Code of Conduct or DLO Circular. This is a matter for his employer to determine under the GSE Act (s.25(1)).

2. TRANSITION OFFICE

- TfNSW's CPO contacted me on 3 April 2023 to seek my advice on the practical application of the relatively new s.26(4) of the GSE Act (which commenced 1 January 2023).
 - Section 26(4) provides that in exercising their employer functions, a Secretary is not under the direction or control of a Minister.
- The CPO advised that TfNSW was establishing an office to coordinate the various reviews occurring across the Transport portfolio, and that the office was to be headed up by an Executive Director.
- The CPO asked:
 1. whether someone from the Minister's Office could be on the selection panel for the Executive Director
 2. whether, following the interviews, 2 candidates could be put before the Minister to make a choice.
- My advice was that neither would be consistent with s.26(4). The CPO accepted this advice.
- Following that conversation, I raised at a CPO Leadership Group meeting the need to ensure compliance with s.26(4).
 - I specifically mentioned that Minister's offices should not be represented on public service recruitment panels.
 - I noted that departments could seek advice from the PSC if they were unsure how s.26(4) applied to a particular situation.
 - I was keen to ensure consistent application of the new provision across the sector.



- I understand this is the conversation that was referred to in an email sent by the Treasury CPO to her internal colleagues, which was reported on in the Sydney Morning Herald.