

Parliamentary Ethics Adviser

Annual Report

2022 – 2023

The Honourable Ben Franklin MLC
President of the Legislative Council
Parliament House
SYDNEY NSW 2000

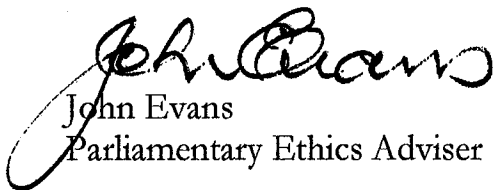
The Honourable Greg Piper MP
Speaker of the Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

I have much pleasure in providing my ninth annual report, as Parliamentary Ethics Adviser, for the year ended 30 June 2023.

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

14 September 2023

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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.

The 2007 Code of Conduct was replaced by a new Code of Conduct in 2020 by resolution of Legislative Assembly on 5 March 2020³ and the Legislative Council on Tuesday 24 March 2020⁴. A copy of the 2020 Code of Conduct is attached as Appendix 1.

On 22 March 2022⁵ the Legislative Council adopted a resolution for the appointment of an Independent Complaints Officer, which included amendments to the Council's Code of Conduct for Members. Details of the amendment are shown at the end of Appendix 1.

The Legislative Assembly also adopted a resolution on 29 March 2022⁶ for the appointment of an Independent Complaints Office which did not include amendments to the Code of Conduct for Members, like the Council.

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.

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

³ Legislative Assembly Votes and Proceedings, 5/3/2020, pp 594-598

⁴ Legislative Council Minutes of Proceedings, 24/3/2020 pp 877-880

⁵ Legislative Council Minutes of Proceedings, 22/3/2022 pp 3039-3045, at pp 3040-3041

⁶ Legislative Assembly Votes and Proceedings 29/6/2022, pp 1633-1688

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.

Advice on post-separation 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.⁷

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.

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

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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.

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.⁸ 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.

NSW 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 NSW Ministerial Code of Conduct, commencing from 20 September 2014. A copy of relevant portions of the Code is attached as Appendix 3.

Seminar for retiring Ministers and Members

On Wednesday 23 November 2022 I attended a panel session for Ministers and Members retiring at the March 2023 General Election and made a presentation on my role as Parliamentary Ethics Adviser.

Seminar for newly elected Members of both Houses

A General Election for the Legislative Assembly and a Periodic election for the Legislative Council were held on Saturday 28 March 2023.

On Wednesday 26 April 2023 I attended induction seminars for the new Members of the Legislative Council and the Legislative Assembly and made a presentation on my role as Parliamentary Ethics Adviser

⁸ Resolution of both Houses, June 2014, para. (6); 2014 Code, clause 25 (3).

Independent Complaints Officer

In March 2022 both Houses adopted a resolution for the appointment of an Independent Complaints Officer.⁹ Subsequent to the appointment of an Independent Complaints Officer in August 2022, I had meetings with the Officer relating to the role and provided comment on a draft protocol. An Independent Complaints Officer Protocols was tabled in both Houses in November 2022.

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.

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.

I attended a meeting with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics on Monday 7 November 2022, and the Legislative Council Privileges Committee on Monday 14 November 2022.

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:

Number of ethical matters raised:

| | |
|------------------------|----|
| Legislative Council - | 15 |
| Legislative Assembly - | 14 |

⁹ Legislative Council Minutes of Proceedings, 22/3/2022 pp 3039-3045; Legislative Assembly Votes and Proceedings 29/3/.2022, pp 1633-1688

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Number of Members/former Ministers who sought advice:

Legislative Council -

Members - 7

Former Ministers - 1

Legislative Assembly -

Members - 8

Former Ministers - 8

Amount of time spent in the course of duties: 194 hours

Number of times advice given:

Legislative Council - 13

Legislative Assembly - 23

Number of post-separation employment advice to former Ministers submitted to the President for tabling: Nil

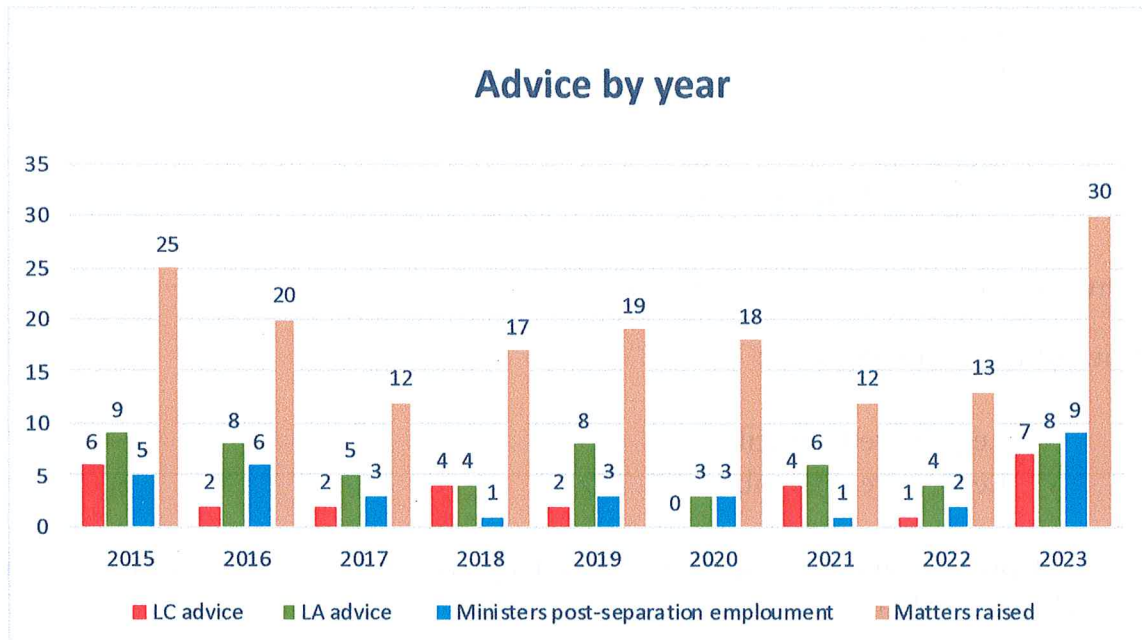
Number of post-separation employment advice to former Ministers submitted to the Speaker for tabling: 2

Advice was provided concerning the following subject matters:

- Code of Conduct for Members
- Conflicts of interest
- Disclosure of pecuniary interests
- Disqualification of a member
- Election funding
- Filling of casual vacancy
- Fundraising for election
- Ministers Code of Conduct
- Post-separation employment
- Office of profit
- Role of a Member
- Secondary employment
- Use of PRT additional entitlements

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The charts below show a summary of advice provided since my appointment as Parliamentary Ethics Adviser.



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.

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I wish place on record my sincere thanks to Mr David Blunt, Clerk of the Parliaments and Clerk of the Legislative Council, Ms Helen Minnican, Clerk of the Legislative Assembly and Mr Mark Webb, Executive Manager, Department of Parliamentary Services, and their respective staff, for their willing assistance in providing me with necessary information and facilities when requested.

Appendix 1

2020 Resolution of both Houses adopting a Code of Conduct for Members

(Legislative Assembly Votes and Proceedings, 5 March 2020, pp 594-598; Legislative Council Minutes of Proceedings, 24 March 2020, pp 877-880)

Addition made to Legislative Council Code of Conduct in resolution for appointment of an Independent Complaints Officer – Legislative Council Minutes of Proceedings, 22 March 2022, pp 3039-3045, at pp 3040-3041, shown at the end of document)

Members' Code of Conduct

That this House adopt, for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, the following Code of Conduct—

PREAMBLE

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 and conventions of Parliament, and using their influence to advance the common good of the people of New South Wales.

THE CODE

1. Purpose of the Code

The purpose of this Code of Conduct is to assist all Members in the discharge of their parliamentary duties and obligations to the House, their electorates and the people of NSW.

The Code applies to Members in all aspects of their public life.

In complying with this Code, Members shall base their conduct on a consideration of the public interest, avoiding conflict between personal interest and their duties as a Member of Parliament. It does not apply to Members in their purely private and personal lives.

Members will not act dishonestly for their own personal gain, or that of another person.

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

PROPER EXERCISE OF POWER

2. Improper influence

- (a) No member shall act as a paid advocate in any proceeding of the House or its committees.
- (b) A Member must not knowingly and 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 as a consequence:
 - (i) The Member;
 - (ii) A member of the Member's family;
 - (iii) A business associate of the Member; or
 - (iv) Any other person or entity from whom the Member expects to receive a financial benefit.
- (c) A Member must not knowingly and improperly use his or her influence as a Member to seek to affect a decision by a public official including a Minister, public sector employee, statutory officer or officer of a public body, to further, directly or indirectly, the private interests of the Member, a member of the Member's family, or a business associate of the Member.

3. Use of public resources

The use of public resources should not knowingly confer any undue private benefit on the Member or, on any other person, or entity.

Members must 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.

Commentary

There is a range of information available to Members to assist them in determining the accurate and appropriate use of resources including:

- *The Legislative Assembly Members' Guide;*
- *The Legislative Council Members' Guide;*

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- *The Department of Parliamentary Services Members' Entitlements Handbook; and*
- *The Parliamentary Remuneration Tribunal's Annual Report and Determination of Additional Entitlements for Members of the Parliament of New South Wales.*

In addition it is open to any Member to seek advice on these matters from the Clerks of the House, Senior Parliamentary Officers, or the Parliamentary Ethics Adviser.

4. Use of confidential information

Information which Members receive in confidence in the course of their parliamentary duties should be used only in connection with those duties. It must never be knowingly and improperly used for the private benefit of themselves or any other person or persons.

5. Limitation on breach of Code

This code is not breached by reason of a benefit or interest that could be or was advanced or received by the persons set out in 2(b)(i)-(iv) by reason of them being a member of the public or a member of a broad class.

OPENESS AND ACCOUNTABILITY

6. Disclosure of interests

Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members.

Commentary

The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that Members lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts.

The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.

Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:

- *Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return;*
- *The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure regime in plain language, with examples where possible; and*

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- *It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

In conjunction with the Regulation and this code, the following Standing Orders apply in relation to personal or pecuniary interests:

- *Legislative Assembly Standing Orders 176-7 and Legislative Council Standing Order 113(2) on voting in divisions; and*
- *Legislative Assembly Standing Order 276 and Legislative Council Standing Order 210(10) on participating in committee inquiries.*

7. Conflicts of interest

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.

Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or its committees, and in any communications with Ministers, members, public officials or public office holders.

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.

Commentary

Members should be aware of the important distinction between disclosing an interest and having a conflict of interest.

There are certain pecuniary interests that must be disclosed on the Register of Disclosures although these may never come into conflict with a Members' duties. There are also interests that are not required to be disclosed on the Register of Disclosures but which could give rise to a conflict of interest if they are not managed appropriately.

It is open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.

8. Gifts

- (a) Members must take reasonable steps to disclose 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 knowingly accept gifts that could reasonably be expected to give rise to a conflict of interest or could reasonably be perceived as an attempt to improperly influence the Member in the exercise of his or her duties.
- (c) Nothing in this Code precludes the giving or accepting of political donations in accordance with the Electoral Funding Act 2018.

Commentary

The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that Members lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts.

The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.

Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:

- *Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return;*
- *The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure regime in plain language, with examples where possible; and*
- *It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

UPHOLDING THE CODE

9. Upholding the Code

Members have a duty to cooperate fully with any processes established under the authority of the House concerning compliance with this Code.

Breaches of this Code may result in actions being taken by the House in relation to the Member. A substantial breach of the Code may constitute corrupt conduct for the purposes of the Independent Commission Against Corruption Act 1988.

This resolution has continuing effect unless and until amended or rescinded by resolution of the House.

Additional paragraphs to Legislative Council Code of Conduct¹⁰

1. The insertion into the second paragraph of clause 9 the following words:

“A minor breach of this Code may be the subject of an investigation by the Independent Complaints Officer.”

2. The addition of the following paragraph:

"Clause 10

A Member must treat their staff and each other and all those working for Parliament in the course of their parliamentary duties and activities with dignity, courtesy and respect, and free from any behaviour that amounts to bullying, harassment or sexual harassment.

Commentary

Section 22(b) of the Anti-Discrimination Act 1977 makes it unlawful for a member to sexually harass a workplace participant or another member in the workplace, or for a workplace participant to sexually harass a member."

¹⁰ Legislative Council Minutes of Proceedings, 22/3/2022 pp 3039-3045, at pp 3040-3041. This amendment to the Council's Code of Conduct followed a recommendation of the Legislative Council Privileges Committee in its Report 85 "Proposal for a Compliance Officer for the NSW Parliament No. 2", dated 6 November 2021. See recommendation 14 of report proposing revised resolution to establish an Independent Complaints Officer, Chapter 3 p. 16

Appendix 2

2014 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

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(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

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(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.

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(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

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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.
