

COMMENTS BY THE NEW SOUTH WALES PARLIAMENTARY ETHICS ADVISER, EDWARD IAN DICKSON B.Bus., FOR THE VICTORIAN PARLIAMENT'S LAW REFORM COMMITTEE ON THE REVIEW OF THE MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) ACT 1978.

1. Way the Office has operated to date

2. Issues that Victoria should consider should it wish to adopt similar arrangements.

Background:

Following the adoption by both Houses of Parliament of a Code of Conduct for Members in mid 1998, the Houses agreed in September of that year to the appointment of an independent Parliamentary Ethics Adviser.

The first appointment was made early in 1999 of Mr. Ken Robson, a former Auditor General. Mr. Robson held the position briefly resigning due to ill health.

I was appointed in December 1999 following my retirement as the Electoral Commissioner for New South Wales.

The position is part-time.

Appointment is made by the President and Speaker under an Agreement with the joint clerks of the Houses.

The advice given by the Ethics Adviser is not legal advice and gives an opinion rather than a ruling. It is up to Members how and whether or not they adopt the advice given. The Adviser may only base the advice on the determinations of the Parliamentary Remuneration Tribunal, the provisions of the Code of Conduct, guidelines developed by the Houses and relevant recommendations issued by the Independent Commission Against Corruption and the Auditor General.

Confidentiality of the advice is maintained and can only be revealed by the Member or under certain conditions by the President or Speaker.

Agreement:

The Agreement between the Clerks and the Ethics Adviser was originally prepared with the assistance of the Crown Solicitor. (A copy of the Agreement might be obtained from the Clerks). Amendments made subsequently have been performed by the Clerks.

Briefly the Agreement contains the following particular Sections:

- Definitions
- Engagement
- Ethics Adviser Obligations
- Statutory Requirements
- Security
- Clerk's Obligations
- Supervision of Contract
- Fees
- Insurance (Professional Indemnity/Public Liability)
- Attendances & Reports to Parliament
- Termination.

Way the Office has operated to Date:

1. As a part-time position the duties can be carried out from home by telephone, letter, fax or email communication. In some instances I prefer to suggest a meeting with the Member at Parliament House either in his/her Room or in facilities provided by the Clerk. Under the Agreement the Clerks must provide secretarial assistance. I prefer to do my own.
2. If the inquiry by the Member is by phone or face-to-face no written advice is given but I record the inquiry and the advice for record purposes. Written inquiries by the Member are responded to in writing.

3. The advice generally required by Members are associated with the following matters:

**Use of Parliamentary Resources for purposes other than Parliamentary Duties eg Staff, equipment, Electorate Office*

** Use of Allowances - eg Mail outs for electioneering; Travel - Parliamentary visits including private holidays; Travel benefits - eg Frequent flyer points; Living away from home or normal place of residence.*

**Misuse of Parliamentary position to gain benefit or cooperation in personal or family matters.*

**Pecuniary Interest Register/ Conflict of Interest- Failure to fully disclose secondary work activities (third parties) Failure to fully disclose properties and other Assets. Bribery - In Parliament knowingly or improperly promote, vote, raise questions in return for personal benefit or assisting family or business interests.*

**Gifts & Benefits - Acceptance of invitations including travel and accommodation packages to Business Conferences; Attendance at Corporate Functions eg Social, Sporting; Uninvited gifts from Constituents*

**Constituents : Support letters; . Resolving disputes.*

The number of inquiries and advice given very annually but average approximately fifteen from Members of both Houses.

4. I have operated on the basis that as the requests are confidential I am not obliged to take any action where the Code of Conduct or entitlements have been breached . The advice could contain steps to correct the issues without revealing the identity of the Member. If the issue becomes a common source of inquiry recommendations are made to the Clerks to issue guidelines as a reminder to Members or to explain the proper interpretation of the Code or entitlements.

This arrangement has been conducted on the understanding of the Office of the Independent Commission Against Corruption.

5. I do not see my role to impose personal ethical values on Members. Members may have different views on ethical standards of behaviour based on various experiences and cultural differences. Eg returning a favour, giving preferences to a relative or friend. *The aim is to introduce the recognition that Members primary obligations are to their constituents and to the people of NSW and to understand public expectations of their performance.*

6. I meet with the Standing Committees on Privileges/Ethics of both Houses as required but at least twice a year.

7. The Ethics Adviser meets with the President and Speaker at least once a year.

8. An Annual Report is furnished to both Houses through the Speaker and President setting out only statistical data (as provided for in the Agreement) on the number of inquiries for advice and the number of times advice has been given. No information is provided to identify the Member. The Report may also contain details of documents perused during the period.

9. Records of all inquiries are held by me until requested by the Clerks. I prefer to retain at least the current three year period. The records delivered to the Clerks are sighted on being placed in Security.

10. In 2007 the Government through the Parliament introduced an amendment to the role of the Parliamentary Ethics Adviser to include providing advice on Post Separation Employment of Ministers. The responsibility of Ministers and the role of the Ethics Adviser is also contained in the Ministerial Code of Conduct. The provisions for Post Separation Employment are loosely based on the UK Advisory Committee on Business Appointments for Ministers intending to or retiring from Parliament.

11. By arrangement regular meetings are held with the Clerks to discuss Members entitlements, particularly annual determinations by the Parliamentary Remuneration Tribunal or general issues coming before the Ethics Adviser.

The meetings also discuss Reports by the ICAC or comments made by the Auditor General.
Confidential.

Issues that Victoria should consider should it wish to adopt similar arrangements.

*The education of Members on their responsibilities to their constituents and the public and public expectations of their role is essential. The education must be ongoing and not only induction programmes for new Members. It is desirable for the education programme to include talks by officers from the Independent Commission Against Corruption, the Auditor General and the Ethics Adviser.

*The initial problem is to encourage Members to recognise changes in public attitudes to the Parliament. Comments from Members such as 'this is the way we have always done it' and 'I did not realise that entitlements had been altered' were common in the early years.

*The Agreement or Contract with the Parliamentary Ethics Adviser and the Clerks should be prepared by the Crown Solicitor and any major amendments and additions be brought to the Crown Solicitor's attention for review of such Agreement or Contract - this is to avoid any misunderstandings or interpretations.

*Confidentiality of the Records is essential and while the Ethics Adviser may wish to keep general notations of advising for future reference, the identity of the Member should be guarded. If the records are classified as documents to be held for a significant period as with other Government records, it is suggested that special exemption be obtained for their destruction after a period of time. Eg perhaps records that are more than three years old should be destroyed. Such considerations might also relate to a change of Government.

*There will be occasions when the Ethics Adviser will receive media attention with regard to matters which will relate to the Members either individually or as a whole. In the current media climate the inquiries cannot be ignored and the Ethics Adviser should be given the discretion in accordance with his independence to respond to such inquiries as seen fit having regard to the responsibilities of the Office.

*The remuneration should reflect the quality of the work being prepared by the Parliamentary Ethics Adviser having regard also to the media and particularly where issues dealing with Members become matters of public interest.

Under my Agreement I pay the Public Liability Insurance in the joint names of the Ethics Adviser and the Clerks. The Ethics Adviser is covered by the Treasury Managed Fund which insures the Ethics Adviser in the performance of the Services.

SUMMARY

I believe that the introduction of the position of Parliamentary Ethics Adviser in NSW has worked satisfactorily and provided valuable assistance to Members to understand their obligations under the Code of Conduct.

While Members may find themselves in difficult circumstances and seek appropriate advice, others simply seek assurances that they know what is the proper thing to do to do but would like someone to turn to for confirmation and to record such action.



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14th May, 2009