

# CORRECTED VERSION

## LAW REFORM COMMITTEE

### Review of the Members of Parliament (Register of Interests) Act 1978

Sydney — 17 August 2009

#### Members

|                 |                 |
|-----------------|-----------------|
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| Mr R. Clark     | Mr J. Scheffer  |
| Mr L. Donnellan | Mrs H. Victoria |
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#### Witnesses

Mr Ian Dickson, New South Wales Parliamentary Ethics Adviser.

## CHAIRMAN'S WELCOME

**Mr DICKSON**—Briefly, as I set out in my report, the position of Parliamentary Ethics Adviser in New South Wales was created some time back in 1998. I was then the Electoral Commissioner for New South Wales and when I retired at the end of 1999 the Government of the day offered me the role. I didn't know what the extent would be, how many inquiries I might get, if any, but I was interested because of a career in the public service and of course a career dealing with politicians for 15 years as the Electoral Commissioner, and it was an interesting task to get into.

Briefly, the number of inquiries hasn't dropped off as one might have expected but basically due, I suppose, to new members coming in after each election, or whatever it might be, by-elections. They have become not so much sophisticated but probably still along the same lines of— This is what I think we should do, is that correct, or look, I think I know the answer but I would like your guidance, so I think they have seen it as an independent person to talk to, other than perhaps the clerks, who could advise them without any embarrassment.

The position is remunerated, of course. I pay public liability in case somebody trips over my bag or whatever it might be, but I am covered by the Treasury insurance fund for any legal action that might proceed.

To retain confidentiality for my purposes I do my own work. I don't use the staff of Parliament House. I do have my own computer. One of my sins as a public servant years ago was to know how to type, so I have retained that. My shorthand has dropped off a little bit but I think that is a non-existent occupation these days, so I can do most of the things from home. I don't need to come into the Parliament as frequently as might be necessary but I do prefer to, if I want to meet the member face to face for some reason, and that's not much of a challenge.

I think the position has served a purpose and is continuing to serve a purpose. There may be other ways of doing the exercise, giving the appointment to somebody perhaps on a board at the moment in another government situation who is also retired. That is perhaps a way of keeping down the costs but it hasn't been an issue to date.

The only major change to the position which has occurred a couple of years or so ago was when the Government introduced post-separation employment and that added some dimension, perhaps not as much as what I might have expected at the time, but it has added a dimension to the functions. That's covered by the ministerial code of conduct.

I do not have to examine the other areas of the ministerial code of conduct. They are matters for the Premier's Department, but it is only this specific area within the code dealing with post-separation employment.

The questions that have been raised by the members are generally concentrated in the areas of travel, perhaps dealing with constituents, similar areas relating to the use of resources, staff, equipment, and then some of the more involved areas of conflicts of interest, gifts, benefits, how to handle them and generally we have been able to resolve them.

I don't operate as a watch dog for the Independent Commission Against Corruption. If I see that there is a problem, or a member has come to me with a problem, we have been able to resolve it in certain ways, so I don't see myself as a whistle blower or anything like that. That has been accepted by ICAC, otherwise the members would not come to me. I think that's a brief summary.

**The CHAIR**—It has been put to us as a Committee that the Victorian Parliament should appoint an Ethics Adviser so that members can have a similar opportunity to their New South Wales colleagues. In terms of what you have just said, do you merely say to people when they come to you, point out to them that there is a problem there and make some general remarks about the nature of the issue, or do you have a process that you work through the actual ethical considerations with them, to assist them in a more hands-on way to come to their own better understanding and resolution of the problem?

**Mr DICKSON**—Ethical issues are still difficult. I still operate on the basis that I can imagine that some members have what we call situation ethics, as against moral ethics. In other words, a member may say I know what I have got to do otherwise I will get into trouble. He or she is not looking at it on the basis of

whether this is a public issue, whether there are public expectations of a higher level of consideration, and I don't think you are going to wipe that out overnight.

The moral ethics side of it could be judged by or could have influences of ethnic backgrounds, or whatever it might be, situations like that where family comes first, or something. They have always brought those issues along with them but generally what we try to do when we are looking at an issue is to run through a process whereby we say that this is what the rules say, this is how it is interpreted.

There might be some grey areas. We go through those. We look at, as I say, what public expectations might be on a particular matter and what might happen down the track. In other words, there might be a fairly innocent issue of a gift which could end up down the track as being a very serious matter.

**The CHAIR**—As I understand the code, and correct me if I'm wrong, it has a code or guidelines but it doesn't have a value statement or statement of principles. Is that correct?

**Mr DICKSON**—Yes.

**The CHAIR**—Does that pose any problems for you?

**Mr DICKSON**—No, not really. I could work my way around those particular problems if they occurred.

**The CHAIR**—Would it be useful if the code had them?

**Mr DICKSON**—It would be. It would if it had statements. I think the ICAC would welcome a code which had those full statements, but Parliament has taken a view that it is not necessary.

**Mrs KRONBERG**—Have you had approaches from ICAC before, a kind of an understanding was worked through? Is that an evolutionary process?

**Mr DICKSON**—No. Well, it is perhaps indirectly. One of the first things I did when taking over the position was, because I had a relationship with the Chairman of ICAC at that particular time, I did discuss with her as to what might be the processes that we would follow. We adopted a fairly informal system where I could talk to somebody within their office over matters, how ICAC perhaps might see it, how they would evaluate it, and I would take that information from them.

I don't have continual contact with ICAC, but I can go to them if I see an issue which might be developing and whether they have issued guidelines in another area which might be helpful too.

**Mrs KRONBERG**—In terms of the management of records, I was interested to hear and I have to congratulate you on how you do the records management and recording through your own resources. That actually gives me a measure of comfort in terms of the management of records. You have made a suggestion to us that records be destroyed after a period of time, certainly if the role was handed from one to another. Do you have a cycle for the management of records and custodianship?

**Mr DICKSON**—It is probably one of the moot points we have. At the moment, my agreement requires me to deliver the records to the clerks of the House within a certain period, but I do that on the basis that I see where the records are going. They are going into a locked safe. Of course the management of the safe is with the clerks.

I have pushed for destruction of records but because it comes under the Government repository provisions, or something like that, they must be retained for so long and then they can be destroyed, but it is an issue. I think members would be comfortable, as you expressed, that a process where these records are not available or could not be assessed, perhaps inadvertently or whatever it might be, by others, and I would favour a destruction process for the records for the last three years or so.

**Mrs KRONBERG**—Do you see that you would have more customers, Mr Dickson, if what actually happened to the records--

**Mr DICKSON**—No, I do not think that has been an issue with members. I think they are satisfied

with the fact that I have just made a note of their problem, if it is not a written reply that I have got on record, if they want to use it to justify whatever happened, I can produce the result of our discussion and the decision or the advice that I provided to them. They are conscious that that is available.

**Mrs KRONBERG**—In terms of advice, you would not provide anecdotal advice and say there has been such a colleague who would have handled it this way, you would be just straight down the line with the information?

**Mr DICKSON**—Yes.

**Mrs KRONBERG**—So nobody coming to you can make some comparative process?

**Mr DICKSON**—No, they cannot. I might be conscious that if I gave a member of one of the major parties perhaps certain advice with regard to getting some benefits and travel, perhaps they may have gone back and said, 'Well, this is what the Parliamentary Ethics Adviser will advise if you go to him', and that may have been taken up, but no, I think the issue has been quite clear.

**Mrs KRONBERG**—So there are plenty of Chinese walls in terms of any one parcel of discourse?

**Mr DICKSON**—Yes, that is true.

**Mr BROOKS**—Mr Dickson, your submission talks in very strong terms about the need for ongoing educational work with members in terms of parliamentary standards and values. Who do you see as best being placed to ensure that happens and to facilitate that, a committee like the Privileges Committee, a position like yourself or maybe an independent body like ICAC in New South Wales? How do you see that working?

**Mr DICKSON**—It is controlled, of course, at the moment as you are aware by the clerks of the Parliament. They provide the education. On occasions they have called representatives from ICAC and the Auditor-General in to discuss. This has not been as frequent in more recent years. I think that is probably one of the necessary provisions that should be made. I talk to the clerks and provide them with general aspects of members' concerns as to what might be going on and suggest that these could be included in the education programs. I would be quite willing to attend the education programs if they so wished, but it is not part of my agreement, so I do not do that.

I would think that members would not wish the education process to be transferred outside. I think that might be a burden. I think they are quite happy. Getting them to attend is another issue which I am sure the clerks are faced with, their actual attendance at these education programs. Again, historically members say this is how we have done it, why should we change it. So they are processes that we have to continually develop with them to indicate to them that there has been a change in public expectations, ethical issues are now widespread and you should be aware that these are the problems that might arise.

**Mrs VICTORIA**—You say in your submission, if I can just quote from it:

There will be occasions when the ethics adviser will receive media attention with regard to matters which will relate to 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 seems fit, having regard to the responsibilities of the office.

Do you get media inquiries, and, if so, about what and what do you do with them?

**Mr DICKSON**—No. I got very few media inquiries when the position was first established and I took it up. I think there were a couple of reporters who wanted to know how the operation would go along. I think one reporter ended up by saying it is a bit like the members going confession with me not giving penance. I suppose that is basically what it is all about to some extent.

I did think that there might be more media inquiries on post separation employment, in other words Ministers leaving Parliament, taking up positions with businesses or firms, whatever it might be. I thought that might be an attraction for the media. It has not developed that way at this stage, no.

I am concerned to some extent that if I do get media inquiries my agreement says that I must go to the clerks first and seek permission to answer it. Realistically, in these days if a reporter rings up, firstly he rings the House and says, 'Who is the Parliamentary Ethics Adviser? Can I have his phone number?' So they are going to ring me straight away. The media would not accept me simply saying, 'Look, I have got to get approval from the clerks to talk to you'. So I have a procedure, which is accepted by the clerks, to say what is the issue, what is the problem, and generally, again, it is something like how is the position being developed. In other words, it is a circular matter, not a particular issue involving a member, which I would not discuss with them anyway to maintain the privacy of it.

That issue is just a matter of discretion to be able to go directly to the media. If they think you are hiding something, they are going to be a like a dog with a bone, aren't they, they are not going to leave you alone. So I do not pretend to hide anything from them. I tell them the overall issue and the matters which are private are private.

**Mr FOLEY**—If I could extend the confessional analogy, as a long lapsed Catholic myself, unlike the confessional you do not have the authority to issue an edict one way or the other. How important in your dealings with members over a number of years now have you found their concerns when it comes to the issue of legal advice? Would it assist if there was some form, either through yourself or a different body, in a New South Wales context, but something that would allow the MPs to get formal legal advice as to the same level of confidentiality that you offer on the broader ethical issues, and have you found that an issue at all?

**Mr DICKSON**—I can appreciate that some members would be more comfortable with legal advice in certain circumstances. My concern will be why do they want the legal advice in the first place as against ethics advice.

**Mr FOLEY**—Does one lead to the other?

**Mr DICKSON**—It could, but the legal advice is only going to help you to the extent of— Is the person giving the legal advice getting all the information to start with? The same as in my position. Am I dragging out all the issues that might be involved in this particular case? The legal advice might not even be concerned about that. It might be legal advice, advice of convenience. I am not too sure that that is going to help the member in the long run. Down the track, ICAC might reject the legal advice or might have a different point of view. Who is going to give the legal advice? Is it going to be somebody from the Crown Solicitor's Office? Is it going to be legal advice from some other legal avenue of a government department? Who is the legal advice going to be presented by?

**Mr FOLEY**—But it has emerged as an issue?

**Mr DICKSON**—It has emerged. As I say, I can appreciate that some members would be more comfortable with legal advice, particularly on matters relating to declarations of their pecuniary interest or something like that. We have had problems with forms, as I am sure everybody has had. Are they too complex? Are they too involved? What should I put in them? These are issues which the clerks have gradually tried to uncover over a period of time. We have introduced a new set of forms which seem to me to be pretty straightforward. Of course, my advice sometimes is— If in doubt declare it. What is going to be the issue if you do?

**The CHAIR**—Could I just come back to a point that Heidi Victoria raised when she talked about the media and you talked about your relationship with the clerks. My understanding is that your job relates to an agreement with the clerks rather than being enshrined in legislation or in the Standing Orders?

**Mr DICKSON**—Yes.

**The CHAIR**—Do you think it would be better if your duties and the structure around your position was enshrined in legislation or in the parliamentary Standing Orders?

**Mr DICKSON**—Legislation in my experience can be too hard to amend. There could be delays before you get around to amending the process. I see the process now of resolution by the Houses, while that might be a little bit of a problem if you want to make amendments, is working satisfactorily. I am quite happy, with my background, to accept the agreement on the basis of the resolution of the Houses. As I say,

there has only been one major change. You have still got the problems of interpretation of a resolution. You still have those issues, but generally can work around it. To answer your question, no, I would generally not favour the strict inflexibility of legislation.

**Mrs KRONBERG**—In terms of people who come to see you, do they come back repeatedly when other issues come up, so that you do truly become their father confessor running parallel through their parliamentary life?

**Mr DICKSON**—Funny you should say. They do. Some adopt the process of, 'Look, I've got a few doubts. I would like to run this by you.' They are the repetitions. Certain members do like to justify their stance, whatever it might be. They might be concerned about certain matters. They want someone independent to talk to about it, rather than perhaps be embarrassed by going to the clerks. So they are quite happy to continue to come back to me to deal with it.

**Mrs KRONBERG**—Does cultural diversity have anything to do with the nature and the level of inquiry?

**Mr DICKSON**—Yes.

**Mrs KRONBERG**—With different mores prevailing upon people?

**Mr DICKSON**—Yes, that is quite true, and you have got to respect that I think. Some of them with a certain background have come with an issue, whether it might be, 'My relatives come first' or 'my family comes first before constituents'. It is difficult to show to them that 'You are wrong or your duties now as a parliamentarian can turn that around slightly'.

**Mrs KRONBERG**—Hence comes your recommendation about the importance of the educative process and that it be ongoing?

**Mr DICKSON**—Yes.

**Mrs KRONBERG**—So it is more or less percolating through, people are imbued with this rather than a sense of compulsion?

**Mr DICKSON**—Yes, I would see that. There are issues, as you say, of different people coming in, moving on, whatever it might be, those sorts of aspects, where a continual education of those people is necessary.

**Mr BROOKS**—I missed the last question because I was busy looking for the wording in the relevant Act. If this is a duplication of the question, I apologise.

The clerk in the previous mixed group mentioned the concern around the subjective wording of the current Act in relation to codes members have to abide by in relation to the ICAC Act 1998 where it defines corrupt conduct as 'conduct by a pinister of the Crown or a pember of a house of Parliament which is a substantial breach'. The point she was making was around the definition of 'substantial' and the ability for members to have a clear understanding of what is black and white. She was I thinking alluded to what she sees as two different codes, one which was black and white and one which was more of an aspirational, values based code.

I wanted to get your view on the record in terms of how you think that, at the very best unclear, definition in the Act works in practice?

**Mr DICKSON**—It operates. I would not go as far as ICAC has stipulated in some of its provisions, its extension and the commitment on members, on which they might make recommendations in their hearings or whatever it might be.

Some of the decisions of ICAC have changed my view as to things that I might have refused members. In other words, ICAC have taken a slightly different stance on certain matters and that changes my perspective. Over the period of time the decisions that I make or the advice I might give has been tempered down a little bit. I'm not too sure to what extent the members were talking about or the clerk was talking about.

**Mr BROOKS**—I suppose one example might be an area where a member might think that part of a relevant code was, for example, declaration. There might be a view that maybe in the eyes of the wider community, certainly in the eyes of ICAC, it isn't as serious as the other issues around bribery and so forth, and the level of attention and detail paid to that area of their obligations to the code may not be fulfilled as strongly as others and therefore, without a clear definition in the Act, members may not know exactly how much resources and time to spend on complying with all aspects of the code.

**Mr DICKSON**—Look again, if it is in the ICAC Act, and that's what you are talking about?

**Mr BROOKS**—Yes.

**Mr DICKSON**—If it is in the ICAC Act - look, there may be some problems which the members might be concerned about, as to the extent of what they might go to. This might be in relation to a smaller aspect of the code, parliamentary duties, which is all open to interpretation, whatever that might be. I have never faced a serious problem with those particular issues. Generally my concerns have been that there are little matters that might be occurring that might develop down the track, things like gifts and issues with regards to those matters.

The member might be handling any number of constituents who will, as you perhaps can appreciate, come in with a gift or leave a gift before they go. The member is in a position, do they accept the gift or return it straight away? In most of the cases the gifts can be recorded in their interests, or in some cases the member picks up the gift, goes out with the constituent, and leaves it with the secretary and gives an indication of how it can be handled.

Just to give you an example of one of those, a member was accepting gifts, or a constituent was leaving a number of gifts with the particular member every time that he or she visited, leaving a number of gifts. This person was running a fruit shop or something, whatever it was. It got to the stage that the member went down and bought a few groceries, something or other, was going through the counter and the constituent waved her through. She was a bit taken aback by the issue and she just left. She got home and thought, what have I done? I haven't paid for these groceries, or whatever it may have been. Of course she gets in touch with me then and tells me what's going on.

We started off by saying how can I resolve it. The amount of groceries was given as a donation to a charity, or something or other, and I think that's what we did. We wrote to the person and said look, you know, in this country things aren't done this way and I would ask you to refrain from continually coming in. I'm quite happy to assist you as a constituent but you don't need to leave any gifts. That could have extended down the track.

You don't know what the constituent is saying to other people and it could have developed into a major concern down the track. I think the member did the right thing. In the first place she probably should not have walked out of the shop. She probably could have indicated to pay for it straight away. You can understand somebody being taken aback, they don't wish to raise a scene inside the shop and they walk out.

I'm not completely sure of the issue. I think most of these matters can be handled in some way.

**The CHAIR**—Could I come back to matters that have been raised by other members and by you? It is the issue of how we lift parliamentary standards and that partly relates to the education of members, and you said yourself, and other witnesses have said this, and all of us know this from our own experience, how difficult it is to get members of parliament to commit to educative processes and training processes, or contributing their views to some kind of parliamentary development, which I think would be fair to say is reflective of the low priority that those kinds of considerations have to members of parliament, maybe for very good reasons, because they are very busy and have a range of commitments that they have to satisfy, and that's a fact, but on the other side of that it has been put to us that we have a very important responsibility as Members of Parliament to raise the prestige and effectiveness of the Parliament itself as an institution of which we are the custodians at this particular time, so it is not just us, it is what we bequeath, so therefore it makes it very important to shake ourselves and say we can't be too busy, this is a priority, we have to attend to it. How do you recommend we might go about that?

**Mr DICKSON**—You have obviously got an Auditor-General and Ombudsman and ICAC.

**Mrs KRONBERG**—We don't have ICAC, not yet. Should we have an ICAC?

**Mr DICKSON**—An Integrity Commission or something like that. I think currently Tasmania is seeking to introduce one.

**The CHAIR**—All of those things are in the mix and that is why we are looking at it.

**Mr DICKSON**—I think it needs to be somebody with clout. I don't have any clout. It is purely advice. Even with post-separation employment it can only end up being name and shame by somebody down the track, whether it be the media or whoever it might be. There should in the first instance be somebody with the clout that oversees the process. Then you come down and you have different levels of where it can be operated from there.

I see my position as something which supplements what the members might be able to do. It is extremely difficult, as you say, with the education process. Whether that can be controlled by the clerks, by the House, by saying you know, you must attend these particular matters. You could do it by way of examples, test cases, issuing them with test cases, provided you keep the identity confidential. I do not know whether that covers your whole question.

**The CHAIR**—That is fair enough.

**Mr DICKSON**—It is an issue which will always be a major concern.

**The CHAIR**—Workload and resources— You did talk about the work demands earlier on but your understanding or from your submission you said you get about 15 requests a year

**Mr DICKSON**—Yes, roughly. I give a report to Parliament. The report is purely statistical. In other words, the number of inquiries made, the number of advices given, the number of subjects that might be raised, purely statistical, so it is not an involved report.

**The CHAIR**—How much time each week would be allocated to these tasks by your office, would you say roughly?

**MR DICKSON**—Look, weekly you could not evaluate it. It ranges from something like over the year from 80 hours a year to 120, perhaps a little bit more in some cases. It probably averages 100 hours a year. Some months might go by and I might not get a single inquiry and other times I might get four or five in the same week.

**The CHAIR**—When you spoke earlier on in the piece about you doing much of your own work, do you think that it would be better or worse for some of your functions to be undertaken by a section of the Parliament itself, or do you think it should be kept discreet in the way that you are doing it?

**Mr DICKSON**—I would personally prefer it to be maintained discreetly. It is not that onerous that it can't be done. As I said, most of the work can be done at home by fax, by phone, by e-mail these days. That can be carried out and that does have an certain preservation and protection about it.

**Mrs KRONBERG**—In terms of your advice, do you become involved in a research endeavour yourself to either provide good examples with your advice, underpin your advice, or even strengthen your own advice? Is there a research function out of what your normal interface with those people would be?

**Mr DICKSON**—Yes. Look, a Parliamentary Remuneration Tribunal comes down annually with determinations. It is essential that I see that and examine it with the clerk. In some instances, very rarely, I might go to the chairman of the Parliamentary Remuneration Tribunal and ask perhaps for an explanation, or an extension, or grey areas, or what concerns I may have.

I obviously have to be aware of what the two houses, the Privileges Committee of both houses are discussing and examining. Again, I appear before them and I can perhaps float with them issues which seem to be repetitive amongst members, and they are quite acceptable.

I must keep abreast, of course, of what's going on in other places. It is probably one of the reasons I would



like you to appoint an Ethics Adviser, at least I would have someone to talk to.

**Mrs KRONBERG**—That was going to be my next question.

**Mr DICKSON**—I'm used to having a network. I would be aware of the UK provisions, although they are not going through happy times at the moment over there. Post-separation employment is loosely based on their provisions, so I keep abreast of what's going on over there. Canada has a similar type system, although they have gone another way at the moment from what I can understand. It is a bit lonely at the moment. I would appreciate someone to talk to.

**Witness withdrew.**