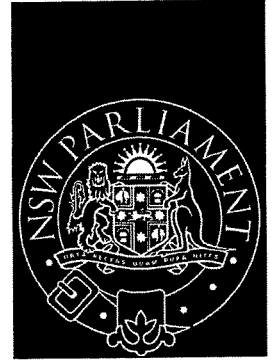


LEGISLATIVE ASSEMBLY



Standing Committee on Parliamentary Privilege and Ethics

SECOND REPORT ON PROPOSED AMENDMENTS TO THE CODE OF
CONDUCT AND DRAFT CONSTITUTION (DISCLOSURES BY
MEMBERS) REGULATION 2006

November 2006

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CHAIRMAN'S FOREWORD

As foreshadowed in the Committee's earlier report on the proposed amendments to the Code of Conduct and draft Constitution (Disclosure by Members) Regulation, which was tabled on 1 September 2006, the Committee has now reviewed its original recommendations in light of the Legislative Council Privileges Committee's report on the proposed amendments. The Legislative Council Committee tabled its report on 3 October 2006.

Given the evident substantial agreement on many of the proposed changes as set out below, we hope that this report will assist progress towards a workable and effective disclosure regime.

As the 53rd Parliament draws to a close, I would like to thank members of the Committee for their diligent and non-partisan work on the inquiries we have undertaken. In particular, the Committee would like to thank John Mills MP, Vice-Chairman, and long-standing Committee member the Hon Kim Yeadon MP, who have both announced that they will not be contesting the March 2007 election, for their valued contribution to the Committee's various inquiries, briefings and discussions.

John Price MP
Deputy Speaker
Committee Chairman

Chapter 1: Background to the Inquiry into Amendments to the Code of Conduct and the Draft Constitution (Disclosures by Members) Regulation 2006

On 25 May 2006 the Government tabled in the Legislative Assembly proposals for amendments to the Code of Conduct for Members of Parliament, and changes to the Constitution (Disclosures by Members) Regulation. On the same day the House conferred a reference on the Committee on Parliamentary Privilege and Ethics to review the proposed changes and report to the House by 1 September 2006.

The Committee met on 7 June, 28 June, 21 August and 30 August and the Committee's report was tabled on 1 September. The report "Amendments to the Code of Conduct and draft Constitution (Disclosures by Members) Regulation 2006" commented on the proposals and made a number of recommendations. Both committee reports are available on the Parliament's website.

The Legislative Council Privileges Committee received a similar reference from the Legislative Council, and the Privileges Committee reported on 3 October 2006. Both committee reports are available on the Parliament's website.

Each committee had received a reference from their respective House pursuant to Section 14A of the Constitution which requires that any regulation made pursuant to the Act, for or with respect to the disclosure by Members of either House of Parliament of pecuniary interests or other matters unless, has to apply equally to members of both Houses.

Section 14A (5) also requires:

The Governor shall, before making a regulation under subsection (1):

- (a) afford any committee of either House of Parliament established for the purpose an opportunity of considering and making representations with respect to the proposed regulation, and*
- (b) take into account any such representations.*

The Legislative Assembly Committee was required to report one month earlier than the Legislative Council Committee, but undertook to consider any report of the Privileges Committee on the proposed amendments to the Code and Draft Regulation with a view to establishing agreement on recommendations wherever possible.

Accordingly, with a view to establishing areas of agreement between the two committees, our Committee met again on 18 October 2006 to review the Privileges Committee report. The following chapters set out the various areas of agreement and where the two committees diverge.

Chapter 2. Proposed change to the Draft Constitution (Disclosures by Members) Amendment Regulation 2006: Increased information about a member's secondary employment

The major change proposed in the new regulation implements recommendations of the Independent Commission Against Corruption to impose more rigorous disclosure requirements about Member's secondary employment. The ICAC noted that the current regulation was deficient in not requiring sufficient information to be disclosed about a Member's engagement as a consultant or other secondary employment in "public affairs".

Legislative Council Committee response to this proposal:

3.9: The Committee supports the principle of greater disclosure with regard to members' secondary employment and the enhancement of measures to prevent conflicts of interest arising from outside engagements, particularly in view of the investigations into former and current members. In that context, it accepts the desirability of amending the existing Regulation in areas where greater transparency is required.

3.10: The Committee is concerned, however, that as currently proposed the draft Regulation includes a number of measures which do not appear to have been properly thought through and which may have unintended consequences in practice, as well as a number of provisions which are overly complex and unclear. These concerns are important because, to the extent that provisions of the Regulation are uncertain or unworkable, the aim of preventing the misuse of a member's parliamentary position is less likely to be achieved, and the opportunities for inadvertent errors in the Register are increased. Moreover, in view of the potential consequences of a breach of the Regulation, rather than raising public confidence in the members and institution of Parliament, the introduction of such complex measures could have the opposite effect. [Paras 3.9-3.10, page 8]

Legislative Assembly Committee response to this proposal:

The LA Committee agrees with the requirement for a Member to take all reasonable steps to disclose the nature of interest of any person or company, and the identity of any client or such person/company, who benefited from the Member's services (through employment or paid contractual engagement). This can be through entry in the Register, or through disclosure at the start of any proceedings in Parliament where the Member is aware or ought to be aware, that the person/client might have an interest in the proceedings beyond the interest of persons generally.

Both committees therefore support increased disclosure about secondary employment in principle.

Chapter 3. Proposed change—Primary return to be lodged within one month of taking oath of loyalty.

The draft Regulation proposes shortening the period for lodging primary returns from within three months of taking the oath of allegiance to one month from the pledge of loyalty.

Legislative Council Committee response to this proposal:

Timing of primary returns

3.12: ...This change is presumably intended to enhance the currency and accuracy of the Register from the earliest possible date. It is also in line with a proposal by the ICAC for continuous reporting of changes to members' interests within one month of any change.

3.13: It is questionable, however, whether the proposed time frame will be adequate to allow newly elected members to become sufficiently familiar with the complexities of the disclosure regime, given that at the same time they are also being required to come to grips with an array of other complex but essential information via the induction process. This includes the requirements of constitutional disqualifications (failure to observe which could result in the member losing their newly acquired seat), the standing orders and other procedural rules (awareness of which is essential if the member is to function in the House), myriad rules and restrictions relating to the use of the member's parliamentary resources (breach of which can lead to the application of the Code of Conduct and involvement of the ICAC), as well as more practical issues such as the process of recruiting suitable staff.

3.14: The proposed time frame may also be inadequate to allow a proper transition from positions held by members outside Parliament, which they fully intend to relinquish to focus on their parliamentary role. This could result in primary returns commonly containing information which may soon become out of date.

3.15: While such concerns are applicable to all new members they are especially relevant in the case of members filling casual vacancies, as there may be very little time between a casual vacancy arising and the vacancy being filled. For example, the time between the vacancy arising and the member taking the pledge of loyalty can be as little as 7 days.

3.16: The Committee received one submission which commented specifically on this issue from the Parliamentary Ethics Advisor, Mr Ian Dickson. That submission suggested that "the existing period of 3 months be retained to ensure as far as possible that the Return is understood and completed with accuracy". Mr Dickson has experience of the practical issues faced by members of Parliament in seeking to comply with their obligations under the Regulation and other ethical rules, having held the position of Ethics Advisor since 1999. [Paras 3.12-3.16, pages 8-9]

Legislative Assembly Committee response to this proposal:

The Legislative Assembly Committee supports a 35-day time frame for lodging the primary return. This is in line with a recommendation in the Report of the Senate Committee of Senators' Interest on Review of Arrangements for Registration of Senators' Interests, dated April 2006, which recommended 35 days as a reasonable time frame for notification of alteration of interests to the Registrar.

The LA Committee considered the LC Committee's arguments for retaining the three month period for lodging the primary return. **The LA Committee does not agree with the Legislative Council Committee's view that 35 days is inadequate.** The Legislative Assembly Committee notes that candidates for election are on notice about the Regulation and the Code of Conduct through information distributed by the State Electoral Commissioner. The orientation program for new members includes a focus on ethics issues. The preparation and lodging of the primary return at an early date gives new Members an opportunity to consider the potential conflict of interests at the very outset of their parliamentary career.

Chapter 4: Proposal 3—Six monthly lodgement of ordinary returns and voluntary updates

Currently Members are required to lodge a primary return within three months of taking the affirmation of office, and to lodge an ordinary return by 1 October each year. There is no provision for lodging supplementary returns, although Members can write to the Clerk to notify changes.

The draft Regulation proposes that members lodge an ordinary return every six months. There would also be provision for voluntary supplementary returns where changes occur between return dates. The Committees were also asked to consider the possibility of “exception reporting”, where only changes would be notified every 6 months, rather than a full form.

Legislative Council Committee response to this proposal:

3.19: Following the submission of a primary return, the draft Regulation proposes that members would be required to lodge an ordinary return every six months. There would also be provision for voluntary supplementary returns where changes occur between return dates.

This process would clearly improve the currency and accuracy of the Register in comparison to the current system of annual returns. Further, the fact that supplementary returns are to be voluntary introduces an element of flexibility.

3.20: It should be noted, however, that a requirement to make full disclosure every six months is likely to result in considerable duplication between successive returns and to place a much greater burden on members than is currently the case. Further, the usefulness of supplementary returns is likely to be diminished in view of the doubling of the frequency of mandatory returns. It is also relevant to note that, if the time for lodging primary returns is maintained at three months as is suggested above, there may be very little time between the member's primary return and the first six monthly return.

3.21: The Legislative Assembly's Committee on Parliamentary Privilege and Ethics has recommended that the current requirement of full annual disclosures be maintained, but supplemented with mandatory updates to the Register within 35 days of a change, instead of the process proposed by the draft Regulation. This suggestion has the benefit of overcoming the cumbersome process of full disclosures every six months. However, the 35-day limit for updates may prove difficult for some members in practice, especially during certain phases of the parliamentary cycle when members' activity is particularly intense.

“Exception reporting”

3.22: Paragraph 2 of the terms of reference for the Committee's inquiry states: That the committee, in conducting the review [of the draft Regulation], in addition to considering supplementary returns, give consideration to the feasibility of reporting changes to pecuniary interests by “exception reporting”.

3.24 The advantage of exception reporting is that it enables the Register to be kept up to date without the cumbersome combination of full disclosures, with supplementary disclosures between return dates. As such, it allows those members whose interests change regularly to update their entries in the register without bringing the majority of members whose interests change very rarely into the time consuming process of regular returns.

3.25: On the other hand, for those members whose interests do change regularly, a requirement to report changes within a specified time may be even more onerous than a system of regular full disclosures, and the process of identifying current interests as against a previous return may prove time-consuming in itself. Further, while the process ensures that members' disclosures are kept up to date, if another member, or journalist, or member of the public wishes to ascertain the current status of a member's interests, it is necessary to trace all the reported changes back to the primary return, which may mean going back eight years.

3.26: Despite these difficulties, however, exception reporting offers a simple and straightforward alternative for the vast majority of members who do not have complex financial arrangements.

Further, it is used by a number of Australian Parliaments, in some form or other, as well as in the House of Commons (UK). It was also supported by the three submissions to the Committee's inquiry which specifically commented on the issue, from the ICAC, the Parliamentary Ethics Advisor and Ms Lee Rhiannon.

3.27: If exception reporting were to be introduced for the Legislative Council, however, consideration would need to be given to incorporating procedures to overcome the complexities of reporting changes during an 8-year term. This could be addressed by including a requirement for reporting changes against the member's primary return for the first four years of their term, followed by the lodging of an ordinary return at the start of the next Parliament, and the reporting of all subsequent changes against that ordinary return. This procedure would make reported changes easier to understand in context, and would align the reporting requirements for Council members with the four-year term of Assembly members.

3.28: The Committee also believes that consideration would need to be given to choosing a realistic timeframe within which members would be required to report, which may be longer than one month of the change occurring, but not more than three months.

LC Recommendation 2

That, if the Government chooses not proceed with the draft Regulation, a system of exception reporting should be introduced as a simpler alternative. That this system of exception reporting should specify the time limit in which changes must be reported by the member to the Clerk for inclusion in the pecuniary interests register.

That exceptions should be reported against the primary return of the member, with a requirement for each member to submit an ordinary return at the start of each Parliament. . [Paras 3.19-3.21, 3.24-3.28 pages 9-11]

Legislative Assembly Committee response to this proposal:

THAT the Draft Regulation be amended to reflect the following recommendations:

- Rec 4.1 That full Ordinary Declaration of Interest forms continue to be lodged annually, and that six-monthly returns not be adopted.
- Rec 4.2 That there be a new requirement for mandatory updating of the Register within 35 days of a change in interests recorded on the return.
- Rec 4.3 That the Clerk be required to table all updates received quarterly, at the next sitting of the House. [LA report page 26]

The Committee considered that the current system of mandatory yearly reviews had the benefit of requiring members to regularly fully review all aspects of their declaration, while not being administratively cumbersome. The current annual reporting timetable of reminder letters to Members and compilation of a report for tabling in the House coincides with current parliamentary sittings and Members' end of financial year arrangements.

The Committee considered that in view of the small number of updates received by the Clerk, a requirement for mandatory updating would not be onerous. The Committee also considered that for registration of interests to be effective as a means of avoidance of conflict of interest between private and public interests, a Register should accurately reflect the disclosure of interests as set down by the Regulation. The Committee therefore considered that where change to reported interests has occurred, a supplementary return should be mandatory, rather than optional.

Neither Committee supports six-monthly returns. The LA Committee supports annual reporting, with mandatory updates. The LC Committee supports a primary return, an ordinary return once every 4 year parliamentary cycle, and updates by "exception reporting" within a 1-3 month time-frame of change occurring.

Chapter 5: Proposed change—new requirements for details of income and secondary employment arrangements

Sections 7A, 9(s) 9(20A) and 15A of the draft Regulation require Members to provide fuller details of the actual services provided in any employment, engagement or other arrangement where services are provided to third parties.

Where the services relate to a Member's parliamentary position, the Member will also be required to disclose details of the persons to whom the services are to be provided, or of clients of the employer engaging a member.

Legislative Council Committee response to this proposal:

3.30: The aim of such provisions is presumably to prevent a member misusing their parliamentary position by imposing stricter transparency, in a way which more accurately reflects the intricacies of many modern commercial relationships. Payment for services rendered may be by way of benefits to third parties, which allows corruption to take forms other than a straightforward exchange of reward directly to the member.

3.31: The excessive complexity of the measures proposed in the draft Regulation, however, and the strikingly convoluted manner in which they are drafted, together with the frequent use of language which is vague or otherwise unclear, raise the question of whether such provisions are in fact capable of achieving that aim. Indeed, when the particular nature of the provisions is taken into account, the Committee questions whether the more likely effect of their adoption would be to expand the range of technicalities and potential loopholes on which a member deliberately setting out to avoid their obligations may seek to rely, while increasing the likelihood of the majority of members being innocently caught by attempting to comply.

3.32: The concerns outlined above are particularly evident in the case of draft clause 15A ("Provision of client services"), which is characterised by contorted syntax, excessive reliance on dependent clauses and internal cross-references, and six paragraphs of definitions (see subclauses (1)-(4) and (6)-(7)). The definition paragraphs are complex enough in themselves. However the effect is exacerbated by the fact that the reader has no knowledge of the context in which the definitions are to operate until paragraph 5, as the four paragraphs of complex definitions appear before the substantive paragraph of the clause which sets out the obligation imposed.

3.33: The Committee notes that the Legislative Assembly Committee on Parliamentary Privilege and Ethics also raised concerns with clause 15A in particular, to the extent that it referred to the need for legal advice to be made available to members to understand their legal requirements under the Regulation.

3.34: Given the extensive nature of the substantive changes proposed by the amendments and the lack of clarity of many aspects, the Committee has serious concerns with regard to this part of the draft Regulation. When

combined with the requirement for six monthly reporting, the Committee believes that adoption of such amendments is likely to provide a minefield of traps and obstacles for even the most careful of members.

Privileges Committee Recommendation 3

That clause 15A of the draft Regulation not be implemented in its present form, and that any redrafting avoid the complexity and lack of clarity of the current proposal. [Paras 3.30-3.34, page 12]

Legislative Assembly Committee response to the proposal:

The Committee supports the principle of increasing transparency and accountability with respect to secondary employment. However, the Committee has serious concerns about the provisions as drafted.

As a general observation, the Committee strongly believes it is important for clauses in the Code and Regulation to provide clear and unambiguous guidelines and accountabilities. The introduction of legalese, ambiguity, and unwieldy cross-references into either can only detract from the whole purpose of such a Code.

Section 15A of the draft Regulation is one such example of a very complex clause. The clause is peppered with definitions, including one externally cross-referenced with the Commonwealth Corporations Act. The Committee has in a previous report recommended that legal advice be made available to Members to assist in understanding the precise legal requirements of the Regulation. Some members of the Committee also unfavourably compared the complex legal terminology of the Regulation with the clearer statements of disclosure requirements set out in say, the Queensland Parliament's Members' Interests Resolution. (Page 20 LA Report). The Committee recommended:

THAT Clause 15A "Provision of client services" be reviewed to simplify and clarify requirements.

THAT the draft Regulation be amended to ensure that any requirement to disclose information about secondary employment or clients of principals should not apply retrospectively to encompass employment prior to a Member of Parliament being sworn in as a Member. [Page 22]

Both Committees agree with the need for increased disclosure, but have serious concerns with the complexity of the positions as drafted.

Chapter 6: Complexity of the forms

The draft Regulation proposes:

- A new section on Forms (Clause 3A), which requires forms to be completed in accordance with the Regulation, any directions on the form, and “any guidelines issued or approved from time to time by the appropriate parliamentary committee”.
- A new provision, and form, for making supplementary returns (Clause 6 and Form 3 in Schedule 1).

Legislative Council Committee response to this proposal:

Forms

3.35: The draft Regulation includes new forms for members' returns to take account of the changes proposed in the disclosure requirements. However, the Government has informed the Committee that in its view the new forms remain unduly complex, and require clarification. The Committee endorses that view.

3.36: The Legislative Assembly Committee has made certain recommendations with regard to the forms, including that they should not be included in a schedule to the Regulation but should be devised by the Committee in consultation with the Clerk thereby enabling the format to be adjusted if necessary. This Committee has no objection to the forms being part of the Schedule but would urge the Government to consult with the Clerks of each House before finalising changes to the forms and would be pleased to review a draft of the revised forms prior to their introduction. The Committee believes it is too early for the Clerks to be consulted at the current stage given the concerns expressed regarding the drafting of the Regulation. [Paras 3.35-3.36 page 13]

Legislative Assembly Committee response to this proposal:

The Committee was concerned that the forms as appended to the draft Regulation were poorly set out, and were not conducive to assisting Members in understanding the exact requirements of the Regulation. The tabled forms were unfavourably compared with examples from other jurisdictions, most notably the New Zealand form, and others which gave examples and guidance to members within the framework of the form itself.

The Committee queried the Cabinet Office as to whether the form could be further reviewed, and was advised that the amending Regulation had sought to only make the most necessary consequential amendments, rather than completely review the layout and wording of the form.

The draft Regulation also makes provision for guidelines to be issued by a Parliamentary committee to assist Members in completing the form.

The LA Committee recommended:

THAT the declaration of interests form not be dictated by a Schedule of the Regulation, but be in a format to be devised by the Committee, in consultation with the Clerk, reflecting the requirements of the Regulation, thereby enabling the format to be adjusted if necessary.

THAT the form be clearer, and include brief examples of the types of entries required. The form for the Register of Pecuniary Interests of Members of the New Zealand Parliament is a suitable example. [Pages 27-28]

Both Committees agree that the forms are unduly complex and require clarification.

Chapter 7: Public Access to the Register

Legislative Council Committee response to this proposal:

3.40: A related question which has arisen during the course of the inquiry is the issue of public access to the Register. Currently, the Register is available for public inspection at the office of the Clerk and published periodically. However, the ICAC has supported making the register available as an electronic database which members could access easily to make updates, and placing the Register on the internet. The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics has recommended that the register for their members be available on the Parliament's website, as is the case for the House of Commons. However, it has also recommended that for reasons of safety and privacy the Regulation should be amended to require the disclosure of the location of real property by town or suburb, rather than postal address or particulars of title.

3.41: Putting the register on line makes it immediately accessible to a much wider, indeed worldwide, audience than its current physical location. This brings with it accompanying problems when the register contains personal details such as the home address of the member, information which is generally protected for reasons of privacy and the personal safety of the member.

3.42: This Committee supports the view that the postal address or other particulars of title should not be required to be disclosed, but instead a more general identifier such as the suburb or town. Few Parliaments require members to make available to the public their home address in the way that is currently expected. The ICAC, in its submission, also recognised that privacy issues should be considered, such as blocking the street address, if the register was made available on the internet. [Paras 3.40-3.42, page 14]

LA Committee recommendation:

LA Committee Recommendation 4: That any decision to make the pecuniary interest register available on line be on the basis that any detail which could be used to identify the member's residential address be blocked from public access for reasons of safety and privacy.

The Committee also considered that, in order for the Register to work effectively in disclosing interests, it should be accessible through the Parliament's website. Updates should also be added to the Register on the web. However, for reasons of privacy and the personal safety of Members and their families, if access to the Register were to be available this way, the Regulation should be amended to require disclosure of the location of real property by town or suburb, rather than postal address or particulars of title.
(Page 20)

Both Committees agree that if the register is accessible on-line, then for privacy and safety reasons home addresses and real property title particulars should not be disclosed.

Chapter 8: Proposed amendments to the Code of Conduct

8.1 New preamble paragraph “responsibility to constituents”

The tabled code includes a new preamble paragraph:

Members of Parliament acknowledge that their principal responsibility in serving as Members is to their constituents and to the people of New South Wales.

Legislative Council Committee response to this proposal:

The LC committee supports this additional paragraph in the Preamble of the Code.

The LC committee noted the LA Committee’s objection to the proposed new preamble paragraph, but did not agree with the suggestion of the Auditor General and does not support the deletion of the existing paragraph two. The LC Committee has no objection to the recommendation of the Auditor General to delete “accordingly” from the existing paragraph. [Paras 4.7-4.9, pages 18-19]

Legislative Assembly Committee response to this proposal:

As noted in its report, the LA Committee noted, and adopted, the suggestion of the Auditor General that the draft provision should replace the existing second paragraph of the Preamble (which acknowledges that the electorate is the final arbiter of members’ conduct). The LA Committee also supported deleting the word “accordingly” from the beginning of paragraph 3.

The Committees do not agree on this proposal.

8.2 Clause 2 “Knowingly or improperly”

The LA Committee has previously recommended a change to this clause, as reflected in the resolution of the Assembly of 25 May 2006 to amend clause 2.

The proposed new clause in the code is:

2 Bribery

Members 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 or reward, direct or indirect, which the Member, any member of his or her family, a business associate of the Member or any other person or entity from whom the Member expects to receive a financial benefit has received, is receiving or expects to receive or any other personal financial benefit.

A breach of the prohibition on bribery constitutes a serious breach of this Code of Conduct.

The background to the proposed changes is set out on pages 15-17 of the LA Committee report and pages 19-20 of the LC Committee report.

Legislative Council Committee response to this proposal:

The LC Committee notes the differences of opinion on the need for insertion of “knowingly or improperly” between the Auditor General, the LA Committee and the Cabinet Office.

The LC Committee is not confident that the intent of the phrase “knowingly or improperly” will be apparent to a member who reads the clause unguided, and this is a difficulty with the phrasing of the amendment.

The LC Committee notes the differences of opinion between the Auditor General, the LA Committee and the Cabinet Office on the need and scope of the proposed new definition of “benefit”. The LC Committee does not agree with the proposed redraft by the LA Committee, stating “This Committee believes the attempt to define the indirect benefit is problematic. Suggesting an alternative definition is likely to create other unforeseen difficulties” (para 4.19, page 21).

The two committees do not agree about how clause 2 should be redrafted.

8.3 Serious breach

The LC and LA committees both noted that that if adopted, the word “serious” in the tabled draft code should be omitted and replaced with the word “substantial” so as to clarify its relationship to “corrupt conduct” under section 9(1)(d) of the ICAC Act.

The two committees agree with this proposed addition to the Code.

8.4 Draft clause 7

The new proposed clause 7 introduces a new area of accountability for Members with regard to secondary employment or engagements.

7. Secondary employment or engagements Members must take all reasonable steps to disclose at the start of any proceedings in Parliament to which they intend to contribute (other than by voting only) the identity of any person (natural or corporate) who employs or engages the Member (or who has employed or engaged the Member in the previous two years), and the identity of any client or former client of any such person who benefited from the Member’s services within the previous two years, and the nature of the interest of the person and any client or former client in the proceedings if:

- (i) the Member is aware, or ought to be aware, that the person, client or former client might have an interest in the proceedings beyond the interest of persons generally; and
- (ii) the Member's entry in the Register of Pecuniary Interests does not at the time of the start of the proceedings disclose the identity of the person, the client or the former client (as applicable) and the nature of their interest in the proceedings.

Legislative Council Committee response to this proposal:

The LC Committee noted the concern of the LA Committee about the effect of the proposed clause, and the agreement of the LA Committee with the concerns raised by the Auditor General in relation to the provision and the suggestion that the clause be reworded. The LA Committee proposed an amended version of the clause, based on the Premier's statement in the House foreshadowing the amendments.

The amended clause proposed by the LA Committee is also preferred by the LC Committee. The LC Committee notes that before adopting the LA proposal, it would be important to understand the views of the key stakeholders on the possible implications of these words.

8.5 Gifts

The LC Committee and LA Committee agree that in clause 3(b) of the existing code relating to gifts, the word "corruptly" should be changed to "improperly" as recommended by the Auditor-General.

The LC committee did not address the LA Committee's recommendation about increasing the threshold amounts in line with the CPI.

8.6 Parliamentary Privilege

The LC Committee recommended that the Government enact a statutory codification of the privileges and immunities of both Houses of the NSW Parliament in a similar form to the Parliamentary Privileges Act 1987 (Cwth).

Legislative Assembly Committee response to this proposal:

The LA Committee did consider the issue of parliamentary privilege in relation to the Code and the relationship between the Code of Conduct and the ICAC in the context of this inquiry. However, in previous reports the LA Committee has considered and expressed support for LC Committee recommendations for new legislation to clarify the powers and privileges of Parliament. This recommendation has been discussed in committee meetings considering reports on s13B of the Constitution Act, and the need for a protocol to ensure that investigative agencies do not breach parliamentary privilege, such as occurred when ICAC entered Parliament in 2003. The LC committee specifically recommended that it be given a reference for an inquiry into the

desirability of privileges legislation. Since that report the LA committee has also discussed the need for legislation to clarify that privilege attracts to documents prepared for the purpose of or incidental to the transaction of parliamentary business.

The two committees agree to the need for parliamentary privilege legislation.

APPENDIX 1

REVIEW OF THE AMENDMENTS TO THE CODE OF CONDUCT AND MEMBERS' INTEREST REGULATION

AREAS OF AGREEMENT AND DISAGREEMENT BETWEEN THE LC PRIVILEGES COMMITTEES AND LA ETHICS AND PRIVILEGES COMMITTEE

<p><i>Tabled changes and amendments</i></p> <p>The amendments implement recommendations of the ICAC to increase transparency and greater disclosure about members' secondary employment.</p> <p>The proposed amendments increase measures to prevent conflicts of interest arising from outside engagements.</p>	<p><i>LA Ethics committee report recommended:</i></p> <p>LA agrees in principle.</p> <p>Critical of some aspects of the drafting.</p>	<p><i>LC Privileges committee report recommends:</i></p> <p>Agrees in principle.</p> <p>But does not support complexity of some of the proposed redraft; "the Regulation should be redrafted with the aim of greater simplicity" "does not support further amendments which make reporting requirements more onerous and complex".</p>
<p>Primary return to be lodged within one month of taking oath of loyalty.</p>	<p>LA supports 35-day time-frame for lodging return.</p>	<p>LC does not support reducing current 3 month deadline. One month not long enough for new members to make transition from old employment and interests; MPs need time for orientation.</p>

<p><i>Tabled changes and amendments</i></p>	<p><i>LA Ethics committee report recommended:</i></p>	<p><i>LC Privileges committee report recommends:</i></p>
<p>Return to be lodged every 6 months, but proposes “exception reporting” meaning only changes to be updated.</p>	<p>LA recommends retaining annual Ordinary returns, plus mandatory updating of the register within 35 days of a change in interests recorded on the return.</p>	<p>LC recommends one Primary return every 4 years, with exception reporting of changes within “a realistic time frame” suggesting between 1-3 months.</p>
<p>New requirements for details of income and secondary employment arrangements. S7A, 9(2), 9(20A) and 15A.</p>	<p>LA agrees with LC. No problem with principle as expressed by Premier, but “serious concerns” about some of the drafting – should not be implemented in its current form.</p>	<p>LC doubts that complex and convoluted provisions, as drafted, will achieve aim of increasing transparency about payment of MPs for services through benefits to third parties. LC view is that these provisions will expand loopholes, and increase the risk of breach by the innocent.</p>
<p>Forms not substantially changed. Details of new requirements simply inserted. [Govt has advised that forms remain unduly complex and require clarification.]</p>	<p>LA recommends that the forms be removed from the Regulation. LA has previously recommended forms be redrafted in style of New Zealand forms.</p>	<p>LC agrees forms require clarification. LC has no objection to forms being part of the schedule. Urges Govt to consult Clerks before finalising changes to forms.</p>
<p>Rejects ICAC proposal to put register on web.</p>	<p>LA supports Register on web, but with privacy protection about residential addresses.</p>	<p>LC view is if register is to go on web, then information about residence should be deleted.</p>