

INTEGRITY LEGISLATION AMENDMENT BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

In its report entitled *Investigation into the conduct of the local member for Drummoyne (Operation Witney Report)* following an investigation known as Operation Witney, the Independent Commission Against Corruption (ICAC) recommended that the NSW Government amend the *Constitution (Disclosures by Members) Regulation 1983 (Disclosure Regulation)* to require Members of Parliament (MPs) to:

- disclose expanded interests, including interests in trusts and the interests of immediate family members, on an ongoing basis (recommendation 1)
- register conflicts of interest (recommendation 4).

The Disclosure Regulation is made under section 14A of the *Constitution Act 1902* (the **Constitution Act**), which provides that the Governor may, subject to certain requirements, make regulations for or with respect to the disclosure by MPs of certain pecuniary interests or other matters.

Schedule 1.1 of the Integrity Legislation Amendment Bill 2022 (the **Bill**) proposes amendments to the regulation-making power in the Constitution Act to clarify that the Governor may make regulations with respect to the disclosure by MPs of:

- other matters, whether pecuniary or not, of a kind specified in the regulations, intended to facilitate the future implementation of recommendation 4 of the Operation Witney Report and also capture the disclosure of the diaries of MPs (implementing the Government Response to the ICAC report entitled *Lobbying and the NSW public sector - the regulation of lobbying, access and influence in NSW (Operation Eclipse Report)* following the investigation known as Operation Eclipse)
- the interests of MPs' immediate family members, to facilitate the future implementation of recommendation 1 of the Operation Witney Report.

Recommendation 8 of the Operation Witney Report was that the Government introduce amending legislation to clarify that an applicable code of conduct in relation to a Parliamentary Secretary is a ministerial code of conduct prescribed or adopted for the purposes of section 9(3) of the *Independent Commission Against Corruption Act 1988* (the **ICAC Act**).

Schedule 1.2 of the Bill proposes an amendment to section 9(3) of the ICAC Act to implement this recommendation.

Objectives: What is the policy's objective couched in terms of the public interest?

It is in the public interest to put beyond doubt that amendments to the Disclosure Regulation to expand the disclosure obligations of MPs in the manner contemplated by the Operation Witney Report and Operation Eclipse Report are within the scope of regulation-making power conferred by section 14A of the Constitution Act.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Arguably, these matters could be implemented within the current regulation-making power in the Constitution Act, however a minor legislative amendment is proposed to put the matter beyond doubt. The amendments are the preferred course of action in the interests of legal certainty.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The advantages of legal certainty were considered to outweigh the minor resource impacts associated with the drafting of the Bill. The Bill does not impose any appreciable cost or burden on the public or any group of the public.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

If passed, the Bill will commence on assent.

Regulations expanding the disclosure requirements of MPs in line with the Government's responses to the Operation Witney Report and Operation Eclipse Report will be subject to consultation with the relevant Parliamentary Committees (discussed below).

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

As required under section 14A of the Constitution Act, the Government is consulting with the Legislative Council Privileges Committee and the Legislative Assembly Privilege and Ethics Committee on regulations to amend the Disclosure Regulation:

- to require all MPs to publish diary disclosures consistent with the Government's response to the Operation Eclipse Report
- to implement recommendations 1 and 4 of the Operation Witney Report.

Consultation with the Clerks of Parliament will also be undertaken regarding the Government's implementation of the ICAC's recommendations.