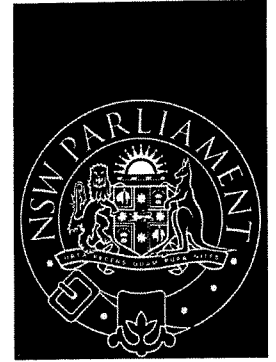


LEGISLATIVE ASSEMBLY



# Standing Committee on Parliamentary Privilege and Ethics

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REVIEW OF THE PROPOSED AMENDMENTS TO THE CODE OF  
CONDUCT AND DRAFT CONSTITUTION (DISCLOSURE BY  
MEMBERS) REGULATION 2006

September 2006

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# **REPORT ON INQUIRY INTO PROPOSED AMENDMENTS TO THE CODE OF CONDUCT AND DRAFT CONSTITUTION (DISCLOSURE BY MEMBERS) REGULATION 2006**

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## MEMBERSHIP AND STAFF

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## **CHAIRMAN'S FOREWORD**

In September 2004 this Committee tabled its report on "Regulation of Secondary Employment for Members of the New South Wales Legislative Assembly", which responded to a number of recommendations made by the Independent Commission Against Corruption in response to a request by the Assembly.

The report herewith presented to the House is consequence of that 2004 report, in that it reviews amendments to the Constitution (Disclosure by Members) Regulation, and the Code of Conduct, tabled by the Government on 25 May 2006, aimed at strengthening the disclosure obligations on Members who hold outside employment or engagements. Concurrent with tabling of the draft amending regulation and amendments to the Code, the House resolved that this Committee review the proposals and report to the House by 1 September. The Privileges Committee of the Legislative Council have also been requested to review the provisions, as is required under the Constitution Act 1902.

The full range of proposed amendments is discussed below in chapters 2, 3, 4 and 5 of the Report.

While the time-frame for this inquiry was short, this Committee has been considering the issue of secondary employment, and the potential for conflicts of interest, from the time of the original reference to the ICAC in 2002. The Committee has also actively reviewed the contents of the Code of Conduct in response to specific recommendations made in other ICAC reports, and in comparison with other jurisdiction's codes. This report however is mainly confined to discussing the major changes proposed in the draft documents tabled on 25 May, rather than a whole-scale review of the Regulation and Code.

In considering the draft amendments the Committee was greatly assisted by the submissions received from the Independent Commission Against Corruption, the Auditor General and the Ombudsman. Their comments, suggestions and recommendations, while not always in unison, reflected the wide range of approaches that can be explored in attempting to reach a mutually agreed ethical outcome. Only one community response was received, that of the Potts Point and Kings Cross Heritage Conservation Society Incorporated, which supported strengthening the Code.

The Committee was also assisted by legal officers from The Cabinet Office and the Clerk of the Legislative Assembly, who provided advice to the Committee on the operation of the current Register and the proposed changes to the system.

The outcome of the Committee's review of the Code confirms the need for greater disclosure about Members' secondary employment and a clearer statement that Members' principal responsibility is to the people of New South

Wales. The Committee also supports strengthening the Code's provisions on bribery and avoidance of conflict of interest.

Instead of the proposal for two returns each year, the Committee recommends a continuation of the current requirement for the annual lodgement of a full declaration of interests, with mandatory updates when substantial changes are made.

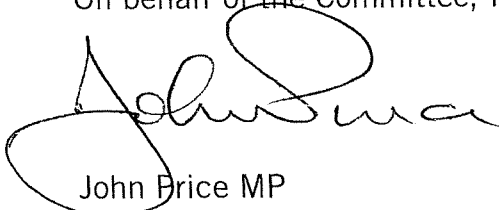
The Committee also recommends that the Register be placed on the internet, provided that the declaration of the general location of residential property, rather than full street address, suffice.

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, unwieldy cross-references into either can only detract from the whole purpose of such a Code.

At the time of tabling this report, the Legislative Council Privileges Committee is close to reporting on a review of the Code of Conduct, commenced prior to the tabling of the proposed amendments and the draft Regulation. With a view to establishing areas of mutual agreement, we hope to have the opportunity to meet jointly with the Privileges Committee to discuss the tabled amendments, and the views of our committee as contained in this report.

Our committee also hopes that this report will encourage Members of Parliament to closely examine the draft amendments and take the opportunity to contact members of the committee if there are other areas of the current regulation or code that they consider should also be reviewed.

On behalf of the Committee, I commend the report to the House.



John Price MP  
Deputy Speaker  
Committee Chairman

## **MAJOR RECOMMENDATIONS**

**Recommendation 1: THAT the Committee supports providing for greater disclosure about secondary employment.**

**Recommendation 2: Having considered the Draft Code of Conduct (see Appendix 6) it is recommended THAT the Draft Code be amended as follows:**

### **The Code of Conduct for Members of the New South Wales Parliament**

#### **PREAMBLE**

- The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament. The Code, which is adopted by resolution of each House, has continuing effect unless and until amended or rescinded by resolution of each House.
- Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.
- Members of Parliament can be non-aligned or belong to political parties. Political parties are a fundamental part of the democratic process and participation in their legitimate activities is not, in itself, prohibited by this Code.
- 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 of Parliament, and using their influence to advance the common good of the people of New South Wales.

#### **THE CODE**

- 1 Disclosure of conflict of interest
  - (a) Members of Parliament must base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, as soon as practicable, in favour of the public interest.
  - (b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through

declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.

- (c) 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.

## **2 Bribery**

Members must not knowingly 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, direct or indirect, which the Member has received, is receiving or expects to receive.

An indirect benefit might arise in a number of ways, including:

- (a) a member of the Members' family has received, or is receiving or expects to receive a benefit.
- (b) a business associate of the Member receives or expects to receive a benefit in turn.

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

## **3 Gifts**

- (a) Members must declare 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 accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to improperly influence the Member in the exercise of his or her duties.

## **4 Use of public resources**

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

## **5 Use of confidential information**

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.



## 6 Secondary employment or engagements

Members are required under the Constitution (Disclosures by Members) Regulation to disclose information about any secondary employment or engagement for a service involving the use of the Member's parliamentary position. The disclosing of the required information in the Register guards against the risk of paid advocacy, in that the public can form a balanced judgment of a member's contribution to parliamentary proceedings.

For this reason, if a member is aware, or reasonably ought to be aware, that they have received financial benefit from secondary employment, or contractual engagement to provide services, and it would be registrable under the provisions of the Constitution (Disclosures by Members) Regulation, but is yet to be reported in the Register, a Member must make a disclosure at the start of any proceedings in Parliament to which they intend to contribute (other than by voting only).

### **Recommendation 3: The Consultation Draft Constitution (Disclosures By Members) Amendment Regulation 2006**

#### **THAT the Draft Regulation be amended to reflect the following:**

- Rec 3.1 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.
- Rec 3.2 That Clause 15A "Provision of client services" be reviewed to simplify and clarify requirements.

### **Recommendation 4: Reporting Requirements**

#### **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.
- Rec 4.4 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.

- Rec 4.5 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.
- Rec 4.6 That updates to the Register be able to be notified either by a form (the Senate form is a good example) or by signed letter to the Clerk.
- Rec 4.7 That the Register and updates be available on the Parliament's website.
- Rec 4.8 That, for reasons of safety and privacy, the Regulation be amended to require disclosure of the location of real property by town or suburb, rather than postal address or particulars of title.

## **CHAPTER 1: BACKGROUND TO THE INQUIRY INTO AMENDMENTS TO THE CODE OF CONDUCT AND THE DRAFT CONSTITUTION (DISCLOSURE BY MEMBERS) REGULATION 2006**

On 25 May 2006 the committee received a reference from the House (see below) with regard to proposals for amendment of the Code and changes to the registration of members' interests. The draft regulation and the amendments to the Code were tabled in the Assembly on the same date.

These are part of a package of proposals, which included changes to post-separation and secondary employment procedures for former Ministers and members of the NSW Parliament, announced by the Premier in the Legislative Assembly on 28 March 2006. The proposals increase the standard of probity for members.

Extract from *Votes and Proceedings*, Thursday 25 May 2006:

### **23 COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**

Mr Scully moved:

- (1) That the Committee on Parliamentary Privilege and Ethics inquire into and report on:
  - (i) The draft Constitution (Disclosure by Members) Regulation 2006, in accordance with section 14A (5) of the Constitution Act 1902; and
  - (ii) Amendments to the Code of Conduct for Members of the New South Wales Parliament;
- (2) That the Committee in conducting their review, in addition to considering supplementary returns, give consideration to the feasibility of reporting changes to pecuniary interests by "exception reporting";
- (3) That the Committee consult with the Clerk of the House to ensure a streamlined process is introduced for updating the Pecuniary Interests Register;
- (4) That the Committee report to the House by 1 September 2006;
- (5) That the Committee have leave and power to confer with the Legislative Council Privileges Committee for the purposes of this inquiry;
- (6) That a message be sent informing the Legislative Council of this resolution and requesting that leave be granted to the Committee on Privileges to confer with the Committee on Parliamentary Privilege and Ethics.

Question put and passed.

On 25 May the Hon Carmel Tebbutt tabled in the Legislative Assembly:

- (1) Draft Constitution (Disclosures by Members) Regulation 2006.
- (2) Proposed Amendments to the Code of Conduct for Members of the New South Wales Parliament.

These documents form Appendix 7 (“the draft Regulation”) and Appendix 6 (proposed amendments to the Code of Conduct) to this report. Appendix 1 to the report reprints the current Code of Conduct as first adopted by the Legislative Assembly in May 1998. The Code was readopted by the Legislative Assembly following the State election in March 1999, and again at the beginning of each subsequent Parliament.

The Committee, in keeping with the spirit of the original motion of the House which led to the adoption of a Code of Conduct, advertised the inquiry in the daily metropolitan press, and major regional papers. The Committee also wrote to the Commission of the Independent Commission Against Corruption, the Ombudsman and the Auditor-General to invite a submission on the proposed amendments to the Code of Conduct and the draft regulation.

Submissions were received from the Commission of the Independent Commission Against Corruption (dated 18 August 2006), the Ombudsman (dated 23 June 2006) and the Auditor-General (dated 14 July 2006). One submission only was received in response to the advertisement, from the Potts Point and Kings Cross Heritage Conservation Society Incorporated. The small number of submissions may have been a result of the very short time provided for submissions, given the early reporting date fixed by the resolution of the House.

The Committee received the submissions at its meeting on 21 August 2006, and authorised publication. Copies of the submissions may be obtained from the Secretariat upon request.

The Committee held meetings to consider the tabled amendments to the Code of Conduct and the Consultation Draft Regulation on 7 June, 28 June, 21 August and 30 2006. Minutes of the meetings are appended below.

In light of a number of concerns that the committee had about aspects of the tabled amendments, the Chairman wrote to the Premier requesting that Cabinet Officers be made available to assist the Committee with background to proposed changes. Mr Anthony Lean, Policy Manager, Legal Branch and Ms Catherine Chang, Principal Legal Officer, from the Cabinet Office attended the committee meeting of 28 June and were able to advise the Committee of the rationale for the proposed amendments and clarify some areas of concern.

The Chairman also wrote to the Premier and Leader of the House on 28 July, requesting that the reporting date for this inquiry be extended to 3 October 2006. A later reporting date would permit the committee to meet with the Legislative Council Privileges Committee with a view to presenting joint

recommendations. However, at the time of reporting, the Legislative Council is yet to conclude its inquiry on the terms of reference.

Consequently, this report has been tabled on the date set by the House and the Committee will in due course 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.

## **CHAPTER 2: PROPOSED AMENDMENTS TO THE CODE OF CONDUCT FOR MEMBERS OF THE NEW SOUTH WALES PARLIAMENT**

The proposed amendments to the Code were considered in conjunction with the amendments to the Constitution (Disclosure by Members) Regulation.

The major aim of the proposals is to strengthen the disclosure obligations on members who hold outside employment or engagements. The proposed amendments also incorporate a number of the recommendations made by the Independent Commission Against Corruption.

The proposed amendments to the Code of Conduct are:

- Members will be required to disclose at the start of a parliamentary debate the identity of any person by whom they are employed or engaged, or the identity of any client of any such person or any former client who benefited from a member's services within the previous 2 years. This will not be required if a member is only voting on a bill/motion; and not required if the interest is already disclosed in the Register.
- Strengthen the prohibition on bribery in response to recommendations made by the former Legislative Assembly Standing Ethics Committee. This will make it clear that bribery can occur when a member knowingly or improperly agrees to take action in Parliament in return for payment to a party. A third party might include a family member, a business associate, or a person with whom the member has a financial relationship.
- To ensure that the ICAC is entitled to investigate any breach of the prohibition on bribery.

The submissions received from the Commission of the Independent Commission Against Corruption, the Ombudsman and the Auditor-General also recommended further amendments to the Code, as discussed below.

This chapter examines (and numbers) proposed amendments in the order in which they appear in the Code.

### **(i) Proposed Introductory Clause:**

That: (1) This House adopt, for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, the following code of conduct:

The Committee does not agree with the insertion of this new statement. This type of provision has never previously been part of the motion to adopt a Code of Conduct in the Legislative Assembly. The Auditor General noted that if reference to the ICAC Act was to be part of the code, it should be in the

preamble. The Legislative Assembly has clearly stated in its Members' Handbook that the Code of Conduct has a clear relationship to the Independent Commission Against Corruption Act.

**(ii) Proposed insertion of a new paragraph in the Preamble**

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

The ICAC has previously recommended that "That the New South Wales Legislative Assembly consider an amendment to the Code of Conduct to include an additional principle or responsibility which sets out that a Member's primary obligation is to their constituents, and to the people of New South Wales."

*The ICAC is of the view that it is important that there is an underpinning principle in the Code of Conduct which makes it explicit that MPs owe their primary obligations to their constituents and the people of New South Wales. Such a principle should underpin any framework for the regulation of parliamentary standards – not just those that relate to conflicts of interest arising from secondary employment." p67 ICAC Report on Regulation of secondary employment for Members of the NSW Legislative Assembly.*

The Committee reviewed the different sub-clauses in the Preamble, and agreed, that if the recommended new sub-clause was to be inserted, then the original clause noting Member's responsibility to the electorate was unnecessary and should be deleted. The Auditor General's submission on the Preamble was also noted, and as a result the Committee resolved that the second dot point in the tabled Draft Code of Conduct should be deleted.

~~Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.~~

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

The Committee has previously reported this proposed clause, which is similar to a clause in the Code adopted by the House of Commons in the United Kingdom. The majority of the Committee supports the principle embodied in the clause, but considered that the term "people of New South Wales" encapsulated constituents, and thus a specific reference was unnecessary. Ms Clover Moore held a minority view that a Member's responsibility to constituents should be specifically mentioned in the provision.

### **(iii) Clause 1: Conflict of interest**

The tabled draft amendments to the Code of Conduct did not include any changes to Clause 1. However, the submissions from the ICAC, the Ombudsman and the Auditor General all suggested changes to this clause.

The Committee was attracted to the reasoning of the Ombudsman's submission that Codes of Conduct should be prescriptive in terms of requiring the general avoidance of conflict of interests and the management of conflicts. The Ombudsman suggested that the Committee adopt a provision similar to that contained in the Code of Conduct for Members of the House of Commons, which not only requires disclosure of conflicts of interest, but resolution of any conflict between the personal interest and public interest "in favour of the public interest".

The Committee acknowledged that, as noted by the ICAC, the term "private financial interests" is too narrow. However, the term "personal interest" is extremely broad, encompassing a member's daily and family life as well as their political and professional activities, including membership of a sporting or environmental group, interests arising from being a resident of a town or area and personal interests, arising from being a parent, spouse, son or daughter, or of a nationality or indigenous heritage.

Other conflicts arise between a member's representational interests, i.e. their interest in being re-elected or pre-selected, and their decisions about acting in the public interest.

The committee nevertheless supports in principle the recommendation of the Ombudsman and the ICAC that members be required to resolve conflicts in favour of the public interest. However, in adopting the text of the UK provision, it remains concerned that the clause fails to recognise that some conflicts between personal interests and the public interest will not be able to be avoided, even when a member acts predominantly in the public interest.

The Committee recommends:

THAT Clause 1 of the Code read:

#### **1 Disclosure of conflict of interest**

(a) Members of Parliament must base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, as soon as practicable, in favour of the public interest.



#### **(iv) Proposed amendment of Clause 2: Bribery**

The tabled draft Code of Conduct proposes an amended Clause 2:

##### **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.

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

Clause 2 of the Code originally read, prior to amendment on 25 May:

##### *Bribery*

*Members must not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for payment or any other personal financial benefit.*

Clause 2 currently states (as amended on 25 May, 2006), implementing this Committee's recommended amendment (underlined):

##### *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, for the private benefit of themselves or others.*

The newly proposed amendment therefore alters the scope of the current provision in two ways, by reference to "family, business associate and "any other person or entity from whom the member expects to receive a financial benefit..." rather than "others"; and by replacing "private benefit" with a more extensively defined set of terms. New amendments also extend the definition so that it covers future benefits, or benefits to third parties closely associated with the member.

The amendment which stipulates that a breach of the bribery provision is a "substantial breach" is intended to automatically give ICAC jurisdiction to investigate any complaint or allegation of bribery, although s122 which preserves Parliamentary privilege would still have effect.

This Committee has previously reported its view that a Member who pursued an agenda that was designed to benefit family or friends should be seen as culpable as one who pursued it for personal gain. As a result Clause 2 was amended, as shown above.

The Committee agreed to the ICAC recommendation to emphasise the seriousness of this provision of the code through declaring a breach of the prohibition on bribery as constituting “a substantial breach of the Code of Conduct”.

The Committee also agreed with the suggestion by the Auditor General to add a new section to the existing Clause 2, rather than adopt a new provision which, while well-intentioned, is confusing and possibly ambiguous.

The Committee recommends inserting the word “*knowingly*” into the provision, requiring a mens rea standard of activity by the Member “*in return for*” benefit, “*direct or indirect*”. The requirement that a Member have knowledge of the fact that a benefit would derive from promotion of a matter, voting, or asking a question in the Parliament or committees is particularly important if the clause is to include a definition of “*indirect benefit*” that includes receipt of benefit by a member of an MP’s family, or one of their business associates. The word “improperly” was considered to be superfluous, in that, as noted by the Auditor General, it would be difficult to envisage a circumstance where it would not be improper for a Member to promote “any matter, vote” in return for “any remuneration, fee...”.

The Committee queried the necessity for the suggested new amendment “*A breach of the prohibition on bribery constitutes a serious breach of this Code of Conduct*”, noting the submission from the Auditor General which commented that this provision could imply that breach of other clauses was not as important. Noting the Cabinet Office submission that “paid advocacy” is especially heinous, the Committee does not object to the inclusion of this provision.

It is recommended THAT clause 2 read:

## **2 Bribery**

Members must not knowingly 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, direct or indirect, which the Member has received, is receiving or expects to receive.

An indirect benefit might arise in a number of ways, including:

- (a) a member of the Members’ family has received, or is receiving or expects to receive a benefit

(b) a business associate of the Member receives or expects to receive a benefit in turn.

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

**(v) Clause 3: Gifts**

The Committee has previously recommended that the threshold for registration of gifts be raised to an amount greater than \$500, as this quantum has remained unchanged since the commencement of the Regulation in 1983. The Committee has also previously recommended that the threshold for travel be raised to a minimum of \$500 so that there is consistency between the two provisions.

It is recommended:

THAT the threshold amounts for gifts and travel should be regularly reviewed in line with annual CPI rises.

**(vi) New tabled Clause 7: Secondary employment or engagements**

The ICAC has recommended greater disclosure of engagements in the consultancy area, which is reflected in Clause 7. Clause 7 requires that secondary employment that may conflict or be seen to conflict with a member's parliamentary duties should be disclosed.

Recommendations in the ICAC Report on Secondary Employment for Members of the NSW Legislative Assembly include:

**ICAC Recommendation 6 – Paid Parliamentary Strategist, Adviser or Consultant**

*That the New South Wales Legislative Assembly consider the particular situation of secondary employment as a parliamentary strategist, adviser or consultant and determine whether this type of secondary employment should be prohibited or should be permitted within the current disclosure regime.*

**ICAC Recommendation 7 – Greater Detail in the Register of Pecuniary Interests**

*That Members undertaking secondary employment should be required to provide a description of the services being provided and/or activities being undertaken, and that the description should be sufficiently detailed that a reasonable person would have an understanding of the actual work being performed by the Member on inspection of the register.*

**ICAC Recommendation 8 – Declaring Conflicts of Interests before Proceedings in Parliament**

*A Member should be required to disclose a conflict of interest at the start of any proceedings in Parliament which relate to the interests of any employer, association or client who has employed, or is currently employing the Members. In developing the detail of a disclosure-before-proceedings rule, consideration should be given to the experience in the British House of Commons, the Scottish Parliament and the Ontario Legislative Assembly.*

**ICAC Recommendation 9 – Employment Arising or Relating to Membership of the Parliament**

*Where a Member is engaged in secondary employment which depends upon, or arises out of, the Members' position as a Member of Parliament, that this should be indicated in the pecuniary interests register. The Member should be required to list all individual organisations to which the Member's services are provided, with a description of the nature of the business of the employer, client, or association in each case.*

The ICAC notes at p71 of the report:

*“The ICAC considers that Members should be required to provide a description of employment or secondary employment that is detailed enough that a member of the public could discern what the Member actually does in their secondary employment – for example, “consultant providing services to public and private sector clients on topics relating to corporate risk assessment and management; internal audit planning, and corporate policy on risk” is more informative than “consultant”*  
p71.

Proposed new Clause in the Code of Conduct:

**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.

The Committee strongly supports the principle of a requirement for registration or declaration of interests where there may be a potential conflict of interests arising from a member's secondary employment or engagement to provide services.

The proposed amendment aims at overcoming the general lack of detail given in the Register with regard to describing the nature of secondary employment undertaken by members. The ICAC noted that descriptions such as 'solicitor', 'consultant', 'contributor', 'director' or 'importer' are insufficient to enable a determination of whether or not a Member could potentially have a conflict of interest. However, the Committee has a number of concerns about the clause as drafted.

The proposed clause requires disclosure of past secondary employment, over the previous 2 years. The Committee does not support any requirement for new Members to disclose information about clients of employment prior to being sworn in as a new Member.

The Committee also noted that the terminology in this draft Clause is particularly legalistic in comparison with other clauses in the code. The clause is unwieldy, containing a number of component parts, and exceptions.

The Committee favourably noted the Auditor General's comment:

*"The proposed wording for this section does not set out what conduct the section is seeking to encourage or prohibit. Is this section intended to avoid (or require disclosure of) a potential conflict of interest? Is it intended to limit the potential for paid advocacy?"*

*In the absence of such a values-based statement, the section is simply a rule that should be followed rather than a code to be adhered to.*

*Suggestion: The Committee should consider the intended outcome of the proposed section and re-word accordingly."*

The Committee recommends a redrafted Clause 7 (numbered as Clause 6 in the Code of Conduct recommended by the Committee – see page 7 of this Report) which attempts to address the deficiency noted by the Auditor General. The redrafted clause also attempts to link the need for declaration of interests to the related requirements of s15A of the Regulation, as the regulation is much more detailed in terms of definitions and scope. However, the Committee also recognises that in so doing, the complexity of s15A as currently drafted is imported into the Code, and the question of the

relationship between the Code and the Regulation also introduces undesirable uncertainty.

A further option for consideration would be to redraft the clause to reflect the text of the Premier's statement in the House of 28 March 2006, when in answer to a question on notice he first advised of the proposed changes. The clause would then read:

[6] Secondary employment or engagements

*Members must disclose at the start of a parliamentary debate the identity of any person by whom they are employed or engaged. Members must also disclose the identity of any client of any such person or any former client who benefited from a member's services within the previous two years (but not before they are sworn as a member).*

*This disclosure obligation does not apply if a member simply votes on a matter; it will only apply when he or she participates in a debate. If the member has already disclosed the information in the member's entry in the register of members' interests, he or she will not be required to make a further disclosure during the proceedings.*

**(vii) Proposed insertion of provision to provide for continuing effect:**

The tabled amendments to the Code included a new final section:

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

The Committee recommends that this provision be incorporated into the Preamble.

### **CHAPTER 3: PROPOSED AMENDMENTS TO THE REGULATION**

The draft Regulation introduces a new requirement to report on “Use of a member’s parliamentary position to provide services” (See Clause 7A and [13] and Forms 1 and 2 in the tabled draft.)

The draft Regulation also requires increased information to be provided in relation to income from any service provided by a member (Clause 9(2)(a) [16] and Clause ((2A) [18]. In certain circumstances, Members will also be required to disclose details of the clients to whom the services are to be provided, through a new section on “Provision of client services” Clause 15A [19] and Forms 1 and 2.

It is further proposed that Members be required to update the Register of Disclosures by Members of the Legislative Assembly every 6 months instead of annually.

The Committee considered the proposed amendments and makes the following observations.

The 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.

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.

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

Regulation should be amended to be amended to require disclosure of the location of real property by town or suburb, rather than postal address or particulars of title.

**Recommendations:**

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.

THAT the Register and updates be available on the Parliament’s website.

THAT, for reasons of safety and privacy, the Regulation be amended to require disclosure of the location of real property by town or suburb, rather than postal address or particulars of title.



## **CHAPTER 4: SUPPLEMENTARY RETURNS AND “EXCEPTION REPORTING”**

The terms of reference of this inquiry specified that the Committee, in conducting its review, in addition to considering supplementary returns, give consideration to the feasibility of reporting changes to pecuniary interests by “exception reporting”. The Committee is also required to consult with the Clerk of the Legislative Assembly to ensure a streamlined process is introduced for updating the Register of Disclosures.

The draft Regulation proposes:

- Changes to sections and definitions to provide for two reporting dates each year, with deadlines for reporting being “one month after the date on which the Assembly first meets after 31 March, and one month after the date on which the Assembly first meets after 30 September, in any year.”
- A new section on Forms (s3A), which requires forms to be completed in accordance with the Regulation, any directions on the form, and any guidelines issued by “the appropriate parliamentary committee”.
- A new provision, and form, for making supplementary returns (s6 and Form 3).

### **Supplementary returns**

Clause 6 of the Regulation provides:

#### ***6 Supplementary returns***

- (1) If a Member considers it appropriate to do so, the Member may lodge a supplementary return with the Clerk at any time before the date on which the Member is next required to lodge an ordinary return.*
- (2) A supplementary return may contain such disclosures as the Member wishes to make concerning any or all of the matters that under this Regulation are required to be disclosed in an ordinary return.*

In considering the necessity for supplementary returns, the Committee examined how many members had written to the Clerk of the Legislative Assembly over a number of years to advise of changes to their returns, or to register additional interests such as gifts or travel benefits received prior to the required reporting period.

The Committee noted that a review of 12 members’ forms over a 14 year period showed that nearly all members had made a change in their form from one year to another. However, only a very small number of members had advised of changes or updates during a reporting year. This may be due to the fact that there is currently no capacity for members to make a supplementary return. The Clerk has accepted letters from Members notifying changes or

additional information and placed them on the Register held in his office. The most common notifications concerned addition or disposal of real estate, details of contributions to travel, overseas and intra- and inter-state, and income from shares.

The Committee also noted the Second Report of the Legislative Council Privileges Committee on the Inquiry into the Pecuniary Interests Register Supplementary Returns (2002) which recommended that the Constitution (Declaration of Members' Interests) Regulation 1983 be amended to provide for supplementary returns by Members.

### **Other jurisdictions:**

The Committee also noted that other jurisdictions in Australia have the following provisions for supplementary returns:

**Northern Territory**—A member shall within 60 days of any change occurring relating to information contained in the Register notify the Clerk of such change.

**Senate**—The Senate's resolutions for the registration of senators' interests require any alterations to be notified to the Registrar within 28 days of the alteration. There is a proposal before the Senate at the moment to extend this time to 35 days for the reasons given in Report 2/2006 of the Committee of Senators' Interests.

**Tasmania**—Members of the Tasmanian Parliament are subject to the Parliamentary (Disclosure of Interests) Act 1996. This legislation provides for a primary return (for each member after they are elected) and an annual (or ordinary) return for any amendments thereafter. Members by section 22 may provide a variation to a return at any time.

**House of Representatives**—The requirements for the disclosure of Members' interests apply to financial and other interests. Members are required to complete declarations within 28 days of being sworn in or making an affirmation. Copies of all declarations are tabled in the House. The resolution of the House establishing the regime also requires that Members notify alterations of relevant interests within 28 days of the alterations occurring. Copies of notices of alteration are also tabled in the House.

**Queensland**—Schedule 2 of the Standing Rules and Orders of the Legislative Assembly provides that within one month of making an oath or affirmation, each member must provide the Registrar of Members' Interests (the Clerk of the Parliament) a statement of their registrable interests and those of their spouse and any dependent children. Members are required to notify the Registrar of any alterations to those interests within one month of the alteration occurring.

**South Australia**—The South Australia Members of Parliament (Register of Interests) Act 1983 requires that a new Member submit a primary return within 30 days of taking the oath or affirmation and subsequently an ordinary return within 30 days after 30 June each year. There is no provision for a supplementary return.

**Victoria**—The Parliament of Victoria requires newly elected Members to lodge a Primary Return of their interests under the Members of Parliament (Register of Interests) Act 1978, which must be lodged within 30 days of being sworn-in. Thereafter, every Member is required to lodge an Ordinary Return within 60 days of 30 June each year, setting out any changes that have occurred during the previous 12 month period. In addition, it is open to any Member to notify the Clerk of the Parliaments of any changes at any time, if desired (usually in the form of a letter).

**Western Australia**—No specific provision, but Members not precluded from correcting or amending information provided in a return. In Western Australia it is not necessary to make a full return every year, or to repeat disclosure of information that has already been disclosed in the previous return. If an MP's circumstances have not altered, the MP can write "No Change" under the relevant section to avoid repeating information already provided.

**New Zealand**—The New Zealand Standing Orders provide for a system for Members of Parliament to register their pecuniary interests through an annual return as at 31 January. The scheme is set out in Standing Order 164 and Appendix B of the Standing Orders. It does not provide for supplementary returns. There is no formal requirement to register any change in a member's pecuniary interests after 31 January each year until the next return is required. However, Standing Orders 165-167 establish further obligations on members to declare any financial interests that they may have in an item of business before the House, before participating in any consideration of that item of business. While these obligations do not apply to anything included in the Register of Pecuniary Interests of Members, they are wider in scope and application. Therefore, members may have financial interests that are not covered by the requirements of the register, that they will need to declare orally in the House or to a committee prior to participating in the consideration of an item of business.

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.

The Committee had the benefit of noting the Report of the Senate Committee of Senators' Interests 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. In a meeting with a visiting Western Australian delegation led by Speaker the Hon Fred Riebeling MP, the Committee also discussed the question of timing of updates of the Register and concluded that 28 days was insufficient for mandatory updating, given that some country members may be away from home for up to two weeks at a time.

As noted above in the Report, the Committee also supports updates to the Register being accessible through the internet.

**The Committee recommends:**

THAT full Ordinary Declaration of Interest Forms continue to be lodged annually, and that six-monthly returns not be adopted.

THAT there be a new requirement for mandatory updating of the Register within 35 days of a change in interests recorded on the return.

THAT the Clerk be required to table all updates received quarterly, at the next sitting of the House.

## **CHAPTER 5: REVIEW 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).

Schedule 1 of the Regulation dictates the format and contents of the forms used for Members’ as Primary and Ordinary Returns. This Schedule 1, headed up “Forms”, which is part of the tabled draft Regulation, was also updated to insert extra columns for registration of the additional information proposed to be required in relation to sources of income (Clause 9(2)(a)) and Client Services (Clause 15A).

The Cabinet Office advised the Committee that under the terms of reference of the inquiry which was agreed to by the House, it was up to the House to issue guidelines on what should be included under the broad terms of the Regulation. This raises some concerns about the drafting and scope of guidelines, and potential for problems to arise due to discrepancies between the terms of the Regulation and guidelines devised by the Committee. There is also the possibility that the introduction of guidelines could lead to lack of precision in interpretation of the Regulation.

The Committee was also 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 Committee accordingly recommends:**

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.

THAT updates to the Register be able to be notified either by a form (the Senate form is a good example) or by signed letter to the Clerk.

**APPENDIX 1: CODE OF CONDUCT AS ADOPTED BY MEMBERS OF THE LEGISLATIVE ASSEMBLY** (Votes and Proceedings, 12 May 1999, 8 September 1999, 3 May 2000, 16 November 2000, 26 February 2002, 29 April 2003, 22 May 2006.)

**CODE OF CONDUCT**

**FOR MEMBERS OF THE NEW SOUTH WALES PARLIAMENT**

*Preamble to the Code of Conduct*

*The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.*

*Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.*

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

**THE CODE**

**1 Disclosure of conflict of interest**

*(a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.*

*(b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.*

*(c) 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.*

**2 Bribery**

*Members must not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for payment or any other personal financial benefit.*

### **3 Gifts**

- (a) Members must declare 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 accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the member in the exercise of his or her duties.*
- (c) Members may accept political contributions in accordance with part 6 of the Election Funding Act 1981.*

### **4 Use of public resources**

*Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.*

### **5 Use of confidential information**

*Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.*

### **6 Duties as a Member of Parliament**

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



## **APPENDIX 2: EXCERPTS OF MINUTES OF MEETINGS OF THE COMMITTEE**

### **Minutes of Proceedings of the Standing Committee on Parliamentary Privilege and Ethics**

**Wednesday 7 June 2006 at 1.00 pm  
Room 1254, Parliament House**

#### **Members Present**

Mr Price (Chairman), Mr Mills, Ms Keneally, Ms Moore, Mr O'Farrell, Mr Pearce, Mr J H Turner and Mr Yeadon.

#### **Minutes of the meeting held 29 March 2006**

The Minutes of the meeting held on 29 March 2006, previously circulated, were adopted on the motion of Ms Keneally, seconded Mr Turner.

#### **Business Arising from the Minutes**

The Committee Clerk advised:

A package of motions were moved, and carried, in the House on 29 May 2006, extending the appointment of the Parliamentary Ethics Adviser to 30 June 2007, amending the section of the Code of Conduct in relation to bribery, and referring amendments to the Code and a new registration of interests regulation to this committee.

.....

In light of the changes announced to the regulation and code, the draft Handbook will require changes, and thus work on it had been deferred.

#### **Correspondence**

The Chairman advised that the Committee had received a letter from the Legislative Council Privileges Committee advising that the Committee had commenced their review of the Code of Conduct.

#### **Inquiry on amendments to the Code of Conduct and the Consultation Draft**

The Committee noted the schedule that the Committee Clerk had prepared and circulated prior to the meeting. Notes from the discussion were circulated.

The Committee agreed THAT:

The Clerk research the original ICAC recommendations, and prepare a schedule showing the text of the recommendations, whether the Committee agreed to the recommendations, and how these relate to the tabled proposed Code amendments and new regulation.

The Chairman to write to the Premier requesting attendance by Cabinet Officers to assist the Committee with the rationale behind the proposed changes.

That the inquiry terms of reference be advertised, in Sydney and leading regional papers.

That letters go out to all members and identified interested parties, seeking submissions.

That calendars be circulated to enable future meeting dates to be set, especially given that this committee should meet with the LC committee.

.....  
The committee adjourned at 1.50 pm, sine die.

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**Minutes of Proceedings of the Standing Committee on Parliamentary Privilege and Ethics**

Wednesday 28 June 2006 at 1.00 pm  
Room 1254, Parliament House

**Members Present**

Mr Price (Chairman), Mr Mills, Ms Keneally, Ms Moore, Mr O'Farrell, Mr Pearce.

Apologies: Mr J H Turner and Mr Yeadon.

Also present: Mr Russell Grove, Clerk of the Legislative Assembly, Mr Anthony Lean, Policy Manager, Legal Branch, The Cabinet Office and Ms Catherine Chang, Principal Legal Officer, The Cabinet Office.

**Minutes of the meeting held 7 June 2006**

The Minutes of the meeting held on 7 June 2006, previously circulated, were adopted on the motion of Mr O'Farrell, seconded Mr Mills.

**Inquiry on amendments to the Code of Conduct and the Consultation Draft**

The Chairman welcomed Anthony Lean and Catherine Chang, Cabinet Officers, who outlined the tabled changes to the Code of Conduct and the draft amended Regulation on Members' Interests. Mr Lean advised that the amendments were in response to recommendations by the ICAC that members be required to give more information about "sources of income". Discussion ensued.

The Committee was advised that, as proposed in the terms of reference of the inquiry which was agreed to by the House, it was up to the House to issue guidelines on what should be included under the broad terms of the Regulation.

When queried about why the opportunity was not taken to review the format of the form which was a Schedule to the Regulation, it was advised that the Cabinet Office had sought to only make the most necessary consequential amendments, rather than completely review the layout and wording of the form. It was, of course, open to the committees to do this.

The committee clerk was requested to report back to the Committee on:

- The number of members who have updated their annual return during the year;
- The number who have changed their returns over a period of years on a year to year basis
- Information on whether there have been problems when an MP has failed to update their return during the year.
- Information on whether other Parliaments require members to report other than annually, and if supplementary updates are required, whether they are filed within 30 days or 90 days.

It was noted that the Government does not support the ICAC recommendation that any contract of employment of a member be lodged with the Clerk, nor the recommendation that the pecuniary interest forms be accessible to the public through the internet.

### **Business Arising from the Minutes**

As resolved at the last meeting, the Chairman has written to the Premier requesting a copy of Minister's Handbook containing the Ministerial Code of Conduct. All members of the Legislative Assembly have been circulated advising of the tabled proposals for amendment of the Code and pecuniary interest regulations, and invited to submit to the Committee. The Chairman wrote to the Ombudsman, Auditor-General and ICAC Commissioner inviting a submission. The Ombudsman has responded to date, and the ICAC requested further information. Advertisements were placed in the Sydney metropolitan papers and regional papers about the inquiry.

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## **Minutes of Proceedings of the Standing Committee on Parliamentary Privilege and Ethics**

**Monday 21 August 2006 at 11.00 am**

**Waratah Room, Parliament House**

### **Members Present**

Mr Price (Chairman), Mr Mills, Ms Keneally, Ms Moore, Mr O'Farrell, Mr Pearce and Mr Yeadon.

Apology: Mr J H Turner

### **Minutes of the meeting held 28 June 2006**

The Minutes of the meeting held on 28 June 2006, previously circulated, were adopted on the motion of Ms Keneally, seconded Mr Mills. The clerk confirmed that notes of discussions circulated with the minutes did not form part of the minutes, but were as an aide-memoire only.

### **Business Arising from the Minutes**

The Clerk outlined information gathered in response to requests by the Committee at the last meeting, as circulated:

- (1) Briefing Note on Review of Year on Year Pecuniary Interest Forms – examination of a sample of returns. It was noted that most members

only changed one or two sections of their return each year, usually in relation to real estate, share-holdings, gifts or travel.

- (2) Briefing Note on Other Jurisdictions' Financial Disclosure Requirements for supplementary returns (includes copies of supplementary disclosure forms from Queensland and the Senate). It was noted that Queensland, Northern Territory and the Australian Parliament had requirements for mandatory updating of changes to returns. Forms or letters were sufficient to notify of changes.
- (3) Letter received from The Cabinet Office dated 8 August 2006, outlining background to the tabled amendments and draft Regulation. Noted.

### **Correspondence**

The Chairman advised that he had written letters to the Premier and Leader of the House on 28 July, requesting an extension of time for the reporting date to 3 October 2006, so that the committee can meet with LC committee about the Code and Regulation.

### **Inquiry on amendments to the Code of Conduct and the Consultation Draft Regulation**

The Committee noted that submissions had been received from the Auditor General, the Ombudsman, the Commissioner of the Independent Commission Against Corruption and the Potts Point and Kings Cross Heritage Conservation Society Incorporated. The submissions were tabled and authorised to be printed.

A schedule summarising the comments received about the Code had been circulated. The Committee discussed the various provisions, and requested the Clerk to prepare a draft indicating the areas of agreement, with accompanying records of discussion and options.

The committee adjourned at 1.00 pm, until Wednesday 30 August at 10.00am .

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## **Minutes of Proceedings of the Standing Committee on Parliamentary Privilege and Ethics**

**Wednesday 30 August 2006 at 10.00 am**

**Room 1153, Parliament House**

### **Members Present**

Mr Price (Chairman), Mr Mills, Ms Moore, Mr O'Farrell, Mr Pearce, Mr J H Turner and Mr Yeadon.

Apology: Ms Keneally

### **Minutes of the meeting held 21 August 2006**

The Minutes of the meeting held on 21 August 2006, previously circulated, were adopted on the motion of Mr Yeadon, seconded Mr Mills.

### **Business Arising from the Minutes**

The Chairman advised that, in response to his letters to the Premier and Leader of the House on 28 July, requesting an extension of time for the reporting date to 3 October 2006, he had received advice that the original reporting date of 1 September would stand.

The Clerk noted that in response to requests from committee members, following the last meeting copies of the New Zealand pecuniary interest form, the Queensland standing orders and forms for registration and declaration of interests, and the recent Senate report on pecuniary interests, together with relevant forms, had been circulated for members' information.

**Inquiry on amendments to the Code and the Consultation Draft Regulation**

The Clerk circulated a draft chapter outline proposing a report structure. The Committee resolved, on the motion of Mr Mills, seconded Mr Yeadon, that the draft report reflect the circulated format.

The Committee then considered the briefing note prepared by the Clerk noting areas of agreement indicated at the last meeting of the committee, and the marked up draft Code which incorporated the agreed changes, both of which had been previously circulated. Discussion ensued.

The Committee resolved, on the motion of Mr Yeadon, seconded Mr O'Farrell, that a draft report be prepared reflecting the decisions and discussions on the briefing note, and that the report be circulated to members, with members advising the Clerk to the Committee of any amendments, additions or comments for recirculation prior to the report, as confirmed by the Committee, being tabled on 1 September 2006.

The committee adjourned at 11.45 pm, sine die.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Clerk to the Committee

## **APPENDIX 3**

### **Role and function of the Legislative Assembly Committee on Parliamentary Privilege and Ethics**

The Committee on Parliamentary Privilege and Ethics, a standing committee of the Legislative Assembly, was established in December 2003. This committee has assumed all the functions and powers of the Standing Committee on Ethics, which was established by amendment to the Independent Commission Against Corruption Act in 1995. The principal function of the Standing Committee on Ethics was to prepare a draft code of conduct for Members of the Legislative Assembly, and to review any code introduced. A Code of Conduct for Members of Parliament was first adopted by the Assembly in May 1998, and readopted in 1999, 2002 and 2003.

The Committee is also the designated committee for the purposes of s 72E of the ICAC Act, which includes review of codes of conduct already adopted, educative work relating to ethical standards applying to members of the Legislative Assembly, and advising on ethical standards in response to requests for advice by the Legislative Assembly.

The Committee has no power to advise on actual or alleged conduct of any particular person.

Since December 2003 the Committee has been given power to consider and report on any matters relating to privilege which may be referred to it by the House. The House also has power to examine and deal with contempts of Parliament and to consider issues relating to the control of proceedings and the publication of parliamentary debates and reports.

The resolution establishing the Committee on Parliamentary Privilege and Ethics forms Appendix 6 to this report, and s72E of the Independent Commission Against Corruption Act forms Appendix 7.

## **APPENDIX 4**

### **STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**

Hansard, page: 6058

#### **Establishment**

**Mr TONY STEWART** (Bankstown—Parliamentary Secretary) [1.02 p.m.]: I move:

That notwithstanding anything to the contrary in the standing orders:

1. A Standing Committee on Parliamentary Privilege and Ethics (referred to as "the Committee") be appointed to consider and report upon any matters relating to privilege which may be referred to it by the House.
2. The Committee is the designated committee for the purpose of exercising the functions in part 7A division 2 of the Independent Commission Against Corruption Act 1988, relating to parliamentary ethical standards including the review of the code of conduct.
3. The Committee consist of the eight members being: five members nominated by the Premier, two members nominated by the Leader of the Opposition and one member nominated by Independent members. Nominations for membership of the Committee are to be in writing to the Clerk of the House within seven days of the date of this resolution.
4. (1) The Premier is to nominate the Chair of the Committee in writing to the Clerk of the House.  
(2) The Deputy Chair of the Committee will be elected by the Committee.  
(3) The Deputy Chair is to act as Chair when the Chair is absent from a meeting.  
(4) In the absence of both the Chair and Deputy Chair from a meeting, a member of the Committee is to be elected by the members present to act as Chair for that meeting.  
(5) The Chair, Deputy Chair or other member acting as Chair at a meeting has a deliberative vote and in the event of an equality of votes a casting vote.  
(6) Any five members of the Committee shall constitute a quorum.
5. The Committee have power to make visits of inspection within New South Wales and elsewhere in Australia.
6. The Committee have power to confer with any similar Committee appointed by the Legislative Council.

7. A member may raise a matter of privilege suddenly arising relating to proceedings then before the House. The matter will be determined in accordance with Standing Order 101.

8. Except as provided in paragraph 7 and in paragraph 8 (e), a matter of privilege shall be brought before the House as follows:

(a) A member desiring to raise a matter of privilege must inform the Speaker of the details in writing.

(b) The Speaker must consider the matter within 14 days and decide whether a motion to refer the matter to the Committee is to take precedence under the standing orders. The Speaker must notify his decision in writing to the member.

(c) While a matter is being considered by the Speaker, a member must not take any action or refer to the matter in the House.

(d) If the Speaker decides that a motion for referral should take precedence, the member may, at any time when there is no business before the House, give notice of a motion to refer the matter to the Committee. The notice must take precedence under Standing Order 127 on the next sitting day (unless the next sitting day is a Friday sitting).

(e) If the Speaker decides that the matter should not be the subject of a notice of referral, a member is not prevented from giving a notice of motion in relation to the matter. Such notice shall not have precedence.

(f) If notice of a motion is given under paragraph 8 (d), but the House is not expected to meet on the day following the giving of the notice or the next sitting day is a Friday sitting, the motion may be moved at a later hour of the sitting at which the notice is given with the leave of the House.

**Motion agreed to.**

Votes and Proceedings, 4 December 2003.



## **APPENDIX 5**

### **Independent Commission Against Corruption Act 1988 No 35**

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#### **72E Functions of committee**

- (1) The functions of the designated committee are:
  - (a) to prepare for consideration by the Legislative Assembly draft codes of conduct for members of the Legislative Assembly and draft amendments to codes of conduct already adopted, and
  - (b) to carry out educative work relating to ethical standards applying to members of the Legislative Assembly, and
  - (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Assembly, but not in relation to actual or alleged conduct of any particular person.
- (1A) The designated committee may appoint any member of the public for the purpose of assisting the committee to carry out any of its functions under this section in relation to a code of conduct.
- (2) The designated committee may seek comments from the public in relation to any of its functions under this section.
- (3) Before presenting a draft code of conduct for consideration by the Legislative Assembly, the designated committee must:
  - (a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public, and
  - (b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice, and
  - (c) specify, in the notice, the period during which submissions may be made to the committee.
- (4) Any person may, during the period referred to in subsection (3) (c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct. The committee must take any such submissions into consideration.
- (5) The designated committee is to review a code of conduct adopted by the Legislative Assembly at least once every 4 years.

## APPENDIX 6: DRAFT AMENDMENTS TO THE CODE OF CONDUCT AS TABLED 25 MAY 2006

### Draft amendments to the Legislative Assembly's and Legislative Council's Code of Conduct

*The following sets out the full Code of Conduct for Members with the proposed amendments underlined.*

That:

1. This House adopt, for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, the following code of conduct:

#### PREAMBLE

- The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.

- Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.
- Members of Parliament accordingly 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 of Parliament, and using their influence to advance the common good of the people of New South Wales.
- Members of Parliament acknowledge that their principal responsibility in serving as Members is to their constituents and to the people of New South Wales.

#### THE CODE

##### 1 Disclosure of conflict of interest

(a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.

(b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.

(c) 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.

## 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.

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

## 3 Gifts

- (a) Members must declare 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 accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the Member in the exercise of his or her duties.
- (c) Members may accept political contributions in accordance with part 6 of the Election Funding Act 1981.

## 4 Use of public resources

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

## 5 Use of confidential information

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.

## 6 Duties as a Member of Parliament

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

## 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:

- (iii) 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
- (iv) 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.

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

**APPENDIX 7: THE CONSULTATION DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) AMENDMENT REGULATION 2006.**

**Text of the Constitution (Disclosures by Members) Regulation can be accessed on [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).**





New South Wales

## Constitution (Disclosures by Members) Amendment Regulation 2006

under the

Constitution Act 1902

Her Excellency the Governor, with the advice of the Executive Council and in compliance with the provisions of section 14A (5) of the *Constitution Act 1902*, has made the following Regulation under the *Constitution Act 1902*.

Premier

### Explanatory note

The object of this Regulation is to amend the *Constitution (Disclosures by Members) Regulation 1983*:

- (a) to require any Member of Parliament who is engaged (whether under an employment contract, as an officer of a corporation or by means of certain other contracts, agreements or arrangements for monetary consideration) by a person (the *principal*) to provide a service involving the use of the Member's parliamentary position to or on behalf of clients of the principal to disclose certain information about the service the Member provides, and
- (b) to require newly elected Members of Parliament to lodge primary returns within 1 month after they take office instead of the current period of 3 months, and
- (c) to require Members of Parliament to disclose certain additional information concerning their sources of income, and
- (d) to make certain consequential amendments to the Regulation, and
- (e) to make other minor amendments in the nature of law revision.

This Regulation is made under section 14A (Disclosure of pecuniary interests and other matters by Members) of the *Constitution Act 1902*.

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## consultation draft

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Clause 1      Constitution (Disclosures by Members) Amendment Regulation 2006

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### **Constitution (Disclosures by Members) Amendment Regulation 2006**

under the

Constitution Act 1902

**1 Name of Regulation**

This Regulation is the *Constitution (Disclosures by Members) Amendment Regulation 2006*.

**2 Commencement**

This Regulation commences on 24 March 2007.

**3 Amendment of Constitution (Disclosures by Members) Regulation 1983**

The *Constitution (Disclosures by Members) Regulation 1983* is amended as set out in Schedule 1.



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# consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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## Schedule 1 Amendments

(Clause 3)

**[1] Clause 2 Arrangement**

Omit the clause.

**[2] Clause 3 Interpretation**

Insert in alphabetical order in clause 3 (1):

*first ordinary return date* for a year means:

- (a) except as provided in paragraph (b)—31st March, or
- (b) where there are no Members of the Legislative Assembly on 31st March in that year by reason of the termination, either by dissolution or expiry, of the Legislative Assembly—the date that occurs 1 month after the date on which the Legislative Assembly first meets after 31st March in that year.

*second ordinary return date* for a year means:

- (a) except as provided in paragraph (b)—30th September, or
- (b) where there are no Members of the Legislative Assembly on 30th September in that year by reason of the termination, either by dissolution or expiry, of the Legislative Assembly—the date that occurs 1 month after the date on which the Legislative Assembly first meets after 30th September in that year.

*supplementary return* means a return in or to the effect of Form 3.

**[3] Clause 3 (1), definition of “ordinary return period”**

Omit the definition. Insert instead:

*ordinary return period* means:

- (a) in relation to an ordinary return required to be lodged by a Member before the first ordinary return date for a particular year:
  - (i) if the last return lodged by the Member was an ordinary return—the period of 6 months commencing on 1st July and ending on 31st December in the previous year, or
  - (ii) if the last return lodged by the Member was a primary return—the period commencing on the

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## consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1 Amendments

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- primary return date in relation to the Member and ending on 31st December in the previous year, or
- (b) in relation to an ordinary return required to be lodged by a Member before the second ordinary return date for a particular year:
- (i) if the last return lodged by the Member was an ordinary return—the period of 6 months commencing on 1 January and ending on 30th June in that particular year, or
  - (ii) if the last return lodged by the Member was a primary return—the period commencing on the primary return date in relation to the Member and ending on 30th June in that particular year.

**Note.** See clause 24 for a summary of the requirements in respect of the lodgment of returns in the year of 2007.

**[4] Clause 3 (1), definition of “primary return date”**

Omit the definition. Insert instead:

*primary return date*, in relation to a person who becomes a Member (not being a re-elected Member), means the date on which he or she takes the pledge of loyalty required by section 12 of the Act.

**[5] Clause 3 (1), definition of “return”**

Omit the definition. Insert instead:

*return* means any of the following:

- (a) a primary return,
- (b) an ordinary return,
- (c) a supplementary return.

**[6] Clause 3 (2) and (3)**

Omit the subclauses. Insert instead:

- (2) A reference in this Regulation to a primary return or an ordinary return that was last lodged by a Member includes a reference to a primary return or ordinary return in or to the effect of the relevant form set out in Schedule 1 (as in force before its substitution by the *Constitution (Disclosures by Members) Amendment Regulation 2006*) if that was the last return lodged by the Member.
- (3) Notes included in this Regulation (except for directions and other notes in a Form) do not form part of this Regulation.

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Constitution (Disclosures by Members) Amendment Regulation 2006

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**[7] Clause 3A**

Insert after clause 3:

**3A Forms**

- (1) In this Regulation, a reference to a Form is a reference to a Form in Schedule 1.
- (2) A Form must be completed in accordance with such of the following directions and guidelines (if any) as are consistent with this Regulation:
  - (a) any directions specified in the Form,
  - (b) any guidelines issued or approved from time to time by the appropriate parliamentary committee for the Member completing the Form.
- (3) In this clause, the *appropriate parliamentary committee* for a Member completing a Form means:
  - (a) a committee of the House of Parliament to which the Member belongs that is authorised by that House to issue or approve guidelines of the kind referred to in subclause (2) (b), or
  - (b) if a joint committee of the Houses of Parliament is so authorised by both Houses, that joint committee.

**[8] Clauses 4–6**

Omit the clauses. Insert instead:

**4 Primary returns**

A person who becomes a Member (not being a re-elected Member) must, within 1 month after the date on which he or she takes the pledge of loyalty required by section 12 of the Act, lodge a primary return with the Clerk.

**5 Ordinary returns**

- (1) In each year a Member must lodge an ordinary return with the Clerk both before the first ordinary return date and the second ordinary return date for that year.
- (2) However, a Member is not required to lodge an ordinary return if the primary return date in relation to the Member occurs after the end of the ordinary return period in respect of which the ordinary return is required to be lodged.

**Note.** See clause 24 for a summary of the requirements in respect of the lodgment of returns in the year of 2007.

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## consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

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### 6 Supplementary returns

- (1) If a Member considers it appropriate to do so, the Member may lodge a supplementary return with the Clerk at any time before the date on which the Member is next required to lodge an ordinary return.
- (2) A supplementary return may contain such disclosures as the Member wishes to make concerning any or all of the matters that under this Regulation are required or permitted to be disclosed in an ordinary return.

#### [9] Clause 7 Interpretation: Part 3

Insert in alphabetical order in clause 7 (1):

*entity* means any of the following:

- (a) a corporation or body corporate,
- (b) a partnership or other unincorporated association of persons.

#### [10] Clause 7 (1), definition of “disposition of property”

Omit “his” from paragraph (f) of the definition. Insert “his or her”.

#### [11] Clause 7 (1), definition of “income”

Omit “*Income Tax Assessment Act 1936* of the Parliament of the Commonwealth”.

Insert instead “*Income Tax Assessment Act 1997* of the Commonwealth”.

#### [12] Clause 7 (4)

Insert after clause 7 (3):

- (4) A reference in this Part to a description that is reasonably sufficient to identify a matter is a reference to a description that would enable a reasonable person to identify the nature or the kind of matter.

#### [13] Clause 7A

Insert after clause 7:

##### 7A Use of Member’s parliamentary position to provide services

A reference in this Part to a service provided by a Member involving the use of the Member’s parliamentary position is a reference to any service provided by the Member to another person that arises from or relates to the use of the Member’s

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Constitution (Disclosures by Members) Amendment Regulation 2006

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position as a Member, including (but not limited to) any of the following services:

- (a) the provision of public policy advice,
- (b) the development of strategies, or the provision of advice, on the conduct of relations with the Government or Members,
- (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

**[14] Clauses 8 (2), 11 (2) (c) and (f), 12 (1) (a), 13 (a), 14 (3) (d) (ii) and 16**

Omit “he” and “his” wherever occurring.

Insert instead “he or she” and “his or her” respectively.

**[15] Clause 9 Sources of income**

Omit clause 9 (1) (a). Insert instead

- (a) in a primary return—each source of income that the Member received, or reasonably expects to receive, in the period commencing on the primary return date and ending on the next succeeding 30th June or 31st December (whichever is last date of the ordinary return period for the Member’s first ordinary return), and

**[16] Clause 9 (2) (a)**

Omit the paragraph. Insert instead:

- (a) in relation to income from any service provided by a Member:
  - (i) a description that is reasonably sufficient to identify the service provided, or that is reasonably expected to be provided, for that income, and
  - (ii) where the service is provided, or is reasonably expected to be provided, as part of an occupation—a description that is reasonably sufficient to identify the occupation, and
  - (iii) where the service is provided, or is reasonably expected to be provided, as an employee of another person or as the holder of an office—the name and address of the Member’s employer or a description of the office (as the case may be), and
  - (iv) where the service is provided, or is reasonably expected to be provided, in connection with a partnership the Member has entered into with other

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## consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

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persons—the name (if any) under, and address from which, the partnership is conducted, and

- (v) where the service is provided, or is reasonably expected to be provided, under any other contract, agreement or arrangement—the name and address of the person from whom the income was, or is reasonably expected to be, received, or

**[17] Clause 9 (2) (c)**

Insert “that is reasonably” before “sufficient”.

**[18] Clause 9 (2A)**

Insert after clause 9 (2):

(2A) Without limiting subclause (2), if:

- (a) the source of income was, or is reasonably expected to be, received:
- (i) from the Member’s employer, or
  - (ii) for an office held by a Member in an entity, or
  - (iii) under a contract or any other agreement, and
- (b) the Member knows that the source of income was, or is reasonably expected to be, received for the provision by the Member of any service involving the use of the Member’s parliamentary position,

the disclosure required by subclause (1) in relation to that source of income must include a description that is reasonably sufficient to identify the business carried on by the employer, entity or other party to the contract or agreement (as the case may be).

**[19] Clause 15A**

Insert after clause 15:

**15A Provision of client services**

- (1) This clause applies to any Member who is or was engaged by a person (the *principal*) to provide any service that involves the use of the Member’s parliamentary position (a *relevant service*) to or on behalf of any client of the principal regardless of whether or not the Member also received, or is also reasonably expected to receive, a payment, gift or other financial benefit from the client or other person to whom the service is (or is to be) provided.
- (2) For the purposes of this clause, a *client* of a principal is any person to whom a service is, or is to be, provided or made

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available in circumstances where the principal has received, or is reasonably expected to receive, consideration in money or money's worth for the service.

- (3) For the purposes of subclause (1), a Member is *engaged by a principal* to provide a relevant service to or on behalf of clients of the principal if the Member provides the service in connection with:
- (a) any contract of employment that the Member has entered into with the principal, or
  - (b) where the Member is an officer of the principal—the Member's functions as an officer of the principal, or
  - (c) any other contract, agreement or arrangement that the Member has entered into with the principal under which the Member receives, or is reasonably expected to receive, consideration in money or money's worth.
- (4) For the purposes of this clause, a relevant service is provided *on behalf of a client of the principal* if the client has requested that the service be provided to another person on the client's behalf.
- (5) A Member to whom this clause applies must disclose:
- (a) in a primary return—each relevant service the Member provided, or reasonably expects to provide, to or on behalf of any clients of the principal in the period commencing on the primary return date in relation to the Member and ending on the next succeeding 30th June or 31st December (whichever is last date of the ordinary return period for the Member's first ordinary return), and
  - (b) in an ordinary return—each relevant service provided to or on behalf of any clients of the principal that the Member provided at any time during the ordinary return period.
- (6) A reference in subclause (5) to each relevant service provided, or reasonably expected to be provided, by a Member to or on behalf of any clients of the principal is a reference to:
- (a) a description that is reasonably sufficient to identify the nature of the service, and
  - (b) the names and addresses of the persons that the Member knows, or ought reasonably to know, have directly benefited or are likely to benefit directly from the provision of the service, and
  - (c) a description that is reasonably sufficient to identify the nature of the business carried on by any of the persons referred to in paragraph (b).

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## consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1 Amendments

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(7) In this clause:

*function* includes a power, authority or duty.

*officer*, in relation to a person that is corporation, has the same meaning as officer of a corporation has in section 9 of the *Corporations Act 2001* of the Commonwealth.

**[20] Clause 19 Form of registers**

Omit clause 19 (2) (b). Insert instead:

- (b) There shall be separate parts of a register for the ordinary returns lodged in respect of each ordinary return period, together with:
- (i) primary returns lodged under clause 4 in respect of primary return dates in that period, and
  - (ii) supplementary returns lodged under clause 6 in that period.

**[21] Clause 24**

Insert after clause 23:

**24 Summary of operation of this Regulation in 2007**

**(1) Summary of requirements in 2007**

For the avoidance of doubt, this clause summarises the operation of this Regulation (as amended by the *Constitution (Disclosures by Members) Amendment Regulation 2006*) in the year of 2007.

**(2) When first ordinary return is due**

The first ordinary return date for the lodgment of an ordinary return in 2007 (the *first 2007 ordinary return date*) is the date that occurs 1 month after the date on which the Legislative Assembly first meets following the general election to be held on Saturday 24th March 2007 (the *2007 general election*).

**(3) Members required to lodge first ordinary return**

The following Members (other than recently elected Members referred to in subclause (4) (b)) will be required to lodge an ordinary return before the first 2007 ordinary return date:

- (a) any re-elected Member, and
- (b) any Member of the Legislative Council whose term of office does not expire with the 2007 general election.



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Constitution (Disclosures by Members) Amendment Regulation 2006

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- (4) However, the following Members (*recently elected Members*) will not be required to lodge an ordinary return before the first 2007 ordinary return date:
- (a) any Member (other than a re-elected Member) who is elected at the 2007 general election,
  - (b) any Member (other than a re-elected Member) who took the pledge of loyalty required by section 12 of the Act in early 2007 before the 2007 general election.
- (5) **Ordinary return period**
- The ordinary return period in respect of the ordinary return required to be lodged before the first 2007 ordinary return date is:
- (a) if the last return lodged by the Member was an ordinary return—the period of 6 months commencing on 1st July 2006 and ending on 31st December 2006, or
  - (b) if the last return lodged by the Member was a primary return and the Member is not a recently elected Member—the period commencing on the date on which the Member takes the pledge of loyalty required by section 12 of the Act and ending on 31st December 2006.
- (6) **Requirements in relation to recently elected Members**
- Instead of lodging an ordinary return before the first 2007 ordinary return date, a recently elected Member elected at the 2007 general election will be required to lodge a primary return within 1 month after the Member takes the pledge of loyalty required by section 12 of the Act.
- (7) Recently elected Members will be required to lodge their first ordinary returns before the second ordinary return date in 2007 (that is, 30th September 2007).
- (8) The ordinary return period for any such ordinary return for a recently elected Member will be:
- (a) the period commencing on the date on which the Member takes the pledge of loyalty required by section 12 of the Act, and
  - (b) ending on 30th June 2007.

[22] **Schedule 1**

Omit the Schedule. Insert instead:

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1 Amendments

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## Schedule 1 Forms

(Clauses 3 (1) and 3A)

### Form 1 Primary return

(Clause 3 (1), definition of "primary return")

#### Constitution (Disclosures by Members) Regulation 1983

#### Primary Return—Legislative \*Council/\*Assembly

##### Directions

- 1 The pecuniary interests and other matters required to be disclosed in this return are prescribed in clauses 8, 9, 12, 13, 14 and 15A of the *Constitution (Disclosures by Members) Regulation 1983*.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- 4 Where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.
- 5 Matter marked with an asterisk (\*) is to be omitted if it is not appropriate for the Member concerned.

Disclosures of pecuniary interests and other matters by:

..... as at .....  
*(full name of Member)* *(primary return date)*  
.....  
*(Member's signature)*  
.....  
*(Date)*

#### Part 1 Real property

Address of each parcel of real property in which I had an interest on the primary return date	Nature of interest

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## consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

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Schedule 1

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<b>Address of each parcel of real property in which I had an interest on the primary return date</b>	<b>Nature of interest</b>

### Part 2 Sources of income

- 1 Particulars of the sources of income I received or reasonably expect to receive from any services provided, or to be provided, in the period commencing on the day I took the pledge of loyalty required by section 12 of the *Constitution Act 1902* and ending on the next succeeding 30th June or 31st December (whichever is the last date of the ordinary return period for my first ordinary return):

## consultation draft

Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

Description that is reasonably sufficient to identify the services that were provided, or are reasonably expected to be provided, for the income	If services were provided, or are reasonably expected to be provided, as part of an occupation—a description of the occupation that is reasonably sufficient to identify the occupation	If services were provided, or are reasonably expected to be provided, as an employee, office holder, in connection with a partnership or under any other contract, agreement or arrangement—the name and address of the employer, partnership or other party to the contract, agreement or other arrangement or a description of the office (as applicable)	If a service involves the use of the Member's parliamentary position—a description that is reasonably sufficient to identify the nature of the business carried on by the employer, partnership, entity in which an office is held or other party to the contract, agreement or other arrangement (as applicable)

**2** Sources of income I reasonably expect to receive from a trust in that period:

Name and address of settlor	Name and address of trustee

**3** Sources of other income I reasonably expect to receive in that period:

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## consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

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Schedule 1

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*(Include description reasonably sufficient to identify the person from whom, or the circumstances in which, that income is expected to be received.)*

.....  
.....  
.....  
.....

### Part 3 Interests and positions in corporations

Name and address of each corporation in which I had an interest or held a position on the primary return date	Nature of interest (if any)	Description of position	Description of principal objects of corporation (except in case of public company)

### Part 4 Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) on the primary return date	Description of position

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# consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1 Amendments

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## Part 5 Debts

Name and address of each person to whom I was liable to pay any debt on the primary return date.

.....  
.....  
.....  
.....

## Part 6 Client services

Particulars of services involving use of my parliamentary position that I provided, or reasonably expect to provide, to or on behalf of any client of a principal in the period commencing on the day I took the pledge of loyalty required by section 12 of the *Constitution Act 1902* and ending on the next succeeding 30th June or 31st December (whichever is the last date of the ordinary return period for my first ordinary return):

Description that is reasonably sufficient to identify the nature of the services	Names and addresses of the persons who benefited, or are likely to benefit, directly from the provision of the services	Description that is reasonably sufficient to identify the nature of the business carried on by any persons who benefited, or are likely to benefit, directly from the provision of the services

## Part 7 Discretionary disclosures

.....  
.....  
.....  
.....

## Form 2 Ordinary return

(Clause 3 (1), definition of "ordinary return")

Constitution (Disclosures by Members) Regulation 1983  
Ordinary Return—Legislative \*Council/\*Assembly

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# consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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**Directions**

- 1 The pecuniary interests and other matters required to be disclosed in this return are prescribed by clauses 8–15A of the *Constitution (Disclosures by Members) Regulation 1983*.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- 4 Where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.
- 5 Matter marked with an asterisk (\*) is to be omitted if it is not appropriate for the Member concerned.

Disclosures of pecuniary interests and other matters by:

.....  
*(full name of Member)*

in respect of the period from ..... to .....  
*(ordinary return period)*

.....  
*(Member's signature)*

.....  
*(Date)*

**Part 1 Real property**

Address of each parcel of real property in which I had an interest at any time during the ordinary return period	Nature of interest

consultation draft

Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

Address of each parcel of real property in which I had an interest at any time during the ordinary return period	Nature of interest

**Part 2 Sources of income**

1      Particulars of sources of income I received from any services provided at any time during the ordinary return period:

Description that is reasonably sufficient to identify the services that were provided for the income	If services were provided as part of an occupation—a description of the occupation that is reasonably sufficient to identify the occupation	If services were provided as an employee, office holder, in connection with a partnership or under any other contract, agreement or arrangement—the name and address of the employer, partnership or other party to the contract, agreement or other arrangement or a description of the office (as applicable)	If a service involves the use of the Member's parliamentary position—a description that is reasonably sufficient to identify the nature of the business carried on by the employer, partnership, entity in which an office is held or other party to the contract, agreement or other arrangement (as applicable)



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consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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- 2** Sources of income I received from a trust at any time during the ordinary return period:

Name and address of settlor	Name and address of trustee

- 3** Sources of other income I received at any time during the ordinary return period:  
*(Include description reasonably sufficient to identify the person from whom, or the circumstances in which, that income was received.)*

.....  
.....  
.....  
.....

**Part 3 Gifts**

Description of each gift I received at any time during the ordinary return period	Name and address of donor

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## consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

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### Part 4 Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the ordinary return period	Dates on which travel was undertaken	Names of States, Territories of the Commonwealth and overseas countries in which travel undertaken

### Part 5 Interests and positions in corporations

Name and address of each corporation in which I had an interest or held a position during ordinary return period	Nature of interest (if any)	Description of position	Description of principal objects of corporation (except in case of public company)

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consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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**Part 6 Positions in trade unions and professional or business associations**

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the ordinary return period	Description of position

**Part 7 Debts**

Name and address of each person to whom I was liable to pay any debt at any time during the ordinary return period.

.....  
.....  
.....  
.....

**Part 8 Dispositions of property**

**1** Particulars of each disposition of real property by me at any time during the ordinary return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to reacquire the property at a later time.

.....  
.....  
.....  
.....

**2** Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the ordinary return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

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.....

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# consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1 Amendments

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### Part 9 Client services

Particulars of services involving use of my parliamentary position that I provided to or on behalf of any client of a principal at any time during the ordinary return period:

Description that is reasonably sufficient to identify the nature of the services	Names and addresses of the persons who benefited, or are likely to benefit, directly from the provision of the services	Description that is reasonably sufficient to identify the nature of the business carried on by any persons who benefited, or are likely to benefit, directly from the provision of the services

### Part 10 Discretionary disclosures

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.....  
.....

### Form 3 Supplementary return

(Clause 3 (1), definition of "supplementary return")

#### Constitution (Disclosures by Members) Regulation 1983 Supplementary Return—Legislative \*Council/\*Assembly

##### Directions

- 1 If a Member considers it appropriate to do so, a Member may make any disclosures in a supplementary return concerning any or all of the matters that a Member is required or permitted to disclose under the *Constitution (Disclosures by Members) Regulation 1983* in an ordinary return, before the date on which the Member is next required to lodge an ordinary return.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.

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consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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4 Matter marked with an asterisk (\*) is to be omitted if it is not appropriate for the Member concerned.

Disclosures of pecuniary interests and other matters by:

.....

*(full name of Member)*

in respect of the period from ..... to .....

.....

*(Member's signature)*

.....

*(Date)*

**Disclosures**

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.....  
.....