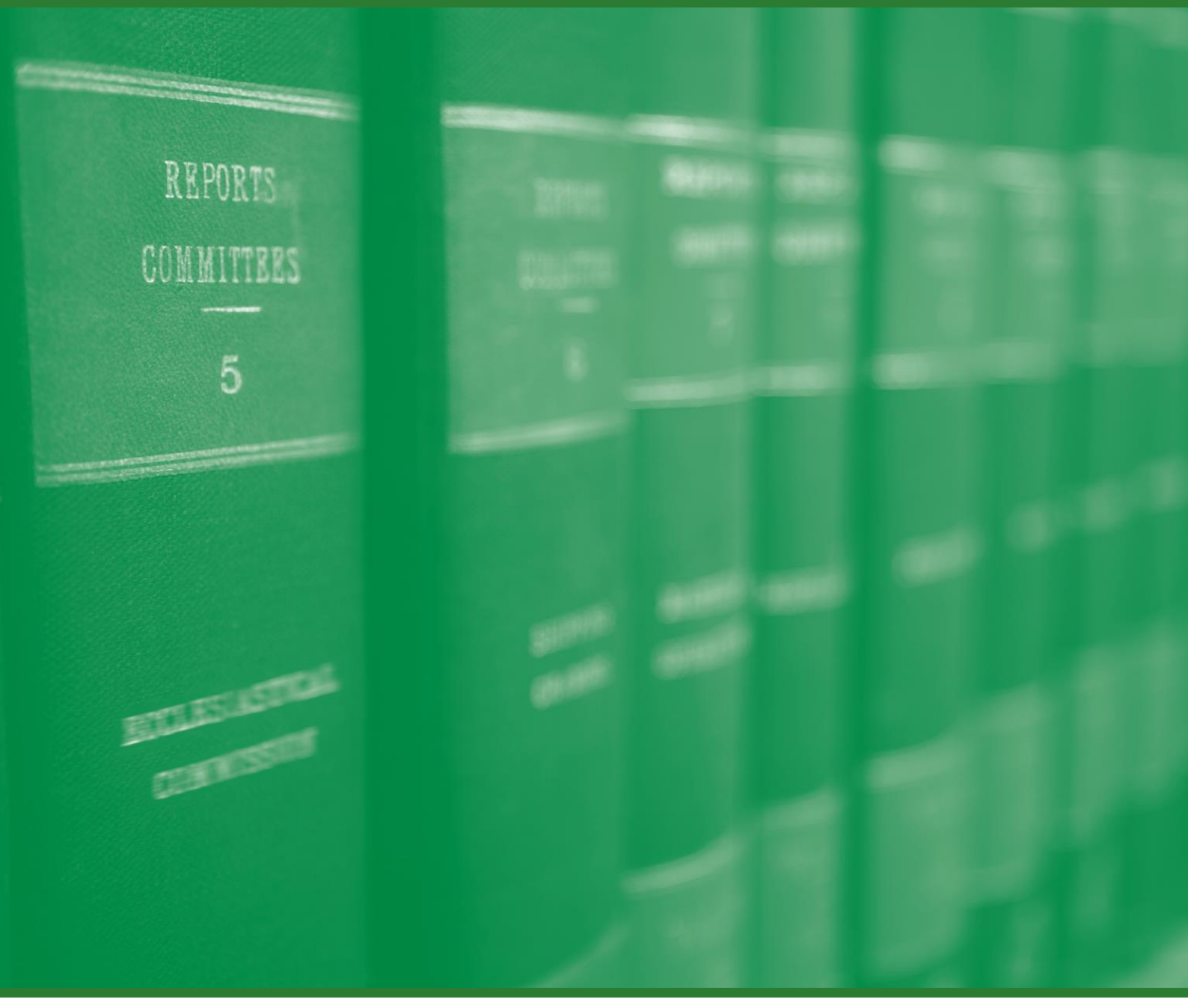




Parliamentary Privilege and Ethics

REPORT 2/55 – JULY 2014

INQUIRY INTO MATTERS ARISING FROM THE ICAC REPORT ENTITLED "REDUCING THE OPPORTUNITIES AND INCENTIVES FOR CORRUPTION IN THE STATE'S MANAGEMENT OF COAL RESOURCES"





LEGISLATIVE ASSEMBLY

STANDING COMMITTEE ON
PARLIAMENTARY PRIVILEGE AND ETHICS

INQUIRY INTO MATTERS ARISING FROM THE ICAC REPORT
ENTITLED "REDUCING THE OPPORTUNITIES AND INCENTIVES
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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

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Terms of Reference

That the Committee on Parliamentary Privilege and Ethics inquire into and report on recommendations 22, 24 and 25 in the report of the Independent Commission Against Corruption entitled “Reducing the opportunities and incentives for corruption in the state’s management of coal resources”.

Chair's Foreword

I am pleased to present the report of the Committee on Parliamentary Privilege and Ethics of the inquiry into matters arising from the ICAC report entitled "Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources".

The Committee's inquiry occurs at a time of continuing investigations by the ICAC which contribute to cynicism and mistrust in the community about members' conduct and how it is managed. It is important to acknowledge, therefore, that our inquiry has not taken place in isolation, but in the context of a long history of oversight by this Committee, and its predecessors in previous parliaments. The Committee's work forms part of a body of oversight, in concert with the work of the ICAC and other agencies, which has developed into the scheme for overseeing Parliament in NSW today. These arrangements allow the people's representatives, through the auspices of this Committee, to examine issues publicly, critique them openly, proclaim deficiencies honestly, and propose improvements optimistically.

In its report the ICAC said that a register of members' interests should be sufficiently robust in scope to ensure public confidence. The Committee agrees that the entire regime for overseeing members' conduct should be similarly robust. Public confidence in our system of government and elected representatives is a central tenet of representative democracy.

Therefore, the Committee has looked not just at the ICAC's three recommendations, but at a holistic model for managing members' conduct; a model which puts ethics, clarity, independent oversight and transparency at its centre and as its defining characteristics. It is a model which identifies the best of ours and other parliamentary experiences, complements the role of the ICAC, and puts members on notice that poor conduct is unacceptable.

I would like to thank the members of the Committee for their clear thinking and objectivity in conducting this inquiry. I would also like to thank the people and institutions who made submissions to our inquiry for the great benefit we received from their expertise. Further, I would like to thank the Hon Trevor Khan MLC, Chair of the Legislative Council Privileges Committee and his staff for their assistance and cooperation. And finally I would like to place on record my thanks to the staff of the Legislative Assembly whose efforts in this inquiry and over many inquiries, underpins the work of our Committee system and meeting the community's aspirations for good government.



John Sidoti
Chair

Executive Summary

The Committee resolved to inquire into the recommendations of the ICAC as referred by the House, in parallel with its counterpart committee in the Legislative Council. The two Committees advertised for and received public submissions jointly, and met together to exchange views on the terms of reference and various proposals for addressing them. Both Committees resolved to table separate reports in their respective houses, and the Legislative Council Privileges Committee report was tabled in the Council on 12 June 2014.

The Committee has made a number of recommendations to address the ICAC's recommendations, including:

- Amending the *Code of Conduct for Members* by the inclusion of a new clause addressing improper influence by members.
- Amending the members' interest disclosure regime by resolution to provide for the disclosure by members of the interests of their partners/spouses and dependent children.
- Appointing an officer of the Parliament to be known as the Ethics Commissioner to advise members on their obligations; receive and investigate complaints about members' compliance; and report findings, apply sanctions, or refer matters for further investigation.
- Reviewing the members' entitlements regime.
- Reviewing the *Constitution (Disclosures by Members) Regulation 1983*.

Chapter One of this report explains the background to this inquiry and how it was conducted.

Chapter Two describes the ICAC's report and its findings.

Chapter Three examines the ICAC's recommendation 22 regarding the *Code of Conduct for Members*.

Chapter Four examines the ICAC's recommendation 24 regarding the interest disclosure regime for members.

Chapter Five examines the ICAC's recommendation 25 regarding a parliamentary investigator.

Chapter Six examines other matters referred to by the ICAC in its report including aspects of the disclosure regime, and the transparency of the system for managing members' conduct.

List of Findings and Recommendations

RECOMMENDATION 1 _____ 5

The Committee recommends that the *Code of Conduct for Members* be amended by the addition of the following Clause 8:

8 Improper Influence

A member must not improperly use his or her influence as a member to seek to affect a decision by a public official including a minister, public sector employee, statutory officer or public body, to further, directly or indirectly, the private interests of the member, a member of the member's family, or a business associate of the member.

RECOMMENDATION 2 _____ 10

The Committee recommends that the members' interest disclosure regime be amended by resolution of the House to provide for a requirement that members disclose the interests of their spouses/partners and dependent children privately to the parliamentary officer to be appointed as Ethics Commissioner.

RECOMMENDATION 3 _____ 10

The Committee recommends that definitions and other guidance material be prepared for the benefit of members and the community by the Ethics Commissioner as a priority on appointment, and returned to the Committee on Parliamentary Privilege and Ethics for review.

RECOMMENDATION 4 _____ 15

The Committee recommends that an office of the Parliament be established by resolution of the House to be called Ethics Commissioner and incorporating the current responsibilities of the Parliamentary Ethics Adviser with the additional responsibilities of:

- Conducting a mandatory meeting with all members to advise them on the preparation of their primary return;
- Providing legal advice to members on complying with their obligations;
- Receiving updates to the members' primary returns as required or every six months;
- Fielding public inquiries concerning members' compliance;
- Receiving complaints confidentially about members' compliance;
- Reviewing complaints confidentially;
- Making findings of members' compliance or non-compliance; and
- Using discretion to keep findings confidential or report findings to the House with recommended sanctions for breaches. Sanctions are to include ordering an apology, ordering rectification or reimbursement, recommending the Parliament levy a fine, and referring the matter to an external agency for further investigation such as the Independent Commission Against Corruption or the NSW Police Force.

RECOMMENDATION 5 _____ 19

The Committee recommends that members entitlements and in particular, the Parliamentary Remuneration Tribunal determinations regime be reviewed.

RECOMMENDATION 6 _____ 19

The Committee recommends that the Constitution (Disclosures by Members) Regulation 1983 be reviewed.

RECOMMENDATION 7 _____ 19

The Committee recommends that any proposed changes to legislation, regulations, guidelines and policies be referred to the Committee for review and report before any changes are introduced.

Chapter One – Introduction

TERMS OF REFERENCE

- 1.1 On 21 November 2013 the Committee resolved to inquire into matters arising from the Independent Commission Against Corruption (ICAC) Report entitled “Reducing the Opportunities and Incentives for Corruption in the State’s Management of Coal Resources”.
- 1.2 The ICAC’s report was tabled in the Parliament on 30 October 2013, and the inquiry was referred to the Committee by the House on 21 November 2013. A parallel inquiry was also referred to Legislative Council Privileges Committee by the Council on 26 November 2013. The two committees were given leave by their respective houses to meet together in the conduct of their inquiries.
- 1.3 The full terms of reference can be found on page iv.

CONDUCT OF THE INQUIRY

Submissions

- 1.4 The Committees called jointly for public submissions by advertising in the Sydney Morning Herald on Saturday 18 January 2014. The Committees also wrote jointly to all Members of the NSW Parliament; the Parliaments of the Commonwealth, other Australian states and territories, New Zealand the United Kingdom; selected NSW and Commonwealth agencies; and selected stakeholders inviting them to make a submission. The closing date for submissions was Friday 14 March 2014.
- 1.5 The Committees published jointly three discussion papers to provide background information on the ICAC’s recommendations, the current situation and other relevant information.
- 1.6 The discussion papers are titled:
 - Discussion Paper No 1 – Code of Conduct
 - Discussion Paper No 2 – Family Interests
 - Discussion Paper No 3 – A Parliamentary Investigator
- 1.7 The three discussion papers may be found in Appendix One.
- 1.8 The Committees received 16 submissions. Eight submissions were received from parliaments including the NSW Legislative Council, four from NSW Government agencies, two from ethicists, and one each from a Member of Parliament and a member of the public.
- 1.9 A list of submission makers may be found in Appendix Three. The Committee resolved to publish all submissions received on the Committee’s website:
<http://www.parliament.nsw.gov.au/laprivilegeandethics>

Joint Meeting with Legislative Council Privileges Committee

- 1.10 Having reviewed the evidence in the submissions received, the Committee resolved not to hold a public hearing. At the invitation of the Legislative Council Privileges Committee, the Committee attended a joint meeting of both Committees held at Parliament House on Tuesday 27 May 2014. The joint meeting was chaired by the Hon Trevor Khan MLC, Chair of the Legislative Council Privileges Committee and gave members of both Committees an opportunity to exchange views on the terms of reference and various proposals for addressing them.

A HOLISTIC MODEL

- 1.11 In undertaking its inquiry the Committee has taken the approach that the ICAC's recommendations should not be seen in isolation, but in the context of what a holistic model for the management of members' conduct in NSW should look like. Hence, the Committee looked beyond the ICAC's current recommendations to consider the entire scope of the members' entitlements regime.

Chapter Two – The ICAC's Report

2.1 In October 2013 the Independent Commission Against Corruption (ICAC) released a report entitled *Reducing the opportunities and incentives for corruption in the state's management of coal resources*. The report is available on the ICAC's website at www.icac.nsw.gov.au

2.2 The investigation concerned the circumstances surrounding a decision made in 2008 by the Hon Ian Macdonald MLC, then Minister for Primary Industries and Minister for Mineral Resources, to grant a coal exploration license at Mount Penny in the Bylong Valley in the Western New South Wales Coalfield. The report included findings that:

- Mr Macdonald had engaged in corrupt conduct in relation to the creation of the Mount Penny tenement.
- The corrupt conduct was motivated by an agreement between Mr Macdonald and another member of the Legislative Council, the Hon Edward Obeid MLC, to financially benefit the Obeid family.
- Mr Macdonald and Mr Obeid had engaged in corrupt conduct by conspiring to defraud in relation to the creation of the Mount Penny tenement.

2.3 The ICAC's report contained 26 recommendations. Chapter 6 of the report was entitled 'Recommendations concerning the conduct of members and ministers' and contained seven recommendations of which three were directed to the NSW Parliament:

Recommendation 22

That the NSW Parliament's Legislative Council Privileges Committee and the Legislative Assembly Privileges and Ethics Committee consider amending the Code of Conduct for Members to deal comprehensively with improper influence by members.

Recommendation 24

That the NSW Parliament's Legislative Council Privileges Committee conducts a new inquiry into the mechanism for elected members to disclose the interests of their spouses/partners and dependent children under the provisions of the Constitution (Disclosures by Members) Regulation 1983, with a view to making third-party disclosures a requirement.

Recommendation 25

That the NSW Parliament's Legislative Council Privileges Committee considers the establishment of a parliamentary investigator position in consultation with the Legislative Assembly Privileges and Ethics Committee.

2.4 These recommendations, the reasons for the ICAC's making of them, and the deliberations of the Legislative Assembly Committee in considering the recommendations and its responses, are discussed in the following chapters.

Chapter Three – The Code of Conduct for Members

- 3.1 As discussed in Chapter 2, the ICAC recommended that the parliamentary committees consider amending the *Code of Conduct for Members* to deal comprehensively with improper influence by members.¹
- 3.2 In making its recommendation 22 the ICAC noted that the Code has been adopted by resolution of both Houses for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988* as an applicable code of conduct for defining corrupt conduct.
- 3.3 The ICAC noted further that the Code ‘does not contain specific provisions concerning members attempting to influence ministerial or bureaucratic decisions that affect their private interests and those of their family and associates’.²
- 3.4 The full text of the *Code of Conduct for Members* and the history of its adoption are outlined in Discussion Paper No 1 which can be found in Appendix One.
- 3.5 The Code consists of a preamble and seven clauses which deal with disclosure of conflicts of interest, bribery, gifts, use of public resources, use of confidential information, duties as a Member of Parliament, and secondary employment or engagements.
- 3.6 While the preamble acknowledges that members are responsible for ‘using their influence to advance the common good of the people of New South Wales’, the seven subsequent clauses do not address the use of influence.

COMMITTEE COMMENT

- 3.7 In its deliberations the Committee considered *inter alia* the submissions received in response to the public inquiry. The Committee noted that in some parliamentary models, including the Australian Senate and House of Representatives³, where codes of conduct are not employed, legal mechanisms including contempt jurisdictions and criminal law are available to prosecute improper influence.

¹ ICAC, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013, p43

² ICAC, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013. p42

³ Submission 3, Dr Rosemary Laing, Clerk of the Senate; Submission 4, Mr David Elder, Clerk of the House of Representatives

- 3.8 The Committee noted support from both public and community sources⁴ for the inclusion and defining of improper influence within the Code.

Chair's draft recommendations

- 3.9 At its deliberative meeting No 17, held at Parliament House on Wednesday 14 May 2014, the Committee considered the Chair's draft recommendation that the Code of Conduct for Members be amended to deal comprehensively with improper influence by members by including a requirement that members act in the public interest before their private interest at all times. The Committee reached a consensus in support of the Chair's draft recommendation.

Joint meeting with Legislative Council Privileges Committee

- 3.10 At its deliberative meeting No 18, which followed the joint meeting with the Legislative Council Privileges Committee, held at Parliament House on Tuesday 27 May 2014, the Committee considered the summary of recommendations tendered to the joint meeting by the Hon Trevor Khan MLC, Chair of the Legislative Council Privileges Committee. Mr Khan's summary included the following draft recommendation:

That the *Code of Conduct for Members* be amended by the addition of the following clause 8:

8 Improper Influence

A member must not improperly use his or her influence as a member to seek to affect a decision by a public official including a minister, public sector employee, statutory officer or public body, to further, directly or indirectly, the private interests of the member, a member of the member's family, or a business associate of the member.

- 3.11 The Committee noted consensus between the Committees' proposed approaches to responding to the ICAC's recommendation 22.

RECOMMENDATION 1

The Committee recommends that the *Code of Conduct for Members* be amended by the addition of the following Clause 8:

8 Improper Influence

A member must not improperly use his or her influence as a member to seek to affect a decision by a public official including a minister, public sector employee, statutory officer or public body, to further, directly or indirectly, the private interests of the member, a member of the member's family, or a business associate of the member.

⁴ Submission 5, Dr Simon Longstaff AO, St James Ethics Centre; Submission 12, Mr Lloyd Babb SC, Director of Public Prosecutions; Submission 13, Dr Elizabeth Coombs, Privacy Commissioner; Submission 14, Revd Dr Andrew Cameron, Anglican Diocese of Sydney

Chapter Four – The Interest Disclosure Regime for Members

- 4.1 As discussed in Chapter 2, the ICAC recommended that the Legislative Council Privileges Committee conduct a new inquiry into the mechanism for elected members to disclose the interests of their spouses/partners and dependent children under the provisions of the Constitution (Disclosures by Members) Regulation 1983, with a view to making third-party disclosures a requirement.⁵
- 4.2 As discussed in Chapter 1, the inquiry was referred to the Legislative Assembly Privileges and Ethics Committee by the House on 21 November 2013.
- 4.3 In making its recommendation 24 the ICAC noted that the current statutory pecuniary interest disclosure regime in NSW does not require members to disclose the interests of their spouse, domestic partner or other family members, but that such disclosures had been the subject of discussion and recommendations in the past.
- 4.4 The ICAC listed the benefits of expanding the pecuniary interest register as including added transparency, minimising perceptions of members avoiding scrutiny, and dealing with the potential for family interests to influence decision-making. The ICAC described the expansion of the register as complementing any revision of the conflict of interest provisions in the *Code of Conduct for Members* which for the sake of completeness should specifically include family trusts and companies. Further, the ICAC considered a review of the disclosures regime to be a timely opportunity to review the timeliness with which pecuniary interest disclosures are made, the cumbersome nature of the disclosure regime, and the transparency of the system.
- 4.5 The current and previous disclosure arrangements in NSW and comparative information regarding other Australian and New Zealand Parliaments are outlined in Discussion Paper No 2 which can be found in Appendix One.

COMMITTEE COMMENT

- 4.6 In its deliberations the Committee noted that while restricted to members' interests only, the current NSW disclosure requirements can already extend to members' disclosure of interests held by their partners and children in such areas as trust income, family-held companies, and disposition of property to family members.
- 4.7 The Committee also noted the variations between parliaments regarding disclosure requirements; the requirements of five parliaments that partner's and children's interest be disclosed (the Commonwealth, Queensland, South Australia, Australian Capital Territory, and Northern Territory); and the requirement of the Victorian Parliament that members disclose family interests

⁵ ICAC, *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, October 2013, p43

which might appear to raise a material conflict between a member's private interest and public duty as a member.

- 4.8 In noting the practices of other parliaments, the Committee considered the several submissions which detailed these disclosure requirements and whether disclosures of non-member interests were made publicly or received some level of confidentiality.
- 4.9 The Committee also considered the requirements of the NSW Ministerial Register and its provisions for private disclosure of interests.
- 4.10 The Committee also noted that some submissions called for broader disclosure requirements than recommended by the ICAC including disclosure of independent children's interests in some circumstances.⁶

Chair's draft recommendations

- 4.11 At its deliberative meeting No 17, held at Parliament House on Wednesday 14 May 2014, the Committee considered and reached a consensus in support of the Chair's draft recommendation that a mechanism be introduced requiring that members disclose the interests of their spouses/partners and dependent children privately to a parliamentary officer to be called Ethics Commissioner (the role and function of the proposed Ethics Commissioner is discussed in Chapter 5).

Joint meeting with Legislative Council Privileges Committee

- 4.12 At its deliberative meeting No 18, the Committee also considered the summary of recommendations provided by the Hon Trevor Khan MLC, Chair of the Legislative Council Privileges Committee, and discussed at the committees' joint meeting on Tuesday 27 May 2014. In particular the Committee considered the distinctions between the two Chairs' draft recommendations: in summary, the proposal before the Assembly committee is for private disclosure of spouse/partner and dependent children interests to a parliamentary officer and the proposal before the Council committee is for online publication of disclosures with spouse/partner and dependent children names suppressed.

Proposals to extend disclosure requirements

- 4.13 In its deliberations at meeting No 18 the Committee agreed that the responsibility for disclosure rested with each member, and could only extend to disclosures of the interests of members' spouses/partners and dependent children that were 'known' interests ie interests the member could reasonably have known. The Committee also agreed that the disclosure requirements under consideration are minimum requirements, and that members retain the discretion to make additional disclosures if they wish. In this regard the Committee noted the advice of Mr Guy Zangari MP, Committee member that it was the policy and practice of the NSW Opposition that its members make an open disclosure of their family members' interests in their returns.
- 4.14 The Committee also noted the policy contained in the *Constitution Amendment (Disclosures by Members) Bill 2014*, introduced by the Hon John Robertson MP,

⁶ Submission 5, Dr Simon Longstaff AO, St James Ethics Centre

Leader of the Opposition. The object of the Bill is to expand members' disclosure requirements to require:

- Disclosure of certain pecuniary interests of the spouse or de facto partner of a member and any member's dependents under the age of 18;
- Disclosure of commercial arrangements with the government entered into by a member's relatives; and
- Disclosure of each member's taxable income.

4.15 The draft Bill defines a pecuniary interest to mean:

- a) An interest in real property, or
- b) A source of income received or reasonably expected to be received, or
- c) A gift received, or
- d) A financial or other contribution to travel, or
- e) An interest, or position, held in a corporation, or
- f) A position held in a trade union or professional or business association, or
- g) A liability to pay a debt, or
- h) A disposition of real property.

4.16 The Committee also agreed to reconsider the Australian Senate model for disclosing interests before making a final recommendation.

The Senate model

4.17 The Australian Senate scheme for the registration of members' interests is established by resolution and is overseen by a Committee of Senators' Interests established by Senate Standing Order 22A.⁷ The returns lodged by Senators are published online.

4.18 The Senate scheme differs from the House of Representatives scheme with regard to the registration of interests of a senator's spouse/partner and dependent children in that statements of such interests are confidential to the Committee of Senators' Interests.⁸ Senators are required to lodge statements of family interests of which they are aware. These statements are then kept confidentially and are not made public unless the oversight committee considers that a conflict of interest arises.⁹

4.19 The Committee of Senators' Interests has issued explanatory notes to provide guidance to senators.¹⁰ The notes emphasise that senators are responsible for interpreting the resolution and applying it to their own circumstances.¹¹ The

⁷ Submission 3, Dr Rosemary Laing, Clerk of the Senate, p3

⁸ Submission 3, Dr Rosemary Laing, Clerk of the Senate, p3

⁹ Submission 3, Dr Rosemary Laing, Clerk of the Senate, p4

¹⁰

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/Guidelines_and_Resolutions/Explanatory_Notes

¹¹ Submission 3, Dr Rosemary Laing, Clerk of the Senate, p4

notes also provide guidance on non-disclosure of names, when a senator is unaware of interests, definitions of dependent children and partner, how to declare jointly-held interests, and the status of interests in trusts and companies.¹²

- 4.20 The Committee considers that the Senate model is generally consistent with the agreements reached by the Committee in its own deliberations, with the important distinctions set out below.

Oversight role

- 4.21 In the Senate the scheme for registration of members' interests is overseen by the Committee of Senators' Interests. The Clerk of the Senate is the Registrar of members' interests and maintains the register. The Committee holds the confidential statements of interests of a senator's spouse/partner and dependent children, and has powers of inquiry to investigate the private interests of senators.
- 4.22 As foreshadowed in this chapter and discussed in detail in Chapter 5, this report recommends the establishment of a NSW parliamentary position called Ethics Commissioner amongst whose responsibilities will be advising members on the preparation of returns, the holding of confidential returns, the investigation of complaints of non-compliance by members, reporting the results of investigations, and the determination of sanctions for found breaches. The Legislative Assembly Committee on Parliamentary Privileges and Ethics would be responsible for recommending the general principles of the registration scheme, and for reviewing proposed procedures and guidance for the operation of the scheme, but does not recommend itself as an investigator of complaints of conflict of interest or as an adjudicator of breaches. In the view of the Committee these are responsibilities which for the assurance of fairness and independence, and in order to achieve public confidence in the scheme, are best vested in an independent parliamentary officer appointed by and answerable to the House.

Definitions and other guidance

- 4.23 In its deliberations at meeting No 18 the Committee agreed that a model for governing members' responsibilities should include clear guidelines in plain English to explain members' obligations with regard to declaration and registration of interests. The Committee has not given detailed consideration to the content of these guidelines, but has reviewed the submissions received and the several models they outline, has reconsidered the Senate model and the guidelines it contains, and has considered the guidelines contained within the summary of recommendations provided by the Hon Trevor Khan MLC, Chair of the Legislative Council Privileges Committee, and discussed at the committees' joint meeting on Tuesday 27 May 2014.
- 4.24 The Committee notes that the guidelines it has reviewed are generally similar, have similar merit, and are worthy of support in principle. In the Committee's view, the drafting of guidelines should be the responsibility of, and a priority for, the incoming Ethics Commissioner when appointed.

¹² Submission 3, Dr Rosemary Laing, Clerk of the Senate, p4

Establishment by resolution

- 4.25 In its deliberations at meeting No 18 the Committee agreed that the model for governing members' responsibilities should be adopted by resolution of the House rather than by legislation. The Committee notes that the Senate model was adopted by resolution. While noting that some aspects of the regime are and will continue to be governed by legislation and regulation including the *Constitution (Disclosures by Members) Regulation 1983*, and the Parliamentary remuneration arrangements, adoption by resolution of the expanded interests disclosure regime envisaged by the ICAC's recommendation 24 will ensure that ownership and oversight of the scheme is vested as far as possible in the House itself, and that the prospects of expensive, time consuming, and confidence-sapping litigation are avoided.

Right to privacy of non-elected third parties

- 4.26 The Committee has considered closely the question of the right to privacy of non-elected third parties whose interests will be subject to disclosure under a register expanded as envisaged by the ICAC's recommendation 24. The Committee noted that third party disclosures are already common in other parliaments and considered several options available for achieving both transparency and privacy including confidential disclosure to an oversight committee or parliamentary officer, and non-disclosure of the name of the interest holder.
- 4.27 As recorded above, in its deliberations at meeting No 17, the Committee agreed that the mechanism requiring the disclosure of members' family interests allow for private disclosure to a parliamentary officer. After further deliberation the Committee believes that such a mechanism balances the obligations of members as holders of public office with the right to privacy of non-elected third parties.

A draft resolution

- 4.28 In order to facilitate the adaption of the Senate model for adoption in NSW the Committee has included a draft resolution, based on the Senate model, but incorporating current categories, at Appendix 2.

RECOMMENDATION 2

The Committee recommends that the members' interest disclosure regime be amended by resolution of the House to provide for a requirement that members disclose the interests of their spouses/partners and dependent children privately to the parliamentary officer to be appointed as Ethics Commissioner.

RECOMMENDATION 3

The Committee recommends that definitions and other guidance material be prepared for the benefit of members and the community by the Ethics Commissioner as a priority on appointment, and returned to the Committee on Parliamentary Privilege and Ethics for review.

Chapter Five – A Parliamentary Investigator

- 5.1 As discussed in Chapter 2, the ICAC recommended that the Legislative Council Privileges Committee consider the establishment of a parliamentary investigator position in consultation with the Legislative Assembly Privileges and Ethics Committee, provided no change to the ICAC’s jurisdiction was proposed.¹³
- 5.2 In making this recommendation the ICAC noted that it, the Commission, is the only enforcement regime in NSW for breaches of the codes of conduct and statutory pecuniary interest regimes.¹⁴ The ICAC described this as problematic for allegations of minor breaches given the Commission’s role in examining serious and systematic corrupt conduct, referring to the requirement of section 9 of the ICAC Act that breaches be ‘substantial’ as the trigger for investigation.¹⁵
- 5.3 The ICAC also noted that the only available sanction under the Constitution Act 1902 is the declaration of a member’s seat vacant. The report cited the findings of the 2002 Legislative Council Privileges Committee inquiry into the Hon Edward Obeid MLC’s pecuniary interest returns as demonstrating the shortcomings of investigations undertaken by parliamentary committees.¹⁶
- 5.4 The report mentioned the UK model of a Parliamentary Commissioner for Standards and other proposals for external third party oversight of complaints against members, as discussed by Mr David Blunt, Clerk of the Parliaments in his submission to the inquiry.¹⁷ The ICAC’s report listed the benefits of a third party investigator as:
- The provision of an impartial and timely mechanism for resolving minor complaints;
 - Greater public confidence in Parliament through the enforcement of standards; and
 - A graded approach to non-compliance as opposed to the single sanction described above.¹⁸

¹³ ICAC, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013, p44

¹⁴ ICAC, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013, p43

¹⁵ ICAC, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013, p44

¹⁶ ICAC, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013, p44

¹⁷ Submission 9, Mr David Blunt, Clerk of the Parliaments, NSW Legislative Council

¹⁸ ICAC, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013, p44

COMMITTEE COMMENT

- 5.5 In its deliberations the Committee examined the various models described in the submissions received, and indeed the absence of models for third party review described in some submissions.¹⁹
- 5.6 The Committee noted the current arrangements for regulating members' conduct including the standing orders, the *Code of Conduct for Members* and its scope, the statutory regulation of interest disclosures, and the jurisdiction of the ICAC. The Committee also noted the current auditing regime applying to members' entitlements and comments by the Auditor-General regarding problem areas for claims.
- 5.7 The Committee further noted the appointment by the Parliament of a Parliamentary Ethics Adviser to advise members, upon their request, on ethical issues concerning the exercise of their parliamentary duties.
- 5.8 Finally, the Committee noted its own role, and that of its counterpart in the Legislative Council, in relation to reviewing the Code and in educating members regarding ethical standards.

United Kingdom and Canadian models

- 5.9 In examining the various models the Committee concluded that they could be divided into two categories, the United Kingdom (UK) model and the Canadian model.
- 5.10 The UK model provides for the appointment of a Parliamentary Commissioner for Standards, reporting to a parliamentary committee and operating according to House standing orders. The Commissioner receives and investigates complaints about members, and reports the results of investigations including recommended sanctions, to the committee. Each UK House has appointed its own commissioner. The UK Commissioners for Standards work alongside the Independent Parliamentary Standards Authority (IPSA) which is a separate agency established by legislation whose remit is to ensure compliance by members with the rules regarding the expenditure of funds provided to members to undertake their parliamentary duties. The Commissioners and the IPSA have negotiated protocols for the referral of complaints between them which might be dealt with more appropriately by the other body.²⁰
- 5.11 The United Kingdom does not have a body equivalent to the ICAC.
- 5.12 The Canadian model, as utilised by the Canadian Parliament and the Canadian provincial and territorial legislatures, provides for the appointment of an independent parliamentary officer, variously known as Ethics Commissioner, Conflict of Interest Commissioner, or Integrity Commissioner, who administers conflict of interest legislation with a remit of preventing conflicts between the public duties and private interests of elected officials.

¹⁹ Submission 11, Rt Hon David Carter, Speaker, House of Representatives of New Zealand

²⁰ Submission 9, Mr David Blunt, Clerk of the Parliaments, NSW Legislative Council

- 5.13 The British Columbia Conflict of Interest Commissioner has three primary responsibilities:
- To advise elected members on their obligations and the steps they need to take to fulfil them;
 - To meet with members to review their interest disclosures; and
 - To investigate alleged contraventions of members' obligations and report to the House.²¹

Adapting the models to NSW

- 5.14 In considering the adaption of either model to NSW the Committee noted the absence of similar bodies to the ICAC in both the UK and Canada. Both countries operate criminal and fraud jurisdictions similar to Australia, as well as ombudsmans offices with both general and sector-specific remits, and certain anti-corruption-style agencies such as the Quebec Permanent Anti-Corruption Unit, an arm of the Ministry for Public Security (police, prisons and emergency services).²²
- 5.15 The existence of the ICAC makes the need to distinguish the respective roles of the ICAC and any proposed parliamentary officer crucial to ensure clearly separate and complementary roles and responsibilities, and most importantly, no interference in the jurisdiction of the ICAC. This could be achieved through the formulation of protocols for the operation and interaction of the two agencies, and through the clarification of definitions which currently govern the referral of matters eg the term 'substantial' in section 9 of the ICAC Act.

Parliamentary Ethics Adviser

- 5.16 The Committee noted the position in the NSW Parliament of Parliamentary Ethics Adviser (PEA), currently vacant. The position was established by resolution of both Houses to assist and advise members resolve issues such as use of entitlements and interpreting the entitlements rules, potential conflicts of interest. The PEA gives opinions and not rulings, and does not give legal advice.²³

DISCUSSION

- 5.17 In considering the above information the Committee deliberated on the dual nature of the oversight regime which would be created by adding an Ethics or Standards Commissioner to the environment in which the ICAC was already operating.
- 5.18 The Committee considered, therefore, that a useful way to describe the regime proposed to be established was a dual one:

²¹ http://www.coibc.ca/com_role.htm

²² <https://www.upac.gouv.qc.ca/>

²³ <http://www.parliament.nsw.gov.au/prod/la/precdent.nsf/49e704b03ed2e72bca256b2100158c92/19437f2b5ae90f0bca2572a60082e37d?OpenDocument>

- Investigation versus compliance
- Serious or substantial versus non-serious or non-compliance
- ICAC versus non-ICAC

5.19 In light of this dual context, then, the Committee concluded that the primary functions of a proposed position of Standards or Ethics Commissioner would be to complement the ICAC by taking responsibility for what could be typified as ‘compliance’, ‘non-serious or non-compliance’, and ‘non-ICAC’ member-conduct matters, the obverse of these being the purview of the ICAC.

5.20 In drawing this conclusion the Committee noted the congruence between these responsibilities and aspects of the Senate model discussed in Chapter 4 and the Canadian model discussed above.

Chair’s draft recommendations

5.21 In its deliberations at meeting No 17 the Committee considered the Chair’s draft recommendations which proposed the creation of a new position within the Legislative Assembly to be called Ethics Commissioner. This position would include the remit of the Parliamentary Ethics Adviser expanded to include:

- Oversight of a primary return by each member of their pecuniary interests which will be updated as required;
- Responsibility for a mandatory meeting with each member to advise on his or her disclosure and use of entitlements requirements, including the provision of legal advice to members;
- Fielding public inquiries concerning members’ compliance with these requirements;
- Receiving complaints confidentially concerning members’ compliance with these requirements;
- Reviewing members’ compliance confidentially; and
- Reporting findings to the House with recommendations regarding sanctions commensurate with any breaches found which include the ability to order rectification and the power to fine members, amongst other sanctions

5.22 The Committee reached a consensus in support of the Chair’s draft recommendations with the qualification that the Ethics Commissioner should have the discretion whether to report findings of a breach to the House or deal with a finding of a breach confidentially, depending on the seriousness of the breach.

5.23 The Committee also reached a consensus to the effect that requirements for members to declare gifts include an exemption for the mandatory reporting of hospitality, and that members should have the discretion whether or not to report gifts of hospitality according to appropriate guidelines to be reported. This is discussed further in Chapter 6.

Joint meeting with Legislative Council Privileges Committee

5.24 In its deliberations at meeting No 18 the Committee considered the summary of recommendations provided by the Hon Trevor Khan MLC, Chair of the Legislative

Council Privileges Committee, and discussed at the committees' joint meeting on Tuesday 27 May 2014.

- 5.25 The Committee noted that the Legislative Council draft report drew on the UK model ie a Commissioner for Standards established by resolution who would report findings in the case of Legislative Council members, to the Legislative Council Privileges Committee.
- 5.26 The Committee noted the many areas of convergence in the two Chairs' draft summaries, notably establishment by resolution, thus avoiding any interference with the ICAC Act and adjudication by external bodies.
- 5.27 The Committee also noted distinctions between the Chairs' draft summaries, notably the reporting arrangements following investigations of any alleged breach. However, the Committee reached a consensus that regardless of any distinctions between the reports adopted by the two Committees and the models adopted ultimately by the two Houses, nothing had been foreshadowed which would prevent the proposed models being managed and implemented by a sole parliamentary officer who would discharge his or her responsibilities to each House cognisant of any distinctions.

ETHICS COMMISSIONER – A HOLISTIC MODEL

- 5.28 In concluding its deliberations at meeting No 18 the Committee agreed that any recommendations it made should address the ICAC's recommendations 22, 24 and 25 in the context of a holistic model for governing members' responsibilities, as discussed in Chapter 1, and confirmed its agreement to recommend the establishment of a new position within the Legislative Assembly to be called Ethics Commissioner, as proposed in the Chair's draft recommendations considered at the Committee's deliberative meeting No 17.
- 5.29 The Committee agreed that the model should set out general principles, include clear guidelines in plain English to explain members' obligations especially with regard to the application of the Parliamentary Remuneration Tribunal Determination rulings, and clarify the *Constitution (Disclosures by Members) Regulation 1983*.
- 5.30 The Committee agreed that the model should be established by resolution of the House rather than by legislation.
- 5.31 The Committee reiterated that any proposed changes to legislation, regulations, guidelines, and policies should be referred to the Committee for review and report before any changes are introduced. This matter is dealt with in Chapter 6.

RECOMMENDATION 4

The Committee recommends that an office of the Parliament be established by resolution of the House to be called Ethics Commissioner and incorporating the current responsibilities of the Parliamentary Ethics Adviser with the additional responsibilities of:

- **Conducting a mandatory meeting with all members to advise them on the preparation of their primary return;**
- **Providing legal advice to members on complying with their obligations;**
- **Receiving updates to the members' primary returns as required or every six months;**
- **Fielding public inquiries concerning members' compliance;**
- **Receiving complaints confidentially about members' compliance;**
- **Reviewing complaints confidentially;**
- **Making findings of members' compliance or non-compliance; and**
- **Using discretion to keep findings confidential or report findings to the House with recommended sanctions for breaches. Sanctions are to include ordering an apology, ordering rectification or reimbursement, recommending the Parliament levy a fine, and referring the matter to an external agency for further investigation such as the Independent Commission Against Corruption or the NSW Police Force.**

Chapter Six – Other Matters

- 6.1 In considering the ICAC's report the Committee noted the ICAC's support for other matters to be dealt with as timely and complementary to the consideration of its recommendations 22, 24 and 25.
- 6.2 These other matters included matters which needed to be dealt with as a consequence of recommending and implementing changes in response to the ICAC's recommendations, and matters which arose naturally from a consideration of how to manage members' conduct and achieve community support.
- 6.3 In its discussion of the pecuniary interest register, preparatory to its recommendation 24, the ICAC noted that a review of the Register of Disclosures and the *Code of Conduct for Members* would also provide a timely opportunity to reconsider related issues outside the scope of operations Jasper and Arcadia. These include:
- the timeliness with which pecuniary interest disclosures are made;
 - the cumbersome nature of the disclosure regime; and
 - the transparency of the system.²⁴

TIMELINESS OF DISCLOSURES

- 6.4 The Committee agrees with the ICAC's suggestion. Regarding the timeliness with which pecuniary interest disclosures are made, the Committee has recommended in Chapter 5 that members' primary returns should be updated as required or every six months. In the Committee's view the current requirement for six monthly updates results in members' returns being up to six months out of date. Updating returns whenever changes to members' interests occurs is timely for both the public who have access to information on changes at the time they occur, and for members who can update their returns as changes occur and not have to remember to make changes some months later. The Senate model provides members 35 days to make an update.

CUMBERSOME NATURE OF DISCLOSURE REGIME

- 6.5 Regarding the cumbersome nature of the disclosure regime, the Committee agrees with the ICAC's assessment. Hence the Committee recommended in Chapter 5 that the new position of Ethics Commissioner would have a mandatory meeting with each member to advise them on the preparation of their primary return, including the provision of legal advice to members on complying with their obligations.

²⁴ ICAC, *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, October 2013, p43

TRANSPARENCY

- 6.6 The Committee notes, however, that this new parliamentary role is insufficient to address the cumbersome nature of the disclosure regime. In the Committee's view the wider regime of members' entitlements and obligations is opaque. For both members and the community to have confidence in the current regime, its structure, wording, explanations, and advices need to be clear and unambiguous, easily located in its entirety, and helpful in its application rather than presenting as obtuse and contradictory.
- 6.7 The Committee believes that in recommending a holistic model for managing members' conduct, further steps need to be taken. In particular the Committee advocates for a review of the members' entitlements regime with emphasis on the Parliamentary Remuneration Tribunal determinations and the way they are constructed, promulgated and interpreted. The current determinations and the manner in which they are written and implemented are poorly understood by members and the community alike. The Tribunal itself has not developed a practice of explaining and interpreting its own determinations, and the external advices on interpreting determinations of which the Committee is aware, for the most part confirm the Committee's view that the system is opaque.
- 6.8 The Committee has no brief for members who seek to subvert the system, but in its current configuration, the members' entitlements regime lacks clarity and is open to inadvertent non-compliance.
- 6.9 Similarly the *Constitution (Disclosures by Members) Regulation 1983* also suffers from lack of clarity and explanation. In the Committee's view this is likely to be compounded by the amendments to the regulation which will be necessary to accommodate the expanded disclosure requirements regarding members' spouses/partners and dependent children should the ICAC's and the Committee's recommendations be implemented. These new requirements will require clear explanation through the production of guidance documents for the use of members, as recommended in Chapter 5. Clear guidance will assist both members and the community to understand members' obligations and satisfy everyone that the system is robust and transparent.

COMMITTEE COMMENT

- 6.10 At its deliberative meeting No 18 the Committee reiterated its view that any proposed changes to legislation, regulations, guidelines and policies should be referred to the Committee for review and report before any changes are introduced. This includes:
- any proposed amendments to the *Constitution (Disclosures by Members) Regulation 1983*, any proposed changes to and guidelines prepared regarding the Parliamentary Remuneration Tribunal determinations;
 - any guidelines prepared by the incoming Ethics Commissioner to assist members and the public understand the new role and the members' obligations which flow from it; and
 - any protocols developed by the Ethics Commissioner outlining the relationship between the Commissioner and the ICAC, their respective roles

and responsibilities, definitions which delineate their areas of responsibility, and protocols which govern the way matters are allocated to and referred between them.

RECOMMENDATION 5

The Committee recommends that members entitlements and in particular, the Parliamentary Remuneration Tribunal determinations regime be reviewed.

RECOMMENDATION 6

The Committee recommends that the Constitution (Disclosures by Members) Regulation 1983 be reviewed.

RECOMMENDATION 7

The Committee recommends that any proposed changes to legislation, regulations, guidelines and policies be referred to the Committee for review and report before any changes are introduced.

Appendix One – Background Papers



PARLIAMENT OF NEW SOUTH WALES

LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE
LEGISLATIVE ASSEMBLY PRIVILEGES AND ETHICS COMMITTEE

INQUIRY INTO RECOMMENDATIONS OF THE ICAC REGARDING ASPECTS OF THE CODE OF CONDUCT FOR MEMBERS, THE INTEREST DISCLOSURE REGIME AND A PARLIAMENTARY INVESTIGATOR

Background Paper No. 1:

Amendment of the *Code of Conduct for Members* relating to improper influence by members

Recommendation 22 of the ICAC

- 1.1 In October 2013, the Independent Commission Against Corruption (ICAC) released a report entitled *Reducing the opportunities and incentives for corruption in the State's management of coal resources*. The report is available on the website of ICAC at www.icac.nsw.gov.au.
- 1.2 Chapter 6 of the report contained recommendations concerning the conduct of members of parliament and ministers. Recommendation 22 was as follows:

That the NSW Parliament's Legislative Council Privileges Committee and the Legislative Assembly Privileges and Ethics Committee consider amending the Code of Conduct for members to deal comprehensively with improper influence by members.

The *Code of Conduct for Members*

- 1.3 The *Code of Conduct for Members* was originally adopted by resolutions of the Legislative Council and Legislative Assembly in 1998. An expanded version of the Code was adopted by the Houses in 2007 following a report by ICAC concerning the regulation of members' secondary employment. A copy of the *Code of Conduct for Members* is attached.
- 1.4 The Code consists of a preamble and seven clauses which deal with disclosure of conflicts of interest, bribery, gifts, use of public resources, duties as a member of Parliament and secondary employment or engagements.
- 1.5 The preamble includes an acknowledgement that members are responsible for 'using their influence to advance the common good of the people of New South Wales'. However, there is no substantive provision which specifically addresses the use of influence as such.

- 1.6 Each House of Parliament has adopted the *Code of Conduct for Members* for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*. As a result of this nexus with the Act a substantial breach of the Code may amount to 'corrupt conduct' under the Act and attract the investigatory jurisdiction of ICAC.

Background to the ICAC recommendation

- 1.7 In July 2013 ICAC reported to Parliament on its investigation concerning Operation Jasper. The investigation concerned the circumstances surrounding a decision made in 2008 by the Hon Ian Macdonald MLC, then minister for primary industries and minister for mineral resources, to grant a coal exploration license at Mt Penny in the Bylong Valley in the Western New South Wales Coalfield. The report included findings that:

- Mr Macdonald had engaged in corrupt conduct in relation to the creation of the Mt Penny tenement.
- The corrupt conduct was motivated by an agreement between Mr Macdonald and another member of the Legislative Council, the Hon Edward Obeid, to financially benefit the Obeid family.
- Mr Macdonald and Mr Obeid had engaged in corrupt conduct by conspiring to defraud in relation to the creation of the Mt Penny tenement.

- 1.8 In August 2013 the ICAC reported to Parliament on its investigation in relation to Operation Acacia which concerned the granting of a further coal exploration license by Minister Macdonald.

- 1.9 In October 2013, in its report entitled *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, ICAC noted that Operations Jasper and Acacia had highlighted shortcomings in the accountability framework governing the conduct of ministers and members. With respect to the *Code of Conduct for Members*, ICAC specifically observed:

There are currently no specific provisions concerning members attempting to influence ministerial or bureaucratic decisions that affect their private interests and those of their family and associates, although such conduct seems quite contrary to the preamble. This ignores the reality that major decisions of considerable value are taken by the executive and by state agencies and do not come before Parliament.¹

Previous consideration of the regulation of members' influence

- 1.10 Prior to the adoption of the Code of Conduct for Members in 1998 the Legislative Council Standing Committee on Parliamentary Privilege and Ethics and the Legislative Assembly

¹ ICAC, *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, October 2013, p 42.

Standing Ethics Committee conducted separate inquiries into the development of a draft code of conduct for the members of their respective Houses. The draft code developed by each Committee included provisions regulating the use of influence by members.

1.11 The Council Committee's draft code addressed the issue as follows:

- Clause 1, 'Conduct – General', included a requirement for members to 'exercise the influence gained from their public interest to advance the public'.
- Clause 5, 'Use of public office for private gain', included the following prohibitions on the use of public office for private gain and the improper use of influence:
 - 5.1 Members will not at any time act in a manner that takes improper advantage of their status or position as a Member of Parliament.
 - 5.2 Members must not engage in conduct that exploits for private reasons their positions or authorities.
 - 5.3 Members shall not use the resources and status of their public office to seek to influence a decision by another person to further, directly or indirectly, their private interests or the private interests of their family.
 - 5.4 Members shall not use improperly their influence in order to obtain appointment, promotion, advancement, transfer or any other advantage within the public sector on behalf of themselves or another or to affect the proper outcome of any procedure established under legislation for the management of the public sector.
 - 5.5 Members should not approach Ministers, public servants or public bodies on a matter connected with a private interest, without appropriate disclosure.²

1.12 The Assembly Committee's draft code addressed the use of influence as follows:

- The preamble included an acknowledgement of members' responsibility to 'use the influence gained as elected office-holders to advance the common good of the people of New South Wales'.
- Clause 1 required members to 'exercise the influence gained from their public office to advance the public interest'.³

1.13 The Code of Conduct ultimately adopted by the Houses in 1998 included reference to the use of influence in the preamble but not in any substantive clause, as previously discussed. In support of that Code the then Premier argued that the draft codes which had been developed by the committees were too wide and uncertain in scope to provide

² Legislative Council Standing Committee on Parliamentary Privilege and Ethics, *Report on inquiry into the establishment of a code of conduct for members*, Report No. 3, October 1996.

³ Legislative Assembly Standing Ethics Committee, *Report on a draft code of conduct for members of the Legislative Assembly*, October 1997.

effective grounds for findings of 'corrupt conduct' under the *Independent Commission Against Corruption Act 1988*.

- 1.14 Since the introduction of the Code of Conduct for Members in 1998 the Legislative Council Privileges Committee and the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics have conducted reviews of the Code of Conduct in each successive Parliament. These reviews have included consideration of issues relating to the use of influence by members in connection with Clause 1, 'Disclosure of conflicts of interest', and Clause 2, 'Bribery'.
- 1.15 With regard to Clause 1, 'Disclosure of conflicts of interest', the reviews have considered proposals to expand the disclosure requirements to encompass the interests of family members and associates and the use of influence by members. The Committees have generally not supported these proposals given the difficulty of encapsulating the issues raised with sufficient precision to operate effectively in the context of the statutory definition of 'corrupt conduct'. However, the Council Committee has supported consideration being given to the introduction of a requirement to disclose family interests in the pecuniary interests register under the *Constitution (Disclosures by Members) Regulation 1983*.
- 1.16 With regard to Clause 2, 'Bribery', the reviews have considered proposals to expand the current prohibition beyond the promotion of matters in Parliament in return for reward to encompass a ban on all forms of advocacy by members outside Parliament in return for reward. The Committees have not supported these proposals in the forms they have been put forward to date, noting that the *Constitution (Disclosures by Members) Regulation 1983* provides for the disclosure of income derived from the use of a member's position outside Parliament. However, the Council Committee has indicated that it would be prepared to entertain an amendment to the Code to prohibit paid advocacy if the amendment could be targeted to specific situations where the promotion of matters outside Parliament involves a clear conflict of interest or abuse of the member's position.

Submissions sought

- 1.17 The Legislative Council Privileges Committee and Legislative Assembly Privileges and Ethics Committee seek submissions concerning the amendment of the Code of Conduct for Members to deal comprehensively with improper influence by members, including in relation to:
- The types of influence by members which should be regulated in the Code
 - The form of an appropriate amendment or amendments.



Code of Conduct for Members

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 has the right to dismiss them from office at regular elections.
- 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.
- Members of Parliament acknowledge that their principal responsibility in serving as Members is 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

- (a) A Member 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, reward or benefit in kind, of a private nature, which the member has received, is receiving or expects to receive.
- (b) A Member 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, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive:

- (i) A member of the Member's family;
 - (ii) A business associate of the Member; or
 - (iii) Any other person or entity from whom the Member expects to receive a financial benefit.
- (c) 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.
- (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 a Parliamentary debate:

- (a) The identity of any person by whom they are employed or engaged, or by whom they were employed or engaged in the last two years (but not if it was before the Member was sworn in as a Member);
- (b) 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 if it was before the Member was sworn in as a Member); and
- (c) The nature of the interest held by the person, client or former client in the parliamentary debate.

This obligation only applies if the Member is aware, or ought to be aware, that the person, client or former client may have an interest in the Parliamentary debate that goes beyond the general interest of the public.

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 pecuniary interest register, he or she is not required to make a further disclosure during the parliamentary debate.



PARLIAMENT OF NEW SOUTH WALES

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INQUIRY INTO RECOMMENDATIONS OF THE ICAC REGARDING ASPECTS OF THE CODE OF CONDUCT FOR MEMBERS, THE INTEREST DISCLOSURE REGIME AND A PARLIAMENTARY INVESTIGATOR

**Background Paper No. 2:
Disclosure of the interests of members' spouses/partners and dependent children**

Recommendation 24 of the ICAC

- 1.1 In October 2013, the Independent Commission Against Corruption (ICAC) released a report entitled *Reducing the opportunities and incentives for corruption in the State's management of coal resources*. The report is available on the website of the ICAC at www.icac.nsw.gov.au.
- 1.2 Chapter 6 of the report contained recommendations concerning the conduct of members of parliament and ministers. Recommendation 24 was as follows:

That the NSW Parliament's Legislative Council Privileges Committee conducts a new inquiry into the mechanism for elected members to disclose the interests of their spouses/partners and dependent children under the provisions of the Constitution (Disclosures by Members) Regulation 1983, with a view to making third party disclosures a requirement.
- 1.3 While the recommendation was directed to the Legislative Council Privileges Committee, the two Houses of the Parliament have referred the recommendation to both the Legislative Council Privileges Committee and the Legislative Assembly Privileges and Ethics Committee for inquiry and report.

Background to the ICAC recommendation

The ICAC findings arising out of Operation Jasper

- 1.4 In July 2013, the ICAC reported to Parliament on its investigation concerning Operation Jasper. The investigation concerned the circumstances surrounding a decision made in 2008 by the Hon Ian Macdonald MLC, then minister for primary industries and minister for mineral resources, to grant a coal exploration license at Mt Penny in the Bylong Valley in the Western New South Wales Coalfield. The report included findings that:

- Mr Macdonald had engaged in corrupt conduct in relation to the creation of the Mt Penny tenement.
- The corrupt conduct was motivated by an agreement between Mr Macdonald and another member of the Legislative Council, the Hon Edward Obeid, to financially benefit the Obeid family.
- Mr Macdonald and Mr Obeid had engaged in corrupt conduct by conspiring to defraud in relation to the creation of the Mt Penny tenement.

1.5 In October 2013, in its report entitled *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, the ICAC noted that Operations Jasper (and Acacia) had highlighted shortcomings in the accountability framework governing the conduct of ministers and members. In relation specifically to the disclosure of the interests of members' spouses/partners and dependent children, the ICAC focused not only on the actions of Mr Obeid Senior, but other members of the Obeid family, notably Moses Obeid. The ICAC found that:

Edward Obeid Sr also did not declare interests in the Mount Penny area, effectively hiding his actions and those of Mr Macdonald from public scrutiny. These behaviours bring into question the adequacy of parliamentary control over the behaviour of its members and the degree to which this contributed to the corrupt conduct that occurred. ...

The current Register of Disclosures for members is also limited, in that there is no requirement for members to disclose family interests.¹

The current arrangements for the disclosure of interests of members' spouses/partners and dependent children in New South Wales

- 1.6 Under the current interest disclosure regime for members of New South Wales Parliament, there is no requirement for members to disclose the interests of their spouse, domestic partner or any other family member. The *Constitution (Disclosures by Members) Regulation 1983* only requires the disclosure of interests held by members themselves.
- 1.7 However, some provisions of the *Constitution (Disclosures by Members) Regulation 1983* may result in the disclosure of interests which are held by partners or other family members. For example, income from a trust, under clause 9(2)(d) of the Regulation, could include income from a family trust. Interests and positions in corporations, under clause 12, could include shareholdings or offices in family companies. Dispositions of property, under clause 15, could include the disposition of property to a family member.
- 1.8 In addition to these forms of indirect disclosure, members may choose to disclose interests held by a member of their family, by way of a discretionary disclosure under

¹ ICAC, *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, October 2013, p 41.

clause 16 of the Regulation. However, leaving aside indirect and discretionary disclosures, there is no provision for the disclosure of the interests of family members.

The previous interest disclosure regime in New South Wales

- 1.9 It is notable that in November 1979, following an inquiry by a joint committee upon pecuniary interests, the Parliament of New South Wales established by resolution of both Houses an interest disclosure regime which did require the disclosure of the interests of members, their spouses, and infant children. However, in November 1980, the resolutions of the Houses establishing the registers of interests were rescinded following legal advice that the Houses did not have the power to establish an enforceable scheme for the disclosure of members' interests in the absence of legislative authority. It is not clear why the provision of the 1979 resolution relating to the disclosure of the interests of members' spouses and infant children were dropped when the current regime was adopted in 1983.

The arrangements for the disclosure of interests of members' spouses/partners and dependent children in other Australian Parliaments and the New Zealand Parliament

- 1.10 There is considerable variation between Parliaments around Australia concerning disclosure of the interests of members' spouses/partners or dependent children.
- 1.11 Five Parliaments *require* the disclosure of partners' and children's interests in the register. Those five parliaments are the Commonwealth, Queensland, South Australia, Australian Capital Territory and Northern Territory. In each case, members are only required to disclose interests of which the member is *aware*, or which are ascertainable by the exercise of reasonable diligence.
- 1.12 Certain Parliaments take steps to protect the privacy of members' spouses/partners and dependent children.
- 1.13 In the Senate, the disclosures concerning partners and dependent children are accessible only by the Committee on Senators' Interests except if that Committee considers that a conflict of interest arises in which case the Committee may table the relevant statement of disclosures in the Senate. In Queensland, a separate 'Register of Related Persons' Interests' is maintained which is not tabled in the House and is only accessible to certain specified officials. In South Australia, interests of partners and dependent children may be disclosed in such a way that does not distinguish between those interests and the interests of the member.
- 1.14 One Australian Parliament, the Victorian Parliament, requires only limited disclosure of interests of members' spouses/partners and dependent children. Members are required to disclose interests of a member of his or her family of which the member is aware and which the member considers might appear to raise a material conflict between his or her private interest and his or her public duty as a member.

1.15 There are two other Australian Parliaments (in addition to the New South Wales Parliament) that do not require the disclosure of the interests of members' spouses/partners or dependent children: the Western Australian Parliament and the Tasmanian Parliament. The New Zealand Parliament also does not require the disclosure of family interests.

1.16 Parliaments also have varying mechanisms for dealing with breaches of disclosure requirements.

Submissions sought

1.17 The Legislative Council Privileges Committee and Legislative Assembly Privileges and Ethics Committees seek submissions addressing the following issues:

- The merits or otherwise of the disclosure of the interests of members' spouses/partners and dependent children
- Appropriate mechanisms for the disclosure of the interests of members' spouses/partners and dependent children, including means of protecting the privacy of members' spouses/partners and dependent children.



PARLIAMENT OF NEW SOUTH WALES

LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE
LEGISLATIVE ASSEMBLY PRIVILEGES AND ETHICS COMMITTEE

**INQUIRY INTO RECOMMENDATIONS OF THE ICAC REGARDING ASPECTS OF THE CODE OF
CONDUCT FOR MEMBERS, THE INTEREST DISCLOSURE REGIME AND A PARLIAMENTARY
INVESTIGATOR**

**Background Paper No. 3:
A parliamentary investigator position?**

Recommendation 25 of the ICAC

- 1.1 In October 2013, the Independent Commission Against Corruption (ICAC) released a report entitled *Reducing the opportunities and incentives for corruption in the State's management of coal resources*. The report is available on the website of the ICAC at www.icac.nsw.gov.au.
- 1.2 Chapter 6 of the report contained recommendations concerning the conduct of members of Parliament and ministers. Recommendation 25 was as follows:

That the NSW Parliament's Legislative Council Privileges Committee consider the establishment of a parliamentary investigator position in consultation with the Legislative Assembly Privileges and Ethics Committee.
- 1.3 The Houses of the Parliament have referred the recommendation to the Legislative Council Privileges Committee and the Legislative Assembly Privileges and Ethics Committee for inquiry and report.

Background to the ICAC recommendation

The current arrangements for regulating the conduct of members of the Parliament of New South Wales

- 1.4 The conduct of members of the Parliament of New South Wales is regulated in a number of ways.
 - Conduct in the chambers is governed by the standing orders of each House.
 - Both Houses have adopted an identical *Code of Conduct for Members* which deals with matters such as: disclosure of conflicts of interest; bribery; gifts; use of public resources; use of confidential information; the role of political parties; and secondary employment.



PARLIAMENT OF NEW SOUTH WALES

LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE
LEGISLATIVE ASSEMBLY PRIVILEGES AND ETHICS COMMITTEE

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- There is a statutory scheme for the disclosure by members of their pecuniary and other interests.
- The ICAC has jurisdiction to investigate allegations of corrupt conduct against a member, in accordance with the definition of corrupt conduct in the *Independent Commission Against Corruption Act 1988*, provided also that the conduct amounts to a 'substantial breach' of the *Code of Conduct for Members*.
- The Parliament has appointed a Parliamentary Ethics Adviser to advise members, upon their request, on ethical issues concerning the exercise of their role as members.
- The Privileges Committees of each House have roles in relation to the review of the *Code of Conduct for Members* and educative work in relation to ethical standards.

The ICAC recommendation

- 1.5 The ICAC report entitled *Reducing the opportunities and incentives for corruption in the State's management of coal resources* included recommendations 22 and 24 in relation to the *Code of Conduct for Members* and the interest disclosure regime for members. These are the subject of the two other background papers. However, following on from recommendations 22 and 24, ICAC observed in its report:

The effectiveness of codes of conduct and statutory pecuniary interest regimes is dependent on timely and impartial enforcement mechanisms. No such enforcement mechanism exists in NSW outside of that provided by the Commission's jurisdiction. This is problematic for allegations of minor breaches given the role of the Commission, as far as practicable, to direct its attention to serious and systemic corrupt conduct. Furthermore, the provisions of s 9 of the ICAC Act require a "substantial" breach of an applicable code of conduct.

...

The establishment of a parliamentary investigator to examine minor allegations about members would provide a number of benefits. These include the provision of an impartial and timely mechanism for resolving minor complaints about the conduct of members. Public confidence in the institution of parliament might be enhanced if the standards that apply to members are enforced. The creation of a parliamentary investigator may also provide for a "graded" approach to non-compliance rather than the "all or nothing" response of the current system.

- 1.6 ICAC emphasised in its report, however, that while it supported further consideration of a 'parliamentary investigator' position, it did so on the basis that there would be no change to its jurisdiction or the definition of corrupt conduct in the *Independent Commission Against Corruption Act 1988* as a result of any review. The Committees do not propose to consider changes to the jurisdiction of the ICAC or the definition of corrupt conduct as part of their inquiries.

Previous discussion of a 'parliamentary investigator position' in New South Wales

- 1.7 The establishment of a parliamentary investigator position or similar has been proposed in the past in New South Wales:
- In 2002, in response to a resolution of the Legislative Assembly requesting that ICAC investigate the regulation of secondary employment by its members, ICAC advised that it had no authority to investigate matters where parliamentary privilege applies. Subsequently, in 2003, in a report to the Speaker of the Legislative Assembly, ICAC raised various possible models for addressing this issue, including the establishment of a Parliamentary Commissioner to investigate such matters. However, ICAC also canvassed the appointment of a parliamentary committee, such as the Privileges Committees, to conduct investigations of such issues, or the appointment of an officer of the Parliament on an as needs basis to undertake necessary investigations.¹ In 2004 the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics concluded that it would be preferable for the Assembly to consider options for investigating matters coming before the ICAC which involve parliamentary privilege 'on a case by case basis'.²
 - In 2004, a member in the Legislative Council, the Hon Peter Breen MLC, gave notice of a bill for an Act relating to the appointment and functions of a Parliamentary Commissioner for Standards.
 - In 2005 Mr Bruce McClintock SC, in a review of the *Independent Commission Against Corruption Act 1988*, recommended the adoption of a parliamentary investigator. Mr McClintock cited two potential benefits: the speedy resolution of minor complaints about the conduct of members, and an avenue to allow investigation of matters where the jurisdiction of the ICAC is limited due to parliamentary privilege.³ However this recommendation was not adopted in the amending bill which implemented most of Mr McClintock's recommendations.
- 1.8 The Clerk of the Parliaments in New South Wales, Mr David Blunt, recently published a paper entitled 'A Parliamentary Commissioner for Standards for New South Wales?', which discussed limitations in the current arrangement for dealing with complaints about the conduct of members of Parliament in New South Wales, detailed the operation of the UK model of a Parliamentary Commissioner for Standards, and suggested how the UK model could be adopted in New South Wales. This paper is available on the website of the Legislative Council under the link 'Articles on the Council'.

¹ ICAC, Regulation of secondary employment for Members of the NSW Legislative Assembly, Report to the Speaker of the Legislative Assembly, September 2003, pp 16-17.

² Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, Regulation of Secondary Employment for Members of the NSW Legislative Assembly, September 2004, p 31.

³ McClintock B, Independent review of the Independent Commission Against Corruption Act 1988, Final Report, January 2005, p 87.

The United Kingdom Parliamentary Commissioner for Standards model

- 1.9 As indicated, a possible model for a ‘parliamentary investigator position’ in New South Wales is the UK Parliamentary Commissioner for Standards model.
- 1.10 In the UK House of Commons, the Office of the Parliamentary Commissioner for Standards deals with the application of the Code of Conduct and related rules that apply to members of the British Parliament. This includes the registration of financial interests held by MPs and the investigation of complaints about MPs who have allegedly breached the Code of Conduct or related Rules. Functions of the Commissioner include:
- Providing advice on a confidential basis to individual members and to the Select Committee on Standards about the interpretation of the Code of Conduct and Guide to the Rules relating to the Conduct of Members.
 - Preparing guidance and providing training for Members on matters of conduct, propriety and ethics.
 - Receiving and investigating complaints about Members who are allegedly in breach of the Code of Conduct and Guide to the Rules. In dealing with complaints about the conduct of members of Parliament, less serious matters are generally dealt with in a timely manner through “rectification” and “reimbursement” and apology.
- 1.11 The work of the Parliamentary Commissioner for Standards is overseen by the Committee on Standards, which is appointed by the House of Commons. The Committee receives reports of the Commissioner, and makes recommendations to the House of Commons on the findings of the Commissioner, particularly in relation to more serious matters.
- 1.12 The House of Lords has similarly appointed a Commissioner for Standards. The Lords Commissioner has a similar role to the Commons Commissioner in respect of complaints, and reports to a sub-committee of the Committee on Privileges and Conduct, which fulfills a similar role to the House of Commons Standards Committee.

Other models

- 1.13 The Legislative Assembly Privileges and Ethics Committee has previously reported on ethics regimes in other jurisdictions including the Canadian federal and provincial parliaments, and Commissioners in Scotland and Wales.

Submissions sought

- 1.14 The Legislative Council Privileges Committee and Legislative Assembly Privileges and Ethics Committee seek submissions on the merits or otherwise of changing the current arrangements for regulating the conduct of members of Parliament. The Committees are interested in parliamentary investigator models in other jurisdictions.

Appendix Two – Draft Resolution

The following text is an example of how the major elements of the current *NSW Constitution (Disclosures by Members) Regulation* could be reflected in the form of a resolution of the House.

Resolutions relating to members' interests

1. Registration of members' interests

- 1) Within 90 days after a member takes the pledge of loyalty required by section 12 of the Constitution each member shall meet with the Parliamentary Ethics Commissioner and provide a statement of:
 - (a) The member's registrable interests; and
 - (b) The registrable interests of which the member is aware:
 - i. Of the member's spouse/partner, and
 - ii. Of any dependent children;

in accordance with this resolution and in a form determined by the Committee on Parliamentary Privilege and Ethics from time to time, and shall also notify any alteration of those interests to the Parliamentary Ethics Commissioner within 35 days of that alteration occurring.

- 2) Any member who:
 - (a) Knowingly fails to provide a statement of registrable interests to the Parliamentary Ethics Commissioner by the due date;
 - (b) Knowingly fails to notify any alteration of those interests to the Parliamentary Ethics Commissioner within 35 days of the change occurring; or
 - (c) Knowingly provides false or misleading information to the Parliamentary Ethics Commissioner;

Shall be guilty of a serious contempt of the House and shall be dealt with by the House accordingly. The House may request a report from the Parliamentary Ethics Commissioner on any matter, and may refer the report to the Committee on Parliamentary Privilege and Ethics for inquiry and report.

2. Registrable interests of spouses/partners and dependent children

Statements of the registrable interests of a member's spouse/partner or of any dependent children submitted in accordance with paragraph (1) shall be maintained in a separate part of the Register by the Parliamentary Ethics Commissioner and shall remain confidential to the Commissioner except where the Commissioner considers that a conflict of interest arises, at which time the Commissioner may forward the declaration to the Registrar for tabling.

3. Registrable interests

The statement of a member's registrable interests to be provided by a member shall include the registrable interests of which the member is aware of the member's spouse/partner and of any dependent children, and shall cover the following matters:

- (a) **real** property, and the purpose for which it is owned or occupied;
- (b) sources of income
- (c) gifts
- (d) contributions to travel
- (e) interests and positions in corporations
- (f) positions in trade unions and professional or business associations
- (g) debts
- (h) dispositions of property
- (i) provision of client services
- (j) discretionary disclosures, whether pecuniary or not.

4. Register and Registrar of Members' Interests

- 1) The Parliamentary Ethics Commissioner shall forward, within 5 working days, members' statements of registrable interests, or alterations to a previous declaration, to the Clerk of the Legislative Assembly for compilation in a Register of Members' Interests.
- 2) The Clerk shall be the Registrar of Members' Interests and maintain the Register of Members' Interests.
- 3) The Register shall be open for inspection at the Office of the Clerk.
- 4) As soon as possible after receipt of statements of registrable interests from the Parliamentary Ethics Commissioner, the Registrar shall cause the Register to be tabled in the House, and shall also table every 6 months any notification by a member of alteration of those interests, as provided to the Registrar by the Parliamentary Ethics Commissioner.
- 5) The separate Register of Members' Interests relating to spouses/partners and dependent children shall remain confidential to the Parliamentary Ethics Commissioner as provided for in paragraph 2.

5. Interpretation

For the purposes of paragraphs 1 to 4 of this resolution:

- "partner" means a person who is living with another person in a *bona fide* domestic relationship; and
- "dependent children" means children under 18 years of age, or full-time students under 25 years of age who are wholly or mainly dependent on the member for support.

For the purposes of paragraph 3 of this resolution the declarable interests as listed are as defined in Explanatory Notes for the Statement of Registrable Interests, to be agreed to by the Committee on Parliamentary Privilege and Ethics.

Appendix Three – List of Submissions

No	Author
1	Mr Davy Nguyen, All Saints Investigations
2	Mr Paul Kernaghan, Commissioner for Standards, House of Lords
3	Dr Rosemary Laing, Clerk of the Senate, Parliament of Australia
4	Mr David Elder, Clerk of the House of Representatives, Parliament of Australia
5	Dr Simon Longstaff AO, St James Ethics Centre
6	Mr David Beamish, Clerk of the Parliaments, House of Lords
7	Sir Robert Rogers KCB, Clerk of the House of Commons
8	Mr Bruce Barbour, Ombudsman, NSW
9	Mr David Blunt, Clerk of the Parliaments, NSW Legislative Council
10	Mr Tom Duncan, Clerk of the Legislative Assembly, ACT
11	The Rt Hon David Carter, Speaker of the House of Representatives of New Zealand
12	Mr Lloyd Babb SC, Director of Public Prosecutions, NSW
13	Dr Elizabeth Coombs, Privacy Commissioner, NSW
14	The Rev Dr Andrew Cameron, Anglican Diocese of Sydney
15	The Hon Amanda Fazio MLC
16	Mr Chris Eccles, Secretary, Department of Premier and Cabinet, NSW

Appendix Four – Extracts from Minutes

MINUTES OF MEETING No 15

Thursday 21 November 2013
4:00 pm
Room 1043 Parliament House

Members Present

Mr Sidoti (Chair), Mr Stokes, Mr Rowell, Mr Zangari

Staff in Attendance

Ronda Miller, Manuela Sudic, David Hale

1. APOLOGIES

Mr Fraser, Mr Rohan

2. COMMITTEE MEMBERSHIP

The Chair reported the change in the membership of the Committee as recorded in the Votes and Proceedings, No 183, Thursday 21 November 2013, entry 22. The Chair welcomed the appointment of Mr Rowell to the Committee in place of Mr Brookes, discharged.

3. RECOMMENDATIONS OF THE ICAC REPORT TITLED “REDUCING THE OPPORTUNITIES AND INCENTIVES FOR CORRUPTION IN THE STATE’S MANAGEMENT OF COAL RESOURCES”

Resolved, on the motion of Mr Rowell: That the Committee advertise jointly with the Legislative Council Privileges Committee a public inquiry into matters arising from the ICAC Report entitled “Reducing the Opportunities and Incentives for Corruption in the State’s Management of Coal Resources”, and other related matters.

Resolved, on the motion of Mr Rowell: That the Committee Chair prepare jointly with the Chair of the Legislative Council Privileges Committee a list of people to be invited to make submissions to the public inquiry, and that the Chairs send letters of invitation to the people on the list.

4. NEXT MEETING

The meeting adjourned at 4:30 pm until 12:00 noon on Thursday 28 November 2013.

MINUTES OF MEETING No 16

Thursday 28 November 2013
12:05 pm
Room 1043 Parliament House

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Fraser (Deputy Chair), Mr Stokes

Staff in Attendance

Ronda Miller, Manuela Sudic, David Hale

1. APOLOGIES

Mr Rohan, Mr Rowell, Mr Zangari

2. CONFIRMATION OF MINUTES

Resolved on the motion of Mr Fraser: That draft Minutes No 14, Tuesday 19 November 2013, and draft Minutes No 15, Thursday 21 November 2013 be confirmed.

3. INQUIRY INTO MATTERS ARISING FROM THE ICAC REPORT ENTITLED “REDUCING THE OPPORTUNITIES AND INCENTIVES FOR CORRUPTION IN THE STATE’S MANAGEMENT OF COAL RESOURCES”, AND OTHER RELATED MATTERS.

The Chair reported on his discussions with the Hon Trevor Khan MLC, Chair of the Legislative Council Privileges Committee, regarding the two committees inquiring jointly. The Committee noted that the Legislative Council had resolved to prepare discussion papers on the three issues raised in the recommendations of the ICAC, and to seek written submissions to the inquiry by Friday 6 March 2014 from a list of organisations and individuals. Discussion ensued.

Resolved on the motion of Mr Stokes: That the Committee request the secretariat to prepare discussion papers jointly with the Legislative Council secretariat for distribution out-of-session to Committee members; that an advertisement be placed jointly in December 2013 seeking written submissions to the inquiry by Friday 6 March 2014; and that Father Frank Brennan, Ethicist, be added to the list of organisations and individuals who will be invited to make submissions.

4. NEXT MEETING

The meeting adjourned at 12.23 pm, *sine die*.

MINUTES OF MEETING No 17

Wednesday 14 May 2014

Room 1254 Parliament House

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Fraser (Deputy Chair), Mr Rohan, Mr Zangari

Staff in Attendance

Ronda Miller, Manuela Sudic, David Hale

The meeting commenced at 3.35pm.

1. APOLOGIES

There were no apologies.

2. CONFIRMATION OF MINUTES

Resolved on the motion of Mr Fraser, seconded Mr Zangari: That draft minutes of Meeting No 16, Thursday 28 November 2013 be confirmed.

3. COMMITTEE MEMBERSHIP

The Chair reported that the Mr Andrew Cornwell MP and Mr Glenn Brookes MP had been appointed this hour to the Committee.

Inquiry into matters arising from the ICAC Report entitled “Reducing the Opportunities and Incentives for Corruption in the State’s Management of Coal Resources”, and other related matters.

4. BACKGROUND PAPERS

Resolved on the motion of Mr Fraser, seconded Mr Zangari: That the Committee note the background papers.

5. SUBMISSIONS RECEIVED

Resolved on the motion of Mr Fraser, seconded Mr Zangari: That submissions 1 to 16 be published on the Committee’s website in accordance with the proposed publication orders.

6. CHAIR’S DRAFT REPORT

The Chair reported on his deliberations regarding the inquiry jointly with the Legislative Council Privileges Committee into matters arising from the ICAC Report entitled “Reducing the Opportunities and Incentives for Corruption in the State’s Management of Coal Resources”. In particular the Chair spoke to draft recommendations prepared as a starting point for the Committee to consider, namely:

1. That the *Code of Conduct for Members* be amended to deal comprehensively with improper influence by members by including a requirement that members act in the public interest before their private interest at all times. (in response to the ICAC's Recommendation 22)
2. That a mechanism be introduced requiring that members disclose the interests of their spouses/partners and dependent children privately to a parliamentary officer to be called Ethics Commissioner. (in response to the ICAC's Recommendation 24)
3. That the position of Ethics Commissioner be created within the Legislative Assembly with a remit established by resolution of the House which includes the current responsibilities of Parliamentary Ethics Adviser expanded to include:
 - Oversight of a primary return by each member of their pecuniary interests which will be updated as required;
 - responsibility for a mandatory meeting with all members to advise on their disclosure and use of entitlements requirements, including the provision of legal advice to members;
 - receiving complaints confidentially concerning members' compliance with these requirements;
 - reviewing members' compliance confidentially; and
 - reporting findings to the House with recommendations regarding sanctions commensurate with any breaches found which include the ability to order rectification and the power to fine members, amongst other sanctions. (in response to the ICAC's Recommendation 25)

Discussion ensued.

The Committee reached a consensus in support of the Chair's draft recommendations 1 and 2 above.

With regard to the Chair's draft recommendation 3, and specifically the fifth dot point above, the Committee reached a consensus that in relation to the remit of the proposed position of Ethics Commissioner, the Commissioner should have discretion whether to report findings of a breach to the House or deal with a finding of a breach confidentially, depending on the seriousness of the breach.

With regard to the remainder of the Chair's draft recommendation 3, the Committee reached a consensus in support.

The Committee also reached a consensus to the effect that requirements for members to declare gifts include an exemption for the mandatory reporting of hospitality, and that members have the discretion whether or not to report gifts of hospitality according to appropriate guidelines to be prepared.

The Chair also reported on his deliberations regarding the *Constitution (Disclosures by Members) Regulation 1983*, and the current *Parliamentary Remuneration Tribunal Determination* rulings on the use of the various entitlements.

The Committee reached a consensus that the *Constitution (Disclosures by Members) Regulation 1983* is complex and should be clarified. The Committee also reached a consensus that detailed guidelines to assist members in the application of the current *Parliamentary Remuneration Tribunal Determination* rulings, should be prepared for the benefit of members. The Committee noted that any changes to the regulation and draft guidelines must be referred to the Committee for review and report.

Finally, the Chair reported on his deliberations regarding the United Kingdom Standards Commissioner model and the Canadian Ethics Commissioner model, and the view that the United Kingdom model is not automatically transferrable to the New South Wales environment as it does not reflect the existence of an ICAC. The Chair noted that it would be undesirable for there to be concurrent inquiries into different levels of complaints that might be raised in relation to a member, and that the United Kingdom model does not include confidentiality protection during its investigations phase.

Resolved on the motion of Mr Zangari, seconded Mr Rohan: That the Chair's draft report be amended to reflect the Committee's discussion and consensus reached, and be circulated for review and approval out-of-session.

7. CORRESPONDENCE

The Hon Trevor Khan MLC, Chair of the Legislative Council Privileges Committee, 13 May 2014 proposing that the Legislative Council Privileges Committee and the Legislative Assembly Committee on Parliamentary Privilege and Ethics meet to discuss the possible responses of the two committees to the ICAC report.

Resolved on the motion of Mr Zangari, seconded Mr Rohan: That the two committees meet at a date to be confirmed during the next sitting week.

8. NEXT MEETING

The meeting adjourned at 4.17 pm, *sine die*.

MINUTES OF MEETING NO 18

Tuesday 27 May 2014

Parkes Room Parliament House

MEMBERS PRESENT

Mr Sidoti (Chair), Mr Anderson, Mr Rohan, Mr Zangari

Staff in Attendance

Ronda Miller, David Hale

The meeting commenced at 7.30pm.

1. APOLOGIES

Mr Brookes, Mr Cornwell

2. CONFIRMATION OF MINUTES

Confirmation of the minutes of Meeting No 17 held on Wednesday 14 May 2014 was deferred.

3. COMMITTEE MEMBERSHIP

The Chair reported that Mr Kevin Anderson MP had been appointed to the Committee in place of Mr Andrew Fraser MP, resigned.

Inquiry into matters arising from the ICAC Report entitled “Reducing the Opportunities and Incentives for Corruption in the State’s Management of Coal Resources”, and other related matters.

4. MEETING WITH LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE

The Chair reported on the Committee’s meeting with the Legislative Council Privileges Committee held on 27 May 2014. Discussion ensued.

The Committee noted:

- Consensus between the Committees’ proposed approaches to responding to the ICAC’s recommendation 22 regarding the *Code of Conduct* and improper influence;
- Lack of consensus regarding the ICAC’s recommendation 24 concerning disclosure of the interests of a members’ spouse/partner/dependent children on the issue of whether such disclosures should be made privately to an officer of the Parliament (the Assembly proposal) or publicly but with non-disclosure of names (the Council proposal);
- Lack of consensus regarding the ICAC’s recommendation 25 for the appointment of a parliamentary investigator on the powers of the role and reporting arrangements.

5. CHAIR’S DRAFT REPORT

The Chair reported on the outcomes of the meeting with the Legislative Council Privileges Committee and their implications for the preparation of a final report reflecting the Committee’s earlier deliberations at Meeting No 17. Discussion ensued.

The Committee agreed that:

- The report should make recommendations which address the ICAC’s recommendations in the context of a holistic model for governing members’ responsibilities;

- The model should set out general principles, include clear guidelines in plain English to explain members' obligations especially with regard to the application of the Parliamentary Remuneration Tribunal Determination rulings, and clarify the *Constitution (Disclosures by Members) Regulation 1983*;
- The model should be established by resolution of the House rather than by legislation;
- The Legislative Council's proposed Clause 8 addressing improper influence should be adopted;
- Disclosure of interests of a member's spouse/partner/dependent children should be of 'known' interests;
- The disclosure requirements contained in the recommended model are a minimum disclosure and members retain the discretion to make additional disclosures;
- An office of the Parliament be established called Ethics Commissioner incorporating the current responsibilities of the Parliamentary Ethics Adviser and with the additional responsibilities of:
 - Conducting a mandatory meeting with all members to advise them in the preparation of their primary return;
 - Providing legal advice to members on complying with their obligations;
 - Receiving updates to the members' primary returns as required or every six months;
 - Receiving complaints confidentially about members' compliance;
 - Reviewing complaints confidentially;
 - Making findings of members' compliance or non-compliance; and
 - Using discretion to keep findings confidential or report findings to the House with recommended sanctions for breaches, with sanctions to include ordering an apology, ordering rectification or reimbursement, recommending the Parliament levy a fine, and referring the matter to an external agency for further investigation such as the Independent Commission Against Corruption and the NSW Police Force.

The Committee reiterated that the report should recommend that any proposed changes to legislation, regulations, guidelines, and policies should be referred to the Committee for review and report before any changes are introduced.

The Chair proposed that the Committee consider the Australian Senate model for disclosing interests and provide feedback to the secretariat out-of-session.

6. NEXT MEETING

The meeting adjourned at 8.15 pm, *sine die*.

MINUTES OF MEETING NO 19

Thursday 19 June 2014

Clerk's Meeting Room, Parliament House

Members present

Mr Sidoti (Chair), Mr Anderson, Mr Brookes, Mr Zangari

Staff in Attendance

Ronda Miller, Manuela Sudic, David Hale

The meeting commenced at 3.30pm.

1. Apologies

Mr Cornwell, Mr Rohan

2. Confirmation of minutes

Resolved on the motion of Mr Anderson, seconded Mr Zangari: That the minutes of Meeting No 18 held on Tuesday 27 May 2014 be confirmed.

3. Election of Deputy Chair

The Chair called for nominations for the position of Deputy Chair of the Committee, in place of Mr Fraser. One nomination was received being Mr Anderson, nominated by Mr Zangari. There being only one nomination, the Chair declared Mr Anderson elected.

Inquiry into matters arising from the ICAC Report entitled "Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources", and other related matters

4. Consideration of the Chair's draft report

The Chair spoke to his draft report, previously circulated. Discussion ensued.

The Committee agreed to consider proposed amendments being:

- Reference to the *Constitution Amendment (Disclosures by Members) Bill 2014* in draft Chapter 4
- A sample resolution to be inserted as Appendix 2.

Resolved on the motion of Mr Zangari, seconded Mr Anderson:

1. That the Committee accept the Chair's draft report in principle;
2. That the Chair's report be circulated and members be requested to notify any proposed amendments to the report within 10 days;
3. That proposed amendments received be circulated to members;

4. That, in the event of agreement from members to proposed amendments, the report stand as the report of the Committee and that it be signed by the Chair and presented to the House; or
5. That, in the event of lack of agreement, that the report and amendments be referred to the next meeting of the Committee on a date to be advised.

5. Next meeting

The meeting adjourned at 4.00 pm, *sine die*.