



REPORT OF THE STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS
DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION 2024 (REPORT 3/58,
AUGUST 2024)
GOVERNMENT RESPONSE

On 8 February 2024, the Legislative Assembly referred a draft Constitution (Disclosures by Members) Regulation 2024 (**Draft Regulation**) to the Standing Committee on Parliamentary Privilege and Ethics Committee for inquiry and report.

The Government prepared the Draft Regulation to implement recommendations of the Independent Commission Against Corruption (ICAC) in its July 2022 report *Investigation into the conduct of the local member for Drummoyne*, following an investigation known as 'Operation Witney' (**Operation Witney Report**).

The Parliamentary Privilege and Ethics Committee tabled its report on 15 August 2024. Enclosed is a table which details the Government's response to each of the Committee's eight recommendations.

The Legislative Council Privileges Committee also inquired into the Draft Regulation and made recommendations in Report 96, September 2024. The Government responded to that report on 2 December 2024.

The recommendations of the reports of the Parliamentary Privilege and Ethics Committee and the Privileges Committee are inconsistent. There was disagreement between the Committees of each House with respect to proposals in the Draft Regulation to require Members of Parliament to register conflicts of interest and disclose the interests of their immediate family members. The Government understands that discussions regarding these matters have taken place between the Chairs of the Parliamentary Committees and the Chief Commissioner of the ICAC following the tabling of the Committee's report.

The Government has prepared a revised Constitution (Disclosures by Members) Regulation 2025 (**Regulation**), following consideration of the recommendations of the Parliamentary Privilege and Ethics Committee and the Privileges Committee, and invites the Committees to make any further comment before the Regulation is finalised and progressed to the Governor in Council for consideration.

The Government wishes to thank the Parliamentary Privilege and Ethics Committee for its engagement on this important integrity reform to enhance Parliamentary transparency and accountability.

Standing Committee on Parliamentary Privilege and Ethics Committee Report 3/58, August 2024 ‘Draft Constitution (Disclosures by Members) Regulation 2024’

	COMMITTEE RECOMMENDATION	GOVERNMENT RESPONSE
1.	The regulations should allow for an extension of time, of up to 60 days during each session of Parliament, for a Member to lodge a further interest disclosure return or make an annual declaration in circumstances involving: (1) the death of a family member; or (b) a serious illness or injury affecting the individual Member. The Member’s ground should be submitted in writing to the Clerk of the relevant House, as soon as practicable, and recorded in a confidential register maintained by the Clerk, which should be made available to Members of the relevant House and the Independent Commission Against Corruption upon request.	<p>The Government has not implemented this recommendation.</p> <p>It is a matter for the Houses of Parliament to determine if a Member has wilfully contravened their disclosure obligations. The relevant circumstances of the failure to comply with disclosure obligations would be relevant to any consideration by the Houses.</p> <p>The Houses may wish to consider implementing this recommendation through the making of Standing Rules and Orders regulating the making of a declaration under section 14(2) of the <i>Constitution Act 1902</i>.</p>
2.	The regulations should not require the disclosure by Members of Parliament of pecuniary interests and other matters relating to the “immediate family members” of Members.	<p>The Government has implemented this recommendation.</p> <p>The Government requests that the Parliamentary Privilege and Ethics Committee and the Privileges Committee further consider mechanisms for Members to disclose the interests of their immediate family members, having regard to the ICAC’s finding in the Operation Witney Report that the interests of family members are a corruption risk for Members of Parliament.</p>

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3.	Where a Member leases real property to someone else, it should be sufficient under the regulations that the Member disclose “the location of the parcel by suburb or area” and for the details of investment properties to be included in a confidential part of the register accessible in limited circumstances, e.g. to the ICAC for the purpose of an investigation.	<p>The Government has implemented this recommendation.</p> <p>A direction in the interest disclosure return form at Schedule 1 to the Regulation provides that a Member may disclose on the publicly available part of the register of disclosures, as an alternative to disclosing the address of a parcel of tenanted real property:</p> <ul style="list-style-type: none"> • a statement that the parcel is tenanted • the location of the parcel by suburb or area. <p>The direction further provides that if a Member discloses a tenanted property in this way, the Member must disclose the property’s address for inclusion on the confidential part of the register of disclosures.</p>
4.	Subject to the findings and recommendations above, s. 11 of the Draft Regulation relating to trusts should be made.	<p>The Government has implemented this recommendation.</p> <p>Clause 10 of the Regulation (formerly clause 11 of the Draft Regulation) would require Members to disclose a trust if the Member or an immediate family member has a beneficial interest in the trust, including a mere expectancy as a beneficiary of a discretionary trust, or is a trustee of the trust.</p>
5.	The regulations should <i>not</i> include a mandatory register of conflicts of interest.	<p>The Government has implemented this recommendation.</p> <p>The Government acknowledges the findings of the Parliamentary Privilege and Ethics Committee that:</p> <ul style="list-style-type: none"> • it is unclear in what circumstances Ministers and Parliamentary Secretaries would disclose conflicts of interest on the confidential Ministerial Register of Interests, and when they would disclose conflicts of interest on the public parliamentary registers (finding 8) • the concept of what is a conflict is too imprecise, and the consequences of a finding that a conflict was deliberately not disclosed are serious (finding 9). <p>The report of the Privileges Committee also raised concerns regarding the proposal that Members disclose all conflicts of interest, and recommended</p>

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		<p>that disclosed conflicts be limited to interests of a pecuniary nature (recommendation 1), or in the alternative that conflicts of interest be recorded on a separate and confidential register (recommendation 10).</p> <p>After carefully considering the concerns raised by the Committees of each House, the Government has determined to remove the provision (formerly clause 15 of the Draft Regulation) proposing that Members disclose all conflicts of interest from the Regulation.</p> <p>Members will continue to be able to make discretionary disclosure of conflicts of interest under clause 19 of the Regulation (formerly clause 22 of the Draft Regulation), and the Legislative Council Members' Code of Conduct and the Legislative Assembly Code of Conduct for Members (Members' Codes of Conduct) will continue to require Members to take reasonable steps to avoid, resolve or disclose any conflict between their private interest and the public interest.</p> <p>The Government requests that the Parliamentary Privilege and Ethics Committee and the Privileges Committee further consider mechanisms for Members to disclose and manage conflicts of interest through amendment of the Members' Codes of Conduct , having regard to the ICAC's finding in the Operation Witney Report that the existing conflict of interest regime for Members relies heavily on self-regulation and lacks effective mechanisms to monitor and enforce its requirements.</p>
6.	Subject to the findings and recommendations above, s. 21 of the Draft Regulation relating to water access licences should be made.	<p>The Government has implemented this recommendation.</p> <p>Clause 18 of the Regulation (formerly clause 21 of the Draft Regulation) proposes that Members disclose interests in water access licences.</p>
7.	The Committee is opposed to the proposed requirements for Members of Parliament to disclose the interests of "immediate family members" and for mandatory disclosure of conflicts of interest. It advises the Government that it should not proceed with these aspects of the Draft Regulation.	<p>The Government has implemented this recommendation.</p> <p>Please see the responses to recommendations 2 and 5 for further information.</p>

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8.	<p>The regulations should reflect the presumption that each House of Parliament controls access to its own papers, including any information that might be excluded under s. 25(2) of the Draft Regulation. Members of the Legislative Council should <i>not</i> have access to the Legislative Assembly's "complete registers" in circumstances where public access is not available, and vice versa, unless access is authorised by a resolution of the relevant House.</p>	<p>The Government has implemented this recommendation.</p> <p>Concepts in the Draft Regulation relating to complete and redacted registers of disclosures, and the prior clause 26(a) providing access to the complete register by Members, have been omitted from the Regulation.</p> <p>Clause 23(3) of the Regulation would provide that information on the confidential part of a register may be disclosed to (among other persons):</p> <ul style="list-style-type: none"> • the Member who disclosed the information • the Privileges Committee in respect of information disclosed by a Member of the Legislative Council • the Parliamentary Privilege and Ethics Committee in respect of information disclosed by a Member of the Legislative Assembly • the Presiding Officer of the Member's House. <p>Clause 23(4) of the Regulation proposes that the Privileges Committee and the Parliamentary Privilege and Ethics Committee may, in accordance with the Standing Rules or Orders of the House or a resolution of the House:</p> <ul style="list-style-type: none"> • specify a person to whom disclosure of information recorded on the confidential part of a register may be made • resolve that specific information on the confidential part of a register be tabled in the House and published, generally or subject to restriction.