



# Standing Committee on Parliamentary Privilege and Ethics

DISCUSSION PAPER 1/56 – MARCH 2018

## REVIEW OF THE CODE OF CONDUCT FOR MEMBERS



New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly. Standing Committee on Parliamentary Privilege and Ethics.

Review of the Code of Conduct for Members / Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics [Sydney, N.S.W.] : the Committee, 2018. [29] pages ; 30 cm. (Discussion paper / Standing Committee on Parliamentary Privilege and Ethics ; no. 1/56)

"March 2018".

Chair: Mark Taylor, MP.

ISBN 9781921012617

1. New South Wales. Parliament—Rules and practice.
2. New South Wales. Parliament—Ethics.
3. Political ethics—New South Wales.
4. Legislators—Professional ethics—New South Wales.
5. Parliamentary practice—New South Wales.
- I. Taylor, Mark.
- II. Title.
- III. Series: New South Wales. Parliament. Legislative Assembly. Standing Committee on Parliamentary Privilege and Ethics. Discussion paper ; no. 1/56

(328.944 DDC22)

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".

# Contents

|   |     |
|---|-----|
| Membership _____  | ii  |
| Terms of Reference _____  | iii |
| Chair’s Foreword _____  | iv  |
| CHAPTER ONE – A REVISED CODE FOR DISCUSSION _____                             | 1   |
| CHAPTER TWO – WHY REVISE THE CODE IN THIS WAY? _____                          | 6   |
| ACCOMPANYING GUIDANCE _____   | 19  |
| APPENDIX ONE – THE CURRENT CODE _____   | 21  |
| THE MEMBERS’ CODE OF CONDUCT _____  | 21  |
| APPENDIX TWO – AMENDMENTS TO THE MEMBERS’ CODE OF CONDUCT SINCE 1998<br>_____ | 24  |

# Membership

|                 |   |
|-----------------|---|
| CHAIR           | Mr Mark Taylor MP (from 29 March 2017)  |
| DEPUTY CHAIR    | Mr Michael Johnsen MP (from 29 March 2017)  |
| MEMBERS         | Mr Kevin Anderson MP (from 28 May 2015 until 2 June 2016)<br>Mr Greg Aplin MP (from 21 March 2016)<br>Mr Glenn Brookes MP (from 28 May 2015 until 21 March 2016)<br>Mr Kevin Conolly MP (from 28 May 2015)<br>Mr Mark Coure MP (from 28 May 2015 until 29 March 2017)<br>Mr Christopher Gulaptis MP (from 11 October 2016 until 29 March 2017)<br>Mr Ron Hoenig MP (from 28 May 2015)<br>Mr Adam Marshall MP (from 2 June 2016 to 11 October 2016)<br>Mr Jai Rowell MP (from 28 May 2015 until 29 March 2017)<br>Mr Damien Tudehope MP (from 29 March 2017) |
| CONTACT DETAILS | Legislative Assembly Standing Committee on<br>Parliamentary Privilege and Ethics<br>Parliament House<br>Macquarie Street<br>Sydney NSW 2000   |
| TELEPHONE       | (02) 9230 2222  |
| FACSIMILE       | (02) 9230 2333  |
| E-MAIL          | <a href="mailto:Ethics.committee@parliament.nsw.gov.au">Ethics.committee@parliament.nsw.gov.au</a>  |
| URL             | <a href="http://www.parliament.nsw.gov.au/laprivilegeandethics">www.parliament.nsw.gov.au/laprivilegeandethics</a>  |

# Terms of Reference

That the Committee review the Code of Conduct for Members, pursuant to s72E (5) of the *Independent Commission Against Corruption Act 1988*.

## Chair's Foreword

It gives me great pleasure to bring forward this discussion paper on the Members' Code of Conduct.

The Code requires careful consideration and this consideration should extend beyond the Committee to the membership of both Houses and the communities which they serve.

The purpose then, of this discussion paper, is not to state what the Committee wants. Rather it is to stimulate debate about what Members and those they represent want from their Code. Because it is only when Members develop and own a set of standards, that their true value is realised.

In presenting this paper for discussion, I would like to thank all of those who have made a submission to the review process.

In particular I would like to acknowledge Ms Margaret Crawford, Auditor-General, and Mr Barry Underwood, Executive Officer, Audit Office of New South Wales; Mr John Evans PSM, Parliamentary Ethics Adviser; Mr Alister Henskens SC MP; the Independent Commission Against Corruption; the former Clerk of the Legislative Assembly Ms Ronda Miller; and Dr Robert Waldersee, formerly the Executive Director, Corruption Prevention Division, ICAC.

The Committee has sought their views on several occasions during the drafting process and it is grateful for their considered and constructive contributions. Those consultations have been preparatory to the publication of this discussion paper. Whilst the Committee hasn't been able to accommodate every perspective in the draft code which it is now putting forward, we do believe it represents a good balance of principle, prescription and practicality.

In closing I would like to thank the former Chair, Mr Mark Coure, for his substantial input into this review before taking up the role of Parliamentary Secretary; and I would also like to thank all committee members past and present for their determination to deliver the best in ethical standards.

The Committee welcomes feedback on this discussion paper by **Monday 16 April 2018** at ([Ethics.committee@parliament.nsw.gov.au](mailto:Ethics.committee@parliament.nsw.gov.au)).

In the meantime our focus will now turn to the *Constitution (Disclosures by Members) Regulation 1983* and to any proposals made by the President of the Legislative Council in relation to a Parliamentary Standards Commissioner and a Parliamentary Privileges Bill.



**Mark Taylor MP**  
Chair

# Chapter One – A revised code for discussion

## CODE OF CONDUCT FOR MEMBERS

That this House adopt, for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*, the following Code of Conduct—

### PREAMBLE

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

### THE CODE

#### 1 Purpose of the Code

The purpose of this Code of Conduct is to assist all Members in the discharge of their parliamentary duties and obligations to the House, their electorates and the people of NSW.

The Code applies to Members in all aspects of their public life. It does not apply to Members in their purely private and personal lives.

In complying with this Code, Members shall base their conduct on a consideration of the public interest, avoiding conflict between personal interest and their duties as a Member of Parliament.

Members will not act dishonestly for their own personal gain, or that of another person.

It is recognised that some members are non-aligned and others belong to political parties. Organised political parties are a fundamental part of the democratic process. Participation in the activities of organised political parties is within the legitimate activities of Members of Parliament and will not be a breach of this Code of Conduct.

### PROPER EXERCISE OF POWER

#### 2 Improper influence

(a) No member shall act as a paid advocate in any proceeding of the House or its committees.

(b) A Member must not knowingly and 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 as a consequence:

(i) The Member;

- (ii) A member of the Member's family;
  - (iii) A business associate of the Member; or
  - (iv) Any other person or entity from whom the Member expects to receive a financial benefit.
- (c) A Member must not knowingly and 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.

This code is not breached by reason of a benefit being received by the persons set out in 2(b)(i)-(iv) by reason of them being a member of the public or a member of a broad class.

### 3 Use of public resources

The use of public resources should not knowingly confer any undue private benefit on the Member or, on any other person, or entity.

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

#### *Commentary*

*There is a range of information available to Members to assist them in determining the accurate and appropriate use of resources including:*

- *The Legislative Assembly Members' Guide;*
- *The Legislative Council Members' Guide;*
- *The Department of Parliamentary Services Members' Entitlements Handbook;*  
*and*
- *The Parliamentary Remuneration Tribunal's Annual Report and Determination of Additional Entitlements for Members of the Parliament of New South Wales.*

*In addition it is open to any Member to seek advice on these matters from the Clerks of the House, Senior Parliamentary Officers, or the Parliamentary Ethics Adviser.*

### 4 Use of confidential information

Information which Members receive in confidence in the course of their parliamentary duties should be used only in connection with those duties. It must never be knowingly and improperly used for the private benefit of themselves or any other person or persons.

## OPENESS AND ACCOUNTABILITY

### 5 Disclosure of interests



Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members. They shall always be open and frank in taking reasonable steps to draw attention to any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.

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.

#### *Commentary*

*The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that Members lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts.*

*The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.*

*Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:*

- *Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return;*
- *The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure regime in plain language, with examples where possible; and*
- *It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

*In conjunction with the Regulation and this code, the following Standing Orders apply in relation to personal or pecuniary interests:*

- *Legislative Assembly Standing Orders 176-7 and Legislative Council Standing Order 113(2) on voting in divisions; and*
- *Legislative Assembly Standing Order 276 and Legislative Council Standing Order 210(10) on participating in committee inquiries.*

## 6 Conflicts of interest

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. This should always be done in favour of the public interest.

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.

#### *Commentary*

*Members should be aware of the important distinction between disclosing an interest and having a conflict of interest.*

*There are certain pecuniary interests that must be disclosed on the Register of Disclosures although these may never come into conflict with a Members' duties. There are also interests that are not required to be disclosed on the Register of Disclosures but which could give rise to a conflict of interest if they are not managed appropriately.*

*It is open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

## 7 Gifts

- (a) Members must take reasonable steps to disclose 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 knowingly accept gifts that could reasonably be expected to give rise to a conflict of interest or could reasonably be perceived as an attempt to improperly influence the Member in the exercise of his or her duties.
- (c) Nothing in this Code precludes the giving or accepting of political donations in accordance with the *Election Funding, Expenditure and Disclosures Act 1981*.

### *Commentary*

*The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that Members lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts.*

*The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.*

*Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:*

- *Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return;*
- *The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure regime in plain language, with examples where possible; and*
- *It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

## UPHOLDING THE CODE

## 8 Upholding the Code

Members have a duty to cooperate fully with any processes under the authority of the House concerning compliance with this Code.

Breaches of this Code may result in sanctions being imposed upon a Member by the House. A substantial breach of the Code may constitute corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988*.

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

# Chapter Two – Why revise the Code in this way?

## The Preamble to the Code

2.1 This currently reads as follows:

### **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.

- 2.2 The first paragraph of the preamble states that it is a result of an agreement between the Houses and that it applies to all Members of Parliament. This seems to be unnecessary procedural context where there could be an opening statement of greater impact and purpose.
- 2.3 The second paragraph also seems superfluous as both Members and the public understand our system of representative democracy. More importantly, the paragraph seems to make an unfortunate connection between the results of elections and Member misconduct.
- 2.4 A Member losing their seat at an election may do so for any number of reasons. It should not be implied that the loss of a seat is necessarily connected to a breach of the Code.
- 2.5 Nor should the re-election of a Member, who is alleged to have breached the Code, be seen as the electorate having arbitrated favourably on the alleged breach.<sup>1</sup>
- 2.6 The third paragraph, like its predecessors, is quite contextual. However this time it is useful context in the form of a well-crafted statement that embodies the key principles of any ethical framework. It could be retained as the preamble.

---

<sup>1</sup> See for example the comments of the former NSW Auditor-General at p7 of the Legislative Council Privileges Committee [Review of the Members' Code of Conduct 2010](#)

2.7 The fourth and final paragraph of the preamble states that a Members principal responsibility is to serve the people of New South Wales. Rather than be part of the preamble this recognition of the need to put public interest before private gain could be an actual clause in the Code (see the proposed clause on the Code's purpose).

2.8 So the preamble could be amended by deleting paragraphs 1,2 and 4. Paragraph 3 would be retained so that it reads:

**PREAMBLE**

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

2.9 Note the addition of the word "conventions" in line 3 to include parliamentary customs.

### The structure of the Code

2.10 The current Code is a list of clauses without any coherent structure. Grouping the Code's clauses under a series of sub-headings could make it a more effective and user friendly document.

2.11 The clauses which address misconduct could be grouped together under an appropriate sub-heading such as "Proper exercise of power". Those clauses addressing the need for transparency (disclosure of conflicts of interest and gifts) could be grouped together under the appropriate sub-heading of "Proper exercise of power" and "Openness and accountability".

2.12 There could also be a catch-all section at the end of the Code under the sub-heading of "Upholding the Code" (see paragraphs 2.73-2.77 below).

2.13 Bringing relevant clauses together under explanatory headings can send a clearer message about how the Code works at both a preventative and an enforcement level.

### Stating the purpose of the Code

2.14 The preamble to the Code acknowledges the responsibilities Members have to their electorates and to the people of New South Wales. This is then followed by the series of clauses which deal with the specifics of conduct: conflicts of interest; bribery; gifts; use of public resources; use of confidential information; duties as a Member of Parliament; and secondary employment or engagements.

2.15 These clauses, which are prescriptive in nature and are designed to define corruption, lack the kind of value statement which is easily understood by Members and the public whom they serve.

2.16 By way of example, the Committee notes the broad ethical guidance provided by Clause 6 of the NSW Ministerial Code of Conduct:

## Duty to act honestly and in the public interest

A Minister, in the exercise or performance of their official functions, must not act dishonestly, must act only in what they consider to be the public interest, and must not act improperly for their private benefit or for the private benefit of any other person.<sup>2</sup>

- 2.17 A new Clause 1 could be inserted into the Code to set an aspirational tone and act as the ethical yardstick for all that follows. This would be a simple guiding principle for Members which they can apply to any ethical dilemmas which might arise. For example:

### Purpose of the Code

The purpose of this Code of Conduct is to assist all Members in the discharge of their parliamentary duties and obligations to the House, their electorates and the people of NSW.

The Code applies to Members in all aspects of their public life. It does not apply to Members in their purely private and personal lives.

In complying with this Code, Members shall base their conduct on a consideration of the public interest, avoiding conflict between personal interest and their duties as a Member of Parliament.

Members will not act dishonestly for their own personal gain, or that of another person.

It is recognised that some members are non-aligned and others belong to political parties. Organised political parties are a fundamental part of the democratic process. Participation in the activities of organised political parties is within the legitimate activities of Members of Parliament and will not be a breach of this Code of Conduct.

- 2.18 Note that the final paragraph of the proposed new Clause 1 incorporates Clause 6 of the current Code entitled “Duties of a Member of Parliament”. This clause has been moved, because when setting out the scope and intent of the Code, it is important to make it clear that party activities are a legitimate part of the democratic process.

- 2.19 The wording has then been amended to put beyond any doubt that a Member’s participation in the activities of organised political parties is not a breach of the Code.

## Disclosure of conflict of interest

- 2.20 The current clause reads as follows:

1 Disclosure of conflict of interest

---

<sup>2</sup> NSW Ministerial Code of Conduct <http://www.legislation.nsw.gov.au/#/view/regulation/2010/211/app1>  
Current version for 20 September 2014 to date (accessed 27 October 2016)

- (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.

- 2.21 The title and structure of the current clause is misleading because disclosing an interest and having a conflict of interest are two separate things.
- 2.22 A disclosure process does enable conflicts of interest to be identified and managed where they arise; but equally a Member’s private interests may never come into conflict with their public duty and these two issues should not be confused.
- 2.23 So two separate clauses may help to draw out this important distinction. One to address the requirements to disclose certain interests and one to address the necessity of appropriately managing any conflict of interest. A commentary section in the Code below each of those clauses could then offer some practical guidance and sources of advice.
- 2.24 The new disclosure of interests clause would also specify that a Member’s communications with Ministers, Members, public officials or public office holders on a particular matter should draw attention to any relevant interest the Member holds.
- 2.25 This would keep the disclosure clause consistent with the proposed new clause on improper influence (see the next section of this report).
- 2.26 The revised clauses would then read as follows:

5 Disclosure of interests

Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members. They shall always be open and frank in taking reasonable steps to draw attention to any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.

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.

*Commentary*

*The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that Members lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts.*

*The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.*

*Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:*

- *Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return;*
- *The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure regime in plain language, with examples where possible; and*
- *It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

*In conjunction with the Regulation and this code, the following Standing Orders apply in relation to personal or pecuniary interests:*

- *Legislative Assembly Standing Orders 176-7 and Legislative Council Standing Order 113(2) on voting in divisions; and*
- *Legislative Assembly Standing Order 276 and Legislative Council Standing Order 210(10) on participating in committee inquiries.*

## 6 Conflicts of interest

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. This should always be done in favour of the public interest.

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.

### *Commentary*

*Members should be aware of the important distinction between disclosing an interest and having a conflict of interest.*

*There are certain pecuniary interests that must be disclosed on the Register of Disclosures although these may never come into conflict with a Members' duties. There are also interests that are not required to be disclosed on the Register of Disclosures but which could give rise to a conflict of interest if they are not managed appropriately.*

*It is open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

2.27 The question of whether Members should disclose the interests of third parties (e.g. family members) is an issue which the Committee will address when it reviews the Pecuniary Interests Regulation.

2.28 The Regulation is the appropriate instrument for governing the disclosures regime. The Code is the appropriate document to draw all of the elements of the ethics framework together in a set of broad principles.



- 2.29 Accordingly in the revised code set out in Chapter 1, reference is made to Members fulfilling “conscientiously the requirements of the House in respect of the Register of Disclosures by Members” and always being “open and frank in taking reasonable steps to draw attention to any relevant interest” but the detail of what would be declared should remain in the Regulation.

## Bribery

- 2.30 The current bribery clause in the Code prohibits a Member from knowingly engaging in paid advocacy whilst participating in activities of the Parliament and its Committees. It reads as follows:

### 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.

- 2.31 This clause might benefit from the insertion of a simple opening statement such as “No member shall act as a paid advocate in any proceeding of the House or its committees”.

- 2.32 This could then be followed by retaining the existing sub-clauses which describe the activities which would constitute a breach of the code. However inserting “and” instead of “or” so that it reads “A Member must not knowingly and improperly” to 2(b) could make it clear that a breach of the Code is where a Member knowingly seeks to exert improper influence.

- 2.33 As there is some repetition in the current sub-clauses (a) and (b) they could be combined so as to make a more concise provision. The insertion of the words “as a consequence” after the words “expects to receive” would also give it greater clarity.

- 2.34 A further matter for this section of the Code, concerns any Member who might attempt to influence a ministerial or bureaucratic decision in favour of their private interests, or those of their family and associates.

- 2.35 This issue was raised by ICAC and was considered by the privileges committees of both Houses in the last parliament. In its 2014 report, the Committee noted that the scope of the Code's bribery clause did not extend to "improper influence", that is the promotion of matters to public officials outside of Parliament for private gain.<sup>3</sup>
- 2.36 The Committee's report recommended that there should be a prohibition on Members seeking to improperly influence decisions by public officials. The Legislative Council Privileges Committee report of 2014 made a very similar recommendation though it differed slightly in construction to that of the Assembly committee.
- 2.37 The 2014 Assembly Committee report proposed the following clause be inserted:
- 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.
- 2.38 Consideration could be given to taking up this important recommendation. The addition of the word "knowingly" so that it read "A Member must not knowingly and improperly promote any matter" would make this sub-clause consistent with the rest of the clause.
- 2.39 This proposed sub-clause could then replace clause 2(c) of the current bribery clause which states that "A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct".
- 2.40 This sub-clause appears to be superfluous because any substantial breach of the Code may constitute corrupt conduct for the purposes of the Independent Commission Against Corruption Act 1988. There is no need to emphasise that for one clause and not the others.
- 2.41 A new clause on "Upholding the Code" (see below) would make it abundantly clear that either Parliament or ICAC will be responsible for enforcing all of the Code's provisions.
- 2.42 Consideration might also be given to changing the heading of Clause 2 from "Bribery" to "Improper influence".
- 2.43 This might be a more accurate description of the unethical activities which the clause prohibits and it would avoid any confusion with the broader criminal offence of bribery. That criminal offence would not need to be established in order for there to be a breach of Clause 2 of the Code.

---

<sup>3</sup> Legislative Assembly Privilege and Ethics Committee [Final Report, Inquiry into matters arising from the ICAC Report entitled "Reducing the opportunities and incentives for corruption in the State's management of coal resources"](#) p.vii. See also Legislative Council Privileges Committee [Final Report, Report No. 70: Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator](#)

2.44 Finally clarification should be provided that the Code is not breached by reason of a benefit accruing to a person by reason of them being a member of the public or a member of a broad class. This would ensure consistency with Clause 5 “Disclosure of interests”.

2.45 The revised clause would then read as follows:

Improper influence

- (a) No member shall act as a paid advocate in any proceeding of the House or its committees.
- (b) A Member must not knowingly and 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 or any of the following persons has received, is receiving or expects to receive as a consequence:
  - (i) The Member;
  - (ii) A member of the Member’s family;
  - (iii) A business associate of the Member; or
  - (iv) Any other person or entity from whom the Member expects to receive a financial benefit.
- (c) A Member must not knowingly and 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.

This code is not breached by reason of a benefit being received by the persons set out in 2(b)(i)-(iv) by reason of them being a member of the public or a member of a broad class.

## Gifts

2.46 The current gifts clause reads as follows:

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*.

- 2.47 The gifts clause is part prescriptive in nature with its references to the requirements to comply with disclosure regulations and with electoral law.
- 2.48 It is also part principle in clearly expressing an ethic that a Member should not accept a gift that may pose, or appear to pose, a conflict of interest between their public duty and their private interests.
- 2.49 This seems an appropriate balance between explaining the ethics in relation to gifts and referencing the regulatory requirements on declarations.
- 2.50 However sub-clause 3(a) could be restructured to make it more consistent with the proposed clause on disclosure of conflicts of interest by requiring Members to take “reasonable steps” when declaring gifts.
- 2.51 Similarly sub-clause 3(b) could be more consistent with the preceding proposed clause on bribery/improper influence, by making it clear that a breach of the Code is where a Member knowingly accepts a benefit which might conflict with the exercise of their duties.
- 2.52 At sub-clause 3(c) reference is made to Members accepting political contributions in accordance with Part 6 of the *Election Funding Act 1981*. The relevant legislation is now the *Election Funding, Expenditure and Disclosures Act 1981* and this should be updated.
- 2.53 A commentary section below the clause could provide useful guidance by referencing relevant sources for rules and advice.
- 2.54 The revised clause would then read as follows:

#### Gifts

- (a) Members must take reasonable steps to disclose 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 knowingly accept gifts that could reasonably be expected to give rise to a conflict of interest or could reasonably be perceived as an attempt to improperly influence the Member in the exercise of his or her duties.
- (c) Nothing in this Code precludes the giving or accepting of political donations in accordance with the *Election Funding, Expenditure and Disclosures Act 1981*.

#### Commentary

*The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that Members lodge regular returns, disclosing certain interests such as real or personal property, income, debts and gifts.*

*The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.*

*Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:*

- *Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return;*
- *The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure regime in plain language, with examples where possible; and*
- *It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

## Use of public resources

2.55 The current clause on the use of public resources reads as follows:

### 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.

2.56 This clause could be improved upon by firstly setting out the general principle that there should be no conflict between a Member's personal interests and their public duty:

### Use of public resources

The use of public resources should not knowingly confer any undue private benefit on the Member or, on any other person, or entity.

2.57 This general principle could then be followed by a reference to the fact that there are specific rules that govern the use of public resources:

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

2.58 Finally a commentary section would refer Members to the relevant sources of guidance and advice:

### *Commentary*

*There is a range of information available to Members to assist them in determining the accurate and appropriate use of resources including:*

- *The Legislative Assembly Members' Guide;*
- *The Legislative Council Members' Guide;*
- *The Department of Parliamentary Services Members' Entitlements Handbook;*  
*and*
- *The Parliamentary Remuneration Tribunal's Annual Report and Determination of Additional Entitlements for Members of the Parliament of New South Wales.*

*In addition it is open to any Member to seek advice on these matters from the Clerks of the House, Senior Parliamentary Officers, or the Parliamentary Ethics Adviser.*

## Use of confidential information

2.59 The current clause on the use of confidential information reads as follows:

### 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.

2.60 This clause could be redrafted to give it more fluency and context which would emphasise the essential ethical principle. For example:

Information which Members receive in confidence in the course of their parliamentary duties should be used only in connection with those duties. It must never be knowingly and improperly used for the private benefit of themselves or any other person or persons.

## Duties of a Member of Parliament

2.61 In the current Code the clause on the duties of a Member reads as follows:

### 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.

2.62 As noted above, it is proposed that this clause be transferred into the proposed new Clause 1 which sets out the Code's purpose.

## Secondary Employment or engagements

2.63 In the current Code the clause on secondary employment reads as follows:

### 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 which 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.

- 2.64 The clause regarding secondary employment was inserted in 2007, following concerns about the adequacy of the provisions of the Code regarding forms of secondary employment and the extent to which they may conflict, or appear to conflict with a Members' parliamentary duties.
- 2.65 This section considers whether that specific provision would be still be necessary in a revised code.
- 2.66 In terms of the broad principle, it has already been discussed (at paragraph 2.21) whether a new disclosures clause should be amended to clearly express the ethic that Members should be frank and open about any relevant interests – with reference to the requirements of the House and the Register of Disclosures.
- 2.67 If the Code were amended to insert that new disclosures clause, the Secondary Employment clause would appear superfluous. This is because the Secondary Employment clause would largely repeat an existing requirement to disclose a relevant interest.
- 2.68 The relevant section in the new disclosures clause would be that:
- [Members]...shall always be open and frank in taking reasonable steps to draw attention to any relevant interest in any proceeding of the House or its Committees
- 2.69 This revised clause would operate in conjunction with the standing orders and the Regulation. The Standing Orders prohibit a member from voting on any question in which they have a direct pecuniary interest not held in common with other citizens of the State (see Standing Orders 176-77 and 276 in relation to Committees). There are equivalent provisions in Legislative Council Standing Orders e.g. 113(2) on voting in divisions.
- 2.70 The Regulation requires that Members declare sources of income and any services which a Member might provide to clients which involve the use of the Member's parliamentary position.
- 2.71 Collectively the new disclosures clause, the Standing Orders and the Regulation would appear sufficient to cover the issue of secondary employment or engagements and a separate clause on that specific issue seems unnecessary.
- 2.72 In its forthcoming review of the *Constitution (Disclosure by Members) Regulation 1983* the Committee will give consideration to clauses 7A (Use of Member's parliamentary position to provide services) and 15A (Provision of client services) to ensure consistency.

## A new clause on cooperating with investigations

2.73 The current Code commences with the statement that it has been adopted for the purposes of Section 9 of the *Independent Commission Against Corruption Act 1988*.

2.74 The revised Code could then make it clear, that what this means is that a substantial breach of the Code can, as a consequence amount to corrupt conduct which may be investigated by ICAC. This explanation is important, so that the Code is rightly seen as setting the standards and showing that there is a means of enforcing those standards.

2.75 Here the Committee notes the preamble to the NSW Ministerial Code of Conduct at paragraph 9:

9 A substantial breach of the NSW Ministerial Code of Conduct (including a knowing breach of any provision of the Schedule) may constitute corrupt conduct for the purposes of the [Independent Commission Against Corruption Act 1988](#).<sup>4</sup>

2.76 Other breaches of the Code, which do not fall within the scope of Section 9, may be investigated by the Parliament. Therefore it seems important that the revised Code recognises this and requires Members to co-operate fully with any parliamentary processes and make it clear and that where a Member is found to have breached the Code there may be sanctions imposed by the Houses.

2.77 The proposed clause might read as follows:

Upholding the Code

Members have a duty to cooperate fully with any processes under the authority of the House concerning compliance with this Code.

Breaches of this Code may result in sanctions being imposed upon a Member by the House. A substantial breach of the Code may constitute corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988*.

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

## Implementation of the Code

2.78 Parliamentary codes of conduct may be established by a resolution of the House or by an act of parliament. In NSW, to date, the Code has always been adopted by resolution.

2.79 It seems entirely appropriate that Members should continue to adopt the Code by resolution given the constitutional importance of Parliament retaining control over its own internal affairs (which includes setting standards for its membership).

---

<sup>4</sup> Ibid.



- 2.80 Establishing the Code by resolution also provides essential flexibility and responsiveness because it can be changed as needed without the need to pass legislation.

## ACCOMPANYING GUIDANCE

- 2.81 While a principles-based code has the advantage of being easily understood by Members and the wider community; the disadvantages can be that this leaves a lot of scope for differences in interpretation and judgement.
- 2.82 This disadvantage can be offset by offering detailed guidance on how these broad principles apply to the day to day work of a Member of Parliament.

### *How the principles are applied in the UK model*

- 2.83 In the case of the UK House of Commons, the Code is printed together with a *Guide to the Rules relating to the Conduct of Members*.
- 2.84 The Guide and amendments to it are approved by means of resolutions of the House of Commons and therefore carry the authority of the House.
- 2.85 The Guide which is currently around 50 pages in length provides more detailed guidance on matters such as registration, declaration of interests and the prohibition of paid advocacy.<sup>5</sup>
- 2.86 The Code and the Guide together form three distinct tiers. Firstly the broad “General Principles” in Part IV of the Code; then the “Rules of Conduct” in Part V that guide the application of those principles to the behaviour of Members; and finally the third tier which is the Guide. The Guide provides specific instructions applicable to Members’ day to day conduct.
- 2.87 For example, where Paragraph 13 of the Code of Conduct provides that:
13. Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Financial Interests. They shall always be open and frank in drawing attention to any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.
- 2.88 The Guide explains the principles behind registration and declaration of Members’ interests. Next it sets out the requirements on Members to place information on a Register and the responsibilities of the Parliamentary Commissioner for Standards in maintaining that register.
- 2.89 Finally it sets out the categories in which Members are required to register their financial interests and the information which is to be provided. The Chapter of the Guide on Registration of Members’ Financial Interests is currently 18 pages in length.

---

<sup>5</sup> House of Commons, *The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members*, April 2015. At: <http://www.publications.parliament.uk/pa/cm201516/cmcode/1076/107601.htm>

*Current guidance on the NSW Code*

- 2.90 In the NSW Parliament the nearest comparator to the UK guide would be the guides produced by each House for their Members<sup>6</sup>. These provide information on the facilities and services available to Members and give guidance on performing parliamentary duties in accordance with the Code of Conduct.
- 2.91 The guides operate in conjunction with the advisory roles performed by the Clerks and by the Parliamentary Ethics Adviser.
- 2.92 Were the current code to be revised this would provide a timely opportunity for a review of the usefulness of the current guidance for Members.
- 2.93 For example, while there would be obvious pitfalls in attempting to give general advice (given the highly contextual nature of Members' ethics) is there enough in the way of plain English explanations of the requirements and the principles behind them?
- 2.94 Equally are the roles of the Clerks and the Parliamentary Ethics Adviser fully understood or are they in need of further explanation? And is there enough information on the potential consequences of breaching the ethical framework?

---

<sup>6</sup> See *Legislative Assembly Members' Guide 2015* and the *Legislative Council Members' Guide 2015* published on the Parliamentary intranet.

# Appendix One – The current code

## THE MEMBERS' CODE OF CONDUCT

The New South Wales Legislative Assembly first adopted a Code of Conduct for its Members on 5 May 1998.

The Code provides Members with a set of ethical standards which place great emphasis on honesty and the appropriate management of conflicts of interest. It seeks to guide Members in the sometimes competing spheres of parliament, party and personal.

Critically, it is also the “jurisdictional hook”, by which ICAC can investigate a Members’ conduct. Under s9 of the Independent Commission Against Corruption Act, a substantial breach of the Code can amount to corrupt conduct which may be investigated by ICAC.

Following its adoption in 1998, the Code of Conduct remained largely unchanged until in 2007 when both Houses adopted changes to the Preamble, Clause 2 (‘Bribery’) and Clause 3 (‘Gifts’), and the insertion of a new provision, Clause 7 (‘Secondary employment or engagements’).

See Appendix 2 for a table of amendments made to the Code since 1998.

The current Code consists of a preamble outlining members’ duties to the public followed by seven clauses dealing with: conflicts of interest; bribery; gifts; use of public resources; use of confidential information; duties as a Member of Parliament; and secondary employment or engagements.

## CODE OF CONDUCT FOR MEMBERS

(Adopted 5 May 2015, Votes and Proceedings, pp. 53-5)

That this House adopt, for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, the following Code of Conduct–

### PREAMBLE

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

Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate 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 which 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.

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

# Appendix Two – Amendments to the Members’ Code of conduct since 1998

The Members’ Code of Conduct (the Code) was first adopted by the Legislative Assembly on 5 May 1998; it was adopted by the Legislative Council on 1 July 1998.

| Date          | Amendments made to the Code  | Source   |
|---------------|--|--|
| May 2006      | <p><u>Assembly only</u></p> <ul style="list-style-type: none"> <li>A revised Clause 2. Insertion of “knowingly or improperly” into the bribery clause.</li> </ul>  | <p><a href="#">Votes and Proceedings 25/5/2006 p.66</a></p>  |
| May/June 2007 | <p><u>Both Houses</u></p> <p><b>Preamble</b></p> <ul style="list-style-type: none"> <li>Amendment to paragraph two of the preamble deleting “is the final arbiter of the conduct of Members of Parliament” from lines 2 and 3 after “The electorate”;</li> <li>Amendment to paragraph three of the preamble deleting “accordingly” from line 1 after “Members of Parliament”; and</li> <li>Insertion of a fourth paragraph “Members of Parliament acknowledge that their principle responsibility in serving as Members is to the people of New South Wales”</li> </ul> <p><b>Clause 2 Bribery</b></p> <ul style="list-style-type: none"> <li>Insertion of “knowingly or improperly” in clause 2(a);</li> <li>Expansion of the prohibition on bribery to encompass benefits to third parties in clause 2(b);</li> <li>Insertion of clause 2(c) which identifies a breach of the clause as a “substantial breach” of the Code;</li> </ul> <p><b>Clause 3 Gifts</b></p> <ul style="list-style-type: none"> <li>Word “corruptly” replaced with “improperly”</li> </ul> <p><b>Clause 7 Secondary employment or</b></p> | <p><a href="#">Votes and Proceedings 8/5/2007 p. 34-36; and LC Minutes 21/6/2007 p.148-152</a></p> |

| Date | Amendments made to the Code   | Source |
|------|---|--------|
|      | <p><b>engagements</b></p> <ul style="list-style-type: none"> <li>• Addition of a new clause, Clause 7 outlining the requirements for declarations on secondary employment and engagements.</li> </ul> |        |

The current Code of Conduct is the same for both Houses. It is adopted at the start of each Parliament and has continuing effect unless amended or rescinded by resolution.