

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

**Organisation:** Information and Privacy Commission NSW  
**Name:** Dr Elizabeth Coombs  
**Position:** Privacy Commissioner  
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Mr Stephen Frappell  
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21 MAR 2014

Dear Mr Frappell,

**Re: Joint inquiry into recommendations of the ICAC**

Thank you for the invitation to make a submission to the joint inquiry into recommendations of the Independent Commission Against Corruption (ICAC) regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator.

Members of Parliament are not subject to the *Privacy and Personal Information Protection Act* (PPIP Act) or the *Health Records and Privacy Protection Act 2002* (HRIP Act) and the ICAC recommendations outlined in the background papers do not impact upon the privacy legislation. My comments therefore relate to the best practice actions that can be put in place in pursuing the recommendations.

My comments have been divided according to each background paper as follows:

**Background Paper 1: Amendment of the Code of Conduct for Members relating to improper influence by members**

I support the general intent to amend the *Code of Conduct for Members* to deal with improper influence by members. As elected representatives of electorates, Members of Parliament should be held to high standards of conduct.

At paragraph 1.15, the Council Committee has supported consideration be given to the introduction of a requirement to disclose family interests in the pecuniary interest register. I canvass privacy considerations on such disclosures in the section below. While there is a clear public purpose in having Members of Parliament that hold an elected public office declare various information, that is less the case when it relates to third parties unless a public purpose can be made out.

**Background Paper 2: Disclosure of the interests of members' spouses/partners and dependent children**

I support the general intent to require elected members to disclose the interests of their spouse/partners and dependent children. The conflicting interests between a Member of Parliament's responsibilities to his/her electorate and the personal

interests of the Member's family members have received the attention of the community.

Privacy interests of the Members' spouse/partners and dependent children may meet with the need to publicly disclose their personal interests that may conflict with a Members' duty to the community. The disclosure of personal information can be managed appropriately in the context of the right to privacy. Any consideration of a mechanism for the disclosure of the interests of members' spouses/partners and dependent children should ensure that the privacy of these individuals is considered. Consideration may go to the type of information being collected and the extent of information to be declared, accessed, stored, disposed and used. The length of time in which personal information of spouses/partners and dependent children is retained requires explicit consideration even if disclosures are in accordance with legislation. People of whom this information relates should be made aware of the duration in which this information will be retained.

At present, the pecuniary interests register is not a public document, but members of the public may be able to make an appointment with the Clerk of the respective Houses to view the information in the register. This provides a way to protect the privacy of Members of Parliament to the extent the information is not publicly available and requires manual inspection of the register. A similar mechanism may be considered for the disclosure of family interests as a protective measure of privacy. I note in the background paper that, at the Commonwealth level, disclosures concerning partners and dependent children are accessible only by the Committee on Senators' Interests, unless the Committee tables the relevant statement of disclosures to the Senate if there is a conflict of interest.

With any mechanism that will be pursued, I encourage an information guide to be prepared for Members' spouse/partners and dependent children whom may be required to disclose their personal interests either separately or as part of a Members' own declaration. Such a guide would inform individuals the purpose for which the information is collected, used, accessed, stored and disposed.

### **Background Paper 3: A parliamentary investigator position?**

Generally, I support the intent to establish a position to regulate the conduct of Members of Parliament in light of the unique position they hold as elected representatives of the electorate.

In terms of general comments, I note the brief history of previous proposals for a parliamentary investigator in the background paper. It does not however detail the reasons why the model was previously opposed nor does the commentary provide a strong argument on why it should be supported in this instance.

The background paper notes that the Committees are interested in parliamentary investigator models of other jurisdictions, with particular attention drawn to the United Kingdom (UK) model. The Canadian model and both Scotland and Wales models were also briefly mentioned. Based on the provided information, it is difficult to support or oppose a particular model without any background or detail stating whether support or opposition for these other models was provided. Therefore the comments provided are based solely on the UK model.

In relation to paragraph 1.10 (3rd dot point), the paragraph notes that in dealing with complaints, less serious matters will be dealt with through "rectification" and



"reimbursement" or apology. Definitions of these terms are required to better understand the role and breach management processes.

The responsibility of the parliamentary investigator is to address minor allegations. This may differ from the ICAC, which may find the conduct of a Minister or member of a House of Parliament to be corrupt if it found a substantial breach of an applicable code of conduct: section 9 of the *Independent Commission Against Corruption Act 1988*. While the seriousness of the conduct differs between a parliamentary investigator and the ICAC, the definition of "minor allegations" nonetheless requires clarification. This will assist in understanding whether such an investigator is necessary in light of the current arrangements for regulating the conduct of Members of Parliament, such as the Member Code of Conduct and Standing Orders.

There appears to be a possible overlap in responsibility with the Parliamentary Ethics Advisor and the parliamentary investigator. The Parliamentary Ethics Advisor "*advises members, upon requests on ethical issues concerning the exercise of their role as members*". Similarly, a key function outlined in the paper of the parliamentary investigator is "preparing guidance....for Members on matters of conduct, propriety and ethics".

From a privacy perspective, it is unclear whether the parliamentary investigator will be an officer of the Legislative Council or Legislative Assembly (or both or neither) as per the definition of "public sector official" in section 3(1). I note that exemptions exist in the privacy legislation for public sector officials who are investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency: section 24 of the PPIP Act. The exemption allows non-compliance with the Information Protection Principles around use and disclosure of personal information. At this stage it is unclear as to where the position of parliamentary investigator sits and whether the privacy legislation applies.

Any amended Member's Code of Conduct or proposals to be released for consultation with regard to a mechanism for disclosure of spouse/partner and dependent children interests, and a parliamentary investigator should enhance existing privacy protections for personal information and accord with community expectations of privacy.

I hope this information is of assistance to you. Please do not hesitate to contact me if you require anything further, or alternatively,

on \_\_\_\_\_, or by email at \_\_\_\_\_

Yours sincerely

Dr Elizabeth Coombs  
**Privacy Commissioner**

21/3/2014