

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

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The Committee Manager
Standing Committee on Parliamentary Privilege and Ethics
Parliament House
Macquarie St
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Submission by the Social Issues Executive, Anglican Church, Diocese of Sydney

**To the Inquiry into recommendations of the ICAC regarding aspects of
the Code of Conduct for Members, the interest disclosure regime and
a parliamentary investigator.**

**(Parliament of NSW Legislative Council Privileges Committee
and the Legislative Assembly Privileges and Ethics Committee.)**

Thank you for the opportunity to make a submission to this inquiry. We write on behalf of the Social Issues Executive (SIE) which has been appointed by the Anglican Church, Diocese of Sydney, to advise the Diocese and to comment on public policy issues for the purpose of helping the Diocese contribute to public governance.

Opening Statement

Members of the Anglican Church in Sydney acknowledge good government as one of God's gifts to humanity. We regularly pray for 'the Queen of Australia, leaders of Federal, State and Local government; the police and those who administer our laws' and for 'all men and women in their daily work', asking God to:

*Give wisdom to those in authority in every land,
and give to all peoples a desire for righteousness and peace,
and the will to work together in trust,
to seek the common good
and to share with justice the resources of the earth.*

We acknowledge that the task of good government is committed to those with the expertise to effect it, and we do not presume always to know the intricacies of how it should proceed. We respect that the Members of the Legislative Assembly and Legislative Council are best placed to order the affairs of each House and of the Executive.

However we also acknowledge, with heartache, the Bible's testimony that 'all have sinned and fall short of the glory of God' (Romans 3:23)—meaning that each of us, in every walk of life, is tempted and often fails to live as God calls us to live. We also rejoice in the forgiveness Jesus Christ offers to those who admit their sin. Nonetheless, it becomes the melancholy duty of professionals in every area of authority, politicians included, to seek temporal means for accountability and restraint.

We are broadly in favour, then, of the three ICAC recommendations before the Committee. While we do not have the expertise to comment on the mechanics of their implementation, as concerned citizens we offer the following suggestions.

Recommendation 22: Code of Conduct

The Committees 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; and
- the form of an appropriate amendment or amendments.

We agree that the Code of Conduct for Members should deal comprehensively with improper influence by Members.

A Code of Conduct sets a standard against which a Member's conduct may be viewed.¹ It provides an accountable public context—that is, a basis for other Members, members of the public, and (importantly for the present context) public servants, to challenge Members as to the appropriateness of their actions. The Code of Conduct also serves as a reminder of the trust which is entrusted to Members by the public of NSW.

Members of Parliament have particular influence over government departments and bureaucrats, through formal and informal power structures. Moreover, as ICAC has recognised, major decisions of considerable monetary and social value are made by the executive and by agencies, which do not come before Parliament.² Hence there will often be less transparency in the decision-making process, and no vote among Members, thereby allowing a greater potential for improper influence to affect the ultimate decision.

For these reasons we consider it important for the Code of Conduct to be amended to deal with improper influence by Members, particularly in relation to their dealings with the executive and state agencies.

We consider that the draft Code previously suggested by the Council Committee concerning the use of influence by Members should be reconsidered. As the Background Paper observes, this draft Code stated that:

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.

We do not agree that this draft Code is insufficiently precise. While it may be difficult to prove in a particular case that a Member has acted improperly, the import of the draft Code is clear. The Code is clearly improved by the addition of these considerations.

Recommendation 24: Disclosure of Family Interests

The Committees seek submissions addressing the following issues:

- the merits or otherwise of the disclosure of the interests of Members' spouses/partners and dependent children; and
- 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.

We agree that disclosure of the interests of Members' spouses, partners and dependent children should be required.

As a matter of fact, and law, there is more fluidity in financial relationships between a person and their spouse or dependent child(ren) than between that person and other members of the

¹ House of Representatives Standing Committee of Privilege and Members' Interests, 'Draft Code of Conduct for Members of Parliament Discussion Paper,' November 2011 at [3.9].

² ICAC, *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, October 2013, p 42.

community. Assets are more readily transferable. It follows that there is greater potential for a person to 'hide' his or her assets in the name of a spouse or dependent child.

Moreover, even apart from issues of fraud, a person may be tempted to act in ways which will advantage their spouse or dependent child due to the special bonds between spouses and parents and their children.

This recognition is reflected in the rules of conduct for many professions. For example, the NSW Bar Rules prohibit a barrister from accepting a brief in which the client's interest is in conflict with the interest of the barrister *or his or her associate—including* a member of the barrister's immediate family.³

It can be very difficult to determine whether a Member has acted in pursuit of a private, rather than public purpose. Disclosure of the interests of spouses, partners and dependent children will better ensure the protection of the public. Indeed, the very act of disclosure reminds a Member of their responsibilities to the public, and reminds the Member of their responsibility to the common good.

For these reasons, disclosure of interests should extend beyond the Member, to the Member's spouse, partner and dependent children.

It is acknowledged that disclosure of the interests will involve an incursion into the privacy of the Member's spouse, partner or dependent children. One possible option would be for the disclosure of interest not to be made public, and to be accessible only by Parliament or the ICAC (or by a Parliamentary investigator, if such an investigator is appointed).

Recommendation 25: Parliamentary Investigator

The Committees seek submissions addressing the merits of appointing a Parliamentary investigator.

We agree that there would be merit in appointing a Parliamentary investigator. The establishment of such an investigator would ensure that minor breaches of the Code of Conduct are properly considered. The adequacy of investigation of minor breaches would better ensure compliance with the Code of Conduct. Investigating minor breaches will also have a significant deterrent effect in respect of significant breaches. Investigation of minor breaches may also bring to light more significant breaches, which may otherwise go undiscovered.

We provisionally note that the structuring of this investigator's employ will need to 'firewall' it both from inappropriate political gaming, and from the possibility of corruption. We also note that no position can be set up 'perfectly', and that such a position will always be susceptible to political undertows. While we hope that the Committees will recommend such mechanisms as will reduce the influence of these undertows, we also urge the Committees to proceed even if the office cannot be set up 'perfectly'.

There may be utility in putting the investigator under the office of the Ombudsman in order to protect his or her independence, although Members may then resist the investigator's actions as an intrusion upon Parliamentary privilege and sovereignty. The regular presence of an 'in house' Parliamentary investigator may better signal the norms to which Members are accountable.

We prayerfully wish the Committees well in their deliberations, and appreciate their consideration of our submission.

Andrew Cameron (The Rev. Dr)

Chair, Social Issues Executive
Anglican Diocese of Sydney

³ NSW Barrister's Rules, clause 96(b).