

**Submission
No 5**

**DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION
2024**

Name: Professor Emerita Anne Twomey

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Mr Alex Greenwich MP
Chair
LA Standing Committee on Parliamentary Privilege and Ethics
Parliament House
Sydney, NSW 2000

Dear Mr Greenwich,

Inquiry into the Draft Constitution (Disclosures by Members) Regulation 2024

Please accept this submission with respect to the Committee's inquiry into the draft *Constitution (Disclosures by Members) Regulation 2024* (NSW).

Privacy and revealing addresses

I presume that the reason for revealing the address of properties in which a Member or their immediate family member has an interest, is to reveal potential conflicts of interest. If so, it is appropriate that those who investigate conflicts of interest and potential corruption should have access to such information. But that should not necessarily mean that the general public should have access to those addresses.

While the draft regulation permits a Member not to reveal the address of a parcel of land used by the Member or an immediate family member as their principal or secondary place of residence, it does not protect the address of tenanted properties in which the Member has an interest. There is a risk that members of the public might harass or frighten tenants who live or work in those premises, during times of political controversy. It is also possible that the property is lived in by other relatives of Members who are not their 'immediate family members', such as their elderly parents.

I note that proposed reg 25(2) states that a Clerk may exclude information from the publicly available register if the Clerk is satisfied that it is necessary to protect the privacy of persons other than Members or the safety of a person. This does not appear to be an appropriate burden to be placed upon the Clerk. First, it would potentially politicise their position. Second, they have no expertise to support making an assessment about safety. Third, a Clerk is not placed within a structure which allows for judicial review or merits review of their decisions.

Would it not be better to list properties with their general location on the public list, and keep a more protected list with the precise address details, which would be available to the police and anti-corruption investigators? Journalists could also seek access to the list to engage in investigations, as long as they agreed not to publish particular addresses. This would seem to be sufficient to achieve the relevant end sought, without putting at risk those who live or work in the relevant properties.

Interests and positions in corporations

I found it curious that a Member is not required to disclose a position held in a corporation that is formed to provide recreation or amusement, to promote commerce, industry, art, science, religion or charity or for another community purpose, where its profits are applied to promoting its objects and it is prohibited from paying dividends. Surely such bodies are the ones likely to receive government largesse, in the form of grants, and it is therefore important from the point of view of revealing conflicts of interest that the position of the Member in the relevant corporation be revealed?

Conflict of interest

It was not immediately apparent to me what the source was in s 14A of the *Constitution Act 1902* (NSW) for proposed reg 15 regarding ‘Conflicts of Interest’. Is it intended to fall under ‘any other direct or indirect benefits, advantages or liabilities or other matters, whether pecuniary or not, of a kind specified in the regulations’?

I note the importance of proposed reg 15(3), which states that a conflict of interest need not be pecuniary in nature. This is significant given the argument run in *Berejiklian v Independent Commission Against Corruption* [2024] NSWCA 177 that under the NSW Ministerial Code a non-pecuniary personal relationship was not capable of amounting to a ‘private interest’ that could give rise to a conflict of interest and a public duty. I note that the NSW Court of Appeal rejected that argument.

It is nonetheless important to make it very clear to Members, including Ministers, that conflicts of interest may arise in relation to non-pecuniary interests. Proposed reg 15(3) clarifies this in relation to Members, but proposed reg 15(4) excludes from this the public duty of a Member as a Minister or Parliamentary Secretary. It is therefore also important to ensure that these far more significant conflicts of interest of Ministers and Parliamentary Secretaries are also dealt with, presumably through the Ministerial Code.

It does seem rather odd that the constitutional consequence of a Member wilfully failing to reveal a conflict of interest between their public duty as a Member (but not as a Minister) and their private interest can result in a Member’s seat being declared vacant under s 14A(2) of the *Constitution Act 1902* (NSW), whereas the far more serious conflict of interest between a Member’s duty as a Minister (eg in spending public money or granting licences or approvals) and the Member’s private interest is only a breach of a Ministerial Code, with no penalty other than enforcement by the Premier, and the possibility of a finding of serious corrupt conduct by ICAC in very limited circumstances.

It is also odd that Members’ conflicts of interest are placed on a public register, but the far more important conflicts of interest related to a Minister’s public duties are not recorded on a publicly accessible register. The Committee may wish to consider the appropriateness and balance of this position.

Sources of income

Proposed reg 16 provides that the Member must disclose sources of income exceeding \$500 in a financial year received by the Member or an immediate family member. Assuming that these days, many young adults live with their parents, due to the housing affordability crisis, and that many work in the gig economy with a wide range of different sources of income, this could be an extremely onerous burden. Even looking at myself, were I to be an immediate family member of a Member of Parliament, I receive odds and sods of income from many sources for speeches given, articles written, royalties from different publishers, honoraria for marking PhD theses, copyright agency (CAL) payments, etc, although I suppose many would be under \$500. This could end up being a massive burden on immediate family members and the MP who has to record it all.

Yours sincerely,

A solid black rectangular box redacting the signature of Anne Twomey.

Anne Twomey
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