

Privileges Committee

# **Review of the Members' Code of Conduct 2018**

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## Terms of reference

Section 72(5) of the *Independent Commission Against Corruption Act 1988* provides that a designated committee is to review the Code of Conduct for Members at least once every four years. The Legislative Council has resolved that the Privileges Committee is the ‘designated committee’ for these purposes. The Committee has previously conducted reviews in 2002, 2006, 2010 and 2014.

On 15 March 2018, the Chair of the committee informed the Legislative Council that the committee had resolved to adopt the following terms of reference:

That the Privileges Committee inquire into and report on the Members’ Code of Conduct together with any relevant aspects of the pecuniary interest disclosure regime for members under the *Constitution (Disclosures by Members) Regulation 1983*.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 15 March 2018, p 2392.

## Committee details

### Committee members

<b>The Hon Matthew Mason-Cox MLC<sup>1</sup></b>	Liberal Party	<i>Chair<sup>2</sup></i>
<b>The Hon Peter Primrose MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	
<b>Ms Cate Faehrmann MLC<sup>3</sup></b>	The Greens	
<b>The Hon Trevor Khan MLC</b>	National Party	
<b>The Hon Natasha Maclaren-Jones MLC</b>	Liberal Party	
<b>Reverend the Hon Fred Nile MLC</b>	Christian Democratic Party	
<b>The Hon Dr Peter Phelps MLC</b>	Liberal Party	

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1. Member of the committee to 16 April 2018. Reappointed as a member of the committee on 16 October 2018 in place of Mr Mallard.
2. Mr Mason-Cox was Chair of the committee until 16 April 2018 when Mrs Maclaren-Jones was nominated Chair. Mr Mason-Cox was re-appointed Chair on 16 October 2018 in place of Mrs Maclaren-Jones.
3. Appointed as a member of the committee on 18 September 2018 in place of Dr Faruqi.

## Chair's foreword

The Privileges Committee is required to review the Code of Conduct for Members every four years under section 72(5) of the *Independent Commission Against Corruption Act 1988* and the resolution of the Legislative Council appointing the committee.

In the current review the committee was assisted by submissions from the Audit Office, the Independent Commission Against Corruption, the Parliamentary Ethics Adviser, the Department of Premier and Cabinet and the Clerk of the Parliaments.

The committee noted that in June 2018 the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics recommended a substantially revised Code of Conduct for adoption by the Legislative Assembly. Taking into account the desirability of having a consistent Code for both Houses this committee has recommended the adoption of the revised Code developed by the Assembly committee with some slight modifications.

The committee also recommends amendments to the pecuniary interests disclosure regime to provide for annual returns with exception reporting of any changes in line with the submission from the Audit Office.

The committee hopes these reforms will lead to a consistent approach in both Houses in relation to the Code of Conduct and members' interests disclosures.

I thank the other members of the committee for their work on this review and those who made submissions.



The Hon Matthew Mason-Cox MLC

**Committee Chair**

# Recommendations

## Recommendation 1

19

That the Legislative Council adopt the following *Code of Conduct for Members* in place of the existing *Code of Conduct for Members*:

### 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.

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.

#### 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 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 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 or 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 officer of a 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.

##### 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 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.

#### **5 Limitation on breach of Code**

This code is not breached by reason of a benefit or interest that could be or was advanced or 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.

### OPENESS AND ACCOUNTABILITY

#### **6 Disclosure of interests**

Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members.

*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.*

## **7 Conflicts of interest**

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.

Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or its committees, and in any communications with Ministers, members, public officials or other 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*

*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.*

## **8 Gifts**

- (a) Members must 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 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 *Electoral Funding Act 2018*.

### *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

### 9 Upholding the Code

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

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.

#### Recommendation 2

27

That the current system of primary, ordinary, supplementary ordinary and discretionary returns be amended to introduce a simpler system of exception reporting requiring:

- A primary return to be lodged following a member's election to Parliament as at present
- An ordinary return to be lodged in each subsequent year
- Any changes to interests disclosed in a preceding return to be disclosed in an alteration of interest return lodged with the Clerk within 30 days of the change occurring
- Alteration of interest returns to be tabled in the House every six months
- Discretionary disclosures to continue to be available as at present for the disclosure of interests not required to be disclosed by the Regulation but which a member chooses to disclose

#### Recommendation 3

30

- That the Clerk of the Parliaments publish on the Parliament's website the most recent disclosure returns lodged by members as soon as practicable following the tabling of this report in the House.
- That the Clerk of the Parliaments publish on the Parliament's website the disclosure returns to be lodged by members in future Parliaments as soon as practicable following the tabling of those returns in the House.

#### Recommendation 4

35

That the Constitution (Disclosures by Members) Regulation 1983 be amended to provide for the disclosure of the interests of related parties in the terms proposed by the Privileges Committee in Recommendations 2 and 3 of its report entitled *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator* dated June 2014.

#### Recommendation 5

35

That, if Recommendation 4 is not adopted by the government, the resolution establishing the Parliamentary Ethics Adviser be amended to require members to report family interests

confidentially to the Ethics Adviser, and empowering the Ethics Adviser to publish any advice prepared regarding conflicts of interests and family members.

**Recommendation 6**

42

- That the Clerk of the Parliaments schedule an ethics seminar for new and re-elected members during the first sitting week following the summer recess and the first sitting week following the winter recess in 2019
- That the ethics seminars include refresher sessions on the Code of Conduct and the pecuniary interests Regulation, updates on any relevant investigations by the Independent Commission Against Corruption, and updates on any changes to electoral funding requirements
- That, prior to each ethics seminar, the Clerk of the Parliaments write to party leaders and whips to seek their support in encouraging members to attend

**Recommendation 7**

42

- That the Department of the Legislative Council report on members' attendance at the induction and refresher ethics seminars in its annual report or on the Legislative Council website.
- That the Department of the Legislative Council report on members' completion of any online ethics training module provided for members in its annual report or on the Legislative Council website.

## **Conduct of inquiry**

The terms of reference for the inquiry were adopted by the committee on 15 March 2018.

The committee received five submissions.

Inquiry related documents are available on the committee's website, including submissions.



# Chapter 1 Introduction

This chapter outlines the Privileges Committee's statutory obligation to review the Code of Conduct for Members, the outcomes of the previous review conducted in 2014, and the issues which formed the focus of the current review.

## The obligation to conduct a review

- 1.1 Section 72C(5) of the *Independent Commission Against Corruption Act 1988* requires a 'designated committee' of the Legislative Council to review the Code of Conduct for Members at least once every four years. The Legislative Council has designated the Privileges Committee as its committee for the purposes of section 72C in each Parliament since 1995.<sup>2</sup> The committee has conducted four reviews since the Code of Conduct was first adopted by the House. As the last review was in 2014 the current review is required by the end of 2018.
- 1.2 In previous reviews the committee has considered not only the provisions of the Code of Conduct but also aspects of the pecuniary interest disclosure regime under the Constitution (Disclosures by Members) Regulation 1983. In keeping with this approach, at the start of the current review the committee resolved to include consideration of any relevant aspects of the pecuniary interests Regulation.
- 1.3 The *Independent Commission Against Corruption Act 1988* also requires a designated committee of the Legislative Assembly to review the Code of Conduct adopted by that House, which is in the same terms as the Legislative Council's Code. The Assembly has designated its Standing Committee on Parliamentary Privilege and Ethics for that purpose.

## Outcomes of the 2014 review

- 1.4 In the last review of the Code in 2014 this committee made eight recommendations for reform of the regulatory regime governing members' ethics.<sup>3</sup> These included recommendations for an amendment to the Code to address the issue of improper influence and a number of changes to the pecuniary interests Regulation. The recommended changes to the Regulation provided for:
  - the disclosure of interests of members' domestic partners and dependent children and of interests in family trusts, companies and private superannuation funds
  - the replacement of the current system of six monthly disclosure returns with a system of 'exception reporting', that is, the reporting of changes to interests disclosed in a previous return
  - the publication of the Register of Disclosures on the internet

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<sup>2</sup> See, for example, the resolution of the Legislative Council establishing the Privileges Committee in the current Parliament: Legislative Council, *Minutes of the Proceedings*, 12 May 2015, p. 88-89.

<sup>3</sup> Legislative Council, Privileges Committee, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, Report 70, June 2014.

- 1.5 The designated committee of the Legislative Assembly also conducted a review of the Code in 2014.<sup>4</sup> In its review the Assembly committee took a similar approach to that of this committee on some issues such as the need to address improper influence in the Code but took a different approach on other issues such as the mechanism to be adopted for the disclosure of interests of members' partners and children.
- 1.6 Since the completion of the 2014 reviews the following steps have been taken towards the implementation of the recommendations by the designated committees:
- On 1 June 2016 the then Premier wrote to the Presiding Officers stating that the Government broadly agreed with the directions for reform contained in the reports of the two committees. The Premier also advised that the proposed new arrangements should apply consistently to members of both Houses and requested the Houses to work together to provide a single set of recommendations on the matters canvassed in the reports.<sup>5</sup>
  - On 22 June 2016 the Presiding Officers replied they would be pleased to assist with these matters and identified a number of related matters that should be progressed to further enhance the integrity, transparency and operations of the Parliament such as the introduction of a parliamentary privileges Act.<sup>6</sup>
  - On 20 November 2017 the Presiding Officers wrote to the Premier providing an update on these matters and seeking the Premier's views 'before we progress these matters further'.<sup>7</sup>
- 1.7 In short the recommendations made in the 2014 reviews have not been implemented in light of differences in the views adopted by the designated committees on some issues and ongoing work on broader issues relating to the integrity, transparency and operations of the Parliament.

### Scope of the issues considered in this review

- 1.8 In a Discussion Paper published in June 2018, this committee proposed that the 2018 review be used as an opportunity to try to progress issues relating to the Code and the Regulation on which the designated committees had adopted broadly similar approaches in the past. The committee identified the issues on which a broad consensus had been reached as being:
- a new clause for the Code of Conduct concerning improper influence
  - the introduction of a new system of disclosure returns based on 'exception reporting' and
  - the publication of the Register of Disclosures on the internet.

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<sup>4</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into matters arising from the ICAC report entitled "Reducing the opportunities and incentives for corruption in the State's management of coal resources"*, Report 2/55, July 2014.

<sup>5</sup> Correspondence from the Premier to the Presiding Officers dated 1 June 2016, tabled by the President in the Legislative Council: *Minutes*, 22 June 2016.

<sup>6</sup> Correspondence from the Presiding Officers to the Premier, dated 21 June 2016, tabled by the President in the Legislative Council: *Minutes*, 22 June 2016.

<sup>7</sup> Correspondence from the Presiding Officers to the Premier, dated 20 November 2017, p 2.



**1.9** In support of a consensus-based approach to the 2018 review the committee noted that it is desirable that the same Code of Conduct applies to the members of both Houses and that under the *Constitution Act 1902* any regulation for the disclosure of members' interests must apply equally to both Houses.<sup>8</sup> The committee also noted that in 2016 the then Premier had requested that the Houses work together to provide a single set of recommendations in relation to these matters.

**1.10** Subsequently, however, the committee received a number of submissions to its review which addressed wider aspects of the Code and the Regulation than those which had been raised in the Discussion Paper. Further, the Legislative Assembly's designated committee reported on its 2018 review with a recommendation for the adoption of a substantially revised Code.<sup>9</sup>

**1.11** In light of these developments this committee decided to modify the scope of its review to take account of a broader range of issues concerning the Code and the Regulation than those which had been identified in the Discussion Paper, while retaining the aim of seeking to gain agreement on a uniform set of recommendations which could be put before both Presiding Officers and the Premier. The validity of such an aim was confirmed by the receipt of a submission from the Department of Premier and Cabinet which observed:

It is clearly desirable that the same Code of Conduct applies to both Houses. Section 14A(4) of the Constitution Act 1902 also requires any regulation for the disclosure of members' interests to apply equally to both Houses. It is against this backdrop that the Government previously requested that the new arrangements canvassed in previous inquiries should apply consistently to members of both Houses of Parliament, and that the Committee may wish to priorities areas for reform that are likely to be supported by both Houses.<sup>10</sup>

**1.12** The 2018 review also included consideration of a further aspect of this committee's statutory role which concerns ethics education for members. The issues considered in the review are addressed in this report as follows:

- chapter 2 considers the revised Code of Conduct recommended by the Assembly's designated committee and issues raised in the submissions received by this committee
- chapter 3 considers aspects of the pecuniary interest Regulation
- chapter 4 considers the Privileges Committee's statutory educative role.

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<sup>8</sup> *Constitution Act 1902*, section 14A(4).

<sup>9</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018.

<sup>10</sup> Submission 4, Department of Premier and Cabinet, p 1



## Chapter 2 The Code of Conduct for Members

This chapter examines the revised Code of Conduct for Members recommended by the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics in June 2018. It also includes consideration of submissions on the current Code which the committee received before the Assembly committee had reported with a recommendation for a revised Code.

In considering the revised Code the committee has been guided by the principle that it is desirable to reach a consensus with the Assembly on a uniform set of reforms which can be recommended to both Houses of Parliament. In that regard the committee notes that previous reviews conducted in 2010 and 2014 did not result in changes to the Code partly as a result of differences between the two Houses on the reforms needed. The committee has therefore endeavoured to be open to as many of the changes proposed in the revised Code as possible while crafting any necessary amendments so that the resulting rewrite may also be acceptable to members of the Legislative Council.

### The introductory provisions of the Code

- 2.1 The Preamble to the current Code contains four paragraphs addressing matters such as members' responsibility to the electorate and to maintain the public trust. In the revised Code the paragraphs of the Preamble have been reduced from four to one. The provisions of the Preamble in the current and revised Codes are shown below.

**Table 1 The Preamble of the current and revised Codes**

<b>Current Code</b>	<b>Revised Code</b>
<i>Preamble</i>	<i>Preamble</i>
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 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.

Current Code	Revised Code
Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales	-

- 2.2 The revised Code also includes a new clause 1 entitled 'Purpose of the Code'. This clause includes four new paragraphs which include reference to matters such as the role of the Code in regulating aspects of members' lives. It also includes a fifth paragraph recognising the role of political parties in the democratic process which is in similar terms to clause 6 of the current Code, 'Duties as a member of Parliament'.

### Committee comment

- 2.3 Changes to the Preamble are less important than changes to the substantive clauses. Further, the Assembly committee proposal for the Code to include a clause outlining its purpose is a useful improvement. In addition, the relocation of current clause 6 to an introductory part of the Code seems sensible as the clause does not impose any substantive obligation but simply recognises the role of political parties.

- 2.4 The committee has concerns however about aspects of the new clause 1:

- The second paragraph of the clause declares that the Code applies to Members 'in all aspects of their public life' and does not apply 'in their purely private and personal lives'. In reality, however, it can be difficult to draw a hard line between members' public and private lives, and the Code has an important role to play in 'grey areas' where the public and private spheres are blurred.
- The third paragraph declares that in complying with the 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'. This paragraph seems unnecessary in view of clause 7 of the revised Code which specifically deals with the issue of conflicts of interest (see pp 7 to 12 below).
- The fourth paragraph, which incorporates current clause 6, also includes additional text stating that participation in the activities of organised political parties 'will not be a breach of this Code'. This could suggest that participation in party activities can never be a breach of the Code, which is not correct. For example, use of a member's entitlements for party activities contrary to requirements set out in determinations of the Parliamentary Remuneration Tribunal could result in a breach of the clause on use of public resources (current clause 4).

- 2.5 In light of these concerns the committee suggests the following amendments to proposed clause 1:

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.~~

- 2.6 The committee notes that in its submission to the review the Independent Commission Against Corruption argued that the Preamble should incorporate a comprehensive set of conduct principles such as the seven principles of public life enshrined in the House of Common's Code of Conduct.<sup>11</sup> The committee has not sought to incorporate such principles into the revised Code as it has given priority to seeking consensus with the Assembly committee. However, the committee notes that new clause 1 includes a principle to not act dishonestly for personal gain.

## Disclosure of interests and conflicts of interest

### The current Code

- 2.7 Under clause 1 of the current Code members are required to declare conflicts of interest arising in the execution of their office (clause 1(a)). However, a conflict of interest does not need to be declared if the relevant interest has been disclosed in the Register of Disclosures (clause 1(b)). The obligation to declare a conflict of interest does not apply where a member is only affected as a member of the public or a broad class (clause 1(c)).
- 2.8 Clause 7 of the Code requires members to disclose certain details of secondary employment or engagements when speaking in the House or a committee. However, the disclosure obligation does not apply if the information has already been disclosed in the Register of Disclosures or if the member 'simply votes' and does not participate in debate (final paragraph).

### The revised Code

- 2.9 In its report recommending the adoption of the revised Code the Assembly committee noted that the title and structure of current clause 1 are 'misleading' because disclosing an interest and having a conflict of interest are 'two separate things'.<sup>12</sup> The committee therefore argued that

<sup>11</sup> Submission 3, Independent Commission Against Corruption, paragraph 4.

<sup>12</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraph 2.22.

there is a need for two separate clauses, one addressing disclosure of interests, the other dealing with conflicts of interest.<sup>13</sup>

- 2.10** In line with those observations the revised Code omits clause 1 of the current Code and instead includes two separate clauses headed 'Disclosure of interests' and 'Conflicts of interest' respectively. The clause headed 'Disclosure of interests' includes a requirement to comply with the House's requirements in respect of the Register of Disclosures and an additional requirement to disclose 'any relevant interest' in proceedings in the House and committees and in communications with public officials. Both clauses include an extensive 'Commentary' section drawing attention to relevant provisions of the pecuniary interests Regulation and the standing orders of each House.
- 2.11** The Assembly committee also argued that the new disclosure clause combined with the standing orders on voting with an interest and the pecuniary interests Regulation would appear to be sufficient to cover the issue of secondary employment and that a separate clause on that specific issue seems unnecessary.<sup>14</sup> On that basis the revised Code omits clause 7 of the current Code concerning the disclosure of secondary employment or engagements.<sup>15</sup>
- 2.12** The provisions of the current and revised Codes concerning interests disclosure and conflicts of interests are shown below (omitting the new Commentary sections):

**Table 2 Interests disclosure and conflicts of interest**

<b>Current Code</b>	<b>Revised Code</b>
<b><i>1 Disclosure of conflict of interest</i></b>	<b><i>6 Disclosure of interests</i></b>
(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	Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members.

<sup>13</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraph 2.24.

<sup>14</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraphs 2.72 and 2.76.

<sup>15</sup> In view of the proposed omission of clause 7, the Assembly committee foreshadowed that in a future inquiry it would give consideration to clause 7A of the pecuniary interests Regulation ('Use of member's parliamentary position') and to clause 15A of the Regulation ('Provision of client services'), 'to ensure consistency': Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraph 2.77.

Current Code	Revised Code
-	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
(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	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.
-	<b>7 Conflicts of interest</b>
-	Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.
See clause 1(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
<b>7 Secondary employment or engagements</b>	-
[See Appendix 1 for the text of clause 7]	

### Submissions on the current Code

- 2.13** In its submission to this committee the Independent Commission Against Corruption adopted a broadly similar approach to that of the Assembly committee in relation to the issues of disclosure of interests and conflicts of interest. Like the Assembly committee the Commission argued that interests disclosure and conflicts of interests should be addressed in separate clauses,<sup>16</sup> and that the Code should also include a specific disclosure requirement when a member is speaking in the House or a committee.<sup>17</sup>
- 2.14** The Commission also expressed concern about clause 7 of the current Code, objecting to the fact that it only applies if a member participates in debate and does not apply if a member ‘simply votes’. The Commission did not regard this ‘as an appropriate provision’ and argued that ‘at the very least a conflict of interest ought to be disclosed in all cases’.<sup>18</sup>
- 2.15** There were differences, however, between the Commission’s views and those of the Assembly committee concerning the scope of any new conflicts of interest clause. The key differences were as follows:

<sup>16</sup> Submission 3, Independent Commission Against Corruption, paragraphs 7, 8, 10, 13.

<sup>17</sup> Submission 3, Independent Commission Against Corruption, paragraph 11.

<sup>18</sup> Submission 3, Independent Commission Against Corruption, paragraph 33.

- The Commission recommended that a member disclose any ‘conflict of interest’ when speaking in the House or a committee<sup>19</sup> while the revised Code requires ‘any relevant interest’ to be disclosed in those contexts and includes that requirement in the clause providing for the disclosure of *interests* (clause 6) rather than in the clause addressing *conflicts* of interest (clause 7).
- The Commission recommended a broad definition of conflict of interests which included perceived conflicts,<sup>20</sup> non-financial interests<sup>21</sup> and third party interests<sup>22</sup> while the revised Code is confined to conflicts involving members’ ‘private interests’.

**2.16** The Parliamentary Ethics Adviser, Mr John Evans, also suggested that the Code should include a clause dealing with conflicts of interest.<sup>23</sup> Like the Independent Commission Against Corruption, Mr Evans noted that conflicts of interest can include perceived conflicts, non-financial interests and benefits to third parties.<sup>24</sup>

### **Committee comment**

**2.17** In view of the provisions of the revised Code and the views expressed in submissions to the review the committee supports the replacement of current clause 1 with two separate clauses dealing with interests disclosure and conflicts of interest. The committee also supports the inclusion of a specific disclosure requirement which would apply when a member is speaking in the House or a committee. Like the Assembly committee the committee accepts that the adoption of these reforms would make clause 7 of the current Code redundant as clause 7 is concerned with a specific subset of conflicts of interest which involve members’ secondary employment.

**2.18** However, with regard to disclosures in the House and committees, the committee prefers the approach recommended by the Independent Commission Against Corruption, which would require members to disclose any *conflict* of interest, to the approach adopted in the revised Code, which requires the disclosure of any *relevant* interest. The committee believes that an interest is ‘relevant’ if it could give rise to a conflict of interest and that it is confusing to include conflict of interest material in the interests disclosure clause. On that basis the committee suggests the following amendments to clauses 6 and 7 of the revised Code:

#### **6 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~~ [See similar text added to clause 7]

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<sup>19</sup> Submission 3, Independent Commission Against Corruption, paragraph 11.

<sup>20</sup> Submission 3, Independent Commission Against Corruption, paragraph 5.

<sup>21</sup> Submission 3, Independent Commission Against Corruption, paragraph 14.

<sup>22</sup> Submission 3, Independent Commission Against Corruption, paragraph 15.

<sup>23</sup> Submission 5, Parliamentary Ethics Adviser, page 8.

<sup>24</sup> Submission 5, Parliamentary Ethics Adviser, pages 4, 5.



~~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.*

## **7 Conflicts of interest**

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.

Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public 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*

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.

## Bribery and improper influence

- 2.19** Clause 2 of the current Code, entitled 'Bribery', prohibits the promotion of any matter in Parliament in return for reward to the member (paragraph (a)) or certain related persons (paragraph (b)) and specifies that a breach of that prohibition constitutes a 'substantial breach' of the Code (paragraph (c)).
- 2.20** The revised Code incorporates a number of changes to this clause: a new heading, 'Improper influence'; a prohibition on paid advocacy; the streamlining of paragraphs (a) and (b) into a single paragraph; the replacement of "knowingly *or* improperly" with 'knowingly *and* improperly'; a prohibition on improper influence; and the omission of the statement concerning 'substantial breach'. The current and revised clauses are shown below:

**Table 3 Clause 2 of the current and revised Codes**

Current Code	Revised Code
<b>2 Bribery</b>	<b>2 Improper influence</b>
-	(a) No member shall act as a paid advocate in any proceeding of the House or its committees
(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 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;
(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 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.

Current Code	Revised Code
(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 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.
(c) A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct.	-

**2.21** In its report recommending the adoption of the revised Code the Assembly committee stated that:

- The replacement of 'Bribery' with 'Improper influence' in the heading provides a more accurate description of the unethical activities which the clause prohibits and would avoid confusion with the broader criminal offence of bribery.<sup>25</sup>
- The change to 'knowingly *and* improperly' is intended to make it clear that a breach of the Code is where a member knowingly seeks to exert improper influence.<sup>26</sup>
- The prohibition on improper influence included in clause 2(c) was recommended by the Assembly committee in the last review of the Code in 2014, and is similar to a clause which had been recommended by this committee that year in response to an issue raised by the Independent Commission Against Corruption.<sup>27</sup>
- The statement concerning 'substantial breach' in the current clause is superfluous because any 'substantial breach' of the Code may constitute 'corrupt conduct' and there is no need to emphasise that fact for one clause and not the others.<sup>28</sup>

**2.22** The Assembly committee also stated that it had originally intended that the new clause 2 would include a proviso covering situations where a benefit accrues to a person as a member of a broad class. However, following consultations the committee was persuaded that such a limitation

<sup>25</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraph 2.46

<sup>26</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraph 2.35.

<sup>27</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraphs 2.37-2.41.

<sup>28</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraph 2.43.

would stand out better as clause in its own right.<sup>29</sup> The revised Code therefore also includes the following additional clause:

### **5 Limitation on breach of Code**

This code is not breached by reason of a benefit or interest that could be or was advanced or 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.

### **Committee comment**

- 2.23** The committee supports clauses 2 and 5 of the revised Code and is particularly pleased to note the inclusion of clause 2(c) which is modelled on the clause addressing improper influence recommended by this committee in 2014.
- 2.24** However, the committee has concerns in relation to the replacement of “knowingly *or* improperly” with ‘knowingly *and* improperly’ in the new clause 2. Such a change would limit the operation of the current prohibition by allowing a member to claim for example that he or she did not know a related party would benefit from a matter the member was promoting in Parliament. The committee therefore proposes that “knowingly *and* improperly” be used instead of ‘knowingly *or* improperly’ in new clause 2(b) and (c).
- 2.25** The committee also suggests a minor amendment to new clause 2(c) to insert 'officer of a' before 'public body. With these amendments clause 2(c) would read as follows:
- (c) A Member must not knowingly ~~and or~~ 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 officer of a 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.
- 2.26** The committee notes that suggestions were made in submissions to the review for various other changes to the Code concerning bribery and improper influence but has not pursued those suggestions given the need to reach a uniform position with the Assembly in relation to reforms to the Code.

## **Gifts**

- 2.27** The revised Code includes a clause on gifts which is similar to the gifts clause in the current Code. The two clauses are shown below:

**Table 4 The gifts clause in the current and revised Codes**

<b>Current Code</b>	<b>Revised Code</b>
<b>3 Gifts</b>	<b>8 Gifts</b>

<sup>29</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraphs 2.48-2.50.

Current Code	Revised Code
(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.	(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 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.	(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) Members may accept political contribution in accordance with part 6 of the <i>Election Funding Act 1981</i> .	(c) Nothing in this Code precludes the giving or accepting of political donations in accordance with the Electoral Funding Act 2018.

**2.28** The committee has two concerns in relation to new clause 8.

**2.29** Firstly, while the current clause provides that members ‘must’ declare gifts in accordance with the requirements for the disclosure of pecuniary interests, the new clause provides that members ‘must take reasonable steps’ to do so. In its report recommending the revised Code the Assembly committee stated that this change was intended to make the gifts clause more consistent with the interests disclosure clause.<sup>30</sup> However, as members are *obliged* to comply with ‘the requirements for the disclosure of pecuniary interests’ it is undesirable for the Code to purport to set a lower compliance standard of merely taking reasonable steps. The committee therefore supports an amendment to new clause 8(a) as follows:

- (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.

**2.30** Secondly, while the current clause provides that members ‘must not’ accept certain types of gifts, the new clause provides that members ‘must not knowingly’ do so. In its report recommending the revised Code the Assembly committee stated that the insertion of ‘knowingly’ was intended to make the gifts clause consistent with the clause on improper influence.<sup>31</sup> However this committee is reluctant to be seen to be weakening the terms of the current prohibition and would prefer a return to the standard of the current clause by deleting ‘knowingly’ from clause 8(b):

- (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.

<sup>30</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraph 2.55.

<sup>31</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56, June 2018, paragraph 2.56.

## Use of public resources

2.31 The revised Code includes an expanded version of clause 4 of the current Code which concerns the use of public resources. The existing and proposed clauses are shown below:

**Table 5 Use of public resources in the current and revised Codes**

Current Code	Revised Code
<b>4 Use of public resources</b>	<b>3 Use of public resources</b>
-	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 apply the public resources to which they are granted access according to any guidelines or rules about the use of those 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.
-	<p><i>Commentary</i></p> <p><i>There is a range of information available to Members to assist them in determining the accurate and appropriate use of resources including:</i></p> <ul style="list-style-type: none"> <li>• <i>The Legislative Assembly Members' Guide;</i> • <i>The Legislative Council Members' Guide;</i></li> <li>• <i>The Department of Parliamentary Services Members' Entitlements Handbook;</i> and</li> <li>• <i>The Parliamentary Remuneration Tribunal's Annual Report and Determination of Additional Entitlements for Members of the Parliament of New South Wales.</i></li> </ul> <p><i>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.</i></p>

2.32 The committee's only concern in relation to new clause 3 is that it weakens the compliance standard from 'must apply' in the current clause to 'must take reasonable steps to apply'. Members are required to comply with any guidelines or rules about the use of their public resources and the Code should continue to reflect that fact. The committee therefore supports an amendment to the second paragraph of the new clause as follows:

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

## Use of confidential information

- 2.33 The revised Code includes a clause concerning the use of confidential information which is in similar terms to clause 5 of the current Code. The current and revised clauses are shown below:

**Table 6 Use of confidential information in the current and revised Codes**

Current Code	Revised Code
<b>5 Use of confidential information</b>	<b>4 Use of confidential information</b>
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	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

- 2.34 The committee has no objection to the changes to the wording of the existing clause which have been incorporated into the new clause 4.
- 2.35 In its submission to the review the Independent Commission Against Corruption recommended that the current clause 5 should be broadened to include types of improper advantage where it is difficult to substantiate a direct private benefit such as ‘the improper leaking of information to discredit a political rival’.<sup>32</sup> The committee did not pursue that suggestion in this review but notes that new clause 4 includes an additional obligation to only use confidential information in connection with a member’s parliamentary duties.

## Upholding the Code

- 2.36 Clause 9 of the revised Code, entitled ‘Upholding the Code’, includes a new provision which requires members to cooperate with any processes under the authority of the House concerning compliance with this Code.
- 2.37 Clause 9 also includes two further paragraphs which have equivalent provisions in the current Code or in the resolution adopting the Code. The similarities and differences between the current provisions and clause 9 are shown below:

**Table 7 Clause 9 of the revised Code compared to current provisions**

Current Code	Revised Code
-	<b>Clause 9</b>
-	Members have a duty to cooperate fully with any processes under the authority of the House concerning compliance with this Code.

<sup>32</sup> Para 30

Current Code	Revised Code
<p><b>Clause 2(c)</b> A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct</p>	<p>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 <i>Independent Commission Against Corruption Act 1988</i></p>
<p><i>Paragraph 2 of the resolution of the Legislative Council adopting the Code:</i> That this resolution has continuing effect unless and until amended or rescinded by resolution of the House.</p>	<p>This resolution has continuing effect unless and until amended or rescinded by resolution of the House</p>

**2.38** The committee believes that the first paragraph of the new clause should be amended to clarify that the relevant 'processes' are those which concern the investigation of complaints regarding compliance with the Code.

**2.39** The committee does not support the second sentence which refers to sanctions imposed by the House as it could give a misleading impression of the House's powers. The Houses of Parliament in New South Wales have the power to take action against a member to protect the conduct of the House's proceedings but have no power to impose punitive sanctions in the absence of legislation conferring punitive powers on the House.

**2.40** The committee's proposed amendments to new clause 9 are shown below:

Members have a duty to cooperate fully with any processes established under the authority of the House concerning investigation of complaints regarding 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.

## Conclusion

**2.41** The committee supports the adoption of the revised Code of Conduct recommended by the Assembly committee with the amendments discussed in this chapter.

**2.42** The committee therefore recommends:



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### **Recommendation 1**

That the Legislative Council adopt the following *Code of Conduct for Members* in place of the existing *Code of Conduct for Members*:

### **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.

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.

#### **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 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 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 or 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 officer of a 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.

### **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 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.

### **5 Limitation on breach of Code**

This code is not breached by reason of a benefit or interest that could be or was advanced or 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.

## OPENESS AND ACCOUNTABILITY

### **6 Disclosure of interests**

Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members.

#### *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.*

## **7 Conflicts of interest**

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.

Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or its committees, and in any communications with Ministers, members, public officials or other 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*

*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.*

## **8 Gifts**

- Members must disclose all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.
- Members must not 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.
- Nothing in this Code precludes the giving or accepting of political donations in accordance with the *Electoral Funding Act 2018*.

### *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.*

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*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

### **9 Upholding the Code**

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

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.

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## Chapter 3 The pecuniary interests regulation

This chapter examines possible reforms to the pecuniary interests disclosure regime established by the Constitution (Disclosures by Members) Regulation 1983. The potential reforms concern:

- the replacement of the current system of disclosure returns by a system of ‘exception reporting’ involving the reporting of any changes to interests disclosed in a previous return
- the publication of members’ disclosure returns on the internet
- the expansion of the disclosure requirements to include the interests of related parties such as members’ spouses/partners and dependent children.

As with the review of the Code of Conduct discussed in chapter 2, the committee has approached its review of the Regulation with the aim of seeking to reach a uniform position with its counterpart in the Assembly wherever possible. Accordingly the committee has had regard to previous recommendations by both committees as well as the views expressed in submissions to this review. The committee notes, however, that the Assembly committee began a review of the Regulation in 2018 and had not reported on that review when this report was prepared.

### Reform of the system of returns

#### The current system of disclosure returns

- 3.1** The Constitution (Disclosures by Members) Regulation 1983 (‘the Regulation’) established a regime for the disclosure of members’ pecuniary and other interests which provides for the lodging of disclosure returns by members at specified times each year and the maintenance of a Register of Disclosures.
- 3.2** The Regulation includes provisions for the lodging of four types of disclosure returns:
- The primary return is the first return lodged by a member following his or her election to Parliament.
  - Ordinary returns are annual returns which disclose the interests held by each member during the 12 month period to 30 June.
  - Supplementary ordinary returns disclose interests held during the six month period from July to December in the previous year
  - Discretionary returns may be lodged by a member at any time.
- 3.3** The effect of these provisions is that members are required to lodge a return every six months. If a change in a member’s interests occurs before the six months have expired there is no requirement for the member to disclose the change until the next return date. Conversely a member must lodge a return every six months even if there has been no change in the member’s interests since their last return.
- 3.4** The benefit of the current system is that each primary and ordinary return provides a complete snapshot of the member’s interests as at the return date while there is also provision for an

update each year in the form of a supplementary ordinary return. However, the system does not provide an accurate picture of a member's current interests if changes occur between return dates and is complex with multiple returns dates which members are required to meet each year.

### **An alternative approach**

- 3.5** An alternative to the lodging of disclosure returns at set times throughout the year is to require members to continuously update their returns against a single complete return as and when any changes occur. Under this approach only the member's first return provides a comprehensive picture of his or interests, and to understand the member's interests at a later point in time it is necessary to also take account of any updates the member may have provided. However the approach ensures the Register of Disclosures is kept up-to-date and is a more streamlined disclosure process for the vast majority of members whose interests do not often change.
- 3.6** The practice of updating interests disclosed against a previous full return is known as continuous disclosure or exception reporting. Various Parliaments have incorporated this practice into their interest disclosure regimes. However, there are differences between those Parliaments with respect to specific issues such as the timeframe for notifying changes to interests and for tabling updates in the House.

### **Previous inquiries**

- 3.7** The desirability of varying the system of returns in New South Wales to incorporate exception reporting has been considered in a number of previous inquiries.
- 3.8** In 2003 the Independent Commission Against Corruption recommended that members should be required to update the Register within 30 days of new interests arising or changes to current interests occurring, that updates should be incorporated in the Register within seven days of receipt, and that updates should be tabled in Parliament at the commencement of the next sitting period.<sup>33</sup>
- 3.9** In 2006 the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics recommended a form of exception reporting whereby members would continue to provide a full return every year but would update the Register within 35 days of any change occurring and the Clerk would table all updates received quarterly at the next sitting of the House.<sup>34</sup>
- 3.10** In 2010 this committee recommended a form of exception reporting whereby members would provide one full return each Parliament<sup>35</sup> and update the Register within 35 days of any change occurring with updates to be tabled in the House every six months. In support of such a system

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<sup>33</sup> Independent Commission Against Corruption, *Regulation of secondary employment for members of the NSW Legislative Assembly*, September 2003, p 75, Recommendation 10 – Updating the Register of Pecuniary Interests.

<sup>34</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethic, *Review of the proposed amendments to the Code of Conduct and draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 26.

<sup>35</sup> As members of the Legislative Council are elected for two terms of Parliament, the committee envisioned that a member would lodge a primary return at the start of the first Parliament of his or her term and an ordinary return in the second Parliament.

the committee noted that exception reporting has been adopted by various other Houses of Parliament including the Senate which requires updates to be lodged within 35 days and the House of Representatives which requires updates to be lodged with 28 days.<sup>36</sup>

- 3.11** In 2014 this committee recommended a system of exception reporting in similar terms to that which it had recommended in 2010.<sup>37</sup> In support of its recommendations the committee noted a submission from the Clerk of the Parliaments which highlighted the overly complex nature of the current system of returns and a submission from the Department of Premier and Cabinet which indicated that the Government was open to the idea of simplifying the current arrangements relating to returns.<sup>38</sup>
- 3.12** In 2014 the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics expressed support for exception reporting in the following terms:

In the committee's view the current requirement for six monthly updates results in members' returns being up to six months out of date. Updating returns whenever changes to members interests occurs is timely for both the public who have access to information on changes at the time they occur, and for members who can update their returns as changes occur and not have to remember to make changes some months later. The Senate model provides members 35 days to make an update.<sup>39</sup>

#### **Submissions to the current review**

- 3.13** Four of the submissions to the current review addressed the issue of exception reporting.
- 3.14** The Independent Commission Against referred to the issue indirectly, expressing support for review of 'the timeliness with which disclosures are made' and 'the cumbersome nature' of the current regime.<sup>40</sup>
- 3.15** The Clerk of the Parliaments supported introduction of exception reporting noting that:
- Over the last four years since 2014, many established and new members, and other stakeholders, have continued to struggle with the overly complex and unhelpful reporting regime, involving primary, ordinary, supplementary ordinary, and discretionary disclosures. The sooner the reporting regime moves [to] one of an initial

<sup>36</sup> Legislative Council, Privileges Committee, *Review of the Members' Code of Conduct*, Report 54, December 2010, Recommendation 6.

<sup>37</sup> Legislative Council, Privileges Committee, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, Report 70, June 2014, p 43, Recommendations 4 and 7.

<sup>38</sup> Legislative Council, Privileges Committee, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, Report 70, June 2014, paragraphs 3.48 and 3.52.

<sup>39</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into matters arising from the ICAC report entitled 'Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources'*, July 2014, paragraph 6.4.

<sup>40</sup> Submission 3, Independent Commission Against Corruption, paragraph 38.

primary disclosure, followed by exception reporting of updates as necessary, the better.<sup>41</sup>

**3.16** The Parliamentary Ethics Adviser advised:

I ... support the proposal for exception reporting – in that a Member makes an initial disclosure following their election and then notifies changes when they occur.<sup>42</sup>

**3.17** The Auditor-General, Ms Margaret Crawford, expressed support for the reporting of changes to an ordinary return to be lodged annually, rather than a single return to be lodged every Parliament, as this committee has previously recommended:

In relation to exception reporting being the primary means of updating the pecuniary interest register, I recommend that such registers are supported by annual declarations as well as exception reporting. While the committee's proposed changes may create some efficiency in administration, regular returns and sign offs act as a useful reminder and support accurate disclosures and record keeping.<sup>43</sup>

**3.18** Ms Crawford also noted that a requirement for annual declarations would be consistent with a recommendation she had recently made in relation to public sector senior executives.<sup>44</sup>

### **Committee comment**

**3.19** In previous reviews this committee has recommended the introduction of exception reporting against a single return to be lodged by a member in each Parliament. The Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics has also supported exception reporting but has recommended that members be required to report any changes against an ordinary return to be lodged every year rather than against a single return lodged every Parliament. In the current review, to facilitate a consensus, the committee recommends the reporting of changes against a return to be lodged each year consistently with the recommendations of the Assembly committee in 2006. This approach was also supported by a submission from the Auditor-General to this committee's review.

**3.20** There remain small differences between the versions of exception reporting recommended by the two committees. While the Assembly committee in 2006 recommended that returns be lodged within 35 days this committee recommends a timeframe of 30 days; while the Assembly committee has recommended that updates be tabled quarterly this committee recommends that they be tabled every six months. The committee does not believe that these differences are of such significance that they constitute an obstacle to the introduction of an amending regulation to provide for exception reporting. Further, the committee notes that under section 14A(5) of the *Constitution Act 1902* any proposed regulation for the disclosure of members' interests must be referred to a committee of either House established for the purpose which must be given an opportunity to consider the regulation and make representations.

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<sup>41</sup> Submission 1, Clerk of the Parliaments, p 2.

<sup>42</sup> Submission 5, Parliamentary Ethics Adviser, Mr John Evans, p 9.

<sup>43</sup> Submission 2, Auditor-General, page 2.

<sup>44</sup> Submission 2, Auditor-General, page 2.



3.21 The committee therefore recommends:

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**Recommendation 2**

That the current system of primary, ordinary, supplementary ordinary and discretionary returns be amended to introduce a simpler system of exception reporting requiring:

- (a) A primary return to be lodged following a member's election to Parliament as at present
  - (b) An ordinary return to be lodged in each subsequent year
  - (c) Any changes to interests disclosed in a preceding return to be disclosed in an alteration of interest return lodged with the Clerk within 30 days of the change occurring
  - (d) Alteration of interest returns to be tabled in the House every six months
  - (e) Discretionary disclosures to continue to be available as at present for the disclosure of interests not required to be disclosed by the Regulation but which a member chooses to disclose
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## Online publication of returns

### Current arrangements for access to members' disclosure returns

- 3.22 The Regulation provides for the Clerk of each House to compile and maintain a Register containing the disclosures lodged by members of the House during the previous eight years.<sup>45</sup> The Register is open to public inspection at the office of the Clerk of the House between 10.00 am and 4 pm on any day except on Saturday, Sunday or a public holiday, and is also open to inspection by members of the House at any time the House is sitting.<sup>46</sup>
- 3.23 Within 21 sitting days after the last day for the lodgment of primary and any ordinary returns, the Clerk is to provide a copy of that part of the Register which has not previously been tabled to the presiding officer for tabling. On tabling the Register is ordered to be printed or published as a parliamentary paper.<sup>47</sup>
- 3.24 The effect of these provisions is that the Register is only accessible by a member of the public who physically visits the office of the Clerk within certain hours or who obtains one of the limited number of printed copies. There is no provision for the Register or for individual returns to be published electronically.

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<sup>45</sup> Constitution (Disclosures by Members) Regulation 1983, clauses 17, 18, 19.

<sup>46</sup> Constitution (Disclosures by Members) Regulation 1983, clause 20.

<sup>47</sup> Constitution (Disclosures by Members) Regulation 1983, clause 21.

### Previous inquiries

- 3.25** The need for wider public access to members' disclosure returns has been considered in previous inquiries by the Independent Commission Against Corruption,<sup>48</sup> this committee,<sup>49</sup> and the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics.<sup>50</sup> Each of these bodies expressed support for publishing the Register online subject to any privacy concerns being addressed.
- 3.26** Most recently, in 2014, this committee recommended that the Regulation be amended to provide for the publication of the Register online and that certain clauses of the Regulation be amended so that individuals could be identified in returns by name and location rather than address.<sup>51</sup>

### Submissions to the current review

- 3.27** Three of the submissions to the current review addressed the issue of publishing members' returns on the internet.
- 3.28** The Independent Commission Against Corruption supported 'publishing the Registers of Disclosures by members, subject to any privacy constraints that may arise'.<sup>52</sup>
- 3.29** The Auditor-General, Ms Margaret Crawford, supported 'making the Register of Disclosures on-line'.<sup>53</sup>
- 3.30** The Clerk of the Parliaments, Mr David Blunt, advised that the lack of online publication of the Council's Register had attracted criticism:

Clerks of the Legislative Assembly have now been publishing the Register of Disclosures of Legislative Assembly Members online for some years. As far as I am aware this has not attracted any criticism. Indeed, the fact that the disclosures of members of the Legislative Council are not published online has been the subject of

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<sup>48</sup> Independent Commission Against Corruption, *Regulation of secondary employment for members of the NSW Legislative Assembly*, September 2003, p 75, 'Recommendation 11 – Establishment of electronic database of the register of pecuniary interests'; The Honourable Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption, 'Draft regulation on disclosure of pecuniary interests', Submission to the Legislative Council Privileges Committee, 18 June 2006, p 4.

<sup>49</sup> Legislative Council, Privileges Committee, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, Report 35, October 2006, Recommendation 4, p 15; *Review of the Members' Code of Conduct*, Report 54, December 2010, p 66, Recommendation 4; *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, Report 70, June 2014, p 44, Recommendations 5 and 6.

<sup>50</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethic, *Review of the proposed amendments to the Code of Conduct and draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 8, Recommendations 4.7 and 4.8; *Report on review of the Code of Conduct, and aspects of disclosure of interests and related issues*, December 2010, p 18, Chair's Foreword.

<sup>51</sup> Legislative Council, Privileges Committee, *Review of the Members' Code of Conduct*, Report 54, December 2010, p 66, Recommendation 4.

<sup>52</sup> Submission 3, ICAC, paragraph 38.

<sup>53</sup> Submission 2, Auditor-General, p 1.

regular criticism (directed to me). It has also been the cause of frustration and cost to stakeholders who have as a consequence been required to travel to Sydney to inspect the register in person and to the Department of the Legislative Council in printing and mailing out copies of the bulky full register.<sup>54</sup>

- 3.31** Against this background the Clerk advised that he intended to move to publish the disclosures of Council members online unless this committee objected in its report on this review:

It is therefore now my intention, unless an objection is expressed by this committee in its forthcoming report on this inquiry, to move to publish online the disclosures by members of the Council. This will bring the Legislative Council into line, not only with the Legislative Assembly, but also most other Australian Parliaments. In preparation for this step, I have been at pains in recent years to counsel all members not to disclose their street address in their disclosures, but rather, as provided for in the regulation, to instead refer solely to the general location or suburb of their residence, so as to protect Members' privacy.<sup>55</sup>

#### **Committee comment**

- 3.32** The committee reaffirms the view it has expressed in previous reviews that members' disclosure returns should be available on the internet. However, while the committee has previously recommended that this reform be achieved by an amendment to the Regulation the committee now believes there is no justification for waiting for such an amendment in view of the issues raised by the Clerk of the Parliaments in his submission including the fact that Assembly members' returns are already being published online.
- 3.33** The committee is mindful that any transition to an online publishing regime has resource implications for the agency concerned and believes that the Clerk is best placed to determine precisely when members' returns will appear on the website in view of the other administrative responsibilities of his Department. The committee envisages that the most recent return lodged by members during the current Parliament would be published online as soon as practicable following the tabling of this report and that returns to be lodged by members in future Parliaments would be published online as soon as practicable following the tabling of those returns. The committee does not recommend the online publication of returns lodged by members in previous Parliaments.

<sup>54</sup> Submission 1, Clerk of the Parliaments, p 2.

<sup>55</sup> Submission 1, Clerk of the Parliaments, p 2.

**3.34** The committee therefore recommends:

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**Recommendation 3**

- That the Clerk of the Parliaments publish on the Parliament's website the most recent disclosure returns lodged by members as soon as practicable following the tabling of this report in the House.
  - That the Clerk of the Parliaments publish on the Parliament's website the disclosure returns to be lodged by members in future Parliaments as soon as practicable following the tabling of those returns in the House.
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## Disclosure of the interests of related parties

### Overview

- 3.35** While the Regulation provides for the disclosure of members' interests it does not include any requirements for the disclosure of interests of related parties such as close family members.<sup>56</sup> Some Australian Parliaments by contrast have adopted requirements for members to disclose interests of related third parties to ensure that potential sources of private influence for members are subject to scrutiny. The third parties captured by such regimes are usually domestic partners and dependent children but in some case the requirements extend to family companies and trusts.
- 3.36** This committee had not intended to examine the issue of third party interest disclosures in the current review as the designated committees of the Houses reached different views on that subject in the last review and the committee wished to concentrate on those issues on which there was a prospect of reaching a consensus.<sup>57</sup> However, following the receipt of submissions which commented on the issue the committee decided to include third party interest disclosures among the matters to be addressed in this report, and will discuss this with its Assembly counterpart after the inquiry.
- 3.37** An outline of previous recommendations on the issue is provided below followed by a summary of the submissions the committee received in the current review.

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<sup>56</sup> Interests of related parties may be disclosed incidentally. For example, income from a trust disclosed under clause 9(2)(e) of the Regulation could include income from a family trust, while an interest or position in a corporation disclosed under clause 12 could include shareholdings or offices in family companies. Further, interests of related parties may be the subject of a discretionary disclosure by a member under clause 16.

<sup>57</sup> The considerations which determined the issues addressed in the conduct of this review are discussed in chapter 1.

### Previous recommendations

- 3.38** In 2010 this committee recommended that the Legislative Council refer to the committee an inquiry into the best mechanism for members to disclose the interests of their spouses/partners and dependent children under the provisions of the Regulation with a view to implementing third party disclosures if an appropriate mechanism can be found.<sup>58</sup>
- 3.39** In 2013 the Independent Commission Against Corruption made a recommendation in similar terms to that made by this committee in 2010. In support of that recommendation the Commission argued that expanding the Register to include interests of partners and dependent children would minimise perceptions of members avoiding scrutiny and deal with the potential for family interests to influence decision-making and was in line with the position in many other Parliaments. The Commission also argued that consideration should be given to requiring disclosure of family trusts and companies.<sup>59</sup>
- 3.40** In a review of the Regulation conducted in 2014 this committee noted a range of third party disclosure requirements which apply in other Houses of Parliament including the House of Representatives, where such interests are publicly disclosed, and the Senate where such interests are disclosed to the Committee on Senators Interests. In light of these precedents and the views expressed in submissions to that review the committee made two recommendations for expanding the current disclosure requirements.
- 3.41** The first recommendation concerned the interests of immediate family:

#### Recommendation 2

That the interest disclosure regime under the Constitution (Disclosures by Members) Regulation 1983 be amended to incorporate full and open disclosure by members of the Parliament of the interests of their spouses/partners and dependent children of which they are aware subject to the following guidelines:

- members are not required to disclose the name of a spouse, partner or dependent child;
- ‘dependent children’ means dependent children under 18 years of age or dependent fulltime students under 25 years of age who are wholly or mainly dependent on the member for support;
- ‘partner’ means a person who is living with another person in a bona fide domestic relationship;
- where interests are held jointly with a spouse or partner, former spouse or partner, or dependent children, the interests need to be included only as interests of the member, with appropriate notation such as ‘jointly owned with [former] spouse/partner’.

- 3.42** The second recommendation, which was modelled on requirements in the federal Parliament and Queensland, concerned family trusts, family companies and private superannuation funds:

<sup>58</sup> Legislative Council, Privileges Committee, *Review of the Members’ Code of Conduct*, Report 54, December 2010, Recommendation 2.

<sup>59</sup> Independent Commission Against Corruption, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013, p 43.

**Recommendation 3**

That a new section should be inserted into Part 3 of the Constitution (Disclosures by Members) Regulation 1983 dealing specifically with interests in family trusts or companies and private superannuation funds where:

- the member or the spouse/partner or any adult or dependent children can exercise voting rights or control over the units or shares in the trust/company/fund, or
- the member or the spouse/partner or any adult or dependent children receive or receives in any way a beneficial interest from the trust/company/fund (but not including a trustee of an estate where no beneficial interest is held).

Members should be required to indicate the name (or a description) of the trust/company/fund, the nature of its operation and the beneficiaries of the trust/company/fund.<sup>60</sup>

- 3.43** In the same year the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics also made a recommendation for the disclosure of third party interests. However, in contrast to the approach of this committee the Assembly committee's recommendation was confined to interests of partners and children and did not extend to corporate entities. Further, the Assembly committee preferred the Senate model whereby third party interests are disclosed confidentially and proposed that the new requirements be established by a resolution of the House rather than by an amendment to the Regulation:

**Recommendation 2**

The Committee recommends that the members' interest disclosure regime be amended by resolution of the House to provide for a requirement that members disclose the interests of their spouses/partners and dependent children privately to the parliamentary officer to be appointed as Ethics Commissioner.<sup>61</sup>

- 3.44** More recently, the Assembly committee has foreshadowed that it will address the question of whether a member should disclose the interests of third parties such as family members in a forthcoming inquiry.<sup>62</sup>

**Submissions to this review**

- 3.45** Three of the submissions to the current review addressed the issue of the disclosure of the interests of related parties.
- 3.46** The Auditor-General, Ms Margaret Crawford, drew attention to third party disclosure requirements which apply to various types of public officials.<sup>63</sup>

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<sup>60</sup> Legislative Council, Privileges Committee, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, Report 70, June 2014.

<sup>61</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into matters arising from the ICAC report entitled 'Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources'*, July 2014, Recommendation 2, p 10.

<sup>62</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the Code of Conduct for Members*, Report 1/56 – June 2018, paragraph 2.30.

<sup>63</sup> Submission 2, Auditor-General, pp 1-2.

**3.47** The Independent Commission Against Corruption supported expanding the Registers to include third party disclosures, and noted that:

Expanding the Registers to include spouses, domestic partners and dependent children would minimise perceptions of members avoiding scrutiny and deal with the potential for family interests to influence decision-making. In addition, many other Australian parliaments require the disclosure of third-party interests in a register.<sup>64</sup>

**3.48** The Parliamentary Ethics Adviser, Mr John Evans, advised:

I support previous proposals of the Committee for the disclosure of the pecuniary interests of immediate family, as conflicts of interests do and can arise in relations to those interests.<sup>65</sup>

### Questions concerning implementation

**3.49** Following the receipt of submissions to the current review the committee wrote to the Independent Commission Against Corruption and the Auditor-General seeking their views in relation to a series of questions concerning the practical effects of amending the Regulation to introduce requirements for the disclosure of the interests of members' partners and dependent children. The questions raised issues concerning hypothetical scenarios such as where a spouse does not want to disclose their interests to the member or where a member and his or her partner are estranged.

**3.50** The committee's letter and the responses received from the Independent Commission Against corruption and the Auditor-General are set out in full at Appendix 3.

**3.51** The Commission's response included the views that:

- a member would not be absolved from their disclosure responsibility by simple ignorance of their partners' interests
- members would be expected to take reasonable steps to elicit information from their spouse as to their interests, ideally before the member is elected
- where a partner refused to disclose interests to the member or advised the member they were making a partial disclosure only the member would be expected to disclose that fact.

**3.52** The Auditor General's response included the views that:

- any disclosure should be made to the best of the member's knowledge and belief
- if a family member refuses to disclose details there is no need to compel or penalise the partner or member but members should disclose if information has been requested and a close family member refuses to provide it.

**3.53** The committee also asked both of the agencies for their views on a possible alternative disclosure mechanism in which partners' interests would be disclosed to a confidential independent source, such as the mechanism recommended by the Legislative Assembly's

<sup>64</sup> Submission 3, ICAC, paragraph 37.

<sup>65</sup> Submission 5, Parliamentary Ethics Advisor, Mr John Evans, p 9.

Standing Committee on Parliamentary Privilege and Ethics in 2014 whereby certain interests would be privately disclosed to the Ethics Commissioner.

**3.54** In response to that suggestion the Independent Commission Against Corruption stated that:

A separation of the disclosure regime creates the risk that a disclosure entity may not be able to see the complete picture that applies to a member's interests. For instance, if there are two disclosure entities, neither can provide fully informed advice on the appropriate measures for managing any potential or actual conflicts of interest. Strict procedures and controls for managing the confidentiality of information disclosed to a given entity can manage risks associated with all disclosure information being held by one entity.<sup>66</sup>

**3.55** The Auditor-General stated that:

The Audit Office has no view on this proposal, other than disclosures made in this way be documented, and that the Audit Office has access to those disclosures.<sup>67</sup>

#### **Committee comment**

**3.56** The Privileges Committee as constituted in the 55<sup>th</sup> Parliament strongly supported the expansion of the Regulation to include the disclosure of third party interests. In the course of this inquiry the committee explored the implications of such disclosure on a member and their family. There are complexities, and it is clear that such a move will put partners of members into a disclosure regime which previously did not require their active participation. The current committee is concerned that such a move would provide an appearance of increasing integrity while ignoring the reality that disclosure requirements can easily be evaded by a member who wishes to conceal his or her affairs by vesting interests in an associate or relative outside his or her immediate family. Requiring the disclosure of third party interests is likely to have no impact on the small minority of members who may be intent on avoiding scrutiny and create an unwarranted intrusion into the lives of the majority of members whose interests do not impinge on the performance of their public duties.

**3.57** The committee also notes that members' spouses/partners have not sought election to Parliament, are not responsible to the electorate, and have the right to privacy in the conduct of their own affairs.

**3.58** Nevertheless, despite these misgivings, the committee continues to support the introduction of reforms to provide for the disclosure of certain third party interests in view of the recommendations made by the committee in 2014 and submissions to the current review.

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<sup>66</sup> The Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, correspondence to the committee Chair dated 23 October 2018, p 2.

<sup>67</sup> Ms Margaret Crawford, Auditor-General of New South Wales, correspondence to the committee Chair dated 24 October 2018, p 2.



3.59 The committee therefore recommends:

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**Recommendation 4**

That the Constitution (Disclosures by Members) Regulation 1983 be amended to provide for the disclosure of the interests of related parties in the terms proposed by the Privileges Committee in Recommendations 2 and 3 of its report entitled *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator* dated June 2014.

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3.60 If this recommendation is not adopted by the Government, the committee is open to the suggestion made by the Assembly committee in 2014 for the disclosure of family interests to the Ethics Adviser. Currently the Ethics Adviser can advise members on conflicts of interest involving family members. An amendment to the resolution establishing the Ethics Adviser could be made requiring members to report family interests confidentially to the Ethics Adviser, and empowering the Ethics Adviser to publish any advice prepared regarding conflicts of interests and family members.

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**Recommendation 5**

That, if Recommendation 4 is not adopted by the government, the resolution establishing the Parliamentary Ethics Adviser be amended to require members to report family interests confidentially to the Ethics Adviser, and empowering the Ethics Adviser to publish any advice prepared regarding conflicts of interests and family members.

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## Chapter 4      The educative function of the Privileges Committee

This chapter examines the Privileges Committee's statutory role in relation to educative work concerning the ethical standards applying to members of the Legislative Council. It includes an overview of recent ethics training programs, ideas for improvements to such programs raised in a submission by the Clerk of the Parliaments, and recommendations concerning mandatory continuing ethics education.

### The Committee's statutory role and previous approach

- 4.1 Under section 72C(1)(b) of the *Independent Commission Against Corruption Act 1988* and the resolution of the House establishing the Privileges Committee, the functions of the committee include:
- to carry out educative work relating to ethical standards applying to members of the Legislative Council.
- 4.2 Since the enactment of section 72C in 1994, the committee has been less active in pursuing the educative function than other functions conferred by the Act such as drafting codes of conduct (section 72C(1)(a)) and reviewing the Code (section 72C(5)).
- 4.3 It has mainly fallen to the Clerks to conduct training in relation to ethical conduct, generally at the induction of new members at a commencement of a new Parliament.
- 4.4 However, in its report on the review of the Code of Conduct in 2010, the committee made recommendations for regular ethics seminars and for the publication of educative material concerning investigations by the Independent Commission Against Corruption.<sup>68</sup>
- 4.5 These recommendations were incorporated in later training programs noted below.

### Recent ethics training programs for members

- 4.6 In the 55<sup>th</sup> and 56<sup>th</sup> Parliaments the following ethics training initiatives were offered to members of the Legislative Council:
- After each general election the Clerk of the Parliaments presented a briefing to new members concerning the Code of Conduct, the pecuniary interest disclosure requirements, the role of the Parliamentary Ethics Advisor, the role of the Independent Commission Against Corruption, guidelines and rules for the use of members' additional entitlements and the standing orders which disqualify members from participating in certain matters if they have a direct pecuniary interest.
  - New members received a copy of the Code of Conduct and resource material concerning the pecuniary interests disclosure regime.

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<sup>68</sup> Legislative Council, Privileges Committee, *Review of Members' Code of Conduct 2010*, chapter 4, Recommendations 8-10.

- In 2011 and 2015 new and re-elected members received an information brochure summarising investigations by the Independent Commission Against Corruption in relation to the conduct of members.
- In 2011 a series of training and information sessions were held for new and returning members, including presentations by the Parliamentary Ethics Adviser, the Auditor-General, the Ombudsman and representatives of the Independent Commission Against Corruption.
- An on-line training module concerning ethics, the Code of Conduct and the pecuniary interest disclosure regime was developed and made available to all members on the Parliament's intranet.

### **Submissions to the current review**

- 4.7 Two of the submissions to the current review addressed the issue of ethics education for members.
- 4.8 The Independent Commission Against Corruption expressed support for:
- any attempts to develop plain English guidelines and case studies to help explain members' obligations, and the provision of briefings for members on ethical issues.<sup>69</sup>
- 4.9 The Clerk of the Parliaments, Mr David Blunt, examined the issue of ethics education in some detail, focusing particularly on the area of mandatory continuing education.

### **The submission from the Clerk of the Parliaments**

- 4.10 The key issues raised in the Clerk's submission concerning mandatory continuing education for members are summarised below.

### ***Response to Panel of Experts – Political Donations 2014***

- 4.11 The Clerk attached to his submission a joint response which the Clerks of both Houses of the Parliament had provided to the Panel of Experts – Political Donations in 2014 following a request by the Panel for views on how best to implement mandatory ongoing education of members and their staff.
- 4.12 The joint response included ideas for the possible format and content of a mandatory continuing education program, should the Panel decide to recommend such a measure, and ideas for ways to enhance members' engagement in such programs.
- 4.13 As to form and content the Clerks suggested that consideration could be given to an annual seminar to be co-ordinated by the Presiding Officers, Clerks and Executive Manager which could be repeated on a number of occasions in the year. The Clerks suggested that the seminar could include:

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<sup>69</sup> Independent Commission Against Corruption, Submission 3, paragraph 39.

- Brief refresher sessions on the Code of Conduct and pecuniary interest disclosure requirements,
- Internal and external audit findings concerning Members use of entitlements (including a presentation by the Auditor General),
- Any ICAC investigations of relevance to members (presented by a representative of the ICAC),
- An update on developments and requirements in relation to Election Funding (presented by the Electoral Commissioner),
- Effective staff supervision, and
- Health (physical and mental) issues and resilience.<sup>70</sup>

**4.14** As to the issue of engagement the Clerks contrasted the 2011 induction program which had been well attended with the follow up training sessions which had been poorly attended<sup>71</sup> and attributed the success of the induction to 'party leaders and whips making it clear to all newly elected [members] that [they] were expected/required to attend'.<sup>72</sup>

**4.15** The Clerks went on to suggest that 'strong encouragement by party leaders and whips could assist to ensure participation' in future ongoing education programs'.<sup>73</sup>

**4.16** The Clerks also explored ways in which members could be compelled to participate in training programs in the event that the Panel decided to recommend a mandatory program. Options identified by the Clerks in this area were as follows:

- Participation in mandatory continuing education could be made an essential pre-requisite to the allocation of some part of a member's entitlements such as their Logistic Support Allocation or Electoral Communication Allowance. The Clerks noted that this would require the Premier to make a reference to the Parliamentary Remuneration Tribunal for a special determination.<sup>74</sup>
- Participation in mandatory on-line ethics education programs could be monitored if the relevant training software had the capacity to generate such data.
- Information generated about members' participation in online training could be publicly reported, for example, in the annual reports of the parliamentary departments or in real time.

<sup>70</sup> Submission 1, Clerk of the Parliaments, Attachment, 'Education for Members of Parliament', 2 December 2014, letter from the Clerk of the Parliaments and the Clerk of the Legislative Assembly to the Chair of the Panel of Experts- Political Donations, p 4.

<sup>71</sup> Submission 1, Clerk of the Parliaments, Attachment, 'Education for Members of Parliament', 2 December 2014, letter from the Clerk of the Parliaments and the Clerk of the Legislative Assembly to the Chair of the Panel of Experts- Political Donations, p 3.

<sup>72</sup> Submission 1, Clerk of the Parliaments, Attachment, 'Education for Members of Parliament', 2 December 2014, letter from the Clerk of the Parliaments and the Clerk of the Legislative Assembly to the Chair of the Panel of Experts- Political Donations, p 3.

<sup>73</sup> Submission 1, Clerk of the Parliaments, Attachment, 'Education for Members of Parliament', 2 December 2014, letter from the Clerk of the Parliaments and the Clerk of the Legislative Assembly to the Chair of the Panel of Experts- Political Donations, p 3.

<sup>74</sup> Submission 1, Clerk of the Parliaments, Attachment, 'Education for Members of Parliament', 2 December 2014, letter from the Clerk of the Parliaments and the Clerk of the Legislative Assembly to the Chair of the Panel of Experts- Political Donations, p 3.

- Non-completion of mandatory online training could become a trigger for some further action.<sup>75</sup>

**4.17** In its Final Report the Panel of Experts made a recommendation which reflected ideas contained in the Clerks' response including provision for financial penalties where a member fails to attend a seminar or complete an online module.<sup>76</sup> The Government subsequently accepted the Panel's recommendation in principle and advised that it would consider the best way to implement educational programs and penalties for nonattendance.<sup>77</sup> In 2016 the Joint Standing Committee on Electoral Matters supported the Panel's recommendation and the Government's Response in principle.<sup>78</sup>

### *Other issues*

**4.18** In addition to discussing the response to the Panel of Experts in 2014, the Clerk's submission to this committee highlighted an idea which had emerged at a Commonwealth Parliamentary Association conference in 2017 concerning mandatory continuing education. That idea was to schedule continuing education seminars for members during sitting days to encourage full attendance by members. The Clerk developed this idea in his submission by suggesting that two seminars could be held each year in the first sitting weeks following the summer and winter recesses:

With sufficient support from the political leaders and whips a mandatory seminar could, for example, be scheduled for two hours during an adjournment of the Houses during the first week back after the summer recess and winter recesses. That would help facilitate full attendance and participation.<sup>79</sup>

**4.19** A further issue raised by the Clerk was the phenomenon of recent prosecutions for and the emergence of case law about the offence of misconduct in public office following investigations by the Independent Commission Against Corruption in relation to particular members. In light of those developments the Clerk foreshadowed that he would be seeking to engage a suitably qualified expert such as a legal academic to prepare a brief document on the offence of misconduct in public office for inclusion in the induction package for new members in 2019.

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<sup>75</sup> Submission 1, Clerk of the Parliaments, Attachment, 'Education for Members of Parliament', 2 December 2014, letter from the Clerk of the Parliaments and the Clerk of the Legislative Assembly to the Chair of the Panel of Experts- Political Donations, pp 4-5.

<sup>76</sup> Recommendation 50 of the Final Report was in the following terms: "That: (a) Members of Parliament be required to attend a mandatory induction and continuing education program delivered by the NSW Parliament, with non-participation to result in the following penalties: (i) failure to attend annual seminar – withhold a portion of a party's administration funding (for an endorsed Member) and/or some part of a Member's entitlements; and (ii) failure to complete the online education module on ethics – withhold a Member's first salary payment pending completion. (b) the Premier refer this recommendation to the Parliamentary Remuneration Tribunal for a special determination!": Panel of Experts – Political Donations, *Political donations, Final Report*, Volume 1, December 2014, Recommendation 50, p 141.

<sup>77</sup> NSW Government, 'Final Report of the Panel of Experts - Political Donations Government Response', Attachment A, p 14.

<sup>78</sup> Joint Standing Committee on Electoral Matters, *Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's response*, Report 1/56 – June 2016, paragraphs 9.66-9.67.

<sup>79</sup> Submission 1, Clerk of the Parliaments, p 3.

The Clerk also suggested that the offence of misconduct in public office and investigations by the Independent Commission Against Corruption in relation to members' conduct might be the sorts of topics that could usefully be presented at mandatory continuing education seminars.<sup>80</sup>

## Committee comment

- 4.20** The Clerk's submission to this review contains useful ideas on strategies to enhance the effectiveness of the educative work currently being undertaken in relation to members' ethics. The committee is particularly supportive of initiatives which combine formal training mechanisms such as seminars with practical steps to enhance engagement such as seeking the collaboration of party leaders and whips and scheduling training on days when members will already be present at Parliament House.
- 4.21** The committee endorses the ideas outlined in the Clerk's submission as to the types of issues which could be addressed in ethics seminars. Further, the committee believes that the Clerk's proposal of engaging an expert to prepare material on the offence of misconduct in public office will be a valuable addition to the 2019 induction program.
- 4.22** The committee also supports the expansion of the current ethics training regime, which is entirely voluntary, to incorporate an element of greater transparency to encourage greater participation by members. In the committee's view a suitable point of leverage to enhance participation would be to publicly report on attendances at seminars and completion of online training.
- 4.23** The committee notes that there are other options which could be pursued to promote participation in ethics training, involving financial penalties, but that such options raise complex issues. Denying members access to an aspect of their entitlements would require a referral to the Parliamentary Remuneration Tribunal, as was noted by the Panel of Experts – Political Donations in 2014. The idea of docking a member's pay in the event of non-participation raises the question of the nature of the House's powers to discipline its members which do not extend to punitive action unless supported by legislation. By contrast the public reporting of members' participation in seminars and online programs could easily be implemented.

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<sup>80</sup> Submission 1, Clerk of the Parliaments, p 3.

4.24 The committee therefore recommends:

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**Recommendation 6**

- That the Clerk of the Parliaments schedule an ethics seminar for new and re-elected members during the first sitting week following the summer recess and the first sitting week following the winter recess in 2019
  - That the ethics seminars include refresher sessions on the Code of Conduct and the pecuniary interests Regulation, updates on any relevant investigations by the Independent Commission Against Corruption, and updates on any changes to electoral funding requirements
  - That, prior to each ethics seminar, the Clerk of the Parliaments write to party leaders and whips to seek their support in encouraging members to attend
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**Recommendation 7**

- That the Department of the Legislative Council report on members' attendance at the induction and refresher ethics seminars in its annual report or on the Legislative Council website.
  - That the Department of the Legislative Council report on members' completion of any online ethics training module provided for members in its annual report or on the Legislative Council website.
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## Appendix 1 The current Code of Conduct for Members

1. 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.

2. That this resolution has continuing effect unless and until amended or rescinded by resolution of the House.

## Appendix 2 Draft Code of Conduct for Members recommended by the Assembly committee

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.

### 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.

### 5 Limitation on breach of Code

This code is not breached by reason of a benefit or interest that could be or was advanced or 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.

## OPENESS AND ACCOUNTABILITY

**6 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*

**7 Conflicts of interest**

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.

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.*

## **8 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 *Electoral Funding Act 2018*.

*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

### 9 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.



## Appendix 3 Correspondence from ICAC and the Auditor-General



The Hon Natasha McLaren-Jones MLC  
Chair  
NSW Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Our ref: AD18/0059  
Contact: Lewis Rangott  
Telephone: 8281 5822

**BY EMAIL:** [steven.reynolds@parliament.nsw.gov.au](mailto:steven.reynolds@parliament.nsw.gov.au)

13 October 2018

Dear Ms McLaren-Jones

### **Review of Members' Code of Conduct and Constitution (Disclosures by Members) Regulation 1983**

I refer to your letter of 4 October 2018 and the queries of the Privileges Committee concerning practical issues with reform to disclosure of related parties' interests.

The Commission's response to the questions raised is as follows:

- 1. If a member's spouse does not wish to disclose details when requested by the member, what will then happen? Should there be a penalty applying to the member, who is not able to compel their partner? Or would a penalty be imposed on the partner, who is not elected and has not chosen their partner's occupation?*

The Commission is of the view that a member must take active steps to inform themselves of their partner's interests and cannot absolve themselves of their responsibility through simple ignorance. Where a partner either refuses to disclose their interests to the member (or advises the member they are making a partial disclosure only), the member is expected to disclose this fact.

The objective of this change is to remove the loophole that enables a member to put interests into a spouse or other entity's name in an attempt to conceal them. Consideration of perceived conflicts of interest and maintaining public confidence in discretionary decisions held by members is critical. The obligation to report relevant interests thus resides with a member, irrespective of whether their spouse is reluctant for their interests to be reported.

It is important to establish clear expectations that a member will take all reasonable steps to elicit information from their spouse as to their interests, ideally before the member is elected. Clarity up front on the transparency expected will assist members to manage concerns expressed by spouses.

Note that a member cannot take steps to mitigate any conflict of interest risks if they do not know their spouse's interests. Enshrining in regulation a power to compel a spouse is unnecessary and unworkable. Whether a member has taken all reasonable steps to elicit relevant information and being honest and forthright in their declarations is the important consideration when determining if a breach has occurred.

**Sensitive**

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2. *Should interests of former spouses be required to be disclosed in situations where a couple may be separated or estranged?*

Each situation needs examination on its merits. The fact of separation or estrangement may not mean that the interests of the spouse are no longer those of the member. The key point is whether or not there is a clear separation of all previously shared economic units and other interests. Whether there such a separation is dependent on the individual circumstances applicable.

3. *Members are required to make supplementary returns when their financial situation changes. Should spouses and children have an obligation to also make supplementary returns? This is an onerous obligation when they are not the elected member. If the obligation is on the member how will they know when to ask, particularly if the partner has an active business interests?*

The principle requiring focus is that the interests of the member, including those of spouses and children, should not conflict with their public duty. The obligation to ensure that this principle is upheld lies with the member, not individuals within their family unit. Members should take all reasonable steps to disclose any changes to interests held by individuals within their family unit, and this disclosure should be made immediately for significant changes and at prescribed frequencies for minor changes.

4. *What is the view of the Commission regarding alternatives in which partners interests are disclosed to a confidential independent source? For example, in 2014 the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics recommended that members disclose the interests of their spouses/partners and dependent children privately to the parliamentary officer appointed as Ethics Commissioner, and Senators disclose to a Senate Committee of Senators' Interests.*

A separation of the disclosure regime creates the risk that a disclosure entity may not be able to see the complete picture that applies to a member's interests. For instance, if there are two disclosure entities, neither can provide fully informed advice on the appropriate measures for managing any potential or actual conflicts of interest. Strict procedures and controls for managing the confidentiality of information disclosed to a given entity can manage risks associated with all disclosure information being held by one entity.

5. *A member may have close family members who are not their spouse or child, or instead use their family lawyer or accountant to nominally control business interests which might reasonably be expected to profit from a decision in which a member has a role. Will a requirement be effective if it requires disclosure of immediate family members, but not family members in the area of close kinship (especially from cultures which see the business interests of an extended family to be congruent with their own interests)?*

The interests of the member can extend beyond immediate family.

The issue raised in this question is mostly addressed through education and awareness training together with clear guidelines on what constitutes an interest, an economic unit, membership of particular groups and arrangements such as family trusts, partnerships and company structures.

You may wish to consider the guidelines issued by the US House of Representatives Committee on Ethics, which include three criteria for exemption to spouse and dependent disclosures (knowledge, independence and benefit tests)<sup>1</sup>. Appendix A of these guidelines

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**Sensitive**

<sup>1</sup> Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports, Calendar Year, p14 and Appendix A at:  
[https://ethics.house.gov/sites/ethics.house.gov/files/CY%202017%20Instruction%20Guide%20for%20Financial%20Disclosure%20Statements%20and%20PTRs\\_0.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/CY%202017%20Instruction%20Guide%20for%20Financial%20Disclosure%20Statements%20and%20PTRs_0.pdf)

include extracts from the US Ethics in Government Act which deal with financial disclosures of federal personnel. These incorporate a penalty regime that applies to persons knowingly and wilfully making a false disclosure or failing to report required information.

As set out in paragraphs 5 to 16 of the Commission's submission to the Committee, there is also an important distinction between disclosing private financial interests and disclosing conflicts of interest as they arise. Addressing this distinction may alleviate concern about when and how information about members' private interests should be made public.

Should you or your staff wish to discuss this matter, please contact Lewis Rangott, Executive Director, Corruption Prevention on (02) 8281 5822 or [lrangott@icac.nsw.gov.au](mailto:lrangott@icac.nsw.gov.au).

Yours sincerely



**The Hon Peter Hall QC**  
**Chief Commissioner**

**Sensitive**





Hon. Natasha Maclaren-Jones MLC  
Chair  
Privileges Committee, NSW Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Contact: Barry Underwood  
Phone no: 9275 7101  
Our ref: D1825979

24 October 2018

Dear Chair

Thank you for your correspondence of 4 October where you have requested advice to assist the committee in its review of the Members Code of Conduct and Constitution (Disclosures by Members) Regulation 1983.

My responses to your specific questions draw on the experience of my Office from auditing related party disclosures in the Total State Sector Accounts and the financial statements of State agencies and local councils. Our decisions and work in this area are based on the Australian Accounting Standard AASB124 'Related Party Disclosures' and the NSW Treasury Circular on 'Related Party Disclosures - TC16-12. My answers to your questions are substantially informed by the requirements and guidance in these two documents.

1. *If a member's spouse does not wish to disclose details when requested by the member, what then happens? Will there be a penalty applying to the member, who is not able to compel their partner? Or will a penalty be imposed on the partner, who is not elected and has not chosen their partner's occupation?*

Any disclosure is made to the best of the Member's knowledge and belief. If a family member refuses to disclose details, there is no need to compel or penalise either the partner or the Member. However, Members should disclose if information has been requested and a close family member refused to provide information.

2. *Will interests of former spouses be required to be disclosed in situations where a couple may be separated or estranged?*

An estranged spouse cannot be expected to influence, or be influenced by the Member and would not therefore fall within the definition of a 'close family member'.

3. *Members are required to make supplementary returns when their financial situation changes. Will spouses and children have an obligation to also make supplementary returns? This is an onerous obligation when they are not the elected member. If the obligation is on the member how will they know when to ask, particularly if the partner has an active business interests?*

Members should make a supplementary return when their circumstances change, or when they become aware that their close family member's circumstances change. If the Member can confidently make accurate and complete disclosure themselves in a supplementary return, there is no need to request supplementary disclosures from close family members.

4. *Is there an alternative in which partners interests are disclosed to a confidential independent source. For example, in 2014 the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics recommended that members disclose the interest of their spouses/partners and dependent children privately to the parliamentary officer to be appointed as Ethics Commissioner.*

The Audit Office has no view on this proposal, other than disclosures made in this way be documented, and that the Audit Office has access to those disclosures.

5. *A member may have close family members who are not their spouse or child, or instead use their family lawyer or accountant to nominally control business interests which might reasonably be expected to profit from a decision in which the member has a role. Will a requirement be effective if it requires disclosure of immediate family members, but not family members in the area of close kinship (especially those from cultures which see the business interests of an extended family to be congruent with their own interests)?*

The definition of a close family member is principles-based and is not confined to immediate family members. If a member of a Member's extended family is in a position to influence, or be influenced by the Member, then disclosures will be required. If a lawyer or accountant acts as the Members nominee or agent, then they act as if they are the member themselves and any related party transactions they enter into on behalf of the Member are disclosable.

The following extract from TC16-12 may help with interpretation:

Close family members of a person are those family members who may be expected to influence, or be influenced by that person in their dealings with the entity. Unless estranged, this includes:

- that person's children and spouse or domestic partner
- children of that person's spouse or domestic partner
- dependants of that person, or that person's spouse or domestic partner (AASB 124 para 9).

Other family members (such as siblings, parents or an extended family member) of a person may be caught by the above definition if the family member has the ability to influence, or be influenced by that person. Agencies will need to apply judgement to determine whether there is evidence of sufficient influence.

To assist in making these assessments, Treasury has determined that:

- Children include step, adoptive, dependant, non-dependant, adult children and children not living at home (unless they are estranged).
- Spouse or domestic partner includes married, de facto, civil union partnerships, but excludes separated or divorced spouses or partners.

I trust that this information is of assistance to the Committee. Please feel free to contact Barry Underwood, Director, Office of the Auditor-General should you wish to discuss this matter further.

Kind regards



Margaret Crawford  
Auditor-General of NSW



## Appendix 4 Submissions

No	Author
1	Legislative Council of New South Wales
2	Audit Office of New South Wales
3	NSW Independent Commission Against Corruption
4	Department of Premier and Cabinet
5	The Parliamentary Ethics Advisor

## Appendix 5 Minutes

### Minutes No. 5

Thursday 15 March 2018

President's Dining Room, Parliament House, Sydney, at 1.03 pm

#### 1. Members present

Mr Mason-Cox, *Chair*

Mr Primrose, *Deputy Chair*

Mr Donnelly

Dr Faruqi

Mr Khan

Mrs Maclaren-Jones

Revd Mr Nile

Dr Phelps

#### 2. Previous minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes no. 4 be confirmed.

#### 3. \*\*\*

#### 4. \*\*\*

#### 5. New inquiry – Review of the Members' Code of Conduct 2018

Resolved, on the motion of Mr Donnelly:

- That the committee adopt an inquiry into the Members' Code of Conduct together with any relevant aspects of the pecuniary interest disclosure regime for members under the Constitution (Disclosures by Members) Regulation 1983.
- That the chair report the terms of reference to the House.
- That the secretariat prepare a briefing paper on past developments, including the recent discussion paper by the Legislative Assembly's Standing Committee on Privilege and Ethics, and options for the conduct of the inquiry.

#### 6. \*\*\*

#### 7. \*\*\*

#### 8. Adjournment

The committee adjourned at 1.25 pm *sine die*.



Madeleine Foley  
**Clerk to the Committee**  
**Minutes No. 7**

Thursday 24 May 2018  
President's Dining Room, Parliament House, Sydney, at 1.03 pm

**1. Members present**

Mrs Maclaren-Jones, *Chair*  
Mr Primrose, *Deputy Chair*  
Dr Faruqi  
Mr Mallard  
Dr Phelps

**2. Apologies**

Mr Donnelly, Mr Khan and Revd Mr Nile.

**3. Previous minutes**

Resolved, on the motion of Dr Phelps: That draft minutes no. 6 be confirmed.

**4. \*\*\***

**5. Review of the Members' Code of Conduct 2018**

The committee noted the discussion paper prepared by the secretariat concerning the background to and conduct of the current review and the analysis of the revised Code proposed by the Legislative Assembly's Standing Committee on Privilege and Ethics.

Resolved, on the motion of Mr Primrose:

That:

1. The committee circulate its discussion paper and seek submissions on the issues identified in the discussion paper, which the committee may wish to progress as part of its 2018 review.
2. That the following stakeholders be invited to make submissions:
  - Members of the Legislative Council
  - Clerk of the Parliaments
  - Chair, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics
  - Professor Anne Twomey, University of Sydney
  - Independent Commission Against Corruption

- NSW Ombudsman
  - Department of Premier and Cabinet
  - Parliamentary Ethics Adviser
  - St James Ethics Centre
  - Audit Office of New South Wales.
3. That the closing date for submissions be 27 July 2018.

## 6. Adjournment

The committee adjourned at 1.25 pm.

Madeleine Foley  
**Clerk to the Committee**

## Minutes No. 8

Thursday 21 June 2018  
Room 1136, Parliament House, Sydney, at 1.20 pm

### 1. Members present

Mrs Maclaren-Jones, *Chair*  
Mr Primrose, *Deputy Chair*  
Mr Donnelly  
Dr Faruqi  
Mr Khan  
Mr Mallard  
Revd Mr Nile  
Dr Phelps

### 2. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes no. 7 be confirmed.

### 3. Correspondence

The committee noted the following items of correspondence:

***Sent:***

- 31 May 2018 – Email from Chair, to stakeholders, including all members of the Council, the Clerk of the Parliaments, and the Chair, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, circulating the discussion paper and inviting submissions to the Review of the Members' Code of Conduct 2018.

***Received:***

- \*\*\*

## 4. \*\*\*

**Adjournment**

The committee adjourned at 1.33 pm.

Madeleine Foley  
**Clerk to the Committee**

**Minutes No. 9**

Thursday 16 August 2018  
 Room 1136, Parliament House, Sydney, at 1.05 pm

**1. Members present**

Mrs Maclaren-Jones, *Chair*  
 Mr Primrose, *Deputy Chair*  
 Mr Donnelly  
 Mr Khan  
 Mr Mallard  
 Revd Mr Nile  
 Dr Phelps

**2. Previous minutes**

Resolved, on the motion of Mr Mallard: That draft minutes no. 8 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 20 July 2018 – submission to the committee's inquiry into the Review of the Members Code of Conduct, from the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption.

- 25 July 2018 – submission to the committee's inquiry into the Review of the Members Code of Conduct, from Mr David Blunt, Clerk of the Parliaments, NSW Legislative Council.
- 27 July 2018 – submission from Ms Margaret Crawford, Auditor General of NSW, Audit Office of NSW.
- 3 August 2018 – submission from Mr Tim Reardon, Department of Premier and Cabinet.

#### **4. Review of Members Code of Conduct**

The Chair briefed the committee on options regarding the conduct of the review.

The committee deliberated.

Resolved, on the motion of Mr Mallard: 'That in light of the ICAC's submission to the inquiry, further consideration be given at a future meeting as to what approach the committee will take with respect to the Legislative Assembly' committee's recommenced rewrite of the Members Code of Conduct.

#### **5. Adjournment**

The committee adjourned at 1.10 pm.

Steven Reynolds  
**Clerk to the Committee**

#### **Minutes No. 10**

Wednesday 26 September 2018  
Room 1043, Parliament House, Sydney, at 1.03 pm

#### **1. Members present**

Mrs Maclaren-Jones, *Chair*  
Mr Primrose, *Deputy Chair*  
Mr Donnelly  
Ms Faehrmann  
Mr Khan  
Mr Mallard  
Revd Mr Nile  
Dr Phelps

#### **2. Previous minutes**

Resolved, on the motion of Dr Phelps: That draft minutes no. 9 be confirmed.

#### **3. \*\*\***

4. \*\*\*

5. **Review of Members' Code of Conduct**

The committee considered a briefing paper on options to guide the preparation of the Chair's draft report circulated with the meeting papers.

The committee deliberated.

Resolved, on the motion of Dr Phelps: That the Chair's draft report note the Assembly's committee's proposed rewrite of the Code of Conduct but the committee come to its own conclusions on any changes it wishes to make to the Code and not use the Assembly committee's Code as the basis for its review and report.

Resolved, on the motion of Dr Phelps: That the committee support the Clerk's advised intent to publish future returns on the web to be consistent with the Legislative Assembly.

Resolved, on the motion of Mr Primrose:

- That the committee write to ICAC and the Auditor-General noting their support for the disclosure of related parties' interests and this committee's 2014 recommendations to that effect but raising specific questions about the practical implementation of such recommendations.
- That the letter be circulated to the committee prior to being sent.

6. **Adjournment**

The committee adjourned at 1.46 pm.

Steven Reynolds  
**Clerk to the Committee**

**Draft Minutes No. 11**

Thursday 15 November 2018  
 Room 814/815, Parliament House, Sydney, at 1.00 pm

1. **Members present**

Mr Mason-Cox, *Chair*  
 Mr Primrose, *Deputy Chair*  
 Mr Donnelly  
 Ms Faehrmann  
 Mr Khan  
 Mrs Maclaren-Jones  
 Revd Mr Nile

Dr Phelps

**2. Previous minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes no. 10 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Sent:***

- 4 October 2018 – to Hon Peter Hall QC, Chief Commissioner, ICAC
- 4 October 2018 – to Ms Margaret Crawford, Attorney General - Review of the Members' Code of Conduct and Constitution (Disclosures by Members) Regulation 1983
- 4 October 2018 – to Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics - Review of the Constitution (Disclosures by Members) Regulation 1983

***Received:***

- 23 October 2018 – From Hon Peter Hall QC, Chief Commissioner, ICAC – Review of the Members' Code of Conduct and Constitution (Disclosures by Members) Regulation 1983
- 24 October 2018 – From Ms Margaret Crawford Attorney General – Response to Review of the Members' Code of Conduct and Constitution (Disclosures by Members) Regulation 1983 questions

**4. Review of Members' Code of Conduct 2018 - consideration of Chair's draft report**

The Chair submitted his draft report entitled *Review of the Members' Code of Conduct 2018*, which, having been previously circulated was taken as being read.

Mr Phelps moved: That paragraphs 3.58, 3.59 and 3.60 and Recommendations 4 and 5 be omitted.

The committee deliberated.

Question put.

The committee divided.

Ayes: Dr Phelps, Mrs Maclaren-Jones.

Noes: Mr Donnelly, Ms Faehrmann, Mr Khan, Mr Mason-Cox, Revd Mr Nile, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That:

- The draft report be the report of the committee and that the committee present the report to the House;
- The submissions and correspondence relating to the inquiry be tabled in the House with the report;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

**5. Parliamentary Ethics Adviser**

Under paragraph 10 of the resolution appointing the Parliamentary Ethics Adviser, the committee met with the Adviser, Mr John Evans, to discuss his *Annual Report 2017-2018*.

**6. Adjournment**

The committee adjourned at 1.42 pm.

Steven Reynolds  
**Clerk to the Committee**