



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

**Background Paper No. 2:
Disclosure of the interests of members' spouses/partners and dependent children**

Recommendation 24 of the ICAC

- 1.1 In October 2013, the Independent Commission Against Corruption (ICAC) released a report entitled *Reducing the opportunities and incentives for corruption in the State's management of coal resources*. The report is available on the website of the ICAC at www.icac.nsw.gov.au.
- 1.2 Chapter 6 of the report contained recommendations concerning the conduct of members of parliament and ministers. Recommendation 24 was as follows:

That the NSW Parliament's Legislative Council Privileges Committee conducts a new inquiry into the mechanism for elected members to disclose the interests of their spouses/partners and dependent children under the provisions of the Constitution (Disclosures by Members) Regulation 1983, with a view to making third party disclosures a requirement.
- 1.3 While the recommendation was directed to the Legislative Council Privileges Committee, the two Houses of the Parliament have referred the recommendation to both the Legislative Council Privileges Committee and the Legislative Assembly Privileges and Ethics Committee for inquiry and report.

Background to the ICAC recommendation

The ICAC findings arising out of Operation Jasper

- 1.4 In July 2013, the ICAC reported to Parliament on its investigation concerning Operation Jasper. The investigation concerned the circumstances surrounding a decision made in 2008 by the Hon Ian Macdonald MLC, then minister for primary industries and minister for mineral resources, to grant a coal exploration license at Mt Penny in the Bylong Valley in the Western New South Wales Coalfield. The report included findings that:

- Mr Macdonald had engaged in corrupt conduct in relation to the creation of the Mt Penny tenement.
- The corrupt conduct was motivated by an agreement between Mr Macdonald and another member of the Legislative Council, the Hon Edward Obeid, to financially benefit the Obeid family.
- Mr Macdonald and Mr Obeid had engaged in corrupt conduct by conspiring to defraud in relation to the creation of the Mt Penny tenement.

1.5 In October 2013, in its report entitled *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, the ICAC noted that Operations Jasper (and Acacia) had highlighted shortcomings in the accountability framework governing the conduct of ministers and members. In relation specifically to the disclosure of the interests of members' spouses/partners and dependent children, the ICAC focused not only on the actions of Mr Obeid Senior, but other members of the Obeid family, notably Moses Obeid. The ICAC found that:

Edward Obeid Sr also did not declare interests in the Mount Penny area, effectively hiding his actions and those of Mr Macdonald from public scrutiny. These behaviours bring into question the adequacy of parliamentary control over the behaviour of its members and the degree to which this contributed to the corrupt conduct that occurred. ...

The current Register of Disclosures for members is also limited, in that there is no requirement for members to disclose family interests.¹

The current arrangements for the disclosure of interests of members' spouses/partners and dependent children in New South Wales

1.6 Under the current interest disclosure regime for members of New South Wales Parliament, there is no requirement for members to disclose the interests of their spouse, domestic partner or any other family member. The *Constitution (Disclosures by Members) Regulation 1983* only requires the disclosure of interests held by members themselves.

1.7 However, some provisions of the *Constitution (Disclosures by Members) Regulation 1983* may result in the disclosure of interests which are held by partners or other family members. For example, income from a trust, under clause 9(2)(d) of the Regulation, could include income from a family trust. Interests and positions in corporations, under clause 12, could include shareholdings or offices in family companies. Dispositions of property, under clause 15, could include the disposition of property to a family member.

1.8 In addition to these forms of indirect disclosure, members may choose to disclose interests held by a member of their family, by way of a discretionary disclosure under

¹ ICAC, *Reducing the opportunities and incentives for corruption in the State's management of coal resources*, October 2013, p 41.

clause 16 of the Regulation. However, leaving aside indirect and discretionary disclosures, there is no provision for the disclosure of the interests of family members.

The previous interest disclosure regime in New South Wales

- 1.9 It is notable that in November 1979, following an inquiry by a joint committee upon pecuniary interests, the Parliament of New South Wales established by resolution of both Houses an interest disclosure regime which did require the disclosure of the interests of members, their spouses, and infant children. However, in November 1980, the resolutions of the Houses establishing the registers of interests were rescinded following legal advice that the Houses did not have the power to establish an enforceable scheme for the disclosure of members' interests in the absence of legislative authority. It is not clear why the provision of the 1979 resolution relating to the disclosure of the interests of members' spouses and infant children were dropped when the current regime was adopted in 1983.

The arrangements for the disclosure of interests of members' spouses/partners and dependent children in other Australian Parliaments and the New Zealand Parliament

- 1.10 There is considerable variation between Parliaments around Australia concerning disclosure of the interests of members' spouses/partners or dependent children.
- 1.11 Five Parliaments *require* the disclosure of partners' and children's interests in the register. Those five parliaments are the Commonwealth, Queensland, South Australia, Australian Capital Territory and Northern Territory. In each case, members are only required to disclose interests of which the member is *aware*, or which are ascertainable by the exercise of reasonable diligence.
- 1.12 Certain Parliaments take steps to protect the privacy of members' spouses/partners and dependent children.
- 1.13 In the Senate, the disclosures concerning partners and dependent children are accessible only by the Committee on Senators' Interests except if that Committee considers that a conflict of interest arises in which case the Committee may table the relevant statement of disclosures in the Senate. In Queensland, a separate 'Register of Related Persons' Interests' is maintained which is not tabled in the House and is only accessible to certain specified officials. In South Australia, interests of partners and dependent children may be disclosed in such a way that does not distinguish between those interests and the interests of the member.
- 1.14 One Australian Parliament, the Victorian Parliament, requires only limited disclosure of interests of members' spouses/partners and dependent children. Members are required to disclose interests of a member of his or her family of which the member is aware and which the member considers might appear to raise a material conflict between his or her private interest and his or her public duty as a member.

- 1.15 There are two other Australian Parliaments (in addition to the New South Wales Parliament) that do not require the disclosure of the interests of members' spouses/partners or dependent children: the Western Australian Parliament and the Tasmanian Parliament. The New Zealand Parliament also does not require the disclosure of family interests.
- 1.16 Parliaments also have varying mechanisms for dealing with breaches of disclosure requirements.

Submissions sought

- 1.17 The Legislative Council Privileges Committee and Legislative Assembly Privileges and Ethics Committees seek submissions addressing the following issues:
- The merits or otherwise of the disclosure of the interests of members' spouses/partners and dependent children
 - Appropriate mechanisms for the disclosure of the interests of members' spouses/partners and dependent children, including means of protecting the privacy of members' spouses/partners and dependent children.