

# submission

Submission by Privacy NSW to

*New South Wales Legislative Council Privileges Committee  
New South Wales Legislative Assembly Privileges and Ethics  
Committee*



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Thr Clerk to the Committee  
New South Wales Legislative Council Privileges Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

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Thr Clerk to the Committee  
New South Wales Legislative Assembly Privileges & Ethics  
Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**Re: Review of the Code of Conduct for Members of the New South Wales Parliament**

Privacy NSW is pleased to be able to make this submission to the New South Wales Legislative Council Privileges Committee and the New South Wales Legislative Assembly Privileges & Ethics Committee.

Privacy NSW is the Office of the NSW Privacy Commissioner. The Privacy Commissioner is the holder of an independent statutory office, created by Parliament under the *Privacy and Personal Information Protection Act 1998* (PPIP Act). The functions of the Privacy Commissioner include making public statements about matters relating to the privacy of individuals generally, and publishing reports and making recommendations about any matter that concerns the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of individuals.

**Code of Conduct**

The PPIP Act does not regulate the actions of Members of Parliament or any individuals acting in their private capacity. It only applies to NSW public sector agencies. It is our understanding that neither the Assembly or the Council are public sector agencies for the purpose of the PPIP Act. This means that the information collected from Members of Parliament for the purpose of compilation in the Register of Disclosures by Members under the *Constitution (Disclosures by Members) Regulation 1983 (the Regulation)*, will not be subject to the Information Protection Principles in Part 2 or the Public Register Provisions in Part 6 of the PPIP Act.

The lack of privacy regulation, coupled with the freedom of expression offered by parliamentary privilege mean that Members of Parliament are in a position to collect, use and disclose personal information about their constituents in a manner which in might otherwise lead to a privacy complaint.<sup>1</sup> We therefore endorse the operation of

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<sup>1</sup> For instance see :

[http://www.lawlink.nsw.gov.au/lawlink/privacynsw/ll\\_pnsw.nsf/pages/PNSW\\_08\\_specialrpt070502](http://www.lawlink.nsw.gov.au/lawlink/privacynsw/ll_pnsw.nsf/pages/PNSW_08_specialrpt070502)



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the Code of Conduct and suggest the inclusion of a statement which requires that Members of Parliament consider and attempt to lessen the impact of their dealings with personal information upon the privacy of their constituents.

### **On-line Access to the Register of Disclosures**

We note the proposal in the Public Discussion Paper to allow on-line access to the Register of Disclosure (the Register) by members on the Parliamentary website. In our advice to public sector agencies we suggest a cautious approach to making any information about individuals available via the internet. This is because the internet allows the user immediate access to information which, if particularly sensitive or intrusive could enable opportunistic use of the information in a way which could prove harmful to the individual to whom the information relates or to third parties who have a connection with that individual. The temporal and physical limitations of the current access regime lessen this likelihood.

In light of this and given, the lack of protection and remedy for personal information relating to Members of Parliament and relevant third parties under privacy law, we suggest that if the Committee decides to amend the Regulation to allow on-line access to the Register, it should also consider building in certain privacy protections. By way of analogy, section 57(1) of the PPIP Act provides that the agency responsible for keeping a 'public register' (as defined) must only disclose personal information kept in the register if the agency is satisfied that the purpose for which the information is accessed is consistent with the purpose for which the register was kept. Section 57(2) provides that in order to do this the responsible agency 'may require any person who applies to inspect personal information contained in the public register to give particulars, in the form of a statutory declaration, as to the intended use of any information obtained from the inspection'.

We recognise the public interest in allowing scrutiny of pecuniary interests and we do not suggest that the Regulation proscribe the intended uses of the information, however, we suggest the Regulation could include a requirement for interested parties who wish to access the information via the internet to lodge an on-line application form, requiring a name and a return email address. This would go some way to establishing the bona fides of the interested party and thereby limit the possibility that the information could be used for the purpose vilification or harassment. We also suggest that there be a processing time to allow for consideration not only by the Speaker, the President or their nominated representative, but also for consideration by the applicant prior to using the information.

Further, we suggest that there be consideration given to an amendment similar to that in section 58 of the PPIP Act to allow for consideration of the suppression of certain information not only from on-line access, but also from public inspection, in circumstances where access to the general public might place a Member of Parliament or any other third party at risk of harm. We suggest that this might be effected by requiring the Speaker, the President, or their nominated representative to consider whether the public interest in requiring public access to the information 'outweighs any individual interest in suppressing the information'. We suggest that



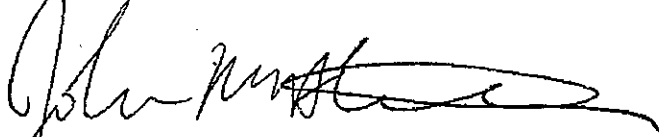
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any such provision to permit suppression should be subject to any other lawful requirement to disclose the information.

Finally, we suggest that any changes to the Register access regime be made very clear to Members of Parliament and to any third parties whose personal information appears in the register. This could possibly take the form of a notification at the commencement of each session of Parliament, followed by a written confirmation of the contents of the register sent to the individual concerned with an opportunity to confirm the information within a set period of time.

We thank you for the opportunity to provide a submission on these matters. Please contact Ms Jenner of this Office on (02) 8019 1603 if you have any queries regarding this matter.

Kind regards



John McAteer

Acting Privacy Commissioner



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