



Office of the Inspector
of the Independent Commission Against Corruption



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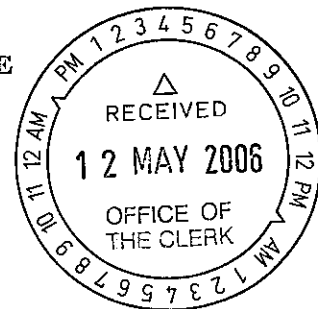
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10 May 2006

RECEIVED

12 MAY 2006

LEGISLATIVE
COUNCIL



Chair
Legislative Council Privileges Committee
Parliament House
Macquarie Street,
Sydney NSW 2000

Dear Mr Primrose,

Thank you for your letter dated 19 April 2006 inviting me to comment on the latest review of the Code of Conduct for Members ("the Code").

I have one general comment on paragraph 1 of the Code.

It is not immediately obvious to me why similar rules should not apply to Members in similar circumstances as those that apply to directors of public companies under sections 191 and 195 of the Corporations Act 2001.

The main differences between the obligations of public company directors under these provisions and the obligations of Members under paragraph 1 of the Code are:

1 Section 191 of the Corporations Act is in terms *unqualifiedly mandatory* in its obligation to make disclosure as soon as practicable after the director becomes aware of a material personal interest in a relevant matter. Further, *strict liability* applies to a failure to make the required disclosure.

In comparison, paragraph 1 of the Code obliges a Member merely *to take all reasonable steps* to declare their interests.

2 Section 191 applies to all *material personal interests*. In comparison, paragraph 1 of the Code merely applies to *private financial interests*.

3 Section 195 provides that a public company director who has a material personal interest in a matter under consideration at a directors' meeting (a) *must not be present while the matter is being considered at the meeting*; and (b) *must not vote on the matter*.

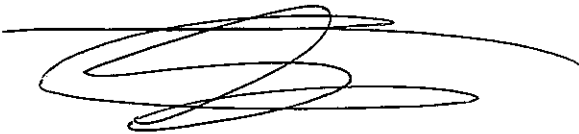
Sub-section 195(2) provides an exception if all other non-conflicted directors, being informed of the nature and extent of the director's interest and its relationship with the affairs of the company, are satisfied that the interest should not disqualify the director from voting or being present.

In comparison, paragraph 1 of the Code merely requires a Member *to declare* the relevant interest, without any requirement to be absent from discussion or to refrain from voting on the matter.

There is an interest, from a corruption prevention perspective, in similar rules applying in similar circumstances. In this regard, I observe that it has now long been accepted, in the public company context, that mere general disclosure provisions are not sufficient to avoid inappropriate conflicts of interest.

The Privileges Committee may, therefore, wish to consider whether a similar regime should apply to Members.

Yours sincerely,



Graham Kelly
Inspector