



INDEPENDENT COMMISSION AGAINST CORRUPTION

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Date: 18 August 2006 No of Pages Following: _____

ICAC File No. Z06/0104

Message:

Please find attached the letter from the ICAC Commissioner to the Hon. Peter Primrose MLC, Chair, Privileges Committee providing our comments on Draft regulation on disclosure of pecuniary interests.

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INDEPENDENT COMMISSION AGAINST CORRUPTION

The Hon. Peter Primrose MLC
Chair, Legislative Council Privileges Committee
Parliament House
Macquarie Street
Sydney NSW 2000

Our Ref: Z06/0104

Dear Sir,

RE: Draft regulation on disclosure of pecuniary interests

I thank you for giving the Commission an opportunity to comment on the draft Constitution (Disclosures by Members) Amendment Regulation 2006.

The Commission welcomes the proposed changes to the pecuniary interest disclosure regime for Members of Parliament.

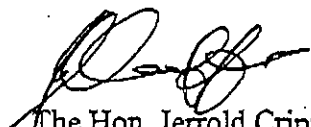
The Commission provides a submission on the proposed amendments which is attached. The most significant issue on which the Commission has a different view to the Committee concerns the disclosure procedure provided by the draft Regulation. The Commission agrees that Members should be required to make an initial disclosure (i.e. a primary return) of all pecuniary interests as defined by the Draft Constitution (Disclosure by Members) Amendment Regulation 2006. However the Commission does not agree with the proposal requiring Members to submit an ordinary return (as set out in Form 2 in the schedule which requires the Member to re-state their full list of pecuniary interests) every six months.

The Commission is of the view that it would be less cumbersome for Members if after lodging their primary return, the requirement was for Members to register any new interests, or changes in current interests within 30 calendar days of the new interest commencing or a current interest being amended. Accepting that Members may genuinely overlook a new or change in interest it would be beneficial to adopt a system which requires Members on a regular basis (e.g. every six or twelve months) to confirm within a specified period (e.g. 30 days) that their disclosed pecuniary interests remain unchanged or declare any changed or new interests. The success of such a procedure would in part rely on Members having

electronic access to the Pecuniary Interest Register to allow quick and easy review of what has previously been disclosed.

The Commission hopes the Committee will take the above suggestions and other matters raised in the Commission's submission into account as part of its review.

Yours faithfully



The Hon. Jerrold Cripps QC
Commissioner

Date: 18/6/06

**INDEPENDENT COMMISSION AGAINST
CORRUPTION**

SUBMISSION

TO THE

PARLIAMENT OF NEW SOUTH WALES

**LEGISLATIVE ASSEMBLY STANDING COMMITTEE
ON PARLIAMENTARY PRIVILEGE AND ETHICS**

&

LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE

ON THE

**DRAFT CONSITUTION (DISCLOSURES BY MEMBERS)
AMENDMENT REGULATION 2006**

AUGUST 2006

INTRODUCTION

This submission has been prepared by the Independent Commission Against Corruption ("the Commission") in response to two separate invitations from the Hon. John Price MP, Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics and the Hon. Peter Primrose MLC, Chair of the Legislative Council Privileges Committee to comment on the draft Constitution (Disclosures by Members) Amendment Regulation 2006.

The Commission has previously commented on the pecuniary interest disclosure regime in *Regulation of secondary employment for Members of the NSW Legislative Assembly: Report to the Speaker of the Legislative Assembly* (September 2003), hereafter referred to as "the Report". The Commission made 14 recommendations in that report of which several concerned the operation of the pecuniary interest disclosure regime for Members of Parliament. This submission deals with those relevant recommendations and includes other comments on the draft Regulation.

ICAC RECOMMENDATION 7 - GREATER DETAIL IN THE REGISTER OF PECUNIARY INTERESTS

That Members undertaking secondary employment should be required to provide a description of the services being provided and/or activities being undertaken, and that the description should be sufficiently detailed that a reasonable person would have an understanding of the actual work being performed by the Member on inspection of the register.

The Commission acknowledges that s9(1)(2) and s9(2A) of the draft regulation require Members to provide reasonable detail to identify the service or work being performed. After implementation it would be beneficial to review or audit entries made by Members to ensure that the detail provided is sufficient for a reasonable person to have an accurate understanding of the actual work being performed by the Member.

ICAC RECOMMENDATION 9 - EMPLOYMENT ARISING OR RELATING TO MEMBERSHIP OF THE PARLIAMENT

Where a Member is engaged in secondary employment which depends upon, or arise out of, the Member's position as a Member of Parliament, that this should be indicated in the pecuniary interests register. The Member should be required to list all individuals/organisations to which the Member's services are provided, with a description of the nature of the business of the employer, client, or association in each case.

Further to this provision, where the Member is engaged by a company or where the Member is a Director of a company which in itself is a consultancy, then the Member should also disclose those of the consultancy's clients with whom he or

she has a personal connection or who benefit from the Member's advice or service.

Further to this provision, where the income received from the employer, client, or association exceeds one per cent (1%) of the Member's parliamentary salary, then the Member should be required to enter a written agreement that outlines the services to be provided and/or activities to be undertaken. Members should be advised that these agreements should be accessible for the purpose of investigating any matter relating to a Member's secondary employment. The Assembly should determine how and with whom these agreements are to be deposited so that they are accessible for the purposes of investigation if required.

The pecuniary interests register should specify whether the secondary employment reaches the threshold of requiring a written agreement with the employer, and if so the date the agreement was entered into. Members should be required to enter into such agreements within 21 days of agreeing to the secondary employment.

The Commission acknowledges that s7a and s15A of the draft regulation largely address the first two paragraphs of the above recommendation.

The draft regulation does not specify requirements as set out in the last two paragraphs of the above recommendation. The Commission maintains its position regarding the importance of managing in a transparent and accountable way any form of employment that arises from a Member's position as a Member of Parliament. Although the Commission adopted the 1% rule used by the United Kingdom House of Commons to trigger a requirement for a written agreement to be entered into, it is arbitrary and the Commission would not object to a variation on this threshold.

However, the Commission does maintain its view that once income from secondary employment arising from a Member's position as a Member of Parliament reaches a certain threshold, the Regulation should require a Member to enter into a written agreement with the employer/client, with that agreement being deposited with the House (or some other appropriate body). The pecuniary interests register should specify whether the secondary employment reaches the threshold of requiring a written agreement with the employer, and if so the date the agreement was entered into. Members should be required to enter into such agreements within 21 days of agreeing to the secondary employment.

ICAC RECOMMENDATION 10 – UPDATING THE REGISTER OF PECUNIARY INTERESTS

That Members of the NSW Parliament be required to register any new interests, or changes in current interests within 30 calendar days of the new interest or a current interest being amended.

That the register of pecuniary interests be updated within seven days of receipt of documentation of a new interest or amendment to a current interest and that

those changes be tabled in the Parliament at the commencement of the next sitting period.

The Commission agrees that Members should be required to make an initial disclosure (i.e. a primary return) of all pecuniary interests as defined by the Draft Constitution (Disclosure by Members) Amendment Regulation 2006. However the Commission does not agree with the proposal requiring Members to submit an ordinary return (as set out in Form 2 in the schedule which requires the Member to re-state their full list of pecuniary interests) every six months.

The Commission maintains its' position as stated in recommendation 10 and is of the view that it would be less cumbersome for Members if after lodging their primary return, the requirement was for Members to register any new interests, or changes in current interests within 30 calendar days of the new interest commencing or a current interest being amended.

Accepting that Members may genuinely overlook a new or change in interest it would be beneficial to adopt a system which requires Members on a regular basis (e.g. every six or twelve months) to confirm within a specified period (e.g. 30 days) that their disclosed pecuniary interests remain unchanged or declare any changed or new interests. The success of such a procedure would in part rely on Members having electronic access to the Pecuniary Interest Register to allow quick and easy review of what has previously been disclosed.

The usefulness of a pecuniary interests register is largely contingent on it being accurate and up-to-date. The current paper system is inadequate in this regard and even though the public can access the bound list of returns from Members, the bound list does not include any changes that a Member may have advised of during the interim period. The Commission maintains its' position that the register of pecuniary interests should be updated within seven days of receipt of documentation of a new interest or amendment to a current interest. Similarly, it is of importance that the relevant House is also advised of such changes and the Commission maintains the view that the relevant Clerk should table in the House a copy of all new and amended disclosures at the commencement of each sitting period.

ICAC RECOMMENDATION 11 - ESTABLISHMENT OF ELECTRONIC DATABASE OF THE REGISTER OF PECUNIARY INTERESTS

That the register of pecuniary interests be established as an electronic database that can be accessed via the Internet by Members of Parliament and members of the public.

The Commission does not propose that the form of the register of pecuniary interests be incorporated into the draft Regulation. However, the operation of the register itself is of importance in determining how procedures can be modified to make the disclosure regime efficient, transparent and less cumbersome for Members of Parliament.

Only by moving to an electronic database can the Parliament deliver a register that can be updated continuously and therefore accurate. It allows all of the relevant information to be in one place (unlike the current system where returns are bound together but other disclosures made during the interim period are not available, when a bound copy of returns is inspected by a member of the public or a Member of Parliament it is likely to be inaccurate and out-of-date) and facilitates expeditious updating of the register itself.

The Commission has recommended that the pecuniary interests register be made publicly available as is done with the register in the House of Commons. It not only demonstrates the willingness of Parliament to be open and transparent, but also enables Members and their staff to examine the register at any time to ensure their registered interests are accurate and current.

In moving to a publicly accessible pecuniary interests register available on the Internet, the Commission is of the view that privacy issues for Member's in respect of declarations made should be considered. The Committees should consider if any categories of information contained on the register should be blocked from the public, for example, the street address of a Member's residential property.

ICAC RECOMMENDATION 12 - REVIEW OF FORMS UNDER SCHEDULE 1 OF THE REGULATION

That in undertaking a review of the pecuniary interests register, that a new form be developed to allow Members to advise of a material change in interests, and that the current forms under Schedule 1 be redesigned to improve usability.

The Commission notes that Forms 1 and 2 attached to the schedule have been modified to improve usability.

The Commission does not support Form 3 in its current form. As indicated earlier the Commission is of the view that Members should not only be given the ability to update their register of interests at any time, but it should be incumbent on Members to ensure their registered interests are current and accurate. The Commission does not consider it appropriate for a Member to determine whether it is appropriate or necessary to update the register for a new or modified interest (as suggested by Form 3). The discussion in the covering letter to this submission and under ICAC recommendation 11 outlines the Commission's position on this issue.