

Submission
No 1

INQUIRY INTO RECOMMENDATIONS OF THE ICAC ARISING OUT OF OPERATION KEPPEL

Organisation: NSW Independent Commission Against Corruption

Date Received: 15 March 2024

The Hon Stephen Lawrence MLC
Chair, Privileges Committee
Parliament House

By email: privilege@parliament.nsw.gov.au

Our Ref: AD24/0022

Dear Mr Lawrence

Inquiry into the recommendations of the ICAC arising out of Operation Keppel

Thank you for your email dated 14 February 2024 attaching the terms of reference as well as a discussion paper regarding the Privileges Committee's *Inquiry into the recommendations of the ICAC arising out of Operation Keppel*, and the invitation to make a submission.

The Commission notes that the attached discussion paper titled *Discussion Paper – Members' Code of Conduct and training and guidance* also considers recommendations made by the Commission in Operation Witney relating to the Members' Code of Conduct as well as training and guidance.

Further, the discussion paper clarifies the scope of the inquiry and that there will be a separate inquiry into draft regulations. The Commission notes that the Draft Constitution (Disclosures by Members) Regulation 2024 ("the Draft Regulation") has been tabled in the Legislative Council on 8 February 2024 and since been referred to the Privileges Committee for inquiry and report.

The Commission's submission is attached and responds to the recommendations and the topics of the Members' Code of Conduct and training/guidance as outlined in the discussion paper. It includes some references to related sections as contained in the Draft Regulation, whilst being cognisant that a separate inquiry is being conducted into this matter.

If you require further information or assistance on matters raised in the submission, please contact my office via john.hatzler@icac.nsw.gov.au or Lewis Rangott, Executive Director Corruption Prevention on [02 8281 5999](tel:0282815999) or [02 9264 5364](tel:0292645364).

Yours sincerely

 The Hon John Hatzler AM
Chief Commissioner

15 March 2024



INDEPENDENT COMMISSION
AGAINST CORRUPTION

NEW SOUTH WALES

**Submission by the NSW Independent Commission
Against Corruption to the Inquiry into the
recommendations of the ICAC arising out of
Operation Keppel**

March 2024

About the Commission

1. The NSW Independent Commission Against Corruption Commission (“the Commission”) was established as an independent body in 1988 to investigate and prevent corruption in and affecting the NSW public sector.
2. The Commission’s principal functions are set out in s 13 of the *Independent Commission Against Corruption Act 1988*. In summary, s 13 provides that the Commission:
 - as part of an investigation process, consider whether laws, methods of work, practices or procedures should be changed to reduce the likelihood of the occurrence of corrupt conduct
 - examine laws, practices and procedures of public authorities to facilitate the discovery of corrupt conduct
 - instruct, advise and assist public authorities on ways in which corrupt conduct may be eliminated or reduced, and the integrity and good repute of public administration promoted
 - enlist and foster public support in combating corrupt conduct and in promoting the integrity and good repute of public administration.

Scope of the Commission’s submission

3. Consistent with the above functions, the Commission’s submission is in response to the terms of reference of the Privileges Committee’s *Inquiry into the recommendations of the ICAC arising out of Operation Keppel* (“the inquiry”), and the specific recommendations made by the Commission as outlined in the *Discussion Paper – Members’ Code of Conduct and training and guidance* (“the discussion paper”) published by the inquiry on 14 February 2024.
4. The Commission’s responses are directed at recommendations it made in reports known as Operation Keppel¹ and Operation Witney², which are the subject of the current inquiry. As outlined in the discussion paper, these are in relation to:
 - the Members’ Code of Conduct
 - training and guidance.
5. The Commission notes that the Draft Constitution (Disclosures by Members) Regulation 2024 (the Draft Regulation) has been tabled in the Legislative Council on 8 February 2024 and has since been referred to the Privileges Committee for inquiry and report. As outlined in the discussion paper for this current inquiry, there will be a separate inquiry into the Draft Regulation, which will address further recommendations made by the Commission. The Commission’s submission includes some references to related

¹ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023.

² NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, Sydney, July 2022.

sections as contained in the Draft Regulation, whilst being cognisant that a separate inquiry is being conducted.

6. The discussion paper includes consideration of recommendations made by the Broderick Review.³ The Commission provides specific comment on one of the recommendations regarding safe reporting, as it also relates to recommendations made in the Operation Keppel report.

Part 1: Members' Code of Conduct

Code of Conduct: Guiding principles

7. The discussion paper refers to the topic of guiding principles as contained in the Members' Code of Conduct, and the following recommendation made by the Commission:

Operation Keppel Recommendation 1

That the Code of Conduct for Members and the NSW Ministerial Code of Conduct be amended to provide for a set of principles of conduct and guiding values addressing the:

- *seven general principles of conduct which underpin public life developed by the United Kingdom's Committee on Standards in Public Life (and the 2021 descriptors to those principles)*
 - *three guiding values of public trust, public interest and public duty.*⁴
8. The Commission's view is that a greater emphasis on ethical values and principles is required to enhance public confidence and trust in government and the institution of the NSW Parliament. The existing references to principles and values interspersed in the Members' Code of Conduct and the NSW Ministerial Code of Conduct should be emphasised by making them more prominent and comprehensive. Further, that an explicit set of values and principles would promote adherence to ethical practices.⁵
 9. On 7 February 2024, the Premier and the Special Minister of State issued a media release announcing a suite of integrity reforms by the NSW Government, including moves to address recommendations made by the Commission in Operation Witney and Operation Keppel. The media release announced that the NSW Government will amend

³ E Broderick, *Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022*, Elizabeth Broderick & Co., August 2022.

⁴ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 2, p. 329.

⁵ *Ibid*, p. 328.

the preamble to the NSW Ministerial Code of Conduct to include principles and guiding values recommended by the Commission.⁶

10. The Commission observes that ideally there will be consistency regarding the principles and values contained in the separate codes of conduct for members and for parliamentary secretaries/ministers.
11. In a recent submission to the Joint Standing Committee on Electoral Matters, the Commission also focused on the strengthening the ethical obligations of elected officials.⁷
12. The seven general principles of public life referred to in the Commission's recommendation were initially developed by the United Kingdom's ("UK") Committee on Standards in Public Life in 1995.⁸ These seven general principles of conduct are:
 - selflessness
 - integrity
 - objectivity
 - accountability
 - openness
 - honesty
 - leadership.
13. The descriptors to these seven principles were amended in 2021.⁹ They are attached as an appendix to these submissions (see **Appendix 1**).
14. The Members' Code of Conduct seeks to reinforce the importance of abiding by the precepts of conduct it embodies. It is an important document to guide the conduct of members of Parliament. As explained in the first 2011 edition of the *Members' Entitlements Handbook*, "a Members' Code of Conduct has been in place since May 1998 with the intention of aiding members to discharge their duties in an ethical and transparent way".
15. In addition to the principles outlined above, the Commission recommends that the following core values are included as well:
 - public trust
 - public interest
 - public duty.

⁶ [NSW Government introduces integrity reforms | NSW Government](#), accessed 13 March 2024.

⁷ [Administration of the 2023 NSW state election and other matters](#)

⁸ Committee on Standards in Public Life, Chairman Lord Nolan, *Standards in Public Life: First Report of the Committee on Standards in Public Life*, London May 1995.

⁹ Committee on Standards in Public Life, *Upholding Standards in Public Life: Final report of the Standards Matter 2 review*, November 2021.

16. The following case law highlights the fact that members of Parliament have a fiduciary-like obligations and have a public duty to maintain the public trust and act in the public interest.
17. For many years, the High Court has emphasised the need for members of Parliament to only use their influence for the public interest, and not for private interests in a situation where they anticipate payment for their services. As was stated by Griffith CJ in *Wilkinson v Osborne*:

*The law cannot supervise the conduct of members of Parliament as to the pressure they may bring to bear on Ministers, but if they sell the pressure, the bargain is, in my opinion, void as against public policy.*¹⁰

18. The case of *Horne v Barber* is relevant for the principles of public trust as well as public interest. It established that it is a breach of public trust for a public official to leverage, or seek to leverage, their position for private gain. As was stated by Rich J:

*Members of Parliament are donees of certain powers and discretions entrusted to them on behalf of the community, and they must be free to exercise these powers and discretions in the interests of the public unfettered by considerations of person gain or profit. So much is required by the policy of the law.*¹¹

19. It can also be inferred from the High Court case of *R v Boston* that members of Parliament have a public duty because they hold a public office. As was observed by Isaacs and Rich JJ:

*A member of Parliament is, therefore, in the highest sense, a servant of the State; his duties are those appertaining to the position he fills, a position of no transient or temporary existence, a position forming a recognized place in the constitutional machinery of government.*¹²

20. Further, Isaacs and Rich JJ in *R v Boston* outlined the “fundamental obligation” of a member of Parliament referring to it as the “*the duty to serve* and, in serving to act with fidelity and with a single-mindedness for the welfare of the community”.¹³ [Original emphasis]
21. More recently, the NSW Court of Criminal Appeal (“NSWCCA”) in *Obeid v The Queen* dismissed an appeal brought by a former member of the Legislative Council regarding the offence of misconduct in public office for making representations in the course of lobbying a public servant with the intention of securing benefits for himself and his family. The NSWCCA observed that members of Parliament have a duty to “act according to

¹⁰ *Wilkinson v Osborne* [1915] HCA; (1915) 21 CLR 89 at 94

¹¹ *Horne v Barber* [1920] HCA 33; (1920) 27 CLR 494 at 501

¹² *R v Boston* [1923] HCA 58; (1923) 33 CLR 386 at 402

¹³ *Ibid*, at 400

what they believe to be in the public interest and the interests of the electorate and must not use their position for the purpose of promoting their own pecuniary interests".¹⁴

22. The importance of the core values of public trust and public duty for senior public officials such as members of Parliament has also been highlighted in a NSW Supreme Court ("NSWSC") judgment by Beech-Jones J, who stated:

*The more senior the public official the greater the level of public trust in their position and the more onerous the duty that is imposed.*¹⁵

23. The values of public trust, public duties and public interest are intrinsically connected and relate to the proper exercise of public power and the holding of public office. Members occupy a position of public trust. The maintenance of public trust requires that members use their position "to advance the common good", resulting in the fundamental duty to act in the public interest. That is why members' duty has also been described as being "analogous to that of a fiduciary".¹⁶

24. The discussion paper queries whether the UK's seven principles of public life would have influenced the conduct of members, as investigated by the Commission in Operations Keppel and Witney, and asked about the effect of these principles on the ethical behaviour of the UK's members of Parliament.

25. The Commission proposes for this inquiry to consider a 2024 report by the Institute for Government. This report considered the benefits of transparency (see the principle of Openness, Appendix 1), and how it can be helpful for government and improve accountability, amongst other benefits.¹⁷ Examples and case studies considered in this report cover the details of expenses for members of Parliament, the publication of ministerial gifts, hospitality, travel and meetings, and the publication of grants awarded.¹⁸

26. The Commission notes that in the UK, there is a separate *Code of Conduct for Members of the House of Lords*, which states:

Members of the House should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. These

¹⁴ *Obeid v The Queen* [2017] NSWCCA 221 at [79] per Bathurst CJ (with whom Leeming JA, R A Hulme, Hamill and N Adams JJ agreed)

¹⁵ *R v Obeid* (No 12) [2016] NSWSC 1815 at [79] per Beech-Jones J

¹⁶ *Obeid v R* [2015] NSWCCA 309 at [148]; see also *R v Macdonald*; *R v Maitland* [2017] NSWSC 638 Adamson J [at 245]

¹⁷ Institute for Government, *The benefits of transparency: Why being more open is good for government*, London, February 2024.

¹⁸ *Ibid*, Annex: Transparency case studies, pp. 27 – 30, 38 – 39.

*principles will be taken into consideration when any allegation of breaches of the provisions in other sections of the Code is under investigation...*¹⁹

27. This notion is also reflected in the role of the House of Commons' Parliamentary Commissioner for Standards, who may investigate a specific matter relating to a member's adherence to the relevant rules of conduct under their Code of Conduct and will take the seven principles of public life into account when considering allegations of breaches of the rules. However, the Parliamentary Commissioner for Standards does not investigate allegations solely about breaches of the seven principles of public life.²⁰
28. This approach taken in the UK illustrates that the seven principles of public life are overarching principles and values, rather than normative rules. The 2023 review by the UK's Committee on Standards in Public Life makes the point that a values-based approach assists elected members in developing high standards, an ethical culture and resilience when faced with ethical dilemmas.²¹ This stands in contrast to a prescriptive rules-based or compliance-based system, which cannot take account of every contingency faced by members of Parliament. The following quote by Committee on Standards in Public Life about the role of values and principles in building a strong ethical culture elucidates this point further:

An ethical culture embeds the commitments of the organisation to the public and to its stakeholders. The culture reflects the shared understanding of why and how the rules and regulations operate. Otherwise, they will have little meaning for those who are bound by them and will be difficult to interpret and implement correctly. There is also a risk that rules on their own may be perceived as something to be navigated, which can diminish responsibility for exercising personal judgement.

*Developing an ethical culture has wider benefits. Rules will only take an organisation so far – focusing on values can guide people to make the right decisions when circumstances change and the unforeseen happens.*²²

29. The review by the UK's Committee on Standards in Public Life considered the role of leadership as well.²³ Of relevance for the findings made in Operation Keppel is the idea that the public sector must be supported by their leaders to provide objective and impartial advice. The review warns that fast-paced operational environments are vulnerable, and notes:

¹⁹ House of Lords, Code of Conduct for Members of the House of Lords, 13th Ed, September 2023, clause 12, p. 3.

²⁰ House of Commons, Procedural Protocol in respect of the Code of Conduct, 7 February 2023, clauses 6, 7 and 17.

²¹ Committee on Standards in Public Life, Leading in Practice: A review by the Committee on Standards in Public Life, January 2023, p. 9ff.

²² Ibid.

²³ Committee on Standards in Public Life, Leading in Practice: A review by the Committee on Standards in Public Life, January 2023.

*In times of crisis, it is crucial that the underpinning principle to act always in the public interest is maintained, and any decisions to shortcut normal processes are clearly explained and open to scrutiny.*²⁴

30. The review makes the following observation:

*...Secretaries should show independence and resilience in building an ethical culture in their departments, speaking truth to power when necessary, and supporting middle managers and their teams to produce objective and impartial advice. Weaker leadership teams can fall into the trap of only giving ministers the advice they want to hear. This is not in line with the Principle of 'objectivity' in the Principles of Public Life...*²⁵

31. It will be recalled that Operation Keppel outlined evidence that a public official was asked to prepare the Australian Clay Target Association ("ACTA") submission for a cabinet committee, the Expenditure Review Committee ("ERC"), in one day, following a request from a minister's office, based on a purported business case that did not "stack up".²⁶ The sense of urgency is a consistent theme regarding the further progress of this draft submission for the ERC. For example, when a staff member of the premier raised queries, he was advised that [the member for] "Wagga Wagga is pushing the barrow", and that there is an urgency due to championships.²⁷ However, there is evidence that the championship did not require the grant and upgrade sought for by the ACTA submission.²⁸

32. Following the ERC approving the ACTA grant application, the former member for Wagga Wagga issued a presumptive media release. This resulted, in the words of a public official in a situation "very hard then for the government ... to do anything but deliver".²⁹ Similarly, it was observed in Operation Keppel that there was subtle influence on the public sector's implementation of the ERC's ACTA decision because of the level of support and priority that the proposal had from within the then Premier's office.³⁰

33. These examples illustrate how conduct by public officials that demonstrates the principles of objectivity and leadership can be undermined by the conduct of elected members, who fail to reciprocate.

34. In considering the queries raised by the discussion paper about values and principles, the Commission notes an observation made by 1979 Report of the Committee of inquiry

²⁴ Ibid, p. 2.

²⁵ Ibid, p. 16.

²⁶ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 2, para. 11.68ff, p. 96ff.

²⁷ Ibid, para. 11.122, p. 105; para. 11.135, p. 106.

²⁸ Ibid, para. 11.150, p. 108.

²⁹ Ibid, para. 11.275, p. 128.

³⁰ Ibid, para. 14.139, p. 347.

(also known as the “Bowen Report”), and that the values expressed in a code of conduct ought to be sufficiently broad to stand the test of time. As was stated in the Bowen Report:³¹

*The Committee believes that the Code of Conduct which it has drawn up is expressed in sufficiently broad terms to stand the test of time. ... It should recognise and embody values about which there is a high and enduring degree of consensus, both within society at large and within the particular organisations to the members of which it applies.*³²

35. The 2021 review by the UK’s Committee on Standards in Public Life considered whether its principles are still relevant, and noted that that they still reflected the public’s expectations of elected public officials:

*The relevance of the Seven Principles to the British public was confirmed in quantitative and qualitative testing from 2002 to 2012, which found that the principles reflected the public’s expectations of elected and appointed office holders.*³³

36. The UK’s Committee on Standards in Public Life subsequently added a revision to the description of the leadership principle, to highlight the importance of treating individuals with respect.³⁴ The Commission reiterates its recommendation that the reference to the 2021 revised descriptors to the seven principles be considered.

37. The Commission also reiterates its observations made in the Operation Keppel report, that it is imperative that members of Parliament lead by example concordant with community and wider public sector expectations of such a high office. The Commission is of the view that there is a high degree of consensus about the proposed guiding principles and core values. Further, that the community may conclude that the applicable codes of conduct had little or no effect in discouraging the conduct of the former member for Wagga Wagga, Daryl Maguire, and former Premier, as identified in this report.³⁵

38. Having the proposed principles and core values emphasised in the Members’ Code of Conduct by making them more prominent and comprehensive would assist not only in preventing misconduct or corrupt conduct but also in promoting ethical conduct and decision-making. This would ultimately assist in the integrity and good repute of public administration.

³¹ Committee of Inquiry Concerning Public Duty and Private Interest (Bowen inquiry) - Public duty and private interest – July 1979, p. 33.

³² *Public Duty and Private Interest: Report of the Committee of Inquiry* established by prime minister Malcolm Fraser on 15 February 1978, Canberra, July 1979, p. 33.

³³ Committee on Standards in Public Life, *Upholding Standards in Public Life: Final report of the Standards Matter 2 review*, November 2021, p. 33.

³⁴ See “Appendix 1”, attached to this submission.

³⁵ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 2, pp. 327 - 328.

Submission 1

39. **As outlined in the Operation Keppel report, the Commission submits that it would assist members of Parliament if the Members' Code of Conduct be amended to include a prominent and comprehensive set of core values and guiding principles.**

Code of Conduct: Conflicts of interest

40. The discussion paper refers to the topic of conflicts of interest as contained in the Members' Code of Conduct, and the following three recommendations made by the Commission:

Operation Witney Recommendation 3

That NSW Parliament's designated committees include a clear, consistent and comprehensive conflict of interest definition in the Code of Conduct for Members. This review should include a consideration of the relevant definitions in the Ministerial Code of Conduct and any opportunities for achieving a consistent approach in regard to avoiding, recognising, disclosing and managing conflicts of interest.

Operation Witney Recommendation 5

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly ensure that the guidance material for members of Parliament be updated to provide details about their obligations pursuant to clause 7 of the Code of Conduct for Members, on how to take reasonable steps to avoid, resolve and disclose a conflict of interest, and the registration of conflicts of interest (pending implementation of recommendations 3 and 4).

Operation Keppel Recommendation 2

That the NSW Parliament, in consultation with the Commission, develops a comprehensive framework applicable to members that addresses the avoidance, disclosure and management of conflicts of interest. The framework should provide members with practical guidance about how to avoid, disclose and manage common conflicts of interest.

41. The NSW Government's media release of 7 February 2024, referenced previously regarding a suite of integrity reforms, foreshadows that a draft regulation will be tabled in NSW Parliament, which proposes to require members to disclose new matters, including conflicts of interest. As noted above, the Draft Regulation was tabled in the Legislative Council on 8 February 2024³⁶ and has since been referred to the Privileges Committee for inquiry and report.³⁷

³⁶ Legislative Council Hansard, 8 February 2024.

³⁷ [Draft Constitution \(Disclosures by Members\) Regulation 2024 \(nsw.gov.au\)](#), accessed 13 March 2024.

42. The Draft Regulation contains proposed clauses regarding when the lodgement of a disclosure is to be made (see Part 2), as well as a proposal to disclose conflicts of interest in writing (as per Schedule 1, Part 6 of the Draft Regulation). Further, the Draft Regulation contains the following clause concerning conflicts of interest:

15 Conflicts of interest

- (1) *A Member must disclose all conflicts of interest.*
- (2) *A **conflict of interest** arises in relation to a Member if there is a conflict between the public duty and private interest of the Member in which the Member's private interest could objectively have the potential to influence the performance of the Member's public duty.*
- (3) *A conflict of interest need not be pecuniary in nature.*
- (4) *To avoid doubt, a Member's public duty as a Member does not include the Member's public duty as a Minister or Parliamentary Secretary.*

43. As noted in the discussion paper released by the Privileges Committee for this current inquiry, this Draft Regulation will be the subject of a separate inquiry. Relevantly for this current inquiry, which considers recommendations 3 and 5 made in Operation Witney, as well as recommendation 2 made in Operation Keppel, the Commission notes that the proposed Draft Regulation contains a definition of a conflict of interest (see above), and outlines processes regarding when and how a conflict should or can be disclosed.

44. Avoiding, recognising, disclosing and managing conflicts of interest are issues of perennial concern for all public officials, including for members of Parliament. As outlined by the Commission in the Operation Witney report, the identification of the scope of public official duties or functions is fundamental in determining whether a conflict between public duty and private interest has arisen or could arise.³⁸

45. The *Members' Guide 2023* outlines the roles of a Member of the Legislative Council ("MLC"), and states:

There is no statute or other guide which defines the role of members of Parliament and members of the Legislative Council. As such, members may interpret and develop their role as they wish, within the ethics framework which regulates the conduct of members.

However, members of the Legislative Council generally define their roles by reference to the broader roles of the Legislative Council within the New South Wales system of government, namely:

- *to represent the people*
- *to scrutinise the Executive Government as a 'House of Review'*

³⁸ NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, July 2022, p. 164.

- to legislate.³⁹

46. The ethics framework as outlined by the *Members' Guide 2023* includes the Members' Code of Conduct, the oversight function of the Commission, the Independent Complaints Officer, the Parliamentary Ethics Adviser as well as the role of the Audit Office of NSW.⁴⁰

47. The Commission notes that there are inherent requirements that attach to the duties and obligations of the public office as a member of Parliament, and that the codification via a code of conduct assists to inform and clarify the content of these duties.⁴¹ Further, the Commission notes the jurisdiction of the Supreme Court regarding the governance of the chamber of Parliament and that there is no exclusive jurisdiction.⁴²

48. The current Members' Code of Conduct mentions conflicts of interest under clause 1. It outlines the purpose of the Code, and states:

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. It does not apply to Members in their purely private and personal lives.

49. Conflicts of interest are addressed specifically in clause 7 of the current Members' Code of Conduct:

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.

50. Further, the commentary section in the current Members' Code of Conduct includes the following guidance:

Commentary

³⁹ NSW Parliament, *Legislative Council: Members' Guide 2023*, March 2023, p. 2.

⁴⁰ *Ibid*, p. 29ff.

⁴¹ NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, July 2022, p. 5.

⁴² NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 1, para3.106ff, p. 50ff; Volume 2, para 14.87, p. 340.

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.

51. Several recommendations made in Operation Witney were previously considered in a report by the Legislative Council Privileges Committee published in November 2022. It contained the following relevant recommendations:

Recommendation 3

That the Commentary in the Code of Conduct be amended to include a definition of conflict of interest that takes account of the views of the Independent Commission Against Corruption concerning the definition of conflict of interest.

Recommendation 5

That the President and the relevant parliamentary departments ensure that the guidance material for members of Parliament be updated to provide details about their obligations pursuant to clause 7 of the Code of Conduct on how to take reasonable steps to avoid, resolve and disclose a conflict of interest, pending implementation of Recommendation 3.⁴³

52. Further, the discussion paper notes that the 2023 updates of the Legislative Council's Members' Guide include some guidance regarding what are reasonable steps that members may do to avoid, resolve or disclose any conflict between their private interests and the public interest.

53. Conflicts of interest can be categorised in the following way:

- potential conflicts of interest
- actual conflicts of interest.

54. A common way to regulate **potential** conflicts of interest is the creation of registers of members' pecuniary interests. As Professor Graeme Orr, of the University of Queensland Law School, has observed:

These registers adapt an idea common to the law of trusts. Just as a fiduciary is not to conceal a personal interest, so someone occupying a public trust

⁴³ NSW Parliament, Legislative Council, Privileges Committee, *Review of the Members' Code of Conduct (2022): Report 90*, November 2022, p. vii.

*should reveal their interests. Such disclosure also encourages divestment of interests that do not pass the smell-test. The primary purpose of MPs' registers is thus publicisation of interests to inform public scrutiny and debate. They rely on informed questioning by the media and political rivals.*⁴⁴

55. The current Constitution (Disclosures by Members) Regulation 1983 made pursuant to section 14A of the *Constitution Act 1902* regulates the current disclosure regime for members of Parliament. The *Members' Guide* states:

*All members of the Legislative Council are required to disclose their pecuniary and other interests in order to address potential conflicts of interest between their public and private activities (interests).*⁴⁵

56. Non-pecuniary or non-financial interests of public officials should be regarded as capable of creating conflicts that a public official might be required to avoid or manage.⁴⁶

57. The Commission's Operation Keppel report reiterated concerns raised as a result of the Operation Witney report regarding conflicts of interest, and that members require detailed guidelines and clear processes.

58. In the Commission's experience, public officials struggle to take an objective view of the status of their personal relationships, for example.⁴⁷ It is imperative that they view their circumstances objectively, in other words, the reasonably held perceptions of others.

59. The Commission maintains that the existing regime could be improved by providing **detailed guidance** and **practical examples** of how to avoid, resolve, disclose and manage a conflict of interest. The mechanisms to disclose and manage conflicts of interest for members could be improved in line with the Commission's conflicts of interest framework by providing for greater:

- *consistency and clarity regarding what constitutes a conflict of interest and the level of detail that is required in a disclosure*
- *consistency and clarity on how to make a disclosure*
- *consistency and clarity on how disclosures should be managed*
- *emphasis on avoiding conflicts of interest*
- *transparency and accountability by requiring continuous updating of registered interests*
- *enforcement mechanisms*

⁴⁴ G Orr, "Parliamentary Disqualification for Financial Conflicts" (2019) 47:4 *Federal Law Review* 583 at 597.

⁴⁵ NSW Parliament, *Legislative Council: Members' Guide 2023*, March 2023.

⁴⁶ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 1, p. 34.

⁴⁷ *Ibid*, para 14.17, p. 329.

- *ongoing professional education to raise awareness and promote an ethical culture.*⁴⁸

60. Further, it is vital that members consider that outside paid work or other business interests can also lead to conflicts of interest. Mr Maguire's conduct as outlined in the Operation Keppel report illustrates such situations:

- Mr Maguire referred constituents to the immigration or "cash-for-visas scheme", in circumstances where there was a conflict, or a real or substantial possibility of conflict, because there was potential profit for him.⁴⁹ In fact, the Commission's findings are that Mr Maguire personally received and retained in excess of \$100,000 in cash in connection with his involvement in the immigration scheme.⁵⁰
- Mr Maguire used his position as the chair of the Asia Pacific Friendship Group ("APFG") and the network of contacts it provided him to set up various meetings, including with consuls general, for the benefit of the Shenzhen Asia Pacific Commercial Development Association ("SAPCDA"), but he never disclosed, when setting up such meetings, that he hoped to benefit financially from the activities of SAPCDA.⁵¹
- Mr Maguire assisted vendors and property developers, including his close friend Joe Alha,⁵² to gain access, whether directly or indirectly, to members of Parliament, their staff and other public sector employees, but at no stage did he disclose to those he approached on behalf of the developers his expectation of receiving a personal pecuniary benefit.⁵³ This included Mr Maguire's "hoped for" financial interest in assisting Charbel Demian and the representations he made on Mr Demian's behalf.⁵⁴
- Mr Maguire in each of the steps that he took in relation to advocating on behalf of the Smartwest.Sydney matter, never disclosed that the principal reason he was doing this, was the hope of receiving a commission or fee for himself.⁵⁵ By his own submission to the Commission, in the course of assisting a land owner he did not disclose and should have disclosed that he was assisting the land owner in relation to a property.⁵⁶

61. Below are further examples of Commission reports that involve conflicts of interests by members of Parliament:

⁴⁸ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 2, para. 14.30, p. 331.

⁴⁹ *Ibid*, para. 6., p. 126, para 6.234, p. 163.

⁵⁰ *Ibid*, para 6.211, p. 160.

⁵¹ *Ibid*, para. 7.26, p. 193.

⁵² *Ibid*, para. 8.310ff.

⁵³ *Ibid*, para. 8.3, p. 219.

⁵⁴ *Ibid*, pp. 222 – 226.

⁵⁵ *Ibid*, para. 8.199, p. 253.

⁵⁶ *Ibid*, para 8.286, p. 269.

- As outlined in the Operation Witney report, the Commission found that the member for Drummoyne had a clear conflict of interest in relation to the Five Dock town centre planning matters.⁵⁷ The Commission found that the member was acting to advance his private interests and those of his family while lobbying councillors over planning matters. The member falsely purported to be acting in the interests of constituents and the community.⁵⁸
- In a 2017 report by the Commission following an investigation known as Operation Credo, the Commission noted that a member did not raise their or their family's interest in a company when the member asked the premier to intervene in a dispute that a government agency had with that company. The Commission found that such conduct amounted to a misuse of the member's position and a breach of their duty.⁵⁹
- In a 2014 report following an investigation known as Operation Cyrus, the Commission found that a member made representations to ministers to have leases renewed without a tender process with respect to commercial leases at Circular Quay without disclosing that their family was effectively a lessee and would benefit financially from the policy change.⁶⁰
- Regarding corruption risks associated with lobbying, access and undue influence, the Commission has previously observed that in situations where a lobbyist's insider status is based on a personal, social or political relationship, the prospect of conflicts of interest is also a matter of significant concern.⁶¹

62. The Commission reiterates its view expressed in the Operation Keppel report, namely that the members' complex working environment requires detailed guidelines and clear processes to assist them to navigate ethical challenges involving conflicts of interest.⁶²

63. Ideally, the separate conflicts of interest regimes relevant for elected public officials (pursuant to the Members' Code of Conduct and the Ministerial Code of Conduct) should be internally consistent about core aspects (to the extent possible), including consistency in the:

- *definition of a conflict of interest*
- *the ways to avoid, recognise, disclose and manage conflicts of interest*
- *approach to maintaining centralised register(s) of conflicts of interest.*⁶³

⁵⁷ NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, July 2022, pp. 163ff.

⁵⁸ *Ibid*, p. 164ff.

⁵⁹ NSW ICAC, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters*, August 2017 pp. 81, 138.

⁶⁰ NSW ICAC, *Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay retail lease policy*, June 2014, p. 7.

⁶¹ NSW ICAC, *Investigation into the regulation of lobbying, access and influence in NSW*, June 2021, p. 32.

⁶² NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 2, para. 14.28, p. 331.

⁶³ *Ibid*, para. 14.19, p. 329, para. 14.28, p. 331.

64. Regarding a definition for a conflict of interest, the Commission's preliminary view is that the proposed definition of a conflict of interest, as outlined in the Draft Regulation, appears to be consistent with the definition in the Ministerial Code. Pending a detailed analysis during the separate parliamentary inquiry, it would seem to be coherent with the processes of the Ministerial Code.
65. The Commission agrees with the previous recommendations made by the Privileges Committee regarding Operation Witney's recommendation 2 and has no objection to a definition of a conflict of interest being included in the commentary section of the Members' Code of Conduct. However, this definition of a conflict of interest ought to be in line with the conflict of interest definition as outlined in the proposed Draft Regulation.
66. To avoid confusion and ensure consistency of approach, it is vital that the Members' Code of Conduct aligns with the requirements outlined in the Disclosure Regulation. As observed by the Commission previously regarding clause 2 of the Members' Code of Conduct, this is not always the case.⁶⁴
67. The Commission notes that the current *Members' Guide 2023* includes some guidance regarding what are "reasonable steps" that members **may do** to avoid, resolve or disclose any conflict between their private interests and the public interest [Emphasis added]. However, the Members' Code of Conduct is unequivocal that there are "reasonable steps" that members "must take" and "shall take". It will assist members to have unequivocal guidance about their obligations regarding conflicts of interest.
68. The discussion paper queries whether the changes made to background materials since the Witney report was released are sufficient in addressing the Commission's concerns.
69. The Commission agrees with the issue raised in the discussion paper, namely that members of Parliament, given they are not employees, would require a suitably tailored conflict of interest framework.
70. The Commission would welcome further consultation with the NSW Parliament to adapt the Commission's conflicts of interest control framework to the workings of the NSW legislature.
71. This could include the Commission assisting with educational material for members to recognise a conflict of interest. The Commission's own resources about identifying whether a conflict of interest exists would be a suitable starting point (assuming the

⁶⁴ In 2021, the Commission has pointed an inconsistency regarding the prohibition on paid advocacy in its report *Investigation into the regulation of lobbying, access and influence*. On its face, the Constitution (Disclosure by Members) Regulation 1983 still permits members of Parliament to be paid lobbyists, as long as the necessary details are disclosed, while the current codes of conduct for member prohibit it in limited circumstances (see clause 2. Improper influence). As noted by the Commission, it is completely incompatible with a role of member of Parliament to accept any further payment to perform lobbying activities. The Commission's recommendation 27 addresses these concerns.

definition of a conflict of interest as outlined in the Draft Regulation will be adopted). It states:

There are four elements to consider when determining whether a conflict of interest exists.

1. *Does the official have a personal interest?*
2. *Does the official have a public duty?*
3. *Is there a connection between the personal interest and the public duty?*
4. *Could a reasonable person perceive that the personal interest might be favoured?*⁶⁵

72. The issue of enforcement mechanisms and how conflicts or interest are managed goes beyond the scope of this current inquiry. The Commission will instead address this topic further in the event the Commission is invited to make a submission to the current Draft Regulation, which was referred to the Privileges Committee for inquiry and report.⁶⁶
73. The NSW Ministerial Code of Conduct is the responsibility of the Executive Government. Amongst a range of differences, the Members' Code of Conduct has a different oversight mechanism (see paragraph 46ff, above).
74. Practical examples that could be developed are hypotheticals or case studies, which outline common scenarios for members of Parliament involving a possible conflict of interest, and guidance for members in situations such as:
- being approached to provide assistance to a constituent or lobbyist, who is also an associate/friend
 - managing representations from political donors, party members and individuals who play a role in the member's pre-selection or election
 - communicating with a minister about an issue that could also affect the private interest of the member, or be perceived to affect their private interest
 - making representation to other public officials or public office holders that could also affect the private interest of the member's family, or be perceived to affect the private interest of their family
 - making public representations about an issue relevant to the member's electorate, which could also affect the private interest of the member or that of their family.
 - engaging staff who might be friends, relatives or associates
 - procuring goods and services from friends, relatives or associates
 - when duties such as committee work, private members' statements, petitions or questions on/without notice could intersect with a member's personal interests
 - when voting on, debating or moving amendments to legislation could intersect with a member's personal interests.

⁶⁵ [Conflicts of interest - Independent Commission Against Corruption \(nsw.gov.au\)](https://www.nsw.gov.au), accessed 13 March 2024.

⁶⁶ [Draft Constitution \(Disclosures by Members\) Regulation 2024 \(nsw.gov.au\)](https://www.nsw.gov.au), accessed 13 March 2024.

75. These examples outlined above could be drafted in conjunction with the Parliamentary Ethics Advisor.

76. As outline above at paragraph 42, above, the Draft Regulation contains proposed clauses regarding when the lodgement of a disclosure is to be made (see Part 2), as well as a proposal to disclose conflicts of interest in writing. Considering the Draft Regulation being the subject of a separate inquiry by the Privileges Committee, the Commission will not be making a detailed submission about these processes. The Commission notes that the issue of management of conflicts of interest ought to be addressed as well, to ensure there is clarity regarding an oversight mechanism.

Submission 2

77. **As outlined in the Operation Witney and the Operation Keppel reports, the Commission submits that the Privileges Committee should progress the implementation of the relevant three recommendations relating to conflicts of interest as outlined above, including:**

- **having a clear, consistent and comprehensive definition of a conflict of interest included in the Members' Code of Conduct**
- **ensuring that members are provided with detailed guidance about their obligations regarding conflicts of interest**
- **developing a conflict of interest framework.**

Code of Conduct: Intermingling of parliamentary and personal resources

78. The discussion paper refers to the topic of the intermingling of parliamentary or public resources with personal activities, and the following recommendations made by the Commission:

Operation Keppel Recommendation 3

That the NSW Parliament's designated committees review and amend the Code of Conduct for Members and the Members' Entitlements Handbook (1 July 2022) in relation to the use of public resources, to clarify the limited circumstances in which it is acceptable to intermingle parliamentary duties with personal or private activities. In particular, this review should address the use of:

- *parliamentary staff*
- *parliamentary offices*
- *stationery*
- *allowances relating to travel*

79. The Members' Code of Conduct provision at clause 3 is as follows:

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.

80. Members have access to and are provided with public resources to fulfil their parliamentary duties. These public resources include:

- staff
- electorate or parliamentary offices
- allowances, entitlements or other benefits
- email and other IT systems
- stationery (which bears the crest of the Parliament).

81. To comply with the Members' Code of Conduct, members must know and follow the guidelines and rules on the use of these types of public resources. This includes the annual determination made by the Parliamentary Remuneration Tribunal (PRT). The commentary section of the Members' Code of Conduct outlines additional sources of information and guidance to assist them in determining the accurate and appropriate use of resources, including the *Members' Guide* and the *Members' Entitlement Handbook*.

82. The Commission has outlined a source of possible confusion, as the guidelines and determination of the PRT concerning the intermingling of a member's parliamentary duties and private activities include a statement that "Some intermingling of a Member's parliamentary duties and private activities is, in practical terms, not always easily avoided". However, the *Members' Entitlement Handbook* states that there are some resources that should not be intermingled under any circumstances. These include:

- *Members' parliamentary staff*
- *parliamentary offices*
- *official business stationery*
- *allowances relating to travel.*⁶⁷

83. The Commission acknowledges that the *Members' Entitlement Handbook* states that Parliament applies a combination of tests regarding possible intermingling of parliamentary duties:

In assessing any claim involving intermingling of parliamentary duties, the Parliament applies a combination of the following tests:

1. *primary purpose test*
2. *proportional approach*
3. *reasonable assessment test.*⁶⁸

⁶⁷ NSW Parliament. Department of Parliamentary Services, *Members' Entitlement Handbook*, Sydney, 1 July 2023, p. 16.

⁶⁸ *Ibid*

84. Further, the Commission acknowledges that “guiding principles” for the use of entitlements were adopted by Parliament in 2020.⁶⁹ These are detailed in the subsequent editions of the *Members’ Entitlement Handbook*. The guiding principles include a reminder that “entitlements should not be used for private, commercial, non-electorate or non-parliamentary purposes or activities of a direct electioneering or political campaigning nature”.⁷⁰
85. Operation Keppel exposed conduct by Mr Maguire, who used public resources, including his parliamentary office, parliamentary staff, the parliamentary letterhead (which included the NSW coat of arms) and his parliamentary email address, with a view to gaining benefits for the company, G8wayInternational Pty Ltd. As detailed in the Commission’s report, he also used his parliamentary business card that displayed the NSW Government logo to promote private interests.
86. The NSW Parliament has published a *Summary of ICAC investigations into the conduct of members of Parliament*, which notes that a recurring theme was the failure of members to comply with the guidelines and rules relating to the use of public resources.
87. The Commission maintains that the intermingling of public duties with private activities remains a common corruption risk for members of Parliament. It can include:
- misusing public resources for private purposes
 - using public resources to support private employment (for example, work time, vehicles, staff, entitlements, stationery, tools, email and communication devices)
 - using the authority and privileges that come with public office to leverage private gain.
88. Further, considering the conduct disclosed in the Operation Keppel report, and other recent reports involving members of Parliament, in the Commission’s view the threshold of “undue private benefit” in the Members’ Code of Conduct is set too low. It fails to consider that misuse of parliamentary resources may be an abuse of public funds even if the member does not ultimately gain a tangible “private benefit”, such as a financial benefit.
89. For example, Operation Keppel outlines the instance of Mr Maguire’s attempt to thwart the potential appointment of persons to Independent Hearing and Assessment Panels at the behest of a property developer and close friend and for their commercial benefit.⁷¹ Further, the report outlines multiple instances of Mr Maguire being involved in attempts to do deals, including:

⁶⁹ *Parliamentary Remuneration Tribunal: Annual report and determination*, 24 May 2022, as published in the Government Gazette, Number 240, 3 June 2022, 17 [82].

⁷⁰ NSW Parliament. Department of Parliamentary Services, *Members’ Entitlement Handbook*, Sydney, 1 July 2023, p. 12ff.

⁷¹ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 1, para. 1.4.5.5, p. 13.

- agreeing with a property developer that he would make representations to government officials in exchange for a secret commission⁷²
- making representations to ministers and other government officials with the hope and expectation of receiving a personal pecuniary benefit from a property development⁷³
- making representations to ministerial staff and government officials in relation to a property development at Badgerys Creek with the expectation of receiving a personal pecuniary benefit or commission.⁷⁴

90. The Commission accepts that in some cases it is difficult to avoid the intermingling of parliamentary duties and private activities. As observed by the Commission:

*Like most other workers, a politician should be able to make occasional, limited personal use of publicly-provided resources. This may include making some personal telephone calls, limited internet use and running errands, in circumstances where to do otherwise would be impractical and where it is not conducive to corruption and improper conduct.*⁷⁵

91. However, the Members' Code of conduct needs to address this issue unambiguously.

92. As noted in the Operation Keppel report, given members of Parliament are not prohibited from having outside employment (which differs from the prohibitions for ministers, as per Part 1 of the Schedule to the NSW Ministerial Code of Conduct), the corruption risks concerning the misuse of public resources remain significant. An amendment of the Members' Code of Conduct as well as further guidance is needed to address this risk.

Submission 3

93. As outlined in the Operation Keppel report, the Commission submits that the Privileges Committee review and amend the Member's Code of Conduct and all relevant guidance material in relation to the use of public resources, to clarify the limited circumstances in which it is acceptable to intermingle parliamentary duties with personal or private activities. In particular, this review should address the use of public resources as outlined in the Operation Keppel report with respect to:

- **staff**
- **electorate or parliamentary offices**
- **allowances, entitlements or other benefits**
- **email and other IT systems**
- **stationery (which bears the crest of the Parliament).**

⁷² NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 1, para. 1.4.5.1, p. 12.

⁷³ *Ibid*, para 1.4.5.3, p. 12

⁷⁴ *Ibid*, para 1.4.5.4, p. 13

⁷⁵ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 2, para. 14.53, p. 335.

Code of Conduct: Friendship groups

94. The discussion paper refers to the topic of friendship groups, and the following recommendation made by the Commission:

Operation Keppel Recommendation 7

To further clarify that the Code of Conduct for Members applies to parliamentary friendship groups it is recommended:

- (a) that the Presiding Officers strengthen the Parliamentary Friendship Groups Policy to specify that all activities undertaken by members under the auspices of a parliamentary friendship group must be in accordance with the Code of Conduct for Members and related guidelines and procedures*
- (b) that the NSW Parliament's designated committees consider amending the Code of Conduct for Members to specifically mention that its application extends to activities involving parliamentary friendship groups.*

95. The Commission's Operation Keppel report outlines the finding that Mr Maguire misused his role as a member of Parliament and chair of the APFG to advance his own financial interests, as well as the commercial interests of his associates.⁷⁶ For example, the Operation Keppel report outlines evidence of an overseas trip taken by Mr Maguire to promote the interests of a certain group of businesspeople. Further, during this trip, Mr Maguire would introduce himself to people as a member of Parliament and as chair of the APFG and would use his parliament business card, which included the words "New South Wales Parliamentary Friendship Group".⁷⁷

96. Participation in an authorised parliamentary group, such as the APFG, is specifically mentioned in the PRT's guideline as an example of activity coming within the definition of "parliamentary duties".⁷⁸

97. As outlined in the Operation Keppel report, the primary control mechanism for parliamentary friendship groups is the Parliamentary Friendship Groups Policy. It includes the following requirement:

*When undertaking activities under the auspices of a Parliamentary Friendship Group, Members must be mindful of the Code of Conduct for Members and the Members' Handbook.*⁷⁹

98. In the Commission's view, the phrase "must be mindful" in regard to the Members' Code of Conduct is too vague. Hence, it made the recommendation to strengthen the

⁷⁶ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 1, chapter 7.

⁷⁷ *Ibid*, para. 7.33, p. 194.

⁷⁸ *Ibid*, Volume 2, para. 14.61, p. 336.

⁷⁹ *Ibid*, para. 14.68, p. 337.

Parliamentary Friendship Groups Policy. The discussion paper mentions a separate review process being conducted by the Presiding Officers to respond to this aspect of the recommendation, and for the Privileges Committee to take the outcome of this review into account.

99. To remove any doubt, the Commission also recommended that the Members' Code of Conduct should state that it applies to the activities of parliamentary friendship groups. Mentioning parliamentary friendship groups specifically would raise members' awareness and assist in reducing the likelihood of the occurrence of corrupt conduct.

Submission 4

100. **As outlined in the Operation Keppel report, the Commission submits that the Members' Code of Conduct be amended to specifically mention that its application extends to activities involving parliamentary friendship groups.**

Code of Conduct: Safe reporting

101. The Commission notes that the discussion paper considers a range of recommendations made by the Broderick Review, including the issue of ensuring safe reporting of concerns by staff.
102. The Operation Keppel report observed that parliamentary and electorate staff are in a difficult and vulnerable position, as their employment is at the discretion of the individual member but paid for by the NSW Parliament.⁸⁰
103. The Commission notes that the Operation Keppel report made several recommendations concerning staff, including that the training program for staff include the processes relating to making a public interest disclosure, both internally and externally under the *Public Interest Disclosures Act 2022*. Further that the induction and regular ongoing training for members' staff (conducted at least every two years) be made mandatory.⁸¹
104. These recommendations were addressed to other parliamentary persons and entities. Given the scope of this current inquiry, these recommendations are also brought to the attention of the Privileges Committee.

Part 2: Training and professional education for members

Training and professional education: ICAC recommendations

105. The Privileges Committee's discussion paper outlines the topic of training and professional education for members and refers to five recommendations made by the

⁸⁰ Ibid, para. 14.117, p. 344.

⁸¹ Ibid, recommendations 13 and 14, para. 14.124 -14.125, p. 345.

Commission in Operation Witney and in Operation Keppel. The Commission proposes that the additional Operation Keppel recommendation 11 (see below) also be considered as part of this current inquiry, because it is relevant to training and professional education as well. The relevant recommendations are:

Operation Witney Recommendation 6

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly develop and/or update specific training and guidance material about the proper and improper exercise of power by members and undue influence, in line with findings made by this investigation.

Operation Witney Recommendation 7

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly develop and/or update specific training and guidance material about the improper intermingling of public resources with personal interests, in line with findings made by this investigation.

Operation Keppel Recommendation 10

That the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments devise a permanent ongoing professional education program for members.

Operation Keppel Recommendation 11

That the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments ensure that the existing induction program and the ongoing education development program for members address the obligations and duties of elected public officials, including (but not limited to):

- a) principles and values that guide members in performing their public role*
- b) disclosing interests via registration*
- c) how to avoid, resolve and manage a conflict of interest*
- d) guidance on secondary employment or outside business interests*
- e) disclosing gifts and benefits*
- f) the prohibition on improper influence*
- g) guidance on the use of public resources*
- h) guidance on the proper use of confidential information*
- i) enforcement mechanisms*

j) risks and processes relating to lobbying

k) restrictions on post-parliamentary careers

l) procedures for reporting suspected corrupt conduct.

Operation Keppel Recommendation 12

That the NSW Parliament should incentivise participation in education, for example, by developing standards and publishing attendance records

Operation Keppel Recommendation 18

That the NSW Government, the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments ensure that the induction and ongoing education programs for ministers and members address the management of political interests when exercising public power. For example, members should be aware that public power to appoint to a public office must be exercised for a public purpose, not for a private or a political purpose. Further, a public power cannot be exercised in relation to the location of a public facility because it will assist the re-election of a party member, rather than it being the proper place for it.

Training and professional education: Privileges Committee

106. As part of the *Review of the Members' Code of Conduct (2022)*, the previous Privileges Committee observed that it "needs to take more active steps to promote members' awareness and understanding of the provisions of the Code" and stated its intention "to pursue a more active role in educating members about the Code in the 58th Parliament".⁸²
107. Several recommendations made in Operation Witney were considered in the report by the previous Privileges Committee. It contained the following relevant recommendations:

Recommendation 6

That the President, the Clerk and the relevant sections of the Department of Parliamentary Services develop and/or update specific training and guidance material about the proper and improper exercise of power by members and undue influence, in line with findings made by the Independent Commission Against Corruption in its investigation into the conduct of the member for Drummoyne.

⁸² NSW Parliament, Legislative Council, Privileges Committee, *Review of the Members' Code of Conduct (2022): Report 90*, November 2022, p. 6.

Recommendation 7

That the President, the Clerk and the relevant sections of the Department of Parliamentary Services develop and/or update specific training and guidance material about the improper intermingling of public resources with personal interests, in line with findings made by the Independent Commission Against Corruption in its investigation into the conduct of the member for Drummoyne.⁸³

Observation by the Commission regarding training and professional education

108. The Chief Commissioner's foreword to the Commission's most recent Annual Report includes further comments that are relevant to the recommendations about training and ongoing professional development:

The findings of Operation Keppel ... send a clear message to all public officials that there are necessary restraints in the use of public power. Our investigation stressed the importance of public officials declaring and addressing conflicts of interest, using public resources only for the purposes for which they are intended (rather than in pursuit of private interest) and reporting suspected corrupt conduct.

...

Pursuant to the strategic plan we are proactively targeting key areas of concern for corruption risk. We acknowledge that more needs to be done to communicate the lessons learnt particularly in areas of high risk. One example is our work with new and departing members of Parliament (MPs) leading to and following the 2023 NSW State Election. In this respect we engaged positively with parliamentary privileges committees and produced a series of publications and education sessions which sought to reinforce key messages.

109. The Operation Keppel report outlined why an expanded professional education program should be implemented to support a culture of ethical behaviour for elected public officials. Ongoing professional education raises awareness and promotes an ethical culture.
110. As noted in this report, education programs are a core element of an effective compliance program. The values and conduct embodied in codes of conduct need to be integrated and implemented in order to become second nature.⁸⁴
111. The Commission's recommendations are aimed at strengthening training and education at NSW Parliament to drive an organisational culture that embraces ethical

⁸³ Ibid, p. vii.

⁸⁴ NSW ICAC, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney, June 2023, Volume 2, para. 14.112, p. 343.

principles and values, as well as providing members with guidance when faced with ethical dilemmas that harbour corruption risks.

112. To this end, the Commission has initiated a multi-pronged approach to assist with training and education for members of Parliament, including:
- as outlined by the Chief Commissioner in his foreword, detailed above, working with departing members of Parliament leading up to the 2023 NSW State Election
 - delivery of a presentation by the Chief Commissioner as part of NSW Parliament's induction program for new parliamentarians on 26 April 2023, including a pre-recorded presentation
 - publication of an *Annotated Code of Conduct for Members* to assist members to know the standards of acceptable behaviour and avoid conduct that could amount to a finding of serious corrupt conduct. It provides references to relevant past Commission reports and other publications that relate to specific topics within the current Members' Code of Conduct
 - seminar briefing of ministers as part of ministerial induction, including the topic of risks for members of Parliament
 - a presentation by the Chief Commissioner to all members and staff on 11 October 2023 at NSW Parliament, as part of the Parliament House Member Development series
 - separate briefings being provided by the Commission, at the request of political party leaders and ministers.

113. The NSW Government's media release of 7 February 2024, referenced previously, also mentions an enhanced education program, stating:

*Further reforms include ...boosting education programs to ensure Ministers are aware of their integrity obligations.*⁸⁵

Submission 5

114. **As outlined in the Operation Witney and the Operation Keppel reports, the Commission submits that the Privileges Committee should progress the implementation of the relevant six recommendations relating to training and professional development.**

⁸⁵ [NSW Government introduces integrity reforms | NSW Government](#), accessed 13 March 2024.

Appendix 1

See Committee on Standards in Public Life, *Upholding Standards in Public Life: Final report of the Standards Matter 2 review*, November 2021, p. 92.

The Seven Principles of Public Life

This includes the updated descriptor to leadership.

The Seven Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.