Submission No 1

INQUIRY INTO DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION 2025

Organisation: Clerk of the Parliaments

Date Received: 19 September 2025

Inquiry into the draft Constitution (Disclosures by Members) Regulation 2025

Summary:

The new draft of the Constitution (Disclosures by Members) Regulation has addressed most of the concerns raised in the Privileges Committee's review of the first draft in 2024. It does this be separating the most problematic aspects of the first draft, which dealt with disclosure of conflicts of interest and disclosure of family interests. The conflicts of interest issue needs to be addressed separately from the regulation by both Houses.

Supporting this draft regulation should lead to a disclosure system which is less administratively burdensome for most members while enhancing transparency by providing a more timely record of member's interests with real time updating.

Background to the 2025 draft

The Privileges Committee tabled its report no 96 *Draft Constitution (Disclosures by Members) Regulation 2024* in September 2024. In the previous month the Legislative Assembly Parliamentary Privilege and Ethics Committee tabled its report into the same draft regulation. Both reports expressed concern regarding the requirements to disclose all conflicts of interest, and the inclusion of disclosure of family interests, suggesting it was too widely expressed to be practical. The Legislative Council committee proposed this be addressed by limited the requirement to disclose only pecuniary conflicts of interests, or failing that a system of private disclosure to a committee similar to that in place for the Senate.

Following the tabling of both reports, the Chief Commissioner of the Independent Commission Against Corruption (ICAC) wrote to both Presiding Officers on 30 October 2024 expressing dissatisfaction with what was proposed in both reports, particularly singling out committee's recommendation of limiting conflicts of interest to pecuniary interests. The Chief Commissioner drew attention to Operation Keppel which at its heart involved a non-pecuniary interest which potentially influenced several important government decisions. The President provided a copy of the correspondence to the committee chair.

In response to the correspondence, a meeting was arranged between the Chief Commissioner and the chairs of the privileges committees of both Houses, also attended by myself and the Clerk of the Legislative Assembly. At that meeting agreement was reached that a way forward was to remove the conflict of interest requirement from the regulation and instead have the Houses establish a confidential register of conflicts of interest, with limited access but for that access to include the ICAC. This conflicts of interest register was to incorporate family interests, which the Chief Commissioner, as a former member, recognised required some confidentiality protections.

Following this meeting the Chair of the Legislative Assembly Committee wrote to the Premier on 21 November 2024 advising of the outcome of the meeting and the preferred approach in a new draft regulation, and again on 17 February 2025. Copies of this correspondence, previously provided to the committee, appears as attachment one.

On 19 August 2025 the Premier the Hon Chris Minns MP wrote to the chairs of both privileges committees and both clerks providing a government response to the reports of both committees and enclosing a new draft regulation which is now the subject of the current inquiry.

Conflicts of interest to be addressed separately

The new draft regulation has given effect to the solution suggested at the meeting with the Chief Commissioner and the chairs of the respective committee. It has excised the requirement to declare conflicts of interest and almost (see below) completely removed the provisions which expanded disclosure requirements to include immediate family members. While members can under cl 19 disclose conflicts of interest as discretionary disclosures (as they can now under the current regulation) this leaves many potential conflicts of interest outside the specific disclosure requirements of what is currently proposed.

It is important that the committee notes that members must still satisfy the requirements of the Members Code of Conduct to declare and manage all conflicts of interest, which is why there needs to be a corresponding action to establish through the House a confidential register of conflicts of interest, and for this to include where appropriate disclosure of relevant family interests which may lead to a conflict of interest or a perceived conflict of interest.

I would encourage the committee in their report on this draft regulation to include a recommendation that the Legislative Council adopt a resolution which gives effect to cl 7 of the Members Code of Conduct:

> Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest.

This could take the form of a confidential register held in the Office of the Clerk. The only access to this register should be to the members of the Privileges committee on resolution

of that committee requiring the Clerk to provide access to a member's disclosure, or to the Independent Commission Against Corruption using its formal powers to require information to be provided, and to the Parliamentary Ethics Adviser on a request from the member seeking advice. Such confidentiality should ensure members can confidently disclose family interests on this register.

References to family interests in draft regulation

The 2024 draft regulation imposed considerable requirements on members to disclose interests of immediate family members. In its report this committee identified some of the difficulties this posed for members to meet their disclosure requirements. As stated above, the new draft regulation is predicated on a parallel confidential register being maintained, so understandably it has removed most references to family interests. In clause 9 (2) the current permission given to members to disclose the location of their primary place of residence by the location of the parcel by suburb or area is extended to other property in which the member has an interest" if the parcel [of land] is used by the member or a relative of the member for residential purposes". A similar extension is also made in cl 10 to real property held in trust. A "relative" is widely defined in the Dictionary section in Schedule 3 to include, for instance, the uncle of a spouse of a member, or a niece or nephew.

The rationale is no doubt for the security of relatives of members, an unfortunate but valid consideration in the current environment. Presumably to avoid criticism of reducing disclosure requirements, cl 21 as explained further in cl 23 requires that a separate confidential register be kept of tenanted real property. This seems to add unnecessary complexity, particularly as there is also intended to be a confidential conflicts of interest register through resolution by the House. It would be simpler if the regulation simply permitted members to identify tenanted property by suburb or area where a relative resided in the property.

In regard to other individuals and their privacy as tenants of a property owned by a member, there was extensive consideration given to this in the committee's 2010 report reviewing the Code of Conduct and member's disclosures.[1] Reference was made to other parliaments permitting confidential disclosures of addresses of tenanted properties for security and privacy reasons.

There may be occasions when a member needs to disclose on the confidential conflicts of interest register the actual addresses of properties they own if they are not clearly identified on the public disclosure of interests, but it appears to be unnecessary to set up this other register just for this purpose of real property. Perhaps there is a way to merge the conflicts of interest register with this confidential register, but keeping the requirements of the former as a matter for the House rather than any reference in the regulation.

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[1] Privileges Committee *Review of the Code of Conduct* Report No. 54, (December 210) paras 3.78 – 3.93.

How the new regime would work

The most significant benefit of the draft regulation to members is the move away from the current cumbersome system where members have to provide an ordinary return each year, together with a supplementary return six months after the ordinary return is submitted, and each time there is one change a full return is required to be submitted. This leads to considerable time taken by Clerks and whips to chase up these six monthly returns, yet ironically it encourages members to wait until the next return is due to report any changes to their interests.

The draft regulation requires members to submit just a primary return. When changes to interests happen, the member can just update that aspect of the disclosure, not submit a whole new return. This is required under cl 6 within one month of the change arising, so as a result members disclosure returns will be a more current reflection of their interests than currently occurs. The check against members overlooking the need to update their returns is in cl 7 which requires members to make an annual declaration to the Clerk by 31 July of each year that to the best of their knowledge their return is up to date.

Initially the first interest disclosure return will be required before 31 March 2026. This may be a paper based return as the on line form will unlikely be developed and tested by this date. Thereafter the first return will be submitted with one month of a member being sworn in after an election or a casual vacancy.

Status of this submission

There is nothing in this submission which would prevent the committee publishing it in part or as a whole, although I note attachment one consists of correspondence that has not been published to my knowledge, and should only be done so in consultation with the author of both letters.

Steven Reynolds
Clerk of the Parliaments

19 September 2025