

Select Committee on Ministerial Propriety in New South Wales

Ministerial Propriety in New South Wales

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Terms of reference

1. That the Select Committee on Ministerial Propriety in New South Wales inquire into and report on ministerial propriety in New South Wales, including but not limited to:
 - (a) Ministerial responsibility to Parliament, including the doctrine of individual ministerial responsibility
 - (b) Measures to reduce potential conflicts of interest between a minister's public duties, private interests and membership of a political party, particularly in relation to financial and commercial activities
 - (c) The operation and enforcement of the *Lobbying of Government Officials Act 2011*, and any associated codes of conduct, registers or administrative arrangements
 - (d) The interaction and appropriate relationship between the Code of Conduct for Members of Parliament, the Lobbyist Code of Conduct, and the current Code of Conduct for Ministers of the Crown
 - (e) Whether the current Code of Conduct for Ministers of the Crown should be adopted as an applicable code for the purposes of section 9(1)(d) of the *Independent Commission Against Corruption Act 1988*, and
 - (f) Any other relevant matters.
2. That the Committee report by 2 March 2015.¹

¹ The original reporting date was 23 October 2014 (*Minutes*, Legislative Council, 22 August 2013, p 1914). The reporting date was later extended to 2 March 2015 (*Minutes*, Legislative Council, 18 September 2014, pp 101-2).

Committee membership

The Hon Robert Borsak MLC	Shooters and Fishers Party	<i>Chair</i>
The Hon Luke Foley MLC	Australian Labor Party	<i>Deputy Chair</i>
Dr John Kaye MLC	The Greens	
The Hon Trevor Khan MLC	The Nationals	
The Hon Dr Peter Phelps MLC	Liberal Party	
The Hon Adam Searle MLC	Australian Labor Party	

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Chair's foreword

This inquiry was established in August 2013 to examine the issue of ministerial propriety in New South Wales. Revelations arising out of various investigations by the Independent Commission Against Corruption both before and since that time serve only to demonstrate the continuing importance of having robust integrity measures in place.

Since the establishment of this inquiry some of the measures to regulate ministerial conduct and address potential conflicts of interest have seen significant reform. Of particular importance in the context of the inquiry's terms of reference are reforms which now mean that a substantial breach of the Ministerial Code of Conduct can constitute corrupt conduct for ICAC purposes.

The committee has also looked at the scheme regulating lobbying in New South Wales. It too has changed significantly in the intervening period. It should be acknowledged that some of the weaknesses in the previous scheme identified by stakeholders in their submissions to this inquiry have since been addressed.

These changes are a welcome step forward. There is, however, always more that can be done to ensure that New South Wales has the most robust integrity measures possible. In the lobbying context, we recommend that the NSW Electoral Commission monitor the implementation of the recent amendments to the scheme and undertake a review to consider ways of further strengthening it. We also recommend that ministers be required to publish extracts from their diaries detailing meetings with lobbyists at least monthly, rather than quarterly as is currently the case.

Finally, in terms of strengthening the measures that apply across the board to all members of Parliament, the committee recommends that the NSW Government bring forward legislation to implement a Commissioner for Standards model, as proposed by the Legislative Council Privileges Committee in June 2014. Among other things, this model would provide a more speedy mechanism by which less serious allegations of misconduct against members, including ministers, can be investigated and resolved.



The Hon Robert Borsak MLC
Committee Chair

Summary of recommendations

Recommendation 1

10

That the NSW Government bring forward legislation to implement a Commissioner for Standards model, as recommended in the Legislative Council Privileges Committee report entitled *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*.

Recommendation 2

15

That the NSW Government require the publication of ministerial diaries online at least monthly.

Recommendation 3

16

That the NSW Electoral Commission monitor the implementation of the *Lobbying of Government Officials Act 2011* and the Register of Third-Party Lobbyists and undertake a review in 2016 to consider ways of further strengthening the lobbying scheme.

Chapter 1 Introduction

This chapter provides an overview of the inquiry process, including the committee's terms of reference and the manner in which the inquiry was conducted. It also includes a brief outline of the report structure.

Conduct of the inquiry

Terms of reference

- 1.1 On 22 August 2013 a motion was passed in the Legislative Council for the establishment of the Select Committee on Ministerial Propriety in New South Wales.² The committee is comprised of six members as set out on page v. The resolution establishing the committee identified the Hon Robert Borsak MLC as Chair of the committee and the Hon Luke Foley MLC as Deputy Chair.
- 1.2 The terms of reference require the committee to inquire into and report on various issues relating to ministerial propriety including ministerial responsibility to Parliament, measures to reduce potential conflicts of interest on the part of ministers, and the operation and enforcement of the lobbying scheme.
- 1.3 The terms of reference are set out on page iv. The House later agreed to extend the reporting date to 2 March 2015.³

Submissions

- 1.4 The committee invited submissions by advertising in the *Sydney Morning Herald*, *Daily Telegraph* and *Australian Financial Review*. A media release announcing the inquiry was sent to all New South Wales media outlets. The committee also wrote to key stakeholders inviting them to make a submission to the inquiry.
- 1.5 The committee received seven submissions to this inquiry. The list of submissions is available at **Appendix 1**.

Public hearing

- 1.6 The committee held one public hearing on 14 October 2013 with witnesses from the Department of Family and Community Services. A list of witnesses is reproduced at **Appendix 2** and a list of documents tabled during the hearing is included in **Appendix 3**.
- 1.7 A transcript of the hearing is available on the committee's website www.parliament.nsw.gov.au/ministerialpropriety. In addition, a list of witnesses who provided answers to questions on notice during the hearing is provided in **Appendix 4**.

² *Minutes*, Legislative Council, 22 August 2013, p 1914.

³ *Minutes*, Legislative Council, 18 September 2014, pp 101-2.

- 1.8** The minutes of the proceedings of all committee meetings relating to the inquiry are included in **Appendix 5**.

Report structure

- 1.9** Chapter 2 of this report briefly explores the concept of ministerial responsibility to Parliament and examines the key measures by which ministerial behavior in New South Wales is regulated. The chapter notes recent changes to these measures as well as proposed improvements recommended by the Privileges Committee of each House. The chapter then goes on to examine the scheme regulating the lobbying of government officials, which has also changed significantly since this inquiry was established.
- 1.10** Chapter 3 provides a case study on ministerial propriety. It examines caseworker numbers in the Department of Family and Community Services in light of statements by the then Minister on this issue.

Chapter 2 Ministerial responsibility and lobbyist conduct

This chapter briefly explains the doctrine of ministerial responsibility to Parliament and goes on to examine the key measures by which ministerial behavior in New South Wales is regulated, including the Ministerial Code of Conduct, the Code of Conduct for Members and the pecuniary interest disclosure regime. Important recent changes to these measures are noted. Also discussed are recent reports by the Privileges Committee of each House recommending further changes.

The chapter then examines the scheme regulating the lobbying of government officials in New South Wales, which has also changed significantly since this inquiry was established. The views of stakeholders in relation to the operation of the previous scheme are also canvassed.

Ministerial responsibility to Parliament

2.1 Ministerial responsibility broadly refers to the:

... principles that make up the system of government under which the executive is constitutionally responsible to – that is, removable by, answerable to, and legally subordinate to – the legislative branch ...⁴

2.2 The principles of ministerial responsibility generally fall within two categories – collective ministerial responsibility and individual ministerial responsibility. Collective ministerial responsibility is sometimes referred to as ‘cabinet solidarity’,⁵ based on the convention that Cabinet stands collectively responsible for its decisions.⁶ According to the Department of Premier and Cabinet’s Ministerial Handbook, aspects of this convention include that:

- Ministers must publicly support Cabinet decisions;
- if unable to do so, they should resign;
- Ministers should seek Cabinet approval for policy before it is announced;
- Ministers should not publicly criticise a colleague's actions; and
- Ministers should not express opinions on policy other than in an official manner; that is, Ministers do not express their ‘private’ opinions on such matters.⁷

2.3 The doctrine of individual ministerial responsibility, on the other hand, refers to the convention that ministers are responsible for matters occurring within their portfolio. The Accountability Round Table commented that while it is difficult to articulate the applicable principles of individual ministerial responsibility, two aspects of the convention are clear:

Firstly, there is a widespread belief that ministers must resign if they are guilty of either wrongdoing in their official capacity or wrongdoing of a personal kind such that their behaviour brings discredit to their office, or demonstrates that they are unfit to hold a position of public trust. Secondly, they must account to Parliament for their

⁴ Submission 2, Department of Premier and Cabinet, p 1.

⁵ Submission 1, Queensland Integrity Commissioner, Attachment 1, p 2.

⁶ NSW Department of Premier and Cabinet, *Ministerial Handbook*, June 2011, p 11.

⁷ NSW Department of Premier and Cabinet, *Ministerial Handbook*, June 2011, p 11-12.

administration of their portfolios and of any legislation for which they are the responsible minister; and they must, by their accounting, place Parliament in a position to make informed judgments about all aspects of that administration.⁸

- 2.4 The submission from the Queensland Integrity Commissioner, Dr David Solomon AM, referred to Professor Patrick Weller's observation that:

In practice this convention means that they [ministers] answer questions about their department and, where inadequacies are uncovered, seek to ensure that they are fixed. It does not mean, and has never meant, that ministers should resign if departments fail in some respect or other.

...

What is important is the way in which ministers interact with their departments, and with the broader public service, and respond to parliamentary examination of their activities.⁹

- 2.5 Similarly, the Department of Premier and Cabinet's submission referred to the 'increasingly common' view, reflected in the Ministerial Handbook, that:

... where the Minister is not personally at fault, and with all reasonable care could not have prevented the mistake, the Minister would not be held responsible in terms of the convention.¹⁰

- 2.6 The Department also noted that whether a minister ought to be considered individually responsible in any particular case is primarily a political question.¹¹

- 2.7 Dr Solomon has commented that '[i]n parliamentary terms, the worst crime (to judge by the complaints which MPs and Senators have made over the years) is to have "misled" (that is, lied to) the Parliament'.¹² In this regard, the submission by Centennial Consultancy emphasised the importance of ministers ensuring that 'Parliament is provided with relevant information about major transactions', such as those involving the proposed sale of public assets.¹³

Measures to reduce conflicts of interest between a minister's public duties, private interests and membership of a political party

- 2.8 Ministerial behavior in New South Wales is regulated by way of several important measures that, amongst other things, aim to ensure that conflicts of interest are avoided or otherwise managed appropriately. These include the Ministerial Code of Conduct, the Code of Conduct for Members and the pecuniary interest disclosure regime. Recent reports by the Legislative

⁸ Submission 7, Accountability Round Table, p 3.

⁹ Submission 1, Queensland Integrity Commissioner, Attachment 2, p 1.

¹⁰ Submission 2, Department of Premier and Cabinet, p 2.

¹¹ Submission 2, Department of Premier and Cabinet, p 2.

¹² Submission 1, Queensland Integrity Commissioner, Attachment 1, p 2.

¹³ Submission 6, Centennial Consultancy, p 6.

Council Privileges Committee and the Legislative Assembly Committee on Parliamentary Privilege and Ethics recommended several changes to the latter two of these measures.

Ministerial Code of Conduct

2.9 A key measure regulating ministerial behaviour in New South Wales is the Ministerial Code of Conduct. Such a code has been adopted by successive governments to govern the conduct of ministers, although the code was first made public only in 2010.¹⁴ The code in force at the time this inquiry was established was published in June 2011 as an annexure to the Ministerial Handbook.¹⁵ This code has since been superseded by a new code introduced in September 2014.

2.10 The preamble to the 2011 code stated that the following two principles must guide ministerial conduct in office:

1. Ministers will perform their duties honestly and in the best interests of the people of New South Wales.
2. Ministers will be frank and honest in official dealings with their colleagues and will maintain the confidentiality of information committed to their secrecy.¹⁶

2.11 The 2011 code was divided into eight parts, dealing with:

- general obligations
- registration of ministers' interests
- conflicts of interest
- confidentiality of information
- misuse of public property and services
- gifts and hospitality
- employment or engagement
- lobbying.

2.12 In relation to the 2011 code the Department's submission notes that:

Compliance with the Ministerial Code is the responsibility of each individual Minister and the Premier of the day. In the event that a Minister fails to comply with a requirement of the Ministerial Code, it is for the Premier to determine what (if any) action would be appropriate.

...

Traditionally, Ministerial Codes of Conduct have been adopted by NSW Premiers and Cabinets as a matter of internal discipline. In particular, they provide for the

¹⁴ Submission 2, Department of Premier and Cabinet, p 3.

¹⁵ Submission 2, Department of Premier and Cabinet, p 2.

¹⁶ NSW Department of Premier and Cabinet, *Ministerial Handbook*, June 2011, Annexure A, p A1.

establishment of a range of practices and behavioural norms that are directed toward enabling the Premier and the Cabinet to avoid, or at least minimise the risk of, non-compliance with Ministers' substantive legal duties and community expectations as to appropriate standards of Ministerial integrity.

As such, while actions (or omissions) which breach the Ministerial Code may separately constitute a criminal offence or a breach of some other applicable requirement, non-compliance with the Ministerial Code, of itself, gives rise to political consequences only.¹⁷

2.13 The Department also noted that the 2011 code had not been adopted as an applicable code for the purposes of the *Independent Commission Against Corruption Act 1988*. It foreshadowed that, were it to be adopted for that purpose:

... its nature as a self-regulatory instrument may change, as substantial non-compliance with the Code would, of itself and provided the relevant conduct otherwise fell generally within the description of conduct set out in section 8 of the ICAC Act, be considered in law to constitute "corrupt conduct", even if that conduct would not other [sic] constitute a criminal offence.¹⁸

2.14 Dr Solomon and the Accountability Round Table put forward the view that the code should be adopted as an applicable code of conduct for the purposes of the *Independent Commission Against Corruption Act 1988*.¹⁹

2.15 The committee notes that a new Ministerial Code of Conduct was introduced in September 2014 as an Appendix to the Independent Commission Against Corruption Regulation 2010. The regulation now prescribes the code as an applicable code of conduct for the purposes of the *Independent Commission Against Corruption Act 1988*. This means that a substantial breach of the code can constitute corrupt conduct for the purposes of the Act.

2.16 A recent briefing paper by the NSW Parliamentary Research Service summarises the other key features of the 2014 code:

... while much of the substance of the Code remains broadly the same, many of its features find more detailed expression and its terms are more clearly defined. This includes the requirements relating to directorships and the disclosure of interests for Members and their immediate family. ... Other new features of the 2014 code include:

- Lawful directions to the public service: Ministers are prohibited from knowingly directing or requesting public servants "to act contrary to the law" or from directing a public service agency to "provide advice with which the agency does not agree" (Appendix cl 5)
- Premier to determine sanctions: The enforcement of the requirements of the Schedule, including any sanctions for a breach, were a matter for the Premier.²⁰

¹⁷ Submission 2, Department of Premier and Cabinet, pp 2-3.

¹⁸ Submission 2, Department of Premier and Cabinet, p 3.

¹⁹ Submission 1, Queensland Integrity Commissioner, pp 3-4; Submission 7, Accountability Round Table, p 6.

²⁰ NSW Parliamentary Research Service Briefing Paper No 1/2015, *Integrity in government: issues and developments in New South Wales, 2011-2015*, pp 20-21.

2.17 The 2014 ministerial code also gives increased power to the Parliamentary Ethics Adviser in relation to post-separation employment. As under the 2011 code, the role of the Parliamentary Ethics Adviser is to provide advice to ministers who, while in office or within 18 months of leaving office are considering an offer of post-separation employment that relates to their current portfolio or any portfolio held in the last two years. Importantly, under the 2014 code a minister is prohibited, while in office, from accepting any offer of post-separation employment if the Parliamentary Ethics Advisor has advised against it. The code also provides that where a minister accepts an offer of post-separation employment, any advice provided by the Parliamentary Ethics Advisor must be tabled in the House of Parliament to which the minister belongs.²¹

Code of Conduct for Members and pecuniary interest disclosure requirements

2.18 There are two additional measures regulating ministerial behaviour which apply to all members of Parliament: the Code of Conduct for Members and the pecuniary interest disclosure regime. These measures apply to ministers in their capacity as members of Parliament,²² but nevertheless influence the discharge of their ministerial role.

2.19 The first version of the Code of Conduct for Members dates from 1998. The current code was adopted by each House for the purposes of the *Independent Commission Against Corruption Act 1988* in 2007.²³ It consists of a preamble followed by seven clauses dealing with:

- disclosure of conflicts of interest
- bribery
- gifts
- use of public resources
- use of confidential information
- duties as a member of Parliament
- secondary employment or engagements.

2.20 The regime relating to the disclosure of members' pecuniary interests is set out in the Constitution (Disclosure by Members) Regulation 1983. The regulation requires members to make a primary return disclosing their interests at the beginning of their term in Parliament, and every six months after that, to make either an ordinary or supplementary return disclosing ongoing interests. Members may also make a discretionary disclosure at any time.

²¹ NSW Parliamentary Research Service Briefing Paper No 1/2015, *Integrity in government: issues and developments in New South Wales, 2011-2015*, p 22.

²² Submission 2, Department of Premier and Cabinet, p 7. This is confirmed in the preamble to the 2014 ministerial code, which provides that '... in addition to the rules set out in this Code, Ministers are subject to ... standards of conduct applying to them in their capacity as Members of Parliament', cl 12, Preamble to the Appendix, Independent Commission Against Corruption Regulation 2010.

²³ *Votes and Proceedings*, Legislative Assembly, 8 May 2007, p 36, amended 20 June 2007, pp 154-5; *Minutes*, Legislative Council, 21 June 2007, pp 148-150.

2.21 As to the relationship between the ministerial code, the members code and the pecuniary interest disclosure regime, the Department of Premier and Cabinet observed that:

The requirements of the Ministerial Code of Conduct, the Members of Parliament Codes, and the *Constitution (Disclosure by Members) Regulation 1983* apply separately. However, there does not appear to be any inconsistency between them, in the sense that it is both necessary and possible to comply with all three at the same time. Further, the obligations are otherwise generally consistent and mutually reinforcing so as to avoid unnecessary confusion or administrative burden.²⁴

Recommendations of the Privileges Committees

2.22 The committee notes that since this inquiry was established the Legislative Council Privileges Committee published a report in June 2014 entitled *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*. The report dealt with recommendations made in the Independent Commission Against Corruption (ICAC) report *Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources*, published in October 2013. The ICAC's report arose out of its investigations into allegations concerning mining exploration licences (Operations Jasper and Acacia).

2.23 The Chair's foreword to the Privileges Committee's report summarises the recommendations of the committee as follows:

- The adoption of a new clause in the *Code of Conduct for Members* dealing comprehensively with improper influence by members;
- Amendment of the interest disclosure regime to require disclosure by members of the interests of their spouses/partners and dependent children, together with a range of other measures to increase the timeliness and accessibility of interest returns by members;
- The adoption of a Commissioner for Standards in New South Wales, based on the model adopted in the UK Parliament.²⁵

2.24 In addition to the functions currently undertaken by the Parliamentary Ethics Adviser (that is, advising members on the exercise of their role as members, and providing advice to ministers and former ministers on post-separation employment), a Commissioner for Standards would also be responsible for:

- monitoring the operation of the code of conduct for members and the pecuniary interest disclosure regime, and making recommendations thereon to the designated oversight committee, being the Privileges Committee
- providing training for members on their obligations under the code of conduct and the pecuniary interest disclosure regime
- receiving complaints in relation to the conduct of members, either from members or from others, including the general public

²⁴ Submission 2, Department of Premier and Cabinet, p 7.

²⁵ Privileges Committee, NSW Legislative Council, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator* (2014), p 9.

- receiving and investigating complaints about alleged breaches of the code of conduct or the pecuniary interest disclosure regime by members
- reporting on the outcome of investigations, and in case of:
 - minor transgressions, take remedial action in agreement with the member concerned, and report that finding to the oversight committee
 - significant misconduct by a member, report the facts and his or her conclusions to the oversight committee
- providing an annual report at the end of each financial year to the designated oversight committee.²⁶

2.25 The Legislative Assembly Committee on Parliamentary Privilege and Ethics also published a report addressing the ICAC's recommendations in July 2014.²⁷ The Legislative Assembly committee's report contains recommendations similar to those made in the Legislative Council committee's report, although it preferred the adoption of an Ethics Commissioner (rather than a Commissioner for Standards), with slightly different functions. A key difference between the two models relates to reporting arrangements following the investigation of an alleged breach by a member.²⁸ There were also minor differences between the recommendations of the two committees in relation to amendments to the members' code to deal with improper influence, and the pecuniary interest disclosure regime to require disclosure of the interests of members' spouses/partners and dependent children.

Committee comment

2.26 Further to the terms of reference, the committee acknowledges and supports the adoption of the ministerial code as an applicable code for the purposes of the *Independent Commission Against Corruption Act 1988*, as well as the changes to the code itself.

2.27 The committee believes that the integrity measures regulating the behaviour of ministers are underpinned by the measures which regulate their conduct as parliamentarians. In this context, the committee acknowledges the recommendations made by the Privileges Committees of both Houses. These recommendations are aimed both at further strengthening the existing measures regulating members' conduct and importantly, establishing a better model for compliance. A key benefit of the Commissioner for Standards model proposed by the Legislative Council Privileges Committee is that it would provide a more speedy mechanism by which less serious allegations of misconduct against members, including ministers, can be investigated and resolved.²⁹

²⁶ Privileges Committee, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, pp 63-4.

²⁷ Committee on Parliamentary Privilege and Ethics, NSW Legislative Assembly, *Inquiry into matters arising from the ICAC Report entitled "Reducing the opportunities and incentives for corruption in the State's management of coal resources"* (2014).

²⁸ Committee on Parliamentary Privilege and Ethics, *Inquiry into matters arising from the ICAC Report entitled "Reducing the opportunities and incentives for corruption in the State's management of coal resources"*, p 15.

²⁹ Privileges Committee, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, pp 61-2.

- 2.28** This committee notes that none of the recommendations by either Privileges Committee have yet been implemented and urges Parliament to continue to consider ways of improving the measures currently in place which regulate the behaviour of its members.
- 2.29** In particular, the committee calls on the NSW Government to bring forward legislation to implement a Commissioner for Standards model as recommended by the Legislative Council Privileges Committee.

Recommendation 1

That the NSW Government bring forward legislation to implement a Commissioner for Standards model, as recommended in the Legislative Council Privileges Committee report entitled *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*.

The *Lobbying of Government Officials Act 2011* and associated measures

- 2.30** The scheme regulating the lobbying of government officials in New South Wales has changed significantly since this inquiry was established. The need for change was demonstrated by controversy over a claim by a lobbyist and member of the Liberal Party state executive, Mr Joseph Tannous, that his party positions enabled him to ‘attain the desired results for his clients’.³⁰
- 2.31** In their submissions stakeholders identified a number of concerns about the operation of the scheme in place in 2013. Some of these concerns have been directly addressed by changes made in 2014.

The lobbying scheme in place in 2013

- 2.32** At the time this inquiry was established, shortly after the controversy referred to above, the scheme regulating the lobbying of government officials comprised two key measures.
- 2.33** The first was a Lobbyist Code of Conduct, initially established by the New South Wales Government in February 2009 and subsequently amended in July 2011 and October 2013.³¹ The code applied to third party lobbyists, that is, lobbyists whose business it is to represent the interests of a third party to government representatives. A government representative was defined to include ministers, parliamentary secretaries, ministerial staff and public sector employees. Notably, the code did not apply to:
- peak bodies, that is, associations or organisations constituted to represent the interests of their members

³⁰ Evidence, General Purpose Standing Committee No. 1, *Budget Estimates 2013-2014*, 16 August 2013, p 28.

³¹ Submission 2, Department of Premier and Cabinet, p 4.

- in-house lobbyists, that is, lobbyists who are employed within an organisation to represent the interest of that organisation
- third party professionals, that is, entities or persons whose business is a recognised technical or professional occupation which, as part of the services provided to third parties in the course of that occupation, represent the views of the third party who has engaged them to provide their technical or professional services.³²

2.34 In terms of the operation of the code as at October 2013, in summary it:

- required lobbyists to be registered on a register of lobbyists, providing public transparency as to the identity of both lobbyists and their clients
- required lobbyists to disclose certain information when making initial contact with a government representative, including the third party on whose behalf they were lobbying and the nature of that third party's issue
- set out ethical standards governing engagement with government representatives, namely:
 - a prohibition on corrupt, dishonest or illegal conduct
 - a requirement that lobbyists use all reasonable endeavours to satisfy themselves of the truth and accuracy of information they provided to their clients and to the government
 - a prohibition on lobbyists making misleading, exaggerated or extravagant claims about their access to government officials or political parties
 - a requirement that lobbyists keep separate from their activities as lobbyists any activity or involvement on behalf of a political party
 - a restriction on lobbyists who have been appointed to a government board or committee from lobbying in the interests of a third party in relation to any matter relating to the functions of the board or committee³³
- prohibited lobbyists from acting in a position concerned with the management of a registered political party.³⁴

2.35 The rule prohibiting lobbyists from acting in a position concerned with the management of a political party came into force in October 2013. This was shortly after a finding by the Director General of the Department of Premier and Cabinet that Mr Tannous' conduct was in breach of the prohibition in the Lobbyist Code of Conduct on lobbyists making misleading, exaggerated or extravagant claims about the nature or extent of their access to government

³² Submission 2, Department of Premier and Cabinet, p 6; NSW Parliamentary Research Service Briefing Paper No 1/2015, *Integrity in government: issues and developments in New South Wales, 2011-2015*, p 13.

³³ This restriction came into force in July 2011. Premier's Memorandum M2011-13, *Lobbying of NSW Government Officials*, 30 June 2011 also provided that lobbyists were ineligible for appointment to any government board or committee if the functions of that board or committee related to any matter on which the lobbyist represented (or in the last 12 months had represented) the interests of third parties, Submission 2, Department of Premier and Cabinet, p 4.

³⁴ Submission 2, Department of Premier and Cabinet, p 5.

officials. However, the Director General found that the breach did not warrant removing Mr Tannous from the register.³⁵

2.36 To implement the new rule, the Department wrote to all registered lobbyists, asking those who held relevant positions within a political party to confirm whether they wished to resign from their party position or be removed from the lobbyist register.³⁶ The Department also wrote to all registered political parties requesting details of the positions concerned with the management of their party, and the holders of these positions, in order to review compliance with the new rule.³⁷

2.37 Under the code the Director General of the Department of Premier and Cabinet had the function of administering and enforcing the code, including approving applications for new lobbyists to be listed on the register as well as removing lobbyists from the register in certain circumstances, including for breaches of the code.³⁸ The Department's submission notes that where a potential breach was brought to its attention, its practice was first to write to the lobbyist and, depending on the nature of the issue, invite them to remedy the breach or seek an explanation before deciding whether to remove them from the register.³⁹

2.38 The second key measure regulating the lobbying of government officials, the *Lobbying of Government Officials Act 2011*, came into force in May 2011. The Act made it a criminal offence to pay or receive a success fee for lobbying. The Act also made it an offence for a former minister to engage in lobbying activities for the first 18 months after leaving office if the activities concerned his or her former portfolio responsibilities in the 18 months prior to leaving office.⁴⁰

Stakeholder views on the 2013 lobbying scheme

2.39 The submissions received from stakeholders from within the lobbying profession raised a number of issues and potential improvements with respect to the operation of the scheme as it existed at the time this inquiry was established. A key issue to emerge from the submissions was the possible extension of the scheme's application from third party lobbyists only to others engaged in lobbying activities. A number of other suggestions, including the provision of education and training for lobbyists, were also made.

2.40 Four submissions from professional lobbying firms and the Public Relations Institute of Australia proposed extending the requirement to register and/or the operation of the lobbyist code to other individuals and organisations engaged in lobbying. PremierState explained the rationale for such a change as follows:

³⁵ Submission 2, Department of Premier and Cabinet, Attachment 1, pp 1-2.

³⁶ Evidence, Mr Simon Smith, Acting Secretary, Department of Premier and Cabinet, General Purpose Standing Committee No. 1, *Budget Estimates 2014-2015*, 21 August 2014, p 14.

³⁷ Answers to questions on notice, the Hon Mike Baird MP, Premier, General Purpose Standing Committee No. 1, *Budget Estimates 2014-2015*, 16 September 2014, p 5.

³⁸ Submission 2, Department of Premier and Cabinet, p 5.

³⁹ Submission 2, Department of Premier and Cabinet, p 6.

⁴⁰ Submission 2, Department of Premier and Cabinet, p 4.

Integrity and transparency is the primary aim of all measures contained in the Act and Lobbyist Code. While regulations in NSW ensure that this is the case for those that are engaged to represent the interests of a third party to Government, it does not capture the vast majority of individuals and organisations that represent interests to government by way of lobbying.

This has led to a two-class system of lobbying in NSW.⁴¹

2.41 Both PremierState and Centennial Consultancy argued that peak bodies, in-house lobbyists and third party professionals should be required both to register and to observe the general ethical standards contained in the code.⁴²

2.42 By contrast, the Public Relations Institute of Australia advocated extending the registration requirement to third party professionals⁴³ but drew a distinction in relation to in-house and peak body lobbyists, pointing out:

... the key function of the register is solely to identify interests represented by the lobbyist. In-house, NFP [not for profit] and peak body representatives have clearly identified interests, following a disclosure of their employer.

...

Nevertheless, it is essential that in-house and any other lobbyists who are not required to register should still be required to abide by relevant requirements of any Lobbyists Code of Conduct.⁴⁴

2.43 A joint submission by Government Relations Australia, Kreab Gavin Anderson and Newgate expressed the same view, commenting that third party professionals should be required to register '[g]iven that some members of these consulting professions are engaged in furthering their client's interests by seeking to influence government decision making'.⁴⁵

2.44 Other suggestions for how the lobbying scheme could be improved included:

- establishing a single national register of lobbyists incorporating commonwealth, state and territory registers⁴⁶
- encouraging all registered lobbyists to join a professional industry association, with such membership noted on the register⁴⁷

⁴¹ Submission 4, PremierState Consulting Pty Ltd, p 6.

⁴² Submission 4, PremierState Consulting Pty Ltd, p 6; Submission 6, Centennial Consultancy, pp 9-11.

⁴³ Submission 5, Public Relations Institute of Australia, p 7.

⁴⁴ Submission 5, Public Relations Institute of Australia, p 6.

⁴⁵ Submission 3, Joint submission: Government Relations Australia, Kreab Gavin Anderson and Newgate, p 3.

⁴⁶ Submission 4, PremierState Consulting Pty Ltd, p 10; Submission 5, Public Relations Institute of Australia, p 10.

⁴⁷ Submission 5, Public Relations Institute of Australia, p 9. Similarly, PremierState Consulting proposed that membership of a professional association be made a prerequisite for registration as a lobbyist, Submission 4, PremierState Consulting Pty Ltd, pp 9-10. See also Submission 3, Joint submission: Government Relations Australia, Kreab Gavin Anderson and Newgate, p 4.

- requiring registered lobbyists to undertake a course covering the operation of the lobbying scheme and to undertake ongoing professional education⁴⁸
- requiring government representatives to report contact and meetings with lobbyists, with exceptions to protect confidential information⁴⁹
- amending the definitions of ‘government official’ in the *Lobbying of Government Officials Act 2011* and ‘government representative’ in the lobbyist code to include all members of Parliament⁵⁰
- amending the Act and code to prohibit registered lobbyists from supplying goods and services to the government.⁵¹

The lobbying scheme currently in place

2.45 As noted previously, the scheme described above has changed significantly since the establishment of this inquiry. The *Lobbying of Government Officials Act 2011* was amended in December 2014 to establish the NSW Electoral Commission as the independent regulator of lobbyists, with responsibility for administering the register of lobbyists and for enforcing the Lobbyists Code. The amendments enable the commission:

... to investigate alleged breaches and impose sanctions, which could result in lobbying firms being removed from the lobbyist register and other organisations being placed on a watch list.⁵²

2.46 In addition, under the amendments a new code of conduct has been prescribed which provides for ethical standards of conduct that apply not only to third party lobbyists but to ‘all organisations who seek to influence government policy or decision making’,⁵³ such as peak bodies, in-house lobbyists and third party professionals. These standards include obligations of disclosure prior to meeting with government officials, and the obligation to act honestly and to use all reasonable endeavours to supply true and accurate information at such meetings.

2.47 Under the amended Act the requirement to *register* as a lobbyist continues to apply only to third party lobbyists (the register is now known as the Register of Third-Party Lobbyists). Some ethical standards, such as the requirement that lobbyists keep separate from their lobbying activities any personal involvement on behalf of a political party, also continue to apply only to third party lobbyists.

⁴⁸ Submission 5, Public Relations Institute of Australia, p 10. Similarly, PremierState proposed the development of a mandatory training program for lobbyists, to be conducted or accredited by the Department of Premier and Cabinet: Submission 4, PremierState Consulting Pty Ltd, pp 8-9.

⁴⁹ Submission 5, Public Relations Institute of Australia, p 11.

⁵⁰ Submission 4, PremierState Consulting Pty Ltd, p 8.

⁵¹ Submission 4, PremierState Consulting Pty Ltd, p 7.

⁵² NSW Parliamentary Research Service Briefing Paper No 1/2015, *Integrity in government: issues and developments in New South Wales, 2011-2015*, p 18.

⁵³ NSW Parliamentary Research Service Briefing Paper No 1/2015, *Integrity in government: issues and developments in New South Wales, 2011-2015*, p 18.

- 2.48** The inclusion of a lobbyist on the watch list is a new sanction that can be used against non-third party lobbyists who have contravened the code or Act, removal from the register not being an available sanction as such lobbyists are not registered in the first place. Removal from the register continues to be the primary sanction for third party lobbyists who breach the code or Act, with placement on the watch list a potential additional sanction.⁵⁴ Government officials are required to observe special precautions when meeting with any lobbyist who has been placed on the watch list, namely ensuring the presence of at least two other government officials, one of whom must take notes of the meeting and provide these to the head of the relevant agency.⁵⁵
- 2.49** Further, as part of the same package of reforms and in an effort to promote greater transparency, the Premier issued a new policy in June 2014 requiring ministers to publish extracts from their diaries on a quarterly basis detailing scheduled meetings with stakeholders, external organisations and individuals (exceptions include meetings that are strictly personal, electorate or party political, and matters for which there is an overriding public interest against disclosure).⁵⁶

Committee comment

- 2.50** The committee acknowledges the important recent improvements to the lobbying scheme, most notably, establishing the Electoral Commission as the independent regulator of lobbyists and extending the application of some of the ethical standards in the lobbyists code to all those engaged in lobbying activities, not just third party lobbyists. The introduction of a requirement for ministers regularly to publish extracts from their diaries detailing meetings with lobbyists is also welcome. These changes address some of the concerns about the previous scheme identified in the submissions. However, the committee is concerned at the delays in the publication of ministerial diaries by the Government.

Recommendation 2

That the NSW Government require the publication of ministerial diaries online at least monthly.

- 2.51** In relation to some of the other concerns identified in submissions, the committee recognises the importance of providing education and training so that lobbyists are familiar with their obligations under the scheme. The committee notes that it is the intention of the NSW Electoral Commission to provide an online training module covering key features of the new scheme. This should be made available as soon as possible.
- 2.52** In relation to proposals to extend the requirement to register as a lobbyist, the committee notes that the recent reforms did not extend that requirement to in-house lobbyists, peak

⁵⁴ Evidence, Mr Smith, General Purpose Standing Committee No. 1, *Budget Estimates 2014-2015*, 21 August 2014, p 15.

⁵⁵ Premier's Memorandum M2014-13, *NSW Lobbyists Code of Conduct*, 28 November 2014.

⁵⁶ Premier's Memorandum M2014-07, *Publication of Ministerial Diaries*, 27 June 2014.

bodies or third party professionals. In relation to the first two of these categories, in-house lobbyists and peak bodies, the committee recognises the rationale for not requiring registration, namely that it will be obvious whose interests are being represented to government.

- 2.53** It is less clear that this rationale applies in respect of third party professionals. At this stage, however, the committee does not believe that there is an imminent need for the *Lobbying of Government Officials Act 2011* to be amended to require third party professionals to register as lobbyists. This is because, pursuant to the recent amendments, third party professionals who meet with government officials are now required (under the general ethical standards in the code) to disclose before the meeting the nature of the matter to be discussed at the meeting, and any financial or other interest they have in that matter.⁵⁷
- 2.54** Nevertheless, the committee considers it essential for the NSW Electoral Commission to monitor the implementation of the lobbying scheme, particularly new elements such as the watch list. There would be merit in the commission undertaking a review of the scheme in 2016 to consider ways of further strengthening it. In this regard we note that the Electoral Commission has already been given discretion to look at ways of enhancing the implementation of the scheme.⁵⁸

Recommendation 3

That the NSW Electoral Commission monitor the implementation of the *Lobbying of Government Officials Act 2011* and the Register of Third-Party Lobbyists and undertake a review in 2016 to consider ways of further strengthening the lobbying scheme.

⁵⁷ Clauses 5 and 6, Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014.

⁵⁸ Evidence, the Hon Mike Baird MP, Premier, General Purpose Standing Committee No. 1, *Budget Estimates 2014-2015*, 21 August 2014, p 16.

Chapter 3 Ministerial responsibility: A case study

The committee held a hearing to examine caseworker numbers in the Department of Family and Community Services. This issue arose out of statements made in the Legislative Assembly by the then Minister for Family and Community Services, the Hon Pru Goward MP, that the number of frontline caseworkers had not declined.

Caseworker numbers

3.1 The Department of Family and Community Services (FACS) is funded to provide 2,068 positions for frontline caseworkers. The hearing investigated claims that in 2013 many of these positions were vacant and that the number of caseworkers had declined, despite statements to the contrary by Minister Goward.

Ministerial statements on caseworker numbers

3.2 In February 2013 Minister Goward advised the Legislative Assembly that caseworker numbers had remained the same, noting that this was ‘a point I have made repeatedly to the House’.⁵⁹ The Minister also said that the vacancy rate was the lowest in a decade.⁶⁰

3.3 In August 2013 Minister Goward informed the Assembly that work commissioned by FACS from Ernst & Young had found that as at March 2013 there were 2,182 caseworkers on a headcount basis, which amounted to 1,797 full-time equivalent positions.⁶¹

3.4 The Minister’s earlier statements on caseworker numbers were the subject of intense scrutiny: in a three-month period members of the Assembly asked the Minister fifty questions regarding the accuracy of her statements on caseworker numbers.

Did the number of caseworkers decline?

3.5 At the committee’s hearing in October 2013 witnesses from FACS were questioned on whether there had been a decline in caseworker numbers.

3.6 Ms Marilyn Chilvers, Executive Director, Frontline Resource Management, FACS, agreed with the statement that caseworker numbers had declined in 2012-2013.⁶² Ms Chilvers noted that the Ernst & Young report had found that there had been a decline in the number of reference full-time equivalent caseworker positions.⁶³

3.7 The Director General of FACS, Mr Michael Coutts-Trotter, acknowledged that there had been a decline in caseworker numbers in terms of occupied full-time equivalent positions.

⁵⁹ *Hansard*, Legislative Assembly, 28 February 2013, p 18274 (Pru Goward).

⁶⁰ *Hansard*, Legislative Assembly, 28 February 2013, p 18276 (Pru Goward).

⁶¹ *Hansard*, Legislative Assembly, 13 August 2013, p 22115 (Pru Goward).

⁶² Evidence, Ms Marilyn Chilvers, Executive Director, Frontline Resource Management, Department of Family and Community Services, 14 October 2013, p 3.

⁶³ Evidence, Ms Chilvers, 14 October 2013, p 16.

However he also noted that: ‘But on the headcount number you would not have known that. The headcount remained consistent’.⁶⁴

Measures for counting caseworkers

- 3.8** The Director General and Ms Chilvers explained the various measures for counting caseworker numbers and how this influenced reporting against the 2,068 funded full-time equivalent positions.
- 3.9** The Director General gave evidence that FACS had used at least six different measures for counting caseworkers at different points in time.⁶⁵ The Director General said that the department had tended to rely on headcount numbers, which he described as ‘a very, very imperfect way of counting caseworkers’.⁶⁶ This is because a headcount could produce a very different result to a full-time equivalent measure, which, rather than counting the number of people in positions (regardless of whether they are part-time or full-time) assesses the extent to which caseworker positions are being filled.
- 3.10** Witnesses were questioned on the accuracy of the advice given to Minister Goward on caseworker numbers. Ms Chilvers said that the advice to the Minister was based on a headcount figure. She described this advice as giving as ‘an accurate figure of the number of caseworkers according to a particular counting rule’.⁶⁷ However, Ms Chilvers acknowledged that this measure was not suitable for measuring the number of occupied full-time equivalent caseworker positions against the 2,068 funded positions.
- 3.11** Ms Chilvers agreed with the statement that the Minister was provided with inadequate data on caseworker numbers, on the basis that she was only given a headcount number.⁶⁸

Changes in counting and reporting on caseworker numbers

- 3.12** As a result of Minister Goward’s frustration with the inability of FACS to produce reliable data on caseworker numbers, the committee was told that the Minister wrote ‘a very blunt and unusual letter’⁶⁹ to the then Director General. Minister Goward’s letter of March 2013 said:

For well over twelve months, the Department has failed to respond effectively to the direct, repeated and exasperated investigation and instruction of me and my office for quality, consistent reporting of caseworker data.⁷⁰

⁶⁴ Evidence, Mr Michael Coutts-Trotter, Director General, Department of Family and Community Services, 14 October 2013, p 3.

⁶⁵ Evidence, Mr Coutts-Trotter, 14 October 2013, p 4.

⁶⁶ Evidence, Mr Coutts-Trotter, 14 October 2013, p 3.

⁶⁷ Evidence, Ms Chilvers, 14 October 2013, p 14.

⁶⁸ Evidence, Ms Chilvers, 14 October 2013, p 27.

⁶⁹ Evidence, Mr Coutts-Trotter, 14 October 2013, p 16.

⁷⁰ Letter from Hon Pru Goward MP, Minister for Family and Community Services, as quoted by the Hon Trevor Khan MLC, Evidence, 14 October 2013, p 15.

- 3.13** The committee was told of two key changes made by FACS in response to the Minister's letter. First, FACS created Ms Chilvers' position of Executive Director, Frontline Resource Management in April 2013. This position is responsible for analysing and verifying the department's data on caseworker numbers to 'ensure it is robust for reporting and monitoring purposes'.⁷¹ The committee heard that this position was created to ensure that the Minister and the department had accurate information on caseworker numbers, and were alerted to any downward trends.
- 3.14** Second, FACS engaged Ernst & Young to report on how the department could produce consistent and reliable caseworker data that could be reported on publicly and measured against the funding provided to the department.⁷² The Ernst & Young report was delivered in September 2013. It found that the most appropriate measure for counting caseworkers was a reference full-time equivalent measure.⁷³
- 3.15** After the report was delivered the department began to publish quarterly data on caseworker numbers (using a full-time equivalent measure) through the Community Services caseworker dashboard.⁷⁴ The dashboard links caseworker numbers to caseworker funding and staff on the ground across the 15 local districts.
- 3.16** Mr Coutts-Trotter said that before the dashboard was introduced, 'the organisation did not present the right people with the right information to really effectively manage translating a funded level of caseworkers into caseworker strength on the ground ...'.⁷⁵ He told the committee that the provision of 'clear, accurate information' was intended to assist managers to make 'good decisions' about when to trigger a recruitment and therefore minimise the caseworker vacancy rate.⁷⁶

Committee comment

- 3.17** The committee acknowledges the significant work by the department to improve how frontline caseworkers are counted and measured against the 2,068 funded positions. It is essential for the department to use consistent and reliable measures to count caseworkers and publicly report on this information.
- 3.18** The committee was told that the Minister was provided with inadequate data regarding caseworker numbers. It is unfortunate that this occurred. We highlight the imperative for ministers to ensure at all times that their statements are accurate and beyond dispute.

⁷¹ Evidence, Ms Chilvers, 14 October 2013, p 2.

⁷² Ernst & Young, *Human resources capacity calculation and reporting – Department of Family and Community Services*, 27 September 2013.

⁷³ Ernst & Young, *Human resources capacity calculation and reporting – Department of Family and Community Services*, 27 September 2013, p 3.

⁷⁴ Department of Family and Community Services, *Community Services caseworker dashboard* http://www.community.nsw.gov.au/docs_menu/about_us/community_services_caseworker_dashboard.html.

⁷⁵ Evidence, Mr Coutts-Trotter, 14 October 2013, p 22.

⁷⁶ Evidence, Mr Coutts-Trotter, 14 October 2013, p 15.

Appendix 1 Submissions

No	Author
1	Queensland Integrity Commissioner
2	Department of Premier and Cabinet
3	Joint submission: Government Relations Australia, Kreab Gavin Anderson and Newgate
4	PremierState Consulting Pty Ltd
5	Public Relations Institute of Australia
6	Centennial Consultancy
7	Accountability Round Table

Appendix 2 Witnesses at hearing

Date	Name	Position and Organisation
14 October 2013 Parliament House	Mr Michael Coutts-Trotter	Director General, Department of Family and Community Services
	Ms Marilyn Chilvers	Executive Director, Frontline Resource Management, Department of Family and Community Services
	Ms Helen Freeland	Former Deputy Chief Executive Operations, Department of Family and Community Services

Appendix 3 Tabled documents

Monday 14 October 2013

Macquarie Room, Parliament House, Sydney

- 1 Briefing note – Major issues – Maintaining Community frontline staffing at the fully funded level, maximising utilisation and publically reporting FACS and NGO frontline worker, *tendered by the Hon Luke Foley MLC.*
- 2 FACS Briefing Note – Current caseworker staffing numbers as at 27 February 2013, *tendered by the Hon Luke Foley MLC.*
- 3 Advice regarding status of RAM – Response to questions asked by the Minister’s Office, *tendered by the Hon Luke Foley MLC.*
- 4 Email from Ms Marilyn Chilvers to Ms Kate Gray and Mr Ian Skead regarding the confirmation of caseworker numbers required, dated 25 February 2013, *tendered by the Hon Luke Foley MLC.*

Appendix 4 Answers to questions on notice

The committee received answers to questions on notice from the following:

- Department of Family and Community Services

Appendix 5 Minutes

Minutes No. 1

Wednesday 11 September 2013

Select Committee on Ministerial Propriety in NSW

Members' Lounge, Parliament House, 1.03 pm

1. Members present

Mr Borsak, *Chair*

Mr Foley, *Deputy Chair*

Dr Kaye

Mr Khan

Dr Phelps

Mr Searle

2. Chair to open meeting

The Chair declared the first meeting of the Select Committee on Ministerial Propriety in NSW open.

3. Committee membership

The Chair noted that Dr Phelps had been nominated as a member of the Committee in place of Mr Mason-Cox.

4. Tabling of the resolution establishing the Committee

The Chair tabled the resolution establishing the Committee from the Minutes of the Legislative Council of 22 August 2013.

5. Procedural resolutions

Resolved, on the motion of Dr Kaye: That unless the Committee decides otherwise, the following procedures apply for the duration of the Inquiry:

- That the Committee authorise the filming, broadcasting and still photography of the public proceedings of the Committee, in accordance with the resolution of the Legislative Council of 18 October 2007.
- That the Committee authorise the publication of transcripts of evidence taken at public hearings.
- That the Committee authorise the publication of answers to questions on notice.
- That the Committee authorise the publication of all submissions to the Inquiry, subject to the Committee Clerk checking for confidentiality, adverse mention and other issues, and, where those issues arise, bringing them to the attention of the Committee for consideration.
- That media statements on behalf of the Committee be made only by the Chair.
- That arrangements for inviting witnesses be left in the hands of the Chair and the Committee Clerk, after consultation with the Committee.

6. Conduct of inquiry

6.1 Media release announcing Inquiry

Resolved, on the motion of Dr Kaye: That a media release be issued by the Chair announcing the Inquiry and calling for submissions.

6.2 Stakeholder list

Resolved, on the motion of Dr Kaye: That the Committee agree to the draft list of stakeholders circulated by the Secretariat, and write to these stakeholders to invite them to make a written submission.

6.3 Call for submissions

Resolved, on the motion of Dr Kaye: That the closing date for submissions be Tuesday 8 October 2013.

Dr Phelps requested that submissions be circulated to the Committee as they are received, rather than waiting until after the submission closing date to distribute a complete set of submissions.

6.4 Advertising

Resolved, on the motion of Dr Kaye: That the Inquiry call for submissions to be advertised in the *Sydney Morning Herald*, *Daily Telegraph* and *Australian Financial Review*.

6.5 Hearing dates

Resolved, on the motion of Mr Foley: That subject to the Chair consulting members regarding their availability:

- the first hearing be held on Monday 14 October 2013
- a meeting to consider witnesses be held on Tuesday 17 September 2013.

6.6 Summary of advice: Evidence from Ministers and their staff

The Committee noted the summary prepared by the Secretariat of the advice provided in Lovelock and Evans: *NSW Legislative Council Practice* regarding the powers and practice of Legislative Council committees in relation to hearing evidence from Ministers, members of Parliament and their staff.

7. Adjournment

The Committee adjourned at 1.15 pm until Tuesday 17 September at 1 pm.

Madeleine Foley

Clerk to the Committee

Minutes No. 2

Tuesday 17 September 2013

Select Committee on Ministerial Propriety in NSW

Room 1153, Parliament House, Sydney at 1:04pm

1. Members present

Mr Borsak, *Chair*

Mr Foley, *Deputy Chair*

Dr Kaye

Mr Khan

Dr Phelps

Mr Searle (from 1.09 pm)

2. Previous minutes

Resolved, on the motion of Dr Phelps: That Draft Minutes no. 1 be confirmed.

3. Inquiry into Ministerial Propriety in NSW

3.1 Witnesses

Mr Foley moved: That the following witnesses be invited to appear at the Committee's hearing on 14 October 2013, for a period of two hours each:

- Ms Marilyn Chilvers, Executive Director, Frontline Resource Management, Community Services, Department of Family and Community Services

- Ms Helen Freeland, former Executive Director, Operations, Department of Family and Community Services.

Mr Khan moved: That the motion of Mr Foley be amended by omitting the words ‘two hours’ and inserting instead ‘one hour’.

Amendment put.

The Committee divided.

Ayes: Mr Khan, Dr Phelps

Noes: Mr Borsak, Mr Foley, Dr Kaye, Mr Searle.

Amendment resolved in the negative.

Original question put.

The Committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Foley, Mr Searle

Noes: Mr Khan, Dr Phelps.

Original question resolved in the affirmative.

3.2 Media release

Dr Kaye moved: That a media release be issued announcing that the Committee intends to:

- Hold its first hearing on Tuesday 14 October 2013
- Examine Term of Reference 1(a) at that hearing
- Focus on statements made to the Legislative Assembly by the Minister for Family and Community Services.

Mr Khan moved: That the motion of Dr Kaye be amended by omitting the words in the third dot point: ‘focus on ... Community Services’.

Amendment put.

The Committee divided.

Ayes: Mr Khan, Dr Phelps

Noes: Mr Borsak, Dr Kaye, Mr Foley, Mr Searle.

Amendment resolved in the negative.

Original question put.

The Committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Foley, Mr Searle

Noes: Mr Khan, Dr Phelps.

Original question resolved in the affirmative.

The Chair reminded members of the Committee’s previous resolution that media statements on behalf of the Committee may be made only by the Chair.

4. Adjournment

The Committee adjourned at 1.24 pm until Monday 14 October at 10 am.

Madeleine Foley

Clerk to the Committee

Minutes No. 3

Monday 14 October 2013

Select Committee on Ministerial Propriety in NSW

Macquarie Room, Parliament House, Sydney at 9.50 am

1. Members presentMr Borsak, *Chair*Mr Foley, *Deputy Chair*

Dr Kaye

Mr Khan

Dr Phelps

2. Apologies

Mr Searle

3. Deliberative meeting**3.1 Allocation of question time**

Resolved, on the motion of Mr Khan: That the time allocated for questions during hearings be divided equally among Opposition, Cross bench and Government members.

3.2 Questions on notice

Resolved, on the motion of Dr Phelps: That Committee members have two days to submit supplementary questions, and that witnesses be requested to return answers to questions on notice and supplementary questions from members within 21 days of the date on which the questions are forwarded to the witnesses.

3.3 Comity between the Houses

The Chair made a statement regarding the principle of comity between the Houses. Discussion ensued.

4. Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings.

The following witnesses were sworn and examined:

- Ms Marilyn Chilvers, Executive Director, Frontline Resource Management, Department of Family and Community Services
- Mr Michael Coutts-Trotter, Director General, Department of Family and Community Services.

Mr Foley tabled the following documents

- Briefing note – Major issues – Maintaining Community frontline staffing at the fully funded level, maximising utilisation and publically reporting FACS and NGO frontline workers.
- FACS Briefing Note – Current Caseworker staffing numbers as at 27 February 2013.
- Advice regarding status of RAM – Response to questions asked by the Minister's Office.
- Email from Ms Marilyn Chilvers to Ms Kate Gray and Mr Ian Skead regarding the confirmation of caseworker numbers required, dated 25 February 2013.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Helen Freeland, Former Deputy Chief Executive Operations, Department of Family and Community Services.

The following witness was examined on his former oath:

- Mr Michael Coutts-Trotter, Director General, Department of Family and Community Services.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.05 pm The public and the media withdrew.

5. Deliberative meeting

5.1 Previous minutes

Resolved, on the motion of Mr Khan: That Draft Minutes no. 2 be confirmed.

5.2 Correspondence

The Committee noted the following items of correspondence:

Received

- 23 September 2013 – Email from Associate Professor Ken Coghill, Monash University to Chair, requesting an extension to no later than 31 October to provide a submission to the Inquiry.
- 26 September 2013 – Email from Mr Ian Killey, Chairman, Weber Shandwick to Secretariat advising that Weber Shandwick is not in a position to make a submission to the Inquiry.
- 30 September 2013 – Letter from Mr Peter Lazar AM, Chairman, Professional Public Relations Pty Ltd, to Committee Director, advising that he will not be making a submission to the Inquiry.
- 3 October 2013 – Email from Dr Betty Con Walker, to Secretariat, requesting an extension to 15 October 2013 to provide a submission to the Inquiry.
- 8 October 2013 – Email from Mr Michael Photios, Chairman, PremierState to Chair requesting an extension until 11 October 2013 to provide a submission to the Inquiry.
- 8 October 2013 – Letter from Mr Chris Eccles, Director General, Department of Premier and Cabinet, requesting that the Committee consult with the Department in relation to the invitation of public servants to appear as witnesses.
- 4 October 2013 – Letter from Mr Stephen O'Bryan SC, Commissioner, Independent Broad-based Anti-corruption Commission to Chair, advising that the Commission is not in a position to provide a submission to the Inquiry.
- 2 October 2013 – Letter from the Hon Bruce Lander QC, Commissioner, Independent Commissioner for Corruption SA to Chair, advising he does not propose to make a submission to the Inquiry.
- 2 October 2013 – Letter from Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission WA to Chair, referring to the Commission's 2006 submission to the Parliament of Western Australia which relates to the terms of reference for the Inquiry and the question of ministerial propriety.
- 2 October 2013 – Letter from the Hon David Ipp AO QC, Commissioner, Independent Commission Against Corruption, referring to the Commission's Operations Jasper and Acacia which raised the issue of ministerial propriety which its recommendations scheduled to be released in a report in October, consequently the Commission will not be making a separate submission to the Inquiry.

Sent

- 11 October 2013 – Letter from Committee Director to Mr Michael Coutts-Trotter, Director General, Department of Family and Community Services, confirming his appearance with two officers at the hearing on 14 October 2013.

5.3 Consultation with the Department of Premier and Cabinet regarding public servants as witnesses

Resolved, on the motion of Dr Phelps: That the Committee agree to the request from the Director General of the Department of Premier and Cabinet that the Committee consult with the Department in relation to the invitation of the public servants to attend committee hearings as witnesses.

5.4 Submissions

Resolved, on the motion of Mr Khan: That the Committee note that Submissions No. 1, 2, 3 and 4 were published by the Committee Clerk under authorisation of an earlier resolution.

5.5 Further meeting

Resolved, on the motion of Mr Foley: That the Committee meet later this week to discuss future inquiry activity, during the lunch break on Wednesday or Thursday if possible.

6. Adjournment

The Committee adjourned at 2.15 pm *sine die*.

Ms Madeleine Foley

Clerk to the Committee

Minutes No. 4

Thursday 17 October 2013

Select Committee on Ministerial Propriety in NSW

Members' Lounge, Parliament House, Sydney at 1.02 pm

1. Members present

Mr Borsak, *Chair*

Mr Foley, *Deputy Chair*

Dr Kaye

Mr Khan

Dr Phelps

Mr Searle

2. Previous minutes

Resolved, on the motion of Mr Khan: That Draft Minutes No. 3 be confirmed.

3. Submissions

Resolved, on the motion of Dr Kaye: That the Committee note that Submissions No. 5 was published by the Committee Clerk under the authorisation of an earlier resolution.

4. Tabled documents

Resolved, on the motion of Dr Kaye: That the Committee accept and publish the following documents tabled during the public hearing:

- Briefing note – Major issues – Maintaining Community frontline staffing at the fully funded level, maximising utilisation and publically reporting FACS and NGO frontline workers.
- FACS Briefing Note – Current Caseworker staffing numbers as at 27 February 2013.
- Advice regarding status of RAM – Response to questions asked by the Minister's Office.
- Email from Ms Marilyn Chilvers to Ms Kate Gray and Mr Ian Skead regarding the confirmation of caseworker numbers required, dated 25 February 2013.

5. Future inquiry activity

Mr Foley moved: That the Committee invite Minister Goward to appear at a public hearing, for up to two hours. Further, that:

- The invitation letter list several potential hearing dates, after these dates have been canvassed with members, and the Minister be invited to nominate a suitable date
- Once the invitation is sent, the Committee issue a media release advising that Minister Goward has been invited to appear

- The Committee meet to consider Minister Goward's response, should the Minister decline to attend or not respond to the Committee's invitation.

Question put.

The Committee divided.

Ayes: Mr Borsak, Mr Foley, Dr Kaye, Mr Searle

Noes: Mr Khan, Dr Phelps

Question resolved in the affirmative.

6. Other business

Mr Khan moved: That as part of its Inquiry into Ministerial Propriety in NSW, the Committee examine the ministerial propriety of the actions and statements of John Robertson MP arising from the sale of the property Currawong, owned by Unions NSW, including but not limited to:

1. Any answers to questions whilst a Minister and member of the Legislative Council;
2. His obligations, whilst a Minister of the Crown in the Legislative Council, to report offences, or possible offences;
3. Any conflicts of interests that John Robertson may have had;
4. Any other actions or related matters.

Dr Kaye moved: That the motion of Mr Khan be amended by inserting the words 'Consideration of the matter should be deferred until a future meeting of the Committee' as a new paragraph after the words 'Any other actions or related matters'.

Amendment put.

The Committee divided.

Ayes: Dr Kaye

Noes: Mr Borsak, Mr Foley, Mr Khan, Dr Phelps, Mr Searle

Question resolved in the negative.

Original question put.

The Committee divided.

Ayes: Mr Khan, Dr Phelps

Noes: Mr Borsak, Mr Foley, Dr Kaye, Mr Searle

Question resolved in the negative.

7. Adjournment

The Committee adjourned at 1.45 pm *sine die*.

Madeleine Foley

Clerk to the Committee

Minutes No. 5

Wednesday 13 November 2013

Select Committee on Ministerial Propriety in NSW

Members' Lounge, Parliament House, Sydney at 1.11 pm

1. Members present

Mr Borsak, *Chair*
Mr Foley, *Deputy Chair*
Dr Kaye
Mr Khan
Dr Phelps
Mr Searle

2. Previous minutes

Resolved, on the motion of Mr Khan: That Draft Minutes No. 4 be confirmed.

3. Correspondence

The Committee noted the following correspondence:

Received:

- 28 October 2013 – Letter from Hon Pru Goward MP, Minister for Family and Community Services, to Chair declining the Committee's invitation to attend a public hearing.
- 7 November 2013 – Letter from Mr Michael Coutts-Trotter, Director General, Department of Family and Community Services, to Director, providing answers to questions on notice for the hearing on 14 October 2013.

Sent:

- 22 October 2013 – Letter from Chair to Hon Pru Goward MP, Minister for Family and Community Services, inviting the Minister to attend a public hearing of the Committee on 18 or 22 November 2013.

4. Future inquiry activity

The Committee discussed the possibility of holding a deliberative meeting before the last sitting day of the year to discuss future inquiry activity.

5. Submissions

The Committee noted that Submission Nos. 6 and 7 were published by the Committee Clerk under the authorisation of an earlier resolution.

6. Adjournment

The Committee adjourned at 1.18 pm *sine die*.

Madeleine Foley
Clerk to the Committee

Draft Minutes No. 6

Wednesday 18 February 2015

Select Committee on Ministerial Propriety in New South Wales

Room 1254, Parliament House, Sydney at 10.30 am

1. Members present

Mr Borsak, *Chair*
Mr Foley, *Deputy Chair*
Dr Kaye
Mr Khan
Dr Phelps
Mr Searle

2. Previous minutes

Resolved, on the motion of Dr Phelps: That Draft Minutes No. 5 be confirmed.

3. Consideration of Chair's draft report

The Chair submitted his draft report entitled 'Ministerial Propriety in New South Wales', which, having been previously circulated, was taken as being read.

Mr Searle moved: That the following new paragraph and recommendation be inserted after paragraph 2.28:

'In particular, the committee calls on the NSW Government to bring forward legislation to implement a Commissioner for Standards model as recommended by the Legislative Council Privileges Committee.

Recommendation

That the NSW Government bring forward legislation to implement a Commissioner for Standards model, as recommended in the Legislative Council Privileges Committee report entitled *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator.*'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Foley, Dr Kaye, Mr Searle.

Noes: Mr Khan, Dr Phelps.

Question resolved in the affirmative.

Mr Searle moved: That:

- a) paragraph 2.48 be amended by omitting 'requiring ministers to regularly publish extracts from their diaries' and inserting instead 'requiring ministers to publish extracts from their diaries on a quarterly basis'
- b) paragraph 2.49 be amended by inserting at the end: 'However, the committee is concerned at the delays in the publication of ministerial diaries by the Government.'
- c) the following new recommendation be inserted after paragraph 2.49:

Recommendation

That the NSW Government require the publication of ministerial diaries online at least monthly.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Foley, Dr Kaye, Mr Searle.

Noes: Mr Khan, Dr Phelps.

Question resolved in the affirmative.

Resolved, on the motion of Mr Searle: That paragraph 2.53 and Recommendation 1 be amended by omitting '2017' and inserting instead '2016'.

Dr Kaye moved:

- a) That the draft report as amended be the report of the committee and that the committee present the report to the House;
- b) That the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report;

- c) That upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee;
- d) That the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- e) That the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- f) That dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- g) That the report be tabled on 24 February 2015.

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Foley, Dr Kaye, Mr Searle.

Noes: Mr Khan, Dr Phelps.

Question resolved in the affirmative.

4. Adjournment

The Committee adjourned at 10.45 am *sine die*.

Sharon Ohnesorge

Clerk to the Committee

Appendix 6 Dissenting statement

By the Hon Dr Peter Phelps MLC, Liberal Party

It was not my intention to provide a dissenting report, based on the Chair's draft report presented to Members.

That draft report was moderate and sensible, and was grounded on the evidence provided to the Committee.

The addition of an ALP amendment to the report has, however, made this dissenting report necessary.

The ALP successfully moved that the Committee express its concern "at the delays in the publication of Ministerial diaries" and called for their publication "at least monthly".

This is the same ALP which published absolutely no Ministerial diaries whatsoever.

The truth of the matter is that the current Government has been an outstanding reformer in Ministerial openness and accountability.

As part of that reform program, the current Government has mandated that, for the first time ever, Ministerial diaries are to be released on a quarterly basis.

Moreover, the Government has indicated that its Ministerial accountability mechanisms will be subject to a review and, where necessary, strengthening.

The Labor amendment to call for monthly disclosure is unnecessary and hypocritical: unnecessary on probity grounds, and hypocritical coming from the NSW ALP.