

Standing Committee on Parliamentary Privilege  
and Ethics



LEGISLATIVE  
ASSEMBLY

## Draft Constitution (Disclosures by Members) Regulation 2024



Report 3/58 – August 2024



Legislative Assembly

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Ethics

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

|                        |   |
|------------------------|---|
| <b>Chair</b>           | Mr Alex Greenwich MP  |
| <b>Deputy Chair</b>    | Ms Janelle Saffin MP  |
| <b>Members</b>         | Mr Jason Li MP<br>Ms Lynda Voltz MP<br>The Hon. Leslie Williams MP  |
| <b>Contact details</b> | Legislative Assembly Standing Committee on Parliamentary<br>Privilege and Ethics  |
| <b>Telephone</b>       | (02) 9230 2666  |
| <b>E-mail</b>          | Ethics.Committee@parliament.nsw.gov.au  |
| <b>Website</b>         | <a href="http://www.parliament.nsw.gov.au/laprivilegeandethics">http://www.parliament.nsw.gov.au/laprivilegeandethics</a> |

## Chair’s foreword

Members of Parliament live public and private lives which, in practice, may prove hard to separate. But, as representatives, Members have a duty to act in the public interest, “uninfluenced by other considerations, especially personal financial considerations”.<sup>1</sup> How is this duty regulated?

Members are foremost accountable in the House and at the ballot box, which are the purest expressions of representative democracy. They are also subject to the scrutiny of the Independent Commission Against Corruption (ICAC) in respect of “serious corrupt conduct” meaning a “substantial breach” of the *Code of Conduct for Members*.<sup>2</sup> The media provides essential accountability for Members. So do the requirements that apply to Members who are Ministers or Parliamentary Secretaries.<sup>3</sup>

Under the Constitution (Disclosures by Members) Regulation 1983, Members are required to lodge periodic returns, which disclose certain types of pecuniary and other interests. By making these interests public, Members ensure that the above accountability mechanisms are effective by revealing, rather than concealing, where their private and public lives *might* intersect.<sup>4</sup> The consequences for wilful non-compliance are extremely serious. The *Constitution Act 1902* (NSW) provides that deliberately contravening the regulations may result in the loss of the Member’s seat.

I am pleased to present the Committee’s report, its third of the 58th Parliament, which examines the draft Constitution (Disclosures by Members) Regulation 2024 (**Draft Regulation**). The Committee’s report is made in response to the referral from the House, pursuant to s. 14A(5) of the *Constitution*, for the purpose of making representations to the Governor before the regulations are made. The proposed regulations would require Members to disclose the interests of “immediate family members” and a range of other interests and other matters, including conflicts of interests, water access licences, and trusts.

The Committee has carefully scrutinised the proposed regulations but supports the draft only in part. Consequently, the Committee cannot support the Draft Regulation in its current terms.

While the Parliament must continue to ensure transparency in relation to a range of interests and other matters, and the Committee, therefore, welcomes the opportunity to include trusts and water access licences in the regulations, the Committee otherwise finds that the Draft Regulation does not strike the correct balance between the public interest in disclosure and other important considerations. In particular, the Committee finds that the private lives of “immediate family members” would not be adequately protected. It also considers that the proposal for mandatory reporting of conflicts of interests under the regulation, given the sole consequence for non-compliance is a Member’s seat being declared vacant, is likely to cause the provision to be politicised and abused. Other proposed regulations suffer from a lack of clarity about their intended purpose, policy basis, or operation, despite the Committee’s best

<sup>1</sup> [Re Day \[No 2\]](#) (2017) 263 CLR 201; [2017] HCA 14 at [49] per Kiefel CJ, Bell and Edelman JJ.

<sup>2</sup> [Independent Commission Against Corruption Act 1988](#) (NSW) (**ICAC Act**), Part 3.

<sup>3</sup> [Independent Commission Against Corruption Regulation 2017](#) (NSW), Appendix, *Ministerial Code of Conduct*.

<sup>4</sup> NSW Independent Commission Against Corruption, [Investigation into the Conduct of the Local Member for Drummoyne](#), June 2022, p. 172.

efforts to seek this clarity from the Cabinet Office through requests for information, questions on notice, and meeting with the Committee.

The Draft Regulation in its current form creates conflicting schemes where a Member is also a Minister, and applies a higher penalty and greater public disclosure for backbenchers compared to Ministers and Parliamentary Secretaries.

It appears that little or no regard was applied to how the disclosure process would be managed by the Parliament which, given there are more Members than Ministers, would require even greater legal and administrative resources than the Cabinet Office provides to the Executive.

As Emerita Professor Anne Twomey AO points out, unlike other regulations, s. 14A(6) of the *Constitution* provides that a regulation made pursuant to s. 14A(1) “cannot be disallowed by one House only”. Each House needs to disallow the regulations, which “gives significant power to the government”.<sup>5</sup> Any proposed exercise of that power, therefore, requires close scrutiny. Having examined the provisions of the Draft Regulation, the Committee is not satisfied that the potential implications of the proposed regulations have been adequately or properly addressed. The Draft Regulation, as proposed, should not be made.

It is concerning that such a flawed regulation, with such serious risks to representative democracy in NSW as the potential for many members to have to vacate their seats, has been progressed without consideration of how it would operate in practice, the resources required, or the negative impact on the private lives of Members’ families.

I am grateful to Members of the Committee for their collaborative approach to this inquiry, and to the Clerk of the Legislative Assembly and the Secretariat for their advice and support. Finally, I take this opportunity to thank the Clerk as Registrar and the staff of the Clerk’s Office who work to maintain the pecuniary interest register.

I commend the Committee’s unanimous report to the House.

**Alex Greenwich MP**

Chair

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<sup>5</sup> *The Constitution of New South Wales* (Federation Press, 2004), p. 446.

## Findings and recommendations

### Finding 1 \_\_\_\_\_ 6

The *Integrity Legislation Amendment Act 2022* (NSW) broadened s. 14A(1) of the *Constitution Act 1902* (NSW) to enable the making of regulations under the Act, with the intention of implementing the recommendations of the Operation Witney report.

### Finding 2 \_\_\_\_\_ 9

By adopting consistent lodgement periods of “within 1 month” the Draft Regulation would reduce the complexity of the Current Regulation.

### Finding 3 \_\_\_\_\_ 9

While reducing the time that Members have to lodge their “primary” or “first” return from 3 months to 1 month would emphasise the importance of a Member’s disclosure obligations, appropriate resources and support would be needed to ensure that Members can comply with these obligations during a busy period following an election.

### Finding 4 \_\_\_\_\_ 9

In addition to increasing transparency around Member’s interests, implementation of an electronic system for lodging returns would address an issue arising in the Draft Regulation about requirements for Members to lodge returns during public holidays or periods of leave.

### Recommendation 1 \_\_\_\_\_ 10

The regulations should allow for an extension of time, of up to 60 days during each session of Parliament, for a Member to lodge a further interest disclosure return or make an annual declaration in circumstances involving: (1) the death of a family member; or (b) a serious illness or injury affecting the individual Member. The Member’s ground should be submitted in writing to the Clerk of the relevant House, as soon as practicable, and recorded in a confidential register maintained by the Clerk, which should be made available to Members of the relevant House and the Independent Commission Against Corruption upon request.

### Finding 5 \_\_\_\_\_ 13

The Committee considers that the proposals in the Draft Regulation would have such a significant potential impact on the rights to privacy of a Member’s “immediate family members” that they should be imposed by substantive legislation rather than being introduced through a broadly drafted regulation.

### Recommendation 2 \_\_\_\_\_ 13

The regulations should not require the disclosure by Members of Parliament of pecuniary interests and other matters relating to the “immediate family members” of Members.

### Finding 6 \_\_\_\_\_ 16

The Draft Regulation is unclear about how Members would, in practical terms, manage the breakdown of a marriage or de facto relationship. It is also unclear about the timing and circumstances around the formation of de facto relationships. As such, the Draft Regulation poses significant practical difficulties.



## Finding 7 \_\_\_\_\_ 17

If made, the proposed regulation must ensure that a Member’s immediate family is appropriately protected, including by ensuring that evidence of their workplace is not published, and cannot be discerned from, copies of the public registers. This safeguard needs to be provided for in the terms of the regulation rather than through any discretionary processes relating to publication (see Finding 12).

## Recommendation 3 \_\_\_\_\_ 20

Where a Member leases real property to someone else, it should be sufficient under the regulations that the Member disclose “the location of the parcel by suburb or area” and for the details of investment properties to be included in a confidential part of the register accessible in limited circumstances, e.g. to the ICAC for the purpose of an investigation.

## Recommendation 4 \_\_\_\_\_ 20

Subject to the findings and recommendations above, s. 11 of the Draft Regulation relating to trusts should be made.

## Finding 8 \_\_\_\_\_ 25

It is unclear in what circumstances Members who are Ministers or Parliamentary Secretaries will be required to disclose conflicts of interest on the *confidential* Ministerial Register of Interests and when they will be required to disclose conflicts of interest on the *public* parliamentary registers. The Ministerial Register might be used solely to preserve the confidentiality of Cabinet deliberations, which the Committee accepts is a legitimate purpose. But it *might* be used for other purposes that relate to “the Member’s public duty as a Minister or Parliamentary Secretary”. This phrase is not defined in the Draft Regulation and its meaning is uncertain. If the Ministerial Register *were* used for some other purpose, Ministers and Parliamentary Secretaries might be subject to less public scrutiny than other Members which would be contrary to the accepted principles about their respective positions.

## Finding 9 \_\_\_\_\_ 29

The Draft Regulation would require in s. 15 the disclosure of *potential* and *perceived* conflicts of interest. In theory, whether a conflict of interest exists is to be determined by a “reasonable person” deciding whether the Member’s “private interest could objectively have the potential to influence the performance of the Member’s public duty”. In practice, the House would need to decide. However, the concept of conflict is too imprecise, and the consequences of a finding that a conflict was deliberately not disclosed are potentially so serious, that the Draft Regulation should not proceed in its current form.

## Recommendation 5 \_\_\_\_\_ 29

The regulations should *not* include a mandatory register of conflicts of interest.

## Finding 10 \_\_\_\_\_ 31

While the Committee supports enhanced transparency around the interests of Members in “water access licences”, noting that these are “tradable commodities” worth billions of dollars, the Committee does not support extending this requirement to “immediate family members”. This is because the specific matter has not been specifically considered before the House and should appropriately be the subject of legislation rather than regulation. The Committee notes

that the entries in the “water access licence register” are publicly accessible under the *Water Management Act 2000* (NSW).

Recommendation 6 \_\_\_\_\_ 31

Subject to the findings and recommendations above, s. 21 of the Draft Regulation relating to water access licences should be made.

Finding 11 \_\_\_\_\_ 33

The Register of Senators’ Interests is a good model of an electronic register of disclosures by Members of Parliament, which could be emulated or adapted for the purposes of the NSW Parliament to comply with its obligations under Part 4 of the Draft Regulation.

Finding 12 \_\_\_\_\_ 35

While the Clerk of the Legislative Assembly would be given the discretion under s. 25(2) of the Draft Regulation to exclude information from the public register that the Clerk is satisfied is necessary to protect (a) the privacy of persons other than Members, and (b) the safety of a person, this would require weighing up a range of competing public and private interests. The Clerk’s role as an independent and impartial advisor to, and servant of, the House and its Members could be compromised by exercising this discretion.

Recommendation 7 \_\_\_\_\_ 36

The Committee is opposed to the proposed requirements for Members of Parliament to disclose the interests of “immediate family members” and for mandatory disclosure of conflicts of interest. It advises the Government that it should not proceed with these aspects of the Draft Regulation.

Recommendation 8 \_\_\_\_\_ 37

The regulations should reflect the presumption that each House of Parliament controls access to its own papers, including any information that might be excluded under s. 25(2) of the Draft Regulation. Members of the Legislative Council should *not* have access to the Legislative Assembly’s “complete registers” in circumstances where public access is not available, and vice versa, unless access is authorised by a resolution of the relevant House.

Finding 13 \_\_\_\_\_ 37

Noting that s. 122(2) of the *Independent Commission Against Corruption Act 1988* (NSW) “waived any parliamentary privilege” that may apply to a register of pecuniary interests under s. 14A of the *Constitution* for the purposes set out in s. 122(2)(a) and (b), the Committee makes no finding about the right of ICAC officers to inspect the “complete registers” under s. 26(b).

# Chapter One – Overview

## Draft Constitution (Disclosures by Members) Regulation 2024

### Background

- 1.1 All Members of the NSW Legislative Assembly are required to disclose their pecuniary interests under the Constitution (Disclosures by Members) Regulation 1983 (**Current Regulation**). The Clerk maintains a register of these disclosures, which is tabled annually in the House.<sup>6</sup>
- 1.2 The Current Regulation was last updated in 2010.<sup>7</sup>
- 1.3 On 6 February 2024, the Premier, the Hon. Chris Minns MP, wrote to the Chair of this Committee, enclosing a consultation draft of the Constitution (Disclosures by Members) Regulation 2024 (**Draft Regulation**).<sup>8</sup>
- 1.4 The Premier referred to the July 2022 report of the Independent Commission Against Corruption (ICAC), entitled *Investigation into the Conduct of the Local Member for Drummoyne (Operation Witney report)*, which recommended that the NSW Government, in consultation with this Committee, amend the Current Regulation to require a range of additional disclosures by Members of Parliament.
- 1.5 The Operation Witney report found that a former Member of the Legislative Assembly, Mr John Sidoti MP, engaged in “serious corrupt conduct” because he used his position as a Member to “improperly influence” local councillors to “benefit his family’s property interests”.<sup>9</sup> The ICAC relevantly recommended that Members of Parliament should be required to disclose the details of:<sup>10</sup>
  - Interests in trusts, including discretionary trusts and self-managed superannuation funds, as a standalone item;
  - Real property held by discretionary trusts, where a member of Parliament is a potential beneficiary;
  - Interests of “immediate family members”; and

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<sup>6</sup> The latest compilation of the [Register of Disclosures by Members of the Legislative Assembly](#) for 30 June 2023 was tabled on 10 October 2023. In response to a submission made by the NSW Greens, the Clerk (who has custody of tabled papers under Standing Order 33) has confirmed that “previously tabled records” will not be affected by the Draft Regulation, if made, including during the transition to an electronic register: [Submission 1](#), Ms Koby Shetty MP on behalf of the NSW Greens, 12 June 2024, p. 3.

<sup>7</sup> The [Constitution \(Disclosures by Members\) Amendment \(De Facto Relationships\) Regulation 2010](#) (NSW) entered into force on 17 December 2010.

<sup>8</sup> The Premier also wrote to the Chair of the Legislative Council Privileges Committee, the Hon. Stephen Lawrence MLC. The Draft Regulation is published in the Legislative Assembly’s [Tabled Papers Database](#) for 8 February 2024.

<sup>9</sup> NSW Independent Commission Against Corruption, [Investigation into the Conduct of the Local Member for Drummoyne](#), June 2022, Recommendation 1, pp. 6 and 155.

<sup>10</sup> NSW Independent Commission Against Corruption, [Investigation into the Conduct of the Local Member for Drummoyne](#), June 2022, Recommendation 1, pp. 7 and 176.

- Dispositions of interests to family members or other associates.

- 1.6 The ICAC recommended that there be a mandatory register for conflicts of interests.<sup>11</sup> It further recommended ongoing requirements to update disclosures of interests within 28 days and “electronic databases to improve transparency of the registers”.<sup>12</sup>
- 1.7 The Draft Regulation is intended to implement the ICAC’s recommendations.<sup>13</sup>

### Terms of reference

- 1.8 Section 14A(5) of the *Constitution Act 1902* (NSW), and the House’s resolution of 17 November 2022, affords this Committee the opportunity of “considering and making representations with respect to” the Draft Regulation.<sup>14</sup>
- 1.9 On 8 February 2024, the Draft Regulation was tabled in the House. The Committee was given terms of reference to inquire into, and report on, the proposed regulation by 2 September 2024.<sup>15</sup>
- 1.10 The Committee’s terms of reference are reproduced in **Appendix One**.

### Summary of findings

- 1.11 After carefully reviewing the provisions of the Draft Regulation, the Committee concludes that it is able to support the proposed changes only in part.<sup>16</sup> The following is a high-level overview of the Committee’s findings.

#### *Trusts and water access licences*

- 1.12 First, the Committee supports the proposed changes to improve transparency around trusts and water access licences.<sup>17</sup> The Committee recommends that the House adopt s. 11 and s. 21 of the proposed regulation to the extent that those provisions relate to the interests of Members and, in the case of trusts, would not require Members to disclose the street addresses of investment properties.

#### *Immediate family members*

- 1.13 Second, the Committee does not support any requirement under the proposed regulation for Members to disclose the interests of “immediate family members”. While the Committee notes the findings of the Operation Witney report, and recognises that interests may be transferred or directed to “immediate family

<sup>11</sup> NSW Independent Commission Against Corruption, [Investigation into the Conduct of the Local Member for Drummoyne](#), June 2022, Recommendation 4, pp. 7 and 179.

<sup>12</sup> Recommendation 1.

<sup>13</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2024, pp. 1–2.

<sup>14</sup> Legislative Assembly, [Votes and Proceedings no. 164](#), 17 November 2022, item 21, p. 2040. Regulations made under the *Constitution* are not subject to the requirements regarding the making of statutory rules under the [Subordinate Legislation Act 1989](#) (NSW), s. 3 (definition of “statutory rule”) and Sch 4.

<sup>15</sup> Legislative Assembly, [Votes and Proceedings no. 42](#), 8 February 2024, item 8, p. 497. At Meeting no. 12 on 9 February 2024, the Committee resolved to formally commence its inquiry. See Extract of Minutes in Appendix Four.

<sup>16</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, [Review of the Code of Conduct for Members](#), Report 4/57, December 2022, p. 12 (Finding 6).

<sup>17</sup> These regulations were also supported by the NSW Greens: [Submission 1](#), Ms Koby Shetty MP on behalf of the NSW Greens, 12 June 2024, p. 2.

members” to avoid scrutiny or conceal corrupt conduct, the Committee also recognises that family members are private individuals who are entitled to private lives. Making detailed information about the affairs of “immediate family members” publicly available would involve a level of unwarranted intrusion into the affairs of persons who are not in public life. Consequently, while s. 14A(4A) of the *Constitution* permits the making of regulations that would require disclosure of “the pecuniary interests, or other matters, of members of the immediate family of Members of either House of Parliament”, the Committee does not support the terms of the Draft Regulation insofar as it proposes such disclosures.

### *Conflicts of interest*

- 1.14 Third, the Committee finds that conflicts of interest of Members who are Ministers and Parliamentary Secretaries should continue to be disclosed under a separate regime from ordinary Members.<sup>18</sup> Ministers should continue to have the highest duties of disclosure. The Draft Regulation suffers from a lack of information about what interests Ministers will disclose to the Premier in private, in accordance with their “public duty as a Minister”, and what they would disclose publicly on the ordinary register for Members.<sup>19</sup>
- 1.15 Fourth, the Committee considers that conflicts of interest should continue to be dealt with in the House under the Standing Orders and in the *Code of Conduct for Members*.<sup>20</sup> The Committee’s view is that, while the inclusion in the regulations of mandatory disclosure of “all conflicts of interest”—which would include *potential or perceived* conflicts of interest—may be permitted under s. 14A(1)(a)(xii) of the *Constitution*, it is nevertheless undesirable.<sup>21</sup> The definition of a conflict of interest under s. 15 of the Draft Regulation involves an objective test in determining where a Member’s private interest could “objectively have the potential to influence the performance of the Members” public duty. While this objective test can be applied by the Premier under the *Ministerial Code of Conduct* in a confidential context, the House would need to apply it in a public context potentially involving intense political pressure. It does not strengthen the argument for such mandatory disclosure that the only penalty under s. 14A(2) of the *Constitution* is the loss of a Member’s seat.

### *Electronic publication of the registers*

- 1.16 Finally, the Committee supports the requirement for the Legislative Assembly’s register and the returns lodged by Members to be made available in an searchable electronic format. The Committee outlines requirements for establishing an electronic register and notes that the online system used by the Australian Senate provides a good model. However, the Committee also notes a number of important considerations about protecting the privacy and safety of

<sup>18</sup> Under s. 9(3) of the *JCAC Act*, the Schedule to the *Ministerial Code of Conduct* applies to Parliamentary Secretaries in addition to Ministers of the Crown. It is convenient to simply refer to “Ministers” in this report.

<sup>19</sup> Draft Regulation, s. 15(4).

<sup>20</sup> Allegations of criminal conduct, for example, wilful misconduct in public office, should continue to be dealt with under the common law as independent authorities, like the Director of Public Prosecutions, consider appropriate. In *Obeid v R* [2015] NSWCCA 309 at [47], the NSW Court of Criminal Appeal (Bathurst CJ, Beazley P and Leeming JA) rejected the notion that s. 14A of the *Constitution* supports “an exclusive jurisdiction of a chamber of Parliament”. See also *Obeid v R* [2017] NSWCCA 221 at [46].

<sup>21</sup> C.f., Draft Regulation, s. 15.

persons. The Draft Regulation seeks to address these considerations by giving the Clerk a discretion to exclude information from the public registers. The Committee finds that such a function is not in keeping with the role of the Clerk and should not be adopted in the regulations.

## Chapter Two – The Draft Regulation

### Overview

2.1 This chapter considers Parts 2 to 4 of the Draft Regulation, which broadly raise the following questions:<sup>22</sup>

- When will Members make disclosures?
- What will Members be required to disclose?
- How will Members make disclosures?
- Where will disclosures be published and to whom?

2.2 Before turning to the substance of the proposed regulations, it is convenient to begin with their enabling provisions.

### What authorises the Draft Regulation to be made?

#### *Integrity Legislation Amendment Act 2022*

2.3 Following the Operation Witney report, in November 2022, the Parliament passed the *Integrity Legislation Amendment Act 2022* (NSW) (**Amendment Act**). The amendments were said to “to lay the groundwork” for the implementation of the former Government’s response to the ICAC’s recommendations, and to “provide clarity and certainty” around the powers needed to implement them.<sup>23</sup>

2.4 Five amendments are particularly relevant to the Draft Regulation.<sup>24</sup>

2.5 First, the *Amendment Act* introduced the words “**or other matters**” into s. 14A(1)(a)(xii).<sup>25</sup> Regulations can now relate to “any other direct or indirect benefits, advantages or liabilities or other matters, whether pecuniary or not, of a kind specified in the regulations”. These matters might be described as non-pecuniary interests.

2.6 Second, it introduced a new subsection, s. 14A(4A), which gives the Governor the power to make regulations about the matters in s. 14A(1) that “may relate to the disclosure of the pecuniary interests, or other matters, of members of the **immediate family of Members** of either House of Parliament”.<sup>26</sup> In his second reading speech, Mr Henskens SC MP noted the “limited disclosure requirements on members of Parliament where family members use family trusts to hold

<sup>22</sup> The issues raised by Part 1 of the Draft Regulation, relating to definitions in Schedule 3 and the prescribed forms the guidelines, and the issue raised by Part 5 headed “Miscellaneous” about contraventions of the regulation (s. 27), are considered throughout the report where relevant.

<sup>23</sup> NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), 9 November 2022, Integrity Legislation Amendment Bill 2022 (Mr Alister Henskens SC MP – Second Reading Debate), p. 9143.

<sup>24</sup> See also Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, [Review of the Code of Conduct for Members](#), Report 4/57, December 2022 at [1.36]–[1.41].

<sup>25</sup> [Integrity Legislation Amendment Act 2022](#) (NSW), Schedule 1.1, clause [3].

<sup>26</sup> [Integrity Legislation Amendment Act 2022](#) (NSW), Schedule 1.1, clause [5].

investments”. He said that Members “should not be able to circumvent disclosure obligations by arrangements where family members hold or are transferred assets”.

- 2.7 Third, related to the above, the Opposition successfully moved an amendment to specifically provide for the regulations to require Members to disclose the details of their interests in **trusts**, including discretionary trusts and self-managed super funds, and the details of real property held by discretionary trusts if a Member is a potential beneficiary.<sup>27</sup>
- 2.8 Fourth, the Member for Murray successfully moved an amendment that explicitly provided that the regulation can cover the disclosure of “**water entitlements** and other interests in water”.<sup>28</sup>
- 2.9 Finally, pursuant to an amendment moved by the Greens, the *Amendment Act* introduced a requirement in s. 14A(1A) that, if a regulation is made requiring the compilation and maintenance of registers, it must include requirements:<sup>29</sup>

“(a) that **the registers be kept in an electronic format**, that is searchable, within 12 months after the making of the regulation,

(b) that the registers be accessible by members of the public, subject to any limitations prescribed in the regulations to protect—

(i) the privacy of persons other than Members of either House of Parliament, or

(ii) the safety of a person or class of persons.”

The Member for Balmain referred to the difficulty of locating “handwritten PDFs” and that the above amendment would allow people to search a Member online and “find key issues” relating to their disclosures so that there would be “a level of openness”.<sup>30</sup>

## Finding 1

**The *Integrity Legislation Amendment Act 2022 (NSW)* broadened s. 14A(1) of the *Constitution Act 1902 (NSW)* to enable the making of regulations under the Act, with the intention of implementing the recommendations of the Operation Witney report.**

- 2.10 The *Constitution* now gives the Governor the power to make regulations with respect to the disclosure by Members of Parliament of a wide range of

<sup>27</sup> NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), 15 November 2022, Integrity Legislation Amendment Bill 2022 (Mr Ron Hoenig MP – Second Reading Debate), p. 8734.

<sup>28</sup> NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), 15 November 2022, Integrity Legislation Amendment Bill 2022 (Mrs Helen Dalton MP – Second Reading Debate), p. 8736.

<sup>29</sup> NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), 15 November 2022, Integrity Legislation Amendment Bill 2022 (Mr Jamie Parker MP – Second Reading Debate), p. 8737.

<sup>30</sup> NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), 15 November 2022, Integrity Legislation Amendment Bill 2022 (Mr Jamie Parker MP – Second Reading Debate), p. 8738.



“pecuniary interests and other matters” as set out in s. 14A(1)(a).<sup>31</sup> The Committee notes that, while the legislation authorises the making of regulations for a wide range of matters, including the mandatory disclosure of a Member’s conflicts of interests, and the disclosure of the interests of a Member’s immediate family, the detail of the approach to be taken was left to the regulations. This report considers the appropriateness of the regulations that have been drafted and the concerns that have been identified are raised throughout the report.

## When will Members make disclosures?

### Lodgement of interest disclosure returns and annual returns

- 2.11 Part 2 of the Draft Regulation would require a Member of Parliament to lodge two types of returns:
- “Within 1 month after” the Parliament first assembles after a general election, or “within 1 month after” a Member takes the pledge of loyalty or oath of allegiance (i.e., after a by-election), the Member would need to lodge a return (**first interest disclosure return**).<sup>32</sup>
  - “Within 1 month” of any matters in their latest return changing, needing to be corrected, or any new matters arising, a Member would need lodge another return (**further interest disclosure return**).<sup>33</sup>
- 2.12 Members could choose, at any time, to lodge a **discretionary return** under s. 22.<sup>34</sup>
- 2.13 An **annual declaration** would be required in the first month of each financial year, with the Member declaring that the register maintained by the Clerk, as at 30 June, to the best of the Member’s knowledge:<sup>35</sup>
- “(a) accurately compiles the information lodged in [the Member’s] interest disclosure returns, and
- (b) contains all the information required to be disclosed by [the Member] under the *Constitution (Disclosures by Members) Regulation 2024*.”
- 2.14 However, a Member who lodged a first interest disclosure return “in the 6 months before 30 June in the same year” would not need to make the above declaration.<sup>36</sup>

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<sup>31</sup> The Cabinet Office advised the Committee that the Draft Regulation “is proposed to be made under the *Constitution*, including s. 14A”: Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Answer 3.

<sup>32</sup> Draft Regulation, s. 5.

<sup>33</sup> Draft Regulation, s. 6(1)–(2).

<sup>34</sup> Draft Regulation, s. 6(3).

<sup>35</sup> Draft Regulation, Schedule 2.

<sup>36</sup> On its face, this appears to mean, “in the second half of the financial year”. But, given that the phrase “in the 6 months before 30 June” is to be calculated exclusive of 30 June, counting backwards 6 months from 29 June, 30 December of the previous calendar year appears to be the precise start date: [Interpretation Act 1987](#) (NSW), s. 36(1). In other words, a Member would not need to make an annual declaration if they lodged a “first interest

## Review of the Current Regulation

- 2.15 In its 2018 review, the Committee identified that the Current Regulation is “complex and difficult to understand” and that there “are too many returns” with the number and timing of those returns making the Regulation “too complex”. The Committee recommended that the Regulation be reviewed and re-made to simplify its structure and provide clearer definitions of key terms.<sup>37</sup>

**Table 1: Lodgement of returns—a comparison**

| Current Regulation  | Draft Regulation   |
|---|--|
| cl 4: <b>Primary returns</b> must be lodged within 3 months after new members take pledge of loyalty.<br>The return period is usually the date of the pledge of loyalty or within the “primary return period”.                                | s. 5: <b>First interest disclosure returns</b> must be lodged <u>within 1 month</u> after:<br>(a) The House first assembles after a General Election; or<br>(b) A Member takes the pledge of loyalty or oath of allegiance (i.e., after by-election).  |
| cl. 5: <b>Ordinary returns</b> must be lodged by 1 October each year, relating to the previous financial year, unless a primary return was lodged by 30 April that year.  | s. 6: <b>Further interest disclosure return</b> must be lodged <u>within 1 month</u> of a “disclosable matter” changing, arising, or requiring correction.   |
| cl. 6A: <b>Supplementary ordinary returns</b> usually lodged by 31 March each year, relating to:<br>(a) 1 July to 31 December of the previous year; or<br>(b) For new members, the date of primary return to 31 December of the previous year | s. 7: <b>Annual declarations</b> usually must be lodged <u>by 31 July</u> , unless a first interest disclosure return was lodged between 30 December to 29 June inclusive. <sup>38</sup>   |
| cl. 6B: <b>Discretionary returns</b> can be made any time before the date on which the member is next required to lodge an ordinary or supplementary ordinary return.   | s. 22: <b>Discretionary returns</b> can be lodged <u>at any time</u> . The disclosure may be in relation to a direct or indirect benefit, advantage, liability or other matter, whether pecuniary or not, that isn’t required to be disclosed under another section, and might appear to raise a conflict between their private interest and public duty as a Member, or that the Member otherwise wishes to disclose. |

## Committee comment

- 2.16 The key terms “first interest disclosure return” and “further interest disclosure return” are cumbersome. However, the words “first”, “further” and “annual” give a much better sense of the timing and progression of lodging returns than the Current Regulation.

disclosure return” between 30 December to 29 June inclusive (as opposed to 1 January to 30 June inclusive). While this is a somewhat unusual date span, it is unlikely to add any extra practical difficulties.

<sup>37</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, [Review of the Pecuniary Interests Register](#), Report 2/56, November 2018, Recommendation 1, p. 4.

<sup>38</sup> See above note 36.

- 2.17 The Current Regulation has been simplified, in large measure, by the Draft Regulation adopting a consistent lodgement periods of “within 1 month”. For annual declarations, “31 July” is effectively “within 1 month” of the preceding financial year. “Within 1 month” would also be the return period for lodging “further interest disclosure returns”.
- 2.18 These changes would have two main consequences.
- 2.19 First, the Draft Regulation would reduce the time that Members have to lodge their “primary” or “first” return by two months. In principle, the Committee supports this change. It would emphasise to newly elected Members the importance of their disclosure obligations. However, the first month after an election is an especially busy for Members and, in the case of a General Election, the Department of the Legislative Assembly and Parliament. Appropriate resources and support will be required to assist Members with completing their returns within such narrow periods, in particular, if the Government proceeds (despite many of this Committee’s other findings and recommendations) with other major changes proposed by the Draft Regulation.

## **Finding 2**

**By adopting consistent lodgement periods of “within 1 month” the Draft Regulation would reduce the complexity of the Current Regulation.**

## **Finding 3**

**While reducing the time that Members have to lodge their “primary” or “first” return from 3 months to 1 month would emphasise the importance of a Member’s disclosure obligations, appropriate resources and support would be needed to ensure that Members can comply with these obligations during a busy period following an election.**

- 2.20 Second, the Draft Regulation would create a duty of continuous disclosure for Members. Members would need to continuously monitor all “disclosable matters” and “within 1 month” of any reportable changes update their returns. This will inevitably include the Christmas Closedown period and public holidays. It would also include any periods that a Member is on leave. These practical challenges would, in general, be addressed by the Parliament creating an electronic system for lodging returns, whereby the Member is responsible for lodging their returns through an online portal (which is discussed below). Notwithstanding such a system, the Office of the Clerk will need resources throughout the year to respond to enquiries from Members and address other issues as they arise. The Office of the Clerk could no longer focus its resources on specific periods (i.e., around 1 October and 31 March). The Department of the Legislative Assembly has already allocated resources in its budget for the 58th Parliament. However, the Committee notes there will be ongoing, additional costs to administer the proposed regulations.

## **Finding 4**

**In addition to increasing transparency around Member’s interests, implementation of an electronic system for lodging returns would address an**

**issue arising in the Draft Regulation about requirements for Members to lodge returns during public holidays or periods of leave.**

*Extensions of time*

- 2.21 “Within 1 month” would also include periods of illness or grief affecting the Member or their family, which may make it difficult or unreasonable in the circumstances for the Member to comply with the regulations in such a short timeframe. The regulations should, therefore, allow Members to submit their disclosures outside the required timeframe in limited circumstances (i.e., on compassionate grounds or in circumstances where the individual Member is seriously ill or injured).<sup>39</sup> The Committee considers that there should be the capacity for a Member to formally notify the Clerk as Registrar where such circumstances arise, or to retrospectively confirm they were unable to make a disclosure due to ill-health. Noting the significant repercussions from non-compliance with a Member’s disclosure obligations, this would provide a record of extenuating circumstances where a Member may have been unable to meet the required timeframes for disclosure. However, Members would still be required to account for any delay in the making of their disclosures.
- 2.22 The Committee is not aware that any other jurisdiction in Australia or New Zealand allows for an extension of time in relation to lodging a disclosure return. However, the obligations of continuous disclosure “within 1 month” would be rigorous and may be uncompassionate in certain circumstances. The Committee proposes the following provision for the House to consider.

**Recommendation 1**

**The regulations should allow for an extension of time, of up to 60 days during each session of Parliament, for a Member to lodge a further interest disclosure return or make an annual declaration in circumstances involving: (1) the death of a family member; or (b) a serious illness or injury affecting the individual Member. The Member’s ground should be submitted in writing to the Clerk of the relevant House, as soon as practicable, and recorded in a confidential register maintained by the Clerk, which should be made available to Members of the relevant House and the Independent Commission Against Corruption upon request.**

- 2.23 The Committee notes that the above would not include the time in which the Member must lodge a “first interest disclosure return”. Nor would it affect the obligations of Members to disclose any conflicts of interest under the Standing Orders.<sup>40</sup> However, the expectation would be that the Member would only be entitled to an extension of time in circumstances where they were unable to vote in the House or participate in committee inquiries, and so their obligations under the Standing Orders would not arise.

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<sup>39</sup> The Government may wish to consider, for example, the significance of funeral attendance and sorry business for Aboriginal and Torres Strait Islander Peoples: Queensland Government, [Respect for Cultural Protocols and Practices](#), 4 September 2023.

<sup>40</sup> See [2.66]–[2.67] below.

## What will Members be required to disclose?

### Interests of immediate family members

#### Overview

- 2.24 The Draft Regulation would require Members to disclose 12 interests or other matters. Nine of those interests would relate to the interests of the Member *and their “immediate family member”*. Those interests would need to be disclosed irrespective of whether they were separate from, or joint with, the Member’s interests. They would be interests in real property, trusts, corporations, trade unions and professional or business associations, debts, sources of income, contributions to travel, and water access licences.
- 2.25 The Committee will return to consider each of those interests shortly. However, given the significance of the overarching proposal to include “immediate family members” in the Regulation, it is convenient to address it first. The Committee starts by noting that the Government’s “policy intent is to recognise that, in many circumstances, an immediate family member’s interests will be closely connected with the interests of the Member.”<sup>41</sup>

#### *The meaning of “immediate family member”*

- 2.26 The phrase “immediate family member” would be defined in the Dictionary in Schedule 3 to mean:<sup>42</sup>
- “(a) the Member’s spouse or de facto partner, or
- Note— *De facto partner*** is defined in the *Interpretation Act 1987*, section 21C.
- (b) a child of the Member or of the Member’s spouse or de facto partner if one or more of the following apply—
- (i) the child [is] less than 18 years of age,
- (ii) the child is a dependant of the Member or of the Member’s spouse or de facto partner,
- (iii) the child resides with the Member or the Member’s spouse or de facto partner.”
- 2.27 If a couple is unmarried, and not in a registered relationship, whether they are in a “de facto relationship” will depend on whether “they have a relationship as a couple living together”. All the circumstances of the relationship are to be taken into account, including any of the matters in s. 21C(3) of the *Interpretation Act 1987* (NSW), including the duration of the relationship, the nature and extent of the common residence, and whether a sexual relationship exists.
- 2.28 The word “child” simply describes the child’s relationship to the parent(s) and, therefore, a “child” can be an adult of any age provided the circumstances in (ii)

<sup>41</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Answer 19.

<sup>42</sup> This definition is consistent with the definition in s. 11 of the Preamble to the [Ministerial Code of Conduct](#).

or (iii) exist. The Cabinet Office advised that it is irrelevant to those subsections whether the child pays board or makes rental payments to the Member or their spouse or de facto.<sup>43</sup> The NSW Greens, while supportive of the requirement to include “immediate family members” in the regulations, noted that the Draft Regulation “would require Members to disclose the interests of children under the age of 18 years with whom they have no meaningful relationship, which could give rise to inappropriate and unsafe disclosures”.<sup>44</sup> The Committee shares these and other concerns.

### *Current Regulation*

2.29 The Current Regulation defines a Member’s “relative” for the purposes of Part 3 in much broader terms than the Draft Regulation definition of “immediate family member”. For example, it includes grandparents, aunts and uncles, and nieces and nephews, in addition to “the spouse or de facto partner of the Member”.<sup>45</sup> However, the application of this definition of “relative” at present *limits* rather than *expands* the matters that a Member needs to disclose. Currently, a Member does not need to disclose any gifts or contributions to travel where the donor or contributor is a relative nor any debts that are owed to a relative.<sup>46</sup> By contrast, the Draft Regulation would impose the more burdensome requirement for a Member to disclose gifts received by an immediate family member, contributions to the immediate family member’s travel, and any debts that the immediate family member were liable to repay.

### *Public and private lives*

2.30 A person’s relationship, and its status, is “intensely private terrain” that couples are ordinarily “entitled to keep private”.<sup>47</sup> The Draft Regulation would open a Member’s relationships to public scrutiny and, with it, erode much of that terrain. It would also be a significant invasion of the privacy and rights otherwise enjoyed by “immediate family members” *as individuals*.

2.31 Members of Parliament must voluntarily surrender much of their private lives when they run for public office. High levels of public scrutiny are expected given the nature of their public duties. “Immediate family members” have not made the same decision to enter public life<sup>48</sup>—although aspects of the Member’s decision to run for Parliament might be shared. While an “immediate family member” might anticipate that the Member’s decision will expose them to some levels of scrutiny from the media and public, the Draft Regulation would instead impose a loss of privacy. Any such significant invasion of privacy should in the Committee’s view be imposed through legislation, which has been fully and

<sup>43</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Answer 19.

<sup>44</sup> [Submission 1](#), Ms Koby Shetty MP on behalf of the NSW Greens, 12 June 2024, p. 2.

<sup>45</sup> Current Regulation, clause 7(1). See [Constitution \(Disclosures by Members\) Amendment \(De Facto Relationships\) Regulation 2010](#).

<sup>46</sup> Current Regulation, clauses 10, 11, and 14.

<sup>47</sup> Independent Commission Against Corruption, [Investigation into the Conduct of the then Member of Parliament for Wagga Wagga and then Premier and Others \(Operation Keppel\)](#), Volume 2, June 2023 at [10.2].

<sup>48</sup> The Parliamentary Library records a limited number of husbands and wives (eight couples in total) who have, at some time, each served in the NSW Parliament: [Miscellaneous Facts from NSW Parliament](#).

explicitly considered and the House and each individual Member has had an opportunity to comment and vote on such proposals.

- 2.32 When the Parliament debated the *Amendment Act*, the only consideration given to including “immediate family members” in s. 14A of the *Constitution* was for the limited purpose of Members being required to disclose their families’ interests in trusts.<sup>49</sup> To the extent that Members dealt with the issue in general terms, in relation to defining a “family member”, it was to emphasise that the regulations should be “cautious about the definition”.<sup>50</sup> The Committee takes that approach. While the text of the *Amendment Act* appears to empower the Governor to make regulations in relation to all the interests of “immediate family members” in s. 14A(1), eight of the nine specific matters in the Draft Regulation were not fully debated in the House in this respect.

## Finding 5

**The Committee considers that the proposals in the Draft Regulation would have such a significant potential impact on the rights to privacy of a Member’s “immediate family members” that they should be imposed by substantive legislation rather than being introduced through a broadly drafted regulation.**

## Recommendation 2

**The regulations should not require the disclosure by Members of Parliament of pecuniary interests and other matters relating to the “immediate family members” of Members.**

### *Retrospective effect*

- 2.33 The proposed requirements are significant because they would apply to the “immediate family members” of current Members, who were unable to factor them into their decisions or discussions about whether the Member should run for the 58th Parliament. To that extent, the requirements would operate retrospectively. This could have significant, unforeseen consequences on the existing legal rights or obligations of “immediate family members”. In response to a question about the circumstances in which a Member’s efforts to comply with the Draft Regulation might risk inducing a breach of contract or result in a breach of confidence, for example, the Cabinet Office referred to the Clerk’s ability to exclude information from the copy of the register made publicly available under s. 25(2).<sup>51</sup> The issues with the proposed s. 25(2) are addressed at [2.109] to

<sup>49</sup> See [2.6] and footnote 23 above re the Minister’s second reading speech; NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), 15 November 2022, Integrity Legislation Amendment Bill 2022 (Mr Nathaniel Smith MP – Second Reading Debate), p. 8712 (“There are limited disclosure requirements on members of Parliament where family members may use trusts to hold investments”); (Mr Ron Hoenig MP – Second Reading Debate), p. 8735 (“Whether it is a self-managed superannuation fund, a family trust or any other form of investment, disclosure attracts public confidence”).

<sup>50</sup> NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), 15 November 2022, Integrity Legislation Amendment Bill 2022 (Mr Ron Hoenig MP – Second Reading Debate), p. 8735

<sup>51</sup> In terms of breach of confidence, the Cabinet Office also referred to *Gartside v Outram* (1856) 26 LJ Ch 113. The Committee notes that the “immediate family members” of Members may *legitimately* be required to keep commercial or other information confidential. There may be no “crime, civil wrong or serious misdeed of public importance” involved: *Corrs Pavey v Collector of Customs* (1987) 74 ALR 238 at 450 per Gummow J.

[2.120] below. For now, it is sufficient to note that s. 25(2) is unlikely to address the retrospective effects of the regulations.

#### *Other jurisdictions*

- 2.34 Australian Senators are required to disclose the interests of immediate family members of which they are aware. However, these disclosures are maintained in a part of the register that is confidential to the Committee of Senators' Interests (known as a "Form B").<sup>52</sup> Only the House of Representative publishes the interests of immediate family members online. However, the resolution of the House of Representatives is less prescriptive about the nature of the interests that need to be disclosed than the Draft Regulation.<sup>53</sup> Accordingly, Members of the House of Representatives can be far more protective of the family member's interests by disclosing those interests at a high level. Given that any guidelines by this Committee under s. 4(1)(b) of the Draft Regulation would need to be "consistent" with the regulations, the "appropriate parliamentary committee" referred to in s. 4(2) could not provide guidance that Members of the Legislative Assembly could make similarly high-level disclosures.<sup>54</sup> However, an important difference, which the Committee considers in greater detail shortly, is that Members of the House of Representatives do not risk losing their seats under the resolution whereas Members of the NSW Legislative Assembly would under the Draft Regulation.<sup>55</sup>

#### *Proportionality*

- 2.35 The Committee recognises the harm to the community that the ICAC exposed in the Operation Witney report. Corruption of this kind is insidious and should be prevented. As the NSW Greens submitted:<sup>56</sup>

"Public confidence in political institutions and the integrity of our systems are critical to a strong and healthy democracy. Requirements that enhance transparency and foster a culture of accountability, such that Members may not inadvertently or wilfully do the wrong thing, will improve public participation in democratic processes and ensure politicians are making decisions that are in the public interest, rather than their own."

- 2.36 The Committee accepts that ending the ability of Members to direct or transfer their interests to their "immediate family members", in order to conceal corrupt conduct, is a legitimate end. However, the Draft Regulation must be *proportionate* to achieving that end. The Committee is not satisfied that it is. The

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<sup>52</sup> The Committee may vote to table the declaration where it considers that a conflict of interest arises: Australian Senate, [Resolutions Relating To Senators' Interests](#) at [2].

<sup>53</sup> Australian House of Representatives, [Registration of Members' Interests – Requirements of the House of Representatives](#), Resolution adopted 9 October 1984 (most recently amended 19 September 2019), clause 2.

<sup>54</sup> The name and address of the employer could only be excluded under s. 25(2), where the Clerk exercises this discretion.

<sup>55</sup> A Member of the House of Representatives who knowingly provides false or misleading information to the Register of Members' Interests shall be guilty of a serious contempt of the House and shall be dealt with by the House accordingly: Australian House of Representatives, [Registration of Members' Interests – Requirements of the House of Representatives](#), Additional resolution adopted 13 February 1986.

<sup>56</sup> [Submission 1](#), Ms Koby Shetty MP on behalf of the NSW Greens, 12 June 2024, p. 1.



Committee notes some further, practical issues to emphasise the lack of proportionality in the Draft Regulation.

### *Divorce*

2.37 As the Member for Wagga Wagga, Dr Joe McGirr, recognised in his submission, there is a lack of clarity in the Draft Regulation around what happens “where partners are separated, but not divorced, and in what circumstances”. The Cabinet Office advised the Committee that:<sup>57</sup>

“A Member who is legally married to, but separated from, their spouse should consider if they are eligible to commence divorce proceedings to legally end the marriage. Until the marriage is legally ended, it would be prudent for the Member to take reasonable steps to make themselves aware of the pecuniary and other interests of their spouse to comply with the disclosure obligations under the Draft Regulation”.

2.38 The Cabinet Office noted that what constitutes “reasonable steps” will “differ in each circumstance”.<sup>58</sup> However, some examples could include:<sup>59</sup>

- “Providing the immediate family member with written correspondence requesting the disclosure of interests, and keeping a copy of the correspondence and the reply
- Conducting searches of relevant property and other registers available to the Member
- Disclosing any relevant interests of the immediate family member that are known or suspected by the Member”.

2.39 The advice that Members should simply consider their eligibility for a divorce is unhelpful. This is because the Draft Regulation would require a relatively high level of contact during the separation period of at least 12 months needed before a divorce order can be made.<sup>60</sup> In cases where the Member is fleeing domestic violence, the regulations could place the Member at further risk of harm. The Committee expects that, in many cases involving the dissolution of a marriage, any correspondence required under the regulations would be conducted through legal representatives which, again, Members would need to fund, and would be potentially difficult and problematic.

### *De facto relationships*

2.40 With de facto relationships, Members will need to decide how far their personal relationships need to develop or progress before they have the “*Constitution* talk” with their partner. While “the duration of the relationship” is a factor that

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<sup>57</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Answer 18.

<sup>58</sup> Responses of the Cabinet Office to Questions on Notice, 7 May 2024, Answer 4.

<sup>59</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Answer 12.

<sup>60</sup> [Family Law Act 1975](#) (Cth), s. 48.

has been given meaning in other contexts,<sup>61</sup> the phrase has never taken on *constitutional* significance for the Parliament of New South Wales before.<sup>62</sup>

- 2.41 Unlike in other legal contexts, there would not be a court or other decision-maker weighing up the factors in s. 21C of the *Interpretation Act* and making an objective determination. Instead, the Draft Regulation would leave this to the individual Member—or, where the Member were alleged to have contravened the regulations, the House. Because Members are public figures, they will therefore need to decide relatively early into their relationships when to “go public”.<sup>63</sup> For Members who already give up much of their private lives to hold public office, these proposals could raise further disincentives to seek public office.
- 2.42 Members will also need to accurately recognise when their de facto relationship is over. Where the relationship is “on again, off again” the status may not be clear to the Member themselves. But, even where the status *is* clear, the Member will need to publicly declare the relationship over by removing their ex’s interests from the register.
- 2.43 Questions about “the care and support of children” would also be new, difficult matters for the House to interpret. It is unclear how these matters could be considered in public, having regard to the rights of the children involved.

## Finding 6

**The Draft Regulation is unclear about how Members would, in practical terms, manage the breakdown of a marriage or de facto relationship. It is also unclear about the timing and circumstances around the formation of de facto relationships. As such, the Draft Regulation poses significant practical difficulties.**

### *Death*

- 2.44 Within 1 month after an “immediate family member” died, a Member would need to update the register to:
1. Remove the deceased’s interests; and
  2. Update their own interests, for example, if they were a beneficiary under the deceased’s will.<sup>64</sup>

<sup>61</sup> See, e.g., [Family Law Act 1975](#) (Cth), s. 90YZC(1)(a).

<sup>62</sup> Members of the Parliament of Tasmania are required to disclose information about their “spouse” under s. 7 of the [Parliamentary \(Disclosure of Interests\) Act 1996](#) (Tas). Section 3 defines “spouse” to mean, “in relation to a person, includes the person who is in a significant relationship, within the meaning of the [Relationships Act 2003](#) (Tas), with that person”. Section 4(3) of the *Relationships Act* provides a non-exhaustive list of circumstances which are to be taken into account to determine whether there is a “significant relationship” between two persons who are not in a registered relationship.

<sup>63</sup> The “reputation and public aspects of the relationship” would, in perhaps a circular fashion, need to be considered to determine whether a de facto relationship exists: [Interpretation Act 1987](#) (NSW), s. 21C(3)(i).

<sup>64</sup> The exception in s. 11(3)(a) of the Draft Regulation only applies if the Member is *not* a beneficiary under the will or intestacy.

- 2.45 While the Committee accepts that it would still be up to the House to determine if the Member had “wilfully contravened” the disclosure obligations in circumstances where grief prevented them from complying with the above obligations,<sup>65</sup> and that the House acting compassionately would be unlikely to make that determination, the Committee notes that the last thing a Member should be worrying about at a time of great personal loss is being technically non-compliant with their disclosure obligations as a Member. Accordingly, the regulations should make provision for an extension of time: see Recommendation 1 at [2.21].

### *Workplaces*

- 2.46 The interest an “immediate family member” has in a corporation, or their sources of income, may allow the public to identify where family members, including children, work and therefore spend much of their time. It would be one thing for a Member to publicly disclose the “name and address” of the head office where their 50-year-old partner works for an ASX 200 company with hundreds of locations.<sup>66</sup> It would be quite another from the perspective of safety for the Member to disclose the same details of where their 15-year-old son or daughter works at a small business with a single location. The Draft Regulation doesn’t distinguish between the two circumstances, except for giving the Clerk a discretion to exclude information under s. 25(2). The problems with this proposal is dealt with later in the report. For now, the Committee again notes that the House of Representatives deals with the disclosure of these type of interests in a far less prescriptive way. For example, there is no need for federal MPs to disclose the address of the corporation or describe the position held by the family member.
- 2.47 Professor Emerita Twomey also has pointed to the potentially burdensome nature of the proposed requirement for a Member to disclose sources of income exceeding \$500 a year for immediate family members that would include, for example, a Member’s young adult children living at home, who may have a wide range of different sources of income.<sup>67</sup>

### **Finding 7**

**If made, the proposed regulation must ensure that a Member’s immediate family is appropriately protected, including by ensuring that evidence of their workplace is not published, and cannot be discerned from, copies of the public registers. This safeguard needs to be provided for in the terms of the regulation rather than through any discretionary processes relating to publication (see Finding 12).**

### *Other means of obtaining information about “immediate family members”*

- 2.48 By rejecting the Government’s proposal to include “immediate family members” in the regulations, the Committee is *not* saying that a Member’s family should not be subject to reasonable or legitimate scrutiny. The Operation Witney report

<sup>65</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Answer 21.

<sup>66</sup> Although this information would provide a starting point to identify the specific workplace, which could be matched against any other information that is available online.

<sup>67</sup> [Submission 5](#), Professor Emerita Anne Twomey, 12 August 2024, p. 3.

shows such scrutiny is vital. But, again, it needs to be proportionate. Part of that analysis involves having regard to the availability of other means to achieve the same end. For example:

- If the ICAC, the media, or anyone else, wants to find out about an immediate family member's interests in real property, they can run a title search.
- The ICAC can issue a notice under s. 22, or a summons under s. 35, of the *Independent Commission Against Corruption Act 1988 (NSW)* to a person to obtain documents about, for example, an immediate family member's interests in trusts, sources of income, or positions in a corporation (to the extent those details cannot otherwise be obtained through Australian Securities & Investments Commission or other registers).
- The ICAC can carry out covert surveillance or execute search warrants to identify a range of interests.
- The media can obtain a range of information, including from confidential informants.<sup>68</sup>

2.49 Importantly, if Members are required to disclose *their* interests in trusts under the regulations, as the Committee recommends, these disclosures will provide “a description of the activities of the trust” and “the interests held by the trust”.<sup>69</sup> This description would identify the *general* nature of a family trust and assist the ICAC with identifying, to the extent it were not already clear in that disclosure, which *specific* family members had *specific* interests.

2.50 As noted above, even though the definition of “immediate family member” is very important in the Draft Regulation, it is still quite narrow. It would not cover other relatives, like cousins or parents, to whom a Member might transfer or redirect their interests. It would not cover friends or associates. As the NSW Greens noted (albeit in support of the party's submission to broaden, rather than limit, the definition of “immediate family member” in the regulations):<sup>70</sup>

“There is no good reason to assume that the interests of a Member and their parents, parents-in-law or a close sibling are not potentially aligned, and that a Member acting in a way that delivers a private benefit to such individuals would not amount to a conflict of interest.”

2.51 The above mechanisms for investigative bodies to inquire into these people's interests will continue to be available and able to be utilised for specific investigative purposes.

<sup>68</sup> See [Evidence Act 1995](#) (NSW), s. 126K.

<sup>69</sup> Draft Regulation, s. 11(2)(b) and (d).

<sup>70</sup> [Submission 1](#), Ms Koby Shetty MP on behalf of the NSW Greens, 12 June 2024, p. 2.

## Real property

### Section 10

- 2.52 Section 10(1) of the Draft Regulation would require Members to disclose:
- “(a) the address of each parcel of real property in which the Member or an immediate family member of the Member has an interest, and
  - (b) the nature of the interest in the parcel of real property”.
- 2.53 Where the Member or an “immediate family member” uses the parcel as a principal or secondary place of residence, the Member would only need to disclose “the location of the parcel by suburb or area”.<sup>71</sup>
- 2.54 A Member or immediate family member would not need to disclose their interest in real property where the interest arises only because they are an executor or administrator of the estate of a deceased person, and not a beneficiary under the will or intestacy, or they have an interest only because they acquired the interests in the ordinary course of an occupation.

### Investment properties

- 2.55 The Member for Wagga Wagga, Dr Joe McGirr, submitted that there “must be provisions to ensure privacy and protection for tenants of properties owned by a member or family so that these are not targeted for dangerous acts because they are associated with an MP”. The Member for Wakehurst, Mr Michael Regan, raised essentially the same concern. In his view, Members need certainty that the Clerks will “redact the street name and number of such investment properties prior to searchable copies of the public registers being published on the NSW Parliament’s website”. He noted that publication of the suburb was sufficient and that “[t]enants do not need to be harassed by the media or members of the public because their landlord is a politician”.
- 2.56 Professor Emerita Anne Twomey submitted that the disclosure of addresses of investment properties held risks for those living in tenanted properties in which a Member has an interest, including possibly a Member’s elderly parents, who would not be covered under the regulation as “immediate family members” and, as a consequence of the disclosure, could be subject to harassment during times of political controversy. While disclosure of investment property details could reveal conflicts of interest and potential corruption, Professor Emerita Twomey indicated “that should not necessarily mean that the general public should have access to those addresses”. The submission notes that disclosure of the details of investment properties on a confidential part of the register, and inclusion of only the general location on the public register, might be an alternative that would minimise the risks for tenants while still meeting the needs of investigative and law enforcement bodies, such as the ICAC and the Police, and others.<sup>72</sup>
- 2.57 The Committee agrees with the concerns raised and considers that the disclosure requirements under the proposed regulation should be amended. It notes that

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<sup>71</sup> Draft Regulation, s. 10(2).

<sup>72</sup> [Submission 5](#), Professor Emerita Anne Twomey, 12 August 2024, p. 1.

the approach suggested by Professor Emerita Twomey would address issues of security and safety, while meeting appropriate levels of disclosure.

### Recommendation 3

**Where a Member leases real property to someone else, it should be sufficient under the regulations that the Member disclose “the location of the parcel by suburb or area” and for the details of investment properties to be included in a confidential part of the register accessible in limited circumstances, e.g. to the ICAC for the purpose of an investigation.**

#### Trusts

- 2.58 Section 11 of the Draft Regulation would require Members to disclose a trust if the Member or an “immediate family member” has a beneficial interest in the trust, including a mere expectancy as a beneficiary of a discretionary trust, or is a trustee of the trust.
- 2.59 Superannuation funds, whether public or self-managed, and listed investment trusts would need to be disclosed.
- 2.60 Members would be required to disclose:
- the name of the trust;
  - a description of the activities of the trust;
  - the nature of the interest in the trust; and
  - interests held by the trust, including real property and investments.
- 2.61 As noted above, the Committee is supportive of the proposal to enhance disclosure about trusts. Subject to the references in s. 11 to “immediate family members”, and the Committee’s Recommendation 3 that Members should not be required to disclose the specific address of any properties that they have leased out, the Committee is satisfied that s. 11 of the Draft Regulation is appropriate and should be made. Indeed, the Committee notes that the provision is much needed given the findings in the Operation Witney report, which show the central role that trusts played in that matter.

### Recommendation 4

**Subject to the findings and recommendations above, s. 11 of the Draft Regulation relating to trusts should be made.**

#### Conflicts of interest

##### *Section 15*

- 2.62 Section 15(1) of the Draft Regulation provides that: “A Member must disclose all conflicts of interest”.
- 2.63 A “conflict of interest” is defined in s. 15(2) as “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 private duty".

#### What is a "private interest"?

The ICAC describes a "personal interest" as an interest arising from an individual's private life "that can bring financial or other material benefits or result in disadvantages to the public interest or to other people".<sup>73</sup> As s. 15(3) reflects, these interests are not limited to pecuniary interests and a conflict can arise, for example, from a romantic relationship or friendship.<sup>74</sup>

- 2.64 Section 15(3) states that a "conflict of interest need not be pecuniary in nature".
- 2.65 Finally, s. 15(4) seeks to clarify that, "a Member's public duty as a Member does not include the Member's public duty as a Minister or Parliamentary Secretary".

#### *Code of Conduct for Members*

- 2.66 The *Code of Conduct for Members* requires Members to "base their conduct on a consideration of the public interest, avoiding conflict between personal interest and their duties as a Member of Parliament".<sup>75</sup> 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.<sup>76</sup>
- 2.67 Members must 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". The first aspect of this is reflected in the Standing Orders. Members "cannot vote on any question" in the House in which they have "a direct pecuniary interest".<sup>77</sup> Nor can they participate in a committee inquiry "if personally interested" or if they have "a direct pecuniary interest in the matter under inquiry".<sup>78</sup> In the case of each Standing Order, the Member's interest is an interest "not held in common with other citizens of the State". The *Code of Conduct for Members* clarifies that: "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."
- 2.68 The commentary to the *Code of Conduct for Members* notes that there is an "important distinction between *disclosing an interest* and *having a conflict of interest*" (emphasis added):

<sup>73</sup> Independent Commission Against Corruption, [Managing Conflicts of Interest in the NSW Public Sector](#), June 2019, p. 4.

<sup>74</sup> [Berejiklian v Independent Commission Against Corruption](#) [2024] NSWCA 177 Bell CJ and Meagher JA at [150]–[161]; Ward P at [343]. [Submission 4](#), Mr John Evans PSM, 25 July 2024 at [9]–[11].

<sup>75</sup> NSW Legislative Assembly, [Code of Conduct for Members](#), clause 1. See [Submission 4](#), Mr John Evans PSM, 25 July 2024 at [1]–[8].

<sup>76</sup> Clause 7.

<sup>77</sup> Standing Order 176.

<sup>78</sup> Standing Order 276.

“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”.

- 2.69 By contrast, the Draft Regulation would require a Member to disclose each and every private interest that “could objectively have the potential to influence the performance of the Member’s private duty”. Because interests “need not be pecuniary in nature” the requirement will involve Members disclosing a wide range of interests that are not otherwise addressed by the regulations.
- 2.70 Professor Emerita Twomey noted in her submission to the Committee that the relevant section of the *Constitution* under which s. 15 of the Draft Regulation provided for the disclosure of conflicts of interest is “not immediately apparent”. She questioned whether the intended source in s. 14A of the *Constitution* was the provision relating to “any other direct or indirect benefits, advantages or liabilities or other matters, whether pecuniary or not, of a kind specified in the regulations”.<sup>79</sup> Professor Twomey also noted the “importance of proposed reg 15(3), which states that a conflict of interest need not be pecuniary in nature”. This aspect of the Draft Regulation was particularly significant given the NSW Court of Appeal’s rejection of “the argument run in *Berejiklian v Independent Commission Against Corruption* [2024] NSWCA 177 that under the NSW Ministerial Code a non-pecuniary personal relationship was not capable of amounting to a ‘private interest’ that could give rise to a conflict of interest and a public duty”. This is further discussed at [2.80].

#### *Conflicts of interest under the Ministerial Code of Conduct*

- 2.71 Under Part 3 of the Schedule to the *Ministerial Code of Conduct*, Ministers of the Crown “must promptly give notice to the Premier of any conflict of interest that arises in relation to any matter”. A notice must “specify the nature and extent of the relevant interest, the matter to which it relates, and the reason why a conflict of interest arises”.<sup>80</sup> These notices are placed on the Ministerial Register of Interests, which is “a *confidential* register kept by the Cabinet Office on behalf of the Premier” (emphasis added).<sup>81</sup>
- 2.72 Ministers must also comply with their obligations as a Member under s. 14A of the *Constitution* and the regulations.<sup>82</sup> The only distinction that the Draft Regulation makes between Members who are Ministers and those who are backbenchers is in s. 15(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”.

<sup>79</sup> [Submission 5](#), Professor Emerita Anne Twomey, 12 August 2024, p. 2.

<sup>80</sup> The Parliamentary Ethics Adviser, Mr John Evans PSM, believes that s. 15 should impose the same requirement on Members: [Submission 4](#), 25 July 2024 at [27].

<sup>81</sup> [NSW Ministerial Code of Conduct](#), s. 11 (note to the definition of “Ministerial Register of Interests”).

<sup>82</sup> Clause 5 to the Schedule to the *Ministerial Code of Conduct*. Ministers must also comply with the *Code of Conduct for Members*: clause 3 of the Preamble to the *Ministerial Code* read with s. 9(3)(b) of the [ICAC Act](#).



- 2.73 Section 15(4) effectively causes s. 15(1) to read: “A conflict of interest does not arise in relation to a Member if there is a conflict between the Member’s *Ministerial duty* and the Member’s private interest”. Because the conflict of interest would not arise under the Draft Regulation, it would not need to be disclosed under the Draft Regulation (i.e., publicly). Instead, it would need to be disclosed only to the Premier under the *Ministerial Code of Conduct* (i.e., confidentially).
- 2.74 The Cabinet Office advised the Committee that no amendment of Part 3 of the Schedule to the *Ministerial Code of Conduct*, which deals with conflicts of interest, is proposed. However, “consequential amendments to Part 2 of the Schedule to the Ministerial Code”, which deals generally with Minister’s obligations to make disclosures, “are contemplated”. The Cabinet Office advised that these “consequential amendments” will be “subject to the final form of the Draft Regulation and consultation with the Chief Commissioner of the ICAC”.<sup>83</sup> The Committee notes that this response is open ended and lacking in definition about the operation of the two disclosure regimes.
- 2.75 The Cabinet Office did confirm, however, that s. 6(1)(b) and (c) and s. 7(1)(b) and (c) would be omitted from the Schedule.<sup>84</sup> These requirements for Ministers to, in effect, continuously update the Premier about their interests, and to disclose the interests of the “immediate family members” as though they were the Minister’s own interests under the Current Regulation, will be subsumed in the regulations. The Committee accepts that it would make little sense for Ministers to disclose the same interests a second time to the Premier.
- 2.76 The Committee is, however, unclear on what interests will be disclosable by Ministers *only* to the Premier.<sup>85</sup> This will depend on what the Draft Regulation means by “the Member’s public duty as a Minister or Parliamentary Secretary” and how that duty might be interpreted by a court or defined at some later stage in the *Ministerial Code of Conduct*. The Committee understands that, at a minimum, this duty would mean ensuring “that deliberations of Cabinet should remain confidential”.<sup>86</sup>
- 2.77 The Committee not only understands, but expects, that the deliberations of Cabinet should remain confidential and that certain disclosures will, therefore, be unable to be made by Members who are Ministers on the public register, consistent with their “public duty as a Minister”. However, the Committee is concerned that the use of the Ministerial Register of Interests might not be limited to achieving *only* this purpose. For example, would “public duty as a Minister” include a Minister’s statutory or departmental duties?

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<sup>83</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2023, Answer 2.

<sup>84</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2023, Answer 2.

<sup>85</sup> The Committee asked the Cabinet Office to confirm whether the Draft Regulation “would involve identical disclosure requirements for all Members, including Ministers and Parliamentary Secretaries”. It also asked whether s. 15 of the Draft Regulation would be an “exclusive requirement imposed on *all* Members”: Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Questions 1 and 2 respectively.

<sup>86</sup> *Commonwealth v Northern Land Council* (1993) 176 CLR 604; [1993] HCA 24 at [6] per Mason CJ. Under clause 2 of the Preamble to the *Ministerial Code of Conduct*, Ministers swear or affirm that they “will not directly or indirectly reveal matters debated in the [Executive] Council”.

2.78 To the extent that other conflicts of interest might be disclosed only on the confidential register, lesser standards of disclosure would apply to Ministers than apply to other Members. This would be contrary to the principle that:<sup>87</sup>

“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. Under this State’s constitutional arrangements, and leaving aside the third arm of government, only Ministers occupy a more senior position than that occupied by parliamentarians.”

2.79 Again, the Committee’s concern arises from the lack of detail in the Draft Regulation about the meaning of “public duty as a Minister”. In principle, the Committee accepts that two disclosure regimes could operate in tandem, provided that there were clear guidelines for Ministers about what needed to be disclosed publicly or privately. But the Committee has not received any information about what those guidelines might include and, therefore, cannot comment.

2.80 In relation to the disclosure regimes that would apply to Ministers as distinct from backbench Members, the Committee also notes the submissions made by Professor Emerita Twomey, as follows:<sup>88</sup>

“It is nonetheless important to make it very clear to Members, including Ministers, that conflicts of interest may arise in relation to non-pecuniary interests. Proposed reg 15(3) clarifies this in relation to Members, but proposed reg 15(4) excludes from this the public duty of a Member as a Minister or Parliamentary Secretary. It is therefore also important to ensure that these far more significant conflicts of interest of Ministers and Parliamentary Secretaries are also dealt with, presumably through the Ministerial Code.

It does seem rather odd that the constitutional consequence of a Member wilfully failing to reveal a conflict of interest between their public duty as a Member (but not as a Minister) and their private interest can result in a Member’s seat being declared vacant under s 14A(2) of the *Constitution Act 1902* (NSW), whereas the far more serious conflict of interest between a Member’s duty as a Minister (e.g. in spending public money or granting licences or approvals) and the Member’s private interest is only a breach of a Ministerial Code, with no penalty other than enforcement by the Premier, and the possibility of a finding of serious corrupt conduct by ICAC in very limited circumstances.

It is also odd that Members’ conflicts of interest are placed on a public register, but the far more important conflicts of interest related to a Minister’s public duties are not recorded on a publicly accessible register. The Committee may wish to consider the appropriateness and balance of this position.”

2.81 The Committee has concluded that this aspect of the Draft Regulation and its relationship with the scheme for the disclosure of Ministers’ interests requires further consideration and is not adequately dealt with under the current terms of the Draft Regulation.

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<sup>87</sup> [R v Obeid \(No 12\)](#) [2016] NSWSC 1815 at [79] per Beech-Jones J.

<sup>88</sup> [Submission 5](#), Professor Emerita Anne Twomey, 12 August 2024, p. 2.

## Finding 8

It is unclear in what circumstances Members who are Ministers or Parliamentary Secretaries will be required to disclose conflicts of interest on the *confidential* Ministerial Register of Interests and when they will be required to disclose conflicts of interest on the *public* parliamentary registers. The Ministerial Register might be used solely to preserve the confidentiality of Cabinet deliberations, which the Committee accepts is a legitimate purpose. But it *might* be used for other purposes that relate to “the Member’s public duty as a Minister or Parliamentary Secretary”. This phrase is not defined in the Draft Regulation and its meaning is uncertain. If the Ministerial Register *were* used for some other purpose, Ministers and Parliamentary Secretaries might be subject to less public scrutiny than other Members which would be contrary to the accepted principles about their respective positions.

*The power to declare a seat vacant under the Constitution, s. 14A(2)*

- 2.82 Any Member who, in the House’s opinion, “wilfully contravened” s. 15 of the Draft Regulation could have their seat declared vacant under s. 14A(2) of the *Constitution*. A declaration under s. 14A(2) would need to:<sup>89</sup>
- a. Specify the circumstances that constituted the contravention;
  - b. Declare that the House was of the opinion that the contravention is of such a nature as to warrant the seat being declared vacant; and
  - c. Be made in accordance with the Standing Rules and Orders of the House that regulate the making of the declaration.
- 2.83 As Emerita Professor Twomey notes, to date, the House has not made any specific Standing Orders for this purpose, nor has it dealt with such a declaration.<sup>90</sup> There are the rules that concern expulsion of a Member, which similarly involve a significant decision by the House in respect of an individual Member’s right to their seat.<sup>91</sup> In the case of expulsion, the decision: (1) disenfranchises the Member’s electorate of its chosen Member; and (2) may prejudice any criminal proceedings founded on the alleged misconduct.<sup>92</sup>
- 2.84 A Member’s seat being declared vacant under s. 14A(2) is the only remedy available under the *Constitution* for a breach of the regulations.<sup>93</sup> It must be established that “the Member had the requisite intention, and that it was not

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<sup>89</sup> *Constitution*, s. 14A(3).

<sup>90</sup> Anne Twomey, *The Constitution in New South Wales* (Federation Press, 2004), p. 447.

<sup>91</sup> Standing Order 254.

<sup>92</sup> See this Committee’s discussion of the suspension power under Standing Order 255 in [Matters relating to the position of a Member suspended from the service of the House and subsequently re-elected](#), Report 1/58, June 2023 at [3.8]–[3.10].

<sup>93</sup> Section 27 of the Draft Regulation would provide that a contravention of the regulations would “not attract criminal or civil liability” except to the extent expressly provided by s. 14A. Section 14A does not provide for either type of liability, either expressly or by necessary implication.

merely and oversight or unintentional error”.<sup>94</sup> The Parliament’s intention was “that a parliamentary committee would be formed in each House to investigate complaints of non-compliance and report back to the House”. Emerita Professor Twomey considers that these matters, which involve questions of fact, and given the serious nature of the consequences involved, “may be considered justiciable by a court”.<sup>95</sup> This is in contrast to the House’s assessment of the nature of the contravention, which is internal, and “unlikely to be considered justiciable”.<sup>96</sup> The consequences for a breach of the proposed regulations are, therefore, potentially significant.

- 2.85 Of further concern to the Committee is the fact that the usual safeguard of disallowance in relation to the making of regulations, operates differently in relation to the pecuniary interest regulation. Section 14A(6) of the *Constitution* requires disallowance in both Houses of Parliament, rather than a single House, before a regulation made under s. 14A(1) ceases to have effect. Emerita Professor Twomey notes the reason for this unusual disallowance requirement was to maintain “the similarity in requirements in both Houses”, but it also works to give the government “significant power” where it has a majority in the Assembly.<sup>97</sup> Where the terms of the Draft Regulation, proposed to be made under these provisions are so problematic, the requirement for double disallowance is a concerning threshold.

#### *Power to punish for contempt in other jurisdictions*

- 2.86 In other jurisdictions, breaches of the requirements around pecuniary and other interests can be punished as a contempt of Parliament. For example, in the Houses of Representatives, a Member may be required to make an apology from the Bar of the House for breaching the requirements in its resolution.<sup>98</sup> Any Standing Orders adopted under s. 15 of the *Constitution* would, of course, need to be consistent with the Act, including s. 14A(2).

#### *Submissions by the NSW Greens*

- 2.87 The NSW Greens criticised the “current model” that leaves it to politicians and political parties to decide whether any conduct warrants sanction, and the nature of any sanctions to be applied, which “could give rise to a loss of public confidence in our democracy”.<sup>99</sup> The NSW Greens submitted that “a requirement for Members to proactively disclose any conflicts of interest is long overdue” and would see the NSW Parliament align with other institutions like local councils. While the Committee notes the requirements applicable to local councillors,<sup>100</sup>

<sup>94</sup> Anne Twomey, *The Constitution in New South Wales* (Federation Press, 2004), p. 446. See, also, NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), Constitution (Disclosures by Members) Bill 1981 (The Hon. Neville Wran QC MP – Second Reading Debate), 13 April 1981, p. 5710.

<sup>95</sup> Anne Twomey, *The Constitution in New South Wales* (Federation Press, 2004), p. 446.

<sup>96</sup> Anne Twomey, *The Constitution in New South Wales* (Federation Press, 2004), p. 447.

<sup>97</sup> Anne Twomey, *The Constitution in New South Wales* (Federation Press, 2004), p. 446; originally NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), Constitution (Disclosures by Members) Bill 1981 (The Hon. Neville Wran QC MP – Second Reading Debate), 13 April 1981, p. 5710.

<sup>98</sup> See above note 55.

<sup>99</sup> [Submission 1](#), Ms Koby Shetty MP on behalf of the NSW Greens, 12 June 2024, p. 2.

<sup>100</sup> [Local Government Act 1993](#) (NSW), Chapter 14 (“Honesty and disclosure of interests”). Part 5 of the [Model Code of Conduct for Local Councils in NSW: Code of Conduct for Councillors](#) (2020) requires non-pecuniary conflicts of

the *Constitution* would prevent any similar process to such a code of conduct under the *Local Government Act 1993* (NSW) because that legislation may prescribe a range of responses to a breach of any such code.<sup>101</sup> Here there is only one response to a wilful breach of the regulations: declaration that a seat is vacant under s. 14A(2).

- 2.88 The Committee has not considered the NSW Greens' call for "the establishment of an independent scheme for compliance" because it goes beyond the Committee's terms of reference to inquire into, and report on, the Draft Regulation. The Committee could not support the establishment of such a scheme without a specific referral by the House to consider the proposal.

#### *Perceived and potential conflicts of interest*

- 2.89 Section 15(2) of the Draft Regulation would, in theory, establish an *objective* test for whether a Member's private interest could have the potential to influence the performance of the Member's private duty. This is essentially the same test in s. 7(3) of the *Ministerial Code of Conduct*.<sup>102</sup> However, the context in which that test is applied (*confidentially by the Premier*) is much different than under the Draft Regulation (*publicly by the House*).
- 2.90 The context matters, first, because Ministers are responsible to the Executive Government which, in practical terms, allows for consequences for failing to declare a conflict of interest that fall short of loss of the Member's seat (e.g., removal to the backbench or expulsion from the governing party).
- 2.91 Second and significantly, s. 15 of the Draft Regulation would not only relate to *actual* conflicts of interest, it would extend to *perceived* and *potential* conflicts of interest.<sup>103</sup> Again, this is the same as under the *Ministerial Code of Conduct*. If a Minister *perceives* that their private interest *could* have the potential to influence the performance of a public duty, they "must promptly give notice to the Premier".<sup>104</sup> The Premier may, "*if satisfied* that no conflict of interest arises or that any *potential* conflict of interest can be appropriately managed, make a ruling authorising the Minister to continue to act" (emphasis added).<sup>105</sup> In these

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interest to be identified by local councillors and appropriately managed. How a local councillor manages a non-pecuniary conflict of interest "will dependent on whether or not it is significant".

<sup>101</sup> See Part 1 of Chapter 14 of the [Local Government Act 1993](#) (NSW), dealing with "Serious corrupt conduct" in Division 2 and "Misconduct" in Division 3.

<sup>102</sup> The drafting of s. 15 of the Draft Regulation is based on s. 7(3) of the [Ministerial Code of Conduct](#): Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Answer 8. However, the latter has two aspects that do not appear in the former. Without limiting the definition, a Minister is taken to have a "conflict of interest" in respect of a particular matter on which a decision may be made or other action taken if: "(a) any of the possible decisions or actions (including a decision to take no action) could reasonably be expected to confer a *private benefit* on the Minister or a family member of the Minister, and (b) the nature and extent of the interest is such that it could *objectively have the potential to influence a Minister in relation to the decision or action*" (emphasis added). The term "private benefit" is defined in s. 11 of the *Ministerial Code of Conduct* but is not defined in the Draft Regulation.

<sup>103</sup> See [Submission 4](#), Mr John Evans PSM, 25 July 2024 at [17]–[18]; David Burfoot, [IBAC Insights \(Newsletter\)](#), "Actual and Perceived Conflicts of Interest: Why Both Matter", 25 September 2019.

<sup>104</sup> *Ministerial Code of Conduct*, Schedule, s. 10(1).

<sup>105</sup> *Ministerial Code of Conduct*, Schedule, s. 12(2).

circumstances, the Premier acts as the “reasonable person” applying the test.<sup>106</sup> The Premier may act in that role with advice from the Secretary or other officers of the Cabinet Office.

- 2.92 By contrast, s. 14A(2) of the *Constitution* would create the potential for allegations to be made, possibly on partisan grounds, that a potential or perceived conflict of interest existed but had failed to be disclosed by a Member under s. 15 of the Draft Regulation. The risk is that an imprecise phrase like “*could [...] have the potential to influence*” will be more broadly applied when an alleged contravention is being asserted on the floor of the House, as distinct from the approach that would be taken by the Premier or another “reasonable person” in private.
- 2.93 Conflicts of interest are different than other interests in the Current Regulation because they are contextual and will vary from time to time. Accordingly, Members should not adopt a “set and forget” approach to managing them. Effective management of a conflict of interest requires “continued vigilance” because circumstances “can change”.<sup>107</sup> This is why the Standing Orders require that Members turn their minds to whether a conflict of interest exists, and needs to be disclosed, before casting every vote or participating in every committee inquiry.
- 2.94 Under the Current Regulation, a Member has either disclosed real property that they own or they have not. The relevant factual context is quite narrow and less likely to change quickly. Did the Member have an interest in the property? Did the Member intentionally fail to declare that interest? These questions are less open to interpretation. Under the Draft Regulation, however, the relevant question would be about the “*potential*” for influence upon the performance Member’s public duty arising from a range of private interests which “*need not be pecuniary in nature*”.
- 2.95 The Committee accepts that the question posed by s. 15 of the Draft Regulation is capable, in theory, of being objectively determined. That is not the issue. What matters is the practical context in which the question about whether a Member has a conflict of interest is asked and answered. For example, is it by the Premier *in private* after discussing the relevant context with the Minister and receiving advice from the Secretary of the Cabinet Office? Or is it by the ICAC after careful scrutiny of the relevant evidence (including evidence given by the Member), having regard to the public interest in exposing the allegation?<sup>108</sup> To avoid “unnecessary damage to reputations”, s. 31 of the *ICAC Act* prevents the ICAC

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<sup>106</sup> Independent Commission Against Corruption, [Managing Conflicts of Interest in the NSW Public Sector](#), April 2019, p. 4 (“A conflict of interest exists when a reasonable person might perceive that a public official’s personal interest(s) could be favoured over their public duties”). South Australia Ombudsman, [Investigation into the City of Charles Sturt – Final Report](#), November 2011 at [289]; cited in [Submission 4](#), Mr John Evans PSM, 25 July 2024 at [18] (“A perceived conflict of interest is one which a fair minded and informed member of the public might perceive as existing.”).

<sup>107</sup> South Australia Independent Commissioner Against Corruption, [Identify, Disclose and Manage: Conflicts of Interest in Public Administration](#), June 2021, p. 9.

<sup>108</sup> Section 74BA(1) prevents the ICAC from reporting “a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct”. See Independent Commission Against Corruption, [Report to the Secretary of The Cabinet Office and the Hon Chris Minns MP Premier of NSW](#), April 2024 at pp. 15–17.

from conducting a public inquiry unless “it is satisfied that it is in the public interest to do so”.<sup>109</sup> The ICAC must have regard to, amongst other things, “the seriousness of the allegation or complaint being investigated” and “any risk of undue prejudice to a person’s reputation”.<sup>110</sup> The context would be different where the matter were being considered by the House *in public* under intense pressure to deal with an emerging political controversy where the relevant facts are still emerging.

- 2.96 Even if conflicts of interest falling into the second category above were alleged against Members in good faith, they might still lack important context. A Member’s private non-pecuniary interests might only be known by them or those closest to them. Yet the other 92 Members of the House will need to decide the potential for those interests to have influenced the performance of the Member’s public duty, which will have its own factual context. The onus will inevitably shift to the Member to prove to the House why private interests were kept private, instead of the onus being on the House to prove a serious breach of public trust.
- 2.97 Again, the consequences of the House’s answers to the s. 15 question are of critical importance for s. 14A(2) of the *Constitution* because they may result in the Member’s seat being declared vacant. While the Committee emphasises that Members should not be able to vote on questions in the House or participate in committee inquiries where they have “a direct pecuniary interest”, the Committee finds that the potential consequences of s. 15 of the Draft Regulation may operate inappropriately and unfairly. The consequences of conflicts of interest being wrongly perceived, whether in good faith or bad, would be too great.

### Finding 9

**The Draft Regulation would require in s. 15 the disclosure of *potential* and *perceived* conflicts of interest. In theory, whether a conflict of interest exists is to be determined by a “reasonable person” deciding whether the Member’s “private interest could objectively have the potential to influence the performance of the Member’s public duty”. In practice, the House would need to decide. However, the concept of conflict is too imprecise, and the consequences of a finding that a conflict was deliberately not disclosed are potentially so serious, that the Draft Regulation should not proceed in its current form.**

### Recommendation 5

**The regulations should *not* include a mandatory register of conflicts of interest.**

<sup>109</sup> NSW Legislative Assembly, [Parliamentary Debates \(Hansard\)](#), Independent Commission Against Corruption (Amendment) Bill 1991 (The Hon. Peter Collins QC MP – Second Reading Debate), p. 3183.

<sup>110</sup> Section 74BA(1) also prevents the ICAC from reporting “a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct”. See ICAC, [Report to the Secretary of The Cabinet Office and the Hon Chris Minns MP Premier of NSW](#), April 2024 at pp. 15–17.

*Availability of other means to regulate conflicts of interest*

2.98 The Committee again notes that other means exist to achieve the same ends. The ICAC already has jurisdiction in relation to substantial breaches of the *Code of Conduct for Members*, which might include a breach of the requirements around conflicts of interest (see [2.66] above). Moreover, outside of voting in the House or participating in committee inquiries, backbenchers have limited ability to make decisions or engage in conduct which could affect the public interest in comparison to Ministers. A backbencher’s communications with Ministers, Members, public officials or public office holders (i.e., the Member’s ability to *influence* the decisions those people) is already covered under the *Code*.

**Water access licences***Section 21*

2.99 Section 21(2) of the Draft Regulation would require Members to disclose:<sup>111</sup>

“(a) the water access licence number of each water access licence in which the Member or an immediate family member of the Member has an interest, and

(b) the nature of the interest in the water access licence”.

2.100 Water access licences are defined in s. 56 of the *Water Management Act 2000* (NSW) (**Water Act**).<sup>112</sup> A water access licence “provides the holder with the ongoing right to access a share of a specified water source”.<sup>113</sup> As noted above, the Committee supports enhanced transparency around water access licences. Section 21 would recognise that water access entitlements are “tradable commodities” worth billions of dollars in New South Wales.<sup>114</sup> Accordingly, they should be treated under the regulations like any other valuable asset or interest, for example, shares in a company.

*Committee comment*

2.101 For the reasons outlined above, including that Parliament did not expressly consider the interests of immediate family members in water entitlements and rights when it debated the *Amendment Act*, the Committee does not support extending s. 21 beyond the interests of Members of Parliament. The Committee notes that the Member for Murray introduced a Bill on 12 October 2023 which would have required Members “to publicly disclose interests in water access licences held by the Member or the Member’s spouse”.<sup>115</sup> The Bill lapsed without being debated. A Bill with a similar long title is on the Business Paper as at the date of this report.<sup>116</sup> Finally, the Committee notes that, under s. 71J of the

<sup>111</sup> Section 21(2) would provide two exceptions to disclosure, where the Member or the “immediate family member” were the executor or administrator of a deceased estate, or where the interest were disclosed under s. 11.

<sup>112</sup> Draft Regulation, Schedule 3, definition of “water access licence” means an “access licence” under the [Water Management Act 2000](#) (NSW) (the Dictionary refers to s. 56).

<sup>113</sup> Marsden Jacob Associates, [NSW Water Valuation Consultancy Final Report](#), 5 June 2023, p. 4.

<sup>114</sup> Marsden Jacob Associates, [NSW Water Valuation Consultancy Final Report](#), 5 June 2023, p. 13.

<sup>115</sup> [Water Management Amendment \(Water Access Licence Register\) Bill 2023](#).

<sup>116</sup> The [Water Management Amendment \(Water Access Licence Register\) Bill 2024](#) was introduced by the Member for Murray on 12 March 2024 (the Bill lapses in accordance with Standing Orders on 13 September 2024). According



*Water Act*, the Minister is to make the information recorded in the “water access licence register” under s. 71—which includes a range of matters in relation to the licence or holding under s. 71A—“available to any member of the public”. Again, there are similar means for achieving the same end.

### Finding 10

**While the Committee supports enhanced transparency around the interests of Members in “water access licences”, noting that these are “tradable commodities” worth billions of dollars, the Committee does not support extending this requirement to “immediate family members”. This is because the specific matter has not been specifically considered before the House and should appropriately be the subject of legislation rather than regulation. The Committee notes that the entries in the “water access licence register” are publicly accessible under the *Water Management Act 2000 (NSW)*.**

### Recommendation 6

**Subject to the findings and recommendations above, s. 21 of the Draft Regulation relating to water access licences should be made.**

#### Balance of the interests and other matters in Division 2 of Part 3

2.102 Except where they would extend their requirements to the Member’s “immediate family members”, the following sections of the Draft Regulation would make only relatively “minor housekeeping changes” or consequential amendments to the Current Regulation:<sup>117</sup>

- s. 12 (Interests and positions in corporations);<sup>118</sup>
- s. 13 (Positions in trade unions and professional or business associations);<sup>119</sup>
- s. 14 (Debts);<sup>120</sup>
- s. 16 (Sources of income);<sup>121</sup>
- s. 17 (Gifts);<sup>122</sup>
- s. 19 (Dispositions of interests);<sup>123</sup>
- s. 20 (Provision of client services).<sup>124</sup>

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to the long title of the Bill, it would amend the *Constitution* and related regulations to require Members “to disclose certain water interests held”.

<sup>117</sup> [Submission 1](#), Ms Koby Shetty MP on behalf of the NSW Greens, 12 June 2024, p. 1.

<sup>118</sup> Current Regulation, clause 12.

<sup>119</sup> Current Regulation, clause 13.

<sup>120</sup> Current Regulation, clause 14.

<sup>121</sup> Current Regulation, clause 9.

<sup>122</sup> Current Regulation, clause 10.

<sup>123</sup> Current Regulation, clause 15.

<sup>124</sup> Current Regulation, clause 15A.

- 2.103 Where necessary, the consequential amendments are addressed elsewhere in this report (i.e., the proposed changes to lodgement and type of returns and the return periods in Part 2). Otherwise, the Committee makes no specific findings about these provisions. They should, in effect, remain in force.
- 2.104 The Committee did receive a submission from Professor Emerita Twomey indicating that the limits on the types of corporations in which Members are required to disclose their positions, may exclude corporations that by their nature pose potential conflict of risk issues.<sup>125</sup> The Committee notes that a Member could still utilise the current mechanism of a discretionary disclosure to declare any interests they have in corporations not covered by the regulation, particularly where they consider those positions may raise a conflict of interest.

## How will Members make disclosures and where will they be published and to whom?

### Form of registers

- 2.105 The Draft Regulation would require the Clerk to compile and maintain a register of the disclosures made by Members.<sup>126</sup> The register “must be kept electronically” and updated “as soon as practicable” after a return is lodged.<sup>127</sup> The Clerk would need to make “searchable copies of the registers publicly available for inspection on the website of the NSW Parliament”.<sup>128</sup>
- 2.106 As noted above at [2.20], beyond simply publishing the register electronically, the Committee expects that Members will be able to lodge their returns through an online portal. In other words, the ability for Members to lodge returns, and the Parliament’s ability to publish them on its website should appear to Members to be part of an integrated process.<sup>129</sup>
- 2.107 As the Committee noted during the 57th Parliament, there are technical and funding issues associated with establishing an electronic register, and additional resources will be required for the parliamentary administration for its design and maintenance, as well as a training and education program for Members.<sup>130</sup> The Parliament has secured funding for the 2024/25 financial year to design the system, which will commence once the Government makes the new regulations under s. 14A of the *Constitution*.
- 2.108 The Committee notes that the Register of Senators’ Interests is published on the Australian Parliament’s website and is searchable by keywords, which filter the results to show only those Members who have included those keywords in their returns.<sup>131</sup> Other filters include by party and State or Territory. Senators can

<sup>125</sup> [Submission 5](#), Professor Emerita Anne Twomey, 12 August 2024, p. 2.

<sup>126</sup> Draft Regulation, s. 23(2).

<sup>127</sup> Draft Regulation, s. 24.

<sup>128</sup> Draft Regulation, s. 25(1).

<sup>129</sup> From a technical standpoint, the Committee accepts that different programs and processes will be needed to achieve this outcome.

<sup>130</sup> Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, [Review of the Code of Conduct for Members](#), Report 4/57, December 2022, p. v.

<sup>131</sup> Australian Senate, [Register of Senators’ Interests](#).

lodge their returns through the Parliament's intranet through, in essence, filling out an online form. The Committee's view is that the Register of Senators' Interests provides a good model, which could be emulated or adapted for the purposes of the NSW Parliament.

## Finding 11

**The Register of Senators' Interests is a good model of an electronic register of disclosures by Members of Parliament, which could be emulated or adapted for the purposes of the NSW Parliament to comply with its obligations under Part 4 of the Draft Regulation.**

### The Clerk's discretion to exclude information

- 2.109 When introducing s. 14A(1A) into the *Constitution* in the *Amendment Act*, the Parliament did not prescribe the specific "limitations" for protecting "the privacy of persons other than Members" or "the safety of a person or class of persons". Rather, this was left to the regulations.
- 2.110 Section 25(2) of the Draft Regulation would give the Clerk the discretion to exclude information from the copy of a register made publicly available if the Clerk were satisfied that it were "necessary to protect":
- “(a) the privacy of persons other than Members of either House of Parliament, or
- (b) the safety of a person.”
- 2.111 The Parliament did not consider conferring this discretion on the Clerk, or any other specific person or body, when debating the *Amendment Act*. Rather, s. 25(2) appears analogous to s. 21(ca) of the *Parliamentary (Disclosure of Interests) Act 1996 (Tas)*,<sup>132</sup> which provides that the Clerk may delete from the published parts of the register, "any information that, in the opinion of the Clerk, would, if published online, unreasonably compromise the privacy or safety of any person". The Committee notes two things about the Tasmanian legislation. First, it is the only provision of this kind in Australia or New Zealand. Secondly, its text is more beneficial towards the persons it seeks to protect than the Draft Regulation. This is because the word "necessary" would impose a higher standard for the Clerk to be satisfied of before excluding any information under the Draft Regulation, whereas questions about reasonableness in the Tasmanian act impose a lesser standard.<sup>133</sup>
- 2.112 It is convenient to begin with the issue of safety before addressing privacy.

### *The safety of a person*

- 2.113 Section 25(2)(b) could be consistently applied by the Clerk to street addresses. The Clerk could be satisfied *in almost every case* that it would be necessary to ensure "the safety of a person" that a person's street address not be publicly

<sup>132</sup> Referred to in NSW Independent Commission Against Corruption, [Investigation into the Conduct of the Local Member for Drummoyne](#), June 2022, p. 175.

<sup>133</sup> In *Hogan v Australian Crime Commission* (2010) 240 CLR 651; [2010] HCA 21 at [30] and [31], the High Court said that "necessary" is "a strong word" and requires more than that a publication order be found to be "convenient, reasonable or sensible, or to serve some notion of the public interest".

available. Because this is a universal issue for the safety of “immediate family members” it is covered under specific provisions in the Draft Regulation.<sup>134</sup> It is not clear to the Committee in respect of what *other* information the Clerk could exercise the discretion in s. 25(2)(b) easily or at all.

- 2.114 For example, if a Member asked the Clerk to exclude certain information on health and safety grounds, the Clerk would need to weigh up the public interest in disclosure against any information put forward by the Member about potential risk. The Clerk would need to undertake the same balancing exercise in relation to every request by a Member where the answer were not already covered by the regulations. The Clerk’s discretion would also not be fettered to exclude information *only on request from a Member*.<sup>135</sup> The Clerk would, therefore, need to consider all information that was published for potential safety issues. No other legislation confers upon the Clerk a discretion that involves her weighing up competing considerations of public and private interest.<sup>136</sup> Rather, this discretion is of a kind ordinarily conferred on courts or tribunals.<sup>137</sup>
- 2.115 It is imperative that the Clerk be independent and be seen by the House and public as independent. Reasonable minds will differ about the matters that ought to have been, but were not required *by the Clerk* under s. 25(2), to be disclosed publicly. Under the terms of the Draft Regulation, Members of both Houses would have access to the complete registers and they could politicise the Clerk’s decisions, either directly or indirectly, which should be avoided. The ICAC could also call into question the Clerk’s decisions in the context of parliamentary privilege having been waived over the pecuniary interest registers for the purpose of an ICAC investigation.<sup>138</sup>
- 2.116 It is currently clear that the Clerk is not liable for publishing the pecuniary interest registers. This is because either parliamentary privilege applies to the pecuniary interest registers (which is the Committee’s understanding) or, in the alternative, there is a defence of absolute liability under the *Parliamentary Papers (Supplementary Provisions) Act 1975* (NSW) in respect of the publication of the registers. In making the regulations, the Government should ensure that the legal position remains clear, including (if necessary) by raising in the House any necessary amendments to the relevant legislation, for example, expanding the scope of the deeming provision in s. 14A(7) of the *Constitution*.<sup>139</sup>

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<sup>134</sup> Draft Regulation, s. 10(2).

<sup>135</sup> Responses of the Cabinet Office to Questions on Notice, 15 March 2024, Answer 28.

<sup>136</sup> Any statutory discretion conferred on the Clerk’s is ordinarily limited to the administration of the House and its committees. For example, s. 31F(2) of the *Ombudsman Act 1974* (NSW) requires the Clerk “to call the first meeting of the Joint Committee [on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission] in each Parliament *in such manner as the Clerk thinks fit*” (emphasis added). However, this discretion is controlled by the Standing Orders (i.e., Standing Order 279) and the resolution of the House establishing the Joint Committee including appointing its Chair.

<sup>137</sup> Section 25(2)(b) of the Draft Regulation would raise similar considerations to s. 8(1)(c) of the *Court Suppression and Non-publication Orders Act 2010* (NSW), namely, whether a suppression order or non-publication order is “necessary to protect the safety of any person”: see, e.g., *Haddad v The GEO Group Australia Pty Ltd (No 2)* [2024] NSWCA 140.

<sup>138</sup> Section 122(2) of the *ICAC Act*.

<sup>139</sup> If parliamentary privilege did not apply to the pecuniary interest registers, contrary to the Committee’s understanding that it *does* apply, the Clerk’s decisions might be vulnerable to judicial review. This would depend on

*The privacy of persons other than Members*

- 2.117 Section 25(2)(a) raises similar, but no less significant, concerns.
- 2.118 As discussed above, “the privacy of persons other than Members” is central to operation of the Draft Regulation, insofar as the regulations would burden the privacy of “immediate family members”. As discussed in this report, there are range of competing considerations about public and private interests. The Draft Regulation would leave such questions, and a wide range of others raised under s. 25(2)(a), to be answered by the Clerk. Except for clear cases where excluding information from the public register were necessary to protect “the privacy of persons”, the Clerk would need to weigh up these considerations, including by having regard to the context and purpose of the Draft Regulation, and the text of s. 25, all of which favour publication.<sup>140</sup> Furthermore, in order to preserve the independence and impartiality of her office, the Clerk would need to be *certain* the case for not publishing the information were clear.
- 2.119 Professor Emerita Twomey submitted that:<sup>141</sup>
- “This does not appear to be an appropriate burden to be placed upon the Clerk. First, it would potentially politicise their position. Second, they have no expertise to support making an assessment about safety. Third, a Clerk is not placed within a structure which allows for judicial review or merits review of their decisions.”
- 2.120 Reasonable minds may differ about what’s necessary to protect privacy. If privacy concerns arise under the regulations, and need to be addressed in the regulations, they should be addressed by the Government or the Parliament—not left to the Clerk to decide.

**Finding 12**

**While the Clerk of the Legislative Assembly would be given the discretion under s. 25(2) of the Draft Regulation to exclude information from the public register that the Clerk is satisfied is necessary to protect (a) the privacy of persons other than Members, and (b) the safety of a person, this would require weighing up a range of competing public and private interests. The Clerk’s role as an independent and impartial advisor to, and servant of, the House and its Members could be compromised by exercising this discretion.**

*A separate, confidential register*

- 2.121 The Parliamentary Ethics Adviser, Mr John Evans PSM, while supporting a requirement for Members to declare conflicts of interest, submitted that the register of those interests should be “a separate confidential register kept by the

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the scope of s. 14A(7) of the *Constitution*, which deems the register of pecuniary interests to be a document authorised by the House under the [Parliamentary Papers \(Supplementary Provisions\) Act 1975](#) (NSW). Section 6 of the *Papers Act* provides a defence of absolute liability in respect of the publication of any document authorised under s. 4. However, s. 4(1) relevantly provides that the House may authorise “the publication of a document *laid before it*” (emphasis added). Given that, under the Draft Regulation, disclosures would be continuously published “within 1 month”, they would not actually be “laid before the House”. Accordingly, an amendment to s. 14A(7) of the *Constitution* and/or s. 4(1) of the *Papers Act* may be required.

<sup>140</sup> Above note 133.

<sup>141</sup> [Submission 5](#), Professor Emerita Anne Twomey, 12 August 2024, p. 1.

Clerk of the House”.<sup>142</sup> Under this proposal, he would have access to the register along with the Speaker, the Chair of this Committee, the Independent Complaints Officer and ICAC officers. Because the Committee does not support the proposal to include conflicts of interest or the interests of “immediate family members” in the regulations, it is unnecessary for the Committee to reach a finding in respect of a “separate confidential register”. However, the Committee notes that the confidential register maintained by the Australian Senate would be a much better way of dealing with the safety and privacy of persons other than Members than s. 25(2), if the Government were to proceed with either the regulations relating to conflicts of interest or “immediate family members”.

## Recommendation 7

**The Committee is opposed to the proposed requirements for Members of Parliament to disclose the interests of “immediate family members” and for mandatory disclosure of conflicts of interest. It advises the Government that it should not proceed with these aspects of the Draft Regulation.**

### Registers to be available to Members of Parliament and officers of ICAC

- 2.122 Under the Draft Regulation, the Clerk would be required to make searchable copies of the “complete registers” available for inspection by “a Member” (s. 26(a)) or an “officer” of the ICAC (s. 26(b)).<sup>143</sup>
- 2.123 The Committee understands that “a Member” would include a Member of the Legislative Council being able to access the “complete registers” of the disclosures by Members of the Legislative Assembly and vice versa. The policy reason for this appears to be based on the fact that “[b]oth Houses of Parliament, may by resolution of each House”, refer to the ICAC any “matter” referred to in s. 13 of the *ICAC Act* (for example, an allegation of “corrupt conduct”).<sup>144</sup> The idea appears to be that Members of the Legislative Council might need to access the Legislative Assembly’s “complete registers” to determine whether to pass any such resolution. That may be so. However, the Legislative Assembly could grant Members of the Legislative Council access in those circumstances, including limited access to relevant parts of the “complete registers”.
- 2.124 The Committee’s view is that the regulations should reflect the presumption that, unless the Parliament provides otherwise, each House controls access to its own papers. For example, Members of the Legislative Assembly cannot access papers produced under the Legislative Council’s Standing Order 52 unless the Legislative Council first resolves to make the documents public. The Committee is not convinced that the policy reason put forward for s. 26(a) supports rebutting this presumption and giving Members of the Legislative Council open access to the Legislative Assembly’s register and vice versa. The Draft Regulation should be amended accordingly.

<sup>142</sup> [Submission 4](#), Mr John Evans, 25 July 2024 at [25].

<sup>143</sup> The phrase “officer of the Commission” is defined in s. 3 of the [ICAC Act](#) and includes “any suitably qualified person” engaged as a consultant under s. 104B “to provide the Commission with services, information or advice”.

<sup>144</sup> Responses of the Cabinet Office to Questions on Notice, 7 May 2024, Answer 6.

### **Recommendation 8**

The regulations should reflect the presumption that each House of Parliament controls access to its own papers, including any information that might be excluded under s. 25(2) of the Draft Regulation. Members of the Legislative Council should *not* have access to the Legislative Assembly’s “complete registers” in circumstances where public access is not available, and vice versa, unless access is authorised by a resolution of the relevant House.

### **Finding 13**

Noting that s. 122(2) of the *Independent Commission Against Corruption Act 1988* (NSW) “waived any parliamentary privilege” that may apply to a register of pecuniary interests under s. 14A of the *Constitution* for the purposes set out in s. 122(2)(a) and (b), the Committee makes no finding about the right of ICAC officers to inspect the “complete registers” under s. 26(b).

## Appendix One – Terms of reference

**EXTRACT FROM VOTES AND PROCEEDINGS NO. 162  
THURSDAY, 17 NOVEMBER 2022, ITEM NO. 21**

Mr Alister Henskens moved, by leave, That this House:

1. Notes that should the Integrity Legislation Amendment Bill 2022 pass the Parliament, the Government proposes to make changes to the Constitution (Disclosures by Members) Regulation 1983.
2. Notes the requirements of section 14A(5) of the Constitution Act 1902 that a designated committee of the Legislative Assembly must be afforded the opportunity to consider and make representations with respect to any such proposed changes, and that such representations must be taken into account.
3. Designates the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics as the committee for this purpose.
4. Requires the Committee to report to the House on its review of any proposed changes to the Constitution (Disclosures by Members) Regulation 1983.

Question put and passed.

**EXTRACT FROM VOTES AND PROCEEDINGS NO. 42  
THURSDAY, 8 FEBRUARY 2024, ITEM NO. 8**

Mr Ron Hoenig moved, by leave, That:

1. Under section 14A of the Constitution Act 1902 (NSW), the draft Constitution (Disclosures by Members) Regulation 2024 be referred to the Parliamentary Privilege and Ethics Committee for inquiry and report by Monday 2 September 2024.
2. If required, the Committee has leave of the House to confer with the Privileges Committee of the Legislative Council in order to meet the requirements of Standing Order 311.

Question put and passed.



## Appendix Two – Conduct of inquiry

### Terms of reference

The House referred the inquiry to the Committee on 8 February 2024, and the Committee subsequently resolved to formally adopt the inquiry at its meeting on 9 February 2024.<sup>145</sup>

### Meeting with the Secretary of the Cabinet Office

At its meeting on 9 February 2024, the Committee also resolved to invite Ms Kate Boyd PSM, Secretary of the Cabinet Office, to brief the Committee on the purpose, intent and terms of the Draft Constitution (Disclosures by Members) Regulation 2024 (**Draft Regulation**). Ms Boyd and Ms Mary Klein, Principal Legal Officer at the Cabinet Office, provided a verbal briefing to the Committee at its meeting on 29 February 2024.<sup>146</sup>

### Questions on notice to the Cabinet Office

Following the briefing, the Clerk wrote to Ms Boyd on behalf of the Committee with a number of questions on notice regarding the Draft Regulation on 5 March 2024, to which she responded in writing on 15 March 2024.<sup>147</sup>

The Committee wrote to Ms Boyd with further questions on the Draft Regulation on 15 April 2024, to which she responded in writing on 7 May 2024.<sup>148</sup>

### Information on Disclosure Regimes in other jurisdictions

At its meeting on 25 March 2024, the Committee resolved for the Clerk and the Clerk of the Parliaments to jointly write to the Clerks of other Australian Parliaments and the New Zealand House of Representatives to invite submissions on any comparable disclosure system in their jurisdictions, including the practical aspects of their operation.<sup>149</sup> The joint correspondence, sent on 11 April 2024, was drafted in consultation with the Clerk of the Parliaments for the benefit of both the Committee's inquiry and the Legislative Council Privileges Committee inquiry into the Draft Regulation<sup>150</sup>. Submissions were received in response to this correspondence from:

- Acting Clerk of the Australian Senate on 12 April 2024;
- Clerk of the New Zealand House of Representatives on 15 April 2024;

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<sup>145</sup> Minutes of meeting no. 12, 9 February 2024, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics.

<sup>146</sup> Minutes of meeting no. 13, 29 February 2024, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics.

<sup>147</sup> Responses of The Cabinet Office to Questions on Notice, 15 March 2024

<sup>148</sup> Responses of The Cabinet Office to Questions on Notice, 7 May 2024

<sup>149</sup> Minutes of meeting no. 15, 25 March 2024, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics

<sup>150</sup> Legislative Council Privileges Committee – [Inquiry into Draft Constitution \(Disclosures by Members\) Regulation 2024](#) – accessed on 1 August 2024

- Clerk of the Victorian Legislative Assembly and Clerk of the Parliaments on 15 April 2024;
- Clerk of the Western Australian Legislative Assembly on 16 April 2024;
- Clerk of the Australian House of Representatives on 17 April 2024;
- Clerk of the Northern Territory Legislative Assembly on 19 April 2024;
- Clerk of the Tasmanian Legislative Assembly on 22 April 2024;
- Clerk of the Tasmanian Legislative Council on 22 April 2024; and
- Acting Clerk of the Australian Capital Territory Legislative Assembly on 3 May 2024.

**Seeking submissions from Members of the Legislative Assembly, selected experts and the public**

At its meeting on 13 May 2024, the Committee resolved for:

1. The Chair to write to all members of the Legislative Assembly seeking written submissions in relation to the Draft Regulation.
2. The Clerk to write on behalf of the Chair to Professor Emerita Anne Twomey AO and Mr John Evans PSM, Parliamentary Ethics Adviser, seeking written submissions.
3. The Committee open the inquiry to submissions for a period of 2 weeks via the submissions portal on its webpage<sup>151</sup>.

Correspondence seeking submissions from Members of the Legislative Assembly was sent on 29 May 2024, and correspondence seeking submissions from Mr Evans and Professor Twomey was sent on 18 June 2024. The public submissions portal on the Committee's webpage was open from 11 June 2024 to 25 June 2024.

The Committee received six written submissions, which it resolved to publish on its website at its meeting on 12 August 2024 and by email after the meeting. A list of submissions can be found at Appendix Three.

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<sup>151</sup> Minutes of meeting no. 16, 13 May 2024 – Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics

## Appendix Three – Submissions

| <b>No.</b> | <b>Author</b>                 |
|------------|-------------------------------|
| 1          | Ms Kobi Shetty MP             |
| 2          | Mr Michael Regan MP           |
| 3          | Dr Joe McGirr MP              |
| 4          | Mr John Evans                 |
| 5          | Professor Emerita Anne Twomey |
| 6          | Mr Gregory Briscoe-Hough      |

## Appendix Four - Extracts from minutes

### Minutes of meeting no. 12

|                        |   |                 |   |
|------------------------|---|-----------------|---|
| <b>TIME &amp; DATE</b> | <b>10:00 AM<br/>FRIDAY, 9 FEBRUARY<br/>2024</b> | <b>LOCATION</b> | <b>LA CLERK'S MEETING<br/>ROOM (850B) AND WEBEX</b> |
|------------------------|---|-----------------|---|

#### MEMBERS PRESENT

Mr Alex Greenwich MP (Chair), the Hon. Leslie Williams MP, Mr Jason Li MP (*by Webex*), Ms Lynda Voltz MP.

Apologies: Ms Janelle Saffin MP (Deputy Chair).

#### OFFICERS PRESENT

Ms Helen Minnican (Clerk of the Legislative Assembly), Ms Carly Maxwell (Deputy Clerk of the Legislative Assembly), Mr Todd Buttsworth (Director, House and Procedure & Deputy Serjeant-at-Arms), Mr Alex O'Brien (Senior Advisor, Office of the Clerk), Mrs Rickee Murray (Parliamentary Officer, Office of the Clerk), and Miss Jessica Zhang (Parliamentary Officer, Office of the Clerk).

The Chair opened the meeting at 10:06am.

#### AGENDA ITEMS

##### 1. Confirmation of Minutes

Resolved, on the motion of Ms Voltz:

That the draft minutes of meeting no. 11 on 15 November 2023 be confirmed.

##### 2. Correspondence

The Committee noted the following items of correspondence.

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##### Received:

8. Letter from the Hon. Chris Minns MP, Premier, dated 6 February 2024, enclosing a consultation draft of the Constitution (Disclosures by Members) Regulation 2024, and advising that the Government will table the draft regulation in both Houses and move motions referring it to this Committee and the Legislative Council Privileges Committee (copied to the Hon. Stephen Lawrence, MLC, Chair).

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## COMMITTEE INQUIRIES

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3. \*\*\*

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4. \*\*\*

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5. \*\*\*

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### 6. Constitution (Disclosures by Members) Regulation 2024

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On 6 February 2024, the Premier sent the Chair of this Committee and the Legislative Council Privileges Committee a consultation draft of the Constitution (Disclosures by Members) Regulation 2024 (**Draft Regulation**), which would repeal and replace the Constitution (Disclosures by Members) Regulation 1983.

The Draft Regulation seeks to implement recommendations 1 and 4 of the ICAC's Operation Witney report, and contains a number of additional measures and safeguards.

Recommendation 1 provided that the current regulation be amended to require:

- the details of interests in trusts, including discretionary trusts and self-managed superannuation funds, to be disclosed as a standalone item;
- the details of real property held by discretionary trusts, where a member of Parliament is a potential beneficiary, to be disclosed;
- the details of the interests of immediate family members to be disclosed (noting the option to limit access to certain information for privacy reasons) the dispositions of interests to family members or other associates to be disclosed;
- ongoing (within 28 days) requirements to update disclosures of interests, including for members leaving Parliament; and
- electronic databases to improve transparency of the registers.

Recommendation 4 provided that the current regulation be amended to provide for “the mandatory registration of conflicts of interest by members of Parliament via the creation of a register for this purpose (noting the option to limit access to certain information for privacy and security reasons)”.

On 8 February 2024, the Draft Regulation was tabled in the House by the Hon. Ron Hoenig MP. Additionally, the House resolved to refer the Draft Regulation to this Committee for inquiry and report by 2 September 2024. Full details of the referral were recorded in the Votes and Proceedings.

Discussion ensued.

The Committee noted the importance of thoroughly examining the Draft Regulation during the course of the inquiry, including by potentially seeking independent legal advice.

Resolved, on the motion of Ms Voltz:

That the Committee formally commence its inquiry into the Draft Constitution (Disclosures By Members) Regulation 2024, and invite Ms Kate Boyd PSM, A/Secretary of the Cabinet Office, to brief the Committee on the purpose, intent and terms of the Draft Regulation.

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7. \*\*\*

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## 8. Next meeting

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The Committee agreed that the draft minutes of the meeting would be circulated to ensure concurrence of the Committee prior to the next meeting, scheduled for **3:00pm, Thursday, 29 February 2024** (subject to change in accordance with specific matters arising).

The Chair closed the meeting at 11:03am.

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## Minutes of meeting no. 13

|                        |   |                 |                            |
|------------------------|---|-----------------|----------------------------|
| <b>TIME &amp; DATE</b> | <b>3:00 PM<br/>THURSDAY, 29<br/>FEBRUARY 2024</b> | <b>LOCATION</b> | <b>ROOM 1254 AND WEBEX</b> |
|------------------------|---|-----------------|----------------------------|

### MEMBERS PRESENT

Mr Alex Greenwich MP (Chair), Ms Janelle Saffin MP (Deputy Chair) (*by Webex*), the Hon. Leslie Williams MP (*by Webex*), Mr Jason Li MP (*by Webex*), Ms Lynda Voltz MP.

### OFFICERS PRESENT

Ms Helen Minnican (Clerk of the Legislative Assembly), Ms Carly Maxwell (Deputy Clerk of the Legislative Assembly), Mr Todd Buttsworth (Director, House and Procedure & Deputy Serjeant-at-Arms), Ms Manuela Sudic (Executive Manager, Office of the Clerk), Mr Alex O'Brien (Senior Advisor, Office of the Clerk), Mrs Rickee Murray (Parliamentary Officer, Office of the Clerk), and Miss Jessica Zhang (Parliamentary Officer, Office of the Clerk).

The Chair opened the meeting at 3:15pm.

### AGENDA ITEMS

#### 1. Confirmation of Minutes

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Resolved, on the motion of Ms Voltz:

That the draft minutes of meeting no. 12 on 9 February 2024 be confirmed.

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#### 2. Correspondence

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The Committee noted the following items of correspondence:

Sent:

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4. Letter to Ms Kate Boyd PSM, A/Secretary, the Cabinet Office, dated 16 February 2024, seeking a meeting to discuss the Committee's inquiry into the Draft Constitution (Disclosures by Members) Regulation 2024.

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### COMMITTEE INQUIRIES

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### 6. Constitution (Disclosures by Members) Regulation 2024

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On 6 February 2024, the Premier sent the Chair of this Committee and the Legislative Council Privileges Committee a consultation draft of the Constitution (Disclosures by Members) Regulation 2024 (Draft Regulation), which would repeal and replace the Constitution (Disclosures by Members) Regulation 1983.

At Meeting no. 12, the Committee noted the importance of thoroughly examining the Draft Regulation during the course of the inquiry, including by potentially seeking independent legal advice.

The Committee resolved to formally commence its inquiry into the Draft Regulation, and invite Ms Kate Boyd PSM, A/Secretary of the Cabinet Office, to brief the Committee on the purpose, intent and terms of the Draft Regulation.

Pursuant to the resolution of the Committee at Meeting no. 12 on 9 February 2024, Ms Kate Boyd PSM, A/Secretary of the Cabinet Office, was authorised to attend the Committee's meeting on 29 February 2024, along with an aide from the Cabinet Office.

Ms Boyd and another Cabinet Officer were admitted to the meeting at 3:41pm.

The Committee and Ms Boyd discussed various aspects of the Draft Regulation and some potential consequences of its implementation. Topics of discussion included:

- The relationship between the existing Ministerial disclosures scheme and the scheme proposed under the draft Regulation;
- A potential increase in the Parliament's resourcing requirements;
- Clarity around the definition of conflicts of interest; and
- Disclosure requirements for immediate family members.

Ms Boyd noted that some supplementary materials, consisting of training modules, factsheets, and templates, as used by the Cabinet Office, could be made available to the Clerk to support the implementation of the Draft Regulation.

The Chair stated that the Committee would write to Ms Boyd following this meeting with questions on notice arising from the briefing on the Draft Regulation.

Ms Boyd and aide withdrew from the meeting at 4:28pm.

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## 8. Next meeting

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The Committee secretariat undertook to contact Members' offices seeking an earlier date on which to hold Meeting no. 14 (currently scheduled for Thursday 28 March, 3:00pm-4:00pm).

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The Chair closed the meeting at 4:31pm.

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## Minutes of meeting no. 14

|                        |   |                 |   |
|------------------------|---|-----------------|---|
| <b>TIME &amp; DATE</b> | <b>1:30 PM<br/>TUESDAY, 19 MARCH<br/>2024</b> | <b>LOCATION</b> | <b>LA CLERK'S MEETING<br/>ROOM (850B) AND WEBEX</b> |
|------------------------|---|-----------------|---|

### MEMBERS PRESENT

Mr Alex Greenwich MP (Chair), Ms Janelle Saffin MP (Deputy Chair) (*from 1:36pm*), the Hon. Leslie Williams MP, Ms Lynda Voltz MP.

Apologies: Mr Jason Li MP.

### OFFICERS PRESENT

Ms Helen Minnican (Clerk of the Legislative Assembly), Ms Carly Maxwell (Deputy Clerk of the Legislative Assembly), Mr Todd Buttsworth (Director, House and Procedure & Deputy Serjeant-at-Arms), Ms Manuela Sudic (Director, Office of the Clerk), Mr Alex O'Brien (Senior Advisor, Office of the Clerk), Miss Jessica Zhang (Parliamentary Officer, Office of the Clerk).

The Chair opened the meeting at 1:34pm.

### AGENDA ITEMS

#### 1. Confirmation of Minutes

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Resolved, on the motion of Ms Voltz:

That the draft minutes of meeting no. 13 on 29 February 2024 be confirmed.

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#### 2. Correspondence

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The Cabinet Office's responses (referred to in item 2.4) were received by the Clerk on 15 March 2024, throughout which it is suggested that the Committee may wish to consult with the relevant parliamentary ethics committees in jurisdictions like the Commonwealth, Queensland, South Australia, and Tasmania, which (on the Cabinet Office's advice) require the disclosure of similar interests as under the Draft Regulation. The Cabinet Office suggests the Committee consult with those jurisdictions on "their experiences of Members' compliance with [the] disclosure requirements".

The Clerk suggested that the Committee may wish to write to Ms Boyd with additional questions on the Draft Regulation, seeking clarity on the confidentiality of the register and disclosure requirements for Ministers, among other matters.

The Chair noted that the Committee would be able discuss Ms Boyd's correspondence and the scope of further questions in greater detail at its next meeting

## 5. Next meeting

The next meeting of the Committee is scheduled for Friday 22 March at 12:00pm.

The Chair closed the meeting at 1:48pm.

## Minutes of meeting no. 15

| TIME & DATE | 3:00 PM<br>MONDAY, 25 MARCH<br>2024 | LOCATION | LA CLERK'S MEETING ROOM (850B) AND WEBEX |
|-------------|-------------------------------------|----------|--|
|-------------|-------------------------------------|----------|--|

### MEMBERS PRESENT

Mr Alex Greenwich MP (Chair), Ms Janelle Saffin MP (Deputy Chair) (*by Webex*), Mr Jason Li MP (from 3:30pm), Ms Lynda Voltz MP (until 4:02pm), the Hon. Leslie Williams MP (until 3:52pm) (*by Webex*).

### OFFICERS PRESENT

Ms Helen Minnican (Clerk of the Legislative Assembly), Ms Carly Maxwell (Deputy Clerk of the Legislative Assembly), Mr Todd Buttsworth (Director, House and Procedure & Deputy Serjeant-at-Arms), Mr Alex O'Brien (Senior Advisor, Office of the Clerk), Miss Jessica Zhang (Parliamentary Officer, Office of the Clerk).

The Chair opened the meeting at 3:00pm.

### AGENDA ITEMS

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### 1. Confirmation of Minutes

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Resolved, on the motion of Ms Voltz:

That the draft minutes of meeting no. 14 on 19 March 2024 be confirmed.

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### 2. Correspondence

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The Committee noted the following items of correspondence.

Sent:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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### COMMITTEE INQUIRIES

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### 5. Draft Constitution (Disclosure by Members) Regulation 2024

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At Meeting no. 13 on 29 February 2024, the Committee received a briefing from Ms Kate Boyd PSM, A/Secretary of the Cabinet Office, on the purpose, intent, and terms of the Draft Regulation. A series of questions about the Draft Regulation were put to Ms Boyd by Members. Those questions, along with the questions in the briefing note before the Committee at Meeting no. 13, and some additional questions, were sent to Ms Boyd on 5 March 2024.

In the Cabinet Office's responses, dated 15 March 2024, it is suggested that the Committee may wish to consult with the relevant parliamentary ethics committees in jurisdictions like the Commonwealth, Queensland, South Australia, and Tasmania, which (on the Cabinet Office's advice) require the disclosure of similar interests as under the Draft Regulation. The Cabinet Office suggests the Committee consult with those jurisdictions on "their experiences of Members' compliance with [the] disclosure requirements".

The Secretariat recommended that the Clerk write to the Clerk of the Parliaments proposing that they jointly write to the Clerks of other Australian Parliaments and the New Zealand House of Representatives. It is recommended that the Clerks enclose a copy of the Draft Regulation and, as noted in the draft letter and briefing note circulated as part of this meeting's papers, invite submissions on any comparable disclosure system in their jurisdictions, including the practical aspects of their operation, in particular the:

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- Nature and scope of resourcing required to provide Members with advice on the preparation of their disclosures;
- Disclosure (or if there is no disclosure requirement, the management) of conflicts of interest;
- Extent to which the interests of immediate family members are required to be disclosed;
- Extent to which the disclosures are available and searchable online; and
- Measures taken to preserve the privacy and safety of Members and their immediate relations whose interests have been disclosed.

The Secretariat recommended that the Clerks request that submissions be made prior to the next meeting of the Committee.

The Secretariat also recommended that the Committee invite submissions from all current Members of the Legislative Assembly in relation to the Draft Regulation, after the Committee receives submissions from the other jurisdictions and additional information from the Cabinet Office which could be incorporated into an issues paper for Members to consider and comment on.

Resolved, on the motion of Mr Li:

That the Clerk write to the Clerk of the Parliaments, suggesting that they jointly write to the Clerks of other Australian Parliaments and the New Zealand House of Representatives, seeking information in relation to the operation of the pecuniary interests regime in their respective jurisdictions.

6. \*\*\*

## 7. Next meeting

The Secretariat to seek the availability of Members for Meeting no. 16 on 26 April 2024 or 29 April 2024.

The Chair closed the meeting at 4:20pm.

## Minutes of meeting no. 16

| TIME & DATE | 11:00 AM<br>MONDAY, 13 MAY 2024 | LOCATION | LA CLERK'S MEETING ROOM (850B) AND WEBEX |
|-------------|---------------------------------|----------|--|
|-------------|---------------------------------|----------|--|

### MEMBERS PRESENT

Mr Alex Greenwich MP (Chair), Ms Janelle Saffin MP (Deputy Chair), Ms Lynda Voltz MP.

Apologies: The Hon. Leslie Williams MP and Mr Jason Li MP.

## OFFICERS PRESENT

Ms Helen Minnican (Clerk of the Legislative Assembly), Ms Carly Maxwell (Deputy Clerk of the Legislative Assembly), Mr Todd Buttsworth (Director, House and Procedure & Deputy Serjeant-at-Arms), Mr Alex O'Brien (Senior Advisor, Office of the Clerk), Miss Jessica Zhang (Senior Parliamentary Officer, Office of the Clerk).

The Chair opened the meeting at 11:06am.

## AGENDA ITEMS

### 1. Confirmation of Minutes

The Clerk advised the Committee of a number of late amendments to the draft minutes of meeting no. 15, which were sent to the Chair prior to the commencement of this meeting.

Resolved, on the motion of Ms Voltz:

That the draft minutes of meeting no. 15 on 25 March 2024, as amended, be confirmed.

### 2. Correspondence

The Committee noted the following items of correspondence.

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#### Sent:

5. Email from the then A/Clerk to Clerks of other Australian Parliaments and the New Zealand House of Representatives, dated 11 April 2024, seeking information in relation to the operation of the pecuniary interests regimes in their respective jurisdictions.
6. Letter to Ms Kate Boyd PSM, Secretary, the Cabinet Office, dated 15 April 2024, seeking responses to further questions concerning the draft Constitution (Disclosures by Members) Regulation 2024 (**Draft Regulation**).

#### Received:

7. Various emails from Clerks of other Australian Parliaments and the New Zealand House of Representatives, set out in Item 5, providing responses to the above request.
8. Letter from Ms Kate Boyd PSM, Secretary, the Cabinet Office, dated 7 May 2024, enclosing responses to further questions concerning the Draft Regulation.

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## COMMITTEE INQUIRIES

3. \*\*\*

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#### 4. Draft Constitution (Disclosure by Members) Regulation 2024

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The Committee noted the receipt of correspondence from other jurisdictions:

- Acting Clerk of the Australian Senate on 12 April 2024;
- Clerk of the New Zealand House of Representatives on 15 April 2024;
- Clerk of the Victorian Legislative Assembly and Clerk of the Parliaments on 15 April 2024;
- Clerk of the Western Australian Legislative Assembly on 16 April 2024;
- Clerk of the Australian House of Representatives on 17 April 2024;
- Clerk of the Northern Territory Legislative Assembly on 19 April 2024;
- Clerk of the Tasmanian Legislative Assembly on 22 April 2024;
- Clerk of the Tasmanian Legislative Council on 22 April 2024; and
- Acting Clerk of the Australian Capital Territory Legislative Assembly on 3 May 2024.

On 7 May 2024, the Cabinet Office provided its responses to the further questions posed by the Committee on 15 April 2024.

Discussion ensued.

Resolved, on the motion of Ms Voltz, that:

1. The Chair write to all Members of the Legislative Assembly seeking written submissions in relation to the Draft Regulation, in the terms set out in the briefing paper circulated to the Committee as part of the meeting papers, and attaching supporting information.
2. The Clerk write on behalf of the Chair to Professor Emerita Anne Twomey AO and Mr John Evans PSM, Parliamentary Ethics Advisor, seeking written submissions.
3. The Committee open the inquiry to submissions for a period of 2 weeks via the submissions portal on its webpage.

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#### 5. \*\*\*

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#### 6. Next meeting

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Scheduled for Monday 17 June at 9:00am.

The Chair closed the meeting at 12:02pm.

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## Minutes of meeting no. 17

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|------------------------|---|-----------------|---|
| <b>TIME &amp; DATE</b> | <b>9:00 AM<br/>MONDAY, 17 JUNE 2024</b> | <b>LOCATION</b> | <b>LA CLERK'S MEETING ROOM (850B) AND WEBEX</b> |
|------------------------|---|-----------------|---|

### MEMBERS PRESENT

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Mr Alex Greenwich MP (Chair), Ms Janelle Saffin MP (Deputy Chair), Ms Lynda Voltz MP (from 9:05am), Mr Jason Li MP (*via Webex*).

Apologies: The Hon. Leslie Williams MP.

## OFFICERS PRESENT

Ms Helen Minnican (Clerk of the Legislative Assembly), Ms Carly Maxwell (Deputy Clerk of the Legislative Assembly), Ms Manuela Sudic (Director, Office of the Clerk), Mr Todd Buttsworth (Director, House and Procedure & Deputy Serjeant-at-Arms), Mr Alex O'Brien (Senior Advisor, Office of the Clerk), Miss Jessica Zhang (Senior Parliamentary Officer, Office of the Clerk).

The Chair opened the meeting at 9:02am.

## AGENDA ITEMS

### 1. Confirmation of Minutes

Resolved, on the motion of Ms Saffin:

That the draft minutes of meeting no. 16 on 17 June 2024 be confirmed.

### 2. Correspondence

The Committee noted the following items of correspondence.

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## COMMITTEE INQUIRIES

### 3. \*\*\*

### 4. Draft Constitution (Disclosure by Members) Regulation 2024

On 29 May 2024, the Chair wrote to all Members of the Legislative Assembly seeking submissions to the inquiry. A leaflet was provided to Members with information about the Draft Regulation. Submissions were received from the following Members:

- Submission 1 - Ms Kobi Shetty MP, Member for Balmain, on behalf of the NSW Greens
- Submission 2 - Mr Michael Regan MP, Member for Wakehurst
- Submission 3 - Dr Joe McGirr MP, Member for Wagga Wagga

In accordance with the Committee's resolution at Meeting no. 16, the Clerk will write on behalf of the Chair to Professor Emerita Anne Twomey AO and Parliamentary Ethics Advisor Mr John Evans PSM, inviting them to make submission to the inquiry. The public submissions portal has also been opened for a period of 2 weeks (closing 25 June 2024).

The Legislative Council Privileges Committee inquiry into the same topic has received and

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published one submission, from the Independent Commission Against Corruption.

Resolved, on the motion of the Chair:

That the Committee note the Independent Commission Against Corruption's submission to the Legislative Council Privileges Committee inquiry into the Draft Constitution (Disclosures by Members) Regulation 2024.

Discussion ensued.

The Committee noted that the secretariat would confirm that Ms Shetty, Mr Regan and Dr McGirr are comfortable with their submissions being published before the next meeting.

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**6. \*\*\***

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### **7. Next meeting**

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The committee secretariat will contact Members' offices to seek availability for the next meeting.

The Chair closed the meeting at 9:26am.

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## **Unconfirmed Minutes of meeting no. 18**

|                        |   |                 |                            |
|------------------------|---|-----------------|----------------------------|
| <b>TIME &amp; DATE</b> | <b>2:00 PM<br/>MONDAY, 12 AUGUST<br/>2024</b> | <b>LOCATION</b> | <b>ROOM 1254 AND WEBEX</b> |
|------------------------|---|-----------------|----------------------------|

### **MEMBERS PRESENT**

Mr Alex Greenwich MP (Chair), Ms Janelle Saffin MP (Deputy Chair), Ms Lynda Voltz MP, Mr Jason Li MP, the Hon. Leslie Williams MP

Apologies: None received.

### **OFFICERS PRESENT**

Ms Helen Minnican (Clerk of the Legislative Assembly), Ms Carly Maxwell (Deputy Clerk of the Legislative Assembly), Ms Manuela Sudic (Director, Office of the Clerk), Mr Todd Buttsworth (Director, House and Procedure & Deputy Serjeant-at-Arms), Mr Alex O'Brien (Senior Advisor, Office of the Clerk), Miss Jessica Zhang (Senior Parliamentary Officer, Office of the Clerk).

The Chair opened the meeting at 2:03pm.

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## AGENDA ITEMS

### 1. Confirmation of Minutes

Resolved, on the motion of Ms Voltz:

That the draft minutes of meeting no. 17 on 17 June 2024 be confirmed.

### 2. Correspondence

The Committee noted the following items of correspondence.

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## COMMITTEE INQUIRIES

### 3. \*\*\*

### 4. Draft Constitution (Disclosure by Members) Regulation 2024

The Committee is currently inquiring into the Draft Regulation and is due to report to the House by 2 September 2024.

#### 5.1 Publication of submissions

On 12 June 2024, the Committee received submissions from three Members of the Legislative Assembly, which were subsequently circulated as part of the papers for its meeting on 17 June 2024:

- Submission 1 – Ms Koby Shetty MP, Member for Balmain, on behalf of the NSW Greens
- Submission 2 – Mr Michael Regan MP, Member for Wakehurst
- Submission 3 – Dr Joe McGirr MP, Member for Wagga Wagga

The Secretariat has confirmed that each of those Members is happy for the Committee to publish those submissions on its webpage and to refer to them in its report.

On 25 July 2024, the Committee received an additional submission:

- Submission 4 – Mr John Evans PSM, Parliamentary Ethics Adviser. Mr Evans noted that his submission was made in the same terms as his [published submission](#) to the Legislative Council Privileges Committee inquiry.

On the day of this meeting, the Committee received a further submission which was circulated to Members prior to the meeting:

- Submission 5 - Professor Emerita Anne Twomey AO

Resolved, on the motion of Ms Voltz:

That the Committee publish the five submissions referred to above on its webpage with standard redactions.

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5.2 Consideration of Chair's draft report

The Chair referred to the Chair's draft report entitled *Draft Constitution (Disclosures by Members) Regulation 2024*, circulated to Members by email on 9 August 2024, as amended by the Chair's proposed amendments circulated to Members during the meeting.

The Committee agreed to consider the Chair's draft report circulated to Members by email on 9 August 2024 as amended by the Chair's proposed amendments circulated to Members during the meeting ('the Chair's draft report'), in globo.

Upon which, Ms Voltz moved that the words 'If the Government proceeds with requirements for Members of Parliament to disclose the interests of "immediate family members" and/or conflicts of interest, the regulations should allow for these disclosures to be made on a confidential register. The confidential register should remain confidential to the relevant Clerk and Privileges Committee, except where the Committee considers that a conflict of interest has arisen, at which time the Committee should be permitted to table the declaration, subject to any redactions that it considers are appropriate to protect the privacy or safety of any person other than the Member.' in Recommendation 7 be deleted and replaced with the words 'The Committee is opposed to the proposed requirements for Members of Parliament to disclose the interests of "immediate family members" and for mandatory disclosure of conflicts of interest. It advises the Government that it should not proceed with these aspects of the Draft Regulation.'

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

The Chair advised the Committee that he would make some changes to the Chair's foreword following the meeting and before the report is tabled.

Resolved, on the motion of Ms Voltz:  
That the Committee adopt the Chair's draft report as amended.

Resolved, on the motion of Ms Voltz:  
That reference to identifying details around correspondence received from [REDACTED] regarding [REDACTED] and to related correspondence between [REDACTED] not be included at appendix four to the report as 'extracts from minutes' when the report is tabled.

Resolved, on the motion of Ms Voltz:  
That the report be signed by the Chair and tabled in the House on an appropriate day in August 2024.

Resolved, on the motion of Ms Saffin:  
That the secretariat be permitted to make appropriate final editing and stylistic changes as required.

Resolved, on the motion of Ms Voltz:  
That once tabled, the report be published on the Committee's webpage.

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**6. \*\*\***

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**7. Next meeting**

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The Chair closed the meeting at 2:56pm.

Meeting no. 19 is scheduled for Tuesday, 27 August 2024 at 9:00am.

Meeting no. 20 is scheduled for Wednesday, 28 August 2024 at 2:00pm.

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