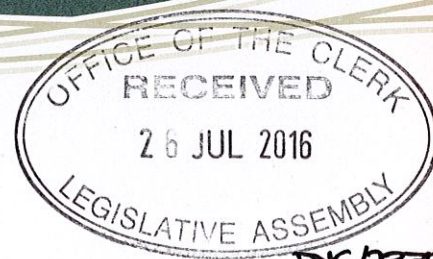


**Supplementary
Submission
No 5a**

REVIEW OF THE CODE OF CONDUCT FOR MEMBERS

Organisation: Independent Commission Against Corruption NSW
Name: The Hon. Megan Latham
Position: Commissioner
Date Received: 20 July 2016

Mr Mark Coure MP
Chair
Committee on Parliamentary Privilege and Ethics
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000



Your Ref: D16/18142(LAC15/059)

Our Ref: Z10/0124

Dear Mr Coure

RE: Review of the Code of Conduct for Members

I refer to your letter of 20 June 2016 requesting a response to three questions from the Committee on Parliamentary Privilege and Ethics. My responses to the questions are set out below.

The Commission has recommended that the Code include sanctions which might apply to any Members who breach it. Is that not a matter better left to the ICAC or the Houses to determine based on the particular circumstances?

In 2010, the Commission recommended that the Code of Conduct for Members (the Code) include what sanctions might apply to a Member who breaches its provisions. Such a clause, or an equivalent form of communication, would give Members an understanding of some of the implications of breaching the Code. The specific sanction applying to a particular breach of the Code would remain a matter for the relevant decision-maker.

If definitions of party activities were incorporated into Clause 6 of the Code would that change the nature of the Code from an aspirational code to a form of regulation?

Generally speaking a code of conduct serves two purposes. Firstly, a code of conduct describes certain commendable conduct to which public officials are expected to aspire.

In this regard, the Commission regards the third dot point of the preamble to the Code as critical in communicating the spirit of the Code:

"Members of parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales."

Although setting aspirational standards, the preamble also accurately encapsulates the responsibilities of public office and is a valuable yardstick against which the specific requirements of the Code may be judged. This is something that relates to the second purpose of a code of conduct which is to set out the specific standards public officials must follow and the sanctions that apply when those standards are not met.

In addition, by virtue of the fact that the Code has been adopted as an applicable code for the purposes of section 9(1)(d) of the *Independent Commission Against Corruption Act 1988* it is necessary for it to be prescriptive in nature. As the Code is of real relevance to the definition of corrupt conduct, it is essential that it provides clarity for it to be an effective tool in defining and combating corruption.

In the last Parliament, the Committee reported that the Constitution (Disclosures by Members) Regulation 1983 suffered from a "lack of clarity and explanation" and the Parliamentary Remuneration Tribunal determinations were "poorly understood by members and the community alike." Do you think those comments are fair?

In *Reducing the opportunities and incentives for corruption in the state's management of coal resources (2013)* the Commission noted that any review of the Register of Disclosures for the relevant House would provide an opportunity to consider issues such as the timeliness with which pecuniary interest disclosures are made, the cumbersome nature of the disclosure regime and the transparency of the disclosure system. The Commission is also supportive of any attempts to develop plain English guidelines to help explain Members' obligations regarding their use of entitlements and the registration of interests.

The Commission would also like to take this opportunity to raise Clause 1 of the Code which was the subject of some discussion at the meeting of the Committee on Parliamentary Privilege and Ethics held on 3 June 2016. Despite the heading "Disclosure of conflict of interest" the Clause also deals with the declaration of Members' interests.

A conflict of interest arises when a public official has a private interest that comes into conflict with his or her public duty. Clause 1(b) appears to provide options for managing conflicts of interest which include Members declaring their private financial interests by an entry in the Register of Disclosures of the relevant House. This Clause appears to regard these declarations as declarations of conflicts of interest, but this is not an accurate description of the contents of a Register of Interests – a private interest that has been disclosed that may never come into conflict with a Member's public duty.

The two concepts (private interest and conflict of interest) are connected, in that the purpose of a disclosure system is to alert the Member and others to conflicts of interest arising from

ongoing financial interests, if they arise. But they are not the same thing, and the distinction is important. Whether or not the involvement of a Member in any particular matter would constitute a conflict of interest is a separate issue and a separate idea. Ideally the Code should disentangle the concept of conflict of interest from the disclosure of interests and each subject ought to be confined to a separate clause. While conflicts of interest can include matters such as those that affect a close friend of a member, but do not have direct financial implications for the Member, a register of disclosures would not typically extend to such relationships.

Thank you for seeking the views of the Commission.

Yours sincerely,



The Hon Megan Latham
Commissioner

20 July 2016