

**Submission
No 1**

**DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION
2024**

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Mr Alex Greenwich
Committee Chair
Standing Committee on Parliamentary Privilege and Ethics
Parliament House, Macquarie Street
Sydney NSW 2000

Wednesday, 12 June 2024

**Submission to the Legislative Assembly Standing Committee on
Parliamentary Privilege and Ethics inquiry into the Draft Constitution
(Disclosures by Members) Regulation 2024**

Dear Mr Greenwich,

I write in my capacity as the Integrity and Anti-Corruption Spokesperson for the NSW Greens. I am pleased to make a contribution on behalf of the Greens regarding the draft Constitution (Disclosures by Members) Regulation 2024.

The draft Constitution (Disclosures by Members) Regulation 2024 (the draft) provides a useful and long overdue update of the current Constitution (Disclosure by Members) Regulation 1983, which has not been substantially amended since 2010.

The draft will make some minor housekeeping changes to the regulation, including the consolidation of definitions within a single schedule. It will introduce some substantive changes, such as the inclusion of requirements to disclose interests in trusts and water access licences, that will generally improve the governance of Member Disclosures. The inclusion of a requirement for Members to disclose conflicts of interest is especially welcome.

However, there are further improvements that the Greens would like to see considered.

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.

There are four important aspects of the draft that I will draw particular attention to.

1. New disclosure requirements

First, the inclusion of requirements to disclose interests in trusts and water access licenses must be supported. Members of Parliament who are making decisions on a broad range of issues must not be able to conceal any potential conflicts of interest – wilfully or otherwise – behind financial arrangements or instruments that could inhibit the discovery of any benefits arising.

2. Managing conflicts of interest

Second, the inclusion of a requirement for Members to proactively disclose any conflicts of interest is long overdue. This would see the NSW Parliament align with other governing institutions such as local councils, and would mitigate against the high potential for corrupt conduct in this setting. Such conduct is unfortunately all too common in New South Wales, as is evidenced by numerous findings of the Independent Commission Against Corruption (ICAC) over many years.

Consideration must also be given to the need for Members to manage a conflict of interest once disclosed, and for an independent compliance scheme to be established. The current model leaves it to politicians and political parties to decide whether any conduct warrants sanction, and the nature of any sanctions to be applied. This could give rise to a loss of public confidence in our democracy, and we should take the opportunity to address this in the draft.

3. Definition of 'immediate family members'

Third, the inclusion of the interests of immediate family members in Members' disclosures must be supported, however the definition of immediate family member warrants review. As it is currently worded, the draft 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. This must be addressed.

The definition should also be broadened to ensure it includes family members that are parents and close siblings of the Member, or relationships of a similar nature. 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. Indeed the ICAC's recent preliminary investigation into the conduct of the Member for Newcastle suggests this is an area that warrants careful consideration.

However, it must also be acknowledged that not all such relationships will give rise to an alignment of interests, and that there are a range of circumstances in which families do not maintain meaningful relationships. Members should not be required to disclose the interests of immediate family members where these cannot be reasonably ascertained.

4. Publicly searchable electronic register

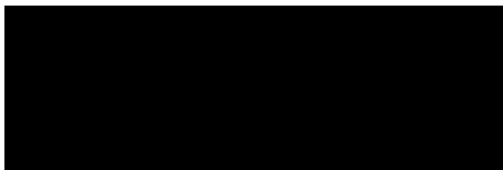
Fourth and finally, the transition from paper records to a searchable electronic publication of the register must be supported. It is well past time that Members' disclosures are readily available and accessible to the public, and the enhancement of transparency in this regard will go a long way towards improving public trust in politicians. However, the draft provides a period of twelve months from the commencement of the regulation for the electronic register to be made publicly available, and it must be made clear that in the interim the previously tabled records will remain available for public scrutiny.

I make the following recommendations for the Committee's consideration:

1. Support the inclusion of requirements to disclose interests in trusts and water access licenses, and conflicts of interest.
2. Consider how a requirement to manage a conflict of interest, once declared, can be included in the regulation, along with the establishment of an independent scheme for compliance.
3. Review and amend the definition of *immediate family member* to ensure Members:
 - a. are required to disclose the interests of people who are a parent, parent-in-law, sibling, or similar familial relation with whom a meaningful relationship exists, and
 - b. are not strictly required to disclose the interests of family members with whom no meaningful relationship exists, and
 - c. may be excused from a failure to disclose the interests of family members where all reasonable efforts have been made to discover any interests for disclosure.
4. Ensure the transition from tabling and publication of registers to the keeping of an electronic register will not result in a period in which a record of the register will not be available or accessible to the public.

Please don't hesitate to contact my office if you would like to discuss this submission in any further detail.

Yours sincerely,



Kobi Shetty MP
Member for Balmain