



LEGISLATIVE COUNCIL

PRIVILEGES COMMITTEE

Recommendations of the ICAC arising out of Operation Keppel



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Privileges Committee

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Recommendations of the ICAC arising out of Operation Keppel

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Recommendations of the ICAC arising out of Operation Keppel

"September 2024"

Chair: The Honourable Stephen Lawrence, MLC



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Terms of reference

1. That the Privileges Committee:
 - (a) inquire into and report on the recommendations of the Independent Commission Against Corruption in its report entitled *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)*, dated June 2023, and
 - (b) make recommendations for further action to be considered by the House, the President, the Clerk and the Government, as appropriate.
2. That in undertaking the inquiry:
 - (a) in accordance with Standing Order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and
 - (b) the committee consult the President, the Clerk and the Chief Commissioner of the Independent Commission Against Corruption as appropriate.
3. That the committee report by 6 September 2024.¹

The terms of reference were referred to the committee by the Hon Ben Franklin MLC, President of the Legislative Council on 7 July 2023.²

¹ The original reporting date was the last sitting day in 2023 (*Minutes*, NSW Legislative Council, 1 August 2023, p 289). The reporting date was later extended to the first sitting day in August 2024 (*Minutes*, NSW Legislative Council, 21 November 2023, p 670) and then 6 September 2024 (*Minutes*, NSW Legislative Council, 6 August 2024, p 1352)..

² *Minutes*, NSW Legislative Council, 1 August 2023, p 289.

Committee details

Committee members

Hon Stephen Lawrence MLC	Australian Labor Party	<i>Chair</i>
Hon Natasha Maclaren-Jones MLC	Liberal Party	<i>Deputy Chair</i>
Hon Wes Fang MLC	The Nationals	
Ms Sue Higginson MLC	The Greens	
Hon Cameron Murphy MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	
Hon Peter Primrose MLC	Australian Labor Party	
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Chair's foreword

The Independent Commission Against Corruption's investigation into the conduct of the then member of Parliament for Wagga Wagga and the Premier and others, known as Operation Keppel, made a number of recommendations to the Parliament arising from that inquiry. While some of these were directed to the Presiding Officers and the parliamentary administration, a number of these were also directed to the privileges committees of both Houses. These recommendations particularly related to the Member's Code of Conduct and ethical training of members, which are part of the designated role of the Privileges Committee.

At the same time, two other inquiries predating Operation Keppel also covered similar ground, namely the ICAC's report "Investigation into the conduct of the local member for Drummoyne" (Operation Witney) and the report into bullying and harassment in the NSW parliamentary workplace, which has become known as the Broderick Review. The committee therefore took a decision early in its inquiry to use the reference given to it by the House to respond to the Keppel recommendations to also consider relevant corresponding recommendations in the earlier two reports. To some extent, however, this inquiry became overtaken by events, with the referral to it in February 2024 of a draft regulation on member's disclosure requirements, highly relevant to both Keppel and Witney reports, and a separate inquiry into the Independent Complaints Officer which dealt with some of the Broderick recommendations.

As a result, the committee received limited evidence other than a very detailed submission from the ICAC itself, with greater interest from stakeholders in the other two inquiries. Nevertheless, the committee has considered in detail the recommendations arising from the two ICAC inquiries and the Broderick Review. The committee agrees with some of the recommendations made in Keppel to amend the current Members' Code of Conduct to incorporate into its preamble the principles of public life taken from the UK Committee on Standards. The inclusion of reference to Parliamentary Friendship Groups in the Code is supported, and additional guidance to members in the commentary sections of the Code is also seen as useful. However, the committee is conscious that the Code applying to Assembly members already differs from that applying to members of the Council in relation to bullying and harassment. To avoid further divergence the committee has made its recommendations on changes to the Code contingent on agreement being reached with the Assembly committee when it reviews the Keppel recommendations.

In its report the committee discusses the further ethical training and advice materials required for members as well as recording progress made since the two ICAC inquiries and the Broderick Review have reported. More work is desirable, and the committee is happy to work with the parliamentary administration and the ICAC to this end. Finally the committee recommends that annual reports of the administration provide statistics on overall numbers of members undertaking training on bullying, harassment and sexual assault and training on ethical issues.

As chair I would like to thank the committee members and the secretariat for their commitment to completing this inquiry during a period when several other inquiries and other matters were attended to in a very busy parliamentary year.

The Hon Stephen Lawrence MLC
Committee Chair

Recommendations

- Recommendation 1** **6**
That, subject to the concurrence of the Legislative Assembly, the preamble to the current Code of Conduct for Members be amended by the inclusion of the seven principles of conduct in public life developed by the United Kingdom's Committee on Standards in Public Life (and the 2021 descriptors to those principles).
- Recommendation 2** **12**
That at the conclusion of the committee's inquiry into the draft regulation on members' disclosures and the tabling of the final version of the regulation, amendments be made to the commentary in the Members' Code of Conduct and to the Members' Guide to reflect the new framework for disclosure of conflicts of interest.
- Recommendation 3** **15**
That the Presiding Officers establish a review of current policies regarding the circumstances in which the use of the parliamentary crest on stationery, business cards and other resources funded through additional entitlements, so as to provide clearer guidance to members in the Entitlements Handbook.
- Recommendation 4** **15**
That subject to the concurrence of the Legislative Assembly, the commentary on clause 3 of the Members' Code of Conduct be amended to state that the following public resources should not be used for private or non-parliamentary interests:
- staff
 - electorate or parliamentary offices
 - allowances, entitlements or other like benefits, noting that electoral allowance is fundamentally different from other allowances and under law can become taxable income
 - stationery which bears the parliamentary crest.
- Recommendation 5** **17**
That, subject to the concurrence of the Legislative Assembly, clause 1 of the Members' Code of Conduct be amended to acknowledge that the Code extends to activities of Parliamentary Friendship Groups.
- Recommendation 6** **23**
That the Committee chair bring to the attention of the Legislative Assembly Standing Committee on Privileges and Ethics recommendations 1, 2, 4 and 5 and seek agreement on a consistent Code of Conduct in any future amendments.
- Recommendation 7** **31**
That the Privileges Committee and the Presiding Officers work closely with the ICAC in preparing future induction materials and education programs for members which specifically address the management of political interests when exercising public power.

Recommendation 8

35

That the Department of Parliamentary Services in its annual report provide the overall numbers of members from each House who have undertaken training offered on bullying, harassment and sexual assault.

That the Department of the Legislative Council in its annual report provide details of numbers of members attending training on code of conduct and related ethical issues.

Chapter 1 Background to the Inquiry

Conduct of the inquiry

Reports considered

- 1.1 This inquiry was established on 7 July 2023 to inquire into and report on the recommendations of the Independent Commission Against Corruption (the ICAC) in its report entitled 'Investigation into the conduct of the then member of Parliament for Wagga Wagga and the premier and others' (Operation Keppel). The Chief Commissioner of the ICAC had previously written to the chair of the committee on 29 June 2023 advising of the recommendations of the Operation Keppel report that were directed at the Privileges committees of both Houses. While the committee is not required to respond, it has been the practice of the Legislative Council committee to consider such recommendations in the context of an inquiry.
- 1.2 The committee resolved at an early meeting to use the terms of reference for this inquiry to also respond to include relevant recommendations from the ICAC report 'Investigation into the conduct of the local member for Drummoyne' (Operation Witney) and the report 'Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct at NSW Parliament Workplaces 2022', commonly referred to as the Broderick Review.
- 1.3 The committee has previously considered recommendations from Operation Witney in its 2022 review of the Members' Code of Conduct.³ At the request of the ICAC, the Chair undertook to again consider these recommendations in the course of this inquiry. A number of Broderick Review recommendations were referred to the committee as part of a separate review of the Independent Complaints Officer system but, as they related to ICAC recommendations, they were also considered in the context of this inquiry.

Discussion paper

- 1.4 The committee published a discussion paper in February 2024 setting out the key recommendations of the three reports directed at the committee relating to the Members' Code of Conduct and training and professional education for members.⁴ For each relevant recommendation, the discussion paper set out the text of the recommendation, the rationale from the ICAC report or Broderick Review for the recommendation, and issues for discussion. The discussion paper was published online and provided to all stakeholders invited to provide a submission. Much of the discussion paper is reproduced below and this report follows a similar structure.

³ Privileges Committee, *Review of Members' Code of Conduct (2022)*, Report No. 90, November 2022.

⁴ Available online:
<https://www.parliament.nsw.gov.au/lcdocs/other/18997/Discussion%20paper%20-%20Code%20of%20Conduct%20and%20training%20recommendations.pdf>

Inquiry process

- 1.5 The committee invited submissions from all Legislative Council members and a small number of stakeholders who regularly assist in advising regarding members' ethical issues. However ultimately the only submissions received were from the ICAC itself and from the Parliamentary Ethics Adviser. The committee also received correspondence on 22 July 2024 from the Parliamentary Advisory Group (PAG) on bullying and harassment which briefly addressed some of the Broderick recommendations addressed as part of this inquiry.
- 1.6 The committee believes this does not reflect lack of interest in the important issues raised by the ICAC in Keppel and of the other two reports, but instead several factors which have impacted this inquiry:
- The referral by the House on 8 February 2024 of an inquiry into a new draft regulation for members' disclosure of interests, tabled in the House the same day, which addresses several of the key recommendations in Operation Keppel and Operation Witney
 - The committee's current review of the Independent Complaints Officer, run concurrently with this inquiry, which involves similar stakeholders and particularly addresses some of the Broderick Review recommendations, and
 - Many of those invited to make a submission had already done so to contribute to the committee's 2022 review of the Code of Conduct, including addressing Operation Witney recommendations.
- 1.7 Despite the inquiry to some extent being overtaken by events the committee appreciates the comprehensive submission provided by the ICAC, which updates the Commission's current thinking on progress regarding the recommendations. The Committee also notes the Parliamentary Ethics Adviser largely endorses the ICAC recommendations. The following two chapters will indicate the committee's response, while acknowledging that further consideration of some issues is necessary in the context of the committee's other two current integrity related inquiries.

Chapter 2 Recommendations relating to the Members' Code of Conduct

The committee considered a number of recommendations from the three reports that address the Members' Code of Conduct in order to strengthen the Code and clarify members' obligations. The recommendations in Operations Witney and Keppel are directed in particular to how conflicts of interests are defined and explained. The Broderick Review made three recommendations to amend the Code for clarity and to provide for safe reporting.

Code of Conduct: Guiding principles

Current provisions

2.1 The Members' Code of Conduct contains a short preamble that provides:

Preamble

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 institutions and conventions of Parliament, and using their influence to advance the common good of the people of New South Wales.

2.2 In addition to the Preamble, section 1 'Purpose of the Code' sets out some broad obligations of members. It notes that members are to consider the public interest, avoid conflicts between personal interests and their duties as a member, and not act dishonestly for their own or another's personal gain.

2.3 By contrast, the NSW Ministerial Code of Conduct⁵ has a more detailed 12-point preamble which highlights the various responsibilities and ethical duties of Ministers and Parliamentary Secretaries.

ICAC recommendation

Operation Keppel Recommendation 1

That the Code of Conduct for Members and the NSW Ministerial Code of Conduct be amended to provide for a set of principles of conduct and guiding values addressing the:

- seven general principles of conduct which underpin public life developed by the United Kingdom's Committee on Standards in Public Life (and the 2021 descriptors to those principles)
- three guiding values of public trust, public interest and public duty.

⁵

<https://arp.nsw.gov.au/assets/ars/862b3be2e6/2014-5461.pdf>

2.4 Operation Keppel Recommendation 1 proposed that the Members' and Ministerial Codes of Conduct be amended to include three guiding values – of public trust, public interest and public duty – and the following seven principles of conduct which underpin public life:

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership.⁶

Rationale for the recommendation

2.5 In its report on Operation Keppel, the ICAC suggested the existing Codes for members and Ministers are insufficient, stating: "The community may conclude that the applicable codes of conduct had little or no effect in discouraging the conduct of Mr Maguire and Ms Berejiklian identified in this report".

2.6 In explanation of the recommendation, the ICAC noted that 'greater emphasis on ethical values and principles is required to enhance public confidence and trust in government and the institution of the NSW Parliament'. ICAC argued that these principles and values should be explicitly articulated in the Code in order to set a positive tone from the top, promote adherence to ethical practices, and provide a clear framework for interpreting the Code.

2.7 In its submission to this inquiry the ICAC quoted a number of High Court and Court of Appeal cases where judgements have indicated that members have a fiduciary like obligation to maintain the public trust and act in the public interest.⁷ In summary, the ICAC stated:

The values of public trust, public duties and public interest are intrinsically connected and relate to the proper exercise of public power and the holding of public office. Members occupy a position of public trust. The maintenance of public trust requires that members use their position "to advance the common good", resulting in the fundamental duty to act in the public interest. That is why members' duty has also been described as being "analogous to that of a fiduciary".⁸

⁶ The general principles of conduct which underpin public life were developed by the United Kingdom's Committee on Standards in Public Life in 1995 and the descriptors to those principles were updated in 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029944/Upholding_Standards_in_Public_Life_-_Web_Accessible.pdf

⁷ *Wilkinson v Osborne* [1915] HCA 21 CLR 89 at 94; *Horne v Barber* [1920] HCA 33 (1920) 27 CLR 494 at 501; *R v Boston* [1923] HCA 58, (1923) 33 CLR 386 at 402, *Obeid v the Queen* [2017] NSWCCA 221 at [79]; and *R v Obeid* (no12) [2016] NSWSC 1815.

⁸ Submission 1, Independent Commission Against Corruption, p 5.

- 2.8** The ICAC argues that the UK seven principles approach reflect public expectations of elected officials but also can help prevent misconduct. The Commission argues that a statement of values promotes an ethical culture more effectively than a prescriptive or rules based approach which cannot take into account every contingency or possible situation a member may face, quoting with approval a 2023 review by the Committee on Standards in Public Life:

Rules will only take an organisation so far - focusing on values can guide people to make the right decisions when circumstances change and the unforeseen happens.⁹

- 2.9** In his submission the Parliamentary Ethics Adviser notes the preamble to the Code currently refers to public trust, honesty and integrity while the Purpose section refers to the public interest, conflicts of interest and avoiding acting dishonestly. Noting the Ministerial Code currently contains 12 points in its preamble, he states:

I would support revision of the Preamble and Purpose under the one heading to encompass wording which included the principles of public life that are not already included, such as selflessness, objectivity, openness and leadership.¹⁰

Committee view

- 2.10** The current Code of Conduct with its preamble has only been in place since 2020, with some additions made in 2022. Operation Keppel reported after this date, so most of the events it investigated occurred under a previous version of the Code, although possibly no version of the code would have had any effect in discouraging the conduct of the former member for Wagga Wagga.¹¹
- 2.11** Regular changes to the Code of Conduct can risk member confusion as to which version is applicable to them and provide outlets for unscrupulous members to claim lack of awareness of the relevant requirements. There is also the risk that the Codes applicable to members of both Houses differ, as already the Legislative Council code contains a clause 10 which requires members to treat each other and all those working in the Parliament with “dignity, courtesy and respect”, a provision which the Legislative Assembly chose not to include in its Code when discussion occurred around the establishment of the Independent Complaints Officer.¹²
- 2.12** Despite this, there does appear merit in the argument that a statement of values as the starting point of the Code is valuable in providing an overall framework which members can apply in understanding the clauses which follow. The committee will support this and several other recommendations relating to the Code provided the Legislative Assembly similarly agrees, and to that end recommendation 6 requires the Chair of this committee to write to his counterpart as chair of the Assembly committee prior to the changes being put to the House.

⁹ Committee on Standards in Public Life, *Leading in Practice: a review by the Committee on Standards in Public Life*, January 2023, p 9.

¹⁰ Submission 2, Parliamentary Ethics Adviser, p 1.

¹¹ NSW Independent Commission Against Corruption, *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, Sydney 2023, volume 2, pp 327-328.

¹² Standing Committee on Privileges and Ethics, *Review of the Members Code of Conduct December 2022*, pp 17-19. The report did suggest the position should be reviewed in the next Parliament.

- 2.13** In passing, the committee suggests the appropriate place to append the seven principles is the preamble. As indicated by the Parliamentary Ethics Adviser, the preamble already has reference to public trust, the responsibility of members to advance the “common good”, so this would largely be a matter of adding to the principles already in the Code to enhance the existing statement of principle.

Recommendation 1

That, subject to the concurrence of the Legislative Assembly, the preamble to the current Code of Conduct for Members be amended by the inclusion of the seven principles of conduct in public life developed by the United Kingdom’s Committee on Standards in Public Life (and the 2021 descriptors to those principles).

Code of Conduct: Conflicts of interest

Current provisions

- 2.14** Conflicts of interest are currently addressed in section 7 of the Code, which provides:

Conflicts of interest

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.

Members shall 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.

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.

- 2.15** The Code also contains some brief commentary that notes the distinction between disclosing and having a conflict of interest, and that a non-pecuniary interest may still give rise to a conflict of interest if not managed appropriately.

- 2.16** Conflicts are also referred to in section 8, 'Gifts':

- (b) Members must not knowingly accept gifts that could reasonably be expected to give rise to a conflict of interest or could reasonably be perceived as an attempt to improperly influence the Member in the exercise of his or her duties.

- 2.17** The Legislative Council *Members' Guide 2023* as currently amended¹³ refers to standing order 117, which prevents a member from voting on a matter in which they have a direct pecuniary interest, and standing order 217, which prevents a member from participating in a committee

¹³ *LC Members Guide (2023)*, p 34.

inquiry where they have a direct pecuniary interest in the inquiry. Members are directed to the Clerk or the Parliamentary Ethics Adviser to seek further information.

ICAC recommendations

Operation Witney Recommendation 3

That NSW Parliament's designated committees include a clear, consistent and comprehensive conflict of interest definition in the Code of Conduct for Members. This review should include a consideration of the relevant definitions in the Ministerial Code of Conduct and any opportunities for achieving a consistent approach in regard to avoiding, recognising, disclosing and managing conflicts of interest.

Operation Witney Recommendation 5

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly ensure that the guidance material for members of Parliament be updated to provide details about their obligations pursuant to clause 7 of the Code of Conduct for Members, on how to take reasonable steps to avoid, resolve and disclose a conflict of interest, and the registration of conflicts of interest (pending implementation of recommendations 3 and 4).

Operation Keppel Recommendation 2

That the NSW Parliament, in consultation with the Commission, develops a comprehensive framework applicable to members that addresses the avoidance, disclosure and management of conflicts of interest. The framework should provide members with practical guidance about how to avoid, disclose and manage common conflicts of interest.

- 2.18** Operation Witney Recommendation 3 calls for a comprehensive conflict of interest definition in the Code of Conduct with consistency and detail around how to avoid, recognise, disclose and manage conflicts of interest. Recommendation 5 recommends that guidance material for members be updated to provide further detail on how to disclose and manage potential conflicts.
- 2.19** Operation Keppel Recommendation 2 builds on the Witney recommendations and calls for the Parliament to develop a comprehensive framework for conflicts of interest in consultation with ICAC. Specifically, the framework should address how common conflicts are to be avoided, disclosed and managed and provide practical guidance to members.
- 2.20** In its Operation Keppel report, ICAC recommended that the mechanisms to disclose and manage conflicts of interest for members be improved in line with ICAC's own control framework and include the following features:
- consistency and clarity regarding what constitutes a conflict of interest and the level of detail required in a disclosure
 - consistency and clarity on how to make a disclosure

- consistency and clarity on how disclosures should be managed
- emphasis on avoiding conflicts of interest
- transparency and accountability by requiring continuous updating of registered interests
- enforcement mechanisms
- ongoing professional education to raise awareness and promote an ethical culture.

Rationale for the recommendations

2.21 In both Operations Keppel and Witney, ICAC highlighted the importance of managing conflicts of interest. In Operation Keppel, ICAC argued that timely disclosure of conflicts 'is fundamental to the avoidance of corruption'.¹⁴ In Operation Witney, ICAC observed that 'it is highly likely that a failure by public officials to recognise, disclose and manage conflicts of interest contributes significantly to a loss of public confidence in the public sector'.¹⁵

2.22 In its submission to this inquiry the ICAC stated:

Avoiding, recognising, disclosing and managing conflicts of interest are issues of perennial concern for all public officials, including for members of Parliament. As outlined by the Commission in the Operation Witney report, the identification of the scope of public official duties or functions is fundamental in determining whether a conflict between public duty and private interest has arisen or could arise.¹⁶

2.23 In Operation Witney, ICAC found that a conflict arose between the private interests of Mr Sidoti's family and his public duty as an elected representative, as Mr Sidoti was pursuing planning outcomes that would have benefited his family's property interests. ICAC rejected Mr Sidoti's view that he did not have to disclose his family's property interests because they were widely known. Furthermore, ICAC held it was 'disingenuous for Mr Sidoti to attempt to pursue his private or family interests under the guise of acting in the public interest and for the benefit of the community'.¹⁷

2.24 The events investigated by Operation Witney happened under an earlier version of the Members' Code of Conduct prior to changes made in 2020 which addressed conflict of interests specifically including commentary to guide members. In putting forward the recommendations in Operation Witney, ICAC noted that, despite the revisions made in 2020 requiring members take reasonable steps to draw attention to conflicts of interest, there are still key gaps in the Code. Namely, that the Code does not:

- include a definition of a conflict of interest
- provide guidance on what 'reasonable steps' should be taken

¹⁴ Operation Keppel vol 2, p 329.

¹⁵ Operation Witney, p 177.

¹⁶ Submission 1, Independent Commission Against Corruption, p 10.

¹⁷ Operation Witney, p 178.

- outline what steps to take to manage a conflict of interest.¹⁸

- 2.25** ICAC also highlighted the limited guidance for members regarding disclosure of conflicts in the applicable Members' Guide, and the need for practical examples illustrating how conflicts can be avoided, resolved, disclosed and managed.
- 2.26** In Operation Keppel, ICAC reiterated its Operation Witney recommendation that a clear, consistent and comprehensive definition of a conflict of interest be developed. The Commission acknowledged progress made by the Parliament on this issue, but noted that the Operation Keppel investigation 'demonstrates the importance of these reforms'.¹⁹
- 2.27** In particular, ICAC noted that amendments to the Code in 2020 expanded members' obligations concerning conflicts of interest so that members must now take reasonable steps not only to disclose, but also to *avoid* and *resolve* any conflict between their private and public interests. According to ICAC, this gives rise to a 'clear implication ... that members must disclose their conflicting interests *at the relevant time* so the conflict can be considered and managed' [emphasis added].²⁰
- 2.28** Despite these changes however, ICAC argued the Code still lacks sufficient detail about conflicts of interests, particularly around what constitutes 'reasonable steps' that a member must take in order to avoid and resolve potential conflicts. It noted that this is in contrast to the procedures outlined in the Ministerial Code.
- 2.29** According to ICAC, Operation Keppel demonstrated how conflicts of interests may arise from having outside paid work or business interests, engaging in lobbying, having close networks, planning for a post-parliamentary career, and close personal relationships. In order to navigate ethical challenges involving conflicts of interest arising from their complex working environment, ICAC argued members require detailed guidelines and clear processes.
- 2.30** Operation Keppel Recommendation 2 requests that ICAC be consulted in developing a conflict of interest framework. It noted that its own conflict of interest control framework could be the basis for an improved framework if tailored to members.²¹ ICAC later reiterated its request to be consulted in relation to this proposed change to the Code in recent correspondence to the Privileges Committee.

Previous consideration by the Privileges Committee

- 2.31** The Privileges Committee considered Operation Witney Recommendations 3 and 5 as part of its 2022 Review of the Code of Conduct. The committee noted that additional explanatory material on the nature of conflicts of interest is available to members. However, it accepted ICAC's view of the limitations of the Code with respect to this issue and supported the inclusion of a definition of conflicts of interest in the commentary of the Code. The

¹⁸ Operation Witney, p 177.

¹⁹ Operation Keppel vol 2, p 331.

²⁰ Operation Keppel vol 2, p 329.

²¹ Available at: NSW ICAC, 'Managing conflicts of interest in the NSW public sector', 2018, p 8. [Managing-conflicts-of-interest-in-the-nsw-public-sector_June-2019.pdf](#).

committee accordingly recommended: 'That the Commentary in the Code of Conduct be amended to include a definition of conflict of interest that takes account of the views of the Independent Commission Against Corruption concerning the definition of conflict of interest'.²²

2.32 The committee also supported the provision of greater guidance for members on how to manage conflicts of interest as per Operation Witney Recommendation 5, recommending that guidance material for members be updated to provide details about their obligations pursuant to clause 7 of the Code on how to take reasonable steps to avoid, resolve and disclose a conflict of interest.

2.33 Recommendation 5 was, in part, implemented with 2023 updates to the Legislative Council *Members' Guide*, which states:

Reasonable steps to ***avoid*** a conflict of interest may include refraining from voting, asking questions in the House or making representations to ministers in relation to the matter that would give rise to the conflict.

...

Reasonable steps to ***resolve*** a conflict of interest may include ensuring the conflict is disclosed and either renouncing the interest or ceasing to participate further in the proceedings that have led to the conflict arising.

Reasonable steps to ***disclose*** a conflict of interest may include drawing attention to the existence of the conflict at the time the conflict arises, even if the interest itself has already been disclosed in the Register of Disclosures.²³

2.34 In its submission the ICAC stated:

The Commission notes that the current Members' Guide 2023 includes some guidance regarding what are "reasonable steps" that members **may do** to avoid, resolve or disclose any conflict between their private interests and the public interest [Emphasis added]. However, the Members' Code of Conduct is unequivocal that there are "reasonable steps" that members "must take" and "shall take". It will assist members to have unequivocal guidance about their obligations regarding conflicts of interest.²⁴

2.35 Drawing from five previous investigations, the ICAC in its submission provided a number of case studies of conflicts of interests involving members to highlight the need for detailed guidance and practical examples, noting:

In the Commission's experience, public officials struggle to take an objective view of the status of their personal relationships, for example. It is imperative that they view

²² Report No. 90 of the Privileges Committee, 'Review of Members' Code of Conduct (2022)', November 2022, p 15.

²³ New South Wales Legislative Council *Members' Guide* 2023, p 34.

²⁴ Submission 1, Independent Commission Against Corruption, p 16.

their circumstances objectively, in other words, the reasonably held perceptions of others.²⁵

- 2.36** In his submission the Parliamentary Ethics Adviser supported using the definition of conflict of interest contained in section 7(3) of the Ministerial Code, and offered to provide assistance in the developing of guidelines for members in managing conflicts of interest based upon his experience of advising members in his current position.²⁶

Committee view

- 2.37** The committee accepts that further work may be required to improve members' understanding of how to identify conflicts of interest and the steps then required. However as noted in Chapter One and in the submission from the ICAC, since this current inquiry began there has been a significant development with the tabling of a draft regulation overhauling the current disclosure requirements for members.

- 2.38** While the Code of Conduct since 2020 has required members to disclose "any conflict between their private interests and the public interest", the current Constitution (Disclosures by Members) Regulation 1983 is much more limited in what it requires members to disclose. The new draft regulation at clause 15 is more expansive:

15 Conflicts of interest

- (1) A Member must disclose all conflicts of interest.
- (2) A conflict of interest arises in relation to a Member if there is 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 public duty.
- (3) A conflict of interest need not be pecuniary in nature.
- (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.

- 2.39** The draft regulation also requires disclosures of conflicts of interest to be made in writing (Schedule 1, Part 6) and must be lodged within one month of the member becoming aware of the conflict (Part 2).

- 2.40** The ICAC indicates that the draft regulation satisfies its recommendations which call for a definition of a conflict of interest and processes regarding when and how to disclose.²⁷ The committee also notes clause 6 of the current Members' Code of Conduct, which states:

²⁵ Submission 1, Independent Commission Against Corruption, p 13.

²⁶ Submission 2, Parliamentary Ethics Adviser, p 2.

²⁷ Submission 1, Independent Commission Against Corruption, p 10.

6. Disclosure of interests

Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members.

- 2.41 The committee believes its current inquiry into the draft regulation is therefore the appropriate place to finally address the conflict of interest recommendations arising from Operation Witney and Keppel, noting that if adopted in its current form the new regulation would require amendments to both the commentary in clause 6 and 7 of the Code and changes to the *Members' Guide*. The inquiry is due to report by 1 September 2024.
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Recommendation 2

That at the conclusion of the committee's inquiry into the draft regulation on members' disclosures and the tabling of the final version of the regulation, amendments be made to the commentary in the Members' Code of Conduct and to the Members' Guide to reflect the new framework for disclosure of conflicts of interest.

Code of Conduct: Intermingling of parliamentary and personal resources

Current provisions

- 2.42 The use of public resources is covered in clause 3 of the Code, which provides:

Use of public resources

The use of public resources should not knowingly confer any undue private benefit on the Member or, on any other person, or entity.

Members must take reasonable steps to apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

Related guidance

- 2.43 Brief commentary in clause 3 directs members to some additional resources, such as the Members' Entitlements Handbook and Members' Guides of each House. The Members' Entitlements Handbook in turn refers to the Parliamentary Remuneration Tribunal (PRT) guidelines on 'intermingling of parliamentary duties'. The PRT guidelines and determination acknowledge that 'some intermingling of a member's parliamentary duties and non-parliamentary duties is in practical terms not always easily avoided' but state that, where it is not practical to separate use, members must estimate the component of non-parliamentary use and meet these costs independently.²⁸ The handbook sets out a number of examples where

²⁸ Parliamentary Remuneration Tribunal, 'Annual Determination: Report and determination of salary and additional entitlements for the Members of the Parliament of New South Wales pursuant to the *Parliamentary Remuneration Act 1989*', 15 June 2023 (as amended 14 July 2023), para 2.3.1, p 75.

intermingling may occur but notes that some resources should not be intermingled under any circumstances, including:

- members' parliamentary staff
- parliamentary offices
- official business stationery
- allowances relating to travel.

ICAC recommendation

Operation Keppel Recommendation 3

That the NSW Parliament's designated committees review and amend the Code of Conduct for Members and the Members Entitlements Handbook (1 July 2022) in relation to the use of public resources, to clarify the limited circumstances in which it is acceptable to intermingle parliamentary duties with personal or private activities. In particular, this review should address the use of:

- parliamentary staff
- parliamentary offices
- stationery
- allowances relating to travel.

Rationale for the recommendation

2.44 ICAC referred to the intermingling of public duties with private activities as an 'obvious but common corruption risk'.²⁹ The failure of members to comply with the guidelines and rules relating to the use of public resources has been a common finding in numerous ICAC reports, including Operations Witney and Keppel. For example, ICAC found that Mr Maguire used various public resources to promote private interests, including his parliamentary office, staff, letterhead, email address and business card. Similarly, concerns were raised in Operation Witney around the use of a parliamentary email address and electorate office to pursue private interests.

2.45 ICAC argued that the current threshold of 'undue private benefit' in the Code is too low, as the threshold 'fails to consider that misuse of parliamentary resources may be an abuse of public funds even if the member does not ultimately gain a tangible "private benefit", such as a financial benefit'.³⁰ Examples were provided of various actions by the former member for Wagga Wagga to make representations in the hope of gaining a benefit which did not eventuate. While ICAC accepted that some intermingling may be acceptable, it stated that this needs to be addressed in the Code unambiguously.

²⁹ Operation Keppel vol 2, p 334.

³⁰ Operation Keppel vol 2, p 334.

2.46 ICAC acknowledged the confusion that may arise from inconsistency between the PRT determination and the Members' Entitlements Handbook, with the PRT determination stating that "Some intermingling of a Member's parliamentary duties and private activities is, in practical terms, not always easily avoided", yet the Handbook noting a number of (specific) resources that must not be intermingled under any circumstance, as indicated above.

2.47 Page 75 of the PRT Determination requires that where intermingling cannot be prevented an estimation of the value of the non-parliamentary component be made and for it to be repaid. Currently the guidelines could mean that a member using the email system for a party newsletter, or for a party preselection may constitute a breach, as the Determination states that additional entitlements "should not be used" for

- (i) activities such as those associated with party Membership drives;
- (ii) mail distributions for non-electorate or non-parliamentary activities;
- (iii) costs associated with election campaigning for an individual member;
- (iv) party fundraising for a Member's own political use and/or other party political Members such as the purchase of raffle tickets, raffle prizes or tickets to attend functions etc;
- (v) costs previously borne by political parties, and
- (vi) costs associated with pre-selection activities.³¹

2.48 ICAC noted further:

The Commission accepts that in some cases it is difficult to avoid the intermingling of parliamentary duties and private activities. The pursuit of high ethical standards should not require that common sense be abandoned. Like most other workers, a politician should be able to make occasional, limited personal use of publicly-provided resources. This may include making some personal telephone calls, limited internet use and running errands, in circumstances where to do otherwise would be impractical and where it is not conducive to corruption and improper conduct. The relevant codes of conduct need to address this issue unambiguously.

The Commission's investigation has not located any formal guidance material or procedure about use of the coat of arms, including on official letterheads. There are risks associated with members of Parliament using their parliamentary letterhead when purporting to speak on behalf of the government. In Mr Maguire's case, this was done to advance his personal interests. In her evidence, Ms Cruikshank told the Commission, 'in practice it's well known that unless you're the portfolio holder ... you don't go round expressing opinions on behalf of the government on that particular portfolio issue'. Any proscription that certain official parliamentary resources must not be intermingled with private interests should include an express reference to the parliamentary crest and coat of arms.³²

³¹ 2023 Parliamentary Remuneration Tribunal Annual Determination, pp 74-75, <https://www.remtribunals.nsw.gov.au/assets/remtribunals/documents/2023-PRT-Annual-Determination-with-erratum-14-July-2023.pdf>

³² Operation Keppel vol 2, p 335.

Committee view

- 2.49** The ICAC recommendations are not necessarily suggesting an extension of the areas in which public resources cannot be used, but rather providing greater clarity in the Code, and outside of the Code to clarify guidance on the restrictions around use of the crest.
- 2.50** The use of the crest is an issue that is in the control of the Presiding Officers, noting there is currently a policy available on Parliament's intranet relating only to functions and events, which has not been updated since 2009. The committee encourages the Presiding Officers to consider a review by the Entitlements section of the Department of Parliamentary Services to incorporate more detailed guidance in the Entitlements Handbook on the circumstances in which the crest can be used and in which stationery, including business cards, which bears the crest can be used.
- 2.51** The committee believes there is merit in adding to the current limited commentary in clause 3 of the Code of Conduct to clearly identify the public resources which should not be intermingled, such as staff and electorate offices, given these were so blatantly ignored in the circumstances detailed in Operation Witney and Keppel despite the guidance in the Entitlements Handbook.
- 2.52** As with the earlier recommendation, this would be contingent on the Legislative Assembly making the same change, to avoid too great a divergence between the two Codes.

Recommendation 3

That the Presiding Officers establish a review of current policies regarding the circumstances in which the use of the parliamentary crest on stationery, business cards and other resources funded through additional entitlements, so as to provide clearer guidance to members in the Entitlements Handbook.

Recommendation 4

That subject to the concurrence of the Legislative Assembly, the commentary on clause 3 of the Members' Code of Conduct be amended to state that the following public resources should not be used for private or non-parliamentary interests:

- staff
 - electorate or parliamentary offices
 - allowances, entitlements or other like benefits, noting that electoral allowance is fundamentally different from other allowances and under law can become taxable income
 - stationery which bears the parliamentary crest.
-

Code of Conduct: Friendship groups

Current provisions

- 2.53** Parliamentary friendship groups are not referred to in the Members' Code of Conduct. Friendship groups are mentioned briefly in the Legislative Council *Members' Guide* (2023) which provides a link to the NSW Parliament's Parliamentary Friendships Group Policy (2019).
- 2.54** As well as the policy, a number of additional resources on parliamentary friendship groups are available on the parliament intranet, including reporting forms, a list of approved groups, and a link to the Parliamentary Remuneration Tribunal Annual Determination. The determination permits members to use their entitlements for participation in an approved parliamentary friendship group with exceptions related to overseas travel.³³

ICAC recommendation

Operation Keppel Recommendation 7

To further clarify that the Code of Conduct for Members applies to parliamentary friendship groups, it is recommended:

- (a) that the Presiding Officers strengthen the Parliamentary Friendship Groups Policy to specify that all activities undertaken by members under the auspices of a parliamentary friendship group must be in accordance with the Code of Conduct for Members and related guidelines and procedures
- (b) that the NSW Parliament's designated committees consider amending the Code of Conduct for Members to specifically mention that its application extends to activities involving parliamentary friendship groups.

- 2.55** Operation Keppel Recommendation 7 recommends that the Code of Conduct be amended to specify that it applies to activities involving parliamentary friendship groups. (This follows on from Recommendation 6 which recommends that the Presiding Officers amend the Parliamentary Friendship Groups Policy to include a requirement that members keep each other informed of all parliamentary friendship group activities).

³³ Parliamentary Remuneration Tribunal, 'Annual Determination: Report and determination of salary and additional entitlements for the Members of the Parliament of New South Wales pursuant to the *Parliamentary Remuneration Act 1989*', 15 June 2023 (as amended 14 July 2023), pp 73; 105.

Rationale for the recommendation

- 2.56** ICAC described how Mr Maguire used a parliamentary friendship group 'as a convenient guise' to pursue his private interests, in spite of clear prohibitions against such use in the policy and without disclosing these interests to other members of the group.³⁴
- 2.57** ICAC noted that members of parliamentary friendship groups are still subject to relevant codes of conduct. They recommended that language in the policy and handbook requiring members to 'be mindful' of the Code should be strengthened, and that disclosure requirements be made clearer. In order to 'remove any doubt', ICAC also recommended that the Code of Conduct be amended so that it states explicitly that the Code applies to the activities of parliamentary friendship groups.³⁵

Committee view

- 2.58** The committee notes that the Presiding Officers have undertaken to review the Parliamentary Friendship Groups policy in order to respond to Keppel recommendations directed specifically to them, and this includes clarity in the Policy that the Members' Code of Conduct applies to the activities a member undertakes as part of a Friendship Group.
- 2.59** The committee understands misuse of positions held in the Asia Pacific Friendship Group to pursue commercial activity was a factor in the activities investigated in Operation Keppel. While the activities of these Friendship Groups provide an excellent opportunity for members across party lines to meet and support areas of interest, there is some merit in the ICAC recommendation to amend the Code to refer specifically to these groups. There are over 70 Friendship Groups approved in the current Parliament so far, with a number of these covering areas where there are potential commercial interests which could interact with group members.
- 2.60** As with earlier recommendations, an amendment to the Code would require the Legislative Assembly to agree to a similar change. The committee considers clause 1 – Purpose of the Code – is the appropriate place to insert a very brief statement that the Code applies to activities in Parliamentary Friendship Groups as to other aspects of members' public life.

Recommendation 5

That, subject to the concurrence of the Legislative Assembly, clause 1 of the Members' Code of Conduct be amended to acknowledge that the Code extends to activities of Parliamentary Friendship Groups.

³⁴ Operation Keppel vol 2, p 337.

³⁵ Operation Keppel vol 2, p 337.

Code of Conduct: Identifying breaches

Current provisions

- 2.61** The Members' Code of Conduct sets out the responsibilities of members in various ways. The language of the Code varies from blanket prohibitions on certain conduct, such as improperly using influence to affect decisions, to expressions of what members *ought* not do, such as 'the use of public resources should not knowingly confer any undue private benefit ...'. Additionally, the provisions in relation to the use of public resources, conflicts of interests, and gifts, confer positive obligations on members to take reasonable steps to ensure that these issues are managed and disclosed appropriately.
- 2.62** Enforcing the code is generally a matter for the relevant House, though a substantial breach may constitute corrupt conduct and therefore come within ICAC's jurisdiction.
- 2.63** When the Independent Complaints Officer (ICO) position was established in 2022, the Legislative Council Code was amended to clarify that a minor breach may be the subject of an investigation. Section 9 of the Legislative Council Code of Conduct now provides:

Upholding the Code

Members have a duty to cooperate fully with any processes established under the authority of the House concerning compliance with this Code.

Breaches of this Code may result in actions being taken by the House in relation to the Member. A minor breach of this Code may be the subject of an investigation by the Independent Complaints Officer. A substantial breach of the Code may constitute corrupt conduct for the purposes of the Independent Commission Against Corruption Act 1988.

Broderick recommendation

Broderick Review Recommendation 2.2

Power imbalance and accountability

The Parliamentary Privilege and Ethics Committee (LA), and the Privileges Committee (LC) should clarify the conduct of an MP that can be investigated as a potential breach of the Code of Conduct.

Rationale for the recommendation

- 2.64** The Broderick Review found that 'there are many areas where substantial change is required, both to address the cultural drivers of bullying, sexual harassment and sexual misconduct and to improve pathways to reporting and support'.³⁶ Recommendation 2.2 is part of a number of

³⁶ Broderick Review, p 74.

recommendations in the framework for action that aim to 'address the cultural factors that contribute to bullying, sexual harassment and sexual misconduct in parliamentary workplaces'. In that section, the review notes that bullying, sexual harassment and sexual misconduct 'are the product of a range of cultural factors' that include unequal distributions of power and that access to reporting and support, as well as strong action to shift cultural dynamics, are required.³⁷ Recommendation 2.2 calls for clarity around what sort of conduct could constitute a potential breach of the Code and trigger an investigation.

Previous consideration by the Privileges Committee

- 2.65** The committee considered this recommendation as part of its 2022 review of the Code of Conduct. The committee's position was that conduct that can be investigated as a potential breach of the Code is already clear, as amendments to the Legislative Council Code made in March 2022 have clarified that behaviour constituting bullying or harassment is a breach of the Code that can be investigated by the Independent Complaints Officer. The committee noted further that the ICO's protocol, which was yet to be tabled at the time of the Broderick Review, would further clarify how the ICO will investigate matters.
- 2.66** The 'Independent Complaints Officer Protocols' document, tabled in November 2022, provides more detailed guidance on complaints to the Independent Complaints Officer, including what conduct can be investigated by the ICO, who can make a complaint, the form of complaints, and confidentiality.³⁸

Committee view

- 2.67** The committee believes the changes made to the Legislative Council Code of Conduct in 2022 have addressed this recommendation of the Broderick Review by the inclusion of bullying and harassment as a breach of the Code by the insertion of the new Clause 10, which reads:

Treatment of staff and others

A Member must treat their staff and each other and all those working for Parliament in the course of their parliamentary duties and activities with dignity, courtesy and respect, and free from any behaviour that amounts to bullying and harassment.

- 2.68** When read together with clause 9, it is clear that for members of the Legislative Council bullying and harassment can be investigated as a breach of the Code. This then leads into the role of the Independent Complaints Officer, which is the subject of another current inquiry by the committee.³⁹

³⁷ Broderick Review, p 76.

³⁸ Independent Complaints Officer Protocols, tabled 17 November 2022: <https://www.parliament.nsw.gov.au/tp/files/83575/ICO%20Protocols%20-%2017%20November%202022.pdf>

³⁹ *LC Minutes*, 22 August 2023, p 374.

Code of Conduct: Bullying, sexual harassment and sexual misconduct

Current provisions

- 2.69** As indicated above, the Legislative Council Code of Conduct was amended in March 2022 to expressly prohibit bullying, harassment and sexual harassment. Section 10 also includes commentary that members are also subject to section 22(b) of the *Anti-Discrimination Act 1977* in relation to sexual harassment.

Broderick recommendation

Broderick Review Recommendation 3.1

Codes of Conduct

- (a) The Parliamentary Privilege and Ethics Committee (LA), and the Privileges Committee (LC) should review and strengthen the Members' Code of Conduct in each House to address bullying, sexual harassment and sexual misconduct more explicitly. This should include both explicitly prohibiting these behaviours; stronger accountability arrangements; proportional penalties for breach of the Code; and noting the positive obligation on MPs to create and uphold a safe workplace culture.

- 2.70** This recommendation calls for the Code to address bullying, sexual harassment and sexual misconduct more explicitly. According to the Broderick Review, the Code should explicitly prohibit these behaviours and place a positive obligation on members to create and maintain a safe workplace culture. The recommendation also calls for 'stronger accountability arrangements' and 'proportional penalties' for breaches. Alongside this recommendation, the report recommends further at 3.1(b) that the Parliamentary Executive Group review and update the Code of Conduct for Members' staff (2018) with particular attention to key barriers to reporting.

Rationale for the recommendation

- 2.71** Broderick Review Recommendation 3.1(a) is part of a suite of recommendations aimed at creating an 'enabling policy environment'. The Broderick Review noted that 'policy frameworks are a practical expression of an organisation's values and priorities and send powerful signals about the behaviours that are considered appropriate in that workplace'.⁴⁰ In this context, the Broderick Review identified a number of key gaps in the policy framework and pointed to the 'silence regarding harmful behaviours in the Codes of Conduct' as of particular concern.⁴¹

⁴⁰ Broderick Review, p 77.

⁴¹ Broderick Review, p 77.

Previous consideration by the Privileges Committee

- 2.72 As noted above, the Privileges Committee considered the Broderick Review recommendations relating to the Code as part of its 2022 Review of the Code of Conduct. In relation to this recommendation, the committee was satisfied that the Code already addresses bullying, sexual harassment and sexual misconduct as a result of amendments made in 2022. The committee noted that regarding the issue of penalties for breaches of the Code, there are established limitations at law on the capacity of both Houses to punish members which make this part of the recommendation impossible to implement unless the Parliament passed privileges legislation to overturn the common law position.⁴²

Code of Conduct: Safe reporting

Current provisions

- 2.73 Section 10 of the Legislative Council Code of Conduct for Members now provides that members must treat all staff with dignity and respect. The Code of Conduct does not explicitly provide protection from retribution for those reporting a breach of the Code. However as noted above, section 9 'Upholding the Code' sets out the different mechanisms for investigation of a breach of the Code, which includes complaints to the Independent Complaints Officer. Confidential reporting to the ICO is provided for in the resolution establishing the position and the ICO protocol, and is designed to ensure safe reporting by complainants.

Broderick recommendation

Broderick Review Recommendation 5.5

Protection from retribution

The Parliamentary Privilege and Ethics Committee, and Privileges Committee, should ensure that revisions to Codes of Conduct include provisions that protect survivors and witnesses from retribution for making a report.

- 2.74 This recommendation falls under a suite of recommendations that aim to 'create a safe reporting environment that is human-centric and trauma-informed'. Recommendations in this section include the establishment of an independent reporting body and a wholesale review of the Independent Complaints Officer position.

⁴² Report No. 90 of the Privileges Committee, 'Review of Members' Code of Conduct (2022)', November 2022, p 8.

Rationale for the recommendation

- 2.75** The Broderick Review highlighted the importance of a safe reporting environment, both for those who seek support and for the organisation as a whole. The report noted that confidence in the reporting systems at NSW Parliament is extremely low, in part due to variable knowledge about reporting pathways. More fundamental, however, the report argued, are concerns that staff, in particular members' staff, will suffer retribution for making a report. The Broderick Review identified a 'clear need' to strengthen existing mechanisms and expand reporting options for staff. It also emphasised the importance of confidentiality in preventing retribution, stating: 'Concern about retribution in turn drives concern about confidentiality'.⁴³

Previous consideration by the Privileges Committee

- 2.76** In its 2022 Review of the Code of Conduct the Privileges Committee acknowledged 'it has a role in relation to some aspects of these issues' but questioned whether amending the Members' Code of Conduct would be the most appropriate way to achieve the recommendation's aims.⁴⁴

Committee view

- 2.77** In response to the Broderick report substantial funding has been provided to the Parliament to implement the recommendations, while concurrent with this the position of the Independent Complaints Officer has been established to receive complaints regarding member behaviour and also to make referrals of complaints to appropriate agencies if they fall outside the jurisdiction of that officer. When the recommendation was made this reporting pathway was not in operation. Confidentiality of complaints is a cornerstone of the framework for the Independent Complaints Officer and the investigation protocol which has been tabled.⁴⁵ The committee is not aware of any examples to date of retribution faced by staff who have complained to the Independent Complaints Officer, but it is acknowledged that the scheme has not been operating for long and is the subject of a review by the committee at present which may reveal more. At present the Privileges Committee could act as a forum should these issues arise in the context of complaints of action taken by members, and it is difficult to see what change could be made to the Code which would make any practical enhancement to what remains a difficult area because of the power imbalance often involved.

Code of Conduct: consistency between Houses

- 2.78** In response to the ICAC operations Witney and Keppel there are several changes suggested in this report to either the clauses of the Code or to the accompanying commentary for clauses. As was noted in the review of the Code by the Privileges Committee in November 2022, the Legislative Council Code current has a clause 10 which does not appear in the Legislative

⁴³ *Broderick Review*, p 80.

⁴⁴ Report No. 90 of the Privileges Committee, 'Review of Members' Code of Conduct (2022)', November 2022, p 8.

⁴⁵ *Minutes*, NSW Legislative Council, 17 November 2022, p 3953.

Assembly Code, as well as a reference in clause 9 to the role of the Independent Complaints Officer.

- 2.79** The committee believes having a clause which requires members to treat each other and all others in the parliamentary community with respect is essential to retain as a standard of expected behaviour in the Code, even at the expense of inconsistency between the two Codes. However it is not desirable for the Codes to diverge too much further: while the roles of both Houses differ the basic expectations of members regarding their duty to the public interest is not so far apart that they need to operate under separately expressed standards.
- 2.80** For that reason each of the recommendations for changes to the Code in this report have been expressed as being contingent on agreement of the Legislative Assembly. This should be a matter for further discussion between the two committees. If amendments to the Code are to be made they should await the completion of the inquiries into the draft regulation on members' disclosures, as this inquiry may lead also to minor changes to the Code or its commentary.

Recommendation 6

That the Committee chair bring to the attention of the Legislative Assembly Standing Committee on Privileges and Ethics recommendations 1, 2, 4 and 5 and seek agreement on a consistent Code of Conduct in any future amendments.

Chapter 3 Training and professional education for members

The committee considered a number of recommendations made by the ICAC and the Broderick Review to improve training and professional education for members. In Operation Witney, ICAC recommended that training and guidance to members be updated with respect to specific issues – improper exercise of power, undue influence, and improper intermingling of public resources. In Operation Keppel, ICAC expanded on these, recommending that a permanent ongoing professional education program for members be introduced and specifying a number of issues this program should cover. Operation Keppel, as well as the Broderick Review, also considered uptake of training, with ICAC recommending participation in training be incentivised and the Broderick Review recommending it be mandatory.

Training and professional education: Current offerings

- 3.1 A number of training programs and resources are available to members setting out their obligations under the Code of Conduct and ethical behaviour more generally. The Office of the Clerk runs an induction program for new members at the start of each parliament, and for members filling a casual vacancy. The Clerk periodically provides general advice to all members, such as reminders about their disclosure obligations, as well as ad hoc advice on request. Additionally, members can access ongoing advice and guidance from the Parliamentary Ethics Adviser, as well as resources and an advisory service on entitlements available from the Department of Parliamentary Services (DPS).
- 3.2 In terms of written resources, guidance materials are available on the Parliament's intranet, such as the *Members' Guide*, *Members' Entitlements Handbook*, and various guidelines and policies. DPS hosts a range of eLearning modules which members are strongly encouraged to complete, including modules for new members on the Code of Conduct, electoral funding and disclosure laws, and members' entitlements. DPS is also currently rolling out eLearning modules on public interest disclosures and holding sessions on 'Managing Challenging Interactions', available to all members and staff.
- 3.3 In the last Parliament, Speaker O'Dea promoted a "Leadership Development Showcase", hosting seminars for members at which various organisations such as Next25⁴⁶, the McKinnon Institute for Political Leadership⁴⁷ and the Cranlana Centre for Ethical Leadership⁴⁸. Each of these organisations offer ethical leadership courses targeted at political and public sector leaders, although none of these are integrated into a formal program of training for members of the NSW Parliament.
- 3.4 One of the most important general sources of career development and training for members is the Commonwealth Parliamentary Association (CPA), with the NSW Branch a particularly active member. The ambit of courses and conferences offered by the CPA is much wider

⁴⁶ <https://www.next25.org.au/>

⁴⁷ <https://mckinnoninstitute.org.au/>

⁴⁸ <https://cranlana.org.au>

than those addressing ethical values, but in its more comprehensive courses on governance provides an opportunity for members to gain insights based upon benchmarks with other effective parliaments.⁴⁹ While some courses are offered online, when overseas travel is involved only limited places are available to NSW members, leading to a limitation on member participation for many others

3.5 Since June 2023, the NSW Parliament has run a series of professional development seminars. These are voluntary seminars that take place during lunchtime on Wednesdays when the Houses are sitting – given the many competing demands on members’ time this is the most likely scheduling to maximise participation. Each seminar is presented by a different agency, with recent presenters including the Chief Commissioner of ICAC, Cyber Security NSW, the NSW Ombudsman, Parliamentary Counsel's Office, the NSW Information and Privacy Commission, and the Auditor-General. While these seminars are directed at members, they are open to all staff at Parliament and many of them are available to attend virtually and are recorded. Staff are invited and reminded via email and the President has reminded members each week via an announcement in the House.

3.6 In addition, the Privileges Committees of both Houses have educative functions and occasionally provide advice to and conduct seminars for members. For instance the Privileges committee in March 2024 held an information session for members of the Legislative Council on the new draft regulation on members disclosures (the subject of a separate current inquiry). The Independent Complaints Officer can also assist with educating members about their obligations under the Code of Conduct and disclosures regulation.

Training and professional education: ICAC recommendations

Operation Witney Recommendation 6

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly develop and/or update specific training and guidance material about the proper and improper exercise of power by members and undue influence, in line with findings made by this investigation.

Operation Witney Recommendation 7

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly develop and/or update specific training and guidance material about the improper intermingling of public resources with personal interests, in line with findings made by this investigation.

⁴⁹ For instance the Parliamentary Academy courses [The CPA Parliamentary Academy \(cpahq.org\)](https://cpahq.org), or online resources such as CPA ‘Standards for Codes of Conduct for Members of Parliament and the Parliamentary Workplace’.

Operation Keppel Recommendation 10

That the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments devise a permanent ongoing professional education program for members.

Operation Keppel Recommendation 18

That the NSW Government, the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments ensure that the induction and ongoing education programs for ministers and members address the management of political interests when exercising public power. For example, members should be aware that public power to appoint to a public office must be exercised for a public purpose, not for a private or political purpose. Further, a public power cannot be exercised in relation to the location of a public facility because it will assist the re-election of a party member, rather than it being the proper place for it.

- 3.7** In Operation Witney, ICAC recommended that training and guidance material be updated with respect to particular issues: improper exercise of power and undue influence, and improper intermingling of public resources. In Operation Keppel, ICAC reiterated these recommendations and listed a number of obligations of public officials that should be covered as part of the induction of new members in addition to a permanent ongoing professional education program.
- 3.8** The ICAC submission to this inquiry also recommends that the committee consider Recommendation 11 of Operation Keppel:

Operation Keppel Recommendation 11

That the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments ensure that the existing induction program and the ongoing education development program for members address the obligations and duties of elected public officials, including (but not limited to):

- a) principles and values that guide members in performing their public role
- b) disclosing interests via registration
- c) how to avoid, resolve and manage a conflict of interest
- d) guidance on secondary employment or outside business interests
- e) disclosing gifts and benefits
- f) the prohibition on improper influence
- g) guidance on the use of public resources
- h) guidance on the proper use of confidential information

- i) enforcement mechanisms
- j) risks and processes relating to lobbying
- k) restrictions on post-parliamentary careers
- l) procedures for reporting suspected corrupt conduct.⁵⁰

3.9 The Committee recognises this is a significant recommendation. However as indicated in Chapter 1, the committee is also undertaking an inquiry into the draft Constitution (Disclosures by Members) Regulation. The specific issues referred to in this recommendation are highly relevant to the content of that inquiry and are best dealt with in that context.

Training and professional education: Rationale for the recommendations

3.10 In Operation Witney, ICAC found that Mr Sidoti 'used his position to try and influence the exercise of the official functions of another sphere of government in pursuit of his private interests'.⁵¹ As well as attempts to improperly influence local councillors, ICAC were concerned about Mr Sidoti's use of public resources, such as his parliamentary email address and electorate office, to pursue his private interests. In ICAC's opinion, additional induction, as well as ongoing training and guidance about the topic, 'would assist members of Parliament in differentiating between improper influence and the proper exercise of power and privileges as well as the use of publicly funded resources bestowed on them by virtue of their public office'.⁵²

3.11 Operation Keppel Recommendation 11 reiterated and developed the recommendations of Operation Witney by specifying the various obligations and duties of public officials that ongoing training and education for members should include. Building on the recommendations in Operation Witney, these include improper influence and the use of public resources, but also includes (but is not limited to) confidential information, disclosure obligations, the use of gifts and enforcement mechanisms, as well as how to avoid, resolve and manage a conflict of interest.

3.12 In Operation Keppel, ICAC argued that training and guidance available to members was insufficient. It noted the lack of formal, ongoing professional education and training programs and the voluntary nature of existing options. Given the weaknesses identified with the existing training options for members, ICAC proposed that an expanded professional education program should be considered to support 'a culture of ethical behaviour' for elected public officials and their staff.⁵³

3.13 Failures to disclose interests and report suspected wrongdoing were a particular issue in Operation Keppel, where ICAC found that Ms Berejiklian failed to discharge her duty to report suspicions of corrupt conduct and, ICAC suggested, a lack of reporting from others

⁵⁰ Submission 1, The Independent Commission Against Corruption, p 24.

⁵¹ Operation Witney, p 179.

⁵² Operation Witney, pp 180-181.

⁵³ Operation Keppel vol 2, p 343.

allowed Mr Maguire's conduct to continue for six years. ICAC noted evidence that Mr Maguire had received formal advice and attended Department of Premier and Cabinet briefing sessions but did not recall receiving this training. Similarly, a number of public officials who gave evidence to the investigation had 'scant, if any' recollection of receiving training regarding the codes of conduct and gave varying answers to questions about how wrongdoing should be reported and managed.⁵⁴

- 3.14** Calling for effective education programs to provide guidance on the codes of conduct and members' obligations, ICAC argued that 'the values and conduct embodied in codes of conduct need to be integrated and implemented and become second nature'.⁵⁵
- 3.15** While acknowledging that 'training and professional education might not affect the behaviour of some individuals who intentionally disregard and circumvent their obligations', ICAC nevertheless noted that many factors can contribute to failures by public officials to manage private interests, and that work culture and expectations of others are particularly important. In this context, ICAC made a number of recommendations 'aimed at strengthening training and education at NSW Parliament to drive an organisational culture that embraces ethical principles and values'.⁵⁶
- 3.16** Operation Keppel Recommendation 18 built further on the recommendations of Operation Whitney, recommending that education and training programs for members specifically address the management of political interests when exercising public power. The recommendation provides examples about the sorts of things members should be aware of when exercising public power, such as that public power must not be exercised for a private or political purpose, or to assist in the re-election of a party member.
- 3.17** Recommendation 18 particularly arises from issues outlined in Operation Keppel about by-election commitments. ICAC noted that, given the evidence received in respect of that issue, members and Ministers would benefit from additional training in relation to the management of political objectives when exercising public power. According to ICAC, as this 'is a significant corruption risk for elected public officials', it should be the subject of ongoing professional education.⁵⁷

Training and professional education: Progress on implementation of ICAC recommendations

- 3.18** As noted above, a number of professional development seminars have been held for members in 2023 and a further program is underway for 2024. While clear progress on this recommendation has been made, it should be noted that ICAC has recommended the program be permanent and ongoing.

⁵⁴ Operation Keppel vol 2, p 481.

⁵⁵ Operation Keppel vol 2, p 343.

⁵⁶ Operation Keppel vol 2, pp 343-344.

⁵⁷ Operation Keppel vol 2, p 349.

- 3.19** In terms of guidance material regarding the proper and improper exercise of power by members, undue influence and intermingling of public resources with personal interests, the 2020 amendments to the Members' Code of Conduct provide greater detail in relation to members' obligations, and further guidance is also provided in the *Members' Guide* (2023). As indicated by this committee's recommendation in Chapter Two, adding detail to the commentary of clause 3 of the Code of Conduct will also assist in guiding members regarding use of these resources and entitlements.
- 3.20** The Operation Witney recommendations were considered by the Privileges Committee as part of its 2022 Review of the Code of Conduct. The committee noted its support for these recommendations and, accordingly, recommended that specific training and guidance material about the proper and improper exercise of power by members and undue influence, and about the improper intermingling of public resources with personal interests, be updated in accordance with ICAC's findings in Operation Witney.
- 3.21** The newly appointed Chief Commissioner has been particularly active in engaging with members of both Houses, including meeting with this committee. The foreword to the ICAC's most recent annual report states:

Pursuant to the strategic plan we are proactively targeting key areas of concern for corruption risk. We acknowledge that more needs to be done to communicate the lessons learnt particularly in areas of high risk. One example is our work with new and departing members of Parliament (MPs) leading to and following the 2023 NSW State Election. In this respect we engaged positively with parliamentary privileges committees and produced a series of publications and education sessions which sought to reinforce key messages.⁵⁸

- 3.22** The extensive activity of the ICAC over the last 18 months is outlined in its submission to this inquiry:

To this end, the Commission has initiated a multi-pronged approach to assist with training and education for members of Parliament, including:

- ..., working with departing members of Parliament leading up to the 2023 NSW State Election
- delivery of a presentation by the Chief Commissioner as part of NSW Parliament's induction program for new parliamentarians on 26 April 2023, including a pre-recorded presentation
- publication of an Annotated Code of Conduct for Members to assist members to know the standards of acceptable behaviour and avoid conduct that could amount to a finding of serious corrupt conduct. It provides references to relevant past Commission reports and other publications that relate to specific topics within the current Members' Code of Conduct
- seminar briefing of ministers as part of ministerial induction, including the topic of risks for members of Parliament

⁵⁸ As quoted in Submission 1, Independent Commission Against Corruption, p 26.

- a presentation by the Chief Commissioner to all members and staff on 11 October 2023 at NSW Parliament, as part of the Parliament House Member Development series
- separate briefings being provided by the Commission, at the request of political party leaders and ministers⁵⁹

Committee view

- 3.23** The committee believes there has been significant progress in responding to recommendation 6 of Operation Witney. As indicated by this committee's recommendation in Chapter Two, adding detail to the commentary of clause 3 of the Code of Conduct will also assist in guiding members regarding use of these resources and entitlements. With this, updates to the Members Guide (which will need to be further updated once a new regulation on members' disclosures is finalised) and other activity the committee believes recommendation 7 of Operation Witney has also been largely been met. It is recognised that this is an ongoing process.
- 3.24** In regard to Keppel recommendation 10 the committee believes the ongoing program of lunchtime sessions which has been implemented since the 2023 election has potential to evolve into an ongoing professional education program for members, but much further work will need to be undertaken to reach that goal. A constant issue will be member availability with all the competing demands for their time on sitting days – committee meetings, community events hosted at Parliament, party meetings and so on.
- 3.25** Finally the committee would like to commend the Chief Commissioner for his notable efforts to engage with members of both Houses since his appointment. The issue of making use of public power for a political purpose being potentially in conflict with the public interest, as covered by recommendation 18 from Operation Keppel, is a particularly nuanced issue, which he has raised in several forums. The Committee believes the ICAC is the best placed to present and elaborate this principle in future training.

Recommendation 7

That the Privileges Committee and the Presiding Officers work closely with the ICAC in preparing future induction materials and education programs for members which specifically address the management of political interests when exercising public power.

⁵⁹ Submission 1, Independent Commission Against Corruption, p 27.

Training and professional education: Bullying, sexual harassment and sexual misconduct

3.26 As noted above, bullying, harassment and sexual harassment are breaches of section 10 of the Legislative Council Members' Code of Conduct. These issues are also canvassed in the induction program for new members and in the Members' Guide.

Broderick Review Recommendation 4.1

Provision of best practice training on bullying, sexual harassment and sexual misconduct

- (a) PEG should commission and resource a revised program of training that is highly interactive, delivered by an independent expert and in line with best practice adult education. This should include: assessing the cohort's learning needs and tailoring the training to those needs and key knowledge gaps (eg tailored training for MPs and for senior staff in each MP's office regarding their leadership and management responsibilities); encompassing a wider range of learning styles (including scenarios and storytelling); and requiring follow up discussions and action planning in each office as a result of key learnings coming from the training.
- (b) As part of this suite of training, DPS should explore options for MPs and senior staff to hear survivors' stories in a psychologically safe environment, in order to deepen their understanding of the lived experience of those who have suffered harm in their workplace.

3.27 This recommendation calls for dedicated best practice training on bullying, sexual harassment and sexual misconduct. According to the recommendation, this training should, if possible, include firsthand accounts from survivors, in order to deepen members' understanding of the impact of these behaviours.

3.28 The Broderick Review noted that, while members and staff have several training options available, these could be strengthened. Training on harmful behaviours, along with the policy framework and support options, are currently embedded in the members' induction and annual training program. The Broderick Review recommended that, instead, these training sessions be redesigned to be more appropriate, effective and tailored to each separate cohort.

3.29 This recommendation can be read in the context of the Broderick Review recommendations around changes to leadership and policy frameworks given that, as noted in the report, 'policy frameworks need a range of supports to become a part of the fabric of an institution'.⁶⁰ Capability initiatives such as training 'play a key role' in setting expectations, increasing knowledge and building skills to respond to situations.

⁶⁰ Broderick Review, p 78.

Committee view

- 3.30** Subsequently to the review, the Department of Parliamentary Services has engaged a professional trainer previously used to train Ministers to deliver the “RISE” training to deliver case study-based workshops tailored to the needs of the parliamentary environment. This training has consisted of workshops on Respect in the Workplace, offered to members, members staff and parliamentary officers, and workshops on Trauma informed responding, aimed at those in leadership positions, including members. The training will continue to be offered throughout 2024.
- 3.31** The Committee believes this training has provided the opportunity for members which addresses the Broderick Review recommendation.

Training and professional education: Incentivising participation

- 3.32** Training and professional education programs are currently voluntary for members. Both ICAC in Operation Keppel and the Broderick Review discussed options for incentivising participation in training.

Operation Keppel Recommendation 12

That the NSW Parliament should incentivise participation in education, for example, by developing standards and publishing attendance records.

Broderick Review Recommendation 4.3

Access to and uptake of training

- (a) PEG should explore options for making training on preventing and responding to bullying, sexual harassment and sexual assault, as well as employer responsibilities, mandatory for all who routinely work in Parliamentary workplaces, including MPs.

The Houses should explore options for making the training mandatory for MPs.

- 3.33** In suggesting an expanded professional education program (see discussion above), ICAC noted that the NSW Parliament 'could mandate staff training and promote members' participation in educational events by publishing minimum expectations for attendance, and by tracking, recording and publishing attendance records'.⁶¹ It noted that that Commonwealth Parliament had established a register of members' training that is publicly accessible.⁶²
- 3.34** Similarly, the Broderick Review noted that 'access to training can be challenging for some cohorts, particularly Members of Parliament and staff working for Members'.⁶³ It

⁶¹ Operation Keppel vol 2, p 343.

⁶² Operation Keppel vol 2, pp 342-3.

⁶³ Broderick Review, p 79.

recommended that the parliament explore options for mandatory provision of training as part of a range of recommendations aimed at 'inform[ing], empower[ing], support[ing] and encourage[ing] everyone to speak up and take action on bullying, sexual harassment and sexual assault'.⁶⁴ Alongside this recommendation, the review also recommended that completion of training should be monitored and a communications strategy be developed to increase awareness of policy expectations and reporting pathways and options.

- 3.35** In correspondence to the committee from the chair of the Parliamentary Advisory Group (PAG) on bullying and harassment, the recommendations of the Broderick Review to make training mandatory were supported: specifically that the RISE 1 and RISE 2 training should be mandatory for all members to complete within six months of being elected, and repeated every two years.⁶⁵ The PAG also recommends that the Presiding Officers should investigate removing statutory barriers to mandating training for all Members of Parliament, as has occurred in some other jurisdictions.⁶⁶

Committee view

- 3.36** The Committee believes that the Broderick recommendation 4.1 has been implemented by the Department of Parliamentary Services through the RISE training offered to members and staff, which will continue to be offered. This training satisfies the various criteria outlined in the recommendation.
- 3.37** However in many respects Broderick recommendation 4.3 and Keppel recommendation 12 are closely connected to this recommendation, although noting that the ICAC's recommendation refers to training generally, whereas the Broderick review was focussed on bullying and harassment. The RISE training will have little impact if members do not take up the opportunities offered. Effectively the two recommendations offer two models of how to address this – either the mandatory approach of Broderick or the “incentivisation” approach suggested by the ICAC of reporting on attendance.
- 3.38** Currently there are mandatory training requirements imposed on parliamentary staff and members' staff, for matters such as work health and safety requirements and making a public disclosure. Apart from attendance at initial inductions these are generally delivered through online learning modules, with reminders sent to all staff and to their managers when they yet to complete their requirements.
- 3.39** The committee recognises making training mandatory for members is more problematic, particularly the issue of enforcement for non-compliance. While training has been made mandatory at a Commonwealth level there have been members who have announced publicly that they do not intend to undertake the training.

⁶⁴ Broderick Review, p 78.

⁶⁵ Dr Juliet Bourke, chair, Parliamentary Advisory Group, correspondence to committee, 22 July 2024, p 1.

⁶⁶ Dr Juliet Bourke, chair, Parliamentary Advisory Group, correspondence to committee, 22 July 2024, p 1.

- 3.40** For that reason the committee believes the ICAC approach is a more pragmatic response. Reporting on member attendance at training in annual reports of each House Department or in the DPS annual report will provide an insight into the participation of members in such training. While not wishing to go as far as a “name and shame” approach, if reported numbers were particularly low overall it would indicate a need for leaders of major parties to take further steps to ensure their members made greater use of the training opportunities available.

Recommendation 8

That the Department of Parliamentary Services in its annual report provide the overall numbers of members from each House who have undertaken training offered on bullying, harassment and sexual assault.

That the Department of the Legislative Council in its annual report provide details of numbers of members attending training on code of conduct and related ethical issues.

Additional Broderick Review recommendations

- 3.41** A number of additional recommendations from the Broderick Review relating to the Independent Complaints Officer will be considered by the Privileges Committee as part of its review of the Independent Complaints Officer system currently underway. These include recommendations relating to:
- reviewing complaints made to the ICO in the first year: recommendation 5.3(b)
 - establishing an independent reporting body: recommendation 5.1
 - developing principles and protocols for external investigations: recommendation 5.3(c)
 - redesigning reporting pathways: recommendation 5.4
 - auditing activities taken by members to create safe work environments: recommendation 6.2.

Appendix 1 Submissions

No.	Author
1	NSW Independent Commission Against Corruption
2	Parliamentary Ethics Adviser

Appendix 2 Minutes

Minutes no. 3

Monday 21 August 2023, 3.32 pm

Room 1254, Parliament House, Sydney and via videoconference (Webex)

1. Members

Mr Lawrence (*Chair*)

Mr Fang (via videoconference)

Ms Higginson

Ms Merton (substituting for Mrs Maclaren-Jones)

Mr Murphy

Mr Nanva (via videoconference)

Mr Primrose

Mr Roberts

Secretariat in attendance: Stephen Frappell, Sharon Ohnesorge, Velia Mignacca, Madeleine Dowd, Monica Loftus, Maddie Hollins.

2. Previous minutes

Resolved on the motion of Mr Murphy: That draft minutes no. 2 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 29 June 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, to Chair, regarding the Commission's report "Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others: Operation Keppel", citing eight recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 7 July 2023 – Letter from the President of the Legislative Council to the Chair of the Committee referring terms of reference for a new inquiry into the recommendations of the ICAC arising out of Operation Keppel
- 12 July 2023 – Email from Federal Agent Georgia Gallagher, Special Investigations, Australian Federal Police, to Acting Deputy Clerk, regarding the report on the *Execution of search warrants by the Australian Federal Police No. 4*, including various annexure attachments
- 17 July 2023 – Letter from the President of the Legislative Council to the Chair regarding the recommendations of the Broderick Review
- 26 July 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption to the Chair regarding the Commission's report "Investigation into the conduct of local member for Drummoyne: Operation Witney", citing seven recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 26 July 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption to the President of the Legislative Council, regarding the Commission's report "Investigation into the conduct of local member for Drummoyne: Operation Witney", citing seven recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 26 July 2023 – Letter from Mr Dennis Miralis, Partner, Nyman Gibson Miralis to the Chair regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5

- 27 July 2023 – Letter from The Hon Shaoquett Moselmane to the Chair regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 1 August 2023 – Email from Lara Khider, Senior Solicitor, Nyman Gibson Miralis, to Chair - regarding decision to not provide a submission to the inquiry into the execution of search warrants by the Australian Federal Police No. 5.

Sent:

- 3 July 2023 – Letter from the Chair to the President of the Legislative Council regarding correspondence from ICAC in relation to its report entitled "Operation Keppel", requesting that the President refer terms of reference to the Privileges Committee
- 18 July 2023 – Letter from the Chair to Mr Dennis Miralis, Partner, Nyman Gibson Miralis regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 18 July 2023 – Letter from the Chair to The Hon Shaoquett Moselmane regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 18 July 2023 – Letter from the Chair to The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, regarding the ongoing educative role of the Privileges Committee in relation to ethical standards for members of the Legislative Council and the opportunity to address this further as part of a new inquiry referred to the Privileges Committee responding to the Report on Operation Keppel.

4. Inquiry into the execution of search warrants by the Australian Federal Police No. 5**4.1 Correspondence**

The committee noted that:

- by email dated 12 July 2023, the committee received advice from Federal Agent Georgia Gallagher, Special Investigations, Australian Federal Police, regarding the page numbering issue raised by the committee in Report No 4 on this matter. The correspondence included annexure attachments in relation to the discrepancies in page numbers
- by correspondence dated 18 July 2023, the Chair wrote to Mr Dennis Miralis, Partner, Nyman Gibson Miralis, acting as legal counsel for Mr Zhang, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5 and claims of parliamentary privilege. The Chair invited Mr Miralis to make a submission by Tuesday 25 July 2023
- by correspondence dated 18 July 2023, the Chair wrote to The Hon Shaoquett Moselmane, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5 and claims of parliamentary privilege. The Chair invited Mr Moselmane to make a submission by Tuesday 25 July 2023
- by correspondence dated 26 July 2023, Mr Dennis Miralis, Partner, Nyman Gibson Miralis, acting as legal counsel for Mr Zhang, wrote to the committee clarifying the scope of the parliamentary privilege claim on behalf of Mr Zhang
- by correspondence dated 27 July 2023, The Hon Shaoquett Moselmane wrote to the Chair, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5, citing material over which he maintained a claim of parliamentary privilege.

Resolved, on the motion of Mr Roberts: That all correspondence related to the inquiry into execution of search warrants by the Australian Federal Police No. 5 remain confidential and available for inspection by members in the Clerk's Office on request.

4.2 Chair's draft report

Resolved, on the motion of Mr Murphy: That the committee note that the Chair's draft report has been circulated to members less than seven days prior to the report deliberative.

The Chair submitted his draft report entitled "Inquiry into the execution of search warrants by the Australian Federal Police No. 5", which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That:

- the draft report be the report of the committee, subject to an amendment to be drafted by the secretariat, circulated by the Chair and agreed to via email, regarding the return of privileged material by the AFP
- the committee present the report to the House on Wednesday 23 August 2023
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee.

5. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

The committee noted that:

- by correspondence dated 29 June 2023, the Chief Commissioner of the Independent Commission Against Corruption (ICAC) wrote to the Chair of the Committee in relation to the report "Investigation into the conduct of then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)" and a number of recommendations for reform relevant specifically to the Privileges Committee
- by correspondence dated 3 July 2023, the Chair of the Committee wrote to the President requesting a referral to inquire into the matters contained in the Chief Commissioner's letter
- by correspondence dated 7 July 2023, the President responded to the Chair's letter, granting the request to refer the matters for inquiry and providing terms of reference for the establishment of the inquiry, with a reporting date of the last sitting day in 2023.

The committee further noted that these terms of reference were reported by the President to the House on Tuesday 1 August 2023, as follows:

5.1 Terms of reference – Recommendations of the ICAC arising out of Operation Keppel

- (1) That the Privileges Committee:
 - (a) inquire into and report on the recommendations of the Independent Commission Against Corruption in its report entitled "Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel)", dated June 2023, and
 - (b) make recommendations for further action to be considered by the House, the President, the Clerk and the Government, as appropriate.
- (2) That in undertaking the inquiry:
 - (a) in accordance with standing order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and
 - (b) the committee consult the President, the Clerk and the Chief Commissioner of the Independent Commission Against Corruption as appropriate.
- (3) That the committee report by the last sitting day in 2023.

The committee also noted that by separate correspondence dated 26 July 2023, the Chief Commissioner of the ICAC wrote to the Chair of the Committee and President of the Legislative Council in relation to the implementation of corruption prevention recommendations made by the ICAC in the report "Investigation into the conduct of local member for Drummoyne (Operation Witney)".

By correspondence dated 18 July 2023, the Chair previously advised the Chief Commissioner of the referral of the terms of reference above for an inquiry into the recommendations arising out of the Keppel inquiry.

Resolved, on the motion of Mr Murphy: That the committee write to the Chief Commissioner of the Independent Commission Against Corruption in response to correspondence sent by the Chief Commissioner of 26 July 2023, to indicate that the recommendations arising out of Operation Witney

were previously considered by the committee as part of its 2022 Review of the Code of Conduct for Members, but will be further considered as part of the current inquiry into the recommendations of the ICAC arising out of Operation Keppel.

The committee further noted that there is certain overlap in recommendations arising out of both ICAC reports into Operations Keppel and Witney, as well as recommendations arising out of the Broderick Review that are specific to the Privileges Committee (as per the President's correspondence to the Chair of 17 July 2023).

Resolved, on the motion of Mr Murphy: That the secretariat be tasked with reviewing and reconciling the recommendations of Operations Keppel and Witney, and those recommendations arising out of the Broderick Review that are specific to the Privileges Committee (as per the President's correspondence to the Chair of 17 July 2023), for review by the committee at its next meeting.

6. Review of Independent Complaints Officer system (2023)

The committee noted that under the terms of paragraph 10 of the resolution establishing the ICO, the committee is required to review the Independent Complaints Officer system within 12 months of the establishment of the Independent Complaints Officer position, in consultation with key stakeholders.

Resolved, on the motion of Mr Primrose: That the committee adopt the following terms of reference, and that they be reported to the House on the next sitting day.

Terms of Reference – Inquiry into the review of Independent Complaints Officer system (2023)

1. That, in accordance with paragraph 10 of the resolution of the House establishing the Independent Complaints Officer, the Privileges Committee review the operation of the Independent Complaints Officer system and associated investigations protocol tabled on 17 November 2022, and whether any changes are needed, and in particular:
 - a. the confidentiality provisions applying in respect of complaints and investigations under the system,
 - b. the timeliness of complaints assessments and investigations conducted under the system, and
 - c. the provisions applying with respect to standing for complaints and retrospectivity under the system.
2. That, in undertaking the review:
 - a. the committee consider the recommendations of the Independent Review of Bullying, Sexual Harassment and Sexual Misconduct at NSW Parliament Workplaces, commonly referred to as the Broderick Review, in relation to the role of the Independent Complaints Officer, the Code of Conduct for Members, training for members and any other related matter,
 - b. in accordance with Standing Order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and
 - c. the committee consult the President, the Clerk and other key stakeholders as appropriate.

7. Next meeting

The committee adjourned at 4.04 pm, *sine die*.

Stephen Frappell
Committee Clerk

Minutes no. 4

Thursday 14 September 2023, 3.35 pm
Room 1136, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Mr Fang
Ms Higginson
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Stephen Frappell, Sharon Ohnesorge, Monica Loftus, Irene Penfold.

2. Previous minutes

Resolved, on motion of Mr Roberts: That draft minutes no. 3 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 5 September 2023 – Email from the Independent Complaints Officer to the Privileges Committee, attaching the Independent Complaints Officer quarterly report for June 2023 to August 2023.
- 8 September 2023 – Letter from Ian McCartney APM, Deputy Commissioner National Security, Australian Federal Police to the President of the Legislative Council, copied to the Chair of the Privileges Committee, regarding the notice of motion for the House to adopt the recommendations of the inquiry into the 'execution of search warrants by the Australian Federal Police No. 5'.

Sent:

- 24 August 2023 – Letter from Chair of the Privileges Committee to the Hon John Hatzistergos AM, Chief Commissioner, Independent Commission Against Corruption, advising on progress of Operation Witney recommendations to be considered with Operation Keppel recommendations.

4. Review of Independent Complaints Officer system (2023)**4.1 Conduct of the inquiry**

The committee noted the following documents:

- Resolution establishing the Independent Complaints Officer – agreed to by the House on 2 March 2022.
- Independent Complaints Officer Protocols – prepared by the Independent Complaints Officer and tabled by the former Chair of the Committee on 17 November 2022.
- Quarterly reports prepared by the Independent Complaints Officer under paragraph 8 of the resolution establishing the Independent Complaints Officer for the following periods:
 - 1 September 2022 – 30 November 2022
 - 1 December 2022 – 28 February 2023
 - 1 March 2023 – 31 May 2023
 - 1 June 2023 – 31 August 2023.

Resolved, on motion of Mr Fang: That the resolution establishing the Independent Complaints Officer and the protocol document prepared by the Independent Complaints Officer be published on the inquiry website.

Resolved, on motion of Mr Murphy: That:

1. the Chair write to the Independent Complaints Officer inviting her to provide a submission and briefing to the committee for the purposes of its current inquiry;
2. The Chair write to the Legislative Assembly Parliamentary Privilege and Ethics Committee to inform them of the current inquiry; and
3. the committee consider the further conduct of the inquiry following the briefing from the Independent Complaints Officer.

5. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

5.1 Comparison of recommendations

Resolved, on motion of Mr Murphy: That the secretariat prepare a briefing paper for the committee on the recommendations arising out of Operation Keppel and Operation Witney related to the Members' Code of Conduct and training and professional development for Members.

6. Next meeting

The committee adjourned at 3.39 pm, *sine die*.

Stephen Frappell
Committee Clerk

Minutes no. 5

Thursday 19 October 2023, 1.32 pm
McKell Room, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Ms Boyd (participating)
Mr Fang
Ms Higginson
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts (from 1.40 pm)

Secretariat in attendance: Steven Reynolds, Stephen Frappell, Sharon Ohnesorge, Monica Loftus, Irene Penfold.

2. Previous minutes

Resolved, on motion of Mrs Maclaren-Jones: That draft minutes no. 4 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 14 September 2023 – Annual Report of Parliamentary Ethics Adviser for 2022-2023.
- 22 September 2023 – Email from Ms Abigail Boyd indicating that she will be a participating member for the inquiry into provisions of the Parliamentary Evidence Act 1901.
- 26 September 2023 – Letter from the Commissioner of the Australian Federal Police to the President, in response to the resolution of the House dated 12 September 2023.
- 13 October 2023 – Letter from the Chief Commissioner, Independent Commission Against Corruption to Chair, acknowledging the Chair's correspondence dated 18 July 2023 and requesting to be consulted in the course of the committee's inquiry into the recommendations of the ICAC arising out of Operation Keppel.

Sent:

- 20 September 2023 – Letter from Chair of the Privileges Committee to Ms Rose Webb, Independent Complaints Officer, inviting her to make a submission into the review of Independent Complaints Officer system (2023).
- 20 September 2023 – Letter from Chair of the Privileges Committee to Chair of the Legislative Assembly Parliamentary Privilege and Ethics Committee, to inform him of the committee's commencement of the review of Independent Complaints Officer system (2023).

4. Inquiry into the provisions of the Parliamentary Evidence Act 1901**4.1 Terms of reference**

The committee noted the following terms of reference referred by the House on 20 September 2023:

That:

- (a) this House notes that in its report entitled "Allegations of impropriety against agents of the Hills Shire Council and property developers in the region", dated March 2023, Portfolio Committee No 7 – Planning and Environment recommended that, at the beginning of the 58th Parliament, the NSW Legislative Council refer an inquiry into the Parliamentary Evidence Act 1901 to the Privileges Committee, with a view to identifying amendments to ensure it is fit for purpose and modernised, including in relation to the summoning of witnesses, and
- (b) the provisions of the Parliamentary Evidence Act 1901 be referred to the Privileges Committee for inquiry and report, with a view to identifying amendments to ensure it is fit for purpose and modernised, including in relation to the summoning of witnesses.

4.2 Conduct of the inquiry

Resolved, on motion of Mr Fang: That the committee:

- engage Professor Gabrielle Appleby, Professor of Law, University of New South Wales, to prepare a discussion paper identifying issues for consideration regarding the operation of the Parliamentary Evidence Act 1901 by end of January 2024, through the external expert mechanism funded by the Parliamentary Research Service
- invite Professor Appleby to brief the committee on a draft of the discussion paper at a private roundtable
- publish the final discussion paper and seek submissions from relevant stakeholders.

5. Annual Report of Parliamentary Ethics Adviser for 2022-2023

The committee noted receipt of the Annual Report of the Parliamentary Ethics Adviser 2022-2023. The secretariat will circulate potential dates suitable for the committee's annual meeting with the Parliamentary Ethics Adviser.

6. Inquiry into the recommendations of the ICAC arising out of Operation Keppel**6.1 Extension of reporting date**

Resolved, on motion of Mrs Maclaren-Jones: That the Chair write to the President requesting that he extend the reporting date to the first sitting day in August 2024.

6.2 Discussion paper

Resolved, on motion of Mr Nanva: That the Chair write to the Chair of the Legislative Assembly Parliamentary Privileges and Ethics Committee proposing that the committees collaborate on the Operation Keppel and Operation Witney discussion paper with a view to publication of a joint discussion paper.

7. Review of Independent Complaints Officer system (2023)

7.1 Media report regarding complaint to the Independent Complaints Officer

The committee noted issues arising out of the recent media report regarding a complaint made to the ICO about a member of the Legislative Assembly.

Resolved, on motion of Mr Primrose: That consideration of the matter be deferred until the committee's next meeting.

8. Next meeting

The committee adjourned at 1.47 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 6

Thursday 23 November 2023, 1.03 pm
Room 1043, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Mr Fang
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Stephen Frappell, Sharon Ohnesorge, Monica Loftus.

2. Previous minutes

Resolved, on motion of Mr Murphy: That draft minutes no. 5 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 25 October 2023 – Letter from the President to the Chair, extending reporting date for the inquiry into the recommendations of the ICAC arising out of Operation Keppel.
- 27 October 2023 – Email from Ms Rose Webb, Independent Complaints Officer, to the committee, providing submission for the review of the Independent Complaints Officer system (2023).
- 2 November 2023 – Email from a parliamentary staff member to the committee, requesting to make a submission to the review of the Independent Complaints Officer System (2023).
- 15 November 2023 – Letter from the Hon John Hatzistergos AM, Chief Commissioner, Independent Commission Against Corruption, to the Chair, regarding a memorandum of understanding to address procedures for material covered by parliamentary privilege and sought by ICAC.
- 21 November 2023 – Email from Mr Alex Greenwich MP, Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, to the Hon John Hatzistergos AM, Chief Commissioner of the Independent Commission Against Corruption, proposing to meet with ICAC to discuss the draft protocol.

Sent:

- 20 October 2023 – Letter from the Chair to the President, requesting extension of reporting date for the inquiry into the recommendations of the ICAC arising out of Operation Keppel.

- 20 October 2023 – Letter from the Chair to Mr Alex Greenwich MP, Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, requesting that the two committees collaborate on the publication of a joint discussion.

4. Annual Report of Parliamentary Ethics Adviser for 2022-2023

Under paragraph 10 of the resolution appointing the Parliamentary Ethics Adviser, the committee met with the Adviser, Mr John Evans, to discuss his Annual Report 2022-2023.

5. Inquiry into the provisions of the Parliamentary Evidence Act 1901

The committee noted that Professor Gabrielle Appleby is preparing a briefing paper according to issues provided by members.

6. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

6.1 Draft discussion paper

The committee discussed the draft discussion paper prepared by the secretariat.

Mr Nanva and Mr Primrose left the meeting.

Resolved, on motion of Mr Murphy: That the discussion paper be revised to include alternative positions to some of the ICAC recommendations and the committee revisit a revised discussion paper at its next meeting.

7. Review of Independent Complaints Officer system (2023)

7.1 Conduct of the inquiry

Resolved, on motion of Mrs Maclaren-Jones:

- That the Independent Complaints Officer be invited to give a briefing to the committee on a date to be determined by the Chair in consultation with members.
- That, following the briefing from the Independent Complaints Officer, the committee invite submissions from nominated stakeholders, to be confirmed at a later date.

8. ICAC memorandum of understanding

Resolved, on motion of Mrs Maclaren-Jones: That the Chair coordinate with the Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics to provide a joint response to ICAC.

9. Next meeting

The committee adjourned at 1.35 pm, *sine die*.

Steven Reynolds

Committee Clerk

Minutes no. 7

Wednesday 6 December 2023, 3.01 pm

Room 1254, Parliament House, Sydney and via videoconference (Webex)

1. Members

Mr Lawrence (*Chair*)

Mr Fang (via videoconference)

Ms Higginson (via videoconference)

Mr Murphy

Mr Nanva (via videoconference)

Mr Primrose

Mr Roberts

Secretariat in attendance: Steven Reynolds, Stephen Frappell, Sharon Ohnesorge (via Webex), Monica Loftus, Irene Penfold.

2. Apologies

Mrs Maclaren-Jones

3. Review of Independent Complaints Officer scheme (2023)

3.1 Briefing from the Independent Complaints Officer

The committee met with Ms Rose Webb, Independent Complaints Officer, to discuss her submission. Ms Webb briefed the committee.

Ms Webb left the meeting.

4. Previous minutes

Resolved, on motion of Mr Primrose: That draft minutes no. 6 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received:

- 4 December 2023 – Independent Complaints Officer quarterly report for September to November 2023.

Sent:

- 28 November 2023 - Chair to the Hon John Hatzistergos AM, Chief Commissioner of ICAC, responding to correspondence regarding a revised MOU and interim protocol for privileged documents sought by ICAC.
- 28 November 2023 - Chair to Alex Greenwich MP, Chair of the Legislative Assembly Privileges Committee, noting the Legislative Assembly committee's response to correspondence from the ICAC regarding a revised MOU and interim protocol for privileged documents sought by ICAC.

6. Review of Independent Complaints Officer system (2023)

6.1 Conduct of the inquiry

Resolved, on motion of Mr Primrose:

- That the secretariat prepare a short issues paper canvassing issues discussed at the briefing and possible changes to the ICO resolution or protocols to address these issues.
- That, once the committee has agreed to the issues paper, the committee forward a copy of the paper to the following stakeholders and invite them to provide a submission to the inquiry:
 - Legislative Council members
 - Member's staff and parliamentary staff
 - Independent Commission Against Corruption
 - Parliamentary Ethics Adviser
 - Chief Executive, Department of Parliamentary Services
 - Clerk of the Parliaments
 - Ombudsman
 - Public Service Association and other relevant unions to be determined by the secretariat.

6.2 Submission request

Resolved, on motion of Ms Higginson: That a staff member [name redacted] be included in the list of stakeholders invited to make a submission to the inquiry on the issues in the discussion paper.

7. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

7.1 Draft discussion paper

The committee discussed the draft discussion paper prepared by the secretariat.

The committee is awaiting a reply from the Legislative Assembly committee on whether they will collaborate on a joint discussion paper.

Resolved, on motion of Ms Higginson:

- That, to assist the Legislative Assembly committee in its decision, the committee authorise the draft discussion paper to be sent to the Chair of the Legislative Assembly committee.
- That, once the position of the Legislative Assembly committee is finalised and the discussion paper is finalised, the committee authorise the publication of the discussion paper on the inquiry webpage and forward a copy to each of the stakeholders invited to provide a submission to the inquiry.
- That the committee meet to consider changes if the Assembly Committee requires significant alterations to the discussion paper to make it a joint document.

7.2 Stakeholder list

Resolved, on motion of Mr Roberts:

- That, once the discussion paper is published, the committee invite the following stakeholders to provide a submission to the inquiry:
 - Legislative Council members
 - Independent Commission Against Corruption
 - Parliamentary Ethics Adviser
 - Department of Parliamentary Services
 - Clerk of the Parliaments
 - Public Service Association.
- That members have until 10.00 am Monday 11 December 2023 to nominate additional stakeholders and the committee is to agree to the stakeholder list by email, unless a meeting is required to resolve any disagreement.

7.3 Closing date for submissions

Resolved, on motion of Mr Murphy: That the closing date for submissions be Monday 26 February 2024.

8. Next meeting

The committee adjourned at 3.53 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 8

Thursday 8 February 2024, 1.00 pm
Room 1136, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)
Mr Fang
Ms Higginson
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Monica Loftus, Irene Penfold.

2. Apologies

Mrs Maclaren-Jones

3. Previous minutes

Resolved, on motion of Mr Nanva: That draft minutes no. 7 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 6 February 2024 – Letter from the Hon Chris Minns MP, Premier, to the Chair, forwarding a copy of the draft Constitution (Disclosures by Members) Regulation 2024.

Sent:

- 7 December 2023 - Letter from the Chair to the Hon Alex Greenwich MP, Chair of the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, forwarding a copy of the draft discussion paper on certain recommendations arising out of Operations Keppel and Witney and the Broderick Review.

5. Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024

5.1 Terms of reference

The committee noted the following terms of reference referred by the House this day:

Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024

That, under section 14A of the Constitution Act 1902, the draft Constitution (Disclosures by Members) Regulation 2024 be referred to the Privileges Committee for inquiry and report by Monday 2 September 2024.

5.2 Conduct of the inquiry

Resolved, on the motion of Mr Murphy: That the committee, jointly with the Clerk and Parliamentary Ethics Adviser, host an information session to explain the changes proposed, and that the Chair be empowered to invite any other agency he thinks appropriate to present at the information session.

6. Inquiry into the provisions of the Parliamentary Evidence Act 1901

The committee noted that the draft discussion paper being prepared by Dr Gabrielle Appleby is expected to be provided to the committee by the end of February.

7. Review of Independent Complaints Officer system (2023)

7.1 Discussion paper

The committee noted the draft discussion paper prepared by the secretariat.

Resolved, on the motion of Ms Higginson: That members of the committee provide any comments on the draft discussion paper by 2.00 pm Thursday 15 February, with any issues to be resolved at a meeting if required.

7.2 Stakeholder list

The committee noted it had previously resolved to forward a copy of the discussion paper once finalised to the following stakeholders and invite them to provide a submission to the inquiry:

- Legislative Council members
- Member's staff and parliamentary staff
- Independent Commission Against Corruption
- Parliamentary Ethics Adviser
- Chief Executive, Department of Parliamentary Services
- Clerk of the Parliaments
- Ombudsman
- Public Service Association
- Media, Entertainment and Arts Alliance

- Elizabeth Broderick
- A staff member [name redacted].

7.3 Closing date for submissions

Resolved, on motion of Mr Nanva: That once the discussion paper is agreed to by the committee, stakeholders be given six weeks to make submissions.

8. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

8.1 Draft discussion paper

The committee noted it is awaiting a reply from the Legislative Assembly committee on whether they will collaborate on a joint discussion paper.

8.2 Stakeholder list

The committee noted it has previously agreed to, once the discussion paper is finalised, publish a copy of the paper on the inquiry webpage and forward it to the following stakeholders and invite them to provide a submission to the inquiry:

- Legislative Council members
- Independent Commission Against Corruption
- Parliamentary Ethics Adviser
- Department of Parliamentary Services
- Clerk of the Parliaments
- Public Service Association.

8.3 Closing date for submissions

Resolved, on motion of Mr Nanva: That, once the status discussion paper is resolved, stakeholders be given six weeks to make submissions.

9. Next meeting

The committee adjourned at 1.19 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 9

Monday 19 February 2024, 2.00 pm
Via videoconference (Microsoft Teams)

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Mr Fang
Ms Higginson
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Merrin Thompson, Allison Stowe.

2. Apologies

Mr Murphy

3. Previous minutes

Resolved, on motion of Mr Nanva: That draft minutes no. 8 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 9 February 2024 – Letter from Alex Greenwich MP, to the Chair, advising the Legislative Assembly Parliamentary Standing Committee on Privilege and Ethics will not collaborate on a joint discussion paper on ICAC recommendations
- 16 February 2024 – Email from Steven Reynolds, Acting Clerk, to the Chair, advising that the Independent Legal Arbiter has just provided his report on a dispute of privilege over documents related to Metro Sydney governance and that the report now stands referred to the committee under standing order 54.

Sent:

- 14 February 2024 – Email from the Chair to stakeholders inviting them to make a submission to the inquiry into the recommendations of the ICAC arising out of Operation Keppel.

5. Disputed claim of privilege – Sydney Metro governance

5.1 Method of consideration

The committee noted that it had previously resolved that, wherever possible and unless circumstances require otherwise, the committee follow the established practice in the House and adopt a two-step process.

5.2 Publication of report of the Independent Legal Arbiter – Sydney Metro governance

Resolved, on motion of Mr Roberts: That the report of the Independent Legal Arbiter, the Honourable Keith Mason AC KC, dated 16 February 2024, together with submissions, on the disputed claim of privilege regarding Sydney Metro governance, be published.

6. Next meeting

The committee adjourned at 2.08 pm, until Wednesday 21 February 2024 at 3.30 pm at Parliament House and via videoconference.

Steven Reynolds
Committee Clerk

Minutes no. 11

Tuesday 5 March 2024, 1.18 pm

Room 1043, Parliament House, Sydney and via videoconference (Microsoft Teams)

1. Members

Mr Lawrence (*Chair*)
Mrs Maclaren-Jones (*Deputy Chair*)
Ms Higginson
Mr Murphy
Mr Nanva
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Sharon Ohnesorge, Monica Loftus, Irene Penfold.

2. Previous minutes

Resolved, on motion of Mr Roberts: That draft minutes no. 10 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 22 February 2024 – Email from Heidrun Blackwood, Senior Corruption Prevention Officer, Independent Commission Against Corruption, to the secretariat, seeking a two week extension on their submission to the review of the Independent Complaints Officer system.
- 22 February 2024 – Email from Heidrun Blackwood, Senior Corruption Prevention Officer, Independent Commission Against Corruption, to the secretariat, requesting a copy of various documents mentioned in the discussion paper for the inquiry into the recommendations of the ICAC arising out of Operation Keppel.
- 4 March 2024 – Letter from Mr Alex Greenwich MP, Chair, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics to the Chair, enclosing a draft interim protocol with the Independent Commission Against Corruption regarding the procedures for dealing with claims of parliamentary privilege where material is sought by the Commission under ss 22 or 35 of the Independent Commission Against Corruption Act 1988.

Sent:

- 20 February 2024 – Email from the Chair to stakeholders, inviting them to make a submission to the review of the Independent Complaints Officer system.

4. Disputed claim of privilege – Sydney Metro governance

4.1 Chair's draft report

Resolved, on the motion of Mr Murphy:

- That the committee note that the Chair's draft report was circulated to members less than seven days prior to the report deliberative.
- That the draft report be the report of the committee and that the committee present the report to the House.
- That the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling.

5. ***

6. Next meeting

The committee adjourned at 1.39 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 12

Tuesday 26 March 2024, 1.02 pm

Room 1043, Parliament House, Sydney and via videoconference (Microsoft Teams)

1. Members

Mr Lawrence (*Chair*)

Mrs Maclaren-Jones (*Deputy Chair*) (until 1.49 pm)

Mr Fang (until 2.37 pm)

Ms Higginson

Mr Murphy

Mr Nanva

Mr Primrose

Mr Roberts

Secretariat in attendance: Steven Reynolds, Stephen Frappell, Sharon Ohnesorge, Stephen Fujiwara, Helen Hong, Robin Howlett.

2. Previous minutes

Resolved, on motion of Mr Roberts: That draft minutes no. 11 be confirmed.

3. Inquiry into the provisions of the Parliamentary Evidence Act 1901

3.1 Private roundtable with Professor Gabrielle Appleby

The committee held a private roundtable with Professor Gabrielle Appleby on her draft Discussion Paper identifying issues for consideration regarding the operation of the *Parliamentary Evidence Act 1901*.

3.2 Publication of Discussion Paper

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of the Discussion Paper by Professor Appleby.

3.3 Submissions and hearing

Resolved, on the motion of Mr Nanva: That the committee invite the following stakeholders to make a submission to the inquiry by Friday 24 May 2024:

- Members of the Legislative Council
- Mr David Blunt AM, Clerk of the Parliaments
- Clerks of the other Houses of Parliament in Australia and New Zealand
- Professor Emerita Anne Twomey
- Mr John Evans PSM, Parliamentary Ethics Advisor and former Clerk of the Parliaments
- Mr Bret Walker SC.

Resolved, on the motion of Mr Murphy: That the committee consider whether to hold a hearing following the receipt of submissions.

4. Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024

4.1 Information session for Legislative Council members

The committee noted the information session provided by the Committee Clerk and representatives of The Cabinet Office to members of the Legislative Council regarding the draft Constitution (Disclosures by Members) Regulation 2024 on 18 March 2023.

Resolved, on the motion of Mr Primrose: That the Chair forward the agreed list of follow-up questions to The Cabinet Office for their response.

4.2 Submissions

Resolved, on the motion of Ms Higginson: That the committee invite the following stakeholders to make a submission to the inquiry by Tuesday 7 May 2024:

- Mr David Blunt AM, Clerk of the Parliaments
- Mr John Evans PSM, Parliamentary Ethics Advisor
- Independent Commission Against Corruption
- The Ethics Centre (formerly the St James Ethics Centre)
- The Centre for Public Integrity
- Transparency International Australia.

5. Dates for next committee meeting

The committee agreed to canvass dates for a future meeting by email, noting that submissions for the inquiry into recommendations of the ICAC arising out of Operation Keppel are due by Wednesday 27 March and submissions for the review of the Independent Complaints Officer system are due by Tuesday 2 April.

6. Next meeting

The committee adjourned at 2.41 pm, *sine die*.

Steven Reynolds
Committee Clerk

Minutes no. 13

Tuesday 14 May 2024, 3.31 pm
Room 1136, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)

Mrs Maclaren-Jones (*Deputy Chair*)

Ms Boyd (participating for *Parliamentary Evidence Act* inquiry) (from 3.38 pm)

Mr Fang

Ms Higginson

Mr Murphy

Mr Primrose

Mr Roberts

Mr Tudehope (substituting for Mr Fang for the duration of the *Parliamentary Evidence Act* inquiry) (from 3.39 pm)

Secretariat in attendance: Steven Reynolds, Stephen Fujiwara, Helen Hong.

2. Apologies

Mr Nanva

3. Previous minutes

Resolved, on motion of Mr Murphy: That draft minutes no. 12 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 2 April 2024 – Email from the Office of the Opposition Whip, to secretariat, advising that the Hon. Damien Tudehope MLC will substitute for the Hon. Wes Fang MLC for the duration of the Parliamentary Evidence Act inquiry.
- 2 April 2024 – Email from Ms Bridget Noonan, Clerk of the Legislative Assembly and Clerk of the Parliaments, Parliament of Victoria, to secretariat, advising that the Vic Legislative Assembly will not be making a submission to the Parliamentary Evidence Act inquiry.
- 30 April 2024 – Email from Ms Jackie Morris, Deputy Clerk, Department of the Senate, to secretariat, advising that the Senate will not be making a submission to the Parliamentary Evidence Act inquiry.
- ***
- 7 May 2024 – Letter from Ms Kate Boyd, Secretary, The Cabinet Office, to Chair, responding to letter with questions arising from the TCO briefing on proposed draft Constitution (Disclosures by Members) Regulation 2024.

Sent:

- 28 March 2024 – Correspondence from Chair, to Mr Matt Richards, Acting Deputy Secretary, General Counsel, The Cabinet Office, attaching a list of questions raised by members during the information session about the proposed draft Constitution (Disclosures by Members) Regulation 2024.

5. Review of Independent Complaints Officer system (2023)

5.1 Public submissions

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of submission nos 1 and 5-9.

5.2 Confidential submissions

Resolved, on the motion of Mr Murphy: That the committee keep submission nos 2-3 confidential, as per the request of the author, as they contain identifying and/or sensitive information.

5.3 Publication of submission no. 4

Resolved, on the motion of Mr Primrose: That the committee keep submission no. 4 confidential, as it contains identifying and/or sensitive material.

5.4 Drafting of Chair's report

Resolved, on the motion of Mrs Maclaren-Jones: That the secretariat proceed to draft the Chair's report, with circulation to the committee expected in mid-June.

6. Briefing from the Parliamentary Ethics Adviser

Resolved, on the motion of Ms Higginson: That the committee accept the Parliamentary Ethics Adviser's offer to meet with the committee to discuss the points raised in his submissions for the Review of Independent Complaints Officer system (2023) and the Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024.

7. Recommendations of the ICAC arising out of Operation Keppel

7.1 Public submissions

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of submission nos. 1-2.

7.2 Drafting of Chair's report

Resolved, on the motion of Mrs Maclaren-Jones: That the secretariat proceed to draft the Chair's report, with circulation to the committee expected in mid-June.

8. Inquiry into the draft Constitution (Disclosures by Members) Regulation 2024

8.1 Public submissions

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submission nos. 1-2.

9. ***

10. Next meeting

The committee adjourned at 3.57 pm, *sine die*.

Steven Reynolds
Committee Clerk

Draft minutes no. 17

Monday 26 August 2024, 2.02 pm

Room 1254, Parliament House, Sydney and via videoconference (Microsoft Teams)

1. Members

Mr Lawrence (*Chair*)

Mrs Maclaren-Jones (*Deputy Chair*)

Mr Fang

Ms Higginson (via videoconference)
Mr Murphy
Mr Nanva (via videoconference)
Mr Primrose
Mr Roberts

Secretariat in attendance: Steven Reynolds, Helen Hong, Robin Howlett and Stephen Fujiwara.

2. Previous minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes no. 16 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 6 June 2024 – Correspondence from Mr David Blunt AM, Clerk of the Parliaments, to Chair, attaching correspondence from the Clerk of the Senate concerning a new memorandum of understanding entered into with the Australian Federal Police
- 13 June 2024 – Email from Ms Shaza Barbar, Parliamentary Advisory Group on Bullying, Sexual Harassment and Sexual Misconduct (PAG), to secretariat, requesting that the PAG make a submission to the Review of the Independent Complaints Officer system (2023)
- 19 June 2024 – Letter from Ms Kate Boyd, Secretary, The Cabinet Office, to Deputy Clerk, responding to members' questions regarding the Draft Constitution (Disclosures by Members) Regulation 2024
- 22 July 2024 – Letter from Dr Juliet Bourke, Chair, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct (PAG), to Chair, attaching cover letter for the PAG submission to the ICO inquiry.

Sent:

- 13 June 2024 – Letter from Chair, to the Hon. Ben Franklin MLC, President, Legislative Council, requesting distribution of guidance materials on unauthorised disclosure to members of the Legislative Council
- 5 August 2024 – Letter from Chair, to the Hon. Ben Franklin MLC, President, Legislative Council, requesting further extension to reporting date for inquiry into ICAC recommendations arising from Operation Keppel.

Resolved on the motion of Mr Primrose: That the committee authorise the publication of:

- correspondence from Ms Kate Boyd, Secretary, The Cabinet Officer, responding to members' questions regarding the Draft Constitution (Disclosures by Members) Regulation 2024, dated 19 June 2024
- correspondence from Dr Juliet Bourke, Chair, Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct (PAG), attaching cover letter for the PAG submission to the ICO inquiry, dated 22 July 2024.

4. Review of Independent Complaints Officer system (2023)

4.1 Public submission

Resolved, on the motion of Mr Fang: That the committee authorise the publication of submission no. 10.

4.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Review of Independent Complaints Officer system (2023)*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Nanva: That paragraph 3.6 be amended by omitting, 'Following the release of the Broderick report, the ICO Protocols were tabled in the House and the committee believes that this

document adequately addresses most of the points in recommendation 5.3(c)' and inserting instead 'ICO Protocols tabled in the House address a number of points in recommendation 5.3(c)'.

Resolved, on the motion of Mr Nanva: That the following new paragraph be inserted after paragraph 3.6:

'It is noted, however, that the Broderick Review indicated significant concern that the resolution establishing the Independent Complaints Officer was too narrowly defined, and that the ICO may not have sufficient structural authority to be fully independent of political processes. The committee questions whether these concerns have had a bearing on the volume and nature of complaints received by the ICO.'

Resolved, on the motion of Mr Nanva: That paragraph 3.7 be amended by inserting at the end: 'The committee believes that more substantive qualitative work with parliamentary staff would better inform any assessment about the efficacy of the ICO function, including those concerns raised within the Broderick Review.'

Resolved, on the motion of Mr Nanva: That the following new recommendation be inserted after Recommendation 6:

'Recommendation X

That the Parliamentary Executive Group, in conjunction with the Parliamentary Advisory Group, also conduct a comprehensive consultation with parliamentary staff as to the level of awareness of, and confidence in, the ICO role, functions and processes to address complaints about bullying, harassment and inappropriate conduct.'

Resolved, on the motion of Mr Murphy: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The submissions, correspondence and discussion paper be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished submissions, correspondence and discussion paper be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on 2 September 2024.

5. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

5.1 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Recommendations of the ICAC arising out of Operation Keppel*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That Recommendation 4 be amended by:

- a) inserting 'like' before 'benefits'

- b) inserting ', noting that electoral allowance is fundamentally different from other allowances and under law can become taxable income'.

Resolved, on the motion of Mr Murphy: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The submissions, correspondence and discussion paper be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished submissions, correspondence and discussion paper be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on 2 September 2024.

6. Inquiry into the Draft Constitution (Disclosures by Members) Regulation 2024

6.1 Public submission

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submission no. 3.

6.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Draft Constitution (Disclosures by Members) Regulation 2024*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That the following new paragraph be inserted after paragraph 3.35:

'The committee is unsure whether this interpretation offered by The Cabinet Office is correct.'

Resolved, on the motion of Mr Murphy: That paragraph 5.41 be amended by omitting 'Therefore, if recommendation 10 is agreed to, the regulation or a resolution of the House should specify the consequences if a member breaches the confidentiality of another member's disclosures that have been listed on the separate confidential register' and inserting instead 'The committee is not in favour of any member being able to inspect a register relating to another member's family member interests. We are of the view that a process similar to that used in the Australian Senate is preferable, where a family member's disclosures are kept confidential, with certain and reasonable exceptions to view applying. In any event there should, whether the register is able to be viewed by any member or only by certain members, be a specified consequence for a member who breaches the confidentiality of another member's disclosures that have been listed on a confidential register of interests.'

Resolved, on the motion of Mr Murphy: That the following new paragraph be inserted after paragraph 5.41:

'The committee believes that the Privileges Committee could take on the role similar to the Senators' Interests Committee in the Australian Senate. If the Independent Complaints Officer required access for an investigation, the Privileges Committee could determine the access upon request.'

Resolved, on the motion of Mr Murphy: That the following new recommendation be inserted after paragraph 5.41:

'Recommendation X:

That the Privileges Committee take on a role similar to the Senator's Interests Committee in the Australian Senate and consider access to the confidential register of interests, which contain the declarations of family members' interests, on a case-by-case basis.'

Resolved, on the motion of Mr Murphy: That paragraph 5.43 be omitted: 'We note the suggestion of the Parliamentary Ethics Adviser that he and other relevant officers such as the Independent Complaints Officer be able to review the confidential section of the online register and support this minor extension of access.'

Resolved, on the motion of Mr Murphy: That Recommendation 12 be omitted: 'That section 26 of the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to extend the list of people allowed to inspect the complete registers to those parliamentary officers with a legitimate reason, currently the Parliamentary Ethics Adviser and the Independent Complaints Officer.'

Resolved, on the motion of Mr Roberts: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The submissions and correspondence be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished submissions and correspondence be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on 2 September 2024.

7. **Report from Legislative Council member to appeal report of the Independent Complaints Officer**
The committee noted that it had received a request from a member to appeal a report of the Independent Complaints Officer and that the Committee Clerk had advised that, as the requirements to be satisfied to lodge an appeal under section 5(h) of the resolution establishing the Independent Complaints Officer have not been met in this circumstance, the committee does not have jurisdiction to consider the member's appeal.

Resolved, on the motion of Mr Nanva: That the Chair write back to the member, noting that the committee has no jurisdiction to consider an appeal of a decision made by the Independent Complaints Officer and refer to relevant parts of the committee's report into the ICO system.

8. **Next meeting**

The committee adjourned at 3.01 pm, *sine die*.

Steven Reynolds
Committee Clerk

