



LEGISLATIVE COUNCIL

PRIVILEGES COMMITTEE

Draft Constitution (Disclosures by Members) Regulation 2024



Report 96

September 2024

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Privileges Committee

Draft Constitution (Disclosures by Members) Regulation 2024

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Draft Constitution (Disclosures by Members) Regulation 2024

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Chair: The Honourable Stephen Lawrence, MLC



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Table of contents

	Terms of reference	v
	Committee details	vi
	Chair’s foreword	vii
	Recommendations	ix
Chapter 1	Background of the regulation	1
	The 1983 Regulation	1
	Changes to the regulation	1
	The 2022 legislative changes	2
	The draft regulation	3
	The inquiry process	4
Chapter 2	Conflicts of interest	5
	What conflicts of interest are currently declared?	5
	Proposed changes under draft regulation	7
	Private interests	8
	Conflicts of interest framework	9
	Avoiding, resolving and disclosing conflicts of interest	11
	Assessing, managing, monitoring and reviewing conflicts of interest	12
	Committee comment	13
Chapter 3	Other changes in the draft regulation	17
	Interests of immediate family members	17
	Changes under the draft regulation	19
	Disclosure of family members' interests in other parliaments	21
	Committee comment	21
	Trusts	23
	Committee comment	25
	Dispositions of interests	26
	Committee comment	27
	Water licences	27
	Lobbying	28
	Payment to perform lobbying activities	28

	Committee comment	29
Chapter 4	Lodgement requirements for returns	31
	Current lodgement requirements	31
	Proposed new lodgement requirements	33
	Committee comment	33
Chapter 5	Publication and searchability of registers	35
	Registers under the current regulation	35
	Current practice of maintaining and publishing registers	36
	Proposed changes under draft regulation	36
	Issues regarding privacy and safety	37
	Committee comment	39
Appendix 1	Draft Constitution (Disclosures by Members) Regulation	43
Appendix 2	Submissions	64
Appendix 3	Minutes	65

Terms of reference

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.

The terms of reference were referred to the committee by the Legislative Council on 8 February 2024.¹

¹ *Minutes*, NSW Legislative Council, 8 February 2024, p 901.

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 requirement for Members of Parliament to make certain disclosures about their interests is an important transparency and accountability requirement. It allows members of the public to make important assessments about decision making and for members, who exercise important public powers, to be held to account if they exercise their functions attended by a conflict of interest.

The existence of such disclosure requirements is consistent with various international standards and indeed the United Nations Convention Against Corruption (UNCAC). Article 8.5 of UNCAC provides for example that, "Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials".

Interests personal to a Member obviously can create conflicts of interest with public duties. However, it is similarly obvious that the interests of family members of a Member of Parliament can also pose or create similar conflicts of interest. To limit disclosure to personal interests might be considered to undermine the very purpose of such disclosure requirements. This is perhaps particularly so in our contemporary society, where members are no longer likely to be of a certain age, male, married to a woman and the legal owner of the family property.

In that context, it may surprise many members of the public that in New South Wales there is absolutely no requirement for Members of Parliament to disclose the interests of closely related family members, such as dependent children and spouses. The position of Ministers is different, but for Members not holding ministerial office, there is no requirement for such disclosure.

However, in February of this year the Executive referred the Draft Constitution (Disclosures by Member's) Regulation, a new draft regulation which would represent the most significant expansion of disclosure requirements since the original was introduced. Among many other variations to the existing regulation, the new draft proposes to introduce a requirement for members to disclose the interests of certain closely family members.

The creation of the draft follows several ICAC inquiries which have identified gaps in what is currently required to be disclosed, and also several previous Privileges Committee inquiries which have criticised the unnecessarily cumbersome structure of the current system of six-monthly reporting.

The committee welcomes the focus on an enhanced disclosure regime and in its report considers the draft regulation is an improvement on the current disclosure regime.

The committee supports a requirement for members to disclose the interests of family members. In that respect (and others) we take a markedly different view to our counterpart committee in the Legislative Assembly. It is perhaps disappointing, though certainly not unusual, that the two committees have reached a different conclusion on this important issue.

The committee however does not endorse all aspects of the draft regulation. The committee is of the view that some changes to the draft are required for it to avoid the potential of causing unintended harm to members, and in particular, their families.

Family members endure much when their partner or parent becomes a member of parliament, and it is important to avoid unnecessary harm while maintaining the need to ensure genuine conflicts of interest are declared and open to proper scrutiny.

In particular, the committee is of the view it is not appropriate for all members to be able to access a register of family interests, as is proposed. Rather, the committee supports the model used in the Australian Senate – an online searchable register of family interests administered by a committee of certain members. In the committee's view this will better protect the necessary confidentiality of such information, while also providing an appropriate level of access and scrutiny.

Greater definition is also required of what constitutes reasonable efforts by a member to obtain the interests of a partner, particularly in situations of separation or relationship strain, which can be readily apprehended.

The committee is also concerned that the conflicts of interest requirement is currently worded too widely and recommends that if this part of a return is to be public it should be narrowed to pecuniary conflicts of interest, or if the wider ambit is continued it should be part of the confidential section of the online register.

The committee welcomes the proposed move to a comprehensive initial interest disclosure return, followed by exception reporting when interests change. While members will still need to sign an annual declaration, this system is both administratively simpler and more up to date in real time than under the current regulation.

The committee welcomes the clarity around declaration of trusts, water licences and other drafting improvements.

In regard to the client services clause the committee agrees with the ICAC that the regulation could actually go further than it does, so as to make it more consistent with the requirement of the Code of Conduct.

In its inquiry the committee has been assisted by contributions from the ICAC, The Cabinet Office and the Clerk of the Parliaments either by submission or assisting with information and answers to questions. The committee also offered a briefing to all Legislative Council members on the changes that were proposed. There was a high degree of engagement with the issues and all contributions were welcome.

I thank all committee members and the secretariat for their work on this inquiry, conducted while three other inquiries were also active, and trust that together with the Assembly committee it will assist the Government in reaching a final form of this important regulation.

The Hon Stephen Lawrence MLC
Committee Chair

Recommendations

- Recommendation 1** **15**
 That section 15 of the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to only require conflicts of interest of a pecuniary nature to be declared.
 That members consider their obligations under the Members' Code of Conduct regarding conflicts of interest and ensure they make discretionary disclosures when a conflict of interest of a non-pecuniary nature is relevant to their public duties.
- Recommendation 2** **15**
 That once the Draft Constitution (Disclosures by Members) Regulation 2024 takes effect, the Department of the Legislative Council update the *Members' Guide* to reflect the relevant provisions relating to conflicts of interest.
- Recommendation 3** **15**
 That once the Draft Constitution (Disclosures by Members) Regulation 2024 takes effect, the NSW Parliament amend the Commentary of the Members' Code of Conduct to ensure that is consistent with the provision of mandatory disclosure of conflicts of interest.
- Recommendation 4** **15**
 That once the Draft Constitution (Disclosures by Members) Regulation 2024 takes effect, the Clerk of the Legislative Council consult with the Independent Commission Against Corruption to enhance the conflict of interest framework, with a view to develop guidance materials and examples for members to appropriately disclose and manage their conflicts of interest.
- Recommendation 5** **23**
 That the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to set out a process for members to follow:
- when unable to obtain the information required for disclosures of interests of immediate family members, and for this to be reflected on the public register,
 - that takes into account the potential for relationship breakdowns and separation to limit the ability of a member to disclose interests of immediate family.
- Recommendation 6** **26**
 That the Draft Constitution (Disclosures by Members) Regulation 2024 be amended so that members who are a member of a public superannuation fund are only required to declare the name of the fund, not the interests held by that fund.
- Recommendation 7** **27**
 That either section 6 or 19 of the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to clearly state that the obligation to disclose the disposition of an interest by a member does not extend to the disposition of an interest by an immediate family member, except where the member themselves benefit from such disposition.

- Recommendation 8** **30**
That sections 9 and 20 of the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to ensure consistency with the prohibition on paid advocacy in clause 2(a) of the Members' Code of Conduct
- Recommendation 9** **34**
That the transitional arrangements in the new regulation ensure that the date required for the first interest disclosure by members in the 57th Parliament be at least six months from the lodgement date of the last return required under the old regulation.
- Recommendation 10** **40**
That the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to incorporate a separate and confidential conflicts of interest register for members, including for the interests of their immediate family members.
- Recommendation 11** **41**
That the Privileges Committee take on a role similar to the Senators' 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.
- Recommendation 12** **41**
That the Draft Constitution (Disclosures by Members) Regulation 2024 or a resolution of the House specify the consequences for a member who breaches the confidentiality of another member's disclosures that have been listed on a confidential register of interests.

Chapter 1 Background of the regulation

This chapter provides an introduction to the current disclosure framework from the making of the current regulation in 1983, and subsequent changes. A brief discussion is made of how the proposed regulation the subject of this inquiry arose from an ICAC investigation and subsequent amendments to the *Constitution Act 1902* in 2022.

The 1983 Regulation

1.1 The current disclosure regime has its origins in the initiative by then Premier, the Hon Neville Wran, to amend the *Constitution Act 1902* by the insertion of section 14A through the Constitution (Disclosures by Members) Bill 1981. In his second reading speech the Premier said:

The establishment of a scheme whereby Members of Parliament can be seen to be above approach not only enhances the prestige of our parliamentary system but also protects the Members themselves against scurrilous attacks which in the past they have found difficult to rebut.²

1.2 Section 14A empowered the Governor to make regulations with respect to disclosure by members of both Houses of pecuniary interests or other matters, and specified that these interests included real property, income, gifts, contributions to travel, shareholdings and debts. Having passed both Houses, the bill was then approved at a referendum, with 2,391,036 in favour and 388,791 against.³

1.3 The Constitution (Disclosures by Members) Regulation 1983 was subsequently made under the power given under the amended *Constitution Act 1902*, and it is this regulation, which with amendments, has remained the instrument which continues to prescribe the requirements for members to this day. Throughout this report the 1983 regulation will be referred to as “the current regulation”.

Changes to the regulation

1.4 For many years the regulation remained in force without significant changes. However, over the last two decades the regulation has been amended in respect of both the frequency of lodgement and the items required to be disclosed. To some extent these changes were stimulated by inquiries by the Privileges Committee into a failure to disclose by a Legislative Council member,⁴ but also by various recommendations of the Independent Commission Against Corruption (the ICAC) highlighting deficiencies.

² LA Debates 13/4/1981 5710.

³ Privileges Committee, *Review of the Members' Code of Conduct 2010* Report 54, December 2010, p 47.

⁴ Privileges Committee, *Report on inquiry into the Pecuniary Interests Register*, Report 20, October 2002.

- 1.5 The most significant changes were made in the period 2007–2008, with the initial draft regulation proposed by the government in 2006 significantly modified after the Privileges Committee in its initial report was highly critical of its drafting.⁵ One of the key changes from this period was to introduce supplementary returns covering the six-month period since the ordinary return was submitted, effectively requiring six monthly returns to be submitted. Both at the time and on each subsequent occasion the Privileges Committee has considered the regulation it has recommended that this be replaced with exception reporting rather than the more cumbersome current process.⁶
- 1.6 While the ICAC has considered the disclosure regime in a number of investigations into members, in terms of the subject matter of this inquiry the most significant of these was Operation Witney, with its report entitled *Investigation into the conduct of the local member for Drummoyne*,⁷ and to some extent the later Operation Keppel report.⁸ These investigations focussed on conflicts of interests and also identified the gap between what members are required to disclose under the current regulation and their duty to the public interest as expressed in the Members' Code of Conduct. The Privileges Committee considered the recommendations of Operation Witney in its 2022 review of the Members' Code of Conduct, and recommended the following:

That the New South Wales Government amend the *Constitution (Disclosures by Members) Regulation 1983* in line with Recommendation 1 of the ICAC's report entitled *Investigation into the conduct of the local member for Drummoyne*, provided such draft changes to the regulation are referred to this committee and the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics prior to making the regulation.⁹

The 2022 legislative changes

- 1.7 On 9 November 2022, the then government introduced the Integrity Legislation Amendment Bill 2022 into the Legislative Assembly. In the second reading speech Minister Henskens advised that the “government has agreed to implement all of the ICAC's recommendations directed to it in that report [Operation Witney]”¹⁰ and explained that the legislation would amend the *Constitution Act 1902* to put beyond doubt that any new regulation could address issues such as requiring members to declare interests in trusts and mandatory registration of conflicts of interests.

⁵ Privileges Committee, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) regulation 2006*, Report 55, October 2006.

⁶ For instance see Recommendation 3, Privileges Committee *Review of the Members' Code of Conduct 2010*, Report 54 December 2010., Recommendation 4, Privileges Committee, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator* Report 70, June 2014.

⁷ July 2022.

⁸ *Investigation into the conduct of the then member of parliament for Wagga Wagga and then Premier and others*, June 2023.

⁹ Privileges Committee, *Review of the Members' Code of Conduct 2022*, Report 90, November 2022.

¹⁰ *LA Hansard*, 9 November 2022.

1.8 Even more significantly, the bill contained a provision to insert into the Act the following:

(4A) Without limiting subsection (1), regulations made under that subsection may relate to the disclosure of the pecuniary interests, or other matters, of members of the immediate family of Members of either House of Parliament.

1.9 While the bill was supported by the opposition and cross bench, in committee it was amended by a motion moved by Mr Jamie Parker MP of the Greens to insert a new section 14A (1A):

No 1 Electronic registers Page 3, Schedule 1.1. Insert after line 4—

(1A) If a regulation is made under subsection (1)(c) requiring the compilation and maintenance of registers, the regulation must include the following requirements—

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

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

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

(ii) the safety of a person or class of persons.¹¹

1.10 This is now part of the *Constitution Act 1902* and requires that any regulation made must include a requirement for a publicly searchable electronic format. As a result, the committee in considering the draft regulation that is the subject of this inquiry, is limited to only considering the privacy aspects of the electronic register, within the constraints set out in section 14(1A) of the Act.

The draft regulation

1.11 On 6 February 2024, the chairs of the Legislative Council Privileges Committee and the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics Committee jointly received correspondence from the Premier, the Hon Chris Minns MP, enclosing a “consultation draft” of the Constitution (Disclosures by Members) Regulation 2024 (throughout this report this will be referred to as “the draft regulation”). The Clerks of both Houses received correspondence in the same terms. The correspondence explicitly linked the draft regulation to the ICAC’s Operation Witney.

1.12 Section 14A(5) of the *Constitution Act* requires that the executive in making any draft regulation:

(a) afford any committee of either House of Parliament established for the purpose an opportunity of considering and making representations with respect to the proposed regulation, and

(b) take into account any such representations.

¹¹ LA Votes and Proceedings, 15 November 2022, p 2002.

- 1.13** As a result, the draft regulation was tabled in the Legislative Council by the Leader of the Government the Hon Penny Sharpe MLC on 8 February 2024, and subsequently the House agreed to her motion to refer the draft regulation to the Privileges Committee.¹²

The inquiry process

- 1.14** The committee began its inquiry by inviting all Legislative Council members to a briefing and question and answer session on 18 March 2024, with presentations from the Deputy Clerk and from senior staff of The Cabinet Office involved in the drafting of the regulation. As a follow up to the information session a number of questions were put to The Cabinet Office to clarify certain issues.
- 1.15** The committee invited submissions from all Members of the Legislative Council and a number of stakeholders. Submissions were received from the ICAC, the Parliamentary Ethics Adviser and the Clerk of the Parliaments, and the Parliamentary Ethics Adviser attended a meeting of the committee to provide further advice.
- 1.16** The committee recognises that the views of the Assembly Committee on the draft regulation will be just as important as any recommendations made in this report and the government will need to take both into account when it tables a final regulation.

¹² *Minutes*, NSW Legislative Council, 8 February 2024, pp 900-901.

Chapter 2 Conflicts of interest

A key and substantial change which will be introduced by the Draft Constitution (Disclosures by Members) Regulation 2024 is the mandatory disclosure of members' conflicts of interests. This chapter considers the requirements imposed on members by either the Code of Conduct, standing orders and the current disclosure regime, and contrasts to what will change under the draft regulation.

The chapter then reviews the current framework for avoiding, resolving and disclosing conflicts of interest and how they are then assessed, managed, monitored and reviewed.

What conflicts of interest are currently declared?

2.1 Declaration of conflicts of interest is integral to any governance framework and is particularly crucial to the role of elected officials such as members of parliament. The foundation for members of the NSW Parliament to understand their obligations is the Members' Code of Conduct (Members' Code). Clause 1 of the Members' Code states:

In complying with this Code, Members shall base their conduct on a consideration of the public interest, avoiding conflict between personal interest and their duties as a Member of Parliament.¹³

2.2 This then is explained in clause 6 as an obligation on members, with commentary which includes reference to current obligations under the Constitution (Disclosures by Members) Regulation 1983 (current regulation):

6. Disclosure of interests

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

Commentary

The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that Members lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts.

The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.

Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:

- *Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return;*
 - *The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure regime in plain language, with examples where possible;*
- and*

¹³ NSW Legislative Council Members' Code of Conduct, cl 1.

- *It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.*

In conjunction with the Regulation and this code, the following Standing Orders apply in relation to personal or pecuniary interests:

- *Legislative Assembly Standing Orders 176-7 and Legislative Council Standing Order 117 (2) on voting in divisions; and*
- *Legislative Assembly Standing Order 276 and Legislative Council Standing Order 217 (10) on participating in committee inquiries.*

2.3 While section 6 deals with the declaration of conflicts of interest under the draft regulation, clause 7 of the Members' Code explores how such conflicts are to be managed, as well as requiring members to disclose conflicts of interest.

7. Conflicts of interests

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.

2.4 There is commentary included in this section which states:

Commentary

Members should be aware of the important distinction between disclosing an interest and having a conflict of interest.

There are certain pecuniary interests that must be disclosed on the Register of Disclosures although these may never come into conflict with a Members' duties. There are also interests that are not required to be disclosed on the Register of Disclosures but which could give rise to a conflict of interest if they are not managed appropriately.

It is open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser

2.5 In addition to the Members' Code, and as noted above in clause 6, standing orders 117(2) and 217(1) provide direction for members dealing with potential conflicts of interests in their work in the House and in committees:

Standing order 117 – Voting in division

- (2) A member may not vote in any division on a question in which the member has a direct pecuniary interest, unless it is in common with the general public or it is on a matter of state policy. If a member does vote, the vote of that member is to be disallowed.

Standing order 217 – Membership

(10) No member may take part in a committee inquiry where the member has a direct pecuniary interest in the inquiry of the committee, unless it is in common with the general public, or a class of persons within the general public, or it is on a matter of state policy.

2.6 In addition to their obligations under the Members' Code and the relevant standing orders, the current regulation states that members are able to make discretionary disclosures of conflicts of interest in any return:

(16) A Member may, at his or her discretion, disclose in any return any direct or indirect benefits, advantages or liabilities, whether pecuniary or not:

- (a) which are not required to be disclosed by any provision in this Part, and
- (b) which the Member considers might appear to raise a conflict between his or her private interests and his or her public duty as a Member or which he or she otherwise desires to disclose.

2.7 In its submission to the inquiry, the Independent Commission Against Corruption (ICAC) advised that it had reviewed discretionary disclosures made recently by members of the Legislative Council and noted that these included various declarations regarding trusts, superannuation funds, as well as interests of family members and other close associations. ICAC highlighted that should the proposed changes under the draft regulation be implemented, some of these disclosures, that had been discretionally made, would become mandatory.¹⁴

Proposed changes under draft regulation

2.8 Whereas under the current regulation, the disclosure of most conflicts of interest is discretionary for members, section 15 of the Draft Constitution (Disclosures by Members) Regulation 2024 (draft regulation) introduces a mandatory requirement for members to disclose all conflicts of interest, including non-pecuniary interests:

15 Conflicts of interest

- (a) A Member must disclose all conflicts of interest.
- (b) 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.
- (c) A conflict of interest need not be pecuniary in nature.
- (d) 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.¹⁵

2.9 The definition of a conflict of interest at section 15(2) is similar to the definition that applies to ministers under clause 7(3) of the Ministerial Code of Conduct (Ministerial Code):

7(3) A conflict of interest arises in relation to a Minister if there is a conflict between the public duty and the private interest of the Minister, in which the Minister's private

¹⁴ Submission 1, Independent Commission Against Corruption, p 25.

¹⁵ Draft Constitution (Disclosures by Members) Regulation 2024, s 15(4).

interest could objectively have the potential to influence the performance of their public duty. ...¹⁶

- 2.10** Section 15 of the draft regulation implements ICAC's recommendation from its Operation Witney report for there to be mandatory registration of conflicts of interest by members via a register:

Operation Witney: Recommendation 4

That the NSW Government, in consultation with NSW Parliament's designated committees, amends the Constitution (Disclosures by Members) Regulation 1983 to provide for the mandatory registration of conflicts of interest by members of Parliament via the creation of a register for this purpose (noting the option to limit access to certain information for privacy reasons).¹⁷

- 2.11** The ability for members to make additional discretionary disclosures is also maintained in the draft regulation under section 22:

22 Discretionary disclosures generally

A Member may, at the Member's discretion, disclose in an interest disclosure return a direct or indirect benefit, advantage, liability or other matter, whether pecuniary or not, that—

- (a) is not required to be disclosed by another provision of this part, and
- (b) the Member—
 - (i) considers might appear to raise a conflict between the Member's private interest and the Member's public duty as a Member, or
 - (ii) otherwise wishes to disclose.

Private interests

- 2.12** As noted above, section 15(b) of the draft regulation states that a conflict of interest arises when there is a conflict between the public duty and private interest of the member in which the private interest could objectively have the potential to influence the performance of the member's public duty.

- 2.13** Private interests have been described as those that may:

- bring benefits or disadvantages to public officials as individuals, or to others whom public officials may wish to benefit or disadvantage
- not limited to pecuniary interests or to interests that can bring direct person gain or help avoid personal loss

¹⁶ Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014, cl 7(3).

¹⁷ Independent Commission Against Corruption, *Investigation into the corrupt conduct of the Local Member for Drummoyne*, July 2022, p 179.

- include many social and professional activities and interests¹⁸
- involve the interests of the public official, immediate family members or relatives, business partners, associates, friends or even enemies.¹⁹

- 2.14** Similarly, section 15(c) notes that conflicts of interest do not need to be pecuniary in nature, meaning that non-financial private interests which conflict with public duty must also be disclosed. In its 2004 guidelines on managing conflicts of interest in the public sector, ICAC explained that a non-financial interest 'may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.'²⁰
- 2.15** The Parliamentary Ethics Adviser and the ICAC advised that conflicts of interest can arise in a variety of situations and can be categorised as actual, potential or perceived.²¹ An actual conflict of interest is one where there is a real conflict between an official's public duties and responsibilities and their private interests. A potential conflict of interest arises where an official has private interests that could conflict with their public duties. And a perceived conflict of interest can exist where a third party could form the view that private interests could improperly influence the performance of public duties, now or in the future.²²
- 2.16** ICAC emphasised that having personal interests is common and, on its own, did not suggest any impropriety on the part of a public official holding a personal interest. Similarly, the Commission stated that the disclosure and registration of a relevant interest did not imply any wrongdoing.²³

Conflicts of interest framework

- 2.17** As noted earlier, the Members' Code currently acts as the foundation for members to understand their obligations regarding conflicts of interest, particularly requiring members to take 'reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest'. The Members' Code also states that it is open to any member to seek advice from the Clerk or the Parliamentary Ethics Adviser on matters relating to conflicts of interest.²⁴

¹⁸ Independent Commission Against Corruption, *Managing conflicts of interest in the NSW public sector*, June 2019, p 4, as quoted in Submission 2, Parliamentary Ethics Adviser, p 2.

¹⁹ NSW Ombudsman, *Ombudsman Fact Sheet Conflicts of Interest*, as quoted in Submission 2, Parliamentary Ethics Adviser, p 2.

²⁰ ICAC and Queensland Crime and Misconduct Commission, *Managing conflicts of interest in the public sector – Guidelines 2004*, p 8, as quoted in Submission 2, Parliamentary Ethics Adviser, p 2.

²¹ Submission 1, Independent Commission Against Corruption, p Submission 2, Parliamentary Ethics Adviser, pp 3-4.

²² Submission 2, Parliamentary Ethics Adviser, pp 3-4.

²³ Submission 1, Independent Commission Against Corruption, pp 4 and 26.

²⁴ NSW Legislative Council, *Members' Code of Conduct*, cl 7, Commentary.

2.18 However, in its Operation Witney report, ICAC identified a range of systemic weaknesses relating to the current conflicts of interest requirements of the Members' Code, including that:

- the current mechanisms regarding the recognition, disclosure and management of conflicts of interest rely heavily on self-regulation
- the conflict of interest regime envisaged currently lacks effective mechanisms to monitor and enforce its requirements (apart from the oversight provided by the Commission)
- there is no current register regarding conflicts of interest for members of Parliament
- the current Disclosure Regulation provides that it is at the members' discretion to disclose any direct or indirect benefits, advantages or liabilities, whether pecuniary or not (apart from those already required to be disclosed)
- the current Members' Code does not define what a conflict of interest is nor provides any details or guidance on what process or "reasonable steps" ought to be followed in order to avoid, resolve or disclose conflicts of interest on an ad hoc basis; also there are not mechanisms in place to collate any such ad hoc disclosures
- there are separate and distinct conflict of interest disclosure requirements via separate codes of conduct for members of Parliament and for parliamentary secretaries/ministers. The separate requirements are quite different and lack consistency. The lack of uniformity and differing standards can potentially create confusion for those subject to both codes (that is, ministers and parliamentary secretaries).²⁵

2.19 Therefore, in its submission to the inquiry, ICAC recommended the following aspects of a comprehensive framework be established that:

- addresses the avoidance, disclosure and management of conflicts of interest
- is in line with the mandatory language expressed in the Members' Code of Conduct
- outlines what reasonable steps must be taken:
 - regarding conflicts of interest that have previously been the subject of an interest
 - to draw attention to any conflicts between members' private interests and the public interest in any communication with ministers, members, other public officials or public office holders
- could either be replicated or referenced as 'Commentary' in the Members' Code of Conduct, to assist members to locate advice and guidance.²⁶

2.20 Considering the ICAC's findings and recommendations, the following sections review the current framework for avoiding, resolving and disclosing conflicts of interest and how these are then assessed, managed, monitored and reviewed.

²⁵ Independent Commission Against Corruption, *Investigation into the corrupt conduct of the Local Member for Drummoyne*, July 2022, pp 178-179.

²⁶ Submission 1, Independent Commission Against Corruption, p 33.

Avoiding, resolving and disclosing conflicts of interest

2.21 In its investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel), ICAC recommended that a comprehensive framework be developed to address the avoidance, disclosure and management of members' conflicts of interests:

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.²⁷

2.22 Similarly, in its submission to the inquiry, ICAC emphasised the importance of detailed guidance and practical examples being available and accessible to members on how to avoid, resolve, disclose and manage a conflict of interest. It also noted that the advisory role of the Clerks and the Parliamentary Adviser could be 'utilised further'.²⁸

2.23 In comparison to the Ministerial Code, ICAC observed that the Members' Code lacks details of what the process or reasonable steps should be for members to avoid, resolve or disclose any conflict, and the reasonable steps that shall take to draw attention to any conflicts between their private interests and the public interest in any communications with other public officials.²⁹

2.24 ICAC therefore suggested that guidance could be given to members around disclosing a conflict of interest at the relevant time, even if the related interest had already been registered, and how to draw attention to the relevant interest in any related subsequent communications. It emphasised the importance of members disclosing their conflicting interests at the relevant time in order that the conflict can be appropriately considered and managed.³⁰

2.25 The Commission referenced the 2023 updates that had been made to the Legislative Council's *Members' Guide*, which included some guidance regarding reasonable steps members may undertake to avoid, resolve or disclose any conflict between their private interests and the public interest, including:

- refraining from making representations to members
- renouncing the interest
- ceasing to participate in the proceedings that have led to the conflict arising
- disclosing the interest at the relevant time, even if the related interest has already been registered.³¹

²⁷ Independent Commission Against Corruption, *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel)*, June 2023, p 334.

²⁸ Submission 1, Independent Commission Against Corruption, p 31.

²⁹ Submission 1, Independent Commission Against Corruption, p 28.

³⁰ Submission 1, Independent Commission Against Corruption, pp 30-31.

³¹ Submission 1, Independent Commission Against Corruption, pp 29-30.

- 2.26** Although ICAC expressed the view that the guidance in the *Members' Guide* was a 'good foundation', it recommended that it could be 'further finessed to ensure it is in line with the mandatory language expressed in the Members' Code and be updated in line with additional conflict of interest requirements (once the draft regulation takes effect). It noted that the Members' Code could also incorporate this guidance to further assist members.³²
- 2.27** Other issues that the Commission suggested would assist members, if they were provided with guidance, was when a relationship or association is likely to amount to a personal interest that requires disclosure, and how to differentiate between mandatory and discretionary disclosures pursuant to the draft regulation.³³
- 2.28** ICAC further noted that the Commonwealth Parliamentary Association's *Standards for Codes of Conduct* states that additional guidance can be developed to accompany the code, but that it should not form part of it unless the guidelines have been separately resolved by the parliament as enforceable rules. It suggested that this could be achieved using the standing orders.³⁴

Assessing, managing, monitoring and reviewing conflicts of interest

- 2.29** ICAC raised that disclosure is just one aspect of a conflict of interest regime, and that any disclosures that have been made must then be assessed, managed, monitored and reviewed. It recognised that a conflict of interest framework needs to be tailored to the circumstances relevant for members. It noted that because members do not have a 'manager', many of the conventional approaches to managing their conflicts cannot be applied, including self-regulation.³⁵
- 2.30** In comparison, the Ministerial Code of Conduct is administered and enforced by the Premier, who determines any sanctions for a breach.³⁶ The Premier also makes rulings on potential conflicts of interest, which are made in writing and placed on the Ministerial Register of Interests. A ruling in respect of the Premier may be given if approved by the Cabinet.³⁷
- 2.31** The Commission also explained that in terms of enforcement, the Ministerial Code clearly outlines that the Premier has a central role in its administration, which makes it clear to ministers and parliamentary secretaries that they do not self-regulate their conflicts of interest.³⁸
- 2.32** The Parliamentary Ethics Adviser also highlighted that the new requirement under section 15 of the draft regulation does not go as far as the Ministerial Code, which requires a minister to also 'specify the nature and extent of the relevant interest, the matter to which it relates, and the reason why a conflict of interest arises' and recommended that a similar requirement to provide additional details also apply to disclosures made by members.³⁹

³² Submission 1, Independent Commission Against Corruption, p 30.

³³ Submission 1, Independent Commission Against Corruption, pp 30 and 33.

³⁴ Submission 1, Independent Commission Against Corruption, p 31.

³⁵ Submission 1, Independent Commission Against Corruption, pp 27 and 29.

³⁶ Independent Commission Against Corruption Regulation 2017, Appendix, Schedule, cl 26.

³⁷ Independent Commission Against Corruption Regulation 2017, Appendix, Schedule, cl 27.

³⁸ Submission 1, Independent Commission Against Corruption, p 28.

³⁹ Submission 2, Parliamentary Ethics Adviser, pp 2 and 4-5.

- 2.33** ICAC acknowledged that a distinction exists between the accountability frameworks for members and that for ministers and parliamentary secretaries, and identified that ministers have additional responsibilities, are faced with increased risks, and when compared to members of Parliament, subject to additional obligations regarding secondary employment and business interests, prohibited interests, and their employment after leaving ministerial office.⁴⁰
- 2.34** However, ICAC advocated that the two conflicts of interest regimes should have an 'internal consistency about core aspects, including a generally consistent approach to the principles and steps taken regarding avoiding, recognising, disclosing and managing conflicts of interest.'⁴¹
- 2.35** The Commission also concluded that there is utility for members in having consistency about the core aspects of the separate conflicts of interest regimes, namely between the Ministerial Code and Members' Code, and stated in its submission:

Given most ministers and/or parliamentary secretaries are likely to have spent time in NSW Parliament as backbenchers or in opposition, aligning these regimes more closely would assist them in transitioning to the additional disclosure requirements pursuant to the Ministerial Code of Conduct.⁴²

Committee comment

- 2.36** The committee believes that the declaration of conflicts of interest is integral to any governance framework and is particularly crucial to the role of elected officials, including for members of parliament. Noting that under the current regulation, the disclosure of most conflicts of interest is discretionary for members, we agree and support the principle of strengthening the framework to ensure that members base their conduct on a consideration of the public interest over their own.
- 2.37** However, the committee expresses its strong concern over the proposed changes introduced by the draft regulation, particularly that members must now disclose all conflicts of interest, including those that are not pecuniary in nature (sections 15(a) and (c)), and the details will be published and searchable online (section 25).
- 2.38** We believe that such a requirement is far too broad and lacks specific details on what and how they must be declared. In our opinion, there are simply no limits to what may be caught by this section as currently drafted. Given the consequences for oversighting or missing a declaration are so serious, there is a need for greater clarity.
- 2.39** The committee recognises that there are similarities with the Ministerial Code of Conduct, which also mandates the declaration of conflicts of interest by ministers and parliamentary secretaries. However, as also identified by ICAC, this is understandable because ministers are held to a higher accountability framework due to their additional responsibilities in decision and policy-making and because they are faced with increased risks. Furthermore, in comparison to members of Parliament, ministers are subject to additional obligations regarding secondary

⁴⁰ Submission 1, Independent Commission Against Corruption, p 28.

⁴¹ Submission 1, Independent Commission Against Corruption, p 12; Independent Commission Against Corruption, *Investigation into the corrupt conduct of the Local Member for Drummoyne*, July 2022, p 179.

⁴² Submission 1, Independent Commission Against Corruption, p 21.

employment and business interests, prohibited interests and their employment after leaving ministerial office.

- 2.40** However in spite of their significant and additional obligations and responsibilities, the committee notes that ministers and parliamentary secretaries actually have less transparency than what appears to be proposed in the draft regulation for ordinary members. Although it will be discussed in more detail in chapter 5, we flag our serious concern that while the Ministerial Register of Interests is kept confidential and only viewed by ministers, cabinet committees or by arrangement with the Premier, in direct contrast, the conflicts of interests declared by members of Parliament will be made public and placed on a searchable online register.
- 2.41** The committee cannot reconcile such an onerous disclosure requirement for members (as in, equal to ministers and parliamentary secretaries who are understandably held to a higher level of accountability and transparency), while also making the information public and searchable online (whereas it is kept confidential for ministers).
- 2.42** ICAC had recommended that there be an 'internal consistency' regarding the core aspects of the two conflicts of interest regimes. However, until the draft regulation can address this discrepancy, the committee cannot support such a broad requirement that lacks crucial detail, and which demands more of members than it does of ministers.
- 2.43** An option would be to remove the relevant section until a section with narrower range is inserted into the regulation.
- 2.44** However it is our opinion that this issue could potentially be resolved if the regulation was amended to require only conflicts of interest that are pecuniary in nature to be disclosed. By narrowing the parameters of the requirement, it would provide much-needed clarity on what must be declared and would be entirely appropriate to publish.
- 2.45** Members would still be expected to declare relevant non-pecuniary conflicts of interest under section 22 of the draft regulation, which allows for discretionary disclosures. It is the committee's opinion that this would be an appropriate way to disclose the kind of conflicts of interest, that are not pecuniary in nature, such as those raised in ICAC's Operation Keppel report. The mandatory focus on declarations relating to immediate family would be expected to sensitise members to better identify those non-pecuniary interests which are important to declare to ensure consistency with their obligations regarding conflicts of interest under the Members' Code of Conduct.
- 2.46** The other option is to retain a wider disclosure requirement but for the draft regulation to make clear that this remains a confidential part of the online register, discussed in chapter five. On balance the committee believes the narrower definition of conflicts of interest will make members obligations to disclose clearer.

Recommendation 1

That section 15 of the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to only require conflicts of interest of a pecuniary nature to be declared.

That members consider their obligations under the Members' Code of Conduct regarding conflicts of interest and ensure they make discretionary disclosures when a conflict of interest of a non-pecuniary nature is relevant to their public duties.

- 2.47 Pending recommendation 1, there will need to be updates to the relevant materials that members turn to for advice and guidance so that it reflects the new disclosure requirements under the draft regulation. These materials include the *Members' Guide* and the Members' Code of Conduct.
- 2.48 The committee also supports the Clerk consulting with the Independent Commission Against Corruption to consider how to enhance the conflict of interest framework, with a view to develop guidance materials and examples for members as to how to appropriately disclose and manage their conflicts of interest.
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Recommendation 2

That once the Draft Constitution (Disclosures by Members) Regulation 2024 takes effect, the Department of the Legislative Council update the *Members' Guide* to reflect the relevant provisions relating to conflicts of interest.

Recommendation 3

That once the Draft Constitution (Disclosures by Members) Regulation 2024 takes effect, the NSW Parliament amend the Commentary of the Members' Code of Conduct to ensure that is consistent with the provision of mandatory disclosure of conflicts of interest.

Recommendation 4

That once the Draft Constitution (Disclosures by Members) Regulation 2024 takes effect, the Clerk of the Legislative Council consult with the Independent Commission Against Corruption to enhance the conflict of interest framework, with a view to develop guidance materials and examples for members to appropriately disclose and manage their conflicts of interest.

Chapter 3 Other changes in the draft regulation

The Draft Constitution (Disclosures by Members) Regulation 2024 introduces significant changes relating to disclosures of the interests of immediate family members, trusts, dispositions of interests and water licences, each of which are explored in this chapter.

This chapter also considers the conflicting provisions in the Members' Code of Conduct and the current and draft regulations regarding payment to members to perform lobbying or paid advocacy.

Interests of immediate family members

3.1 The Constitution (Disclosures by Members) Regulation 1983 (current regulation) only requires members of Parliament to disclose their own interests. There are some provisions that may result in the disclosure of interests which are held by family members, such as:

- income from a family trust (clause 9(2)(d))
- interests and positions in corporations, could include shareholdings or offices in family companies (clause 12)
- dispositions of property to a family member (clause 15).

3.2 In addition to these forms of indirect disclosure, clause 16 allows members to make discretionary disclosures, whether pecuniary or not, which a member may consider making if they consider a family member's interest might appear to raise a conflict between the member's private interests and the public duty, or otherwise desires to disclose.

3.3 The issue of whether the interests of family members ought to be disclosed is not new. As early as 1978, a Joint Committee was appointed to inquire into members' pecuniary interests in New South Wales and this committee recommended that members should be required to disclose the interests of their spouse and infant children, as well as their own interests, in the register:

Each member of parliament should disclose in the register details of the pecuniary interests or other benefits held or other benefits received in respect of themselves, their spouses and their infant children.⁴³

3.4 In 1994, the Joint Committee on the ICAC noted evidence it had received from Professor Gerard Carney supporting the disclosure of family interests and who argued that:

- (i) A conflict of interest can as easily arise when the interest in question is that of a member's family or spouse
- (ii) A member may choose to transfer his or her assets to his or her family to avoid the provisions of the register and

⁴³ Joint Committee of the Legislative Council and Legislative Assembly, *Pecuniary interests* (1978), p 19.

- (iii) The Register may not have public confidence unless a member's family interests are disclosed.⁴⁴

3.5 In its submission to the inquiry, ICAC expressed that the Operation Witney and Operation Jasper reports demonstrate examples of the interests of family members being capable of influencing a member's conduct and warned of the potential loopholes that can arise in relation to these interests.⁴⁵ It quoted evidence that it had given in 1994 to the Joint Committee on the ICAC:

The basis of making public and disclosing this information can be seen as preventing a conflict of interest arising, bringing to the attention of the Member or others that there are certain interests and recognising that there are interests which can influence a Member in the exercise of his or her public duties. It is thought that the interests of close associates – in the sense of family members – would be as capable of exercising that influence as if it were the Member's own interests. Therefore, the nexus is so close as to require disclosure.⁴⁶

3.6 ICAC advised that, in addition to the Operation Witney and Operation Jasper reports, it had made additional findings regarding members failing to disclose family interests:

- Operation Cyrus, where a member failed to disclose to ministers that his family had interests in certain Circular Quay leases and would benefit from a change in policy, for which he was advocating.⁴⁷
- Operation Credo, where a member made various representations to ministers and the premier, including asking the premier to intervene in a dispute that a government agency had with a company. There is evidence that this member failed to mention his family's interest in the company, or that his son was working with that company.⁴⁸

3.7 The Commission also noted that the 2024 Commonwealth Parliamentary Association's (CPA) *Standards for codes of conduct for members of parliament and the parliamentary workplace* recommended that 'Relevant interests held by the Member's spouse, partner or close family members are clearly included in the requirements of a register of interests.'⁴⁹

⁴⁴ Committee on the ICAC, 'Discussion paper on the pecuniary interest provisions for members of Parliament and senior executives and a Code of Conduct for members of Parliament' (1994), p 16.

⁴⁵ Submission 1, Independent Commission Against Corruption, p 10.

⁴⁶ Submission 1, Independent Commission Against Corruption, p 11, quoting NSW Parliament, Joint Committee on the ICAC, *Report on inquiry into the pecuniary interest provisions for members of Parliament and senior executives and a code of conduct for members of Parliament* (14 April 1994), p 16.

⁴⁷ Submission 1, Independent Commission Against Corruption, p 11, quoting ICAC, *Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay retail lease policy*, June 2014, pp 7 and 60.

⁴⁸ Submission 1, Independent Commission Against Corruption, p 11, quoting ICAC, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and other related matters*, August 2017, pp 80-81.

⁴⁹ Submission 1, Independent Commission Against Corruption, p 11, quoting Commonwealth Parliamentary Association, *Standards for codes of conduct for members of parliament and the parliamentary workplace: minimum standards, additional measures and supporting structures*, London, 2024, p 14.

3.8 ICAC further drew comparisons with the Ministerial Code of Conduct, which also requires ministers and parliamentary secretaries to disclose the pecuniary and other interests of their immediate family members, which would be required under the current regulation if the relevant interest were that of the minister, and to provide continuous updates regarding the relevant interests of immediate family members.⁵⁰

Changes under the draft regulation

3.9 The explanatory note in the Draft Constitution (Disclosures by Members) Regulation 2024 (draft regulation) outlines that it provides for 'the ongoing disclosure of Members of Parliament of pecuniary interests and other matters relating to Members and their immediate family members'.

3.10 In a considerable broadening of information that is required to be disclosed, the draft regulation requires immediate family members disclose their interests concerning:

- real property (cl 10)
- trusts (cl 11)
- interests in positions in corporations (cl 12)
- positions in trade unions and professional or business associations (cl 13)
- debts (cl 14)
- sources of income (cl 16)
- gifts (cl 17)
- contributions to travel (cl 18)
- water access licences (cl 21).

3.11 The term 'immediate family members' is defined in the dictionary in Schedule 3 of the draft regulation and reflects similar wording to the definition contained in the Ministerial Code of Conduct:

immediate family member, in relation to a Member, means—

- (a) the Member's spouse or de facto partner, or
Note— *De facto partner* is defined in the *Interpretation Act 1987*, section 21C.
- (b) a child of the Member or of the Member's spouse or de facto partner if one or more of the following apply—
 - (i) the child less than 18 years of age,
 - (ii) the child is a dependant of the Member or of the Member's spouse or de facto partner,

⁵⁰ Submission 1, Independent Commission Against Corruption, p 13.

- (iii) the child resides with the Member or the Member's spouse or de facto partner.

- 3.12** In correspondence to the committee, The Cabinet Office (TCO) explained that while the draft regulation does not define when a child is a 'dependant', the concept arises in multiple contexts, including in social security, workers' compensation and succession, and is typically interpreted as a child being wholly or partially dependent for financial support. It noted that as an example, an unemployed adult may be classified as a dependent of their parents, even if they no longer reside with them.⁵¹
- 3.13** In its submission to the inquiry, ICAC expressed that the proposed additional transparency measures regarding the interests of immediate family members 'would seem appropriate' as it is likely that members have detailed knowledge of interests of their immediate family members, more so than those held by other relatives. It noted that these 'ad hoc situations' involving other relatives or close associates would otherwise be captured by the proposed conflicts of interest requirement under section 15(2).⁵²
- 3.14** ICAC was also of the opinion that it would encourage members to recognise their potential conflicts of interest by having to proactively disclose the interests of their immediate family members, which in turn, would assist them in demonstrating their commitment to principles of transparency, accountability and acting with integrity.⁵³
- 3.15** However, in practical terms, the draft regulation does not provide any guidance on what steps a member should take if an immediate family member does not provide certain information or cannot be contacted. Under section 14A(2) of the *Constitution Act 1902*, if a member of either House of Parliament 'wilfully contravenes' any regulation made under s 14A(1) (which would apply to the draft regulation if implemented), that House may declare the member's seat vacant and it will thereupon become vacant.⁵⁴
- 3.16** Considering these serious consequences for non-compliance, clarification was sought from TCO regarding how a member would demonstrate that they had not 'wilfully contravened' the regulation if they were unable to produce the prerequisite information. TCO's response was that it ultimately would be a matter for the Houses of Parliament to determine if a member had wilfully contravened the disclosure obligations and that the relevant circumstances of the failure to comply with disclosure obligations would be relevant to any consideration by the Houses.⁵⁵
- 3.17** TCO recommended that if an immediate family member refused to provide information about their relevant interests, it would be 'prudent' for the member to keep records of their attempts to obtain the information. TCO noted that what would constitute as 'reasonable steps' would differ in each circumstance, but some examples could include:

⁵¹ Correspondence from Ms Kate Boyd, Secretary, The Cabinet Office, to secretariat, attaching responses to members' questions regarding the Draft Constitution (Disclosures by Members) Regulation 2024, 19 June 2024.

⁵² Submission 1, Independent Commission Against Corruption, pp 14-15.

⁵³ Submission 1, Independent Commission Against Corruption, p 15.

⁵⁴ *Constitution Act 1902*, s 14A(2).

⁵⁵ Correspondence from Ms Boyd to secretariat, 19 June 2024.

- providing the immediate family member with written correspondence requesting the disclosure of interests, and keeping a copy of the written correspondence and any reply
- conducting searches of relevant property and other registers available to the member
- disclosing any relevant interests of the immediate family member that are known or suspected by the member.⁵⁶

Disclosure of family members' interests in other parliaments

- 3.18** There are differing approaches across other parliaments regarding the disclosure of interests of family members. For example, both the Senate and the House of Representatives require its members to disclose the interests of a spouse or partner and dependent children, to the extent of which they are aware.⁵⁷ In the Parliaments of Victoria and Western Australia, family members' interests are not required to be disclosed, although in Victoria they should be declared if they are shared with the member or thought to give rise to a real or perceived conflict of interest.⁵⁸
- 3.19** Similarly in the Parliament of New Zealand, interests of immediate family members are not required to be disclosed, unless the member judges that doing so would be consistent with the purpose of the register, which to 'provide transparency and strengthening public trust and confidence in parliamentary processes and decision making'.⁵⁹
- 3.20** Members are required to provide disclosures for family members in Tasmania, Northern Territory, Australian Capital Territory, Queensland and South Australia.⁶⁰
- 3.21** However, there are also differing approaches across parliaments regarding how the disclosures of family members' interests are made. For example, in South Australia, members are able to disclose information 'in a way that no distinction is made between information relating to the Member personally and information relating to a person related to the Member'.⁶¹

Committee comment

- 3.22** The committee does not disagree with the ICAC's view that the interests of family members, and particularly those categorised as immediate family members under the draft regulation, are capable of influencing the conduct of a member. In principle, we support the disclosure of the interests of immediate family members. But at the same time, we feel that what is required under the draft regulation is substantially more and sensitive than what is currently required, which is that members make discretionary disclosures about the interests of their family members under section 16 of the current regulation.

⁵⁶ Correspondence from Ms Boyd to secretariat, 19 June 2024.

⁵⁷ Submission 3, Clerk of the Parliaments, pp 2-3.

⁵⁸ Submission 3, Clerk of the Parliaments, pp 3-4.

⁵⁹ Submission 3, Clerk of the Parliaments, p 3.

⁶⁰ Submission 3, Clerk of the Parliaments, pp 3-6.

⁶¹ Submission 3, Clerk of the Parliaments, p 7.

- 3.23** Members who sign themselves up for public office, also sign themselves up to being scrutinised and being held to higher levels of transparency and accountability. However, their family members do not, and it seems unfair to require them to do so, simply on the basis of the professional aspirations of their spouse, partner or parent.
- 3.24** The draft regulation requires immediate family members to disclose their personal interests at a level equal to the member. Furthermore, this personal information, which includes details of real property, income, trusts, debts and positions held, is likely to be published and searchable on a public register, with a requirement for continuous and ongoing disclosure.
- 3.25** We note that in the Parliament of Victoria, members are not required to disclose the interests of their family members, unless they are shared with the member or thought to give rise to a real or perceived conflict of interest.
- 3.26** In summary, the committee acknowledges that based on recent cases, there is a serious and real risk that conflicts of interest can arise for members when considering the personal interests of a family member against the public duty. We are supportive of changes to strengthen the framework in order to reduce the risk of this happening, but also raise caution against requiring too much disclosure, perhaps for the sake of it, particularly in a public domain.
- 3.27** As a committee and members ourselves, we hold significant concerns regarding the privacy and confidentiality of information disclosed about and by immediate family members, but this will be explored more in chapter 5.
- 3.28** Additionally, it is still not quite clear to the committee what steps would be appropriate if an immediate family member, for example, a former partner with whom one is now separated, refused to respond or provide their personal information (of which, admittedly, a lot is required). The member could be found to be in breach of a regulation, and this could be weaponised against them or used as the basis of a political attack. In addition to this, it could be highly likely to add to the tensions of a relationship that has already broken down if a member was expected to approach an alienated partner about their financial interests.
- 3.29** Therefore, the committee is of the view, that in acknowledgement of the serious potential consequences for non-compliance, the draft regulation should set out a process for members to follow or a declaration to be signed that they had taken all reasonable steps to obtain the information, that also takes into account the potential for relationship breakdowns and separation, which affect a member's ability to disclose. Where information could not be obtained and a declaration has been signed (or another process followed, as listed in the regulation), this should also be indicated on the register available to the public.

Recommendation 5

That the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to set out a process for members to follow:

- when unable to obtain the information required for disclosures of interests of immediate family members, and for this to be reflected on the public register,
- that takes into account the potential for relationship breakdowns and separation to limit the ability of a member to disclose interests of immediate family.

Trusts

3.30 In covering correspondence to the committee from the Premier, the Hon Chris Minns MP, providing the draft regulation, states that in addition to current requirements, the new draft regulation requires members to disclose:

Each trust in which the Member has a beneficial interest, including a mere expediency as a beneficiary of a discretionary trust, and interests in superannuation funds and listed investment trusts (subject to specified exemptions).⁶²

3.31 The ICAC in its submission noted that in several inquiries it had become apparent that the disclosure requirements for members omitted very significant interests by not requiring family trusts, superannuation funds and some other beneficial interests to be disclosed, and as a result posed potential corruption risks.⁶³ In particular this was said to be a matter of concern for the following ICAC inquiries:

- Operation Witney, an investigation into the conduct of the Member for Drummoyne, where the member and his wife were general beneficiaries under a discretionary trust, but this was not required to be disclosed.⁶⁴
- Operation Jasper, involving an investigation into former Legislative Council members Ian Macdonald, and Edward Obeid (among others) where a complex structure of family trusts by the Obeids ensured “that all the family’s diverse business interests operate for the benefit of the family as a whole. The family operates, in effect, as a single economic unit”⁶⁵
- Operation Cyrus, involving lobbying by Edward Obeid for restaurant leases at Circular Quay in which his family held interests through a discretionary family trust.⁶⁶

⁶² The Hon Chris Minns, Premier, correspondence to committee, 6 February 2024.

⁶³ Submission 1, Independent Commission Against Corruption, p 10.

⁶⁴ Submission 1, Independent Commission Against Corruption, p 7.

⁶⁵ Submission 1, Independent Commission Against Corruption, p 7, quoting *Investigation into the conduct of Ian Macdonald, Edward Obeid Senior, Moses Obeid and others* Sydney, July 2013, p 28.

⁶⁶ Submission 1, Independent Commission Against Corruption, p 8.

3.32 The Commission also notes that the 2024 Commonwealth Parliamentary Association's (CPA) *Standards for codes of conduct for members of parliament and the parliamentary workplace* advises that members at a minimum should be required to disclose trusteeships, as well as trusts and blind trusts of which the member is a beneficiary.⁶⁷

3.33 The current regulation places an obligation on members to declare income from a trust under clause 9(e) but lacks detail as to how this is defined, and there is little further assistance given in definitions of income or in the sample disclosure forms appearing in Schedule 1. In contrast, the draft regulation contains a very detailed explanation of what is required to be disclosed at section 11:

- (1) A Member must disclose a trust if the Member or an immediate family member of the Member—
 - (a) has a beneficial interest in the trust, including a mere expectancy as a beneficiary of a discretionary trust, or
 - (b) is a trustee of the trust.
- (2) The following information must be disclosed about the trust—
 - (a) the name of the trust,
 - (b) a description of the activities of the trust,
 - (c) the nature of the interest the Member or immediate family member has in the trust,
 - (d) the interests held by the trust, including interests in real property and investments.
- (3) A trust is not required to be disclosed by a Member under subsection (1)(b) if the Member or immediate family member is trustee—
 - (a) as the executor or administrator of the estate of a deceased person and the Member or immediate family member is not a beneficiary under the will or intestacy, or
 - (b) in the ordinary course of an occupation of the Member or immediate family member that is not related to the Member's duties as a Member.
- (4) To avoid doubt, trusts that are superannuation funds, whether public or self-managed, and listed investment trusts must be disclosed under this section.
- (5) A Member may give the following information about a parcel of real property in which a trust has an interest as an alternative to disclosing the address of the parcel if the parcel is used by the Member or immediate family member for residential purposes—

⁶⁷ Submission 1, Independent Commission Against Corruption, p 8.

- (a) a statement that the parcel is, for the Member or immediate family member—
 - (i) the principal place of residence, or
 - (ii) a secondary place of residence,
- (b) the location of the parcel by suburb or area.

3.34 This is a significant expansion in what members are required to disclose currently. Not only are trusts for which immediate family members have a beneficial interest required to be disclosed, but almost any connection between a member and a trust is required to be declared, with the exceptions made in section 11(3). Not only self-managed superannuation funds but also public superannuation funds including industry funds now have to be declared.

3.35 Clarification was sought from The Cabinet Office by the committee on the extent of disclosure required for superannuation funds, given the requirement in section 11(2) to declare “the interests held by the trust, including interests in real property and investments. The advice of the Office was that for a self-managed fund the expectation would be for specific shares and other interests, whereas for a public superannuation fund it would be sufficient to for there to be a statement of general interests held by the fund – for example “diversified Australian assets”.⁶⁸

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

3.37 The ICAC in its submission welcomed the extensive new disclosure requirements relating to trusts:

The Commission reports outlined above show that the relevant beneficial interest pertaining to trusts and other entities including superannuation funds have not been disclosed. As such, these are significant corruption risks. The Commission supports the implementation of these aspects of the draft regulation.⁶⁹

Committee comment

3.38 The ICAC has provided persuasive evidence that in the past the disclosure regime has allowed a few corrupt members to act without transparency as to their real interests. The current regulation is unclear as to what beneficial interests members are required to declare, therefore not assisting the great majority of members who wish to act honestly and in accordance with requirements.

3.39 The committee believes the proposed section 11, in being prescriptive and detailed, goes a little too far in the opposite direction. A good example of this is that a member is now required to declare the interests held by an immediate family member in a public superannuation fund, as well as their own. Given a member has no control over a public superannuation fund’s investments (unless they sit as a trustee on the Board) the committee believes the regulation should limit the requirement to stating the name of the public superannuation fund of the

⁶⁸ Correspondence from Ms Boyd to secretariat, 19 June 2024.

⁶⁹ Submission 1, Independent Commission Against Corruption, p 10.

member or immediate family member. For a self-managed fund, it is however appropriate to require the disclosure of specific interests held, as the member has a level of control in investment decisions.

Recommendation 6

That the Draft Constitution (Disclosures by Members) Regulation 2024 be amended so that members who are a member of a public superannuation fund are only required to declare the name of the fund, not the interests held by that fund.

Dispositions of interests

3.40 Under both the current regulation and the proposed draft regulation members are required to declare dispositions of interests made during the period for which a disclosure is made. Section 19(1) of the draft regulation states:

- (a) A Member must disclose particulars of each disposition of a relevant interest by the Member if the Member kept, wholly or in part—
 - (a) the use and benefit of the interest, or
 - (b) the right to reacquire the interest at a later time.
- (b) A Member must disclose particulars of each disposition of property by another person under arrangements made by the Member if the Member kept, wholly or in part, the use and benefit of the property.
- (c) In this section— *relevant interest*, in relation to a Member, means an interest that would, but for the disposition of the interest by the Member, be required to be disclosed under this regulation.

3.41 Clause 15 under the current regulation is expressed in similar terms but is narrower in scope, as it refers to “disposition of property”, as defined in clause 7, rather than a “relevant interest”. As section 19(3) in the draft regulation makes clear, this relevant interest is now to be essentially any interest which a member is required to declare under the regulation. Schedule 3 then defines an “interest”:

Interest means-

- (a) in relation to property—an estate, interest, right or power, whether at law or in equity, in or over the property, or
- (b) in relation to a corporation—a relevant interest, within the meaning of the Corporations Act 2001 of the Commonwealth, in securities issued or made available by the corporation.

3.42 The wording of this section 19(1) does not appear to extend to a requirement to declare disposition of interests of family members. Members are required to disclose the relevant interests that they have disposed of, or where they retain the benefit of the interest or the right to reacquire it, but it does not refer to immediate family members. If it did so the same

complications for members which arise with the other aspects of disclosing interests of family members would also apply to the provision on dispositions.

- 3.43** Under the current disclosure framework members are effectively being required to declare any disposition of property that has occurred in the last six months, given the requirement to make supplementary and ordinary returns. As the draft regulation is now proposing that there be one return made at the start of the parliament, members will need to amend their online return within one month of the disposition. As a check, in case this is overlooked, there is the annual declaration form, where members verify that their return is correct.

Committee comment

- 3.44** The committee has no issue with the widening of the requirement for disposition of interests in the draft regulation to encompass more than property. One concern of the committee is however to ensure that there is no room for doubt about the interpretation of section 19(1) as only referring to the member, and that it does not also include dispositions by immediate family interests. It would be easy for a member to not be informed of a disposition by a partner who has complex business interests and may at times take far more than a month for a member to be aware of it occurring.

Recommendation 7

That either section 6 or 19 of the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to clearly state that the obligation to disclose the disposition of an interest by a member does not extend to the disposition of an interest by an immediate family member, except where the member themselves benefit from such disposition.

Water licences

- 3.45** One of the changes in the draft regulation will have no impact on most members but create new obligations to disclose on those few who do hold water access licenses, or whose immediate family hold such interests. These licenses are defined in Schedule 3 of the draft regulation as “an access license within the meaning of the *Water Management Act 2000*.”
- 3.46** Section 21(1) of the draft regulation states:
- A member must disclose-
- (a) The water access license number of each water access license in which the Member or an immediate family member of the Member has an interest, and
 - (b) The nature of the interest of the water access license
- 3.47** An exception is made in section 21(2) if this is held as the executor of an estate where the member is not a beneficiary. In schedule 1 of the draft regulation at Part 12 a separate part of the form is then assigned to this item, so in members’ first interest disclosure this will need to be completed, though for most members the entry is likely to be “nil”.

- 3.48** This issue has arisen under the current regulation. In a submission to an inquiry by Portfolio Committee No. 4 – Regional NSW in the 57th Parliament, the Clerk of the Parliaments provided guidance on whether water access licenses needed to be declared in a return. He referred to a memorandum issued in 2019 by the Clerk of the Legislative Assembly in which she advised that, based upon advice from the Crown Solicitor, members are required to declare any income from a water license, and are also required to declare a water license holding as part of their obligation under clause 8(1) to declare an interest in real property. In the same advice the status of a water access license, as opposed to a water license, was more ambiguous, although disclosure and obtaining independent legal advice was recommended.⁷⁰
- 3.49** This new provision puts the matter beyond doubt, members must now declare such interests in water.

Lobbying

Payment to perform lobbying activities

- 3.50** While the draft regulation represents a substantial redrafting of the current regulation, there are sections which remain unchanged or in similar words to its predecessor. One example of this is the section which relates to paid advocacy by members. Section 9 of the draft regulation is in similar words to the current clause 7A, and states:

A reference in this part to a service provided by a Member involving the use of the Member's parliamentary position is a reference to any service provided by the Member to another person that arises from or relates to the use of the Member's position as a Member, including one or more of the following services:

- (a) The provision of public policy advice
- (b) The development of strategies, or the provision of advice, on the conduct of relations with the Government or Members,
- (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

- 3.51** Section 20 of the draft regulation then requires the member providing client services “involving the use of the Member's parliamentary position” to identify the nature of the services provided, the names and addresses of persons likely to benefit directly from the provision of the service and a description of the business they undertake. This disclosure is required regardless of whether the member has received a financial benefit from the client.

⁷⁰ Clerk of the Parliaments, Submission to *Inquiry into Constitution Amendment (water Accountability and Transparency) Bill and the provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020 and the Water Management Amendment (Water Allocations – Drought Information) Bill 2020*, July 2020, Appendix 1.

3.52 In its submission to this inquiry the ICAC has highlighted that this aspect of the regulation is contrary to the Members’ Code of Conduct, which at clause 2(a) states:

No member shall act as a paid advocate in any proceeding of the House or its committees.

3.53 The submission from the ICAC provides extensive evidence from court decisions and from its past inquiries that paid advocacy for private clients is an undesirable use of a member’s parliamentary position:

- *R v Boston* (1923) 33 CLR 386, where a member was paid to use their position to influence an officer of the Crown was said to cause a “public mischief”
- *Wilkinson v Osborne* [1915] 21 CLR 89 at 94 where the High Court stressed the need for members to only use their influence for the public interest, not private interests
- *Obeid v the Queen* [2017] NSWCCA 221 involving a member of the Legislative Council lobbying a public servant with the intent of securing benefits for himself and his family
- Operation Keppel, where the member for Wagga took steps to engage with public officials to advance his own interests and those of developers whom he hoped to receive benefits
- Codes of conduct from both the House of Commons and the Lords which prohibits members from seeking profit from providing parliamentary advice or services, and
- The Commonwealth Parliamentary Association (CPA) *Standards for Codes of Conduct* which unequivocally states that paid lobbying, advice or advocacy that in any way relates to parliamentary work should be prohibited.⁷¹

3.54 The Commission concludes:

This aspect of the regulation seems to be an anachronism that ought to be remedied by the draft regulation. This inquiry provides an opportunity for NSW Parliament to address recommendation 27 made by the Commission in the Operation Eclipse report [into lobbying]. The draft regulation should be unambiguous and align with the Code of conduct which prohibits paid advocacy.⁷²

Committee comment

3.55 It is clearly undesirable to have the Members’ Code of Conduct prohibiting use of a parliamentary position for paid advocacy on the one hand and then have provision in the regulation for members to declare that they undertake such activity.

3.56 Some client services may be acceptable for a member to undertake or declare – for instance a member who is a doctor or accountant may still retain some clients which will need to be declared using the form which appears in Part 11 of schedule 2 of the draft regulation. But for a member to act as a paid lobbyist using their parliamentary position puts them in serious risk of conflict of interest between their public duty as a member and their private duty to their

⁷¹ Submission 1, Independent Commission Against Corruption, pp 36-38.

⁷² Submission 1, Independent Commission Against Corruption, p 38.

client. The committee is persuaded by the arguments made by the ICAC that the draft regulation needs to be made consistent with clause 2(a) of the Code of Conduct.

Recommendation 8

That sections 9 and 20 of the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to ensure consistency with the prohibition on paid advocacy in clause 2(a) of the Members' Code of Conduct

Chapter 4 Lodgement requirements for returns

This chapter considers the way in which the proposed regulation moves the current reporting system from a twice a year requirement to submit returns to a form of exception reporting where members regularly update specific changes to the return they submit at the beginning of each parliament.

Current lodgement requirements

- 4.1** Part 2 of the Constitution (Disclosures by Members) Regulation 1983 sets out the current frequency and categories of lodgement of returns by members: whether primary, ordinary, supplementary or discretionary.
- 4.2** When a member is first elected, they must, within three months of being sworn as a member, lodge a “primary return” with the Clerk (clause 4). This return is different to the subsequent returns a member must make, with a special form for primary returns provided as Schedule 1, clause 2 of the current regulation. It is a snapshot of the interests of the member at the date they are sworn in, whereas all other returns are effectively retrospective.
- 4.3** For all other members there is a requirement to lodge a return every six months:
- An “ordinary return” (clause 6) covering the period for 12 months ending on 30 June in that year (clause 3)⁷³, and
 - A “supplementary ordinary return” (clause 6A) to cover the period from 1 July to 31 December of the previous year.⁷⁴
- 4.4** The ordinary return must be filled in completely, even if there is no change from the previous ordinary return to any of the interests. The supplementary return can take two forms – either a simple one-page form indicating there has been no change in the six months, or if there has been a change the member must fill out the entire form again.
- 4.5** These returns are all due by the close of three months from the period they relate to – that is 1 October for ordinary returns and 31 March for supplementary returns. The Office of the Clerk writes to all members at the beginning of the period for submitting returns and conducts extensive follow ups either through the whips or directly approaching members as the deadline looms.
- 4.6** If there is a change to a member’s interests which they wish to declare prior to the date for the next return they are able to make a discretionary return (clause 6B), the discretion relating to either the timing of the disclosure for matters required to be disclosed under the regulation, or that a member wishes to disclose matters not specifically required to be disclosed.

⁷³ With an exception made for new members who have lodged their primary return after 30 April of that year.

⁷⁴ Again, with an exception for new members who have made a primary return on or before 1 July.

4.7 These lodgement requirements have been criticised in several previous reports of this committee as both cumbersome and complex yet not requiring real time disclosure. For instance, in its 2018 review of the Members Code of Conduct, the committee made the following recommendation:

That the current system of primary, ordinary, supplementary ordinary and discretionary returns be amended to introduce a simpler system of exception reporting requiring:

- (a) A primary return to be lodged following a member's election to Parliament as at present
- (b) An ordinary return to be lodged in each subsequent year
- (c) Any changes to interests disclosed in a preceding return to be disclosed in an alteration of interest return lodged with the Clerk within 30 days of the change occurring
- (d) Alteration of interest returns to be tabled in the House every six months
- (e) Discretionary disclosures to continue to be available as at present for the disclosure of interests not required to be disclosed by the Regulation but which a member chooses to disclose.⁷⁵

4.8 A similar recommendation was made by an earlier committee in 2014:

That the current system of primary, ordinary, supplementary ordinary and discretionary returns be amended to introduce a simpler system of exception reporting incorporating:

- primary returns to be lodged by a new member within 35 days of the member being sworn,
- ordinary returns to be lodged by returning members within 35 days of the first sitting day of any subsequent Parliament, and
- alteration of interests returns for a member to notify an alteration to his or her pecuniary interests against the relevant primary or ordinary return to be lodged within 35 days of the alteration occurring.⁷⁶

4.9 While the ICAC in Operation Witney was not concerned with some aspects of this, Recommendation 1 of their report included the following:

ongoing (within 28 days) requirements to update disclosures of interests, including for members leaving Parliament.⁷⁷

⁷⁵ Privileges Committee, *Review of the Members' Code of Conduct* November 2018, Report 76, Recommendation 4.

⁷⁶ Privileges Committee, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, June 2014, Report 70, Recommendation 4.

⁷⁷ Independent Commission Against Corruption, *Investigation into the conduct of the local Member for Drummoyne* July 2022, Recommendation 1.

Proposed new lodgement requirements

- 4.10** The new draft regulation simplifies the reporting requirements while putting a greater onus on members to report changes to their interests in real time. Section 5 replaces “primary returns” with “first interest disclosure returns”. These must be lodged with the Clerk within one month of the first sitting day after a general election, or, if becoming a member after that date (for instance to fill a casual vacancy) within one month of being sworn.
- 4.11** What is significant here is that *all* members must lodge this first return after an election, not just members who are elected for the first time. This is because this first return is the basis of each member’s return throughout the Parliament. Under section 7 each member must lodge an “annual declaration” within one month of 30 June, except in the year of the first disclosure. However, unlike the ordinary return, this is simply a declaration that the register is accurate and up to date, with a sample form provided as Schedule 2 of the draft regulation. As the register is required to be kept electronically under section 24, it is intended to be continuously updated.
- 4.12** This is outlined in section 6 of the draft regulation:
- (1) A Member must, within 1 month, lodge a further interest disclosure return with the Clerk if-
 - (a) A matter disclosed or required to be disclosed, in an interest disclosure return changes, or
 - (b) A matter required to be disclosed under this regulation arises, or
 - (c) The Member becomes aware of a mistake in an interest disclosure return by the Member.
- 4.13** In making this amendment to their first interest disclosure return the member is only required to amend the part of the return that relates to the change (section 6(2)), unlike the ordinary and supplementary returns under the current system they do not have to submit an entirely fresh return.
- 4.14** There remains provision for supplementary returns, which are now referred to in section 22 of the draft regulation.

Committee comment

- 4.15** The committee welcomes the new simplified reporting system. It is consistent with calls by previous Privileges committees to discard the cumbersome six-monthly reporting requirements with a single return with exception reporting. This will have the effect of reducing administrative burdens on members while enhancing transparency as returns will never be less than a month out of date rather than six months at present.
- 4.16** There are two aspects of the new system to note. The first is that it places a greater onus on members to update their returns when interests change rather than relying upon six-monthly prompts from the Clerk. The annual declaration will of course act as a reminder for members to review their interests before signing the declaration. It may take some time for members to adjust to the new real time reporting required. If in future months, some members are not as

prompt as is required those wishing to be critical, should understand this is a very significant change requiring members to adapt from past practice and will take time to become embedded in the way members' offices operate.

- 4.17** The second issue the committee wishes to raise is the way in which the “first interest disclosure” will operate for this parliament, given the regulation will take effect long after the first sitting day after the general election held in March 2023. The current regulation has a transitional arrangement at clause 30 which requires this first interest return to be lodged “on or before 1 August 2024”. This date is clearly no longer relevant as the new regulation will not be in effect until September at the earliest, and by this time members under the current regulation will be in the process of submitting their ordinary annual returns for the period ended 30 June 2024.
- 4.18** It would be important that members are given at least six months from the time of their last return prior to the regulation coming into effect before being required to submit their first return under the new regulation. For practical purposes, that will need to be six months from 1 October 2024, or six months from 30 April 2025, depending upon the date of the new regulation being made.

Recommendation 9

That the transitional arrangements in the new regulation ensure that the date required for the first interest disclosure by members in the 57th Parliament be at least six months from the lodgement date of the last return required under the old regulation.

Chapter 5 Publication and searchability of registers

The draft regulation introduces new requirements for the publication and searchability of registers for the disclosures of members and their family members' interests and other matters. This chapter reviews the current requirements and compares them to the proposed changes under the draft regulation. The chapter also considers concerns and issues raised by stakeholders and members, particularly around confidentiality and access to personal information.

Registers under the current regulation

- 5.1 Part 4 of the Constitution (Disclosures by Members) Regulation 1983 (current regulation) provides detail on how the registers of pecuniary interests disclosed by members of the Legislative Council must be maintained and published.
- 5.2 Under clause 17, the Clerk of the Legislative Council is required to compile and maintain a 'Register of Disclosures by Members of the Legislative Council' in respect of disclosures of their pecuniary interests and other matters.
- 5.3 The current regulation is also prescriptive on what form the registers must take, including that it must be in loose-leaf form, comprise lodged returns within the previous eight years, that it should be structured in a certain way, and be filed in alphabetical order based on the member's surname (clause 19).
- 5.4 In terms of inspection, registers are open to public inspection at the office of the relevant Clerk between the hours of 10.00 am and 4.00 pm on any day, except for weekends and public holidays. In addition to this, members are able to inspect the registers in the relevant Clerk's office at any time that the Legislative Council or the Legislative Assembly is sitting (clause 20).
- 5.5 The Clerk of the Legislative Council also has specific timeframes to table registers under clause 21(1):
 - (a) within 21 sitting days of the Legislative Council after the last day for the lodgment of primary returns under clause 4—furnish to the President of the Legislative Council for tabling in the Legislative Council a copy of the Register of Disclosures by Members of the Legislative Council, and
 - (b) within 21 sitting days of the Legislative Council after the last day for the lodgment of any ordinary returns under clause 6—furnish to the President of the Legislative Council for tabling in the Legislative Council a copy of that part of the Register of Disclosures by Members of the Legislative Council that has not been previously tabled in the Legislative Council.
- 5.6 Unless the relevant House orders for a register or part of a register to be printed, the Clerk publishes the register as a parliamentary paper (clause 21(4)).

- 5.7 Finally, under clause 21(5), the Clerk may 'as the case may require' delete the following for the purposes of tabling or publication of a register:
- (a) any notes or directions concerning the completion of a return,
 - (b) where no disclosures are made under a particular main heading in a return—any matter under that heading apart from the word "NIL", and
 - (c) any page number or other matter that is not relevant to any disclosure in a return.

Current practice of maintaining and publishing registers

- 5.8 The Clerk's office tables the Register of Disclosures by Members of the Legislative Council in the House, which is then published in the tabled papers database. Practically, it is a PDF document which is published on the Parliament's website every six months. It is a static document, where entries cannot be added, removed or edited.⁷⁸
- 5.9 To view registers that were tabled and printed prior to 2018, appointments must be made with the Office of the Clerk.⁷⁹

Proposed changes under draft regulation

- 5.10 Part 4 of the Draft Constitution (Disclosures by Members) Regulation 2024 (draft regulation) introduces a number of significant changes on how the registers must be compiled, maintained and published.
- 5.11 The Clerk of the Legislative Council remains responsible to compile and maintain a register of the disclosures made by members of the Legislative Council, as required by the draft regulation (section 23).
- 5.12 Signalling a marked departure from current practice, a register must now be kept electronically and be updated by the Clerk as soon as practicable after an interest disclosure return has been lodged (section 24).
- 5.13 Registers are also to be made publicly available for inspection on the Parliament's website (section 25(1)).
- 5.14 Another significant proposed change is that a Clerk may exclude information from a publicly available register if the Clerk is satisfied that it is necessary to protect either the privacy of a person (other than members) or the safety of a person (section 25(2)).
- 5.15 This is consistent with requirements of subsection 14A(1A) of the *Constitution Act 1902*, which requires that registers of disclosure be accessible by members of the public subject to any limitations prescribed by the regulations to protect the privacy of persons other than members, or the safety for a person or class of persons.

⁷⁸ Submission 3, Clerk of the Parliaments, p 2.

⁷⁹ Submission 3, Clerk of the Parliaments, p 2.

- 5.16** Noting that under these limited circumstances, the Clerk may choose to exclude certain information from a publicly available register, section 26 stipulates that complete registers must still be searchable and available for inspection by members or an officer of the Commission within the meaning of the *Independent Commission Against Corruption Act 1988* (section 26).
- 5.17** In clarification to the committee, The Cabinet Office (TCO) explained that section 26 has been 'drafted in such a way as to not diminish (compared with the Current Regulation) the access of Members and officers of the ICAC to the registers of disclosure, given the proposed ability of a Clerk to exclude information from the copy of the register of disclosure publicly available on the NSW Parliament website under clause 25(2)'.⁸⁰

Issues regarding privacy and safety

- 5.18** The committee holds significant concerns regarding safeguarding the privacy and safety of information, particularly that of immediate family members, who under the draft regulation, would be required to disclose the same level of information as members.
- 5.19** In a number of other parliaments, information about members' and their family members' interests are also not subject to the same level of disclosure or publication as required by the current provisions of the draft regulation. For example, in the House of Representatives, whilst the interests of immediate family members are published with the member's interests, their names or other identifying details are not required to be disclosed. In addition, there is no searchable online database and declarations are available online in PDF form, listed by member.⁸¹
- 5.20** Although declarations are published in this way in the House of Representatives, the Senate does not publicly disclose or allow for declarations about the interests of family members to be inspected. The Senators' Interests Committee, which oversees the registration of senators' interests, keeps the declarations confidential unless it considers that a conflict of interest arises, at which time the committee may table the declaration.⁸²
- 5.21** In regard to listing specific addresses and locations of property, most other parliaments are not required to reveal this information, with suburbs or locations generally being sufficient. This includes parliaments in Victoria, Queensland, Tasmania, Northern Territory, Australian Capital Territory and New Zealand.⁸³
- 5.22** The Parliament of Western Australia was the only parliament that advised that its members are required to list the full addresses of their real property and described it as a 'relevant and ongoing challenge' which presented potential safety issues for members and their families.⁸⁴

⁸⁰ Correspondence, from Ms Kate Boyd, Secretary, The Cabinet Office, to secretariat, 19 June 2024, p 4.

⁸¹ Submission 3, Clerk of the Parliaments, p 3.

⁸² Submission 3, Clerk of the Parliaments, pp 2-3.

⁸³ Submission 3, Clerk of the Parliaments, pp 3-7.

⁸⁴ Submission 3, Clerk of the Parliaments, p 4.

- 5.23** These concerns are closely aligned with issues that stakeholders rose around establishing a confidential and separate register as well who is able to have access to information that has been made confidential.

Confidential and separate register

- 5.24** While the Ministerial Register of Interests for Ministers and Parliamentary Secretaries (Ministerial Register) also requires ministers and parliamentary secretaries to disclose the pecuniary and other interests of their immediate family members, both the Parliamentary Ethics Adviser and ICAC acknowledged that, unlike what is proposed under the draft regulation for members, this Ministerial Register is kept confidential. The Cabinet Office manages the register on behalf of the Premier and it is only available for inspection only by all ministers at any meeting of the cabinet, or any cabinet committee, and otherwise by arrangement with the Premier.⁸⁵
- 5.25** Noting that the Ministerial Register is kept confidential, the Parliamentary Ethics Adviser argued that members' declarations of conflict of interest should similarly be kept on a separate and confidential register.⁸⁶

Access to information made confidential

- 5.26** As noted above, under the draft regulation, all disclosures of members and their immediate family members will be available on public and searchable registers online, unless the Clerk chooses to exclude information on the basis to protect the privacy of a person (other than members) or the safety of a person (section 25(2)). However complete registers will be available for inspection by other members or by the ICAC (section 26).
- 5.27** The ICAC expressed the view that this section 'strikes the appropriate balance'.⁸⁷
- 5.28** The committee questioned the TCO on whether a member would be made aware if another member or the ICAC had accessed information that the Clerk had deemed confidential. In its response, TCO advised that the draft regulation currently does not provide for the member, who's information had been accessed, to be notified. TCO noted that under the current regulation, the registers of disclosure maintained by the Clerks are typically tabled as a compilation of returns by all members of the House so depending on how the registers of disclosure are maintained by the Clerks under the new provisions, it may not be possible to identify which disclosures have been accessed by a member.⁸⁸
- 5.29** Furthermore, TCO raised that there may be additional policy considerations against notifying a member that the ICAC had accessed their disclosures, potentially alerting that member to an ICAC investigation.⁸⁹

⁸⁵ Submission 2, Parliamentary Ethics Adviser, p 2.; Submission 3, Independent Commission Against Corruption, p 13.

⁸⁶ Submission 2, Parliamentary Ethics Adviser, p 2.

⁸⁷ Submission 1, Independent Commission Against Corruption, p 34.

⁸⁸ Correspondence from Ms Boyd to secretariat, 19 June 2024.

⁸⁹ Correspondence from Ms Boyd to secretariat, 19 June 2024.

- 5.30** In Queensland, the Registrar must inform all members or former members of access requests, except in relation to access requests by the Crime and Corruption Commission.⁹⁰
- 5.31** On a related issue, the ICAC and the Parliamentary Ethics Adviser also expressed that, in addition to Members and the ICAC, the complete registers should be accessible to more people who had a 'legitimate reason' to inspect the complete register, including the Parliamentary Ethics Adviser, Independent Complaints Officer, Presiding Officers or Chairs of the Ethics Committee of the relevant House.⁹¹

Storage and deletion of information

- 5.32** The draft regulation does not specify details around how long the information about a member or their family members' disclosures need to be kept or published.
- 5.33** In Queensland, the interests of a member who dies, resigns or is not returned following an election, and those of their 'related persons' are removed from the Register and only made available to certain officeholders upon request (such as members of the Ethics Committee, Crime and Corruption Commission, Auditor-General and Integrity Commissioner).⁹²
- 5.34** In the Australian Capital Territory, the declaration of interest forms of former members are removed from the website and documents are destroyed after seven years.⁹³

Committee comment

- 5.35** While the committee believes that a strong and robust disclosures regime is of utmost importance, it is our concern that with the significant broadening of disclosures required, there comes substantial issues relating to the privacy of information and safety of persons.
- 5.36** Our key issues are around the unnecessary disclosure of family members' interests, or even those of members. We note that in its 1994 report into the pecuniary interest provisions for members of Parliament and senior executives, the Joint Committee concluded that:

The main argument against such a declaration is that it imposes an unjustified invasion of privacy on a Member's spouse and family. It is argued that it is the Member that is elected to public office and therefore only an invasion of his or her privacy can be in the public interest.⁹⁴

- 5.37** We believe that this statement still stands and that the provisions of the draft regulation need to be changed to acknowledge an immediate family member's right to privacy. Acknowledging that the working environment of a member is unique, it is helpful to consider how declarations of pecuniary and other interests are managed in other comparable parliaments.

⁹⁰ Submission 3, Clerk of the Parliaments, p 6.

⁹¹ Submission 1, Independent Commission Against Corruption, pp 34-35; Submission 2, Parliamentary Ethics Adviser, p 4.

⁹² Submission 3, Clerk of the Parliaments, p 6.

⁹³ Submission 3, Clerk of the Parliaments, p 5.

⁹⁴ Committee on the ICAC, *Pecuniary interest provisions for members of Parliament and senior executives and a Code of Conduct for members of Parliament* (1994), p 16.

- 5.38** We note how other comparable parliaments are managing this important issue and raise that in almost all of them, there are certain safety benchmarks afforded to family members and their interests, for example not disclosing their names or identifying details, or the specific addresses of property, or keeping these disclosures confidential altogether, with certain and reasonable exceptions to view – most of which do not seem allowable under the draft regulation.
- 5.39** Bringing it back to New South Wales, even the Ministerial Register of Interests for Ministers and Parliamentary Secretaries is a confidential document and open for inspection only by a select group of ministers and cabinet committees, and is administered by the Premier and The Cabinet Office.
- 5.40** Similarly, we support amending the draft regulation to allow for the establishment of a separate and confidential conflicts of interest register for members. If the recommendation in chapter two of this report to narrow the conflicts of interest section to pecuniary interests is adopted, then this could be used for discretionary disclosures. If instead the regulation is made with its current broad scope, then all conflict of interest declarations should be kept in this confidential register, as is the case for ministers at present. Details of family members should also be kept on this separate confidential register.

Recommendation 10

That the Draft Constitution (Disclosures by Members) Regulation 2024 be amended to incorporate a separate and confidential conflicts of interest register for members, including for the interests of their immediate family members.

- 5.41** The privacy provisions of the draft regulation also mean, that now, all family interests can be inspected by any member of either House, as required under the amendments to the *Constitution Act 1902* in 2022. It is essential to ensure that the confidentiality and privacy of information is maintained, particularly of family members. Members will have access to the private information of their colleagues not available to the general public. It is important that confidentiality is respected. 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.
- 5.42** 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.

Recommendation 11

That the Privileges Committee take on a role similar to the Senators' 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.

Recommendation 12

That the Draft Constitution (Disclosures by Members) Regulation 2024 or a resolution of the House specify the consequences for a member who breaches the confidentiality of another member's disclosures that have been listed on a confidential register of interests.

- 5.43** For the purposes of accountability and transparency, we support the creation of a publicly available and searchable register for members' other pecuniary interests and matters. At this point, we also acknowledge the additional resources and time that will be required of the Clerk's office and other parliamentary resources to establish electronic searchable registers.

Appendix 1 Draft Constitution (Disclosures by Members) Regulation

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Constitution (Disclosures by Members) Regulation 2024

under the
Constitution Act 1902

[The following enacting formula will be included if this regulation is made—]

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Constitution Act 1902*.

Premier

Explanatory note

The object of this regulation is to repeal and remake, with changes, the *Constitution (Disclosures by Members) Regulation 1983*.

This regulation provides for—

- (a) the ongoing disclosure by Members of Parliament of pecuniary interests and other matters relating to Members and their immediate family members, and
- (b) the publication of publicly accessible and searchable electronic registers of the disclosures on the website of the NSW Parliament.

This regulation is made under the *Constitution Act 1902*, including section 14A.

consultation draft

Constitution (Disclosures by Members) Regulation 2024 [NSW]
Contents

Contents

		Page
Part 1	Preliminary	
	1 Name of regulation	4
	2 Commencement	4
	3 Definitions	4
	4 Forms	4
Part 2	Lodgement of interest disclosure returns and annual declarations	
	5 First interest disclosure returns	5
	6 Further interest disclosure returns	5
	7 Annual declarations	5
Part 3	Interests and other matters to be disclosed	
	Division 1 Preliminary	
	8 Interpretation	6
	9 Use of Member's parliamentary position to provide services	6
	Division 2 General disclosures	
	10 Real property	6
	11 Trusts	7
	12 Interests and positions in corporations	7
	13 Positions in trade unions and professional or business associations	8
	14 Debts	8
	15 Conflicts of interest	8
	16 Sources of income	9
	17 Gifts	10
	18 Contributions to travel	10
	19 Dispositions of interests	11
	20 Provision of client services	11
	21 Water access licences	12
	Division 3 Discretionary disclosures	
	22 Discretionary disclosures generally	12
Part 4	Registers of interests and other matters disclosed	
	23 Registers of disclosures by Members of Legislative Council and Legislative Assembly	13
	24 Form of registers	13
	25 Registers to be publicly available	13
	26 Registers to be available to Members and officers of ICAC	13
Part 5	Miscellaneous	
	27 Contravention of regulation	14
	28 Repeal	14
	29 Savings	14
	30 Transitional arrangement	14

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Contents

	Page
Schedule 1	15
Schedule 2	19
Schedule 3	20

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 1 Preliminary

Constitution (Disclosures by Members) Regulation 2024

under the

Constitution Act 1902

Part 1 Preliminary

1 Name of regulation

This regulation is the *Constitution (Disclosures by Members) Regulation 2024*.

2 Commencement

This regulation commences on 1 July 2024.

3 Definitions

The dictionary in Schedule 3 defines words used in this regulation.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

4 Forms

- (1) A relevant portion of a form required to be completed by a Member under this regulation must be completed in accordance with the following directions and guidelines, if any, that are consistent with this regulation—
 - (a) directions specified in the form,
 - (b) guidelines issued or approved from time to time by the appropriate parliamentary committee for the Member.
- (2) In this section—

appropriate parliamentary committee, for a Member, means—

 - (a) a committee of the House of Parliament to which the Member belongs that is authorised by the House to issue or approve the guidelines referred to in subsection (1)(b), or
 - (b) if a joint committee of the Houses of Parliament is authorised by both Houses to issue or approve the guidelines—the joint committee.

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 2 Lodgement of interest disclosure returns and annual declarations

Part 2 Lodgement of interest disclosure returns and annual declarations

5 First interest disclosure returns

- (1) A Member must, within 1 month after the date on which the Houses of Parliament first assemble after each general election (the *first assembly date*), lodge an interest disclosure return with the Clerk.
- (2) A Member who was not a Member at the first assembly date must, within 1 month after the date on which the Member takes the pledge of loyalty or oath of allegiance required by the Act, section 12, lodge an interest disclosure return with the Clerk.

6 Further interest disclosure returns

- (1) A Member must, within 1 month, lodge a further interest disclosure return with the Clerk if—
 - (a) a matter disclosed, or required to be disclosed, in an interest disclosure return changes, or
 - (b) a matter required to be disclosed under this regulation arises, or
 - (c) the Member becomes aware of a mistake in an interest disclosure return lodged by the Member.
- (2) A Member must complete only the part of the interest disclosure return that relates to the matter or mistake when the Member lodges a further interest disclosure return under subsection (1) about a matter or mistake.
- (3) A Member may also lodge an interest disclosure return with the Clerk if the Member wishes to make a disclosure about a matter under Part 3, Division 3.

7 Annual declarations

- (1) A Member must, within 1 month after each 30 June, lodge an annual declaration with the Clerk about matters appearing on the register as at 30 June.
- (2) Subsection (1) does not apply if the Member lodged the Member's first interest disclosure return under section 5 in the 6 months before 30 June in the same year.

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 3 Interests and other matters to be disclosed

Part 3 Interests and other matters to be disclosed

Division 1 Preliminary

8 Interpretation

- (1) A reference in this part to a disclosure about real property, income, a corporation or another thing includes a reference to a disclosure about real property situated, income derived, a corporation incorporated or another thing arising or received outside New South Wales.
- (2) For this part, gifts or contributions to travel given, loans made or goods or services supplied to a Member by 2 or more corporations that are, for the *Corporations Act 2001* of the Commonwealth, section 50, related to each other are taken to have been given, made or supplied by a single corporation.
- (3) A reference in this part to a description that is reasonably sufficient to identify a matter is a reference to a description that would enable a reasonable person to identify the nature or kind of matter.

9 Use of Member's parliamentary position to provide services

A reference in this part to a service provided by a Member involving the use of the Member's parliamentary position is a reference to a service provided by the Member to another person that arises from, or relates to the use of, the Member's position as a Member, including one or more of the following services—

- (a) providing public policy advice,
- (b) developing strategies for, or providing advice on, the conduct of relations with the Government or Members,
- (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

Division 2 General disclosures

10 Real property

- (1) A Member must disclose—
 - (a) the address of each parcel of real property in which the Member or an immediate family member of the Member has an interest, and
 - (b) the nature of the interest in the parcel of real property.
- (2) A Member may provide the following information about a parcel of real property in which the Member or immediate family member has an interest as an alternative to disclosing the address of the parcel if the parcel is used by the Member or immediate family member for residential purposes—
 - (a) a statement that the parcel is, for the Member or immediate family member—
 - (i) the principal place of residence, or
 - (ii) a secondary place of residence,
 - (b) the location of the parcel by suburb or area.
- (3) An interest in a parcel of real property is not required to be disclosed by a Member if—
 - (a) the Member or immediate family member—
 - (i) has the interest only in the Member's or immediate family member's capacity as the executor or administrator of the estate of a deceased person, and

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 3 Interests and other matters to be disclosed

- (ii) is not a beneficiary under the will or intestacy, or
- (b) the Member or immediate family member—
 - (i) has the interest only in the Member's or immediate family member's capacity as a trustee, and
 - (ii) acquired the interest in the ordinary course of an occupation of the Member or immediate family member that is not related to the Member's duties as a Member, or
- (c) the interest in the parcel of real property is disclosed under section 11.

11 Trusts

- (1) A Member must disclose a trust if the Member or an immediate family member of the Member—
 - (a) has a beneficial interest in the trust, including a mere expectancy as a beneficiary of a discretionary trust, or
 - (b) is a trustee of the trust.
- (2) The following information must be disclosed about the trust—
 - (a) the name of the trust,
 - (b) a description of the activities of the trust,
 - (c) the nature of the interest the Member or immediate family member has in the trust,
 - (d) the interests held by the trust, including interests in real property and investments.
- (3) A trust is not required to be disclosed by a Member under subsection (1)(b) if the Member or immediate family member is trustee—
 - (a) as the executor or administrator of the estate of a deceased person and the Member or immediate family member is not a beneficiary under the will or intestacy, or
 - (b) in the ordinary course of an occupation of the Member or immediate family member that is not related to the Member's duties as a Member.
- (4) To avoid doubt, trusts that are superannuation funds, whether public or self-managed, and listed investment trusts must be disclosed under this section.
- (5) A Member may give the following information about a parcel of real property in which a trust has an interest as an alternative to disclosing the address of the parcel if the parcel is used by the Member or immediate family member for residential purposes—
 - (a) a statement that the parcel is, for the Member or immediate family member—
 - (i) the principal place of residence, or
 - (ii) a secondary place of residence,
 - (b) the location of the parcel by suburb or area.

12 Interests and positions in corporations

- (1) A Member must disclose the following—
 - (a) the name and address of each corporation in which the Member or an immediate family member of the Member has an interest or holds a position, whether remunerated or not,
 - (b) the nature of the interest, or a description of the position held, in each named corporation,

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 3 Interests and other matters to be disclosed

- (c) except for a listed corporation—a description of the principal objects of each named corporation.
 - (2) An interest, or position held, in a corporation is not required to be disclosed by a Member if the corporation is—
 - (a) formed to provide recreation or amusement, to promote commerce, industry, art, science, religion or charity or for another community purpose, and
 - (b) required to apply its profits, if any, or other income in promoting its objects, and
 - (c) prohibited from paying dividends to its members.
 - (3) A Member is not required to disclose a matter the Member would otherwise be required to disclose under this section if the Member has already made a disclosure about the matter when making a disclosure for section 16.
- 13 Positions in trade unions and professional or business associations**

A Member must disclose—

 - (a) the name of each trade union and each professional or business association in which the Member or an immediate family member of the Member holds a position, whether remunerated or not, and
 - (b) a description of the position held in each named union or association.
- 14 Debts**
 - (1) A Member must disclose the name and address of each person to whom the Member or an immediate family member of the Member is liable to pay a debt.
 - (2) A liability to pay a debt must be disclosed by a Member whether or not the amount, or a part of the amount, to be paid is immediately due and payable or is due and payable at another time.
 - (3) A liability to pay a debt is not required to be disclosed by a Member if—
 - (a) the amount to be paid is not greater than \$500 during the parliamentary term, unless—
 - (i) the debt is one of 2 or more debts the Member or immediate family member is liable to pay to 1 person, and
 - (ii) the amounts to be paid are greater than \$500 in total, or
 - (b) the Member or immediate family member is liable to pay the debt to a relative, or
 - (c) for a debt arising from a loan of money—the Member or immediate family member is liable to pay the debt to a bank, building society, credit union or other person whose ordinary business includes lending money and the loan was made in the ordinary course of business of the lender, or
 - (d) for a debt arising from the supply of goods or services—
 - (i) the period since the goods or services were supplied is not greater than 12 months, or
 - (ii) the goods or services were supplied in the ordinary course of an occupation of the Member or immediate family member that is not related to the Member's duties as a Member.
- 15 Conflicts of interest**
 - (1) A Member must disclose all conflicts of interest.

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 3 Interests and other matters to be disclosed

- (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.

16 Sources of income

- (1) A Member must disclose the following sources of income exceeding \$500 in a financial year—
 - (a) each source of income received by the Member or an immediate family member of the Member in the period since the last general election,
 - (b) each source of income the Member or an immediate family member of the Member reasonably expects to receive during the remainder of the parliamentary term.
- (2) In subsection (1), a reference to each source of income is a reference to—
 - (a) for income from being an employee of another person, including an employee of a corporation—
 - (i) the name of the occupation in which the Member or immediate family member is engaged, and
 - (ii) a description that is reasonably sufficient to identify the kinds of services provided, or to be provided, for the income, and
 - (iii) the name and address of the Member's or immediate family member's employer, and
 - (b) for income from being the holder of another office, including the holder of an office in a corporation or other body—
 - (i) the name or title of the office held by the Member or immediate family member, and
 - (ii) a description that is reasonably sufficient to identify the kinds of services provided, or to be provided, for the income, and
 - (iii) for an office held in a corporation or other body—the name and address of the corporation or body, and
 - (c) for income from a partnership the Member or immediate family member has entered into with other persons—
 - (i) the name of the occupation, if any, in which the Member or immediate family member is engaged, and
 - (ii) a description that is reasonably sufficient to identify the kinds of services provided, or to be provided, for the income, and
 - (iii) the name, if any, under which, and the address from which, the partnership is conducted, and
 - (d) for income for a service provided under another kind of contract, agreement or arrangement—
 - (i) the name of the occupation, if any, in which the Member or immediate family member is engaged, and
 - (ii) a description that is reasonably sufficient to identify the service provided, and
 - (iii) the name and address of the person from whom the income was, or is reasonably expected to be, received, and

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 3 Interests and other matters to be disclosed

- (e) for income from a trust—the name and address of the settlor and the trustee, and
 - (f) for other income—a description that is reasonably sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
- (3) Without limiting subsection (2), a disclosure required by subsection (1) must include a description that is reasonably sufficient to identify the business carried on by the employer, body or other party to the contract or agreement if—
- (a) the source of income was, or is reasonably expected to be, received—
 - (i) from the Member's or immediate family member's employer, including if the employer is a corporation, or
 - (ii) for an office held by the Member or immediate family member in a body, including if the body is a corporation, or
 - (iii) under a contract or another agreement, and
 - (b) in relation to a Member—the Member knows the source of income was, or is reasonably expected to be, received for the provision by the Member of a service involving the use of the Member's parliamentary position.

17 Gifts

- (1) A Member must disclose—
- (a) a description of each gift received by the Member or an immediate family member of the Member, and
 - (b) the name and address of the donor of each gift.
- (2) A gift received by a Member or an immediate family member is not required to be disclosed if—
- (a) the amount of the gift was not greater than \$500, unless—
 - (i) the gift was one of 2 or more gifts made by 1 person during a 12-month period, and
 - (ii) the amount of the gifts was greater than \$500 in total, or
 - (b) the gift was a political contribution disclosed, or required to be disclosed, under the *Electoral Funding Act 2018*, Part 3, or
 - (c) the donor was a relative of the Member or immediate family member.
- (3) For this section, the amount of a gift comprising property other than money is an amount equal to the value of the property.

18 Contributions to travel

- (1) A Member must disclose—
- (a) the name and address of each person who made a financial or other contribution to travel undertaken by the Member or an immediate family member of the Member during the parliamentary term, and
 - (b) the dates on which the travel was undertaken, and
 - (c) the name of each State, Territory and foreign country in which the travel was undertaken.
- (2) A financial or other contribution to travel undertaken by a Member or an immediate family member of the Member is not required to be disclosed if—
- (a) the contribution was made from public funds, including a contribution arising from travel on free passes issued under an Act or from travel in government vehicles, or

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
 Part 3 Interests and other matters to be disclosed

- (b) the contribution was made by a relative of the Member or immediate family member, or
 - (c) the contribution was made in the ordinary course of an occupation of the Member or immediate family member that is not related to the Member's duties as a Member, or
 - (d) the amount of the contribution was not greater than \$250, unless—
 - (i) the contribution was one of 2 or more contributions made by 1 person during a 12-month period, and
 - (ii) the amount of the contributions was greater than \$250 in total, or
 - (e) the contribution was a political contribution disclosed, or required to be disclosed, under the *Electoral Funding Act 2018*, Part 3, or
 - (f) the contribution was made by a political party of which the Member was a member and the travel was undertaken—
 - (i) for the political activity of the party in New South Wales, or
 - (ii) to enable the Member or immediate family member to represent the party in Australia.
 - (3) For this section, the amount of a contribution, other than a financial contribution, is an amount equal to the value of the contribution.
- 19 Dispositions of interests**
- (1) A Member must disclose particulars of each disposition of a relevant interest by the Member if the Member kept, wholly or in part—
 - (a) the use and benefit of the interest, or
 - (b) the right to reacquire the interest at a later time.
 - (2) A Member must disclose particulars of each disposition of property by another person under arrangements made by the Member if the Member kept, wholly or in part, the use and benefit of the property.
 - (3) In this section—
relevant interest, in relation to a Member, means an interest that would, but for the disposition of the interest by the Member, be required to be disclosed under this regulation.
- 20 Provision of client services**
- (1) A Member engaged by a person (the *principal*) to provide a service involving the use of the Member's parliamentary position (a *relevant service*) to or for a client of the principal must disclose each relevant service the Member provided to or for a client of the principal.
 - (2) A reference in subsection (1) to each relevant service provided by a Member to or on behalf of a client of the principal is a reference to—
 - (a) a description that is reasonably sufficient to identify the nature of the service provided, and
 - (b) the names and addresses of the persons the Member knows, or ought reasonably to know, have benefited directly or are likely to benefit directly from the provision of the service, and
 - (c) a description that is reasonably sufficient to identify the nature of the business carried on by a person referred to in paragraph (b).
 - (3) A Member must disclose a relevant service under subsection (1) regardless of whether or not the Member also received, or is also reasonably expected to receive,

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 3 Interests and other matters to be disclosed

a payment, gift or other financial benefit from the client or other person to whom the service is, or is to be, provided.

- (4) For this section—
- (a) a *client* of a principal is a person to whom a service is, or is to be, provided or made available in circumstances where the principal has received, or is reasonably expected to receive, consideration in money or money's worth for the service, and
 - (b) a Member is or was *engaged by a principal* to provide a relevant service to or for a client of the principal if the Member provides or provided the service in connection with the following—
 - (i) a contract of employment the Member entered into with the principal,
 - (ii) if the Member is an officer of the principal—the Member's functions as an officer of the principal,
 - (iii) another contract, agreement or arrangement the Member entered into with the principal under which the Member receives, or is reasonably expected to receive, consideration in money or money's worth, and
 - (c) a relevant service is or was provided *for a client of the principal* if the client requests or requested the service be provided to another person on the client's behalf.
- (5) In this section—
function includes a power, authority or duty.
officer, in relation to a person that is a corporation, has the same meaning as *officer* of a corporation in the *Corporations Act 2001* of the Commonwealth, section 9AD.

21 Water access licences

- (1) A Member must disclose—
- (a) the water access licence number of each water access licence in which the Member or an immediate family member of the Member has an interest, and
 - (b) the nature of the interest in the water access licence.
- (2) A disclosure is not required if—
- (a) the Member or immediate family member—
 - (i) has the interest in the water access licence only in the Member's or immediate family member's capacity as the executor or administrator of the estate of a deceased person, and
 - (ii) is not a beneficiary under the will or intestacy, or
 - (b) the interest in the water access licence is disclosed under section 11.

Division 3 Discretionary disclosures

22 Discretionary disclosures generally

A Member may, at the Member's discretion, disclose in an interest disclosure return a direct or indirect benefit, advantage, liability or other matter, whether pecuniary or not, that—

- (a) is not required to be disclosed by another provision of this part, and
- (b) the Member—
 - (i) considers might appear to raise a conflict between the Member's private interest and the Member's public duty as a Member, or
 - (ii) otherwise wishes to disclose.

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 4 Registers of interests and other matters disclosed

Part 4 Registers of interests and other matters disclosed

- 23 Registers of disclosures by Members of Legislative Council and Legislative Assembly
- (1) The Clerk of the Legislative Council must compile and maintain a register of the disclosures made by Members of the Legislative Council under Part 2.
 - (2) The Clerk of the Legislative Assembly must compile and maintain a register of the disclosures made by Members of the Legislative Assembly under Part 2.
- 24 Form of registers
- (1) A register must be kept electronically.
 - (2) A Clerk must update the register as soon as practicable after an interest disclosure return is lodged.
- 25 Registers to be publicly available
- (1) A Clerk must make searchable copies of the registers publicly available for inspection on the website of the NSW Parliament.
 - (2) A Clerk may exclude information from the copy of a register made publicly available under this section if the Clerk is satisfied it is necessary to protect—
 - (a) the privacy of persons other than Members of either House of Parliament, or
 - (b) the safety of a person.
 - (3) This section takes effect immediately before the end of a period of 12 months after this regulation is made.
- 26 Registers to be available to Members and officers of ICAC
- A Clerk must make searchable copies of the complete registers available for inspection by the following—
- (a) a Member,
 - (b) an officer of the Commission within the meaning of the *Independent Commission Against Corruption Act 1988*.

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Part 5 Miscellaneous

Part 5 Miscellaneous

27 Contravention of regulation

A contravention of this regulation does not attract criminal or civil liability, except to the extent expressly provided by the Act, section 14A.

28 Repeal

The *Constitution (Disclosures by Members) Regulation 1983* is repealed.

29 Savings

An act, matter or thing that, immediately before the repeal of the *Constitution (Disclosures by Members) Regulation 1983*, had effect under that regulation continues to have effect under this regulation.

30 Transitional arrangement

- (1) Each Member must lodge an interest disclosure return with the Clerk on or before 1 August 2024.
- (2) Part 2 does not apply to a Member until 2 August 2024.

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Constitution (Disclosures by Members) Regulation 2024 [NSW]
Schedule 1 Interest disclosure return form

Schedule 1 Interest disclosure return form

sections 4–6 and dictionary

Form Interest disclosure return

Constitution (Disclosures by Members) Regulation 2024

Interest disclosure return—Legislative *Council/*Assembly

Directions

- 1 The particulars required to complete this form must be written in block letters or typed.
- 2 Omit matter marked with an asterisk (*) if it is not applicable.

Disclosures of pecuniary interests and other matters by—

..... as at

(full name of Member) *(return date)*

.....

(Member's signature)

.....

(date)

Part 1 Real property

Person disclosure relates to	Address of parcel of real property	Nature of interest
self		
spouse/de facto partner		
child		

Part 2 Trusts

Person disclosure relates to	Name of trust	Description of activities of trust	Nature of interest in trust	Interests held by trust
self				
spouse/de facto partner				
child				

Part 3 Interests and positions in corporations

Person disclosure relates to	Name and address of corporation	Nature of interest or description of position held	Description of principal objects of corporation, if corporation is not a listed corporation
self			
spouse/de facto partner			
child			

consultation draft

Constitution (Disclosures by Members) Regulation 2024 [NSW]
Schedule 1 Interest disclosure return form

Part 4 Positions in trade unions and professional or business associations

Person disclosure relates to	Name of union or association and description of position held
self	
spouse/de facto partner	
child	

Part 5 Debts

Person disclosure relates to	Disclosure of information about debts
self	
spouse/de facto partner	
child	

Part 6 Conflicts of interest

Disclosure of conflicts of interest

Part 7 Sources of income

7.1 Income from employment, offices, partnerships and services

Table 7.1.1 Income received as employee

Person disclosure relates to	Name of occupation	Description of kinds of services provided	Name and address of employer	Description of business carried on by employer, if services provided relate to Member's position as a Member
self				
spouse/de facto partner				
child				

Table 7.1.2 Income received as holder of office

Person disclosure relates to	Name or title of office and description of kinds of services provided	Name and address of corporation or body, if any, in which office is held	Description of business carried on by entity, if services provided relate to Member's position as a Member
self			
spouse/de facto partner			
child			

consultation draft

Constitution (Disclosures by Members) Regulation 2024 [NSW]
Schedule 1 Interest disclosure return form

Table 7.1.3 Income from partnership

Person disclosure relates to	Name of occupation, if any	Description of kinds of services provided	Name and address of partnership	Description of business carried on by partnership, if services provided relate to Member's position as a Member
self				
spouse/de facto partner				
child				

Table 7.1.4 Income from services provided under another contract, agreement or arrangement

Person disclosure relates to	Name of occupation, if any, and description of services provided	Names and addresses of parties to contract, agreement or arrangement to provide services	Description of business carried on by other parties, if services provided relate to Member's position as a Member
self			
spouse/de facto partner			
child			

7.2 Income from trust

Person disclosure relates to	Name and address of settlor	Name and address of trustee
self		
spouse/de facto partner		
child		

7.3 Other income

Person disclosure relates to	Disclosure of information about other income
self	
spouse/de facto partner	
child	

Part 8 Gifts

Person disclosure relates to	Description of gift received	Name and address of donor
self		
spouse/de facto partner		
child		

consultation draft

Constitution (Disclosures by Members) Regulation 2024 [NSW]
 Schedule 1 Interest disclosure return form

Part 9 Contributions to travel

Person disclosure relates to	Name and address of person who made contribution to travel	Dates of travel	Places of travel (name State, Territory or country)
self			
spouse/de facto partner			
child			

Part 10 Dispositions of interests

Disclosure of disposition of interests

Part 11 Provision of client services

Names and addresses of persons who benefited directly or are likely to benefit directly from service provided	Nature of service provided	Nature of business carried on by persons who benefited directly or are likely to benefit directly from service provided

Part 12 Water access licences

Person disclosure relates to	Water access licence number	Nature of interest
self		
spouse/de facto partner		
child		

Part 13 Discretionary disclosures

Disclosures that are discretionary

consultation draft

Constitution (Disclosures by Members) Regulation 2024 [NSW]
 Schedule 2 Annual declaration form

Schedule 2 Annual declaration form

section 7 and dictionary

Form Annual declaration

Constitution (Disclosures by Members) Regulation 2024

Annual declaration—Legislative *Council/*Assembly

Directions Omit matter marked with an asterisk (*) if it is not applicable.

Note— The Member of Parliament is under an obligation to continuously update the register of disclosures kept by the Clerk—see the *Constitution (Disclosures by Members) Regulation 2024*, section 8.

The register of disclosures maintained by the Clerk of the Legislative *Council/*Assembly as at 30 June of this year, to the best of my knowledge—

- (a) accurately compiles the information lodged in my interest disclosure returns, and
- (b) contains all the information required to be disclosed by me under the *Constitution (Disclosures by Members) Regulation 2024*.

..... as at

(full name of Member) *(declaration date)*

.....

(Member's signature)

.....

(date)

consultation draft

Constitution (Disclosures by Members) Regulation 2024 [NSW]
Schedule 3 Dictionary

Schedule 3 Dictionary

section 3

address means—

- (a) in relation to a person other than a corporation—the last residential or business address of the person known to the Member disclosing the address, or
- (b) in relation to a corporation—the address of the registered office of the corporation in New South Wales or, if there is no office in New South Wales, the address of the principal office of the corporation in the place in which it is incorporated, or
- (c) in relation to real property—the postal address of the property or the particulars of title of the property.

annual declaration means a written declaration in or to the effect of the form in Schedule 2.

Clerk means—

- (a) in relation to a Member of the Legislative Council—the Clerk of the Legislative Council, or
- (b) in relation to a Member of the Legislative Assembly—the Clerk of the Legislative Assembly.

debt means a debt arising from—

- (a) a loan of money, or
- (b) the supply of goods or services.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes the following—

- (a) the allotment of shares in a company,
- (b) the creation of a trust in relation to property,
- (c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in relation to property,
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in relation to property,
- (e) the exercise by a person of a general power of appointment over property in favour of another person,
- (f) a transaction entered into by a person with the intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

donor means a person who makes a gift.

general election means a concurrent—

- (a) periodic Council election, and
- (b) general election of Members of the Legislative Assembly.

gift means a disposition of property by a person to another person, otherwise than by will, that is a disposition without consideration in money or money's worth or with inadequate consideration, but does not include a financial or other contribution to travel.

immediate family member, in relation to a Member, means—

- (a) the Member's spouse or de facto partner, or
Note— *De facto partner* is defined in the *Interpretation Act 1987*, section 21C.
- (b) a child of the Member or of the Member's spouse or de facto partner if one or more of the following apply—

consultation draft

Constitution (Disclosures by Members) Regulation 2024 [NSW]
Schedule 3 Dictionary

- (i) the child less than 18 years of age,
- (ii) the child is a dependant of the Member or of the Member's spouse or de facto partner,
- (iii) the child resides with the Member or the Member's spouse or de facto partner.

income means assessable income within the meaning of the *Income Tax Assessment Act 1936* of the Commonwealth or the *Income Tax Assessment Act 1997* of the Commonwealth, but does not include remuneration payable under the *Parliamentary Remuneration Act 1989*.

interest means—

- (a) in relation to property—an estate, interest, right or power, whether at law or in equity, in or over the property, or
- (b) in relation to a corporation—a relevant interest, within the meaning of the *Corporations Act 2001* of the Commonwealth, in securities issued or made available by the corporation.

interest disclosure return means a return in or to the effect of the form in Schedule 1.

listed corporation means a listed corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Member means a Member of either House of Parliament.

occupation includes a trade, profession or vocation.

parliamentary term means the period between a general election and a later general election.

political party means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the NSW Parliament of a candidate or candidates endorsed by it or by a body or organisation of which it forms part.

professional or business association means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the economic interests of its members in an occupation.

property includes money.

register means a register compiled and maintained under Part 4.

relative, in relation to a Member, means the following—

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the Member or of the Member's spouse or de facto partner,
- (b) the spouse or de facto partner of the Member or of another person specified in paragraph (a).

Note— *De facto partner* is defined in the *Interpretation Act 1987*, section 21C.

securities has the same meaning as in the *Corporations Act 2001* of the Commonwealth, section 92(1).

the Act means the *Constitution Act 1902*.

travel includes accommodation incidental to a journey.

water access licence means an access licence within the meaning of the *Water Management Act 2000*.

Appendix 2 Submissions

No.	Author
1	NSW Independent Commission Against Corruption
2	Parliamentary Ethics Adviser
3	Clerk of the Parliaments

Appendix 3 Minutes

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. 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

Minutes no. 16

Tuesday 4 June 2024, 3.08 pm

Room 1136, Parliament House, Sydney

1. Members

Mr Lawrence (*Chair*)

Mrs Maclaren-Jones (*Deputy Chair*)

Ms Boyd (participating for *Parliamentary Evidence Act* inquiry) (until 3.18 pm)

Mr Fang (until 3.18 pm)

Ms Higginson

Mr Murphy (until 3.46 pm)

Mr Nanva

Mr Primrose

Mr Roberts

Mr Tudehope (substituting for Mr Fang for the duration of the *Parliamentary Evidence Act* inquiry) (until 3.32 pm)

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

2. Previous minutes

Resolved, on the motion of Mr Nanva: That draft minutes no. 15 be confirmed.

3. Correspondence

The committee noted the following item of correspondence:

Received:

- 3 June 2024 – Independent Complaints Officer quarterly report for March to May 2024.

4. ***

5. Briefing with the Parliamentary Ethics Adviser

The Parliamentary Ethics Adviser, Mr John Evans, joined the meeting at 3.19 pm.

The committee was briefed by the Parliamentary Ethics Adviser regarding its inquiries into the Review of the Independent Complaints Officer system (2023) and Draft Constitution (Disclosures by Members) Regulation 2024.

6. Next meeting

The committee adjourned at 3.49 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

