

Submission
No 3

INQUIRY INTO DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION 2024

Organisation: Clerk of the Parliaments

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LEGISLATIVE COUNCIL

OFFICE OF THE CLERK

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5 August 2024

The Hon Stephen Lawrence MLC
Chair
Privileges Committee
Legislative Council
Parliament House
SYDNEY NSW 2000

Dear Mr Lawrence,

I refer to your invitation to make a submission to the inquiry into the Draft Constitution (Disclosures by Members) Regulation 2024 being undertaken by the Privileges Committee.

The disclosure regime is a matter of utmost importance to members. By presenting the Draft Constitution (Disclosures by Members) Regulation 2024, the Government appears to have taken a position that is fully supportive of the recommendations arising from the ICAC's Operation Witney report.

As the position of the government and the ICAC are both reflected in what is proposed in the draft regulation, I believe that my comments should be very circumspect. Ultimately the approach taken to this draft is a matter for members, who will ultimately be most affected by the proposed changes.

There is, however, one aspect I would like to comment on, which is something that does affect my office. I fully endorse the exceptions reporting model upon which this draft regulation is based. Several Privileges Committee reports in the past have recommended this change, to replace the cumbersome current requirement that every member submit a twice a year return. The annual declaration which members will be required to sign should act as a sufficient reminder for members to ensure any changes to their first return are kept up to date.

To assist your inquiry I have attached a table to mark comparisons between other Australian parliaments on the key changes proposed, so members can benchmark what is proposed against similar jurisdictions. I am thankful to the Department of the Legislative Assembly who consulted with the clerks from the other parliaments to collate this information.

I would of course be happy to be consulted by the committee on any aspect of this inquiry if required.

Yours sincerely

David Blunt AM
Clerk of the Parliaments

Parliament	Disclosures of conflicts of interests	Disclosure of interests of immediate family members	Extent to which disclosures are available and searchable online	Measures to protect privacy and safety of members and immediate relations
<p>Current NSW Legislative Council</p> <p>Source: Constitution (Disclosures by Members) Regulation 1983</p>	<ul style="list-style-type: none"> S7 of Members' Code of Conduct and standing order 117(2) and 217(10). Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and public interest. Members shall take reasonable steps to draw attention to any conflicts between private interests and public interest in any proceedings of the House of its committees, and in any comms with Ministers, members, public officials or public office holders. 	<ul style="list-style-type: none"> Only required to disclose member's own interest. S16 of Regulation – Members may make discretionary disclosures at any time which "the Member considers might appear to raise a conflict between his or her private interest and his or her public duty as a Member of which he or she otherwise desires to disclose." 	<ul style="list-style-type: none"> Register of Disclosures by Members of the Legislative Council is tabled by the Clerk and published in the tabled papers database. PDF placed on website every six months. Static document – cannot make entries. Registers prior to 2018 can be viewed by appointment with the Office of the Clerk. 	<ul style="list-style-type: none"> Members are only required to provide suburb or area of their principal place of residence.
<p>Draft Constitution (Disclosures by Members) Regulation 2024</p>	<ul style="list-style-type: none"> S15 – Members required to disclose all conflicts between public and private interests. 	<ul style="list-style-type: none"> Requires declaration of same interests for immediate family members. Includes any sources of income. Immediate family members = spouse/partner and dependent child. 	<ul style="list-style-type: none"> S24 and S25 – requires a searchable and updateable register. Provision for private information on register. Other members and ICAC able to inspect private information. 	<ul style="list-style-type: none"> S25(2) – Clerk may exclude information from public registers for privacy (not for members) and safety of any person. S26 – Members and ICAC still able to access and inspect complete registers.
<p>Senate, Parliament of Australia</p> <p>Source: Senator's Interests Resolutions adopted in 1994</p>	<ul style="list-style-type: none"> The register deals mainly with the disclosure of pecuniary interests (Form A) through an online portal. Other conflicts of interests may be disclosed by senators in the course of their work e.g., SO27(5) states, 'A senator shall not sit on a committee if the senator has a conflict of interest in relation to the inquiry of the committee.' Non-pecuniary conflicts of interest tend to be dealt with by a statement, noting the potential conflict, to the committee or Senate. 	<ul style="list-style-type: none"> Registrable interests, of which the senator is aware, of a spouse or partner, or any children who are wholly or mainly dependent on the senator for support, are required to be declared in Form B. 	<ul style="list-style-type: none"> Senators' declarations are available and searchable via new database - Senators' Interests Register. Prior to launch of database, declarations were only available via PDF documents published on website and in the six-monthly PDF compilations that continue to be tabled. 	<ul style="list-style-type: none"> No requirement to specify addresses of real estate. General location (suburb or area) is adequate. Names of spouse, partner or children are not required to be disclosed. These declarations are also not publicly disclosed or able to be inspected. Signatures are not required on declarations. Form B remains confidential to Senators' Interests Committee, unless the committee considers that a conflict of interest arises,

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				<p>at which time the committee may table the declaration.</p> <ul style="list-style-type: none"> Senators are not required to disclose salary or allowances (these are publicly available on Remuneration Tribunal website).
<p>House of Representatives, Parliament of Australia</p> <p>Source: Members' Interests Resolutions adopted in 1994</p>	<ul style="list-style-type: none"> The register deals with a range of most pecuniary interests, which are categorised. There is a 'catch-all' final category for "any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise." Members declare their interests through an online portal, which was developed jointly for the House and the Senate. SOs 134 and 231 deal with situations where Members have direct pecuniary interests in House or committee proceedings. These standing orders are rarely invoked and the more common approach is for Members to disclose potential conflicts of interests during proceedings, particularly committee proceedings. 	<ul style="list-style-type: none"> Registrable interests, of which the member is aware, of a member's spouse or partner, or any children who are wholly or mainly dependent on the member for support, are required to be declared through the online portal. 	<ul style="list-style-type: none"> Members' declarations are available in PDF format online, in a separate document per member. There is no searchable online database of Members' interests. 	<ul style="list-style-type: none"> No requirement to specify addresses of real estate. General location (suburb or area) is adequate. Unlike the Senate, the interests of spouses/partners and dependent children are published with the member's interests. Although declared interests of members' spouse, partner and dependents are published, names and other identifying details are not required to be disclosed. Signatures are required but redacted from declarations prior to publishing.
<p>Parliament of Victoria</p> <p>Source: <i>Members of Parliament (Standards) Act 1978</i> Members of Parliament (Standards) Regulation 2019</p>	<ul style="list-style-type: none"> Part 12 of the prescribed form requires members to disclose 'any other interest' – anything thought to give rise to a conflict of interest, real or perceived. 	<ul style="list-style-type: none"> Family members' interests are not required to be disclosed, unless they are shared with the member or unless they engage the 'any other interest' requirement. Act defines 'other interest' as one where a conflict of interest could arise, or reasonably be seen to arise, because of that interest. Many members list the employment of their family members, particularly if they are 	<ul style="list-style-type: none"> Returns are published as a table document and searchable on the tabled documents database. Also searchable under members' own tabs on the Parliament's website. 	<ul style="list-style-type: none"> Each return is reviewed by the clerks to check that there is no inadvertent disclosure of private information.

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		<p>public servants or engage with public policy.</p> <ul style="list-style-type: none"> Members are advised to not inadvertently reveal personal details about family members or other individuals for e.g., specific addresses and locations of property. 		
<p>Parliament of Western Australia</p> <p>Source: <i>Members of Parliament (Financial Interests) Act 1992</i></p>	<ul style="list-style-type: none"> Members can declare conflicts of interest under discretionary disclosures on their return or otherwise inform the House or Committee of any conflicts if they arise during the proceedings. 	<ul style="list-style-type: none"> Interests of immediate family members are not required to be disclosed. Some members may volunteer information on the interests of family members, particularly real estate owned with spouses or shareholdings of spouses. 	<ul style="list-style-type: none"> Members' returns are tabled in the House and are available online as part of the Online Tabled Papers database. 	<ul style="list-style-type: none"> Relevant and ongoing challenge. Members are required to list the full addresses of their real property, which presents a potential safety issue for members and their families.
<p>Parliament of Tasmania</p> <p>Source: <i>Parliamentary (Disclosure of Interests) Act (No. 22 of 1996)</i></p>	<ul style="list-style-type: none"> Act provides that a Member may disclose in any return any direct or indirect benefits, advantages or liabilities, whether pecuniary or not, that are not required under the Act but that the Member considers may raise a conflict between the Member's private interests and his/her duties as a Member. Members' Code of Conduct requires a Member to take all reasonable steps to avoid, disclose and manage any conflict of interest that arises, or is likely to arise between their personal interests and their official duties. 	<ul style="list-style-type: none"> The Act requires disclosure of the interests of the member's spouse. 	<ul style="list-style-type: none"> Members' returns are tabled in the House and are available online as part of the Online Tabled Papers database. Each House has a publicly accessible register of interests, which is published by the Clerk. 	<ul style="list-style-type: none"> Only suburb or locality of property is required to be disclosed, not the actual address. The Act provides that the Clerk, for the purpose of tabling or publication of a return, may delete any information that, in the opinion of the Clerk, would, if published online, unreasonably compromise the privacy or safety of any person (provision has not been used to date).
<p>Parliament of New Zealand</p> <p>Source: Standing Orders of the House of Representatives</p>	<ul style="list-style-type: none"> The standing orders specify the matters that must be disclosed. Separately, financial interest in a matter before the House must be declared before participating in debate. However, interests already disclosed through the annual return do not need to be disclosed again. 	<ul style="list-style-type: none"> Interests of immediate family members are not required to be disclosed, unless member judges that doing so would be consistent with the purpose of the Register, which is to 'provide transparency and strengthening public trust and confidence in parliamentary processes and decision making'. 	<ul style="list-style-type: none"> Register of disclosures are annually published on website as PDF document. 	<ul style="list-style-type: none"> No requirement to disclose specific addresses of residential properties, just the general location.

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<p>Legislative Assembly of the Northern Territory</p> <p>Source: <i>Legislative Assembly (Disclosure of Interests) Act 2008</i></p>	<ul style="list-style-type: none"> The Standing Orders Committee approved guidelines in 2009 to assist Members to complete the register. The guidelines make clear that the purpose of the disclosure regime is to place on the public record conflicts of interest, either real or perceived. However, there is no requirement for Members to disclose how they might be managing those conflicts. Members must also comply with the <i>Legislative Assembly (Code of Conduct and Ethical Standards) Act 2008</i>, which provides that: "Members must avoid conflicts, or apparent conflicts, between their private interests and their official functions". The Code of Conduct states that members should not vote in the Assembly on matters where they may have a declarable interest unless they have declared the interest via the register. 	<ul style="list-style-type: none"> Members are required to provide disclosures for their spouse and dependent children. 	<ul style="list-style-type: none"> Annual tabling of compilation of the registers for all Members. Ongoing access for persons to attend the Clerk's office by appointment to inspect the register (only handwritten notes are allowed). 	<ul style="list-style-type: none"> Members are not required to disclose addresses of property they hold, and instead are only required to disclose the locality or suburb of the property.
<p>ACT Legislative Assembly</p> <p>Source: Standing orders and continuing resolutions</p>	<ul style="list-style-type: none"> Continuing resolution 6 provides that Members shall, within 28 days of taking their seats, declare their private interests. The resolution also sets out how those interests may be accessed. Disclosure of conflicts of interest in the Chamber and Committees is the responsibility of individual members. Members who need guidance are encouraged to seek advice from the Assembly's Ethics and Integrity Advisor on disclosure and/or management of possible conflicts. 	<ul style="list-style-type: none"> Members must disclose "private interests of themselves and their immediate family in the form as presented to the Assembly by the Speaker from time to time". 	<ul style="list-style-type: none"> Since 2010 all members' declarations and alterations have been published on the Assembly's website in PDF. 	<ul style="list-style-type: none"> Members are not required to disclose the address of their principal place of residence or the specifics of superannuation investments. The Declaration of Interests forms of former members are removed from the website and documents destroyed after seven years.

<p>Parliament of Queensland</p> <p>Source: <i>Parliament of Queensland Act 2001</i></p>	<ul style="list-style-type: none"> Chapter 4, Part 2A of the Act establishes a statutory requirement for a Register of Members' Interest and a Register of Related Persons' Interest. Schedule 2 to the Standing Rules and Orders sets out the administrative arrangements for the registers and matters that must be disclosed by Members of the Legislative Assembly of Queensland. In addition to more specific disclosure requirements, Clause 5(n) requires Members to disclose <i>'any other interest (whether or not of a pecuniary nature) of the member or a related person—(i) of which the member is aware; and (ii) that raises, appears to raise, or could foreseeably raise, a conflict between the member's private interest and their duty as a member.'</i> Chapter 40 of the Standing Rules and Orders (259 to 262) deal with situations where Members need to declare their interests in the course of their parliamentary duties. Of particular note is the requirement for Members to declare any pecuniary interest when participating in debate in the House or a committee (SO 260), and for a member of a committee to declare any conflict of interest in relation to matters before the committee (SO 261). Members are expected to comply with the Code of Ethical Standards, which 'serves to remind Members of Parliament of the obligations they have and guide Members' decision-making in relation to ethical issues.' The code is aspirational in nature and does not contain any enforceable obligations. 	<ul style="list-style-type: none"> The Act defines a Member's 'related person' as their spouse, their child who is totally or substantially dependent on the Member, or anyone whose affairs are very closely connected with the Members' affairs and is totally or substantially dependent of the Member. Schedule 2 to the Standing Rules and Orders sets out identical disclosure requirements for Members and their related persons. 	<ul style="list-style-type: none"> Clauses 11-12 of Schedule 2 to the Standing Rules and Orders sets out the requirement for the annually updated Register of Members' Interests to tabled by the Speaker and published on the Parliament's website. 	<ul style="list-style-type: none"> Clause 7(1) of Schedule 2 of the Standing Rules and Orders prohibits Members from disclosing street addresses or the monetary value of various assets (such as shares, investments, and gifts). Unlike the Register of Members' Interests, which is publicly available, the Register of Related Persons' Interest is only available from the Clerk upon request to the Speaker, Premier, any other Leader in the Legislative Assembly of a political party, Chairperson and members of the Ethics Committee, Crime and Corruption Commission, Auditor-General and Integrity Commissioner. The interests of Members who die, resign or are not returned following an election, and those of their related persons, are removed from the Register and only made available to the above officeholders upon request. The Registrar must inform all Members or Former Members of these access requests, except in relation to access requests by the Crime and Corruption Commission.
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<p>South Australia House of Assembly</p> <p>Source: <i>Members of Parliament (Register of Interests) Act 1983</i></p>	<ul style="list-style-type: none"> • Chapter 31A of the Standing Orders of the House of Assembly contains the Code of Conduct for Members. It states that 'Members must avoid conflicts, or apparent conflicts, between their private interests and their official functions.' • There is a statutory requirement for Members to disclose their interests under the Members of Parliament (Register of Interests) Act 1983. The forms which Members must use to disclose their interests are set out in the Members of Parliament (Register of Interests) Regulations 2023. • Under Part 4, Clause 3(g) of the Act, Members are required to disclose 'any other substantial interest whether of a pecuniary nature or not of the Member or of a person related to the Member of which the Member is aware and which he considers might appear to raise a material conflict between his private interest and the public duty that he has or may subsequently have as a Member.' • Standing Order 170 and 321 prohibit Members from voting on a question in the House or sitting on a committee if they have a direct pecuniary interest in the matters before the House or committee. 	<ul style="list-style-type: none"> • The Instructions at the beginning of the Primary Return and Ordinary Return forms for Members, as set out in the Members of Parliament (Register of Interests) Regulation 2023, both include the following: 'A Member may disclose the 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.' • Persons relating to the Member are defined by the Regulation as: a member of the Member's family (spouse or child under 18 who resides with the Member), a family company of the Member, or a trust or family trust of the Member. • The Primary and Ordinary Return forms set out identical disclosure requirements for Members and their related persons. 	<ul style="list-style-type: none"> • Part 5 of the Members of Parliament (Register of Interests) Act 1983 requires the Registrar to compile a Register of Members' Interests and to table it in the House. • Part 5 requires the Registrar to make the Register available to any member of the public upon request, but contains no specific requirement for the Register to be published online. The Register is available in PDF form on the Parliament of South Australia's website. • Part 6 of the Act contains restrictions on publication. Any person or corporation who publishes information derived from the Register that does not constitute a fair or accurate summary, or any comments on the Register that are considered malicious, is guilty of a contempt of Parliament and subject to a fine. 	<ul style="list-style-type: none"> • The Instructions at the beginning of the Primary Return and Ordinary Return forms for Members, as set out in the Members of Parliament (Register of Interests) Regulation 2023, both include the following: 'A Member may disclose the 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.' • The Instructions also specify that Members are not required to disclose the monetary amount of any financial interest. They are also not required to disclose information relating to trustees other than in relation to their role as a trustee in relation to the Member.
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