

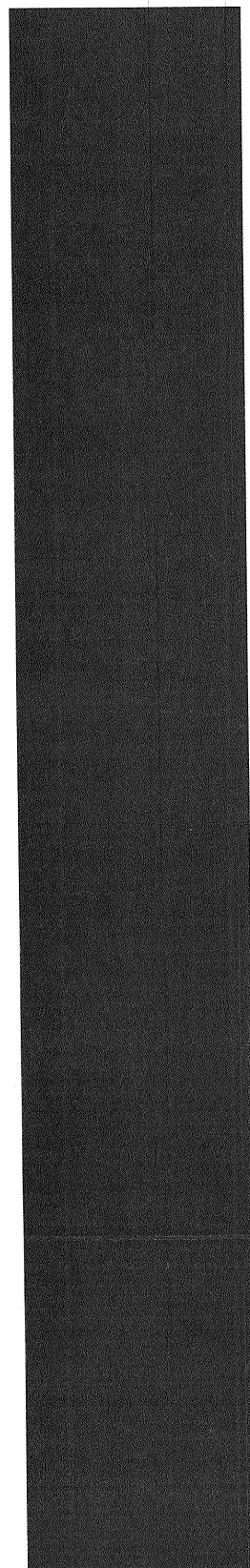
LEGISLATIVE ASSEMBLY

# **Standing Committee on Parliamentary Privilege and Ethics**

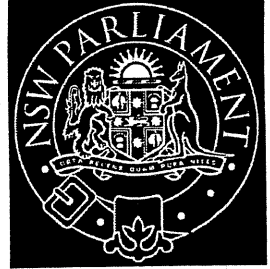
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November 2007

## **Review of the Draft Constitution (Disclosures by Members) Further Amendment Regulation 2007**







LEGISLATIVE ASSEMBLY

# Standing Committee on Parliamentary Privilege and Ethics

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REVIEW OF THE DRAFT CONSTITUTION  
(DISCLOSURES BY MEMBERS) FURTHER  
AMENDMENT REGULATION 2007

November 2007

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# **REPORT ON INQUIRY INTO THE DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) FURTHER AMENDMENT REGULATION 2007**

## **TABLE OF CONTENTS:**

**MEMBERSHIP & STAFF 2**

**CHAIRMAN'S FOREWORD 3**

**CHAPTER 1: Initiation of the Inquiry 5**

**CHAPTER 2: Constitution (Disclosures by Members) Amendment  
Regulation 2006 7**

**CHAPTER 3: The Draft Constitution (Disclosures by Members) Further  
Amendment Regulation 2007 9**

**CHAPTER 4: Proposed changes to the layout of the prescribed forms 13**

**CHAPTER 5: Discretionary Return form (Form 4) 15**

## **APPENDICES:**

**APPENDIX 1: Excerpts of Minutes of Meetings of the Committee 17**

**APPENDIX 2: Circular to all Members of the Legislative Assembly  
enclosing the Draft Constitution (Disclosures by Members)  
Further Amendment Regulation 2007 23**

**APPENDIX 3: Proposed new layout for the Ordinary Return form, as  
suggested by the Clerk of the Legislative Assembly 25**

## MEMBERSHIP AND STAFF

Chairman	Mr Paul Pearce MP, Member for Coogee
Members	Hon Richard Amery MP, Deputy-Chairman, Member for Mount Druitt
	Mr Phillip Costa MP, Member for Wollondilly
	Mr Malcolm Kerr MP, Member for Cronulla
	Ms Lylea McMahon, MP, Member for Shellharbour
	Ms Clover Moore MP, Member for Sydney
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## **CHAIRMAN'S FOREWORD**

The regulatory scheme for registration of interests established by the Constitution (Disclosures by Members) Regulation 1983 is a fundamental element in Members' recognition, and avoidance, of conflict between personal interest and public duty.

The scheme for members of the New South Wales Parliament was strengthened this year with increased reporting obligations on Members who hold outside employment or engagements, and biannual reporting through supplementary returns. New forms were prescribed containing examples and notes to assist Members.

This report, the first of the newly established Committee of the 54<sup>th</sup> Parliament, is the outcome of a request to the Committee to comment on some minor amendments to the forms, as proposed in the Constitution (Disclosures by Members) Further Amendment Regulation 2007. The Committee has examined the amendments and supports their adoption.

This report also discusses proposals to reduce the size of the forms and notes the need for a minor amendment of the Discretionary Return form.

In the course of this inquiry members of the Committee also suggested that, given the increase in the reporting requirements, further consideration could be given to establishing an electronic registration system, available to Members through the internet, and the Register available in CD-Rom form.

The Committee will continue to monitor the scheme, which plays an important role in the ethics regime of the NSW Parliament.

Paul Pearce, MP  
Committee Chairman





## CHAPTER 1: INITIATION OF THE INQUIRY

On 8 November 2007 the Deputy Director General (General Counsel) of the Department of Premier and Cabinet wrote to the Clerk of the Legislative Assembly advising of a proposal to make a minor change to the return forms used by Members of Parliament when disclosing their pecuniary interests.

A copy of the draft amendments, the Constitution (Disclosures by Members) Further Amendment Regulation 2007 was enclosed (see Appendix 2).

The draft amendment was forwarded to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics for review. Under section 14A (5) of the Constitution Act 1902 the Governor is required, before making a regulation relating to the disclosure of interests by Members, to provide any Parliamentary committee established for the purpose of considering the proposed regulation an opportunity to comment on the regulation, and is to take into account any such representations.

As no committee was currently established for this purpose, the draft Regulation was forwarded to this committee for review.

This Committee has been requested to report on the draft Constitution (Disclosures by Members) Further Amendment Regulation 2007 by 30 November 2007.

Copies of the proposed amendments were circulated for comment to all Members of the Legislative Assembly, the Auditor-General, the Commissioner of the Independent Commissioner Against Corruption and the Ombudsman.

Copies of the responses received from the Commissioner of the ICAC and the Parliamentary Ethics Adviser were received and considered by the Committee. Neither the Auditor General nor the Ombudsman had specific comments to make about the proposed amendments.



## **CHAPTER 2: CONSTITUTION (DISCLOSURES BY MEMBERS) AMENDMENT REGULATION 2006**

The scheme for disclosure of Members' interests was established in 1983 by Constitution (Disclosures by Members) Regulation 1983.

In 2006 the Government proposed substantial amendments to the Regulation introducing, amongst other things, six monthly reporting through a Supplementary Ordinary Return, and a requirement for members to disclose information about people or companies, and their clients, who benefited from a Member's services (through employment or paid contractual engagement). The amending Regulation also made provision for discretionary disclosures by Members, by way of a new form.

The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics of the 53<sup>rd</sup> Parliament tabled two reports on these amendments.

The Constitution (Disclosures by Members) Regulation 1983 prescribes the exact wording of the forms to be used by Members to report on the various types of interests referred to in the clauses of the Regulation. In reporting on the 2006 amendments, the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics and the Legislative Council Privileges Committee, had drawn attention to the need for the forms prescribed by the Regulation to be more clearly linked to the individual clauses of the Regulation, and for various forms to include examples to aid Members' completion of the returns. The Government adopted the Committees' recommendations to improve the forms by providing notes and examples. The opportunity was also taken to modernise the design of all the forms prescribed by the Regulation, adopting a clearer and cleaner layout to aid accurate completion of the forms. As a consequence the new forms introduced for the first time in March 2007 were substantially longer than the previous forms, which had previously remained unchanged since introduction in 1983.

At the time of lodging their Ordinary Returns in September this year, a number of Members raised with the Clerk of the Legislative Assembly and the Speaker concern about the size of the new form and as a result the Speaker wrote to the Chairman of the Committee on 13 November 2007 to request that the Committee also consider the possibility of reducing the size of the form required to be completed and returned to the Clerk. The Committee requested that the Clerk of the Legislative Assembly provide further details about the need to reduce the number of pages in the form. Chapter 4 of this report, together with Appendix 3, discusses the proposal to change the layout of the forms.

The Clerk has also drawn the Committee's attention to an anomaly in Form 4, the Discretionary Disclosure form, which includes date references which appear to be unnecessary for certain types of disclosure, and which render the form confusing in certain circumstances. This issue is discussed in Chapter 5 of the Report.



## CHAPTER 3: PROPOSED AMENDMENTS TO THE REGULATION

The draft Further Amendment Regulation provides for new examples to take the place of existing examples that are prescribed to be included in the Forms on which Members submit their returns.

The changes to the three forms affected by the Regulation are discussed separately below.

### 3.1 Change to the Primary Return Form (Form 1)

The draft Further Amendment Regulation amends the **Example** in Part 3 to omit the words "20 shares" (as indicated by strike-through font below) and to insert a new example (as indicated in italics below):

#### Part 3 Interests and positions in corporations

Under clause 12 of the Constitution (Disclosures by Members) Regulation 1983, you must disclose in the table below the following particulars for each corporation in which you had an interest or held any position (whether remunerated or not) on the date on which you took the pledge of loyalty:

- (a) the name and address of each corporation,
- (b) the nature of the interest (if any) or a description of the position held,
- (c) except in the case of a public company, a description of the principal objects of each such corporation. If you received income in respect of any position held in a corporation, that information should be disclosed in Part 2.

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation

#### Examples only:

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation
CD Corporation, 1 Martin Place, Sydney NSW 2000	<del>20 shares</del> <i>shareholder</i>	To provide public affairs advice to its clients

[New example inserted:]

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation
<i>MD Corporation Pty Ltd, 33 Kingsgrove Road, Kingsgrove, Sydney NSW 2208</i>	<i>shareholder</i>	<i>To provide financial advice to its clients</i>

### 3.2 Change to the Ordinary Return Form (Form 2)

The draft Further Amendment Regulation amends the **Example** in Part 5 to mirror the proposed change to the Primary Return form, i.e. to omit the words "20 shares" (as indicated by strike-through font below) and to insert a new example (as indicated in italics below):

#### Part 5 Interests and positions in corporations

Under clause 12 of the Constitution (Disclosures by Members) Regulation 1983, you must disclose in the table below the following particulars for each corporation in which you had an interest or held any position (whether remunerated or not) at any time during the ordinary return period:

- (b) the name and address of each corporation,
- (b) the nature of the interest (if any) or a description of the position held,
- (c) except in the case of a public company, a description of the principal objects of each such corporation. If you received income in respect of any position held in a corporation, that information should be disclosed in Part 2.

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation

#### **Examples only:**

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation
CD Corporation, 1 Martin Place, Sydney NSW 2000	<del>20 shares</del> <i>shareholder</i>	To provide public affairs advice to its clients

[New example inserted:]

<i>Name and address of corporation</i>	<i>Nature of interest (if any) or description of position held</i>	<i>Description of principal objects of corporation</i>
<i>MD Corporation Pty Ltd, 33 Kingsgrove Road, Kingsgrove, Sydney NSW 2208</i>	<i>shareholder</i>	<i>To provide financial advice to its clients</i>

### 3.3 Changes to the Supplementary Ordinary Return Form (Form 3)

The draft Further Amendment Regulation proposes two amendments to the Supplementary Ordinary Return Form. One is a minor amendment to replace the word “which” with the words “that you”, as indicated in the following excerpt from the form:

#### *Part 1 Real property*

List in the table below any interests in real property you held during the supplementary ordinary return period, which are additional to those ~~which~~ *that you* have already been declared in your most recent return:

Address of each parcel of real property	Nature of interest

The draft Further Amendment Regulation amends the **Example** in Part 5 to mirror the proposed change to the Primary and Ordinary Return forms, ie to omit the words “20 shares” and to insert a new example, as demonstrated below.

#### Part 5 Interests and positions in corporations

List in the table below all positions or interests in corporations you held during the supplementary ordinary return period that are additional to those positions or interests that you have already declared in your most recent return. If you received income in respect of any position held in a corporation, that information should be disclosed in Part 2.

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation

#### Examples only:

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation
CD Corporation, 1 Martin Place, Sydney NSW 2000	20 shares shareholder	To provide public affairs advice to its clients

[New example inserted:]

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation
MD Corporation Pty Ltd, 33 Kingsgrove Road, Kingsgrove, Sydney NSW 2208	shareholder	To provide financial advice to its clients

### **3.4 Comments on the proposed amendments**

The Committee considered the proposed amendments, and noted that the change reinstates the previous practice of not being required to nominate the number of shares held. The aim of disclosing interests is to avoid conflict of interest, through transparency, which is achieved through the requirement to declare the nature of interest in a corporation, not the value.

#### **Recommendation:**

**THAT** the proposed amendments contained in the Draft Constitution (Disclosures by Members) Further Amendment Regulation 2007 be adopted.



## CHAPTER 4: PROPOSED CHANGES TO THE LAYOUT OF PRESCRIBED FORMS

The Clerk of the Legislative Assembly, Mr Russell Grove, wrote to the Committee commenting on the proposal to review the forms prescribed by the Regulation, and in light of the size of the published collation of Primary and Ordinary Returns of Members, whether the forms could be streamlined.

The Clerk acknowledged that the aim of the new forms was:

- (1) To increase the correlation between the form and the pertinent section of the Regulation, given that the old form did not have a clear link between the various parts of the Regulation and the relevant section of the form in which the interest was to be declared.
- (2) To include examples of how the return was to be completed, given that some Members had previously made errors, giving either insufficient, or extraneous, information.

However, in practice it was evident that the new Primary and Ordinary Return forms also had disadvantages:

- (1) The increased size of the form has resulted in a very large document for publication. While the Assembly only prints a small number of the tabled set of Returns, it is an important publication in terms of accountability. The former Committee had recommended that the returns be viewable on the internet, but this recommendation was not adopted by the Government, meaning that the printed copy would continue to be published.
- (2) The inclusion of examples within the form has resulted in some readers misinterpreting the document, when an example had been mistaken as an actual entry. This is particularly the case as a majority of members report a "NIL" response to many sections of the form.
- (3) When published, the very large amount of interpretive text embodied within the form detracts from the actual entry, if any, made by a Member.

One solution to these problems, which would retain the advantage of cross-referencing between the Regulation and the form, as well as a clear exposition of requirements, would be for the form to be reformatted into two sections, so that Members need only fill in information on the final few pages, which could be detached and returned to the Clerk. The advantage of a two-section form would be that all the information currently in the form (i.e. the text of the relevant clause and an example entry) would be retained to assist Members in correctly completing the form, but only five pages, the second and last section of the form, would be required to be returned. A mocked-up version of the proposed new form is appended as Appendix 3. Reducing the

size of the form to be lodged form to just one page would restore the size of the tabled document to a 465 page volume, as opposed to the 3 volumes of the current return recently tabled.

It is proposed that the full text of both sections of each of the four forms currently prescribed be retained as Schedules to the Regulation.

**CHAPTER 5: DISCRETIONARY RETURN FORM (Form 4)**

In the course of the inquiry, the Clerk of the Legislative Assembly also advised the Committee of a further matter that had been brought to his attention in relation to the forms prescribed under the Regulation.

The Regulation prescribes that Form 4 is to be used for any discretionary disclosure a Member may wish to make at any time between reporting periods.

Form 4 is prescribed to contain the following information:

**Form 4 Discretionary return**

(Clause 3(1), definition of "discretionary return")

**Constitution (Disclosures by Members) Regulation 1983**

**Discretionary Return — Legislative Assembly**

**Directions**

- 1 If a Member considers it appropriate to do so, a Member may make any disclosures in a discretionary return concerning any or all of the matters that a Member is required or permitted to disclose under the *Constitution (Disclosures by Members) Regulation 1983* in an ordinary return, before the date on which the Member is next required to lodge an ordinary return or supplementary ordinary return.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.

Disclosures of pecuniary interests and other matters by:

.....  
(full name of Member)

in respect of the period from

..... to .....

.....  
(Member's signature)

.....  
(Date)

**Disclosures**

.....  
.....

## 5.1 Comment

The Discretionary Return form requires a Member to enter dates “*in respect of the period from*”, and in effect nominate a “start date” and “end date”. The need for Members to specify a defined period is not clear, and has caused problems. No example is given, although conceivably in some circumstances it would be appropriate to nominate the date of the last reporting period, up to the date of making the discretionary disclosure.

The Committee deliberated, and agreed that reference to a time period on the Discretionary Disclosure return form should be optional. As the choice to disclose a matter was at the Member’s discretion, and clause 16 of the Constitution (Disclosures by Members) Regulation 1983 is very broad, it should be up to the Member making the disclosure to specify the time period, if any, that is relevant to the disclosure.

Clause 16 states:

### **16 Discretionary disclosures generally**

*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 of 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.*

## **Recommendation**

The Committee therefore recommends that the Discretionary Return not specify a period of time to cover the disclosure.

## **APPENDIX 1: Excerpts from Minutes of Meetings of the Committee**

### **Minutes of Proceedings of the Standing Committee on Parliamentary Privilege and Ethics (no. 1)**

9.45 am Friday 22 June 2007

Parliament House

#### **Members Present**

Mr Amery, MP

Mr Costa, MP

Ms McMahon, MP

Mr Pearce, MP

Mr Terenzini, MP

Mr J. H. Turner, MP

#### **Apologies**

Apologies were received from Mr Kerr and Ms Moore.

#### **Introduction**

The Clerk-Assistant (Committees) Assembly, on behalf Clerk of the Legislative Assembly, opened the meeting and read the following extract from the Votes and Proceedings of Wednesday 20 June 2007, entry 22 –

“Standing Committee on Parliamentary Privilege and Ethics

Mr Aquilina moved, by leave:

That notwithstanding anything to the contrary in the standing orders:

- (1) A Standing Committee on Parliamentary Privilege and Ethics (referred to as “the committee”) be appointed to consider and report upon any matters relating to privilege which may be referred to it under standing order 92 or by resolution of the House.
- (2) The committee is the designated committee for the purpose of exercising the functions in part 7A Division 2 of the Independent Commission Against Corruption Act 1988, relating to Parliamentary ethical standards including the review of the code of conduct.
- (3) The committee consist of eight members being: Mr Amery, Mr Costa, Mr Kerr, Ms McMahon, Ms Moore, Mr Pearce, Mr Terenzini and Mr J.H.Turner.
- (4) Any five members of the committee shall constitute a quorum.
- (5) That the committee have leave to make visits of inspection within the state of New South Wales and other states and territories of Australia.
- (6) The committee have power to confer with any similar committee appointed by the Legislative Council.”

#### **Election of Chair and Deputy Chair**

Pursuant to Standing Order 282—

Resolved, on the motion of Mr Amery, seconded by Mr Terenzini:

That Mr Pearce be elected Chair of the committee.

Resolved, on the motion of Mr Terenzini, seconded by Mr Costa:

That Mr Amery be elected Deputy Chair of the committee.

The Clerk-Assistant (Committees) then introduced the Ronda Miller, Clerk-Assistant (Procedure) and Serjeant-at-Arms, who will be the chief officer serving the committee.

## **Procedural Motions**

Resolved, on the motion (in globo) of Mr Terenzini, seconded by Mr Costa:

1. That arrangements for the calling of witnesses and visits of inspection be left in the hands of the Chair and the Committee Manager to the committee.
2. That, unless otherwise ordered, witnesses appearing before the committee shall not be represented by any member of the legal profession.
3. That, unless otherwise ordered, when the committee is examining witnesses, the press and public (including witnesses after examination) be admitted to the hearing being conducted by the committee.
4. That persons having special knowledge of the matters under consideration by the committee may be invited to assist the committee.
5. That press statements on behalf of the committee be made only by the Chair after approval in principle by the committee or after consultation with Committee members.
6. That, unless otherwise ordered, access to transcripts of evidence taken by the committee be determined by the Chair and not otherwise made available to any person, body or organisation: provided that witnesses previously examined shall be given a copy of their evidence; and that any evidence taken in camera or treated as confidential shall be checked by the witness in the presence of the Committee Manager to the committee or another officer of the committee.
7. That the Chair and the Committee Manager to the committee be empowered to negotiate with the Speaker through the Clerk of the Legislative Assembly for the provision of funds to meet expenses in connection with advertising, operating and approved incidental expenses of the committee.
8. That the Chair be empowered to advertise and/or write to interested parties requesting written submissions.
9. That upon the calling of a division or quorum in either House during a meeting of the committee, the proceedings of the Committee shall be suspended until the committee again has a quorum.
10. That the Chair and the Committee Manager make arrangements for visits of inspection by the committee as a whole to undertake the entire itinerary.
11. That pursuant to Standing Order 297, evidence, submissions or other documents presented to the committee which have not been reported to the House are not be disclosed or published by any Member or by any other person unless first authorised by the House or the committee.

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## **Minutes of Proceedings of the Standing Committee on Parliamentary Privilege and Ethics (no. 2)**

1.00pm Wednesday 7 November 2007

Waratah Room, Parliament House

### **Members Present**

Mr Pearce MP (Chair)

Mr Amery, MP

Ms McMahon, MP

Mr J. H. Turner, MP

Mr Kerr, MP

Mr Terenzini, MP

## **Apologies**

Apologies were received from Mr Costa and Ms Moore.

In attendance: Mr Ian Dickson, Parliamentary Ethics Adviser

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### **2. Meeting with the Parliamentary Ethics Adviser**

The Chair welcomed Mr Ian Dickson, the Parliamentary Ethics Adviser, who had been invited to meet the Committee. A copy of the resolution of the House appointing the Parliamentary Ethics Adviser was circulated.

Mr Dickson briefed the Committee on his work during the previous year, which would form the basis of his forthcoming annual report to Parliament. Discussion ensued.

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### **3. General Business**

The Chair noted that future work of the Committee included the statutory review of the Code of Conduct, which was required once every Parliament.

As parliamentary privilege was also relevant to the Committee's role, the Clerk also undertook to circulate information to the Committee on current issues and developments in other States as they came to notice.

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## **Minutes of Meeting of Members of the Standing Committee on Parliamentary Privilege and Ethics (no. 3)**

1.00pm, Wednesday 14 November 2007, Waratah Room

Parliament House

### **Members Present**

Mr Pearce, MP (Chair)

Mr Amery, MP (Vice-Chair)

Mr Kerr, MP

Mr J. H. Turner, MP

### **Apologies**

Apologies were received from Ms McMahon and Ms Moore.

.....

### **2. Letter from the Clerk to the Chair, enclosing correspondence from The Cabinet Office and the proposed amendment to the Constitution (Disclosure by Members) Regulation**

The meeting considered the letter, which had been previously circulated.

The meeting noted the reference of the draft regulation. Debate ensued. The meeting recommended THAT the draft amendment be circulated to all Members for comment.

### **3. Letter from the Speaker to the Chair, dated 13 November 2007 (Appendix B).**

The meeting considered the letter, which had been previously circulated.

The meeting noted the Speaker's letter. Debate ensued. The meeting recommended THAT the inquiry also consider the forms used to report interests.

The views of the Auditor-General, the Ombudsman, the Parliamentary Ethics Adviser and the ICAC Commissioner would also be formally sought.

#### **4. Inquiry Time-table**

In view of the reporting date of 30 November, response would be sought by 23 November, with a view to circulating comments, and consideration of a draft report on Wednesday 28 November.

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### **Minutes of Meeting of the Standing Committee on Parliamentary Privilege and Ethics (no. 4)**

1.00pm, Wednesday 28 November 2007, Waratah Room  
Parliament House

#### **Members Present**

Mr Pearce, MP (Chair)  
Mr Amery, MP (Vice-Chair)  
Mr Costa, MP  
Ms McMahon, MP  
Ms Moore, MP  
Mr J. H. Turner, MP

.....

#### **2. Correspondence from The Clerk of the Legislative Assembly and the Parliamentary Ethics Adviser**

The committee considered the letters, which were noted as received. The Clerk to the Committee advised that the contents of the letters will be incorporated into the draft report.

#### **3. Draft Report on the Constitution (Disclosures by Members) Further Amendment Regulation 2007**

The committee considered the draft report, which had been previously circulated. The Clerk outlined the format and contents of each chapter.

Chapters 1 – 3 were considered, and agreed to.

Chapter 4 was considered. The Committee deliberated, and agreed that the Ordinary Return form, as it currently stands, does not meet the objective of clearly disclosing areas where conflict of interest may arise. It was suggested that the report recommend that consideration be given to amending the form, possibly along the lines suggested by the Clerk of the Legislative Assembly, to reduce the number of pages which were required to be returned to the Clerk for publication.



The Committee also noted that the Commissioner of the ICAC had written to the Committee commenting on the draft amending Regulation, drawing attention to the Recommendation contained in the 2003 ICAC *Report on Regulation of secondary employment for Members of the NSW Legislative Assembly*. Recommendation 11 in that report was:

*That the register of pecuniary interests be established as an electronic database that can be accessed via the Internet by Members of Parliament and members of the public.*

Chapter 5 was considered. The Committee deliberated, and agreed that reference to a time period on the Discretionary Disclosure return form should be optional. As the choice to disclose a matter was at the Member's discretion, and clause 16 of the Regulation is very broad, the need to specify a time-frame is not clear.

Clause 16 states:

**17 Discretionary disclosures generally**

*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 of 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.*

Members of the Committee also suggested that, given that the new Register is considerably bulkier than earlier editions, further consideration could be given to use of the internet for registration of interests, or the Register could be published in CD-Rom format for distribution.

The Clerk undertook to incorporate the Committee's comments and recommendations into the draft report and to circulate it to Members for consideration and further amendment if required.

The Committee resolved, upon the motion of Mr Amery, seconded Mr Turner, that the report agree to by the Committee be adopted, and tabled in the Parliament before Friday 30 November, 2007.



## APPENDIX 2: CIRCULAR TO MEMBERS ENCLOSING THE DRAFT REGULATION



LEGISLATIVE ASSEMBLY  
STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS

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### LEGISLATIVE ASSEMBLY STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS

#### DRAFT AMENDMENT TO DECLARATION OF INTERESTS REGULATION

The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics has a reference to inquire and report on a draft amendment to the Constitution (Disclosures by Members) Regulation 2006, in accordance with section 14A (5) of the Constitution Act 1902.

The Committee in conducting their review, in addition to considering the draft amendment, is to consider whether the reporting forms which have been drafted in conformity with the Regulation could also be streamlined to enable publication of a more concise document for tabling.

The draft amendment to the Constitution (Disclosures by Members) Regulation is attached.

Further copies can be obtained from the committee's website at [www.parliament.nsw.gov.au/laprivilegeandethics](http://www.parliament.nsw.gov.au/laprivilegeandethics). Copies can also be requested from the secretariat on (02) 9230 2225.

Individuals and organisations are invited to make a submission (in writing, typed or on disk) to assist the committee in its inquiry. Submissions should be addressed to the Committee, at Parliament House, Macquarie Street, Sydney, NSW 2000. Alternatively, they may be faxed to (02) 9230 2828 or emailed to [ethics@parliament.nsw.gov.au](mailto:ethics@parliament.nsw.gov.au).

Further information can be obtained from Ronda Miller, Clerk-Assistant (Procedure) and Serjeant-at-Arms on (02) 9230 2225 or (02) 9230 2616.

The closing date for submissions is 21 November 2007. The Committee is required to report by 30 November 2007.

I encourage all members to consider the changes and take this opportunity to comment on the draft amendment and the reporting forms.

PAUL PEARCE  
Chair





New South Wales

## Constitution (Disclosures by Members) Further Amendment Regulation 2007

under the

Constitution Act 1902

*[The following enacting formula will be included if the Regulation is made:]*  
Her Excellency the Governor, with the advice of the Executive Council and in compliance with the provisions of section 14A (5) of the *Constitution Act 1902*, has made the following Regulation under the *Constitution Act 1902*.

Premier

### Explanatory note

The object of this Regulation is to amend the *Constitution (Disclosure by Members) Regulation 1983*:

- (a) to provide new examples in the Forms for returns set out in Schedule 1 to the Regulation in relation to disclosures relating to interests and positions in corporations, and
- (b) to correct a minor typographical error in a Form.

This Regulation is made under section 14A (Disclosure of pecuniary interests and other matters by Members) of the *Constitution Act 1902*.

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## consultation draft

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Clause 1      Constitution (Disclosures by Members) Further Amendment Regulation  
2007

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### **Constitution (Disclosures by Members) Further Amendment Regulation 2007**

under the

Constitution Act 1902

**1 Name of Regulation**

This Regulation is the *Constitution (Disclosures by Members) Further  
Amendment Regulation 2007*.

**2 Amendment of Constitution (Disclosures by Members) Regulation 1983**

The *Constitution (Disclosures by Members) Regulation 1983* is  
amended as set out in Schedule 1.

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# consultation draft

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Constitution (Disclosures by Members) Further Amendment Regulation  
2007

Amendments

Schedule 1

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## Schedule 1 Amendments

(Clause 2)

### [1] Schedule 1 Forms

Omit the matter headed "Example only:" from Part 3 of Form 1.

Insert instead:

**Examples only:**

CD Corporation Limited, 1 Martin Place, Sydney NSW 2000	shareholder	
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MD Corporation Pty Limited, 33 Kingsgrove Road, Kingsgrove NSW 2208	majority shareholder	To provide financial advice to its clients
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### [2] Schedule 1, Form 2

Omit the matter headed "Example only:" from Part 5 of the Form.

Insert instead:

**Examples only:**

CD Corporation Limited, 1 Martin Place, Sydney NSW 2000	shareholder	
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MD Corporation Pty Limited, 33 Kingsgrove Road, Kingsgrove NSW 2208	majority shareholder	To provide financial advice to its clients
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### [3] Schedule 1, Form 3

Omit "which" where secondly occurring in Part 1. Insert instead "that you".

### [4] Schedule 1, Form 3

Omit the matter headed "Example only:" from Part 5 of the Form.

Insert instead:

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## consultation draft

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Constitution (Disclosures by Members) Further Amendment Regulation  
2007

Schedule 1 Amendments

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**Examples only:**

CD Corporation Limited, 1 Martin Place, Sydney NSW 2000	shareholder	
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MD Corporation Pty Limited, 33 Kingsgrove Road, Kingsgrove NSW 2208	majority shareholder	To provide financial advice to its clients
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**APPENDIX 3: SUGGESTED REFORMATTING OF THE ORDINARY  
RETURN FORM**





## CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION 1983

### FORM 2 ORDINARY RETURN

The Constitution (Disclosures by Members) Regulation 1983 requires Members to disclose certain pecuniary interests and other matters on forms which are prescribed in a Schedule to the Regulation (Clauses 3(1) and 3A).

Form 2 is the "Ordinary Return", as defined in Clause 3(1).

**The form is in two sections. The first section ("Description of requirements and sample entries") sets out the requirements of the Regulation for each type of interest to be disclosed, and gives an example under each heading of how to make an entry on the return. The second section of the form ("Ordinary Return") is the part of the form which is to be filled in by the Member. This single page is to be detached from the full form and lodged with the Clerk by the due date.**

The notes and examples in the first section of the form are provided only for the purpose of assisting Members to complete the Return page of the form. Members may also need to refer to the definitions in the Regulation or the clauses specified in the notes about each Part.

The form is available as a Word document on the Parliament's intranet, listed under Legislative Assembly. Select "Members Ethics", and the form is listed as "Primary Return" in the Policies and Forms section. The form cannot be lodged electronically, but will need to be printed off once completed, as a signed hard copy is required to be lodged with the Clerk under the Regulation. The Constitution (Disclosures by Members) Regulation 1983 can be obtained from the Procedure Office, or looking at the "In Force" section of [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

The deadline for completion and lodging of the return is 30 September 2007.

**Directions**

(clause 3(1), definition of "ordinary return")

- 1 The pecuniary interests and other matters required to be disclosed in this return are prescribed in clauses 8 to 15A of the *Constitution (Disclosures by Members) Regulation 1983*.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- 4 Where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.
- 5 A reference in this form to the ordinary return period in relation to a Member is a reference to:
  - (a) where the last return lodged by the Member was an ordinary return-the period of 12 months ending on 30<sup>th</sup> June in the year this return is required to be lodged, or
  - (b) where the last return lodged by the Member was a primary return-the period commencing on the day on which the Member took the pledge of loyalty and ending on 30<sup>th</sup> June in the year this return is required to be lodged.
- 6 The entries marked as "Examples only" are provided by way of example only.
- 7 **You must disclose ALL matters required to be disclosed as set out in this form (and as required by the *Constitution (Disclosures by Members) Regulation 1983* for the ordinary return period applicable to you. Specifically, even where you have listed a pecuniary interest for the period of 1 July to 31 December of the previous year in your most recent supplementary ordinary return (such as a source of income, gift, contribution to travel, disposition of property or client services), you must again list that item in this return.**

## DESCRIPTION OF REQUIREMENTS AND SAMPLE ENTRIES

### Part 1 Real property

Under clause 8 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose the address of each parcel of real property in which you had an interest at any time during the ordinary return period and the nature of the interest in the real property. Make a separate entry for each parcel of real property held, separated by a line, in Table 1.

#### Example only for entry in Table 1

Address of each parcel of real Property	Nature of interest
1 Pitt Street, Sydney, NSW 2000	Joint tenant

### Part 2 Sources of income

Under clause 9 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in the tables below each source of income that you received, or reasonably expect to receive, during the ordinary return period. You must disclose income received, or which you expect to receive:

- (a) as an employee, as part of a partnership, as an office holder (including an office holder in a corporation or body) or under any other contract, agreement or arrangement (such as a self-employed consultant/contractor) (use Part 2.1 below to complete Table 2.1), and
- (b) from a trust (use Part 2.2 below to complete Table 2.2), and
- (c) from any other source (use Part 2.3 below to complete Table 2.3).

#### 2.1 Income from employment, offices, partnerships and services

Under clause 9 (2) (a)–(d) of the *Constitution (Disclosure by Members) Regulation 1983*, you must disclose any income you have received during the ordinary return period as an employee, as part of a partnership, as an office holder (including an office holder in a corporation or body) or under any other contract, agreement or arrangement (such as a self-employed consultant/contractor).

You must also describe the services you provide in receiving that income. The description of the services provided must be reasonably sufficient to identify the service provided in return for that income. Services from which you do not derive any income do not need to be disclosed.

You must make a separate entry for each different source of income in the appropriate Table in the Return. For example, if you are employed and hold an office, two separate entries should be made respectively in Tables 2.1.1 and 2.1.2. Separate multiple entries in each Table by a line. Where the Table is not relevant to your circumstances enter "NIL" in that Table (for example, if you do not derive any income, whether as an employee, as an office holder, from a partnership or otherwise under a contract, agreement or arrangement, you must enter "NIL" in all Tables).

Where you provide services that "arise from or relate to the use of" your position as a Member, you must complete the last column in each table. This includes (but is not limited to) where you engage in:

- (a) the provision of public policy advice, or
- (b) the development of strategies or the provision of advice on the conduct of relations with the Government or Members, or

- (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

**Note, where the provision of services “arise from or relate to the use of” your position as a Member, you may also need to complete Part 9 of this form.**

Example only for entry in Table 2.1.1 Income received as an employee

Name of occupation	Description of services provided	Name and address of employer	Nature of business of the employer (where the services provided relate to your position as a Member)
Solicitor	Employed solicitor providing legal services to client, in the areas of criminal and family law	ABC Lawyers, 1 Pitt Street, Sydney	NIL

Example only for entry in Table 2.1.2 Income received as holder of office

Name or title of the office and a description of kinds of services provided	Name and address of corporation or body (if any) in which the office is held	Nature of business carried on by the entity (where the services provided relate to your position as a Member)
Local Councillor	Paddington Local Council	NIL

Example only of entry in Table 2.1.3 Income from partnership

Name of occupation (if any)	Description of kinds of services provided	Name and address of the partnership	Nature of business carried on by the partnership (where the services provided relate to your position as a Member)
Solicitor	Partner of the law firm and to provide commercial legal services specialising in litigation, property, intellectual property, competition and corporate law	XYZ Lawyer, 3 Smith Street, Paddington	NIL

Example only for entry in Table 2.1.4 Income from services provided under any other contract, agreement or arrangement

Name of occupation (if relevant) and a description of kind of services provided	Name and address of parties to any contract, agreement or arrangement to provide services	Nature of business carried on by the other party to the contract, agreement or arrangement (where the services provided relate to your position as a Member)
Public affairs consultant – Providing public affairs advice, including lobbying MPs and government departments on the issue of regulation of electrical appliances	XYZ Corporation, 1 Pitt Street, Sydney	Manufacturer of electrical appliances

### Table 2.2 Income from a trust

Under clause 9 (2) (e) of the Constitution (Disclosures by Members) Regulation 1983, you are required to disclose any source of income which you received during the ordinary return period from a trust, including the name and address of the settlor and the trustee. Make a separate entry in Table 2.2 (separated by a line) for each trust.

Example only of entry in Table 2.2 Income from a trust

Name and address of settlor	Name and address of trustee
XY Settlor, 2 George Street, Sydney NSW 2000	AB Trustee, 10 George Street, Sydney, NSW 2000

### 2.3 Other income

Under clause 9 (2) (f) of the Constitution (Disclosures by Members) Regulation 1983, you are required to disclose below any other income you received during the ordinary return period and provide a description sufficient to identify the person from whom, or the circumstances in which, the income was received:

Example only of entry in Table 2.3 Other income

Income from the operation of a farm at 1 Pitt Street, Orange of which I am the sole proprietor.
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### Part 3 Gifts

Under clause 10 of the Constitution (Disclosures by Members) Regulation 1983, you are required to disclose in Table 3 any gifts (including gifts of cash) received during the ordinary return period and the name and address of the person from whom the gift was received.

You do not need to disclose gifts that:

- (a) do not exceed \$500 in value unless the gift was 1 of 2 or more gifts made by 1 person at any time during the ordinary return period and the amount of those 2 or more gifts together exceeds \$500 in aggregate, or
- (b) political donation disclosed, or required to be disclosed, under Part 6 of the Election Funding Act 1981, or
- (c) are from a donor who is a relative of yours (as defined by clause 7 (1) of the Constitution (Disclosures by Members) Regulation 1983).

Example only of entry in **Table 3: Gifts**

Description of each gift that I received at any time during the Ordinary Return period	Name and address of donor
4 tickets to the XYZ sporting event	XYZ Sports Union, 1 Pitt Street, Sydney

### Part 4 Contributions to travel

Under clause 11 of the *Constitution (Disclosures by Members) Regulation 1983*, you are required to disclose the information set out in the table below for any contribution to any travel (including accommodation incidental to a journey) undertaken by you during the ordinary return period.

You do not need to disclose a contribution if:

- (a) the contribution was made from public funds (including a contribution arising from travel on free passes issued under any Act or from travel in government vehicles), or
- (b) the contribution was made by a relative of yours (as defined by clause 7 (1) of the *Constitution (Disclosures by Members) Regulation 1983*), or
- (c) the contribution was made in the ordinary course of any occupation which is not related to your duties as a Member, or
- (d) the amount of the contribution did not exceed \$250 unless the contribution was 1 of 2 or more contributions made by 1 person at any time during the ordinary return period and the amount of those 2 or more contributions exceeded, in the aggregate, \$250, or
- (e) the contribution was a political contribution disclosed, or required to be disclosed, under Part 6 of the *Election Funding Act 1981*, or
- (f) the contribution was made by a political party of which you are a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable you to represent the party within Australia.



**Example only for entry in Table 4: Contributions to travel**

Name and address of each person who made any financial or other contribution to travel undertaken at any time during the ordinary return period	Dates on which travel was taken	Names of States, Territories of the Commonwealth and overseas countries in which travel undertaken
Brisbane City Council, 1 Smith Street, Brisbane	31 August to 4 September	Brisbane, Queensland

**Part 5 Interests and positions in corporations**

Under clause 12 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in the table below the following particulars for each corporation in which you had an interest or held any position (whether remunerated or not) at any time during the ordinary return period:

- (a) the name and address of each corporation,
- (b) the nature of the interest (if any) or a description of the position held,
- (c) except in the case of a public company, a description of the principal objects of each such corporation.

If you received income in respect of any position held in a corporation, that information should be disclosed in Part 2.

**Example only for entry in Table 5: Interests and positions in corporations**

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation
CD Corporation, 1 Martin Place, Sydney NSW 2000	Shares	To provide public affairs advice to its clients

**Part 6 Positions in trade unions and professional or business associations**

Under clause 13 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in Table 6 the name of each trade union and professional or business association in which you held any position (whether remunerated or not) at any time during the ordinary return period and a description of the position held.

**Example only of entry in Table 6: Positions in trade unions and professional or business associations**

Name of trade union or association	Description of position
ABC Trade Union	Member Honorary Secretary

### Part 7 Debts

Under clause 14 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in Table 7 the name and address of each person to whom you were liable to pay any debt at any time during the ordinary return period. You must disclose all debts, whether or not the amount to be paid was due and payable at any time during that period.

You do not need to disclose a debt that:

- (a) does not exceed \$500 unless the debt was 1 of 2 or more debts owed to 1 person and the amount of those 2 or more debts together exceeds \$500 in aggregate, or
- (b) is owed to a relative of yours (as defined by clause 7 (1) of the *Constitution (Disclosures by Members) Regulation 1983*), or
- (c) is owed to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender, or
- (d) arises from the supply of goods and services which were supplied during the ordinary return period, or
- (e) arises from the supply of goods and services in the ordinary course of any occupation not related to your duties as a Member.

### Example only of entry in Table 7: Debts

Personal loan made by Mr John Smith of 1 Pitt Street, Sydney NSW 2000

### Part 8 Dispositions of property

Under clause 15 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in Table 8 particulars of each disposition of:

- (a) real property by you at any time during the ordinary return period whereby you retained, wholly or in part, the use and benefit of the property or the right to reacquire the property at a later time, or
- (b) property to a person by any other person under arrangements made by you during the ordinary return period whereby you obtained, either wholly or in part, the use and benefit of the property.

### Example only of entry in Table 8: Dispositions of property

Disposition of Lot 5, DP1234 on 30 May to XYZ Corporation, whereby a right is conferred on Mr Smith MP to use the property.

**Part 9 Client services**

Under clause 15A of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose the details set out in Table 9 if you have provided “client services” at any time during the ordinary return period.

Client services are provided by you if:

- (a) you are engaged by a person (whether an individual or corporation) to provide services to or on behalf of any of that person’s clients, and
  - (b) that person has received or is reasonably expected to receive consideration in money or money’s worth from the client for your services, and
  - (c) the services relate to your Parliamentary position.

You are engaged by a person (whether an individual or corporation) to provide services if you provide services in connection with:

- (a) any contract of employment with the person, or
- (b) your role as an officer of the person (such as a corporation), or
- (c) any other contract, agreement or arrangement that you have entered into with the person in respect of which you receive consideration in money, or money’s worth, for providing the services. Services relate to your Parliamentary position if the services “arise from or relate to the use of” your position as a Member. This includes (but is not limited to) where you engage in the:
  - (a) the provision of public policy advice, or
  - (b) the development of strategies or the provision of advice on the conduct of relations with the Government or Members, or
  - (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

You are required to disclose the persons who receive the benefit of your client services even if you did not directly receive any payment from that person.

You must make a separate entry in Table 9 for each person who directly receives the benefit of your services. You must also disclose who receives the benefit of your services if the client of the person who engages you, requests that the services be provided to some other person. For example, if you are employed by, or are a director of Company X, and Company X contracts with Person Y for you to provide consultancy services to Company Z, you must disclose the provision of client services to both Person Y and Company Z.

Please note, your engagement with a person to provide client services should be disclosed in Part 2 (Table 2.1.4) of the Return form.

**Example only of entry in Table 9: Client Services**

Names and addresses of persons who benefit from the services at any time during the ordinary return period	Description of the services reasonably sufficient to identify the nature of the service provided	Nature of the business of persons who directly benefited or are likely to benefit
Smith Constructions Pty Ltd, Orange Street, Paddington NSW 2021	Advising on public policy regarding public infrastructure and the development of strategies on the conduct of relations with the Government, and lobbying government departments in relation to projects managed by the company	Construction company specialising in public infrastructure such as roads

### **Part 10 Discretionary disclosures**

Under clause 16 of the *Constitution (Disclosures by Members) Regulation 1983*, a Member may disclose in Table 10 any direct or indirect benefits, advantages or liabilities that are not required to be disclosed by the Regulation but 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 wishes to disclose.

ORDINARY RETURN OF .....

Disclosures of pecuniary interests and other matters by:

..... in respect of the period from .....to.....

*(full name of Member)*

*(ordinary return period)*

.....

*(Member's signature)*

.....

*(date)*

**REAL PROPERTY: Table 1.**

Address of each parcel of real property	Nature of interest

**Table 2.1.1 Income received as an employee**

Name of occupation	Description of services provided	Name and address of employer	Nature of business of the employer (where the services provided relate to your position as a Member)

**Table 2.1.2 Income received as holder of an office**

Name or title of the office and a description of the kinds of services provided	Name and address of corporation or body (if any) in which the office is held	Nature of business carried on by the entity (where the services provided relate to your position as a Member)

**Table 2.1.3 Income from partnership**

<b>Name of occupation (if any)</b>	<b>Description of kinds of services provided</b>	<b>Name and address of the partnership</b>	<b>Nature of business carried on by the partnership (where the services provided relate to your position as a Member)</b>

**Table 2.1.4 Income from services provided under any other contract, agreement or arrangement**

<b>Name of occupation (if relevant) and a description of kind of services provided or to be provided</b>	<b>Name and address of parties to any contract, agreement or arrangement to provide services</b>	<b>Nature of business carried on by the other party to the contract, agreement or arrangement (where the services provided relate to your position as a Member)</b>

**Table 2.2 Income from a trust**

Name and address of settlor	Name and address of trustee

**Table 2.3 Other income**

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**Table 3 Gifts**

Description of each gift I received at any time during the ordinary return period	Name and address of donor

**Table 4 Contributions to Travel**

Name and address of each person who made any financial or other contribution to travel undertaken at any time during the ordinary return period	Dates on which travel was taken	Names of States, Territories of the Commonwealth and overseas countries in which travel undertaken

**Table 5 Interests and positions in corporations**

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation

**Table 6 Positions in trade unions and professional or business associations**

Name of trade union or association	Description of position

**Table 7 Debts**

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**Table 8 Dispositions of property**

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**Table 9 Client Services**

Names and addresses of persons who benefit or are likely to benefit from the services at any time during the ordinary return period	Description of the services reasonably sufficient to identify the nature of the service provided	Nature of business of persons who directly benefited or are likely directly to benefit

**Table 10 Discretionary Disclosures**

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