

Privileges Committee

Review of the Members' Code of Conduct 2010

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Terms of reference

Section 72(5) of the *Independent Commission Against Corruption Act 1988* provides that a designated committee is to review the Code of Conduct for Members at least once every four years. The Legislative Council has resolved that the Privileges Committee is the 'designated committee' for these purposes.¹ The Committee has previously conducted reviews in 2002 and 2006.

On 21 April 2010, the Deputy Chair of the Committee² informed the Legislative Council that the Committee had commenced a review of the Code of Conduct for Members including aspects of the *Constitution (Disclosures by Members) Regulation 1983*.³

¹ *LC Minutes* (10/5/2007) 53-54.

² At the time, the Chair of the Committee, who is also the Deputy President of the Legislative Council, was in the Chair of the House.

³ *LC Minutes* (21/4/2010) 1751.

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Chair's foreword

This is the third review of the Code of Conduct for Members conducted by the Privileges Committee under the provisions of section 72(5) of the *Independent Commission Against Corruption Act 1988* and the resolution of the House designating the Privileges Committee as the designated committee to undertake such reviews. Previous reviews were conducted by this Committee in 2002 and 2006.

As with previous reviews, the Committee has interpreted its responsibilities broadly. The Code of Conduct for Members intersects with a range of other mechanisms for regulating the conduct of members, most notably the pecuniary interest disclosure regime under the *Constitution (Disclosures by Members) Regulation 1983*, but also the standing orders of the Legislative Council, the Independent Commission Against Corruption, and the educative role of this Committee under the *Independent Commission Against Corruption Act 1988*. In this review, the Committee has examined a range of aspects of the system regulating members' ethics.

This report contains a number of recommendations for reform. Of note, in Chapter 3, which deals with the pecuniary interest disclosure regime, the Committee makes two significant proposals. First, that in the next Parliament, the Committee conduct an inquiry into the best mechanism for members to disclose the interests of their spouses/partners and dependent children under the provisions of the *Constitution (Disclosures by Members) Regulation 1983*, with a view to implementing third party disclosures if an appropriate mechanism can be found. Second, that steps be taken to reform the reporting by members of their pecuniary interests with a view to the publication of the 'Register of Disclosures by Members of the Legislative Council' on the Council's website.

On behalf of the Committee, I would like to thank those individuals and organisations that made submissions to the inquiry.

I also thank the members of the Committee for their contributions to the inquiry, as well as the Clerk to the Committee and the Committee Secretariat for their valuable support.

The Hon Kayee Griffin MLC
Chair

Summary of recommendations

- Recommendation 1** **45**
That the merits of a Parliamentary Integrity Commissioner be considered by the Privileges Committee in the new Parliament, in consultation with the Legislative Assembly's Privileges and Ethics Committee.
- Recommendation 2** **58**
That in the next Parliament, the House refer to the Privileges Committee a new inquiry into the best mechanism for members to disclose the interests of their spouses/partners and dependent children under the provisions of the *Constitution (Disclosures by Members) Regulation 1983*, with a view to implementing third party disclosures if an appropriate mechanism can be found.
- Recommendation 3** **63**
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 as the case may be, to be lodged within 35 days of the alteration occurring.
- Recommendation 4** **66**
That in implementing a system of exception reporting incorporating primary, ordinary and alteration of interests returns, those clauses of the *Constitution (Disclosures by Members) Regulation* that require members to disclose the names and addresses of individuals (as opposed to corporations, trusts, associations, unions and the like) should be amended to provide that individuals should be identified by name and location only (not address), subject to satisfactory resolution of any security and safety issues that may affect members and their families.
- Recommendation 5** **67**
That the *Constitution (Disclosures by Members) Regulation 1983* be amended to provide explicitly for the publication of the Register online, with the Clerk to cause the recommended new primary and ordinary returns to be published on the Council's website as soon as possible following the deadline for their receipt, but not later than 14 days after the deadline for their receipt, and to cause the recommended new alteration of interests returns to be published on the Council's website within 14 days of their receipt.
- Recommendation 6** **69**
That clause 21 of the *Constitution (Disclosures by Members) Regulation 1983* continue to require the Clerk to cause the recommended new primary and ordinary returns to be furnished to the President of the Legislative Council for tabling in the Legislative Council as soon as possible following the deadline for their receipt, but not later than 21 days after the deadline for their receipt. In addition, the Clerk is to cause the recommended new alteration of interests returns to be furnished to the President of the Legislative Council for tabling in the Legislative Council every six months.

Recommendation 7

69

That following the implementation of Recommendations 3 – 6 incorporating changes to the timing and types of pecuniary interest returns submitted by members, protection of the privacy of members and others, and the authority to publish the Register on the Council's website, that the 'Register of Disclosures by Members of the Legislative Council' should be placed on the Council's website. A new page should be created on the Council's website under the link to 'Members' entitled 'Register of Disclosures'. Transitional arrangements should also be incorporated maintaining existing access arrangements to returns already lodged by members under the existing regime.

Recommendation 8

72

That the Clerk, in consultation with the Commissioner of the Independent Commission Against Corruption, produce a publication summarising the lessons from the investigations concerning the conduct of members of Parliament upon which the Commission has reported to Parliament since its establishment, as a resource for use in future ethical education for new and continuing members. The publication could also draw upon reports by similar bodies in other Australian jurisdictions. The publication should not identify members by name.

Recommendation 9

73

That the Clerk produce a publication drawing together case studies in relation to the conduct of members of Parliament, based upon the public reports of the UK and Scottish Parliamentary Standards Commissioners and the relevant parliamentary committees that consider the reports of the Standards Commissioners. The publication should not identify members by name.

Recommendation 10

74

That the Clerk arrange a program of regular seminars and briefings for both newly elected and continuing members in relation to issues concerning the Code of Conduct, members' pecuniary interest disclosure requirements and other relevant issues concerning ethical conduct. Such seminars and briefings may incorporate presentations from the Auditor-General, the Ombudsman, and the Commissioner of the Independent Commission Against Corruption.

Chapter 1 Introduction

The Code of Conduct which applies to members of the Legislative Council has been in force for some 12 years spanning four consecutive Parliaments. The Privileges Committee has a statutory obligation to review the Code during the life of each Parliament. The review of the Code provides an opportunity to examine the effectiveness of the individual provisions of the Code and the way in which the Code intersects with other aspects of the regulatory regime governing members' conduct. The Committee has now completed its review for the 54th Parliament covering the period from 2007 to 2010.

This chapter provides an overview of the Code of Conduct, the obligation of the Privileges Committee to review the Code, and the process the Committee has followed in conducting the current review. It concludes with an overview of the conduct of the inquiry and a summary of the main focus of each chapter of this report.

The Code of Conduct for Members

- 1.1 The House has a common law power to discipline members adjudged guilty of misconduct or conduct unworthy of the House.
- 1.2 However, since 1998, the conduct of members of both Houses has also been regulated by a Code of Conduct for Members, adopted for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*. Under the *Independent Commission Against Corruption Act 1988*, the Independent Commission Against Corruption has jurisdiction to make findings of 'corrupt conduct' against members for a 'substantial breach' of the Code. Enforcement of the Code, however, is the responsibility of the individual Houses.
- 1.3 The current Code of Conduct for Members was adopted by the House on 21 June 2007. It consists of a preamble and seven clauses. The individual clauses deal with conflicts of interest, bribery, gifts, use of public resources, use of confidential information, duties as a member of Parliament and secondary employment or engagements.

The ethics functions of the Committee

- 1.4 Part 7A of the *Independent Commission Against Corruption Act 1988* provides for a committee of each House of Parliament to undertake certain functions concerning the ethical standards which apply to members of the House.
- 1.5 Division 1 of Part 7A, comprising sections 72A-C, applies to the Legislative Council. Division 2 contains comparable provisions in relation to the Legislative Assembly.
- 1.6 Section 72B provides that a committee of the Legislative Council shall be designated by resolution of the House as soon as practicable following the commencement of each Parliament for the purposes of Division 1. Section 72C provides that the designated committee is to perform the following functions:
 - Prepare draft codes of conduct for members of the House and draft amendments to codes already adopted (section 72C(1)(a))

- Carry out educative work relating to ethical standards applying to member of the House (section 72C(1)(b))
- Give advice in relation to such ethical standards in response to requests for advice by the House but not in relation to actual or alleged conduct of any particular person (section 72C(1)(c)) and
- Review any code of conduct adopted by the House at least once every four years (section 72C(5)).

1.7 In each successive Parliament since the insertion of Part 7A in 1994, the Legislative Council has designated the Privileges Committee as its committee for the purposes of Division 1.⁴

Establishment of the inquiry

1.8 Pursuant to section 72C(5) of the *Independent Commission Against Corruption Act 1988* and the resolution of the House designating the Privileges Committee as its committee for the purposes of Division 1 of Part 7A of the *Independent Commission Against Corruption Act 1988*, the Privileges Committee is required to review the Code of Conduct for Members at least once every four years. The Committee has previously conducted reviews in 2002⁵ and 2006.⁶

1.9 On 20 April 2010, the Committee resolved to commence a new review of the Code of Conduct for Members in accordance with section 72C(5) of the *Independent Commission Against Corruption 1988*. The Committee resolved that the review of the Code would include consideration of aspects of the *Constitution (Disclosures by Members) Regulation 1983*.

1.10 On 21 April 2010, the Deputy Chair of the Committee⁷ informed the Legislative Council that the Committee had commenced a review of the Code of Conduct for Members including aspects of the *Constitution (Disclosures by Members) Regulation 1983*.⁸

Scope of the issues considered in this review

1.11 The Code of Conduct which applies to members of the Legislative Council intersects with various other accountability mechanisms which together constitute the regulatory framework governing the conduct of members of the House. In view of this wider regulatory context, the Committee has approached this review of the Code of Conduct as encompassing all relevant aspects of the system regulating members' ethics.

1.12 A particular focus of the current review has been the *Constitution (Disclosures by Members) Regulation 1983*, which provides for the disclosure of members' interests in the Register of

⁴ See, most recently: *LC Minutes* (10/5/2007) 53-54.

⁵ Standing Committee on Parliamentary Privilege and Ethics, *Report on review of the Members' Code of Conduct*, December 2002.

⁶ Privileges Committee, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, October 2006

⁷ At the time, the Chair of the Committee, who is also the Deputy President of the Legislative Council, was in the Chair of the House.

⁸ *LC Minutes* (21/4/2010) 1751.

Disclosures. The requirements of the Regulation intertwine with various aspects of the operation of the Code of Conduct. The Register itself is expressly referred to in certain clauses of the Code. As indicated above, the Committee specifically resolved at the commencement of the inquiry that the review of the Code would include consideration of aspects of the *Constitution (Disclosures by Members) Regulation 1983*.

- 1.13** Other matters addressed by the Committee in the course of this review include proposals concerning lobbying of members of Parliament, models for the enforcement of parliamentary ethical standards, and the statutory educative role of the Privileges Committee itself.

Conduct of the review

- 1.14** On 12 May 2010 the Committee adopted a public discussion paper setting out issues which the Committee considered could usefully be addressed as part of this review.
- 1.15** On 24 May 2010 the Committee wrote to each member of the Legislative Council, forwarding a copy of the discussion paper, and inviting them to make a written submission in relation to the review of the Code. In addition, in conjunction with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, which is conducting its own review of the Code of Conduct as it applies to the members of that House, the Committee wrote to relevant regulatory agencies in New South Wales, and the Presiding Officers of other Australian Houses of Parliament, forwarding a copy of the discussion paper and inviting them to make a submission to the review. A list of the submissions received by the Committee in response to these invitations is provided in Appendix 1 to this report.
- 1.16** On 30 November 2010, the Committee met to consider the Chair's draft report, and resolved to adopt this report.

Report structure

- 1.1** Chapter 2 reviews the operation of the Code of Conduct and suggestions which have been raised for amendments to certain provisions of the Code. It also considers suggestions concerning the operation of the Code and other aspects of the regulation of members' conduct.
- 1.2** Chapter 3 examines proposals for reform of the *Constitution (Disclosures by Members) Regulation 1983*, notably the merits of requiring members to disclose the interests of their spouses/partners and dependent children and the publication of the 'Register of Disclosures by Members of the Legislative Council' on the Council's website.
- 1.3** Chapter 4 concerns the function conferred on the Privileges Committee under section 72C(1)(b) of the *Independent Commission Against Corruption Act 1988* to undertake educative work in relation to the ethical standards which apply to members of the House.

Chapter 2 The Code of Conduct

This chapter reviews the provisions of the Code of Conduct taking account of any amendments to those provisions which have been made since the last review of the Code in 2006 and suggestions for further amendments which have been raised in submissions to the current review. It also discusses issues concerning the operation of the Code and the wider system for the regulation of members' conduct which have been raised during this review. The chapter begins with a brief overview of the evolution of the current provisions of the Code.

Overview: The current provisions of the Code

- 2.1** The Code of Conduct was originally adopted by resolution of the Legislative Council in 1998.⁹ It was readopted by the Council in 1999,¹⁰ with continuing effect until amended or rescinded by the House. The same Code of Conduct was adopted by the Legislative Assembly in 1998¹¹ and readopted by that House in later Parliaments¹² until adopted with continuing effect in 2007.¹³
- 2.2** Following its adoption in 1998, the Legislative Council Code of Conduct remained unchanged for almost a decade. The Legislative Assembly Code of Conduct also remained substantially unchanged.¹⁴
- 2.3** In 2006, however, the Government tabled in each House of Parliament a series of draft amendments to the Code. These draft amendments were largely intended to respond to recommendations made by the Independent Commission Against Corruption in a report entitled *Regulation of the secondary employment for members of the NSW Legislative Assembly* published in September 2003.
- 2.4** The draft amendments to the Code were referred to this Committee and its Assembly counterpart for inquiry and report. This Committee considered the draft amendments as part its 2006 review of the Code.¹⁵ The Assembly considered the draft amendments in a separate inquiry.¹⁶
- 2.5** In its report on the review, this Committee was generally supportive of the draft amendments, although it did suggest certain modifications to those amendments, as well as certain further changes to some of the existing provisions of the Code. The Assembly Committee also supported the draft amendments in general while suggesting certain further changes.

⁹ *LC Minutes* (1/7/1998) 629-630.

¹⁰ *LC Minutes* (26/5/1999) 91-92.

¹¹ *LA Votes* (5/5/1998) 544-548.

¹² *LA Votes* (12/5/1999) 49-50; (8/9/1999) 34-35; (26/2/2002) 14-15; (29/4/2003) 34-35; (22/4/2006) 16-17.

¹³ *LA Votes* (8/5/2007) 34-36.

¹⁴ The Legislative Assembly adopted a revised clause 2 ('Bribery') on 25 May 2006: *LA Votes* (25/5/2006) 66.

¹⁵ Legislative Council, Privileges Committee, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, Report 35, October 2006.

¹⁶ Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and draft Constitution (Disclosures by Members) Regulation 2006*, September 2006.

- 2.6** In May/June 2007, each House of the Parliament adopted a revised Code of Conduct which incorporated the draft amendments proposed by the Government with certain modifications, and other amendments to address issues which had emerged during the inquiries of the Council and Assembly committees.¹⁷ The revised Code of Conduct consists of a Preamble and seven substantive clauses. It is set out in full at Appendix 2.
- 2.7** The amendments incorporated in the revised Code of Conduct adopted by the House in 2007 concerned the Preamble to the Code, clause 2 ('Bribery') and clause 3 ('Gifts'), and the insertion of a new provision, clause 7 ('Secondary employment or engagements').

The Preamble to the Code

- 2.8** The Code of Conduct which applies to members of Parliament in New South Wales contains two sections: an introductory section entitled 'Preamble', which consists of four dot-pointed paragraphs, and a core section entitled 'The Code', which contains seven numbered clauses. The Preamble provides:

PREAMBLE

- The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.
- Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate has the right to dismiss them from office at regular elections.
- Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.
- Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.

Amendments in 2007

- 2.9** The revised Code of Conduct adopted in 2007 noted earlier in this chapter included modifications to the second and third paragraphs of the Preamble and the insertion of a new fourth paragraph. The individual amendments are noted in turn below together with a summary of the main issues each one was intended to address.

Second paragraph

- 2.10** The second paragraph of the Preamble was amended by the House in 2007 as follows:
- Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate is the final arbiter of the conduct

¹⁷ LA Votes (8/5/2007) 34-36, (20/6/2007) 154-155; LC Minutes (21/6/2007) 148-152.

~~of Members of Parliament and~~ has the right to dismiss them from office at regular elections.

2.11 In the last review of the Code of Conduct in 2006 the Auditor-General submitted that the second paragraph of the Preamble as it then stood could have been interpreted as suggesting that the re-election of a member who is alleged to have breached the Code implies that the electorate has arbitrated favourably on the breach.¹⁸ He also submitted that it is ‘naive’ for the Code to suggest that members’ personal behaviour is the only or even a major factor in influencing voter intentions. In light of these concerns the Auditor-General recommended that the second paragraph of the Preamble be removed altogether.

2.12 This Committee was not prepared to recommend removal of the paragraph as a whole and in particular supported retention of the statement which acknowledges the electorate’s right to dismiss members from office.¹⁹ The amendment subsequently made by the House can be seen as responding to the Auditor-General’s concerns as well as reflecting this Committee’s views.

Third paragraph

2.13 The revised Code of Conduct adopted in 2007 includes the following amendment to the third paragraph of the Preamble:

Members of Parliament ~~accordingly~~ acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.

2.14 In the last review of the Code of Conduct in 2006 the Auditor-General pointed out that the use of ‘accordingly’ in this provision could have suggested that members only acknowledge their responsibility to maintain the public trust, as stated in the third paragraph, because they can be dismissed from office by the electorate as stated in the second paragraph.²⁰ In light of that concern, this Committee recommended that ‘accordingly’ be deleted,²¹ which is reflected in the amendment subsequently made by the House.

Fourth paragraph

2.15 The revised Code of Conduct adopted by the House in 2007 included the following new provision:

Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.

2.16 This provision has its origins in a recommendation made by the Independent Commission Against Corruption in 2003 which was intended to articulate one of key principles

¹⁸ Mr R J Sendt, Auditor-General, Submission to the Privileges Committee’s second review of the Code of Conduct, 14 July 2006, p 1.

¹⁹ Privileges Committee, *Review of Members’ Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, Report 35, October 2006, p 19, paragraph 4.9.

²⁰ Mr R J Sendt, Auditor-General, *op cit*, p 1.

²¹ Privileges Committee, *Review of Members’ Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, p 19, paragraph 4.9 and Recommendation 6.

underpinning the obligations imposed by the Code.²² The provision recommended by the Commission was later adopted by the Government in draft amendments to the Code released in 2006,²³ and supported by this Committee in turn in its last review of the Code.²⁴

- 2.17** The version of the paragraph adopted by the House in 2007 varies from the draft amendment previously considered by this Committee in that it excludes any separate acknowledgment of members' responsibility to their constituents.²⁵ This variation reflects comments made by the Legislative Assembly's ethics committee to the effect that as constituents form part of the broader class of 'the people of New South Wales' it is unnecessary to make any separate reference to them.²⁶

Comment

- 2.18** No issues were raised with the Committee during the conduct of this review in relation to the Preamble to the Code of Conduct.

Clause 1 'Disclosure of conflict of interest'

- 2.19** Clause 1 of the Code of Conduct provides:

1 Disclosure of conflict of interest

- (a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.
- (b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.
- (c) 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.

- 2.20** Clause 1 has remained unchanged from the form in which it first appeared in the Code of Conduct adopted by the House in 1998. However, a number of submissions to the Committee's review included suggestions for amendments to the clause. The suggested amendments concern the declaration of conflicts of interest which involve:

- Interests of related third parties, such as family, friends and associates of a member;

²² Independent Commission Against Corruption, *Regulation of secondary employment for members of the Legislative Assembly*, September 2003, pp 66-68; Recommendation 3.

²³ NSW Government, *Draft amendments to the Legislative Assembly's and Legislative Council's Code of Conduct*, tabled in the Legislative Council by the Hon Tony Kelly MLC on 7 June 2006.

²⁴ Privileges Committee, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, p 19, Recommendation 5.

²⁵ The draft amendment provided that: 'Members of Parliament acknowledge that their principal responsibility in serving as Members is to *their constituents and* the people of New South Wales' (emphasis added).

²⁶ Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and draft Constitution (Disclosures by Members) Regulation 2006*, p 13.

- *Non-financial* interests of a member; and
- Interests which have already been disclosed by the member in the Register of Disclosures under the *Constitution (Disclosures by Members) Regulation 1983*.

Interests of related third parties

- 2.21** Clause 1 currently provides that members must take all reasonable steps to declare any conflicts involving *'their private ... interests'* and decisions in which they participate in the execution of their office (clause 1(a)). There is no reference in the clause to any obligation for members to disclose conflicts involving interests other their own.
- 2.22** Three of the submissions received by the Committee expressed support for widening the current disclosure requirement to include conflicts of interest involving the interests of certain related third parties.
- 2.23** The Independent Commission Against Corruption submitted that members may have family, friends or associates whose financial interests may give rise to a conflict of interest for members by virtue of their relationship.²⁷ The Commission also pointed out that there are legislative precedents for attempting to address this broader class of conflicts. Such precedents include section 443(1) of the *Local Government Act 1993*, which contains a definition of pecuniary interest which encompasses interests held by certain family members, associated persons and entities.²⁸ The Commission concluded that clause 1(a) of the Code of Conduct should be amended to make it clear that 'private financial interests':

include the financial interests of family (including de facto partners), friends or associates whose financial interests may give rise to a conflict of interest for Members by virtue of their relationship.²⁹

- 2.24** The Public Interest Advocacy Centre advised that a code of ethics for Commonwealth ministers issued in 2008 contains a range of different measures designed to regulate the potential for family influence. These measures include a requirement that members must consider the private interests of members of their families in considering whether a conflict of interest could arise. The Public Interest Advocacy Centre recommended that consideration should be given to the introduction of the same measures in relation to members of Parliament in New South Wales:

Family members

The Federal Office of Prime Minister and Cabinet has a *Standards of Ministerial Ethics* (the Ethics Code) that provides more detail than the NSW Code.³⁰ The Ethics Code includes time frames for reporting changes to private interests, and the boundaries on the influence of family members. Application of the controls on family members, a particular aspect on which the NSW Code is silent, should be considered for all Members of Parliament in NSW. The Federal requirements include that:

²⁷ Submission 4, Independent Commission Against Corruption, p 3, paragraph 4.

²⁸ *Ibid*, paragraph 6(a).

²⁹ *Ibid*, page 4, Recommendation 1.

³⁰ A distinction should be drawn in New South Wales between the Code of Conduct for Members and the Code of Conduct for Ministers of the Crown.

- (...)
- members must consider the private interests of members of their families in considering whether a conflict of interest could arise;
- (...) ...

PIAC recommends that [the Parliament] put in place the same requirements ... as the Office of Prime Minister and Cabinet requirements ... including those relating to limitations on family members ...³¹

2.25 The Parliamentary Ethics Adviser, Mr Ian Dickson, referred to the disclosure requirements of clause 1 of the Code in the context of discussing another matter on which the Committee has called for submissions in the current review which is discussed in Chapter 3: whether the *Constitution (Disclosures by Members) Regulation 1983* should be amended to require the disclosure of the interests of the spouse or partner of a member in the Register of Disclosures.

2.26 In relation to the Register of Disclosures, Mr Dickson identified various difficulties which could arise if partners' interests were to be included among the matters which must be disclosed. In that regard, Mr Dickson observed:

The disclosure of partners pecuniary interests should be carefully considered for the reasons outlined in the discussion paper.

In addition such an amendment could affect the decision of a potential parliamentary candidate from pursuing a political career or continuing his or her parliamentary pursuits.

The disclosure of a partner's pecuniary interests could be seen as making undue disclosure of the partner's business dealings that might have the potential to damage the interests of others not also in public life such as business associates or shareholders.³²

2.27 Mr Dickson also raised certain issues relating to the possible disclosure of the interests of the partners of members who are also ministers:

In certain portfolios held by Ministers an argument could exist for the disclosure of partners' and relatives' interests that could conflict with his or her management of the portfolio or be perceived as being in danger of creating a conflict of interest. Such circumstances may not necessarily involve public disclosure but be maintained in confidence by the Premiers Department. A predetermined structure for such portfolios could be established for appointments.³³

2.28 Having identified these difficulties, however, Mr Dickson suggested that, as an alternative to requiring the disclosure of partners' interests in the Register of Disclosures, amendments could be made to 'the existing provisions dealing with participation in debates or voting' to include requirements for the disclosure of such interests:

³¹ Submission 2, Public Interest Advocacy Centre, pp 4-5.

³² Submission 3, Mr Ian Dickson, Parliamentary Ethics Adviser, p 1.

³³ *Ibid.*

To overcome concerns that non-disclosure creates a lack of confidence in the parliamentary process the existing provisions dealing with participation in debates or voting could be strengthened by amendments to instructions to include indirect pecuniary interests such as those of a partner. The deterrent for failing to disclose by the resulting embarrassment in disclosure by the media or others could be a sufficient penalty for avoidance. On the other hand such a situation may not arise for many Members in their life in the Parliament.³⁴

Comment

- 2.29** In light of the submissions the Committee has received in this review, from the Independent Commission Against Corruption, the Public Interest Advocacy Centre, and the Parliamentary Ethics Adviser, the Committee accepts that there is a potential for the interests of persons closely related to a member to come into conflict with the execution of a member's public duties and that the potential for such conflicts to arise would justify appropriate reforms to the disclosure regime.
- 2.30** In support of that view, the Committee notes that five Australian Parliaments, as well as the New Zealand Parliament and the House of Commons (UK), have all adopted significant requirements for the disclosure of certain third party interests.³⁵ These requirements either provide for the *ad hoc* declaration of relevant interests at the time a conflict of interest arises, or for the periodic disclosure of specified interests in a register of disclosures, or for some combination of *ad hoc* declaration and registration. In addition, Victoria and Tasmania are also looking to introduce requirements for the disclosure of third party interests.³⁶
- 2.31** While accepting the need for reform, however, the Committee is not convinced that the most appropriate method of implementing a new approach is by way of an amendment to clause 1 of the Code of Conduct. Clause 1(b) of the Code provides that a conflict of interest may be disclosed in any one of three ways: in the Register of Disclosures, when a member is speaking on the matter in the House or a committee, or in any other public and appropriate manner. However, there is currently no provision for the disclosure of the interests of related persons in the Register of Disclosures (unless by way of a discretionary disclosure return). Consequently, an amendment to clause 1 of the Code to expand the conflicts of interest which

³⁴ *Ibid.*

³⁵ **Senate**, *Resolutions relating to Senator's Interests* (1994, amended to 2006), resolution 2 'Registrable interests of spouses or partners and dependants'; **House of Representatives**, *Registrations of members' interests Requirements of the House of Representatives* (Resolutions adopted 1984, amended to 2008), resolution 1 'Registration of members' interests' and 2 'Registrable interests'; **Queensland**, *Standing Orders*, Schedule 2, 'Register of Interests', clauses 4 and 5, standing orders 260, 261, 262; **South Australia**, *Members of Parliament (Register of Interests) Act 1983*, section 4(1)(b) and (2); **ACT**, Continuing resolution 6, *Declaration of private interests of members*, paragraph 1; **Northern Territory**, *Legislative Assembly (Disclosure of Interests) Act 2008*, section 4(b), *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*, section 3 'Declaration of interests'. See also Victoria, *Members of Parliament (Register of Interests) Act 1978*, section 3(1)(d) (member to disclose the name of any trade or professional organization of which he or she is a member which has an interest in a matter the member speaks on in Parliament). **New Zealand**, standing order 160; **House of Commons** (UK), *Guide to the rules relating to the conduct of members*, 9 February 2009, 'The categories of registrable interest', Category 5 'Gifts, benefits and hospitality (UK)', Category 6 'Overseas visits' Category 7 'Overseas benefits and gifts'; 'Declarations of Member' Interests', paragraph 73.

³⁶ *Members of Parliament (Standards) Bill 2010* (Vic), clauses 3 (definition of 'prescribed person') and 8 ('Conflicts of interest'); *Tasmanian Government response to recommendations in the Final Report of the Joint Select Committee on Ethical Conduct ('Public Office is Public Trust')*, 4 November 2009, pp 2-3 (response to Recommendation 1).

must be declared to include third party interests would effectively result in the creation of two separate declaration regimes: one for the declaration of conflicts involving the interests of members themselves, which members usually comply with by way of disclosure in the Register; the other for the declaration of conflicts involving third party interests, which members would be obliged to comply with by way of a declaration in the House, committee, or another public and appropriate manner, without the option of disclosure in the Register.

- 2.32** Given these difficulties with amending clause 1 to widen the class of conflicts of interest which must be disclosed, the Committee believes that, rather than expanding the requirements of the Code of Conduct to take account of conflicting third party interests, it would be preferable to provide for the systematic disclosure of relevant third party interests in the Register of Disclosures under the *Constitution (Disclosures by Members) Regulation 1983*, which is the primary mechanism for the disclosure of members' interests in New South Wales.
- 2.33** In support of this view, the Committee understands that most Australian Parliaments which have adopted requirements for the disclosure of third party interests require those interests to be disclosed periodically in a register.³⁷ A minority provide for the declaration of third party interests at the time a conflict of interest arises such as when a member is speaking on a matter in the House³⁸ which is one of the forms of disclosure required by clause 1(b) of the Code in New South Wales.
- 2.34** The Committee also notes that a regime which provides for the disclosure of third party interests in the register has the benefit of providing a central repository for all members' disclosures, as opposed to a system of *ad doc* declarations which may result in declarations being made in different contexts and at different times. Moreover, a requirement to disclose third party interests when members are completing written disclosure returns is likely to prove less difficult for members to comply with than a requirement for the *ad hoc* declaration of third party interests in the House or committees at the time a conflict arises which may entail a significant potential for inadvertent breach.
- 2.35** The Committee notes that there are privacy concerns with the disclosure of the interests of third parties in the Register of Disclosures. However, the Committee also notes that a number of Australian Parliaments have adopted measures to provide for the disclosure of third party interests while also protecting the privacy of the third parties concerned. The Committee further examines these issues in chapter 3 when discussing the *Constitution (Disclosures by Members) Regulation 1983*.

³⁷ Senate, *Resolutions relating to Senator's Interests* (1994, amended to 2006), resolution 2 'Registrable interests of spouses or partners and dependants'; House of Representatives, *Registrations of members' interests Requirements of the House of Representatives* (Resolutions adopted 1984, amended to 2008), resolution 1 'Registration of members' interests' and 2 'Registrable interests'; Queensland, *Standing Orders*, Schedule 2, 'Register of Interests', clauses 4 and 5; South Australia, *Members of Parliament (Register of Interests) Act 1983*, section 4(1)(b) and (2); ACT, Continuing resolution 6, *Declaration of private interests of members*, paragraph 1; Northern Territory, *Legislative Assembly (Disclosure of Interests) Act 2008*, section 4(b).

³⁸ Queensland, standing orders 260, 261, 262; Northern Territory, *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*, section 3 'Declaration of interests'; Victoria, *Members of Parliament (Register of Interests) Act 1978*, section 3(1)(d) (member to disclose the name of any trade or professional organization of which he or she is a member which has an interest in a matter the member speaks on in Parliament).

Non-financial interests of members

2.36 Clause 1(a) provides that members must take all reasonable steps to declare any conflict of interest between their ‘private *financial* interests’ and decisions in which they participate in the execution of their office. This requirement is clearly confined to conflicts involving members’ financial interests and does not encompass conflicts involving interests of a non-pecuniary kind.

2.37 In its submission to the Committee’s review, however, the Independent Commission Against Corruption argued that clause 1 should be expanded to require the declaration of any other material benefit a member receives, even if *not* financial in nature, which might reasonably be thought by others to influence the member’s actions:

The Commission recommends that clause 1 of the Code be amended to require Members to take reasonable steps to declare any other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches, or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament, or which the Member considers might be thought by others to influence his or her actions in a similar manner, even though the Member receives no financial benefit.³⁹

2.38 In support of this recommendation the Commission advised that the *Model Code of Conduct for Local Councils* recognises that there are pecuniary and non-pecuniary conflicts of interests.⁴⁰ The Commission also advised that a requirement to disclose non-financial benefits in the Register of Interests applies in the House of Commons (UK):

The *Guide to the Rules relating to the Conduct of Members* that accompanies the British House of Commons Code of Conduct for Members of Parliament requires a Member to include in the Register of Interests any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches, or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament, or which the Member considers might be thought by others to influence his or her actions in a similar manner, even though the Member receives no financial benefit.⁴¹

Comment

2.39 A requirement to declare a benefit which ‘*might reasonably* be thought by *others* to *influence*’ a member’s actions, without any objective financial criterion, appears open to be a wide range of differing interpretations and may prove difficult to consistently apply. Further, by focusing on the issue of influence rather than improper influence the amendment proposed by the Independent Commission Against Corruption seems to overreach what is really the key public policy concern.

2.40 Moreover, in the immediacy of the cut and thrust of parliamentary debate, it may not always be practicable for members to engage in the reflection necessary in order to identify every non-financial benefit which ‘*might reasonably* be thought by *others* to *influence*’ their actions. In

³⁹ Submission 4, Independent Commission Against Corruption, pp 4-5.

⁴⁰ *Ibid*, p 3.

⁴¹ *Ibid*, pp 3-4.

that regard, the House of Commons provision on which the Commission's recommended amendment is based is concerned with disclosures in the *Register*,⁴² as acknowledged in the Commission's submission.⁴³ By contrast, the House of Commons rules concerning the declaration of interests in the *House* are mainly concerned with 'pecuniary interests'⁴⁴ although members may also declare non-pecuniary benefits if they wish.⁴⁵

2.41 The existing approach to the disclosure of non-financial benefits in New South Wales is to allow members to disclose any benefits they consider could give rise to a conflict of interest in the Register of Disclosures. Clause 16 of the *Constitution (Disclosures by Members) Regulation 1983* provides that:

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.

2.42 Under this clause the disclosure of non-financial benefits by members is discretionary. A similar approach has been adopted in most other Australian Parliaments, which require the disclosure of non-pecuniary benefits *if* a member considers that the benefit could raise a conflict with their public duties.⁴⁶ A minority of other Australian Parliaments *require* the disclosure of non-pecuniary benefits.⁴⁷

2.43 The Committee would be prepared to give consideration to strengthening the current provisions of the *Constitution (Disclosures by Members) Regulation 1983* concerning the disclosure of non-pecuniary benefits in the future, should the need arise. However the Committee does not support the amendment recommended by the Independent Commission Against Corruption to clause 1 of the Code of Conduct, given the likely difficulties with its application identified above.

⁴² House of Commons (UK), *Guide to the rules relating to the conduct of members*, 9 February 2009, 'The categories of registrable interest', Category 11, 'Miscellaneous', p 24.

⁴³ Submission 4, Independent Commission Against Corruption, p 3.

⁴⁴ House of Commons (UK), resolution 22 May 1974, reproduced and discussed in the *Guide to the rules relating to the conduct of members*, 9 February 2009, at p 28.

⁴⁵ *Ibid*, p 29, paragraph 73.

⁴⁶ *Members of Parliament (Register of Interests) Act 1978* (Vic), section 6(2)(i); *Members of Parliament (Financial Interests) Act 1992* (WA), section 16 'Discretionary disclosures generally'; *Members of Parliament (Register of Interests) Act 1983* (SA), section 3(g); *Parliamentary (Disclosure of Interests) Act 1996* (Tas), section 9 'Discretionary disclosure'; ACT Legislative Assembly, Continuing resolution 6, *Declaration of private interests of members*, Explanatory Notes, p 10.

⁴⁷ Senate, *Resolutions relating to Senator's Interests* (1994, amended to 2006), resolution 3 'Registrable interests', paragraph (n); House of Representatives, *Registrations of members' interests Requirements of the House of Representatives* (Resolutions adopted 1984, amended to 2008), resolution 2 'Registrable interests', paragraph (n); Queensland, *Standing Orders*, Schedule 2, 'Register of Interests', clause 7(2)(p); Northern Territory, *Legislative Assembly (Disclosure of Interests) Act 2008*, Schedule, p 6.

Interests which have already been disclosed in the Register

2.44 Clause 1(b) provides that the relevant declaration of interests which members are required to make under clause 1(a):

may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.

2.45 Under this provision, if a member has disclosed a particular interest in the Register of Disclosures the member need not declare the interest when speaking in the House or a committee; the fact that the interest has been disclosed in the Register is sufficient for the purposes of compliance with clause 1. If, however, an interest has not been disclosed in the Register of Disclosures and the interest gives rise to a conflict with a decision taken by the member in the execution of his or her office, the interest must be declared in the House or a committee, as relevant, or in any other public and appropriate manner.

2.46 The Independent Commission Against Corruption noted that it has previously recommended that members should be required to declare any relevant interest of an employer or client before participating in any parliamentary debate. The Commission also noted that the British House of Commons, the Scottish Parliament and the Ontario Legislative Assembly require members to declare interests in the House even where the interests have been disclosed in the register. In light of that experience, the Commission recommended that clause 1 of the Code should be amended to make it clear that members must disclose interests in the House or a committee implying that this requirement should apply *irrespective* of whether the interest has been disclosed in Register or elsewhere:

In its September 2003 report: 'Regulation of secondary employment for Members of the NSW Legislative Assembly' the Commission recommended that 'A Member should be required to disclose a conflict of interest at the start of any proceedings in Parliament which relate to the interests of any employer, association or client who has employed, or is currently employing, the Member. In developing the detail for the operation of a disclosure-before-proceedings rule, consideration should be given to the experience in the British House of Commons, the Scottish Parliament and the Ontario Legislative Assembly' (recommendation 8).

The British House of Commons, the Scottish Parliament and the Ontario Legislative Assembly models discussed in the report require Members not only to disclose interests in a register but to disclose interests prior to proceedings in Parliament where the Member is aware that the proceedings may relate to the interests of their secondary employer or, in some cases, any former secondary employer. The purpose of declaration in the House of Commons is explained in the following way:

The main purpose of declaration of interests is to ensure that fellow Members of the House and the public are made aware, at the appropriate time when a Member is making a speech in the House or in Committee or participating in any other proceedings of the House, of any past, present, or expected future pecuniary interest which might reasonably be thought to be relevant to those proceedings.

The Commission supports this approach (...).

Recommendations

(...) The Commission recommends that clause 1(b) of the Code be amended to make it clear that disclosure of a conflict of interest when speaking on a matter in the House or a Committee should occur in the House or Committee before the Member speaks on the matter.⁴⁸

Comment

- 2.47 The current approach to the disclosure of interests in clause 1 of the Code, whereby interests need not be declared in the House if they have been disclosed in the Register, is consistent with the approach adopted in clause 7 of the Code ('Secondary employment or engagements'). That clause requires members to disclose interests held by any employer, client or former client of the member before participating in any relevant parliamentary debate, but provides that:

If the Member has already disclosed the information in the Member's entry in the pecuniary interest register, **he or she is not required to make a further disclosure during the parliamentary debate.**

- 2.48 The same approach has been adopted in the disclosure provisions in the New Zealand Parliament. Standing Order 161(1) of the New Zealand Parliament provides that members must declare any financial interest they have in any item of business before participating in consideration of that item. However, standing order 161(2) provides:

Nothing in this standing order requires a member to declare an interest that is contained in the Register of Pecuniary Interest of Members of Parliament.

- 2.49 A similar approach was endorsed by the Senate Committee of Senators' Interests in 2002, in a report which recommended that the Senate abolish a resolution it had previously adopted requiring the declaration of interests when senators participate in proceedings in the Senate. In that regard, the Senate Committee stated that 'given the public nature of a senator's own statements of registrable interests, this is sufficient to comply with the requirements at present set down in resolution 5'.⁴⁹ The Committee went on to observe, however, that 'the Committee expects that such a declaration will be made in the Senate if any interest *not yet notified in the register* is involved'⁵⁰ (emphasis added).
- 2.50 The Senate subsequently abolished its earlier resolution requiring the declaration of interests when senators participate in proceedings.⁵¹ A number of other Houses of Parliament also rely on the disclosure of interests in the register alone without any concurrent requirements for declarations of interests in the House.⁵²

⁴⁸ Submission 4, Independent Commission Against Corruption, pp 3-5, paragraphs 8-9 and Recommendation 3.

⁴⁹ Senate Committee of Senators' Interests, *Proposed changes to resolutions relating to declarations of senators' interests and gifts to the Senate and the Parliament*, Report 2/2002, June 2002, p 7.

⁵⁰ *Ibid.*

⁵¹ H. Evans (ed), *Odgers' Australian Senate Practice*, 12th ed, Department of the Senate, Canberra, 2008, p 136.

⁵² See, for example, I. Harris (ed), *House of Representatives Practice*, 5th ed, Department of the House of Representatives, Canberra, 2005, p 144.

2.51 Given that the approach to the disclosure of interests in clause 1 of the Code is in line with clause 7, and consistent with the approach in various other Australasian Parliaments, the Committee is not persuaded that there is a compelling need for any change. The Committee accepts that there are currently limitations to the accessibility of the Register of Disclosures in that members of the House or the public must physically visit the office of the Clerk to view the Register itself or obtain one of a limited number of printed copies of the Register. However, in Chapter 3, the Committee recommends reforms which will vastly improve public access to the Register and the currency of the information it contains.

Clause 2 ‘Bribery’

2.52 Clause 2 of the Code of Conduct provides:

2 Bribery

- (a) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which the Member has received, is receiving or expects to receive.
- (b) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive:
 - (i) a member of the Member’s family;
 - (ii) a business associate of the Member; or
 - (iii) any other person or entity from whom the Member expects to receive a financial benefit.
- (c) A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct.

Amendments in 2007

2.53 The revised Code of Conduct adopted by the House in 2007 included the following amendments to clause 2:

2 Bribery

- (a) A Members must not knowingly or improperly promote any matter, vote on any bill or resolution; or ask any question in the Parliament or its Committees; in return for any remuneration, fee, payment or any other personal financial benefit, reward or benefit in kind, of a private nature, which the Member has received, is receiving or expects to receive.

(b) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive:

(i) a member of the Member's family;

(ii) a business associate of the Member; or

(iii) any other person or entity from whom the Member expects to receive a financial benefit.

(c) A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct.

2.54 The main amendments shown above consist of:

- the insertion of 'knowingly or improperly' in clause 2(a)
- the insertion of clause 2(b) which expands the prohibition on bribery to encompass benefits to third parties in clause 2(b)
- the insertion of clause 2(c) which identifies a breach of the prohibition on bribery with a 'substantial breach' of the Code (clause 2(c)).

2.55 The insertion of 'knowingly or improperly' in clause 2(a) was intended to operate in tandem with the insertion of clause 2(b) which expanded the prohibition on bribery to include the promotion of matters in return for benefits to certain third parties. In that regard, the Government advised: 'the prohibition on bribery should ... only extend to where a Member knowingly or improperly takes action in Parliament in return for benefits to third parties who are closely associated with a Member'.⁵³ The Government further advised that the amendment was intended to convey the idea that a member is only caught by the prohibition on bribery if they act with actual knowledge of the relevant benefit, or some other form of positive intent such as 'wilful blindness', rather than with a mere suspicion of the benefit.⁵⁴

2.56 The insertion of clause 2(b) to include reference to benefits to third parties was intended to respond to concerns that 'bribes can take the form of benefits not only to members but also to a member's family and associates'.⁵⁵

2.57 The insertion of clause 2(c) to include reference to 'substantial breach' was intended to ensure that 'bribery falls within the definition of "corrupt conduct" under the *Independent Commission*

⁵³ The Hon John Della Bosca MLC, Leader of the Government in the Legislative Council, Submission, 14 August 2006, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, Report 35, October 2006, p 70.

⁵⁴ Privileges Committee, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, p 20, paragraph 4.12.

⁵⁵ The Hon John Della Bosca MLC, Leader of the Government in the Legislative Council, Submission, 14 August 2006, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, Report 35, October 2006, p 70.

Against Corruption Act 1988, and ‘make it clear in advance that ICAC will be able to investigate any complaint or allegation of bribery’.⁵⁶

The heading ‘Bribery’

- 2.58** The Independent Commission Against Corruption submitted that the use of the term ‘Bribery’ in the heading of clause 2 is potentially confusing as the clause is designed to prohibit a range of different sorts of conduct, including ‘paid advocacy’ and ‘cash for questions’, which may not match the ambit of the common law and statutory offences concerning bribery. On that basis, the Committee recommended that the heading should be changed to ‘Paid advocacy’, or something similar:

The heading of this clause is “Bribery”. It is not clear why this heading is used.

In NSW bribery remains a common law offence. Part 4A of the *Crimes Act 1900* also covers the giving and receiving of corrupt rewards. The ambit of both extends beyond what is set out under clause 2.

Clause 2 is designed to prohibit Members engaging in both “paid advocacy” and “cash for questions”, and to prohibit them casting a vote in return for payment. The clause also prohibits advocacy in return for payment made to family members and other specified persons and entities, rather than directly to a Member.

While the use of the heading “Bribery” may have been intended to express disapproval of paid advocacy and cash for questions it potentially introduces confusion. It is possible that a Member might argue that unless a criminal offence of “bribery” is established there is no breach of the clause. It would be appropriate to change the title of clause 2 to reflect more accurately what is prohibited (...)

Recommendations

... The Commission recommends that the heading of clause 2 be changed to ‘Paid advocacy’ or something similar.⁵⁷

Comment

- 2.59** In its report on the regulation of members’ secondary employment in 2003, the Independent Commission Against Corruption recommended that the heading of clause 2 of the Code be changed to ‘Bribery and Paid Advocacy’, to ‘reflect the fact that the description of activities contained in that clause is not confined to bribery’.⁵⁸ The Commission also recommended that ‘paid advocacy’ as such should be prohibited by the Legislative Assembly.⁵⁹

⁵⁶ *Ibid.*

⁵⁷ Submission 4, Independent Commission Against Corruption, pp 5-6, paragraphs 10-13 and Recommendation 4.

⁵⁸ Independent Commission Against Corruption, *Regulation of secondary employment for members of the NSW Legislative Assembly*, September 2003, p 69, Recommendation 4, ‘Defining paid advocacy in the Code’.

⁵⁹ *Ibid*, Recommendation 5, ‘Prohibiting paid advocacy’.

2.60 These recommendations were considered by the Legislative Assembly's Standing Committee on Parliamentary Privilege in 2004 and by the Government when preparing draft amendments to the Code in 2006.

2.61 The Assembly Committee concluded that no changes to the Code were required to address the Commission's concerns as clause 2 already prohibits paid advocacy. With specific reference to the heading of the clause the Committee stated:

The Committee considers that the Code adequately prohibits paid advocacy, in that the text of Clause 2 clearly states ...:⁶⁰

2.62 The Government also advised that it did not support the Commission's recommendation to extend the prohibition on bribery to cover paid advocacy, in view of the provisions of clause 2, and certain new disclosure requirements which were at that time being introduced:

ICAC recommended that the prohibition on bribery be extended to prohibit 'paid advocacy,' that is, the paid lobbying of another Member. ICAC noted precedents in the British House of Commons, the Scottish Parliament and the Canadian House of Commons. While ICAC noted that paid advocacy may fall within clause 2 of the Code of Conduct, as Clause 2 is headed 'Bribery,' it considered there may be an implication that the prohibition is confined to the definition of bribery in the Crimes Act 1900 which would not include paid advocacy.

The Government considers, however, that it is unnecessary to adopt this recommendation as the current prohibition on bribery already captures any payment to a Member to lobby another Member to take action in proceedings in Parliament. Also, the new disclosure requirements [in the then draft *Constitution (Disclosures by Members) Amendment Regulation 2006*] will mean that any paid lobbying will also need to be disclosed.

The Premier has also recently released comprehensive Guidelines for Ministers and public officials when dealing with lobbyists.⁶¹

2.63 This Committee accepts that there may be differences between the criminal law of bribery and the types of conduct which are prohibited by clause 2 of the Code. However, the Committee also believes it is unlikely that members of the House are at risk of interpreting 'Bribery' as it appears in a heading in the Code as denoting particular statutory or common law offences. If there is a risk that members could be confused in this way, the Committee believes it would be preferable to address the issue by ensuring that members are advised about the correct interpretation to be given to the clause and its heading in induction and other training forums concerning the operation of the Code, rather than by introducing an unfamiliar and possibly confusing term such as 'paid advocacy' into the Code itself.

2.64 In the Committee's view the use of 'Bribery' in the heading of clause 2 conveys the idea of acting improperly in return for reward, which accurately encapsulates the essence of the range of conduct encompassed by clause 2. In light of this, and the observations concerning 'paid

⁶⁰ Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Regulation of secondary employment for members of the NSW Legislative Assembly*, September 2004, p 15.

⁶¹ The Hon John Della Bosca MLC, Leader of the Government in the Legislative Council, Submission, 14 August 2006, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, Report 35, October 2006, p 71.

advocacy' noted above, the Committee does not support the Commission's recommendation to replace the reference to 'Bribery' in the heading of the clause.

Whether clause 2 should be extended to cover conduct outside Parliament

2.65 The Independent Commission Against Corruption submitted that the prohibition which is contained in clause 2 of the Code should be extended beyond the promotion of matters 'in the Parliament or its committees' for reward, to include the promotion of matters to public officials *outside* Parliament for reward:

The general prohibitions on paid advocacy in clause 2 are qualified by the use of the phrase 'in the Parliament or its Committees'. This suggests that the Code is not intended to prohibit a Member from promoting a matter in return for receiving any remuneration, fee, payment, reward or benefit of a private nature, if the promotion takes place outside Parliament or its Committees. This ignores the reality that Members can, through their advocacy, affect major decisions involving public interest and amenity and of potential considerable value both to the State and those entities that benefit from those decisions.

The Commission does not consider that it is appropriate for Members to accept any 'remuneration, fee, payment, reward or benefit of a private nature' in return for using their position to advocate the taking of a particular course of action by public officials. There is a strong perception that a Member who is advocating a position in return for reward is primarily motivated by that reward (or the prospect of the reward) rather than the public interest and as such is not using their position 'to advance the common good of the people of New South Wales' (as set out in the Preamble to the Code) but rather to advance their own private interest.

The prohibition on paid advocacy should not be restricted to the promotion of matters in the Parliament and its Committees but should extend to the promotion of matters to public officials outside the Parliament or its Committees.⁶²

2.66 Having identified a need for such an amendment to the Code, the Commission also noted that a corresponding change to the *Constitution (Disclosure by Members) Regulation 1983* would be required, as members are currently required to *disclose* income derived from certain activities outside Parliament, including the activity of lobbying the Government:

The Commission notes however that the *Constitution (Disclosure by Members) Regulation 1983* contemplates that Members may derive income from providing a service arising from or relating to their position as Members. Clause 7A of the Regulation defines such a service to include:

- 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.

⁶² Submission 4, Independent Commission Against Corruption, pp 5-6, paragraphs 14-16.

The Commission notes that any provision in the Code banning paid advocacy needs to be accompanied by amendment to the *Constitution (Disclosure by Members) Regulation 1983*.⁶³

2.67 In light of these considerations the Commission recommended that:

clause 2 be amended to extend the prohibition on paid advocacy by Members to the promotion of matters to public officials outside the Parliament or its Committees and that the *Constitution (Disclosure by Members) Regulation 1983* be amended to the same purpose.⁶⁴

Comment

2.68 In 2006 the New South Wales Government introduced a series of reforms to the regulation of the secondary employment of members of Parliament, in response to recommendations made by the Independent Commission Against Corruption in its report on the regulation of secondary employment in 2003. Some of these reforms consisted of the draft amendments to the Code of Conduct discussed earlier in this report. The remaining reforms consisted of amendments to the *Constitution (Disclosure by Members) Regulation 1983*.

2.69 The relevant amendments to the *Constitution (Disclosure by Members) Regulation 1983* included expanded disclosure requirements concerning members' sources of income (clause 9), including income derived from a service involving the use of the member's parliamentary position (clause 9(2A)), which was defined as a service involving the provision of public policy advice, advice on Government relations, and lobbying the Government or other members (clause 7A). Other amendments provided for the disclosure of the provision of any such service to any client of any employer of the member (clause 15A).

2.70 The overall effect of these various reforms was that members were prohibited from promoting matters *in Parliament* in return for reward in a much broader range of contexts, including in return for a benefit to a family member, business associate or entity from which the member expects to receive a financial benefit (clause 2(b) of the Code). However, members remained free to engage in secondary employment *outside* Parliament, including by lobbying the Government, provided they complied with the more stringent disclosure requirements of the *Constitution (Disclosure by Members) Regulation 1983*. It was also intended that the more stringent disclosure requirements of the *Constitution (Disclosure by Members) Regulation 1983* would have a deterrent effect in making it less likely that members would be engaged to provide services involving the use of their parliamentary position. In that regard, the Government stated that it anticipated that:

the obligation to disclose clients will ... reduce the attractiveness of engaging members as consultants in relation to parliamentary affairs.⁶⁵

2.71 The amendments proposed by the Independent Commission Against Corruption would have the effect of altering this regulatory framework by replacing the mechanism of disclosure, and

⁶³ *Ibid*, p 6, paragraph 17.

⁶⁴ *Ibid*, p 6, Recommendation 5.

⁶⁵ The Hon John Della Bosca MLC, Leader of the Government in the Legislative Council, Submission, 14 August 2006, *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, Report 35, October 2006, p 67.

the associated intended deterrent effect, with prohibition, in those cases where a member promotes a matter to a public official outside Parliament in return for reward.

- 2.72** Some types of conduct involving the promotion of matters to public officials outside Parliament involve clear conflicts of interest which should not be countenanced under any circumstances. Such conduct can be illustrated by reference to circumstances which have resulted in reported cases in the courts. In the case of *Wilkinson v Osborne* (1915) 21 CLR 89, for example, two members of the Legislative Assembly had agreed in return for payment to attempt to persuade the Government to expend public funds for the purchase of certain land. The High Court concluded that the relevant agreement was contrary to public policy and therefore void.⁶⁶ Such conduct where members are paid to influence public officials for sheer personal gain is contrary to ethical standards by whatever measure is applied as well as being in breach of legal principles, and could justifiably be proscribed by the Code.
- 2.73** There are other circumstances, however, in which the need to prohibit interaction between members and public officials in the context of paid employment may not be so clear-cut, if it is accepted that members should be able to pursue secondary employment as a matter of general principle, which appears to be the view underpinning the current regulatory regime. A lawyer, for example, may need to argue particular interpretations of legislative or regulatory requirements when seeking approvals from public authorities or officials on behalf of their clients. Other forms of employment or self-employment may also involve the use of government services and a consequent need to argue in favour of particular points of view.
- 2.74** Although it is hard to be definitive, the Committee understands that some parliaments have banned paid advocacy to public officials outside parliament.⁶⁷ However, the more common approach in Australian parliaments appears to be to regulate this type of conduct by way of disclosure, or to rely on requirements for members to prevent conflicts of interest arising, or on prohibitions against use of their influence or position for personal gain.
- 2.75** At the current time, the Committee is not persuaded that there is a need to recommend a complete ban on all paid advocacy to public officials outside Parliament, given that this would appear to involve such a significant departure from the regulatory regime for secondary employment established only recently in New South Wales. However, the Committee would be prepared to entertain in the future an amendment to the Code along the lines of the Commission's recommendation if the amendment could be targeted to specific situations where the promotion of a matter outside Parliament involved a clear conflict of interest or other abuse of the member's position.

⁶⁶ Strictly speaking the facts in *Wilkinson v Osborne* involved the promotion of a matter inside Parliament as well as the promotion of the matter outside Parliament as the purchase of the land by the Government was subject to approval by both Houses of Parliament. However, Griffith CJ did not consider that aspect of the case to be necessarily decisive, stating that (at 94):

'Even if the completion of the particular contract of sale had not been dependent upon the approval of Parliament, I am not prepared to say that the respondents' contract would have been lawful. ... The law cannot supervise the conduct of members of Parliament as to the pressure they may bring to bear on Ministers, but if they sell the pressure the bargain is, in my opinion, void as against public policy.'

⁶⁷ See, for example, House of Commons (UK), *Guide to the rules relating to the conduct of members*, 9 February 2009, p 34, paragraph 89; *Interests of Members of the Scottish Parliament Act 2006*, section 14(1) and (2)(a).

Clause 3 'Gifts'

2.76 Clause 3 of the Code of Conduct provides:

3 Gifts

- (a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.
- (b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to improperly influence the Member in the exercise of his or her duties.
- (c) Members may accept political contributions in accordance with part 6 of the Election Funding Act 1981.

2.77 The revised Code of Conduct adopted by the House in 2007 included the following amendment to clause 3(b):

- (b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to ~~corruptly~~ improperly influence the Member in the exercise of his or her duties.

2.78 This amendment reflects comments made by the Auditor-General in a submission to the review of the Code of Conduct in 2006 to the effect that, as only a 'substantial breach' of the Code could be regarded as 'corrupt', the word 'corruptly' should be replaced with 'improperly'.⁶⁸

2.79 The Committee received no submissions which addressed any aspect of clause 3 in the current review of the Code.

Clause 4 'Use of public resources'

2.80 Clause 4 of the Code of Conduct provides:

4 Use of public resources

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

2.81 The 'guidelines or rules' about the use of the public resources to which members are granted access include annual determinations of the Parliamentary Remuneration Tribunal under the *Parliamentary Remuneration Act 1989* concerning members' additional entitlements which set out the circumstances in which such entitlements may be used for the purpose of a member's 'parliamentary duties'.⁶⁹ They also include administrative policies, procedures, handbooks and

⁶⁸ Mr R J Sendt, Auditor-General, Submission to the Privileges Committee's second review of the Code of Conduct, 14 July 2006, p 3.

⁶⁹ See, for example, Parliamentary Remuneration Tribunal, *Annual report and determination of additional entitlements for members of the Parliament of New South Wales*, 21 June 2010, 'Guidelines and General Conditions Regarding Additional Entitlements for Members in Connection with Parliamentary Duties', pp 19-24.

guidelines issued by the Presiding Officers of the Parliament or the parliamentary administration concerning the use of various types of public resources.

- 2.82** The Public Interest Advocacy Centre raised two issues which relate to aspects of the ‘guidelines or rules’ encompassed by clause 4.

Employment of family members

- 2.83** The Public Interest Advocacy Centre advised that a code of ethics for Commonwealth ministers issued in 2008 contains a range of different measures designed to regulate use of public resources in relation to family members. These measures include a requirement that family members may not be appointed to work in an electorate office or agency within the minister’s portfolio. The Public Interest Advocacy Centre recommended that consideration should be given to the introduction of similar measures in relation to members of Parliament in New South Wales:

Family members

The Federal Office of Prime Minister and Cabinet has a Standards of Ministerial Ethics⁷⁰ (the Ethics Code) that provides more detail than the NSW Code. The Ethics Code includes time frames for reporting changes to private interests, and the boundaries on the influence of family members. Application of the controls on family members, a particular aspect on which the NSW Code is silent, should be considered for all Members of Parliament in NSW. The Federal requirements include that:

(...)

- family members cannot be appointed to positions in their Ministerial or electorate offices or those of other members of the Executive Government, or to any position in an agency in the Minister’s own portfolio ...

PIAC recommends that ... [the Parliament] put in place the same requirements ... as the Office of Prime Minister and Cabinet requirements ... including those relating to limitations on family members ...⁷¹

Comment

- 2.84** Under the annual determinations of the Parliamentary Remuneration Tribunal, every member of the Legislative Council who is not a minister has an entitlement to one staff member. In addition, when the staff member is on annual recreation leave or other extended period of leave, a relief staff member may be employed for the period of absence. Cross bench members and whips of recognised parties of not less than ten members are entitled to certain additional staff.⁷²

⁷⁰ A distinction should be drawn in New South Wales between the Code of Conduct for Members and the Code of Conduct for Ministers of the Crown.

⁷¹ Submission 2, Public Interest Advocacy Centre, pp 4-5.

⁷² Parliamentary Remuneration Tribunal, *Annual report and determination of additional entitlements for members of the Parliament of New South Wales*, 21 June 2010, pp 44-45.

- 2.85** The practice of the Department of the Legislative Council is to advise members not to employ relatives as their staff members in any capacity. In addition, members of both Houses of Parliament have recently been formally advised not to employ relatives as relief staff.⁷³

Reporting of members' use of entitlements

- 2.86** The Public Interest Advocacy Centre made various observations about the need for appropriate regulation and accountability in relation to members' use of public resources. It concluded that members should be required to publicly report on their use of parliamentary entitlements:

Use of public resources

The code should describe the principles governing the use of public resources and how the use of resources is publicly reported. Principles and regulations should apply to ensure that parliamentary entitlements cannot be used for politically partisan purposes and that any changes to the use of those resources are be subject to independent evaluation.

Recommendation

PIAC recommends that Members of NSW Parliament report publicly on the use of their parliamentary entitlements.⁷⁴

Comment

- 2.87** Expenditure on members' travel entitlements has been disclosed in the annual reports of the Department of the Legislative Council for some years.⁷⁵ Such reporting has included reporting of expenditure on travel by members' spouses or approved relatives and staff.
- 2.88** More extensive reporting of expenditure on members' entitlements is expected to occur from 2010 as a result of changes in the system for administering members' entitlements introduced in 2009. These changes include an enhanced program of internal and external auditing, the annual reporting of audit findings, and a requirement for the annual reporting of details of expenditure on entitlements.⁷⁶

Clause 5 'Use of confidential information'

- 2.89** Clause 5 of the Code of Conduct provides:

5 Use of confidential information

⁷³ Memorandum from the Speaker of the Legislative Assembly and the President of the Legislative Council to all members of Parliament, *Employment of members' relatives under section 7.6.2 of the Members' Handbook*, 22 June 2010.

⁷⁴ Submission 2, Public Interest Advocacy Centre, p 3.

⁷⁵ See, for example, Department of the Legislative Council, *Annual Report 2008-2009*, p 113; *Annual Report 2007-2008*, p 103; *Annual Report 2006-2007*, 102.

⁷⁶ Department of Parliamentary Services, Information Sheet, *Changes to the administration of members' entitlements*.

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.

Broadening the prohibition on the use of confidential information

- 2.90** The Independent Commission Against Corruption recommended that the prohibition which is contained in clause 5 of the Code against the use of confidential information should be widened so that it captures the misuse of confidential information generally, rather than being confined to the misuse of information for ‘private benefit’:

This clause deals with improper use of confidential information for the “private benefit” of the Member or others.

In its December 1998 report: ‘Report on investigation into Parliamentary and Electorate travel: Second Report - analysis of administrative systems and recommendations for reform’ the Commission recommended that ‘the Ethics Committees of each House should consider the appropriateness of the term “private benefit” used in clause 5 of the Members Code of Conduct and recommend an appropriate amendment to clarify its meaning’ (recommendation 54).

The Commission’s concern, expressed in its report, was that the test in this clause is whether there is a private benefit for the Member or others. Conceivably, confidential information could be used where it is difficult to substantiate a direct private benefit, such as the leaking of information to discredit a political opponent’s policy proposals, or even an opponent, in an electorate or parliamentary contest. The Code should make it clear that misuse of confidential information in this way would amount to an abuse (...)

Recommendation

The Commission recommends widening the scope of clause 5 to include misuse of confidential information generally.⁷⁷

Comment

- 2.91** A prohibition on misusing confidential information ‘generally’ would provide little helpful guidance for members as to the standards they are expected to observe when handling confidential information. Such an obligation would be likely to prove difficult to enforce in an objective or consistent way.

Privacy of constituents

- 2.92** Privacy NSW noted that the *Privacy and Personal Information Protection Act 1998* does not apply to members of Parliament, in contrast other public officials in New South Wales. It also submitted that the lack of privacy regulation when combined with members’ absolute freedom of speech has implications for the privacy of members’ constituents and that this justifies an amendment to the Code:

⁷⁷ Submission 4, Independent Commission Against Corruption, pp 6-7, paragraphs 19-21 and Recommendation 7.

The PPIP Act does not regulate the actions of Members of Parliament or any individuals acting in their private capacity. It only applies to NSW public sector agencies. It is our understanding that neither the Assembly or the Council are public sector agencies for the purpose of the PPIP Act. This means that the information collected from Members of Parliament for the purpose of compilation in the Register of Disclosures by Members under the *Constitution (Disclosures by Members) Regulation 1983* (the Regulation), will not be subject to the Information Protection Principles in Part 2 or the Public Register Provisions in Part 6 of the PPIP Act.

The lack of privacy regulation, coupled with the freedom of expression offered by parliamentary privilege mean that Members of Parliament are in a position to collect, use and disclose personal information about their constituents in a manner which might otherwise lead to a privacy complaint [For instance see: http://hwww.lawlink.nsw.gov.au/lawlink/privacynsw/ll_PNSW_08_specialrpt07050.] We therefore endorse the operation of the Code of Conduct and suggest the inclusion of a statement which requires that Members of Parliament consider and attempt to lessen the impact of their dealings with personal information upon the privacy of their constituents.⁷⁸

Comment

- 2.93** The Committee agrees that members should consider and attempt to lessen the impact of their dealings with personal information upon the privacy of their constituents and strive to exercise their freedom of speech responsibly at all times. The Committee also believes, however, that it is difficult to succinctly encapsulate the relationship between absolute freedom of speech, which may in some cases need to prevail over individual privacy in the broader public interest, and the principle of self-restraint in relation to the exercise of freedom of speech which members should in the vast majority of cases observe.
- 2.94** The tension between these two competing principles is acknowledged in the amendment suggested by Privacy NSW, which avoids the use of categorical proscriptions, and employs flexible terms. However, the resulting suggestion for members to 'consider' and 'attempt' to 'lessen' particular factors seems out-of-step with the objective standards articulated in other substantive provisions of the Code and may prove difficult to enforce.
- 2.95** The Australian Senate has adopted a parliamentary privilege resolution in relation to amongst other things the use of freedom of speech which identifies a range of different factors which senators must take into account when speaking under parliamentary privilege. These factors include the need for members to be able to fearlessly perform their duties, on the one hand, and the need to consider the damage which may be done to individuals, on the other. The relevant part 9 of the resolution is set out below:

9 Exercise of freedom of speech

- (1) The Senate considers that, in speaking in the Senate or in a committee, senators should take the following matters into account:
 - (a) the need to exercise their valuable right of freedom of speech in a responsible manner;

⁷⁸ Submission 5, Privacy NSW, pp 1-2.

- (b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
 - (c) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
 - (d) the need for senators, while fearlessly performing their duties, to have regard to the rights of others; and
 - (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.
- (2) The President, whenever the President considers that it is desirable to do so, may draw the attention of the Senate to the spirit and the letter of this resolution.⁷⁹

2.96 The Committee believes that it is desirable for the Parliament to regulate the proper exercise of freedom of speech, but that it would be preferable to do by way of a resolution of the House concerning matters of privilege rather than by way of an amendment to the Code of Conduct. This proposal, however, raises broader issues of privilege which are outside the scope of this inquiry.

Clause 6 ‘Duties as a Member of Parliament’

2.97 Clause 6 of the Code of Conduct provides:

6 Duties as a Member of Parliament

It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.

Determinations by the Parliamentary Remuneration Tribunal

2.98 The Independent Commission Against Corruption recommended that clause 6 of the Code should include reference to determinations by the Parliamentary Remuneration Tribunal which include descriptions of the types of political party activities for which members’ entitlements may be used:

In its December 1998 report: ‘Report on investigation into Parliamentary and Electorate travel: Second Report - analysis of administrative systems and recommendations for reform’ the Commission recommended that ‘the Ethics Committees of each House should consider whether the term “legitimate activities” used in clause 6 of the Members’ Code of Conduct should be amended to define these as activities whose principal purpose is for Parliamentary or electorate benefit’ (recommendation 57).

⁷⁹ *Parliamentary Privilege*, Resolutions agreed to by the Senate on 25 February 1988, Resolution 9, in H. Evans (ed), *ibid*, p 607.

The Commission notes that the Parliamentary Remuneration Tribunal has since delineated what party activities do or do not fall within the definition of 'Parliamentary activities' for the purpose of use of Parliamentary resources and allowances. (...)

Recommendation

The Commission recommends making direct reference in clause 6 to the relevant definitions of what constitutes party activities as set out in the relevant Parliamentary Remuneration Tribunal determinations.⁸⁰

Comment

2.99 The annual determinations of the Parliamentary Remuneration Tribunal under the *Parliamentary Remuneration Act 1989* contain guidelines and conditions concerning the use of members' additional entitlements including descriptions of the circumstances in which such entitlements may be used to participate in the 'activities of recognised political parties'.⁸¹

2.100 The use of members' entitlements is a matter which is specifically addressed in clause 4 of the Code as previously discussed. There is no question that members are bound to observe the guidelines and conditions laid down by the Tribunal when using their entitlements and that they will be in breach of clause 4 of the Code if they fail to do so. However, the Committee does not see the relevance of introducing reference to the same guidelines and conditions in clause 6 of the Code, which makes no reference to the use of public resources, and is not specifically concerned with the matters the Tribunal's determinations are designed to address.

Clause 7 'Secondary employment or engagements'

2.101 Clause 7 of the Code of Conduct provides:

7 Secondary employment or engagements

Members must take all reasonable steps to disclose at the start of a parliamentary debate:

- (a) the identity of any person by whom they are employed or engaged or by whom they were employed or engaged in the last two years (but not if it was before the Member was sworn in as a Member);
- (b) the identity of any client of any such person or any former client who benefited from a Member's services within the previous two years (but not if it was before the Member was sworn in as a Member); and
- (c) the nature of the interest held by the person, client or former client in the parliamentary debate.

This obligation only applies if the Member is aware, or ought to be aware, that the person, client or former client may have an interest in the parliamentary debate which goes beyond the general interest of the public.

⁸⁰ Submission 4, Independent Commission Against Corruption, p 7, paragraphs 22-23 and Recommendation 8.

⁸¹ Parliamentary Remuneration Tribunal, *Annual report and determination of additional entitlements for members of the Parliament of New South Wales*, 21 June 2010, p 21.

This disclosure obligation does not apply if a Member simply votes on a matter; it will only apply when he or she participates in a debate. If the Member has already disclosed the information in the Member's entry in the pecuniary interest register, he or she is not required to make a further disclosure during the parliamentary debate.

Disclosure of secondary employment when voting

- 2.102** The Independent Commission Against Corruption submitted that clause 7 should be amended to extend the disclosure requirement so that it also applies to situations where a member merely votes and does not participate in a debate:

Clause 7 of the Code requires disclosure of secondary employment or other engagements when a Member participates in debates. The Member is specifically exempted from making a disclosure if the Member is 'simply' voting on a matter. The Commission does not regard this exemption as being consistent with requisite or desirable standards of transparency.

The Commission does not regard as onerous a requirement that Members make the disclosures referred to in clause 7 when voting on a matter as well as participating in a debate on the matter. The Commission notes that under clause 7 it would not be necessary for a Member to make a declaration every time the Member voted if the Member has already disclosed the information in the Member's entry in the pecuniary interest register. (...)

Recommendation

... The Commission recommends that clause 7 of the Code be amended to require Members to make the disclosures referred to in that clause when voting on a matter as well as participating in a debate on the matter unless the disclosure has previously been made in the pecuniary interest register.⁸²

Comment

- 2.103** The issue of voting in divisions on a matter in which the member has a financial interest is currently addressed by standing order 113(2). That standing order provides:

A member may not vote in any division on any 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.

- 2.104** Given the provisions of standing order 113(2), the Committee does not believe there is any need for the issue to be addressed in clause 7 of the Code.

- 2.105** The Committee also notes that were the Commission's proposal to be adopted, the House would need to adopt new processes to enable members not speaking in debate to nevertheless disclose an interest.

⁸² Submission 4, Independent Commission Against Corruption, pp 7-8, paragraphs 24-25 and Recommendation 9.

Other aspects of the Code raised by the ICAC

- 2.106** The Independent Commission Against Corruption raised five additional issues in its submission concerning aspects of the operation of the Code of Conduct.

Disqualification from voting on matters of direct pecuniary interest

- 2.107** The Independent Commission Against Corruption noted that the standing orders of the Legislative Council (and the Assembly) disqualify a member from voting on a matter in which he or she has a financial interest and recommended that a similar principle be included in the Code:

The Standing Orders for both Houses generally disqualify members from voting on matters where they have a financial conflict of interest. [See Standing Order 176 of the Legislative Assembly and Standing Order 113(2) of the Legislative Council. See also Standing Order 276 of the Legislative Assembly and Standing Order 210(10)] It is not clear to the reader of the Code that this is the case and it would be preferable for this to be rectified. It is also preferable that the Code make it clear that a financial conflict of interest includes any situation where the Member has received or anticipates receiving a material benefit

Recommendation

The Commission recommends the Code be amended by including a new provision that Members are not to vote on matters where they have a financial conflict of interest.⁸³

Comment

- 2.108** As noted earlier when discussing clause 7 of the Code, the Committee sees no need to repeat the disqualification from voting which is currently contained in standing order 113(2) by inserting a similar provision into the Code.

Continuing effect of the Code of Conduct during periods of prorogation

- 2.109** The Independent Commission Against Corruption submitted that there is doubt as to whether the Code of Conduct applies during periods in which the Parliament has been prorogued. The Commission recommended that the Code be amended to ensure that it has continuing effect:

Some doubt has previously been expressed as to whether the Code applies to the actions of Members that occur after Parliament has been prorogued and before the Code is adopted by a Sessional Order at the start of a new session. This issue was examined in some detail by the 2002 and 2006 reviews which recommended that the Code be amended to specifically acknowledge that it is intended to apply during prorogation.

⁸³ Submission 4, Independent Commission Against Corruption, p 8, paragraph 27 and Recommendation 10.

Recommendation

The Commission recommends the Committees include an amendment to provide that the Code has continuing effect unless and until amended or rescinded.⁸⁴

Comment

2.110 Paragraph 2 of the resolution of the Legislative Council of 21 June 2007 adopting the Code of Conduct provides:

2. That this resolution has continuing effect unless and until amended or rescinded by resolution of the House.

2.111 The effect of this provision in the House's resolution adopting the Code is that the Code continues to operate during the life of each successive Parliament, including during periods of prorogation, until it is amended or rescinded by the House. There is no doubt as to its continuing operation during periods of prorogation.

More comprehensive statement of ethical principles

2.112 The Independent Commission Against Corruption submitted that the Code of Conduct should include reference to the broader principles on which the obligations set out in the Code are based, such as the seven principles of public duty in the British House of Commons Code:

In its November 1995 submission to the Legislative Assembly Standing committee on Ethics and its June 2006 submission to the Legislative Council Privileges Committee the Commission stated that “the principles on which expected standards of behaviour are based should be included in the Code so that the rationale for the obligations of Members can be understood”.

The Preamble to the Code already includes honesty and integrity. Accountability is alluded to in the reference to responsibility in paragraph 2 of the Preamble.

Recommendation

The Commission recommends a more comprehensive set of broad ethical principles. Consideration could be given, for example, to incorporating the seven principles of public duty defined by Lord Nolan and which appear in the British House of Commons Code of Conduct for Members (selflessness, integrity, objectivity, accountability, openness, honesty and leadership).⁸⁵

⁸⁴ Submission 4, Independent Commission Against Corruption, p 9, paragraph 28 and Recommendation 11.

⁸⁵ Submission 4, Independent Commission Against Corruption, p 9, paragraphs 29-30 and Recommendation 12.

Comment

- 2.113** The seven principles of public life as they appear in the British House of Commons Code of Conduct are as follows:

General principles of conduct

In carrying out their parliamentary and public duties, Members will be expected to observe the following general principles of conduct identified by the Committee on Standards in Public Life in its First Report as applying to holders of public office. These principles will be taken into consideration when any complaint is received of breaches of the provisions in other sections of the Code.

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.⁸⁶

⁸⁶ House of Commons (UK), *Guide to the rules relating to the conduct of members*, 9 February 2009, pp 3-4.

- 2.114** The committee which developed these principles intended that the principles would apply across the entire public sector, and not just to members of Parliament.⁸⁷ This is reflected in the content of the principles themselves, not all of which are necessarily applicable to members of Parliament at all times. For example, the third principle, ‘Objectivity’, may not always be appropriate to members of Parliament, who have obligations to their constituencies and political parties as well as to the broader ‘public interest’. Similarly, references to the making of public appointments and public contracts which appear under the heading ‘Objectivity’ are not relevant to non-executive members of Parliament.
- 2.115** Other aspects of the principles developed by the British committee are duplicated in existing provisions of the Code in New South Wales, such as the second paragraph of the Preamble which refers to responsibility to the electorate, which is comparable to the principle of ‘Accountability’, and clause 1, which provides for the disclosure of conflicts of interest.
- 2.116** The current Preamble to the Code of Conduct in New South Wales articulates various broad ethical principles, such as obligations to maintain the public trust and uphold the law. These principles perform a useful role in introducing the substantive obligations expressed in the body of the Code and describing the general context or framework in which those obligations are intended to operate. The Committee would not object to expanding the Preamble to include reference to further specific principles if a demonstrated need for particular principles were to be shown. However the Committee sees no need to attempt to elaborate a complete set of aspirational principles in the Code, which is a prescriptive document intended to give effect to a statutory definition of corruption and provide a basis for the exercise of external investigatory powers. The focus of the Code should be on drawing members’ attention to the specific standards of conduct against which they will be held to account rather than on broad aspirational principles.

Statement of sanctions

- 2.117** The Independent Commission Against Corruption submitted that the Code of Conduct should contain information about the sanctions which apply for breaches:

The Code does not set out what sanctions might apply to a Member who breaches the Code. Such a clause could address:

- the accountabilities of a Member
- the powers of the Ethics Committee
- the role of the Commission
- the relationship of the Code to other accountability mechanisms.

Recommendation

The Commission recommends including in the Code what sanctions might apply to a Member who breaches the Code.⁸⁸

⁸⁷ Committee on Standards in Public Life, First Report, *Standards in Public Life*, 1995, Volume 1, p 3, paragraph 6.

⁸⁸ Submission 4, Independent Commission Against Corruption, p 9, paragraph 31 and Recommendation 13.

Comment

- 2.118** Paragraph 1 of the resolution of the Legislative Council adopting the Code of Conduct expressly states that the Code is adopted 'for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*'. The reference to section 9 of the Act is a clear indication to members that a breach of the Code is capable of falling within the definition of 'corrupt conduct' and thus within the investigatory jurisdiction of the Independent Commission Against Corruption.
- 2.119** Key accountabilities of members are currently referred to in the Preamble to the Code. The Preamble acknowledges members' accountability to the electorate, obligation to uphold the law, and obligation to use their influence for the common good of the people of New South Wales.
- 2.120** The powers of the ethics committees do not appear to be relevant to the issue of sanctions for breaches of the Code. The committees have no power to investigate breaches of the Code or to recommend sanctions for breaches of the Code. The functions of the Council ethics committee, as stated in section 72C(1) and (5) of the *Independent Commission Against Corruption Act 1988* and the relevant resolution of the House, are to:
- Prepare draft codes of conduct and amendments to codes adopted by the House;
 - Carry out educative work in relation to members' ethical standards;
 - Give advice in relation to such ethical standards in response to requests for advice by the House but not in relation to actual or alleged conduct of any particular person; and
 - Review the Code of Conduct at least once every four years.
- 2.121** The relationship between the Code of Conduct and other accountability mechanisms would require a certain amount of detail and discussion to explain. The Committee believes that such matters are more appropriately dealt with in the context of educational forums for members explaining the various elements of the regulatory regime which governs their conduct. The Committee discusses the education function of the Committee further in Chapter 4.

Accessibility

- 2.122** The Independent Commission Against Corruption recommended that the Code of Conduct should have a more prominent place on the Parliament's website:

In line with the principles of openness and accountability consideration should be given to improving the accessibility of the Code by members of the public. For example it is not immediately apparent from the NSW Parliament website that there is a Code of Conduct for Members.

Recommendation

The Commission recommends that the Code be given a more prominent place on the NSW Parliament website.⁸⁹

⁸⁹ Submission 4, Independent Commission Against Corruption, p 10, paragraph 32 and Recommendation 14.

Comment

- 2.123** The Code of Conduct is currently accessed via a link which appears on the ‘Members’ page under the ‘Legislative Council’ tab on the Parliament’s website. The Independent Commission Against Corruption has suggested that this path for accessing the Code is inadequate and that the Code should be ‘immediately apparent’ on opening the Parliament’s website.
- 2.124** The Committee notes that the Parliament’s website is currently under review. As part of this process, it is anticipated that the path for accessing the Code will be more intuitive and simple. However, the Committee does not agree that the Code of Conduct needs to be ‘immediately apparent’ on opening the Parliament’s website.

Other aspects of the Code raised by the PIAC

- 2.125** The Public Interest Advocacy Centre raised certain additional issues which it considered should be addressed in the Code of Conduct or by other regulatory means.

Participation in party fund-raising events

- 2.126** The Public Interest Advocacy Centre argued that members’ participation in political party fund-raising events can give rise to perceptions of corruption by enabling attendees to pay for access to politicians, and expressed support for the inclusion in the Code of a ban on such participation:

PIAC has undertaken work on election funding and the conflicts that may arise between a parliamentarian’s role once elected and the role as an election candidate. Controls are needed to prevent the perception that access and influence to a member of parliament can be sold. The Code could provide members of parliament with advice about this potential conflict. For example, the appearance of corruption by gaining undue influence by accessing a member of parliament through fund raising would be avoided if the code advised the member not to attend fundraising functions while in office. PIAC supports the recommendation in the paper prepared for the NSW Electoral Commission by Joo-Cheong Tham that members of parliament should be banned from attending party fund-raisers [Joo-Cheng Tham, *Towards a more Democratic political funding regime in NSW* (2010) NSW Electoral Commission, 3-5, Recommendation 17]

Recommendations

PIAC recommends that members of parliament be banned from participating in party fund-raisers.⁹⁰

Comment

- 2.127** Donations to political parties made at fundraising events are currently regulated by the *Election Funding and Disclosures Act 1981*. A ‘political donation’ is defined in that Act to include:

⁹⁰ Submission 2, Public Interest Advocacy Centre, pp 5-6.

An amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fund-raising venture or function (being an amount that forms part of the proceeds of the venture or function) is taken to be a gift for the purposes of this section.⁹¹

- 2.128** Political donations are required to be disclosed in accordance with the regime provided by Part 6, Division 2 of the Act
- 2.129** Two committees of the New South Wales Parliament have considered the need for greater regulation of political donations in recent years.
- 2.130** In 2008 a select committee of the Legislative Council examined the issue of political donations in the context of a broader review of electoral and political party funding in New South Wales. In the course of that review, the Committee noted that concerns have been raised about different types of political donations, including those made at fundraising events, because of perceptions that wealthy donors can purchase undue influence over the political process. For example, the Committee noted that expensive fund-raising dinners with exorbitant entry fees lead to perceptions that the participants gain unfair access to decision-makers.⁹²
- 2.131** The Committee observed that concerns about political donations are particularly acute in the case of donations of substantial amounts and that such donations tend to have corporations or other organisations as their source. The Committee acknowledged, however, that donations from individual citizens have a positive role to play in facilitating community engagement with the political process and encouraging candidates to be more responsive to their grassroots support bases. Moreover, with reference to fundraising events, the Committee noted that there are qualitative differences between events such as expensive dinners from which the vast majority of the people are in practice excluded and community-based functions at which only nominal or small donations are made.⁹³
- 2.132** To address concerns that political donations can lead to distortions of the political process, while also preserving the legitimate role of individual donations, the Committee recommended a range of reforms to the system of election and political party funding in New South Wales. These reforms included a ban on all but small political donations from individual donors and a cap on donations from individuals at \$1,000.⁹⁴ Other reforms recommended by the Committee included limits on electoral expenditure and enhancements to public funding.
- 2.133** The Committee argued that a ban on all but small individual donations would go some way towards addressing the perception that fundraising events provide the wealthy with unequal access to decision-makers,⁹⁵ although the Committee also recommended tighter disclosure requirements to ensure that donations made at such events are clearly identified. Significantly, the Committee did not propose a ban on members of Parliament attending fundraising events. Rather, the Committee supported the approach of regulating fundraising events by addressing the source and the amount of donations and the quality of the associated disclosures.

⁹¹ *Election Funding and Disclosures Act 1981*, section 85(2).

⁹² Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding in New South Wales*, Report 1, June 2008, p 104.

⁹³ *Ibid*, p 101.

⁹⁴ *Ibid*, Recommendation 7, p 105.

⁹⁵ *Ibid*, p 151.

- 2.134** In March 2010 the Joint Standing Committee on Electoral Matters also recommended significant changes to the system of political party and electoral funding, building on the work of the earlier Council Select Committee.⁹⁶ While the Joint Committee did not address the issue of how to reform donations made through fundraising events specifically, the Committee did recommend changes to the system of political donations generally which would also impact on donations made at fundraising events such as caps on the amount of political donations which may be made and tighter disclosure requirements. The Committee also made recommendations concerning the better regulation of electoral spending and the need for increased public funding for elections.
- 2.135** Subsequent to recommendations for changes to the system of political donations by committees of the Parliament, there have recently been significant legislative reforms to the electoral finance regime.
- 2.136** In 2009, legislation was passed prohibiting political donations from property developers in New South Wales.⁹⁷ This includes a ban on property developers making political donations at party fundraising events.
- 2.137** In November 2010 legislation was passed introducing comprehensive reforms to the system of election and political party funding and disclosure in New South Wales.⁹⁸ These reforms include a cap on all donations to political parties and groups of \$5,000 per year and a cap on all donations to elected members, candidates and third parties of \$2,000 per year. They also include a ban on political donations from the tobacco, liquor and gambling industries. Each of these reforms applies to political donations made at political party fundraising events as well as to political donations made in other contexts.
- 2.138** A somewhat different approach to the regulation of party fundraising events has been adopted in Queensland where Premier Bligh has reportedly banned Labor members of the Queensland Parliament from attending any political party fundraising event.⁹⁹ However, the Queensland Premier's ban does not appear to have been adopted in any code or regulation which applies to all members of that Parliament.
- 2.139** In a recent review of the Code of Conduct for members of the Victorian Parliament, the Victorian Law Reform Committee expressed the view that the Code of Conduct was not the appropriate context in which to attempt to limit members' involvement in fundraising events, and that any attempt to prevent members promoting the interests of their parties is likely to be unworkable:

The Committee is conscious of ongoing public debate about political fundraising, but it does not believe the code is the appropriate place to address these issues. Given the integral role played by political parties in parliamentary democracy in Victoria, any rule which attempts to prevent members promoting the interests of their parties is likely to

⁹⁶ Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, Report No. 2/54, March 2010.

⁹⁷ *Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009*.

⁹⁸ *Election Funding and Disclosures Amendment Act 2010*.

⁹⁹ AAP, 'Bligh slaps bans on fundraising functions', *Brisbane Times*, 2 August 2009, <http://www.brisbanetimes.com.au/queensland/bligh-slaps-ban-on-fundraising-functions-20090802-e5kb.html>, cited by Dr Joo-Cheong Tham in *Towards a more democratic political funding regime in New South Wales: A report prepared for the New South Wales Electoral Commission*, February 2010.

be unworkable. Instead, the Committee believes the specific concerns raised by participants in this review would be better addressed in electoral laws.¹⁰⁰

- 2.140** This Committee endorses the views of the Victorian Committee, and notes that significant reforms to the system of political donations have already been made in New South Wales which have resulted in much tighter restrictions on fundraising events.

Responsibility for offices and delegates

- 2.141** The Public Interest Advocacy Centre recommended that the Code of Conduct should be amended to ensure that ministers take responsibility for their portfolios and that other members of Parliament take responsibility for the actions of their staff:

Duties as a member of parliament

The Prime Minister and Cabinet, Standard Ethics Codes refers specifically to the need for Ministers to be accountable for the power and function of their office, including those that act as their delegates.¹⁰¹ PIAC agrees that Members of parliament should not be able to claim ignorance of his or her delegates in their office or department. Some ministers claim that they cannot be held personally responsible for the acts and omissions of others who are involved in the administration of their portfolios because they did not know when they should have known, and those directly answerable to them did know but did not tell them. They are not told because of a culture that allows information be withheld so that the minister can say 'I did not know'. Effectively, personal responsibility is denied. 'Bad government is the inevitable result of a lack of accountability' and fertile ground is prepared for corruption.

Opposition and cross bench members should also take responsibility for their electorate and office staff. All members of parliament should be responsible because their vote can be critical. This is particularly the case where the Government does not hold a majority in both houses and balance of power is held by other members of parliament, and is also the case before an election when a change of government is possible. If integrity of the process is a key aim then codes of practice should apply to all members of parliament.

Recommendations (...)

PIAC recommends that the code reflect that Ministers have responsibility for the actions of their portfolios and all members for their office and delegates.¹⁰²

Comment

- 2.142** The Code of Conduct for members of Parliament does not apply to ministers' responsibilities in relation to their portfolios. The regulation of ministers' conduct in relation to their portfolios is a matter for the executive government and the Parliament. Under the doctrine of individual ministerial responsibility, ministers are individually responsible to Parliament for

¹⁰⁰ Parliament of Victoria, Law Reform Committee, *Review of the Members of Parliament (Register of Interests) Act 1978*, December 2009, p 30.

¹⁰¹ The Committee notes that in New South Wales, the conduct of ministers is governed by the separate Code of Conduct for Ministers of the Crown.

¹⁰² Submission 2, Public Interest Advocacy Centre, p 5.

their actions, however the operation of the doctrine is complex, and not suitable for inclusion in the Code of Conduct.

- 2.143** The Committee is not aware of instances where non-executive members of Parliament have sought to evade responsibility for actions taken in the performance of their duties as a member by claiming ignorance of actions taken by their staff. The Committee is not satisfied that this is an issue which should be addressed in the Code of Conduct which has been adopted by the House to facilitate the exposure and deterrence of ‘corrupt conduct’.

Lobbying by current members of Parliament

- 2.144** The Public Interest Advocacy Centre raised a number of issues concerning lobbying and members of Parliament and concluded that members should be subject to the same ‘reporting requirements’ as lobbyists:

Duties as a member of parliament

PIAC recently commented on the ICAC inquiry into lobbying in NSW. PIAC made several recommendations which, that [sic] to take affect require members of parliament to establish codes for their own conduct and relationship with lobbyists. For the system to be procedurally fair it is critical that both lobbyists and ministers and members of parliament are required to meet the same burden of responsibility in terms of their obligations.

The matters that intersect between the two roles are:

- increasing the reporting requirements of Members of Parliament;
- regulation of lobbyists to extend to all Members of both Houses of the Parliament and their staff;
- sanctions included in the regulations;
- ongoing independent evaluation of the effectiveness of any regulations, codes or standards for Members of Parliament, as well as of any Officer charged with monitoring, educating or enforcing codes and that such evaluations be tabled in the Parliament at regular intervals(...)

Recommendations

PIAC recommends [that] members of parliament meet the same reporting requirements as lobbyists in NSW.¹⁰³

Comment

- 2.145** The activity of lobbying in New South Wales is currently subject to a range of regulatory mechanisms.¹⁰⁴ The chief regulatory instrument is the Lobbyist Code of Conduct issued by the New South Wales Government in February 2009.

¹⁰³ Submission 2, Public Interest Advocacy Centre, pp 4 and 5.

¹⁰⁴ See, for example, Premier’s Memorandum M2006-01, *Guidelines for Managing Lobbyists and Corruption Allegations made during Lobbying; Constitution (Disclosures by Members) Regulation 1983*, clauses 7A, 92A, 15A.

2.146 The Government Lobbyist Code of Conduct has three main features:

- Lobbyists (as defined) who act on behalf of third party clients must register with the Department of Premier and Cabinet on the Register of Lobbyists.
- Lobbyists must observe certain 'principles of engagement' when dealing with a government representative.
- A 'government representative' is not to permit lobbying by a lobbyist who not on the Register.

2.147 The Government Lobbyist Code of Conduct defines 'government representative' to include ministers and parliamentary secretaries, but does not otherwise include members of Parliament. However, Premier's Memorandum M2009-03 entitled *Lobbyist Code of Conduct and Register* issued by former Premier Nathan Rees specifies that the Code of Conduct also applies to 'Government Members of Parliament and their staff'. This encompasses non-ministerial members of Parliament ('backbenchers') of the Government party.

2.148 In November 2010 the Independent Commission Against Corruption published a report in relation to the regulation of lobbying in New South Wales which contained comprehensive recommendations for reform.¹⁰⁵ Aspects of the recommended reforms include:

- The introduction of standard protocols for agencies and ministerial offices concerning the conduct of meetings or other communications between lobbyists and government representatives
- The adoption of requirements for those who are lobbied to create records of the lobbying activity and for those records to be accessible to the public through the operation of the *Government Information (Public Access) Act 2009*.
- An expanded Government Lobbyists Code of Conduct and expanded Lobbyists Register
- Provision for an independent government entity to maintain and monitor the Lobbyists Register.

2.149 The expanded Lobbyists Code of Conduct recommended in the Commission's report applies to a broader range of lobbyists than is currently the case.¹⁰⁶ However, the Commission did not recommend any broadening of the definition of 'government representative' as it currently appears in the Government Lobbyist Code. In particular, the Commission noted that there are good reasons why that definition should be confined to members of the executive government and should not encompass backbench members of Parliament:

The definition does not include a non-executive member of Parliament (MP). There are constitutional reasons for not attempting to regulate the circumstances of their contact with the community. More importantly, while MPs may lobby actively, they do not have executive power with which to make decisions.¹⁰⁷

¹⁰⁵ Independent Commission Against Corruption, *Investigation into corruption risks involved in lobbying*, November 2010.

¹⁰⁶ *Ibid*, pp 48–49.

¹⁰⁷ *Ibid*, p 50.

- 2.150** This view of the proper scope of ‘government representative’ is consistent with a submission provided to the Commission by the Clerk of the Parliaments and the Clerk of the Legislative Assembly, which argued that the purported extension of the Government Lobbyists Code of Conduct to backbench members of Parliament under Premier’s Memorandum M2009-03 referred to earlier is inconsistent with the principle of the separation of powers, under which the Executive Government should not seek to regulate how and with whom non-executive members of Parliament communicate when conducting their parliamentary business.¹⁰⁸ The Clerks also argued that it is not clear how the purported extension of the Government Code to backbench members could be enforced.
- 2.151** The Committee notes that it would be possible for the House to adopt measures to regulate the relationship between members and lobbying including by imposing additional reporting requirements. However, the Committee also notes that the regulation of lobbying in New South Wales is currently under review following the release of the Independent Commission Against Corruption’s recent report. The need for any regulation by the House in this area should only be addressed following consideration of the recommendations contained in the Commission’s report and the Government’s eventual response.

Lobbying by former members

- 2.152** The Public Interest Advocacy Centre recommended that members of Parliament should be prevented from undertaking lobbying activities for 18 months after leaving office and prevented from using confidential information they had access to as a result of their position:

Secondary employment and post-parliamentary employment

While in office, members of parliament should not receive any income from a business or from any other work other than as a member of parliament. However, receipt of royalties received from work undertaken prior to appointment to parliament is acceptable.

Former Ministers and parliamentary secretaries should be banned from lobbying activities for 18 months after leaving office. Members of parliament should not take advantage of information to which they had access, which is not information available to the general public.

Recommendation

PLAC recommends that regulations are be introduced to prevent members of parliament from undertaking lobbying activities for 18 months after leaving office and from using information they had access to in their position, which was not publicly available.¹⁰⁹

¹⁰⁸ Submission from the Clerk of the Parliaments, the Clerk of the Legislative Assembly, and the Executive Manager, Parliamentary Services, to the Commissioner of the Independent Commission Against Corruption, *ICAC Issues Paper: Lobbying in NSW*, 18 June 2010.

¹⁰⁹ Submission 2, Public Interest Advocacy Centre, p 3.

Comment

- 2.153** The introduction of regulations to prohibit lobbying by former ministers and parliamentary secretaries is a matter for the executive government rather than the House. A provision of the Code of Conduct for members would be unenforceable against a former member after they had left office.
- 2.154** It would be open to the House to regulate lobbying *of* current members, by former members, if the House chose to do. However, as noted earlier, the Committee believes that any regulation by the House concerning lobbying should only be addressed following consideration of the recent report of the Independent Commission Against Corruption on the subject of lobbying, and the eventual Government response.

A Parliamentary Standards Commissioner

- 2.155** The Public Interest Advocacy Centre expressed support for the establishment of a Parliamentary Standards Commissioner based on the model which has been adopted in the United Kingdom:

The role of the Privileges Committee could be supported by a Parliamentary Standards Commissioner as appointed in the UK for recording and monitoring statements of interest to parliament, conflicts of interest and ensure observance of ethical practices. A Commissioner could also take over the educative role of the committee, providing guidance and training for all Members of Parliament on matters of conduct, propriety and conflicts of interest. The Australasian Study of Parliament Group reported on the role a Commissioner could take, suggesting it could also monitor and propose modifications to any guides or codes, receive and investigate complaints and possible breaches. The Commissioner in this model would report to Parliament, and be appointed on the recommendation of an all-party Parliamentary committee.

Recommendation

PIAC recommends that the NSW Parliament investigate the establishment of a Parliamentary Standards Commissioner in order to restore and maintain confidence in parliamentary processes.¹¹⁰

Comment

- 2.156** In a report published in October 2010, the Joint Select Committee on Parliamentary Procedure considered the need for the establishment of a parliamentary integrity commissioner in New South Wales, on the model which has recently been agreed to in the Commonwealth Parliament.¹¹¹ The Commonwealth model provides for the creation of a commissioner to:

provide advice, administration and reporting on parliamentary entitlements, investigate and make recommendations to the Privileges Committees on individual

¹¹⁰ *Ibid*, pp 2-3.

¹¹¹ Joint Select Committee on Parliamentary Procedure, *Reforms to parliamentary processes and procedure*, Report No. 1/54, October 2010.

investigations, provide advice to parliamentarians on ethical issues, uphold the parliamentary code of conduct, and maintain the government's Lobbyist register.¹¹²

- 2.157** The Joint Select Committee noted that the appointment of a commissioner to undertake such roles has been raised on previous occasions in New South Wales. Those occasions include an inquiry by the Independent Commission Against Corruption following a reference from the Legislative Assembly in 2003, a notice of motion to the Legislative Council in 2004, and an independent review of the *Independent Commission Against Corruption Act 1988* in 2005.¹¹³
- 2.158** The Joint Select Committee also noted the limitation of the jurisdiction of the Independent Commission Against Corruption to investigate the conduct of members where the relevant material is covered by parliamentary privilege, together with the absence of a mechanism for the investigation of relatively minor matters concerning the conduct of members, so as to permit the Independent Commission Against Corruption to focus on systemic allegations of corruption.
- 2.159** Having noted these issues, the Joint Select Committee concluded that any proposal to appoint a parliamentary integrity commissioner 'would need to be considered carefully'. The Committee therefore recommended that:

The merits of a Parliamentary Integrity Commissioner should be considered by the Legislative Council's Privileges Committee in the new Parliament, in consultation with the Legislative Assembly's Privileges and Ethics Committee.¹¹⁴

- 2.160** This Committee endorses and reiterates the recommendation of the Joint Select Committee on Parliamentary Procedure in relation to the need for further consideration of this issue.

Recommendation 1

That the merits of a Parliamentary Integrity Commissioner be considered by the Privileges Committee in the new Parliament, in consultation with the Legislative Assembly's Privileges and Ethics Committee.

¹¹² 'Agreement for a better Parliament: parliamentary reform', clause 18, Parliamentary Integrity Commissioner.

¹¹³ Joint Select Committee on Parliamentary Procedure, *ibid*, p 64.

¹¹⁴ *Ibid*, p 65.

Chapter 3 The pecuniary interests regulation

This chapter examines the operation of the pecuniary interests disclosure regime for members of the New South Wales Parliament under the provisions of the *Constitution (Disclosures by Members) Regulation 1983*, with particular reference to:

- The merits of requiring members to disclose the interests of their spouses/partners and dependent children;
- The publication of the ‘Register of Disclosures by Members of the Legislative Council’ on the Council’s website;
- The current arrangements for primary, ordinary, supplementary ordinary and discretionary returns, and alternatives to those arrangements; and
- Protecting the privacy of members and others.

Overview of the Regulation

3.1 On 13 April 1981, Premier Wran introduced the *Constitution (Disclosures by Members) Bill 1981* in the Legislative Assembly to insert a new section 14A into the *Constitution Act 1902* dealing with pecuniary interests. In his second reading speech on the bill, the Premier observed:

The establishment of a scheme whereby Members of Parliament can be seen to be above reproach 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.¹¹⁵

3.2 The bill was subsequently passed by both Houses of Parliament and approved by the people at a referendum.¹¹⁶

3.3 Section 14A(1) of the *Constitution Act 1902* empowers the Governor to make regulations for or with respect to the disclosure by members of either House of Parliament of all or any of certain specified pecuniary interests or other matters. The specified pecuniary interests include interests in real or personal property, income, gifts, contributions to travel, shareholdings, and debts.

3.4 The *Constitution (Disclosures by Members) Regulation 1983* was made pursuant to section 14A(1) of the *Constitution Act 1902*. The Regulation established a regime for the disclosure of members’ interests. This regime includes requirements for members to lodge periodic returns setting out any interests which they hold in relation to certain prescribed matters. The Regulation also provides for a public Register of Disclosures which contains members’ disclosure returns.

¹¹⁵ *LA Debates* (13/4/1981) 5710.

¹¹⁶ *LA Votes and Proceedings* (11/5/1981) 350-351; *LC Minutes* (12/5/1981) 543. The referendum was passed with 2,391,036 in favour and 388,791 against.

The types of disclosure returns

- 3.5** The *Constitution (Disclosures by Members) Regulation 1983* provides in Part 2 for four types of returns by members for the disclosure of their pecuniary interests – primary returns, ordinary returns, supplementary ordinary returns and discretionary returns:
- New members must lodge a primary return within three months of the date on which they take the pledge of loyalty under section 12 of the *Constitution Act 1902*.
 - Current members must lodge, before 1 October each year, an ordinary return covering the 12 month period up to 30 June of that year, except members whose primary return date was between 1 May and 30 June that year.
 - Current members must also lodge, on or before 31 March each year, a supplementary ordinary return covering the six month period to 31 December of the previous year.
 - Any member may lodge a discretionary return at any time.
- 3.6** Members are required to lodge a primary, ordinary or supplementary ordinary return, as relevant, even if they do not have any interests to disclose. Members must also lodge a return even if their interests have not changed since their last return.

The Register of Disclosures

- 3.7** The *Constitution (Disclosures by Members) Regulation 1983* provides for the Clerk to compile and maintain the 'Register of Disclosures by Members of the Legislative Council'.¹¹⁷ The Register of Disclosures comprises the returns lodged by members of the House within the previous eight years.¹¹⁸
- 3.8** The Register is open to public inspection at the office of the Clerk between the hours of 10 am and 4 pm on any day except Saturday, Sunday or a day which is a public holiday throughout New South Wales. In addition to the right of public inspection, members may also inspect the register on any day the Legislative Council is sitting.¹¹⁹
- 3.9** The Clerk is required to provide the President with a copy of the register for tabling in the House, within 21 sitting days after the last day for the lodgment of primary returns, and within 21 sitting days after the last day for the lodgment of any ordinary returns.¹²⁰ Following tabling in the House the Register is published as a parliamentary paper.

Interests to be disclosed in members' returns

- 3.10** The interests which members are required to disclose in their primary, ordinary and supplementary ordinary returns are listed and defined in Part 3 of the *Constitution (Disclosures by Members) Regulation 1983*. The categories of interests are as follows:

¹¹⁷ *Constitution (Disclosures by Members) Regulation 1983*, clause 17.

¹¹⁸ *Ibid*, clause 19.

¹¹⁹ *Ibid*, clause 20.

¹²⁰ *Ibid*, clause 21.

- Real property
- Sources of income
- Gifts
- Contributions to travel
- Interests and positions in corporations
- Positions in trade unions and professional or business associations
- Debts
- Dispositions of property
- Provision of client services.

3.11 The particular interests to be disclosed within each category are specified in the relevant clauses of the Regulation.

Disclosure of interests of members' spouses/partners or third parties

The current position in New South Wales

- 3.12** Under the current pecuniary interest disclosure regime in New South Wales outlined above, there is no requirement for members to disclose the interests of their spouse, domestic partner or any other family member. The *Constitution (Disclosures by Members) Regulation 1983* only requires the disclosure of interests held by members themselves.
- 3.13** For example, clause 8 of the *Constitution (Disclosures by Members) Regulation 1983* requires members to disclose the address of each parcel of real property 'in which *the Member* had an interest'. Clause 9 requires members to disclose details of each source of income 'that *the Member* received'.
- 3.14** Some provisions of the *Constitution (Disclosures by Members) Regulation 1983* may result in the disclosure of interests which are held by partners or other family members. For example, income from a trust, under clause 9(2)(d) of the Regulation, could include income from a family trust. Interests and positions in corporations, under clause 12, could include shareholdings or offices in family companies. Dispositions of property, under clause 15, could include the disposition of property to a family member.
- 3.15** In addition to these forms of indirect disclosure, members may *choose* to disclose interests held by a member of their family, by way of a discretionary disclosure under clause 16 of the Regulation. However, apart from indirect and discretionary disclosures, there is no provision for the disclosure of the interests of family members, as such.

Background to the development of the current position in New South Wales

- 3.16** The first step towards the development of a system of registration of members' pecuniary interests in New South Wales was the appointment of a joint parliamentary committee in 1976

to inquire into the issue.¹²¹ The Joint Committee reported in 1978.¹²² The Committee's report contained comprehensive recommendations for the establishment of pecuniary interest registers not just for the members of each House of Parliament but also for certain other categories of public officials.

- 3.17** In relation to members of Parliament, the Joint 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.¹²³

- 3.18** The particular categories of interests the Committee considered should be disclosed included shareholdings, sources of income, positions in corporations, interests in real estate, gifts and sponsored travel.

- 3.19** The Committee also appeared to envisage that only those interests which could influence the member in the discharge of their duties would be required to be disclosed. In that regard, the Committee recommended:

That 'pecuniary interest' and 'other benefit' be defined as 'any interest capable of producing a benefit of a financial or material nature and any such benefit however received directly or indirectly by the person concerned which could influence that person in the discharge of his duties or responsibilities'.¹²⁴

- 3.20** In November 1979, both Houses of Parliament passed resolutions implementing the Joint Committee's recommendations, with certain modifications. These resolutions established a register for the disclosure of the interests of members, their spouses, and infant children. The relevant resolutions of the Houses provided, in part:

(1) That there be established a system for the registration of the pecuniary interests of Members of both Houses of the Parliament of New South Wales, having the following features-

(2) A Register shall be established in each House in which shall be recorded all information required to be disclosed pursuant to this resolution.

(3) (i) Persons Affected

Members shall disclose in respect of themselves and, to the best of their knowledge, each member of their family.

"Members of the family" shall mean-

(a) the spouse of a Member;

¹²¹ *LC Minutes* (29/9/1976) 64-65; (30/9/1976) 73.

¹²² *Report from the Joint Committee of the Legislative Council and Legislative Assembly upon pecuniary interests*, 4 April 1978.

¹²³ *Ibid*, p 19.

¹²⁴ *Ibid*, p 19.

- (b) any infant child of a Member;
- (c) any infant child of the spouse of a Member who has been accepted as one of his family by that Member.

(ii) Matters to be Disclosed (...) ¹²⁵

- 3.21** However, in November 1980, the resolutions of the Houses establishing the registers of interests were rescinded following legal advice that the Houses did not have the power to establish an enforceable scheme for the disclosure of members' interests in the absence of legislative authority.¹²⁶ Such advice subsequently led to the enactment of section 14A in the *Constitution Act 1902* and the promulgation of the *Constitution (Disclosures by Members) Regulation 1983*, noted earlier. It is not clear why the provisions from the 1979 resolutions of both Houses concerning the disclosure of the interests of members' spouses and infant children were dropped from the new regime.
- 3.22** In 1991, an inquiry was referred to the Joint Committee on the Independent Commission Against Corruption concerning the adequacy of the existing pecuniary interests provisions applying to members of Parliament and senior executives and the need for a code of ethics for members of Parliament.¹²⁷ The terms of reference concerning pecuniary interests had their origin in the Charter of Reform agreed to by the Greiner Government and the non-aligned members of the Legislative Assembly in that year.
- 3.23** In April 1994, the Joint Committee released a discussion paper which drew on submissions and evidence the Committee had received in response to its inquiry to date. This discussion paper included consideration of the question of whether the interests of members' families should be required to be disclosed in the Register of Disclosures.
- 3.24** In support of the disclosure of family interests in the Register, the Joint Committee noted evidence from Professor Carney which 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
 - (iii) The Register may not have public confidence unless a member's family interests are disclosed.¹²⁸
- 3.25** The Committee also noted a submission by the Independent Commission Against Corruption that the public disclosure of family interests facilitates the prevention of conflicts of interest since the interests of close associates such as family members are capable of influencing a member's conduct in the same way as if they were the interests of the member.¹²⁹

¹²⁵ *LA Votes and Proceedings* (8/11/1979) 144-149; *LC Minutes* (27/11/1979) 297-299, 302-306.

¹²⁶ *LA Votes and Proceedings* (27/11/1980) 204-205; *LC Minutes* (27/11/1980) 291.

¹²⁷ *LA Votes and Proceedings* (10/12/1991) 454-455; *LC Minutes* (11/12/1991) 375-377.

¹²⁸ 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', April 1994, p 16.

¹²⁹ *Ibid.*

3.26 Against this, however, the Committee noted the view of Professor Paul Finn that registers of interest do not avoid or prevent conflicts of interest occurring, but that their justification is a matter of appearances. The Committee also noted the difficulty of drawing a line between those family members whose interests should be disclosed and other family members whose interests fall outside the disclosure regime but whose interests might also have an influence on members' conduct.¹³⁰

3.27 Having considered various arguments both for and against the disclosure of family interests in the Register, the Committee concluded in its discussion paper that:

The disclosure of family interests remains a controversial issue. However, the Committee has not received any evidence to show that this exemption is a source of abuse for avoiding disclosure of pecuniary interests. Member's families have not made a decision to enter public life and a disclosure where there is no evidentiary justification for it would be a significant invasion of privacy. On the whole, the Committee suggests that unless evidence can be brought forward to show an abuse of the system no benefit would result from the disclosure of the pecuniary interests of the family of a Member of Parliament.¹³¹

3.28 The Committee's inquiry concerning pecuniary interests subsequently lapsed with the expiry of the 50th Parliament in December 1994, without the Committee having reported.

The position in other Australian Parliaments

3.29 There is considerable variation between Parliaments around Australia concerning disclosure of the interests of members' spouses/partners or third parties:

- Five Parliaments *require* the disclosure of partners' and children's interests in the register;
- Two Parliaments (excluding the New South Wales Parliament) *do not require* the disclosure of partners'/children's interests in the register; and
- One Parliament has *limited* requirements for the disclosure of partners' interests.

Parliaments which require the disclosure of partners'/children's interests

3.30 The following five Parliaments have adopted requirements for members to disclose the interests of their spouse or partner in the register:

- Commonwealth
- Queensland
- South Australia
- Australian Capital Territory
- Northern Territory.

¹³⁰ *Ibid*, p 17.

¹³¹ *Ibid*, p iv.

3.31 Each of these five Parliaments also requires members to disclose the interests of any child who is wholly or mainly dependent on the member.¹³² In addition, the Queensland Parliament also requires the disclosure of the interests of:

any other person who --

- (i) is wholly or substantially dependent on the member; and
- (ii) whose affairs are so closely connected with the affairs of the member that a benefit derived by the person, or a substantial part of it, could pass to the member.¹³³

3.32 In addition, in South Australia certain interests of the trustee of a family trust of a member must be disclosed,¹³⁴ if the information to be disclosed relates to the person in their capacity as the family trustee.¹³⁵

3.33 All of the Parliaments in which partners' and dependent children's interests are disclosed only require the disclosure of interests of which the member is *aware*,¹³⁶ or which are ascertainable by the exercise of reasonable diligence.¹³⁷

3.34 In two of the relevant Parliaments, public access is restricted to disclosures relating to the interests of partners and children.

3.35 In the Senate, the disclosures concerning partners and dependent children are accessible only by the Committee on Senators' Interests except if that Committee considers that a conflict of interest arises in which the case the Committee may table the relevant statement of disclosures in the Senate. The relevant Senate resolution provides:

Statements of the registrable interests of a senator's spouse or partner or of any dependent children (...) shall be maintained in a separate part of the register and shall remain confidential to the Committee of Senators' Interests except where the

¹³² Senate, *Resolutions relating to Senator's Interests* (1994, amended to 2006), resolution 1(1)(b)(ii); House of Representatives, *Registrations of members' interests Requirements of the House of Representatives* (Resolutions adopted 1984, amended to 2008), resolution 1(a)(ii); Queensland, *Standing Orders*, Schedule 2, 'Registers of Interests', clause 1 ('Definitions') and clause 5(1)(b); South Australia, *Members of Parliament (Register of Interests) Act 1983*, sections 2(1) and 4; ACT, Continuing resolution 6, *Declaration of private interests of members*, Explanatory note, p 2; Northern Territory, *Legislative Assembly (Disclosure of Interests) Act 2008*, sections 3 'related person' and 4(1)(b).

¹³³ Standing Rules and Orders of the Legislative Assembly, Schedule 2 'Registers of Interests', clauses 1 Definitions, 'related person', and 5(1)(b).

¹³⁴ *Members of Parliament (Register of Interests) Act 1983* (SA), sections 2 and 4(2)(a), (d), (e), 3(a), (c), (d), (e), (f), (fa), (g).

¹³⁵ *Ibid*, section 4(4).

¹³⁶ Senate, *Resolutions relating to Senator's Interests* (1994, amended to 2006), resolution 3; House of Representatives, *Registrations of members' interests Requirements of the House of Representatives* (Resolutions adopted 1984, amended to 2008), resolution 1(a)(ii); Queensland, *Standing Orders*, Schedule 2, 'Registers of Interests', clause 5(4); ACT, Continuing resolution 6, *Declaration of private interests of members*, Explanatory note, p 2; Northern Territory, *Legislative Assembly (Disclosure of Interests) Act 2008*, sections 3 'related person' and 4(1)(b).

¹³⁷ South Australia, *Members of Parliament (Register of Interests) Act 1983*, section 4(3a).

committee considers that a conflict of interest arises, at which time the committee may table the declaration.¹³⁸

3.36 In Queensland, a separate 'Register of Related Persons' Interests' is maintained which is not tabled in the House and is only accessible to certain specified officials. The relevant standing order provides:

The Registrar must, on request, make the Register of Related Persons' Interests available to—

- (a) the Speaker;
- (b) the Premier;
- (c) any other Leader in the Legislative Assembly of a political party;
- (d) the Chairperson and members of the Integrity, Ethics and Parliamentary Privileges Committee;
- (e) the Crime and Misconduct Commission;
- (f) the Auditor-General; and
- (g) the Integrity Commissioner.¹³⁹

3.37 In South Australia, interests of partners and dependent children may be disclosed in such a way that does not distinguish between those interests and the interests of the member. The relevant statutory provision states:

Nothing in this section shall be taken to prevent a member from disclosing the information required by this section in such a way that no distinction is made between information relating to himself personally and information relating to a person related to the member.¹⁴⁰

Parliaments which do not require the disclosure of partners'/children's interests

3.38 There are no requirements for members to disclose the interests of their spouse/partner or children in Western Australia and Tasmania (as well as New South Wales). In Tasmania, however, a joint parliamentary committee in 2009 recommended that the interests of members' partners and certain other related persons should be required to be disclosed in the Register. The relevant recommendation was in the following terms:

The Committee recommends that the *Parliamentary (Disclosure of Interests) Act 1996* be strengthened by amendments to provide for the following:-

- (1) The definition of 'related person' to be added. Such definition to mean –
 - (a) the spouse of a Member;

¹³⁸ Senate, *Resolutions relating to Senator's Interests* (1994, amended to 2006), resolution 2 'Registrable interests of spouses or partners and dependants'.

¹³⁹ Queensland, *Standing Orders*, Schedule 2, 'Registers of Interests', clause 13(2).

¹⁴⁰ *Members of Parliament (Register of Interests) Act 1983* (SA), section 4(7).

- (b) a child of a Member who is wholly or substantially dependent on the Member; or
 - (c) any other person –
 - (i) who is wholly or substantially dependent on the Member; and
 - (ii) whose affairs are so closely connected with the affairs of the member that a benefit derived by the person, or a substantial part of it, could pass to the Member.
- (2) Consequential amendments to require the declaration of a related person's interests in the Register of Interests.¹⁴¹

3.39 The Tasmanian Government subsequently expressed in principle support for this recommendation, but indicated that it would implement amendments in the form to be recommended by the Tasmanian Integrity Commission following legislative reform to transfer responsibility for the Register to a parliamentary standards commissioner.¹⁴²

Parliament with limited requirements for the disclosure of partners' interests

3.40 In the Victorian Parliament members are only required to disclose interests which they themselves hold in relation to the specified categories such as real property, income and gifts.¹⁴³ However, members are also required to disclose in the Register:

any other substantial interest whether of a pecuniary nature or not of the Member or of a member of his family or which the Member is aware and which the Member considers might appear to raise a material conflict between his private interest and his public duty as a Member.¹⁴⁴

3.41 The term 'family' in turn is defined as:

family in relation to a Member means-

- (a) a spouse of that Member; and
- (b) any child of that Member who is under the age of 18 years and normally resides with that Member.¹⁴⁵

3.42 In a review of the disclosure regime in 2009, the Victorian Law Reform Committee gave consideration to whether the current registration requirements concerning family interests in Victoria should be expanded. The Committee noted that there are 'conflicting arguments' in relation to the issue of whether the interests of members' families should be included in registers of interests. On the one hand:

¹⁴¹ Parliament of Tasmania, Joint Select Committee on Ethical Conduct, *Final report; 'Public office is public trust'*, 2009, p 32, Recommendation 1.

¹⁴² *Tasmanian Government response to recommendations in the Final Report of the Joint Select Committee on Ethical Conduct ('Public Office is Public Trust')*, 4 November 2009, pp 2-3 (response to Recommendation 1).

¹⁴³ *Members of Parliament (Register of Interests) Act 1978* (Vic), section 6.

¹⁴⁴ *Ibid*, section 6(2)(i).

¹⁴⁵ *Ibid*, section 2.

- Registration of family interests promotes transparency and accountability;
- Members may be influenced by family interests as much as by their own interests; and
- Ill-intentioned members may try to hide interests from public scrutiny by transferring them to family members.¹⁴⁶

3.43 On the other hand there are significant privacy concerns.¹⁴⁷

3.44 Having examined arguments for and against the registration of family interests, the Committee concluded that the existing discretionary approach which currently applies in Victoria should be retained:

On balance, the Committee favours retention of the existing discretionary approach. It believes the provision strikes a good balance between the public interest in transparency and accountability and the privacy rights of members' families. It only limits their privacy to the extent that family interests may create a conflict of interest for the member. This is consistent with the aim of the register. It is also consistent with the requirements of Victoria's Charter of Human Rights and Responsibilities Act 2006 which allows human rights, including the right to privacy, to be subject to certain reasonable limits.¹⁴⁸

3.45 However, the Committee also recommended the adoption of a new code of conduct for members which would require members to declare conflicts of interest when speaking in parliamentary proceedings, including conflicts of interest involving the interests of a family member or other 'prescribed person'.¹⁴⁹

Submissions to this review

3.46 The Committee's public discussion paper distributed as part of this inquiry raised the question of whether members should be required to disclose the interests of their spouse or partner in the Register of Disclosures:

The argument for the disclosure of members' partners' interests is that it strengthens public trust and confidence in the parliamentary process by improving its transparency, openness and accountability. Conflicts between a member's public duty and private interest can as easily arise where the interest in question is that of the member's partner. Disclosure of partners' interests also counters possible perceptions that members can avoid their disclosure obligations by transferring interests to family members.

On the other hand, the disclosure of partners' pecuniary interests is a significant intrusion upon the privacy of members' partners who have not themselves chosen to be in public life. Further, where the financial affairs of a member and his or her partner are kept separate, it may be questioned whether disclosing the interests of the partner enhances the accountability of the member.

¹⁴⁶ Parliament of Victoria, Law Reform Committee, *Review of the Members of Parliament (Register of Interests) Act 1978*, December 2009, p 67.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid*, p 68.

¹⁴⁹ *Ibid*, p 43.

Issues also arise as to the confidentiality of material provided in relation to partners' interests. As indicated, in other Parliaments, the disclosure of partners' interests is kept confidential, with a separate Register or Committee of Interests responsible for releasing the material if a clear conflict of interest arises. In New South Wales, however, there is not an equivalent to a Register or Committee of Interests to perform this function.¹⁵⁰

- 3.47** In Chapter 2, the Committee discussed at length the submissions received from the Independent Commission Against Corruption, the Public Interest Advocacy Centre and the Parliamentary Ethics Adviser, Mr Ian Dickson, in relation to the disclosure requirements of clause 1 of the Code of Conduct in relation to third parties. The Committee does not reiterate that material here. It is noted that Mr Dickson's was the only submission to specifically address the disclosure of partners' interests in the Register of Disclosures, which he opposed.

Comment

- 3.48** The Committee notes that the disclosure of the interests of partners was discussed in detail in Chapter 2 in relation to clause 1 of the Code of Conduct.
- 3.49** As foreshadowed in Chapter 2, the Committee supports in principle a change to the provisions of the *Constitution (Disclosures by Members) Regulation 1983* to require members to disclose the interests of their spouses/partners and dependent children. The Committee believes that disclosure of the interests of spouses/partners and dependent children would strengthen the parliamentary process by improving its transparency, openness and accountability. As discussed in Chapter 2, a systematic mechanism for the disclosure of the interests of spouses/partners and dependent children through the pecuniary interest regime would be preferable to *ad hoc* declarations under clause 1 of the Code of Conduct which may result in declarations being made in different contexts and at different times.
- 3.50** However, in adopting this position, the Committee accepts that such a step raises significant privacy issues that need to be considered carefully. Should, for example, a register of the interests of spouses/partners and dependent children be kept confidential, as occurs in the Senate, where disclosures are overseen by a dedicated Committee on Senators' Interests? Should such a register be made public, as in the House of Representatives? At the present time, the Committee is not in possession of detailed information on how the regimes for the disclosure of the interests of spouses/partners or third parties are operating in those Australia Parliaments that have such provisions.
- 3.51** Accordingly, the Committee recommends that in the next Parliament, the House refer to the Privileges Committee a new inquiry into the best mechanism for members to disclose the interests of their spouses/partners and dependent children under the provisions of the *Constitution (Disclosures by Members) Regulation 1983*, with a view to implementing third party disclosures if an appropriate mechanism can be found. Such an inquiry would offer the Committee the opportunity to take detailed evidence from members of Parliament and from representatives of other Parliaments, before coming to a considered view on the matter.

¹⁵⁰ Privileges Committee, Discussion Paper, *2010 Inquiry into the operation of the Code of Conduct for Members of the New South Wales Parliament*, Attachment C, 'The disclosure of partners' interests under the pecuniary interest disclosure regime', p 2.

Recommendation 2

That in the next Parliament, the House refer to the Privileges Committee a new inquiry into the best mechanism for members to disclose the interests of their spouses/partners and dependent children under the provisions of the *Constitution (Disclosures by Members) Regulation 1983*, with a view to implementing third party disclosures if an appropriate mechanism can be found.

Publication of the Register of Disclosures on the Council's website

- 3.52** The Legislative Council does not currently publish the 'Register of Disclosures by Members of the Legislative Council' on the Council's website.
- 3.53** In its public discussion paper released as part of this inquiry, the Committee raised the issue of the publication of the Register on the Council's website. In his response to this issue, the Parliamentary Ethics Adviser, Mr Ian Dickson. Mr Dickson indicated that there is 'no reasonable argument not to make the returns of members available on the website', subject to amendment of clause 15 of the *Constitution (Disclosures by Members) Regulation 1983*, discussed further below.¹⁵¹
- 3.54** Most other Australasian Parliaments/Houses currently place their pecuniary interest disclosures on the internet:
- The Senate will publish the Register of Senators' Interests on the Senate's website at the page of the Senate Standing Committee of Senators' Interests from 1 July 2011. Prior to that, the Register of Senators' Interests was available in the Senate tabled paper database.
 - The House of Representatives publishes the Register of Members' Interests on the House of Representative's website at the page of the House Standing Committee on Privileges and Members' Interests. This commenced in the current 43rd Parliament.
 - The Victorian Parliament publishes on its website a Cumulative Summary of Returns provided by Members each September. This commenced in 2009. Any changes to the Cumulative Summary during the intervening 12 months may be obtained from the Parliamentary Library.
 - The Queensland Parliament amended its Standing Orders in November 2009 to direct that the Register of Members' Interests be placed on its website.
 - The South Australian House of Assembly places the Register of Members' Interests on the website under publications and the Tabled papers and Petitions database.
 - The ACT Parliament has published the Register of Members' Interests on the Assembly's website since February 2010. The website is required to be updated every 6 months, however in practice it is updated on receipt of an alteration.
 - The New Zealand Parliament has published an annual summary of its Register of Pecuniary Interests on its website since 2005 under a link to 'MPs' financial interests'.

¹⁵¹ Submission 3, Mr Ian Dickson, p 1.

Summaries of returns from new members are also published on the website, as are corrections of any errors in the summary that are notified to the Registrar after publication.

- 3.55** The Tasmanian Parliament, the Western Australian Parliament, the Northern Territory Parliament and the South Australian Legislative Council do not publish their members' interests on the internet. In the Northern Territory, there has been a push from the media to make members' declarations available on the internet, however an inquiry conducted by the Standing Orders Committee opted for the status quo: inspection by appointment at the Office of the Clerk.
- 3.56** The UK and Scottish Parliaments also publish their registers on the internet, while Canada's Conflict of Interests and Ethics Commissioner publishes information about interests held by members of the Canadian House of Commons.

Comment

- 3.57** There is a strong argument for placing the 'Register of Disclosures by Members of the Legislative Council' on the Legislative Council's website. Placing the Register on the Council's website would strengthen public trust and confidence in the processes of the Council by improving the transparency, openness and accountability of members. While the Register is already publicly available, the value of having the Register on the Council's website is that it would greatly increase ease of public access.
- 3.58** However, before such a step can be taken, there are issues in relation to the timing and types of returns, the protection of the privacy of members and others, and the authority to publish the Register that need to be considered. These matters are discussed below.

The timing and types of returns

- 3.59** As indicated previously, new members of the Council must lodge a primary return with the Clerk within three months of their swearing in. Current members must lodge an ordinary return covering the 12 month period up to 30 June, before 1 October each year, except for new members whose primary return date was between 1 May and 30 June that year. Members must also lodge a supplementary ordinary return covering the six month period to 31 December of the previous year, before 31 March each year. There is also provision for members to lodge a discretionary return at any time.

The timing of primary returns

- 3.60** In its 2006 Review of the Members' Code of Conduct, the Committee examined the timing for the lodging of primary returns after the swearing in of new members. At the time, the Committee supported the retention of the current three month deadline for the lodging of primary returns after a member is sworn in (and by implication the deadlines for submitting ordinary and supplementary ordinary returns which are lodged three months after the relevant return period). It did so on the basis that it was questionable whether a shorter time-frame

would be adequate to allow newly elected members, especially members elected to fill a casual vacancy, to come to grips with the disclosure regime.¹⁵²

- 3.61** However, the Committee now notes that a majority of Australasian parliaments – the Commonwealth Parliament, the Queensland Parliament, the Victorian Parliament, the South Australian Parliament, the Western Australian Parliament, and the ACT Parliament – all require the lodging of initial returns within 28 – 35 days of a member taking office. In addition, experience in the Council has shown that three months is not required for members to compile and return their returns.
- 3.62** Moreover, the Committee believes that if the Register of Disclosures is to be published on the Council's website as the Committee suggests, there is an argument for ensuring that the information it contains is up to date and not three months old.

The timing of ordinary and supplementary ordinary returns

- 3.63** Under the current system of primary, ordinary and supplementary ordinary returns, members are required to fully disclose all their pecuniary interests every six months, albeit with an opportunity for members to lodge a discretionary return at any time. This has the disadvantage that members are required to re-report interests previously disclosed, with all 42 members of the Council required to fill out the relevant form every six months. For those members whose interests do not change regularly, this system is cumbersome and unduly burdensome.
- 3.64** In its 2006 Review of the Members' Code of Conduct, the Committee made the following comment on the proposal to implement ordinary and supplementary ordinary returns:
- ... a requirement to make full disclosure every six months is likely to result in considerable duplication between successive returns and to place a much greater burden on members than is currently the case. Further, the usefulness of supplementary returns is likely to be diminished in view of the doubling of the frequency of mandatory returns. It is also relevant to note that, if the time for lodging primary returns is maintained at three months as is suggested above, there may be very little time between the member's primary return and the first six monthly return.¹⁵³
- 3.65** The Committee also notes that the current requirements for the completion of the supplementary ordinary return forms are somewhat confusing: members are required to complete a supplementary ordinary return form for the period 1 July to 31 December, a period that is subsequently captured in the next ordinary return period as well.
- 3.66** The alternative to these arrangements for ordinary and supplementary ordinary returns every six months is 'exception reporting'. This is discussed below.

¹⁵² Legislative Council, Privileges Committee, *Review of the Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, Report 35, October 2006, pp 8 – 9.

¹⁵³ *Ibid*, pp 9-10

Exception reporting

- 3.67** Exception reporting was also examined in the Committee's 2006 Review of the Members' Code of Conduct.¹⁵⁴ Exception reporting generally requires members to submit a one-off primary return at the beginning of a Parliament or their term in office, and then to provide updates to that primary return as they occur, but without the need for full disclosure of all their pecuniary interests every six and 12 months. Typically, exception reporting requires a member to report changes to his or her primary return within a set number of days – generally 28 or 35 days – of the change occurring.
- 3.68** The advantage of exception reporting is that it enables the Register of Disclosures to be kept up to date without the cumbersome requirement for full disclosure by members of all their pecuniary interests every six and 12 months. For those members whose interests do not change regularly, a system of exception reporting is clearly less onerous than the current arrangements.
- 3.69** The disadvantage of a system of exception reporting is that it is potentially more onerous for those members whose interests do change regularly, as they would need to keep track of changes reported in previous updates to their primary return, which may mean keeping records over the course of up to four years. For others wishing to view a member's disclosures, it means having to trace all the reported changes back to the primary return.
- 3.70** Exception reporting is used in a number of other Australasian parliaments, in some form or another:
- In the Senate, senators must provide a statement of registrable interests within 28 days of making or subscribing an oath or affirmation of allegiance as a senator, and also within 28 days after the first meeting of the Senate after 1 July first occurring after a general election. Any alteration to a senator's registrable interests between those times must be notified to the registrar within 35 days of the change occurring.
 - In the House of Representatives, members must provide a statement of registrable interests within 28 days of making or subscribing an oath or affirmation as a member, and also within 28 days of a new Parliament. Any alteration to a member's registrable interests between those times must be notified to the registrar within 28 days of the change occurring.
 - In the Victorian Parliament, upon taking the oath or affirmation, every member is required to submit a primary return within 30 days. Every member is also required to submit an ordinary return within 60 days of 30 June each year. Members must also notify the Clerk of any changes at any time.
 - In the Queensland Parliament, upon taking an oath or affirmation, each member must provide a statement of the members' registrable interests within one month, with a confirmation of correct particulars within one month of 30 June in each subsequent year. Members are also required to notify any change within one month.
 - In the Western Australian Parliament, members must lodge a primary return within 30 days of being sworn in, and not later than 30 September in each year lodge an annual return listing any information which has not been disclosed in a previous return.

¹⁵⁴ *Ibid*, pp 10-11.

- In the ACT Parliament, members must lodge a declaration of private interests within 28 days of taking an oath or affirmation, and must notify any alteration of those interests within 28 days.
- In the Northern Territory Parliament, members are required to lodge a primary return within 60 days of being sworn, and an ordinary return each year. Members must notify changes within 60 days of the change occurring, unless it takes place after 1 April each year.

3.71 Other Australasian parliaments do not use exception reporting:

- In the Tasmanian Parliament, members must lodge a primary return within three months of taking the oath of allegiance, and must lodge an ordinary return on or before 1 October in any year unless the member's primary return was after 30 April in that year.
- In the South Australian Parliament, members must lodge a primary return within 30 days of taking the oath or affirmation, and an ordinary return within 60 days of 30 June each year. Members may notify the Registrar of any change at any time.
- In the New Zealand Parliament, members must lodge an initial return of pecuniary interests as at the day that is 90 days after taking the oath or affirmation, together with an annual return of pecuniary interests in each year as at 31 January.

3.72 In its 2006 Review of the Members' Code of Conduct, the Committee recommended that if the Government did not implement the draft Constitution (Disclosures by Members) Amendment Regulation 2006, which proposed the implementation of the current system of ordinary and supplementary ordinary returns, then a system of exception reporting should be introduced as a simpler alternative.¹⁵⁵

3.73 Similarly, in its 2006 Review of the Code of Conduct, the Legislative Assembly Privileges and Ethics Committee supported a form of exception reporting with ordinary declarations continuing to be lodged annually, and mandatory updating of the Register by a member within 35 days of a change in the member's interests.¹⁵⁶

Comment

3.74 With the suggested move to place the 'Register of Disclosures by Members of the Legislative Council' on the Council's website, the Committee now recommends that the deadline for the submission of primary returns be reduced from the current three months of a member's swearing in to 35 days. As before, the majority of Australasian parliaments meet this standard, and experience in the Council has shown that three months is not required for members to compile and return their returns. Moreover, a delay in the publication of primary returns on the Parliament's website of over three months would potentially draw the processes of the House into disrepute.

¹⁵⁵ *Ibid*, pp 10-11.

¹⁵⁶ Legislative Assembly, Standing Committee on Parliamentary Privileges and Ethics, *Review of the Proposed Amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 26.

- 3.75** The Committee also recommends that a system of exception reporting be implemented, with notifications of any alterations to be provided to the Clerk within 35 days of the alteration occurring. As before, the Committee is concerned to ensure that if the Register of Disclosures is to be published on the Council's website as the Committee suggests, the information it contains is up to date.
- 3.76** The Committee further notes that members of the Council serve two terms of the Assembly (generally eight years), which is an extended period over which to undertake exception reporting. To overcome this, the Committee proposes that members of the Council be required to lodge an ordinary return within 35 days of the first sitting day of their second Parliament, and any subsequent Parliaments, with exception reporting against the relevant primary/ordinary return as the case may be. This would make reported changes every four years easier to follow, and could potentially be used to align the reporting requirements for Council members with those of Assembly members.
- 3.77** Together, the Committee believes that these steps would greatly increase the transparency of the 'Register of Disclosures by Members of the Legislative Council'. Moreover, such arrangements would be simpler for the vast majority of members who do not have complex financial arrangements.

Recommendation 3

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 as the case may be, to be lodged within 35 days of the alteration occurring.

Protecting the privacy of members and others

- 3.78** A second key issue arising from the proposal to place the 'Register of Disclosures by Members of the Legislative Council' on the Council's website is the protection of the privacy of members and others. As indicated, the Register is currently only available for inspection in the Office of the Clerk. It is also tabled in the House and printed. However, placing the Register on the Council's website would clearly greatly increase public access to the Register, and thereby privacy concerns.
- 3.79** In the past, a particular privacy concern relating to the Register has been the disclosure by members of the specific addresses of their primary and secondary places of residence. However, in 2008, the *Constitution (Disclosures by Members) Regulation 1983* was amended by the *Constitution (Disclosures by Members) Amendment Regulation 2008*. This amendment made a change to clause 8 of the regulation, dealing with the disclosure of real property in which members have an interest, including their principal and secondary places of residence. Under the change, members are now able to identify real property in which they have an interest and which is used as their principal or secondary residence by suburb or area, without the need to specify the postal address or the particulars of title of the property (although it is noted that

some members continue to disclose the postal address or lot title particulars of their place of residence).

- 3.80** This 2008 amendment would appear to have addressed the key privacy issue that members may have held in relation to the publication of the 'Register of Disclosures by Members of the Legislative Council' on the Council's website.
- 3.81** However, there may still be concerns in relation to the privacy of other persons, not being members, whose names and addresses are nevertheless still required to be disclosed in members' returns.
- 3.82** This concern arises principally in relation to persons to whom members may rent a property. Under clause 15 of the *Constitution (Disclosures by Members) Regulation 1983*, members must disclose in Part 8 of an ordinary return (which includes a supplementary ordinary return) the particulars of each disposition of property to a person under arrangements made by the member.
- 3.83** The example listed in the guidance notes to the Ordinary Return form and Supplementary Ordinary Return form is reproduced below.

Example entry only:

Disclosure of 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.

- 3.84** Currently, there are examples where members are listing in their ordinary and supplementary ordinary returns the names and specific addresses of persons to whom they rent a property.
- 3.85** Privacy concerns may also arise in relation to the disclosure of the names and addresses of other persons under other clauses of the *Constitution (Disclosures by Members) Regulation 1983*.
- 3.86** Clause 7(1)(a) of the *Constitution (Disclosures by Members) Regulation 1983* currently defines address to mean:
- (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,
- 3.87** Members are required to disclose the name and address of other persons for the purposes of
- Clause 9 (Sources of income), where an employer is an individual;
 - Clause 10 (Gifts), where the gift giver is an individual;
 - Clause 11 (Contributions to travel), where the contribution was made by an individual;
 - Clause 14 (Debts), where the debt is to an individual; and
 - Clause 15A (Provision of Client Services), where the service provided by a member is to an individual.

- 3.88** There are few, if any, instances of the names and addresses of individuals (as opposed to corporations, companies, trusts and the like) being disclosed under these clauses. Nevertheless, the possibility exists.
- 3.89** The Committee understands that other Australasian parliaments that currently place their pecuniary interest disclosures on the internet generally do not require the disclosure of the names and residential addresses of individuals.
- 3.90** In its response to this issue, Privacy NSW argued in its submission that a cautious approach should be taken to making any information about individuals available on the internet, including possibly the building in of safeguards:

We recognise the public interest in allowing scrutiny of pecuniary interests and we do not suggest that the Regulation proscribe the intended uses of the information, however, we suggest the Regulation could include a requirement for interested parties who wish to access the information via the internet to lodge an on-line application form, requiring a name and a return email address. This would go some way to establishing the bona fides of the interested party and thereby limit the possibility that the information could be used for the purpose vilification or harassment. We also suggest that there be a processing time to allow for consideration not only by the Speaker, the President or their nominated representative, but also for consideration by the applicant prior to using the information.

Further, we suggest that there be consideration given to an amendment similar to that in section 58 of the PPIP Act¹⁵⁷ to allow for consideration of the suppression of certain information not only from on-line access, but also from public inspection, in circumstances where access to the general public might place a Member of Parliament or any other third party at risk of harm. We suggest that this might be effected by requiring the Speaker, the President, or their nominated representative to consider whether the public interest in requiring public access to the information 'outweighs any individual interest in suppressing the information'. We suggest that any such provision to permit suppression should be subject to any other lawful requirement to disclose the information.

Finally, we suggest that any changes to the Register access regime be made very clear to Members of Parliament and to any third parties whose personal information appears in the register. This could possibly take the form of a notification at the commencement of each session of Parliament, followed by a written confirmation of the contents of the register sent to the individual concerned with an opportunity to confirm the information within a set period of time.¹⁵⁸

Comment

- 3.91** With the suggested move to place the 'Register of Disclosures by Members of the Legislative Council' on the Council's website, together with the implementation of a new system of exception reporting, the Committee now recommends that those clauses of the *Constitution (Disclosures by Members) Regulation* that require members to disclose the names and addresses of individuals (as opposed to corporations, trusts, associations, unions and the like) should be amended to provide that individuals should be identified by name and location only (not

¹⁵⁷ *Privacy and Personal Information Protection Act 1998*.

¹⁵⁸ Submission 5, Privacy NSW, pp 2-3.

address). The Committee believes that these are clause 9 (Sources of income), clause 10 (Gifts), clause 11 (Contributions to travel), clause 14 (Debts), clause 15 (Disposition of property) and clause 15A (Provision of Client Services).

3.92 The Committee believes that this approach of removing from pecuniary interest returns all information that may compromise the privacy of individual, be they members of Parliament or citizens, is preferable to the measures advocated by Privacy NSW.

3.93 The Committee believes that further advice is required as to any security and safety issues that may affect members and their families.

Recommendation 4

That in implementing a system of exception reporting incorporating primary, ordinary and alteration of interests returns, those clauses of the *Constitution (Disclosures by Members) Regulation* that require members to disclose the names and addresses of individuals (as opposed to corporations, trusts, associations, unions and the like) should be amended to provide that individuals should be identified by name and location only (not address), subject to satisfactory resolution of any security and safety issues that may affect members and their families.

Authority to publish the Register on the Council's website

3.94 The 'Register of Disclosures by Members of the Legislative Council' is made publicly available under clause 20(1) of the *Constitution (Disclosures by Members) Regulation 1983* which provides that the register shall be open to public inspection at the office of the Clerk between the hours of 10.00 am and 4 pm on any day except Saturday, Sunday or a day which is a public holiday throughout New South Wales.

3.95 Clause 21 in turn provides for the tabling of the Register of Disclosures in the House.

Comment

3.96 While the further publication of the 'Register of Disclosures by Members of the Legislative Council' on the Council's website is presumably consistent with the provisions of clause 20(1) and clause 21(4) of the *Constitution (Disclosures by Members) Regulation 1983*, for abundant caution and the avoidance of any doubt, the Committee believes that the regulation should be amended to provide explicitly for the publication of the Register on the Council's website.

3.97 The Committee also believes that deadlines for the placing of returns on the Council's website following their receipt should be established. The Committee notes that the Senate, which recently moved to place its Register of Senators' Interests on the Senate's website, is proposing that the website be updated weekly.

3.98 The Committee proposes that the recommended new primary and ordinary returns should be published on the website as soon as possible following the deadline for their receipt, but not later than 14 days after the deadline for their receipt; and the recommended new alteration of

interests returns should be published on the website as soon as possible, but not later than 14 days after their receipt.

Recommendation 5

That the *Constitution (Disclosures by Members) Regulation 1983* be amended to provide explicitly for the publication of the Register online, with the Clerk to cause the recommended new primary and ordinary returns to be published on the Council's website as soon as possible following the deadline for their receipt, but not later than 14 days after the deadline for their receipt, and to cause the recommended new alteration of interests returns to be published on the Council's website within 14 days of their receipt.

Other issues concerning the publication of the Register

Copies to be made available on the Council's website in pdf format with watermarks

- 3.99** The Committee is concerned at the potential for the recommended new primary, ordinary and alteration of interests returns, when placed on the Parliament's website, to be downloaded, changed and presented as an original document.
- 3.100** To combat this, the Committee believes that the recommended new primary, ordinary and alteration of interests returns placed on the Council's website should be made available in PDF format only, with a watermark under the text diagonally across the page incorporating the words 'The New South Wales Legislative Council'. This is the approach that has been adopted by the House of Representatives in publishing the pecuniary interest returns of its members online.
- 3.101** This matter can be addressed through administrative processes.

Responsibility for disclosures by members

- 3.102** The Committee notes that in some other parliaments, the Clerk has responsibility to read members' disclosures, and alert them to the unnecessary inclusion of personal details. This is not the current practice in the New South Wales Legislative Council, and it is not proposed to adopt this model. Should the publication of the Register on the Council's website proceed, the Clerk should remind members of recent changes to the disclosure regime and the responsibility of members to ensure their own privacy and the privacy of others. Where the Clerk notices that members have disclosed personal information, the Clerk should notify the member concerned, however ultimately members must take responsibility for their own disclosures.

Tabling the register in the House

- 3.103** As indicated previously, the 'Register of Disclosures by Members of the Legislative Council' is tabled in the House and printed under clause 21 of the *Constitution (Disclosures by Members) Regulation 1983*. Clause 21 provides in part:

- (1) The Clerk of the Legislative Council shall:
- (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.
- ...
- (4) Unless a copy of a register or a copy of part of a register tabled in the Legislative Council or Legislative Assembly is ordered to be printed upon its being tabled, the Clerk of the Legislative Council or the Clerk of the Legislative Assembly, as the case may be, shall cause it to be published as a parliamentary paper by the Government Printer.

- 3.104** Currently, following a Council periodic election, two separate documents, the 'Register of Disclosure by Member of the Legislative Council: Primary Returns' and the 'Register of Disclosure by Member of the Legislative Council: Ordinary Returns', are tabled, printed and made publicly available in the weeks after 1 October. In subsequent years, when there are few if any primary returns received, the two documents are collated.
- 3.105** Supplementary ordinary returns and discretionary returns are not currently tabled in the House. While clause 21(1)(b) could be interpreted as meaning that supplementary ordinary returns and discretionary returns should also be tabled in the House alongside ordinary returns within 21 days of 1 October each year, this is not the interpretation that has been applied, with the result that supplementary ordinary returns and discretionary returns are not tabled in the House. The basis for this is that members must lodge a supplementary ordinary return before 31 March for the period 1 July to 31 December for the previous year. This period is subsequently also captured in the ordinary return period, and therefore there is no need to publish the material twice.

Comment

- 3.106** The Committee notes that the current arrangements for tabling of primary, ordinary, supplementary ordinary and discretionary returns in the House are somewhat confusing and inconsistent. The suggested move to a new system of exception reporting incorporating primary, ordinary and alteration of interests returns will help address this issue.
- 3.107** The Committee recommends that clause 21 of the *Constitution (Disclosures by Members) Regulation 1983* continue to require the Clerk to cause the recommended new primary and ordinary returns to be furnished to the President of the Legislative Council for tabling in the Legislative Council as soon as possible following the deadline for their receipt, but not later than 21 days after the deadline for their receipt.
- 3.108** In relation to the tabling of the recommended new alteration of interests returns, the Committee recommends that these be furnished to the President of the Legislative Council

for tabling in the Legislative Council every six month. The Committee understands that this is the practice in the Senate. The tabling of each alteration of interests returns in the House immediately following their receipt would likely be excessive. Each alteration of interests return would nevertheless be available immediately in the Office of the Clerk for inspection, and be placed on the Council's website within 14 days of its receipt.

Recommendation 6

That clause 21 of the *Constitution (Disclosures by Members) Regulation 1983* continue to require the Clerk to cause the recommended new primary and ordinary returns to be furnished to the President of the Legislative Council for tabling in the Legislative Council as soon as possible following the deadline for their receipt, but not later than 21 days after the deadline for their receipt. In addition, the Clerk is to cause the recommended new alteration of interests returns to be furnished to the President of the Legislative Council for tabling in the Legislative Council every six months.

Final comment on the publication of the Register of Disclosures on the Council's website

- 3.109** The Committee believes that following the implementation of Recommendations 3 – 6 incorporating changes to the timing and types of pecuniary interest returns submitted by members, protection of the privacy of members and others, and the authority to publish the Register on the Council's website, that the 'Register of Disclosures by Members of the Legislative Council' should be placed on the Council's website. A new page should be created on the Council's website under the link to 'Members' entitled 'Register of Disclosures'.
- 3.110** It is not proposed to place members' past returns on the Council's website due to privacy and other concerns.
- 3.111** Amendments to the *Constitution (Disclosures by Members) Regulation 1983* to authorise the publication of the 'Register of Disclosures by Members of the Legislative Council' on the Council's website need to incorporate transitional arrangements to ensure that returns submitted before the implementation of the recommendations in this report remain accessible under existing arrangements.

Recommendation 7

That following the implementation of Recommendations 3 – 6 incorporating changes to the timing and types of pecuniary interest returns submitted by members, protection of the privacy of members and others, and the authority to publish the Register on the Council's website, that the 'Register of Disclosures by Members of the Legislative Council' should be placed on the Council's website. A new page should be created on the Council's website under the link to 'Members' entitled 'Register of Disclosures'. Transitional arrangements should also be incorporated maintaining existing access arrangements to returns already lodged by members under the existing regime.

Chapter 4 **The educative function of the Privileges Committee concerning members' ethics**

This chapter examines the statutory role of the Committee in relation to educative work concerning ethical standards applying to members of the Legislative Council. It includes a number of recommendations for the development of resource materials for the induction programs being prepared for incoming members following the March 2011 election and for the conduct of follow-up information sessions for both new and continuing members.

The Committee's statutory role and previous approach

4.1 As indicated in Chapter 1, under section 72C(1)(b) of the *Independent Commission Against Corruption Act 1988* and the resolution of the House establishing the Privileges Committee, the functions of the Committee include:

to carry out educative work relating to ethical standards applying to members of the Legislative Council.

4.2 Since the enactment of section 72C in 1994, the Committee has been less active in pursuing the educative function than other functions conferred by the Act, such as the drafting of codes of conduct (under section 72C(1)(a)), or reviewing the code adopted by the House (under section 72C(5)).

4.3 To date it has mainly fallen to the Clerks to conduct training for members in relation to ethical conduct, generally at the induction of new members at the commencement of a new Parliament.

Development of new resource materials for members

Summary of ICAC findings in respect of members' conduct

4.4 The Independent Commission Against Corruption has been in operation for more than 20 years. In that time the Commission has reported to Parliament on 14 investigations concerning the conduct of members of Parliament.

4.5 Two recurring themes in these reports have been the use (or misuse) of entitlements (dealt with in six reports), and lobbying, either of or by members (dealt with in three reports).

4.6 The Committee considers that it would be worthwhile for the Clerk, in consultation with the Commissioner of the Independent Commission Against Corruption, to produce a publication which draws together the observations and lessons contained in those reports and any relevant corruption prevention work undertaken by the Commission during the last 20 years. The publication should not identify members by name.

4.7 Such a publication would be a helpful addition to the induction material that is provided to new members in relation to the Code of Conduct and related matters. Even though there will

be a range of opinions about the findings and recommendations of the Independent Commission Against Corruption in its reports on investigations concerning members of Parliament, such a document would, at the very least, assist in ensuring members are aware of the sorts of matters that have been the subject of Commission investigations and the nature of the findings the Commission has made in respect of those matters.

- 4.8** Such a publication could also draw upon case studies from other Australian jurisdictions which have independent investigative agencies which produce reports to their parliaments about the conduct of members of Parliament. These bodies include the Crime and Misconduct Commission in Queensland and the Western Australian Corruption and Crime Commission, each of which has tabled a number of reports concerning the conduct of members.

Recommendation 8

That the Clerk, in consultation with the Commissioner of the Independent Commission Against Corruption, produce a publication summarising the lessons from the investigations concerning the conduct of members of Parliament upon which the Commission has reported to Parliament since its establishment, as a resource for use in future ethical education for new and continuing members. The publication could also draw upon reports by similar bodies in other Australian jurisdictions. The publication should not identify members by name.

Case studies from the UK and Scottish Standards Committees

- 4.9** The House of Commons and House of Lords (UK) and the Scottish Parliament have broadly similar systems in place in relation to the conduct of members.
- 4.10** Each respective House has a position of Parliamentary Commissioner for Standards, the incumbent of which, amongst other things, is charged with the provision of advice to members about the interpretation of the applicable code of conduct and the investigation of complaints concerning members' alleged breaches of the code.
- 4.11** Where an investigation has been conducted, the Parliamentary Commissioner for Standards reports to the parliamentary committee of the relevant House. The Commissioner's findings of fact form the starting point for the relevant parliamentary committee's consideration of the member's conduct. The committee subsequently reports the outcome of its deliberations to the House, including, where appropriate, a recommendation as to the sanction which the committee believes is appropriate.
- 4.12** It must be noted that the relevant standards as set out in the applicable codes of conduct in the UK House of Commons, House of Lords and the Scottish Parliament are not the same as the standards set out in the Code of Conduct for Members of the New South Wales Parliament. Caution is therefore required in drawing direct lessons from UK and Scottish case studies.
- 4.13** Nevertheless, the Committee believes that there would be considerable merit in the drawing together of such case studies, since they deal with 'real life' scenarios. Furthermore, the outcomes of each matter, with the findings of fact of the Standards Commissioners, in effect

the subject of review by a parliamentary committee, have the advantage of having a practitioner's perspective applied before a final finding is made and any sanction recommended.

- 4.14** The information thereby collected could be a helpful addition to the induction material that is provided to new members in relation to the Code of Conduct and related matters. The publication should not identify members by name.
- 4.15** It should also be noted that the Joint Select Committee on Parliamentary Procedure recently recommended that, in the new Parliament, the Privileges Committees of both Houses consider the merits of the appointment of a Parliamentary Integrity Commissioner. It may be that the models considered in such a review would include the UK House of Commons and Scottish Parliament's Standards Commissioners and the relevant parliamentary committees that consider the reports of the Standards Commissioners.

Recommendation 9

That the Clerk produce a publication drawing together case studies in relation to the conduct of members of Parliament, based upon the public reports of the UK and Scottish Parliamentary Standards Commissioners and the relevant parliamentary committees that consider the reports of the Standards Commissioners. The publication should not identify members by name.

Future education seminars for members

- 4.16** As part of their induction program each new member of the Council receives a copy of the Code of Conduct for Members and resource material in relation to their pecuniary interest disclosure requirements (including copies of the relevant forms). One of the initial induction sessions for newly elected members involves the Clerk or Deputy Clerk briefing members on the Code of Conduct, providing relevant examples by way of elucidation and an opportunity for the new members to ask questions about the Code. This briefing session is held for all newly elected members of the Legislative Council as a group, and forms one session in a two-day induction program.
- 4.17** It is understood that consideration is also being given to the development of an on-line training module in relation to the Code of Conduct to be completed by newly elected members following the March 2011 periodic election.
- 4.18** One-off seminars or briefing sessions are conducted for continuing members. For example, a series of seminars were held in relation to major changes in the administration of members' entitlements in 2009.
- 4.19** However, during the course of this review, the Committee has identified scope for more frequent seminars or briefings for both newly elected and continuing members about the Code of Conduct and related issues. This aligns with one of the current strategic directions of the Department of the Legislative Council to support members and their staff through the delivery of appropriate training programs, which is now supported by a dedicated procedural research and training team within the Department.

4.20 Suggestions for future seminar topics include:

- Any changes in members' entitlements (particularly focusing upon any changes in the 'guidelines or rules' for the use of those entitlements in view of clause 4 of the Code of Conduct);
- Any lessons or recurring themes emerging from the program of internal audit of members' use of their entitlements conducted by Deloitte, which commenced in 2009; and
- Any changes in the pecuniary interest disclosure requirements following changes in the *Constitution (Disclosures by Members) Regulation 1983*.

4.21 The Parliamentary Ethics Adviser, Mr Ian Dickson, also suggested that the Auditor-General, Ombudsman and the Independent Commission Against Corruption should be invited to present to members at least twice during the length of a Parliament on ethical standards:

With cultural views having conflicting ethical standards this area remains a difficult concept for educators and members. While the general public has various concepts there are issues for those who take on public life that should be understood. These include the expectations of the public for members to do the right thing, and to act in the interests of their constituents above family members and friends.

These attitudes or expectations may best be outlined by representatives of Departments playing a more formal role in corruption, public actions and having regard to proper accounting procedures. These expectations and the effects of the actions and decisions by members could best be represented by the Auditor General, Ombudsman and the Independent Commission Against Corruption citing actual examples with outcomes. It is suggested that the Committee considers that at least on two occasions in the life of the Parliament presentations be made by these officers to members.¹⁵⁹

Recommendation 10

That the Clerk arrange a program of regular seminars and briefings for both newly elected and continuing members in relation to issues concerning the Code of Conduct, members' pecuniary interest disclosure requirements and other relevant issues concerning ethical conduct. Such seminars and briefings may incorporate presentations from the Auditor-General, the Ombudsman, and the Commissioner of the Independent Commission Against Corruption.

Development of a fraud and corruption risk assessment and control plan**4.22** In addition to the internal audit of members' use of their entitlements referred to above, conducted by Deloitte, the Parliament also engages Deloitte as its internal auditor generally. As part of their internal audit contract Deloitte has recently completed a fraud and corruption risk assessment and control plan in relation to risks pertaining to employees of the Parliament. Deloitte are currently working on a similar fraud and corruption risk assessment and control

¹⁵⁹ Mr Ian Dickson, Parliamentary Ethics Adviser, *Submission*, pp 1-2.

plan in relation to risks pertaining to members of Parliament. It is understood that once this plan is in a final draft form it will be circulated to members for feedback to ensure that it captures all relevant risks and existing controls and that the recommendations for additional new controls are realistic and appropriate. Feedback may be collected either directly in written form or by way of seminars for groups of Members. Members will no doubt find this plan informative and its circulation will, in effect, be another form of ethics education for members.

Appendix 1 Submissions

No	Author
1	Confidential
2	The Public Interest Advocacy Centre
3	Mr Ian Dickson, Parliamentary Ethics Adviser
4	The Independent Commission Against Corruption
5	Privacy NSW

Appendix 2 Code of Conduct for Members of the Legislative Council

Resolution of the Legislative Council 21 June 2007:

1. That this House adopt, for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*, the following code of conduct:

PREAMBLE

- The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.
- Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate has the right to dismiss them from office at regular elections.
- Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.
- Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.

THE CODE

1 Disclosure of conflict of interest

- (a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.
- (b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.
- (c) 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 Bribery

- (a) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which the Member has received, is receiving or expects to receive.

- (b) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive:
- (i) a member of the Member's family;
 - (ii) a business associate of the Member; or
 - (iii) any other person or entity from whom the Member expects to receive a financial benefit.
- (c) A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct.

3 Gifts

- (a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.
- (b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to improperly influence the Member in the exercise of his or her duties.
- (c) Members may accept political contributions in accordance with part 6 of the Election Funding Act 1981.

4 Use of public resources

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

5 Use of confidential information

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.

6 Duties as a Member of Parliament

It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.

7 Secondary employment or engagements

Members must take all reasonable steps to disclose at the start of a parliamentary debate:

- (a) the identity of any person by whom they are employed or engaged or by whom they were employed or engaged in the last two years (but not if it was before the Member was sworn in as a Member);
- (b) the identity of any client of any such person or any former client who benefited from a Member's services within the previous two years (but not if it was before the Member was sworn in as a Member); and
- (c) the nature of the interest held by the person, client or former client in the parliamentary debate.

This obligation only applies if the Member is aware, or ought to be aware, that the person, client or former client may have an interest in the parliamentary debate which goes beyond the general interest of the public.

This disclosure obligation does not apply if a Member simply votes on a matter; it will only apply when he or she participates in a debate. If the Member has already disclosed the information in the Member's entry in the pecuniary interest register, he or she is not required to make a further disclosure during the parliamentary debate.

2. That this resolution has continuing effect unless and until amended or rescinded by resolution of the House.

Appendix 3 Minutes

Note: Asterisks indicate text which has been omitted as not relevant to the current inquiry

Minutes No. 19

Tuesday 20 April 2010

Members' Lounge, Parliament House at 6.21 pm

1. **Members present**

Ms Griffin (*Chair*)

Miss Gardiner (*Deputy Chair*)

Mr Donnelly

Mr Harwin

Revd Mr Nile

Mr Veitch

Mr West

In attendance: David Blunt, Stephen Frappell, Jenelle Moore.

2. **Confirmation of minutes of previous meetings**

Resolved, on the motion of Ms Gardiner: That minutes no. 18 be confirmed.

3. *******

4. **New inquiry – Review of the Members' Code of Conduct 2010**

The Committee noted that under section 72C(5) of the *Independent Commission Against Corruption Act 1988* and paragraph 2(c)(iv) of the resolution of the House establishing the Committee, the Committee is required to review the Members' Code of Conduct at least every four years. As the last review was in 2006, the Committee is due to conduct a new review this year.

The Committee also noted that it had previously resolved to review, as part of the four-yearly review of the Code of Conduct, the disclosure of partners' interests under the *Constitution (Disclosures by Members) Regulation 1983*.

The Committee considered briefing material on the proposed conduct of the inquiry prepared by the secretariat.

Resolved, on the motion of Ms Gardiner:

1. That the Committee adopt an inquiry into the Code of Conduct for Members , together with aspects of the pecuniary interest disclosure regime for members under the *Constitution (Disclosures by Members) Regulation 1983*.
2. That the Committee adopt the proposals for the conduct of the inquiry developed by the secretariat.

That the Committee report the inquiry to the House.

5. *******

6. Adjournment

The Committee adjourned at 6.35 pm *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 20

Wednesday 12 May 2010

Members' Lounge, Parliament House at 1.05 pm

1. Members present

Ms Griffin (*Chair*)

Miss Gardiner (*Deputy Chair*)

Mr Donnelly

Mr Harwin

Revd Mr Nile

Mr Veitch

Mr West

In attendance: David Blunt, Stephen Frappell.

2. Confirmation of minutes of previous meetings

Resolved, on the motion of Revd Mr Nile: That minutes no. 19 be confirmed

3. ***

4. Review of the Members' Code of Conduct 2010

The Committee considered a draft public discussion paper on the issues arising as part of this inquiry.

Resolved, on the motion of Revd Mr Nile: That the Committee adopt the public discussion paper, that the Committee Chair be authorised to write to the parties listed below to invite submissions, and that the parties listed be provided with a copy of the public discussion paper:

- members of the Legislative Council,
- the Leader of the Government in the Legislative Council,
- the Leader of the Opposition in the Legislative Council,
- the Government Whip in the Legislative Council,
- the Opposition Whip in the Legislative Council,
- the Nationals Whip in the Legislative Council,
- Cross-bench representatives in the Legislative Council,
- the Department of Premier and Cabinet;
- the Parliamentary Ethics Adviser,
- the ICAC Commissioner,
- the Auditor General,
- the Parliamentary Ethics Adviser,
- the NSW Privacy Commissioner,
- NSW Council for Civil Liberties,
- the Public Interest Advocacy Centre,
- the Presiding Officers in other Parliaments,
- the NSW Council of Churches,

- the Law Society of NSW,
- the NSW Bar Association.

5. *****

6. **Adjournment**

The Committee adjourned at 1.32 pm *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 21

Thursday, 13 May 2010

Waratah Room, Parliament House at 3.02 pm

1. **Members present**

Ms Griffin (*Chair*)

Miss Gardiner (*Deputy Chair*)

Mr Veitch

In attendance: David Blunt, Stephen Frappell.

The following members and staff of the Western Australian Legislative Assembly Procedure and Privileges Committee were also present:

Hon Grant Woodhams (*Chair*)

Hon Fran Logan

Mr Michael Sutherland

Mr Frank Alban

Mr Peter McHugh (Advisory Officer and Clerk of the Western Australian Legislative Assembly)

Dr Julia Lawrinson (Principal Research Officer)

2. ***

3. **Adjournment**

The Committee adjourned at 4.00 pm *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 22

Thursday 20 May 2010

Members' Lounge, Parliament House at 1.05 pm

1. **Members present**

Ms Griffin (*Chair*)

Miss Gardiner (*Deputy Chair*)

Mr Donnelly

Mr Harwin

Revd Mr Nile

Mr Veitch

In attendance: David Blunt, Stephen Frappell, Velia Mignacca.

2. Apologies

Mr West

3. Confirmation of minutes of previous meetings

Resolved, on the motion of Mr Veitch: That minutes no. 20 and 21 be confirmed.

4. ***

5. Review of the Members' Code of Conduct 2010

The Committee noted that the Legislative Assembly Privileges and Ethics Committee had sought the agreement of the Privileges Committee for the Chairs of the two Committees to write jointly to parties to be invited to make a submission to the review, as previously identified by the Privileges Committee. The Chair of the Privileges Committee would continue to write exclusively to members of the Council concerning the inquiry.

The Committee deliberated.

Resolved, on the motion of Mr Harwin: That the Committee Chair be authorised to write jointly with the Chair of the Legislative Assembly Privileges and Ethics Committee to the heads of the agencies listed below inviting them to make a submission to the review, and providing them with a copy of the Privileges Committee's public discussion paper:

- the Department of Premier and Cabinet
- the Parliamentary Ethics Adviser
- the ICAC Commissioner
- the Auditor General
- the NSW Privacy Commissioner
- the NSW Council for Civil Liberties
- the Public Interest Advocacy Centre
- other Australian Parliaments
- the NSW Council of Churches
- the Law Society of NSW
- the NSW Bar Association.

6. Adjournment

The Committee adjourned at 1.06 pm *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 23

Tuesday 22 June 2010

Members' Lounge, Parliament House at 6.42 pm

1. Members present

Ms Griffin (*Chair*)

Miss Gardiner (*Deputy Chair*)
 Mr Harwin
 Mr Veitch
 Mr West

In attendance: David Blunt, Stephen Frappell.

2. **Apologies**

Mr Donnelly
 Revd Mr Nile

3. *******

4. **Confirmation of minutes of previous meetings**

Resolved, on the motion of Mr Harwin: That minutes no. 22 be confirmed.

5. **Correspondence**

The Committee noted the following item of correspondence received and sent:

Correspondence received:

- Letter dated 15 June from the Hon Jenny Lindell, Speaker of the Victorian Legislative Assembly, in relation to the Review of the Code of Conduct for Members of the New South Wales Parliament. Ms Lindell has requested that the submission be kept confidential.

Correspondence sent:

- Various letters from the Chair (and in some cases also the Chair of the Legislative Assembly Privileges and Ethics Committee) seeking submissions to the Review of the Code of Conduct for Members of the New South Wales Parliament. Letters were sent to the following:
 - All members of the Legislative Council (including members in their capacity as the Leader of the Government in the Legislative Council, the Leader of the Opposition in the Legislative Council, the Government Whip in the Legislative Council, the Opposition Whip in the Legislative Council, and the Deputy Opposition Whip in the Legislative Council)
 - Senator the Hon John Hogg, President of the Senate
 - Mr Harry Jenkins MP, Speaker of the House of Representatives
 - The Hon Barry House MLC, President of the WA Legislative Council
 - The Hon Grant Woodhams MLA, Speaker of the WA Legislative Assembly
 - The Hon Lyn Bruer, Speaker of the SA House of Assembly
 - The Hon Bob Sneath MLC, President of the SA Legislative Council
 - The Hon Susan Smith MLC, President of the Tasmanian Legislative Council
 - The Hon Michael Polley MP, Speaker of the Tasmanian House of Assembly
 - The Hon Jenny Lindell MP, Speaker of the Victorian Legislative Assembly
 - The Hon Robert Smith MLC, President of the Victorian Legislative Council
 - The Hon John Mickel MP, Speaker of the Queensland Legislative Assembly
 - Mr Shane Rattenbury MLA, Speaker of the ACT Legislative Assembly
 - The Hon Jane Aargaard MLA, Speaker of the NT Legislative Assembly
 - Mr Peter Achterstraat, Auditor-General
 - Ms Robin Banks, CEO, Public Interest Advocacy Centre
 - Mr Tom Bathurst QC, President, NSW Bar Association
 - Mr Ian Dickson, Parliamentary Ethics Adviser
 - The Hon David Ipp AO QC, Commissioner of the ICAC

- Ms Mary Macken, President, Law Society of NSW
- Mr Cameron Murphy, President, NSW Council for Civil Liberties
- Mr Brendan O'Rielly, Director General, Department of Premier and Cabinet
- Judge K V Taylor AM, Privacy Commissioner, Privacy NSW
- Revd Bruce Thornton, Secretary, NSW Council of Churches

6. ***

7. **Adjournment**

The Committee adjourned at 6.45 pm *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 24

Thursday 9 September 2010

Members' Lounge, Parliament House at 1.06 pm

1. **Members present**

Ms Griffin (*Chair*)

Miss Gardiner (*Deputy Chair*)

Mr Donnelly

Mr Harwin

Revd Mr Nile

Mr Veitch

Mr West

In attendance: David Blunt, Stephen Frappell.

2. **Confirmation of minutes of previous meetings**

Resolved, on the motion of Mr Donnelly: That minutes no. 23 be confirmed.

3. ***

4. **Inquiry – Review of the Members' Code of Conduct 2010**

The Committee noted the receipt of the following five submissions:

- Submission 1: Confidential
- Submission 2: The Public Interest Advocacy Centre
- Submission 3: Mr Ian Dickson, Parliamentary Ethics Adviser
- Submission 4: The Independent Commission Against Corruption
- Submission 5: Privacy NSW.

Resolved, on the motion of Revd Mr Nile: That Submission No 1 be kept confidential.

Resolved, on the motion of Revd Mr Nile: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submissions No. 2 to 5.

5. ***

6. Adjournment

The Committee adjourned at 1.19 pm *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 25

Wednesday 22 September 2010

Members' Lounge, Parliament House at 2.16 pm

1. Members present

Ms Griffin (*Chair*)

Miss Gardiner (*Deputy Chair*)

Mr Donnelly

Mr Harwin

Revd Mr Nile

Mr Veitch

Mr West

In attendance: Stephen Frappell, Velia Mignacca.

2. Confirmation of minutes of previous meetings

Resolved, on the motion of Mr Harwin: That minutes no. 24 be confirmed.

3. *****4. Adjournment**

The Committee adjourned at 2.29 pm *sine die*.

Stephen Frappell

Director

Minutes No. 26

Thursday 11 November 2010

Parkes Room, Parliament House at 1.10 pm

1. Members present

Ms Griffin (*Chair*)

Miss Gardiner (*Deputy Chair*)

Mr Donnelly

Revd Mr Nile

Mr Veitch

Mr West

In attendance: David Blunt, Stephen Frappell.

2. Apologies

Mr Harwin

3. ***

4. Confirmation of minutes of previous meetings

Resolved, on the motion of Mr Donnelly: That minutes no. 25 be confirmed.

5. ***

6. Inquiry – Review of the Members' Code of Conduct 2010

The Clerk provided the Committee with an update on the drafting of the Chair's draft report on the 2010 Review of the Code of Conduct, together with two proposals in relation to the issue of ethics training for members which could be adopted by the Committee in its report.

Resolved, on the motion of Ms Gardiner: That the proposals for ethics training for members developed by the Clerk be incorporated in the Chair's Draft Report on the 2010 Review of the Code of Conduct for further discussion by the Committee.

7. Adjournment

The Committee adjourned at 2.00 pm *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 27

Tuesday 30 November 2010

Members' Lounge, Parliament House at 6.37 pm.

1. Members present

Ms Griffin (Chair)

Miss Gardiner (Deputy Chair)

Mr Donnelly

Mr Harwin

Revd Mr Nile

Mr Veitch

Mr West

In attendance: David Blunt, Stephen Frappell.

2. Confirmation of minutes of previous meeting

Resolved, on the motion of Mr Donnelly: That minutes no. 26 be confirmed.

3. Inquiry – Review of the Members' Code of Conduct 2010

The Chair tabled her draft report entitled Review of the Code of Conduct 2010, which, having been previously circulated, was taken as being read.

The Committee deliberated.

Introduction read.

Resolved on the motion of Mr Donnelly: That Recommendations 8 and 9 be amended to insert the following final sentence: 'The publication should not identify members by name.'

Chapter 1 read.

Resolved on the motion of Mr Veitch: That Chapter 1 be adopted

Chapter 2 read.

Resolved on the motion of Revd Mr Nile: That Chapter 2 be adopted.

Chapter 3 read.

Resolved on the motion of Ms Gardiner:

- That the following paragraph be inserted after paragraph 3.92: ‘The Committee believes that further advice is required as to any security and safety issues that may affect members and their families.’
- That Recommendation 4 be amended to insert after ‘(not address)’: ‘, subject to satisfactory resolution of any security and safety issues that may affect members and their families.’

Resolved on the motion of Mr Donnelly: That Chapter 3, as amended, be adopted.

Chapter 4 read.

Resolved on the motion of Mr Donnelly: That the paragraphs preceding Recommendations 8 and 9 be amended to reflect the amendments to Recommendations 8 and 9, as previously adopted.

Resolved on the motion of Mr Harwin: That Chapter 4, as amended, be adopted.

Chair’s foreword read.

Resolved, on the motion of Mr Harwin:

- That the report, as amended, be the report of the Committee and be presented to the House.
- That pursuant to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 223, the Committee authorises the publication of all submissions, correspondence and minutes.

The Chair thanked members of the Committee and the Committee Secretariat for their contribution to the work of the Privileges Committee throughout the 54th Parliament. The Committee noted in particular the work of Ms Velia Mignacca on this inquiry.

Members of the Committee thanked the Chair for her leadership of the Committee throughout the 54th Parliament.

4. Adjournment

The Committee adjourned at 6.55 pm *sine die*.

David Blunt
Clerk to the Committee