

Privileges Committee

**Review of Members' Code of  
Conduct and draft  
Constitution (Disclosures by  
Members) Amendment  
Regulation 2006**

Tabled according to Standing Order 231

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## Terms of Reference

Section 72C(5) of the *Independent Commission Against Corruption Act 1988 (NSW)* provides that a designated committee is to review the Members' Code of Conduct at least once every four years. The Legislative Council has resolved that the Privileges Committee is the "designated committee" for these purposes.<sup>1</sup>

On 8 June 2006 the Legislative Council, in response to a request from the Legislative Assembly, passed the following resolution:

1. That the Privileges Committee inquire into and report on:
  - (a) the draft Constitution (Disclosure by Members) Regulation 2006, tabled in the House on 7 June 2006, in accordance with section 14A (5) of the Constitution Act 1902,
  - (b) the draft amendments to the Code of Conduct for members of the Parliament, tabled in the House on 7 June 2006.
2. That the committee, in conducting the review under paragraph 1(a), in addition to considering supplementary returns, give consideration to the feasibility of reporting changes to pecuniary interests by "exception reporting".
3. That the committee consult with the Clerk of the House to ensure a streamlined process is introduced for updating the pecuniary interests register.
4. That the committee report to the House by 3 October 2006.
5. That this House informs the Legislative Assembly that, under standing order 219 of the Legislative Council, the Privileges Committee has the power to join together with any committee of the Legislative Assembly to take evidence, deliberate and make joint reports on matters of mutual concern.<sup>2</sup>

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<sup>1</sup> *Minutes of the Proceedings of the Legislative Council*, No. 2, Wednesday 24 May 1995, entry 21(2)7; No 4, Tuesday 25 May 1999, entry 12(4)8; No. 20, Thursday 4 September 2003, entry 4 as amended by resolution 1 June 2004, No. 57, entry 3

<sup>2</sup> *Minutes of Proceedings of the Legislative Council*, No. 7, Thursday 8 June 2006, entry 20

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Australian Labor Party

The Hon Patricia Forsythe MLC *Deputy Chair* (to 19 September 2006)<sup>3</sup>

Liberal Party

The Hon Jenny Gardiner MLC *Deputy Chair* (from 19 September 2006)

The Nationals

The Hon Amanda Fazio MLC

Australian Labor Party

The Hon Kayee Griffin MLC

Australian Labor Party

The Hon Don Harwin MLC (from 19 September 2006)

Liberal Party

Revd The Hon Fred Nile MLC

Christian Democratic Party (Fred Nile Group)

The Hon Penny Sharpe MLC

Australian Labor Party

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<sup>3</sup> Replaced as a member of the Committee by the Hon Don Harwin MLC (*Minutes of the Proceedings of the Legislative Council*, No. 14, 19 September 2006, entry 8)

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## Chair's Foreword

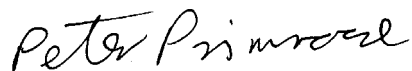
In this inquiry, the Committee examined draft amendments to the members' Code of Conduct and a draft Regulation concerning members' pecuniary interests which were tabled in Parliament by the Government earlier this year. It also undertook a periodic review of the Code of Conduct, pursuant to the *Independent Commission Against Corruption Act 1988*.

The stated aim of the Government's proposals is to strengthen the current requirements relating to the disclosure of members' secondary employment and prevent conflicts of interest arising from such employment, in line with recommendations by the ICAC in 2003. The Committee's report expresses support for that aim, but also identifies a number of areas in which the Committee considers the proposals could lead to difficulties in practice because of undue complexity or lack of clarity in the provisions.

On behalf of the Committee I would like to thank all organisations and individuals who made submissions to the inquiry. I would also like to thank the Government for making available to the Committee representatives of the Cabinet Office for the purpose of a briefing on the intended effects of the draft provisions.

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.

Finally, I would like to place on record my sincere appreciation for the work of the former Deputy Chair of the Committee, Patricia Forsythe, who left the Committee and Parliament in the last stages of this inquiry, having served as a member of the Committee since 2000 and Deputy Chair since 2001.



Hon Peter Primrose MLC

**Chair**



## Summary of Recommendations

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That primary returns be required within three months of taking the pledge of loyalty.	9
<b>Recommendation 2</b>	<b>11</b>
That, if the Government chooses not proceed with the draft Regulation, a system of exception reporting should be introduced as a simpler alternative.	11
That this system of exception reporting should specify the time limit in which changes must be reported by the member to the Clerk for inclusion in the pecuniary interests register.	11
That exceptions should be reported against the primary return of the member, with a requirement for each member to submit an ordinary return at the start of each Parliament.	11
<b>Recommendation 3</b>	<b>12</b>
That clause 15A of the draft Regulation not be implemented in its present form, and that any redrafting avoid the complexity and lack of clarity of the current proposal.	12
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That any decision to make the pecuniary interest register available on line be on the basis that any detail which could be used to identify the member's residential address be blocked from public access for reasons of safety and privacy.	15
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That the additional paragraph proposed by the Government to the Preamble to the Code of Conduct be supported.	19
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That the word "accordingly" be omitted from paragraph three of the existing Preamble to the Code of Conduct.	19
<b>Recommendation 7</b>	<b>22</b>
That if the proposed clause 2 of the Code of Conduct is adopted, the word "serious" should be omitted and replaced with the word "substantial" so as to clarify its relationship to "corrupt conduct" under section 9 (1) (d) of the <i>ICAC Act</i> .	22
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That the Government enact a statutory codification of the privileges and immunities of both Houses of the NSW Parliament in a similar form to the <i>Parliamentary Privileges Act 1987</i> (Cth).	28



# Chapter 1 Introduction

## Establishment of inquiry

- 1.1 Under section 72C (5) of the *Independent Commission Against Corruption Act 1988* the Committee is required to review the Code of Conduct at least every four years. The last review was in 2002.<sup>4</sup> In April 2006 the Committee commenced a new review by seeking submissions from key stakeholders in relation to the Code. Before the Committee had deliberated on the submissions received, however, events in the House arose which impacted on the further conduct of the review.
- 1.2 Specifically, on 25 May 2006, a message was received from the Legislative Assembly advising that it had referred an inquiry to its Committee on Parliamentary Privilege and Ethics concerning a draft Regulation on members' pecuniary interests, the Constitution (Disclosures by Members) Amendment Regulation 2006, and certain draft amendments to the Code of Conduct. The message also requested that the Legislative Council establish an inquiry in similar terms.
- 1.3 On 7 June 2006 the draft Regulation and draft amendments to the Code were tabled in the Legislative Council by the Leader of the House (copies at Appendices 1 - 2). The following day the House agreed to a motion by the Government referring an inquiry to this Committee in the terms proposed (terms of reference at p. iv).
- 1.4 Following receipt of the new reference, the Committee resolved to consider the submissions already received in relation to the review in light of the matters referred by the House, and to conduct a combined inquiry incorporating both the review and the reference from the House. The tabling of this report therefore discharges the Committee's statutory responsibility to review the Code as well as providing advice to the House in its deliberations on the proposed changes to the Code.

## Conduct of inquiry

- 1.5 In April 2006 the Committee sought submissions to its statutory review of the Code, as noted earlier. A list of the submissions received is provided at Appendix 3.
- 1.6 In July 2006, following receipt of the new terms of reference, the Committee sought further submissions in relation to the draft Regulation and amendments to the Code (see Appendix 3). It also wrote to the Leader of the Government inviting comment on the intended purpose of the draft Regulation and amendments to the Code, in view of the fact that both draft documents had been referred to the Committee without explanation or debate.
- 1.7 On 13 September 2006, following an invitation by the Leader of the Government, the Committee met with representatives of the Cabinet Office to be briefed in relation to the draft Regulation and amendments to the Code. Prior to that meeting the Committee also met with representatives of the Western Australian Legislative Assembly Procedure and Privileges

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<sup>4</sup> NSW Legislative Council, Standing Committee on Parliamentary Privilege and Ethics, Report 22, *Report on review of the Members' Code of Conduct*, December 2002

Committee on 11 August 2006 and discussed aspects of a similar inquiry into pecuniary interests being conducted by that Committee.

- 1.8 During the course of the inquiry, the Committee also considered the recommendations of the Legislative Assembly's Committee on Privilege and Ethics, which reported on its inquiry concerning the draft Regulation and amendments to the Code on 1 September 2006.<sup>5</sup> The Committee notes that it would be desirable for any changes to the Code of Conduct to be adopted by both Houses.

### **Structure of report**

- 1.9 Chapter 2 outlines recent developments relating to the regulation of members' conduct in New South Wales which are relevant to the review of the Code and provide background to some of the issues addressed in the draft Regulation and amendments to the Code.
- 1.10 Chapter 3 considers the draft Regulation.
- 1.11 Chapter 4 considers the draft amendments to the Code and certain other suggested changes to the Code raised in submissions to the inquiry.

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<sup>5</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the Proposed Amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006

## Chapter 2      Recent developments concerning members' conduct

Since the last review of the Code in 2002 there have been a number of developments concerning the regulation of members' conduct in New South Wales which are relevant to the current statutory review and provide context for the draft provisions which have been referred by the House. The main developments have been reports by the Independent Commission Against Corruption (ICAC) recommending changes to aspects of the regulatory regime or to provisions of the Code of Conduct; and an independent review of the *Independent Commission Against Corruption Act 1988* (the ICAC Act).

### ICAC reports

#### Regulation of members' secondary employment

- 2.1      In September 2003 the ICAC reported to the Legislative Assembly in relation to the regulation of members' secondary employment (that is, employment outside Parliament), in response to a resolution by that House.<sup>6</sup> The resolution had been passed following the revelation that a member had been engaged by a well-known consultancy firm to provide consultancy services in relation to "public affairs", and the raising of concerns as to whether the member had asked questions in Parliament as part of that consultancy.
- 2.2      The report made 14 recommendations for reform which provide a framework for the regulation of members' employment in the field of "public affairs", as well as measures to promote greater transparency when dealing with conflicts of interest arising from external engagements of any kind. The general approach which underpins the recommendations is the use of disclosure, rather than prohibition, as the key regulatory tool (although prohibition is recommended for some activities).
- 2.3      Many of the recommendations of the ICAC's report concern changes to the system for disclosing members' interests, or the Code of Conduct, although others concern questions of implementation or enforcement. Regarding enforcement, consideration was given to options for investigating breaches of the Code where the relevant conduct is protected by parliamentary privilege. Two possible options were identified in that regard: amending the ICAC Act to allow Parliament to waive privilege for matters referred to the ICAC by resolution of the House; or the appointment by Parliament of an officer to conduct investigations on a case by case basis.

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<sup>6</sup> ICAC, *Regulation of secondary employment for members of the NSW Legislative Assembly*, September 2003

## Conduct of individual members

- 2.4 Since the last review, the ICAC has conducted three investigations concerning the conduct of individual members: the Hon Malcolm Jones MLC (2003), the Hon Richard Face MP (2004), and the Hon Peter Breen MLC (2004).<sup>7</sup>
- 2.5 While each of the investigations had its own particular focus reflecting the circumstances of the case, they all involved the member's use of parliamentary entitlements or allowances, and were at least partly underpinned by clause 4 of the Code, that is:

### 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.

- 2.6 Two of the cases (the investigations into Jones and Face) resulted in findings of "corrupt conduct" on the basis of a breach of clause 4, as well as conduct which could constitute or involve a criminal offence. In the first the ICAC's findings and recommendations ultimately led to the member's resignation from the House,<sup>8</sup> while in the second the member had already retired by the time of the ICAC report.
- 2.7 In the remaining case (Breen) no corrupt conduct was found, although the execution of a search warrant on the member's office during the course of the investigation led to a dispute between the ICAC and the House concerning the relationship between the ICAC's statutory powers and the requirements of parliamentary privilege. The dispute was ultimately resolved for the purposes of that case by the implementation of a procedure which provided for the House to determine whether any of the material seized under the warrant was immune from seizure as a result of such privilege. However, the privilege issues raised by the case were the subject of consideration in a later review of the Act (see below). They also led to the referral of a further inquiry to this Committee concerning the development a draft protocol for the execution of search warrants on members' offices in future.<sup>9</sup>

## ICAC Act review and amendment

- 2.8 In November 2004 the Government commissioned an independent review of the ICAC Act to determine whether the terms of the Act remain appropriate for securing its objectives. The review was begun by the Hon Jerrold Cripps QC and completed by Mr Bruce McClintock SC in January 2005.<sup>10</sup>

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<sup>7</sup> There was a fourth investigation in 2005, concerning a current Minister in the Assembly, but in that case the Code of Conduct was not considered.

<sup>8</sup> Following the ICAC's report a number of notices of motion were given in the Legislative Council for the member's expulsion from the House, but before any of the motions had been moved the member resigned.

<sup>9</sup> See NSW Legislative Council, Privileges Committee, Report 33, *Protocol for execution of search warrants on members' offices*, February 2006

<sup>10</sup> McClintock, B, SC, Independent review of the *Independent Commission Against Corruption Act 1988, Final Report*, January 2005

- 2.9** The review resulted in a wide-ranging set of recommendations for reform. These included amendments to the Act requiring the ICAC to direct its attention to corruption which is “serious or systemic” when exercising its functions, and to include consideration of the potential for prejudice and privacy infringements when determining whether to conduct a public inquiry. Another important recommendation was for the establishment of the office of Inspector of the ICAC, to assess the appropriateness of the ICAC’s procedures and deal with any complaints of abuse of power or misconduct, which was intended to address gaps in the ICAC’s accountability for the use of its coercive powers under the Act.
- 2.10** A number of the issues addressed in the review specifically concern members of Parliament and/or parliamentary privilege:
- difficulties with the interpretation of section 9(4)-(5) of the Act relating to the nature of “corrupt conduct”,<sup>11</sup> which led to a recommendation that the section be amended to clarify the circumstances in which the definition applies to Ministers and members<sup>12</sup>
  - tension between the role of the ICAC as part of the Executive in enforcing parliamentary standards and the principle of parliamentary sovereignty, which led to a recommendation supporting the establishment of a parliamentary investigator or committee to investigate minor matters involving members, or allegations of corruption that the ICAC is unable to investigate because of parliamentary privilege<sup>13</sup>
  - application of parliamentary privilege in the case involving the execution of the search warrant on the office of Mr Breen, which led to an expression of support for the development of an appropriate protocol.<sup>14</sup>
- 2.11** Many of the recommendations made in the review were subsequently put into effect by the *Independent Commission Against Corruption Amendment Act 2005*. Those relating to members of Parliament or parliamentary privilege, however, were not adopted. In particular, as was pointed out in the second reading speech on the bill, the recommendation for clarification of the circumstances in which the ICAC may investigate members or Ministers was not implemented, nor was the establishment of a Parliamentary investigator.<sup>15</sup> The lack of clarity on this issue has important consequences for both Houses if the proposed changes to the Code which are the subject of this review are introduced. Recommendation 9 of this report suggests a preferred response to the current ambiguity.

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<sup>11</sup> Section 9 (4)-(5) establish a ground of “corrupt conduct” for conduct of a Minister or member that would bring the office concerned or Parliament into serious disrepute and which otherwise constitutes a breach of the law apart from the ICAC Act

<sup>12</sup> McClintock, B, SC, Independent review of the *Independent Commission Against Corruption Act 1988, Final Report*, January 2005, 4.4, pp 61-65

<sup>13</sup> Ibid, 5.7, pp 86-101

<sup>14</sup> Ibid, pp 108-113

<sup>15</sup> *Hansard*, Legislative Council, 2 March 2006, p 14,411

## Chapter 3     Draft Regulation

The draft Regulation which has been referred to the Committee proposes a range of amendments to the Constitution (Disclosures by Members) Regulation 1983 which governs the disclosure of members' interests in New South Wales. This chapter outlines the main features of the current Regulation, the key changes proposed by the draft Regulation, and the issues which the Committee believes should be taken into account with regard to those changes. Consideration is also given to further proposed changes to the Regulation suggested in a submission to the Committee's inquiry from a member of the House.

### Current Regulation

- 3.1 Members are required to lodge a primary return within three months of taking the oath or affirmation of office under section 12 of the *Constitution Act 1902*,<sup>16</sup> and an ordinary return by 1 October each year. A return must be lodged even if no interests are to be disclosed (showing "nil").
- 3.2 There is no provision for the lodging of supplementary returns to take account of changes occurring between return dates or to correct inadvertent errors or omissions. However, where members notify the Clerk of changes to their returns, it is the practice for the relevant correspondence from the member to be kept with the member's return.
- 3.3 The information to be disclosed in returns includes: interests in real property; sources of income; gifts over \$500; contributions to travel over \$250; interests or positions in corporations; positions in trade unions or professional or business associations; debts; and dispositions of property. Other benefits, advantages or liabilities may also be disclosed, whether pecuniary or not, at the member's discretion.
- 3.4 The forms to be used for returns are set out in a schedule to the Regulation and must be lodged with the Clerk of the House. The Clerk is responsible for compiling and maintaining a register of all returns lodged within the previous eight years.
- 3.5 The register is open for public inspection at the office of the Clerk during specified hours. Further, within 21 sitting days of the date for the lodging of ordinary returns, the Clerk is required to furnish to the Presiding Officer for tabling in the House that part of the register which has not previously been tabled.
- 3.6 Section 14A (2) of the *Constitution Act 1902* provides that if any member "wilfully contravenes" the Regulation, the House may declare the member's seat vacant. There has never been a case in which a member's seat has been so declared. However, in 2002 the Legislative Council referred an inquiry to this Committee to determine whether a member had "wilfully contravened" clause 12 of the Regulation by failing to disclose interests and positions in corporations. The Committee concluded that the member had made errors in his returns but that the errors were not "wilful contraventions" of the Regulation and that no sanction

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<sup>16</sup> In 2006 section 12 was amended to require a pledge of loyalty instead of an oath or affirmation, but the Regulation has not yet been updated to reflect this change.



could be recommended.<sup>17</sup> It later went on to recommend that the Regulation be amended to make provision for supplementary returns.<sup>18</sup>

## Key changes proposed

3.7 A full copy of the draft Regulation is provided at Appendix 2. The key amendments are:

- Primary returns to be lodged within 1 month of pledge of loyalty as opposed to three months from oath or allegiance of office as at present.
- Ordinary returns to be lodged every six months by 31 March and 30 September as opposed to the current annual return.
- Provision for supplementary returns.
- Greater disclosure relating to income received from services provided to third parties including:
  - nature of actual services provided by member
  - name and address of member's employer, partnership, or person from whom income was or will be derived.
- Further additional disclosure where a member engages in secondary employment or other contractual arrangements involving use of their parliamentary position, including:
  - description of business carried out by member's employer
  - details of clients of employer who benefit from member's services and business of such clients.
- New forms to cater for expanded disclosure requirements.
- Provision for a parliamentary committee or committees to issue or approve guidelines concerning the completion of forms from time to time.

3.8 The amendments proposed by the draft Regulation are largely in response to recommendations made by the ICAC in its report on secondary employment in 2003,<sup>19</sup> although not all changes favoured by the ICAC have been picked up.<sup>20</sup> The stated aim of the Government is to enhance public confidence in members of Parliament in NSW by imposing more rigorous disclosure with regard to such employment.<sup>21</sup>

<sup>17</sup> NSW Legislative Council, Standing Committee on Parliamentary Privilege and Ethics, Report 20, *Report on inquiry into the pecuniary interests register*, October 2002

<sup>18</sup> NSW Legislative Council, Standing Committee on Parliamentary Privilege and Ethics, Report 21, *Report on inquiry into the pecuniary interests register; supplementary returns*, December 2002

<sup>19</sup> The Hon John Della Bosca MLC, Leader of the Government in the Legislative Council, Submission, 14 August 2006, p 1

<sup>20</sup> The changes not addressed in the draft Regulation are noted in the submission from the Hon John Della Bosca MLC at p 4 (see Appendix 4 to this Report).

<sup>21</sup> The Hon John Della Bosca MLC, Submission, p 1

## Consideration of draft Regulation

- 3.9** The Committee supports the principle of greater disclosure with regard to members' secondary employment and the enhancement of measures to prevent conflicts of interest arising from outside engagements, particularly in view of the investigations into former and current members outlined in Chapter Two of this Report. In that context, it accepts the desirability of amending the existing Regulation in areas where greater transparency is required.
- 3.10** The Committee is concerned, however, that as currently proposed the draft Regulation includes a number of measures which do not appear to have been properly thought through and which may have unintended consequences in practice, as well as a number of provisions which are overly complex and unclear. These concerns are important because, to the extent that provisions of the Regulation are uncertain or unworkable, the aim of preventing the misuse of a member's parliamentary position is less likely to be achieved, and the opportunities for inadvertent errors in the Register are increased. Moreover, in view of the potential consequences of a breach of the Regulation, rather than raising public confidence in the members and institution of Parliament, the introduction of such complex measures could have the opposite effect.
- 3.11** The areas in which the Committee's concerns arise are considered in turn below.

### Timing of primary returns

- 3.12** As noted earlier, the draft Regulation proposes to shorten the period for lodging primary returns from three months of taking the oath of allegiance to one month from the pledge of loyalty. This change is presumably intended to enhance the currency and accuracy of the Register from the earliest possible date. It is also in line with a proposal by the ICAC for continuous reporting of changes to members' interests within one month of any change.
- 3.13** It is questionable, however, whether the proposed time frame will be adequate to allow newly elected members to become sufficiently familiar with the complexities of the disclosure regime, given that at the same time they are also being required to come to grips with an array of other complex but essential information via the induction process. This includes the requirements of constitutional disqualifications (failure to observe which could result in the member losing their newly acquired seat), the standing orders and other procedural rules (awareness of which is essential if the member is to function in the House), myriad rules and restrictions relating to the use of the member's parliamentary resources (breach of which can lead to the application of the Code of Conduct and involvement of the ICAC), as well as more practical issues such as the process of recruiting suitable staff.
- 3.14** The proposed time frame may also be inadequate to allow a proper transition from positions held by members outside Parliament, which they fully intend to relinquish to focus on their parliamentary role.<sup>22</sup> This could result in primary returns commonly containing information which may soon become out of date.

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<sup>22</sup> For instance, many organisations do not have monthly meetings at which resignations can be accepted, so it can take up to three months for members to effectively resign from an organisation.

- 3.15** While such concerns are applicable to all new members they are especially relevant in the case of members filling casual vacancies, as there may be very little time between a casual vacancy arising and the vacancy being filled. For example, the time between the vacancy arising and the member taking the pledge of loyalty can be as little as 7 days.
- 3.16** The Committee received one submission which commented specifically on this issue from the Parliamentary Ethics Advisor, Mr Ian Dickson. That submission suggested that “the existing period of 3 months be retained to ensure as far as possible that the Return is understood and completed with accuracy”.<sup>23</sup> Mr Dickson has experience of the practical issues faced by members of Parliament in seeking to comply with their obligations under the Regulation and other ethical rules, having held the position of Ethics Advisor since 1999.
- 3.17** Several Australian Parliaments, including the Senate, currently have a one month reporting requirement,<sup>24</sup> and the Legislative Assembly in its report supported a 35 day requirement.<sup>25</sup> However the Committee also notes that the House of Commons (UK) has a requirement for interests to be lodged within 3 months of a member’s election.<sup>26</sup>
- 3.18** The Committee notes there are valid arguments for a shorter reporting requirement but on balance supports maintenance of a requirement of three months.

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### Recommendation 1

That primary returns be required within three months of taking the pledge of loyalty.

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### Subsequent returns

#### *As proposed by draft Regulation*

- 3.19** Following the submission of a primary return, the draft Regulation proposes that members would be required to lodge an ordinary return every six months. There would also be provision for voluntary supplementary returns where changes occur between return dates. This process would clearly improve the currency and accuracy of the Register in comparison to the current system of annual returns. Further, the fact that supplementary returns are to be voluntary introduces an element of flexibility.
- 3.20** It should be noted, however, that 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

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<sup>23</sup> Mr Ian Dickson, Submission, 11 August 2006, p 2

<sup>24</sup> The Hon Nick Griffiths MLC, President, Legislative Council of Western Australia, Submission, 22 August 2006, p 1 (30 days from being sworn); Senator Ruth Webber, Chair, Committee of Senators’ Interests, Submission, 16 August 2006 (28 days from first meeting of Senate)

<sup>25</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 26

<sup>26</sup> House of Commons, *The Code of Conduct together with The Guide to the Rules relating to the conduct of Members*, 2005, p 11, paragraph 11

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.

**3.21** The Legislative Assembly's Committee on Parliamentary Privilege and Ethics has recommended that the current requirement of full annual disclosures be maintained, but supplemented with mandatory updates to the Register within 35 days of a change, instead of the process proposed by the draft Regulation.<sup>27</sup> This suggestion has the benefit of overcoming the cumbersome process of full disclosures every six months. However, the 35 day limit for updates may prove difficult for some members in practice, especially during certain phases of the parliamentary cycle when members' activity is particularly intense.

### ***"Exception reporting"***

**3.22** Paragraph 2 of the terms of reference for the Committee's inquiry states:

That the committee, in conducting the review [of the draft Regulation], in addition to considering supplementary returns, give consideration to the feasibility of reporting changes to pecuniary interests by "exception reporting".

**3.23** "Exception reporting" involves the reporting by members of changes to their primary return since it was lodged, without any re-reporting of interests already disclosed. Typically, it involves reporting the change within a set number of days of the change occurring. The process can be contrasted with both the current Regulation, where full disclosure is required every year, and the draft Regulation, where full disclosure is required every six months, albeit with provision for updates between such disclosures by voluntary supplementary returns.

**3.24** The advantage of exception reporting is that it enables the Register to be kept up to date without the cumbersome combination of full disclosures, with supplementary disclosures between return dates. As such, it allows those members whose interests change regularly to update their entries in the register without bringing the majority of members whose interests change very rarely into the time consuming process of regular returns.

**3.25** On the other hand, for those members whose interests do change regularly, a requirement to report changes within a specified time may be even more onerous than a system of regular full disclosures, and the process of identifying current interests as against a previous return may prove time-consuming in itself. Further, while the process ensures that members' disclosures are kept up to date, if another member, or journalist, or member of the public wishes to ascertain the current status of a member's interests, it is necessary to trace all the reported changes back to the primary return, which may mean going back eight years.<sup>28</sup>

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<sup>27</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 26

<sup>28</sup> In those circumstances it may be necessary for the Clerk responsible for maintaining the register to prepare consolidated entries on the register for each member based upon the exception reports to assist in ensuring the register accurately reflects members' interests. However, for members with complex financial interest this puts the Clerk in a position that is more appropriate to the accountant of the member – in effect the Clerk would be preparing the member's supplementary return based upon the reported changes.

- 3.26** Despite these difficulties, however, exception reporting offers a simple and straightforward alternative for the vast majority of members who do not have complex financial arrangements. Further, it is used by a number of Australian Parliaments, in some form or other, as well as in the House of Commons (UK) (see Appendix 6). It was also supported by the three submissions to the Committee's inquiry which specifically commented on the issue, from the ICAC,<sup>29</sup> the Parliamentary Ethics Advisor,<sup>30</sup> and Ms Lee Rhiannon.<sup>31</sup>
- 3.27** If exception reporting were to be introduced for the Legislative Council, however, consideration would need to be given to incorporating procedures to overcome the complexities of reporting changes during an 8 year term. This could be addressed by including a requirement for reporting changes against the member's primary return for the first four years of their term, followed by the lodging of an ordinary return at the start of the next Parliament, and the reporting of all subsequent changes against that ordinary return. This procedure would make reported changes easier to understand in context, and would align the reporting requirements for Council members with the four year term of Assembly members.
- 3.28** The Committee also believes that consideration would need to be given to choosing a realistic timeframe within which members would be required to report, which may be longer than one month of the change occurring, but not more than three months.

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## Recommendation 2

That, if the Government chooses not proceed with the draft Regulation, a system of exception reporting should be introduced as a simpler alternative.

That this system of exception reporting should specify the time limit in which changes must be reported by the member to the Clerk for inclusion in the pecuniary interests register.

That exceptions should be reported against the primary return of the member, with a requirement for each member to submit an ordinary return at the start of each Parliament.

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## Details of income and secondary employment

- 3.29** Clauses 7A, 9(2)(a), 9(2A), and 15A of the draft Regulation propose far-reaching changes to the current provisions relating to the disclosure of income and employment, particularly in the case of employment or engagements involving the use of a member's parliamentary position (such as lobbying or advising on public affairs). Under the proposed regime, for example, in some circumstances a member would be required to disclose not only the nature of the business conducted by their employer (or another party<sup>32</sup> with whom the member had

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<sup>29</sup> The Hon Jerrold Cripps QC, ICAC Commissioner, Submission, 18 August 2006, p 1

<sup>30</sup> Mr Ian Dickson, Submission, 11 August 2006, p 2. Mr Dickson expressed support for either exception reporting or supplementary returns.

<sup>31</sup> Ms Lee Rhiannon MLC, Submission, 14 August 2006, p 1

<sup>32</sup> This does not refer to a political party

contracted), but details of any clients of that employer (or other party) who had benefited from the member's services and a description of the business of those clients.

- 3.30** The aim of such provisions is presumably to prevent a member misusing their parliamentary position by imposing stricter transparency, in a way which more accurately reflects the intricacies of many modern commercial relationships. Payment for services rendered may be by way of benefits to third parties, which allows corruption to take forms other than a straightforward exchange of reward directly to the member.
- 3.31** The excessive complexity of the measures proposed in the draft Regulation, however, and the strikingly convoluted manner in which they are drafted, together with the frequent use of language which is vague or otherwise unclear, raise the question of whether such provisions are in fact capable of achieving that aim. Indeed, when the particular nature of the provisions is taken into account, the Committee questions whether the more likely effect of their adoption would be to expand the range of technicalities and potential loopholes on which a member deliberately setting out to avoid their obligations may seek to rely, while increasing the likelihood of the majority of members being innocently caught by attempting to comply.
- 3.32** The concerns outlined above are particularly evident in the case of draft clause 15A ("Provision of client services"), which is characterised by contorted syntax, excessive reliance on dependent clauses and internal cross-references, and six paragraphs of definitions (see subclauses (1)-(4) and (6)-(7)). The definition paragraphs are complex enough in themselves. However the effect is exacerbated by the fact that the reader has no knowledge of the context in which the definitions are to operate until paragraph 5, as the four paragraphs of complex definitions appear before the substantive paragraph of the clause which sets out the obligation imposed.
- 3.33** The Committee notes that the Legislative Assembly Committee on Parliamentary Privilege and Ethics also raised concerns with clause 15A in particular, to the extent that it referred to the need for legal advice to be made available to members to understand their legal requirements under the Regulation.<sup>33</sup>
- 3.34** Given the extensive nature of the substantive changes proposed by the amendments and the lack of clarity of many aspects, the Committee has serious concerns with regard to this part of the draft Regulation. When combined with the requirement for six monthly reporting, the Committee believes that adoption of such amendments is likely to provide a minefield of traps and obstacles for even the most careful of members.

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### Recommendation 3

That clause 15A of the draft Regulation not be implemented in its present form, and that any redrafting avoid the complexity and lack of clarity of the current proposal.

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<sup>33</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 21

## Forms

- 3.35** The draft Regulation includes new forms for members' returns to take account of the changes proposed in the disclosure requirements (see draft Schedule 1). However, the Government has informed the Committee that in its view the new forms remain unduly complex, and require clarification.<sup>34</sup> The Committee endorses that view.
- 3.36** The Legislative Assembly Committee has made certain recommendations with regard to the forms, including that they should not be included in a schedule to the Regulation but should be devised by the Committee in consultation with the Clerk thereby enabling the format to be adjusted if necessary.<sup>35</sup> This Committee has no objection to the forms being part of the Schedule but would urge the Government to consult with the Clerks of each House before finalising changes to the forms and would be pleased to review a draft of the revised forms prior to their introduction. The Committee believes it is too early for the Clerks to be consulted at the current stage given the concerns expressed regarding the drafting of the Regulation.

## Submission from Ms Lee Rhiannon

- 3.37** Ms Rhiannon provided a detailed submission to the Committee in relation to the Regulation, in which she suggested extending the Regulation into a number of new areas, such as:
- declaration of pecuniary interests of the spouse, partner or dependent children of a member
  - disclosure of hospitality
  - extension of the disclosure of income from partnerships, trusts, investments and assets
  - declaration of organisations for which members hold voluntary positions or which members or their spouse, partner or dependent child make contributions.

A copy of Ms Rhiannon's submission showing the proposed amendments is provided at Appendix 5.

<sup>34</sup> The Hon John Della Bosca MLC, Submission, p 3

<sup>35</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 27

- 3.38** The Committee feels, however, that the widening of the pecuniary interests register to include the interests of a spouse, partner or dependent children is too onerous and intrusive on members' families. In the case of a spouse or partner it makes a member responsible for lodging a return for another adult who has not chosen to stand for Parliament and who may have an active professional or business life which is kept separate and confidential from their partner for the very reason of avoiding any conflict of interest. The Committee does not believe the spouse, partner or dependent children of a member should be viewed as if their interests were one and the same, nor that partners and dependent children should be brought into the public spotlight against their will. Extension of the Regulation in this way would potentially intrude into private family relationships and discourage individuals from standing for Parliament if their partner had active professional or business careers.
- 3.39** The other extension of disclosure requirements, many of which incorporate the requirement to disclose the activities of partners and spouses, are also not supported by the Committee. For instance, Ms Rhiannon has not explained the need for a member to declare, for example, the names of any organisation to which the member, their spouse, partner or dependent child contributes more than \$300, and the Committee believes this would be just one further reporting requirement which is more appropriate to the area of private tax returns rather than public broadcast.

### **Public Access to the Register**

- 3.40** A related question which has arisen during the course of the inquiry is the issue of public access to the Register. Currently, the Register is available for public inspection at the office of the Clerk and published periodically. However, the ICAC has supported making the register available as an electronic database which members could access easily to make updates, and placing the Register on the internet.<sup>36</sup> The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics has recommended that the register for their members be available on the Parliament's website, as is the case for the House of Commons. However, it has also recommended that for reasons of safety and privacy the Regulation should be amended to require the disclosure of the location of real property by town or suburb, rather than postal address or particulars of title.<sup>37</sup>
- 3.41** Putting the register on line makes it immediately accessible to a much wider, indeed worldwide, audience than its current physical location. This brings with it accompanying problems when the register contains personal details such as the home address of the member, information which is generally protected for reasons of privacy and the personal safety of the member.
- 3.42** This Committee supports the view that the postal address or other particulars of title should not be required to be disclosed, but instead a more general identifier such as the suburb or town. Few Parliaments require members to make available to the public their home address in the way that is currently expected (see Appendix 7). The ICAC, in its submission, also

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<sup>36</sup> The Hon Jerrold Cripps QC, ICAC Commissioner, Submission, 18 August 2006, p 3

<sup>37</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 22



recognised that privacy issues should be considered, such as blocking the street address, if the register was made available on the internet.

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#### **Recommendation 4**

That any decision to make the pecuniary interest register available on line be on the basis that any detail which could be used to identify the member's residential address be blocked from public access for reasons of safety and privacy.

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### **Conclusion**

- 3.43** In this chapter the Committee has raised a number of concerns about the proposed Regulation. Given there are concerns that the draft Regulation in its original form may lead to unintended complexities for members, the Committee believes the Regulation should be redrafted with the aim of greater simplicity and does not support further amendments which make reporting requirements more onerous and complex.

## Chapter 4 Code of Conduct

This chapter considers the draft amendments to the Code of Conduct which have been proposed by the Government, as well as certain other proposed changes to the Code which were raised in submissions received by the Committee. It also discusses aspects of the interrelationship between the Code and parliamentary privilege.

### Overview of Code and Government amendments

- 4.1** The Code of Conduct was first adopted by resolution of the Legislative Council in 1998 and was readopted the following year with continuing effect. The resolution expressly stated that the Code was adopted for the purposes of section 9 of the ICAC Act. Section 9 defines “corrupt conduct” as including any substantial breach of a code of conduct adopted by a House of Parliament for the purposes of the Act (section 9(1)(d) and (3)).
- 4.2** The Code consists of a Preamble and six clauses which concern conflicts of interest, bribery, gifts, use of public resources, use of confidential information, and duties as a member of Parliament. The draft amendments propose a new paragraph in the Preamble, various changes to the bribery provision, and a new provision requiring the disclosure in Parliament of a member’s secondary employment or engagements.
- 4.3** Like the changes to the Regulation considered in Chapter 3 of this Report, the amendments have been proposed largely in response to the ICAC’s report on secondary employment in 2003.<sup>38</sup> Their aim, according to the Government’s submission to the Committee’s inquiry, is to “enhance the public’s confidence that members are acting in the best interests of their constituents, despite any secondary employment”, and to “prevent members from advancing in Parliament the interests of persons outside of Parliament with whom they have business relationships”.<sup>39</sup>
- 4.4** The proposed amendments (underlined) are shown below in the context of the Code. Each individual amendment is then considered in turn.

#### 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 is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.
- 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.

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<sup>38</sup> The Hon John Della Bosca MLC, Submission, p 3. See also statement by Premier in Legislative Assembly foreshadowing the draft amendments: *Hansard*, Legislative Assembly, 28 March 2006, p 21,542.

<sup>39</sup> *Ibid*

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

## THE CODE

### 1 Disclosure of conflict of interest

- 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.
- 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.
- 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

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 reward, direct or indirect, which the Member, any member of his or her family, a business associate of the Member or any other person or entity from whom the Member expects to receive a financial benefit has received, is receiving or expects to receive** or any other personal financial benefit.

**A breach of the prohibition on bribery constitutes a serious breach of this Code of Conduct.**

### 3 Gifts

- 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.
- Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the Member in the exercise of his or her duties.
- 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 any proceedings in Parliament to which they intend to contribute (other than by voting only) the identity of any person (natural or corporate) who employs or engages the Member (or who has employed or engaged the Member in the previous two years), and the identity of any client or former client of any such person who benefited from the Member's services within the previous two years, and the nature of the interest of the person and any client or former client in the proceedings if:

- (i) the Member is aware, or ought to be aware, that the person, client or former client might have an interest in the proceedings beyond the interest of persons generally; and
- (ii) the Member's entry in the Register of Pecuniary Interests does not at the time of the start of the proceedings disclose the identity of the person, the client or the former client (as applicable) and the nature of their interest in the proceedings.

This resolution has continuing effect unless and until amended or rescinded by resolution of the House.

## New paragraph in Preamble

- 4.5 The introduction of the proposed provision was recommended by the ICAC in its report on secondary employment (2003) and report on the conduct of the Hon Peter Breen MLC (2004). In support of the provision, the ICAC argued that a statement of public duty should underpin the framework for regulating all parliamentary standards,<sup>40</sup> that the Code currently lacks a statement of ethical values as opposed to practices,<sup>41</sup> and that similar statements have been adopted by the House of Commons (UK) and Scottish Parliament.<sup>42</sup> In addition to these rationales, the Government has advised that in its view the adoption of the provision would “enhance the public's confidence that members are acting in their interests and not those of their employers”.<sup>43</sup>
- 4.6 The main issues which arose during the Committee's inquiry with regard to this provision concerned the relationship between the provision and other aspects of the Code, rather than the value of the provision itself. The Parliamentary Ethics Adviser, Mr Ian Dickson, submitted that the provision could be seen as conflicting with clause 6 of the Code (“Duties as a Member of Parliament”), although he also indicated that he not seen any detailed statements of such perceived conflict.<sup>44</sup>
- 4.7 The Auditor-General, Mr Bob Sendt, by contrast, was strongly of the view that the draft provision should *replace* the existing second paragraph of the Preamble (which acknowledges that the electorate is the final arbiter of members' conduct), as that paragraph could be read as implying that the re-election of a member who is alleged to have breached the Code means that the electorate has arbitrated favourably on the issue. He further argued that in the third paragraph of the Preamble, the word “accordingly” could imply that members only

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<sup>40</sup> ICAC, *Regulation of secondary employment for members of the NSW Legislative Assembly*, September 2003, p 67

<sup>41</sup> ICAC, *Report on investigation into the conduct of the Hon. Peter Breen MLC*, December 2004, pp 53-54

<sup>42</sup> ICAC, *Regulation of secondary employment for members of the NSW Legislative Assembly*, September 2003, p 67

<sup>43</sup> The Hon John Della Bosca MLC, Submission, p 4

<sup>44</sup> Mr Ian Dickson, Submission, p 1

acknowledge their responsibility to maintain the public trust because they can be dismissed at an election.<sup>45</sup>

- 4.8** The Legislative Assembly Committee on Parliamentary Privilege and Ethics has adopted the suggestions of the Auditor General by recommending a version of the Preamble in which the word “accordingly” is deleted, and the second paragraph is replaced by the Government’s draft provision (with the exception of “constituents” which the Committee considers is encapsulated in “people of New South Wales”).<sup>46</sup>
- 4.9** The Committee has no objection to the recommendation of the Auditor-General to delete “accordingly” from the existing preamble, nor to the proposed additional paragraph by the Government. However it does not support the deletion of the existing paragraph two. It is undesirable to delete the existing statement that includes the phrase that the electorate has the right to dismiss members from their office at regular elections. In any case the Preamble has limited legal significance compared to the actual clauses of the Code.

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### Recommendation 5

That the additional paragraph proposed by the Government to the Preamble to the Code of Conduct be supported.

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### Recommendation 6

That the word “accordingly” be omitted from paragraph three of the existing Preamble to the Code of Conduct.

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## Clause 2

### “Knowingly or improperly”

- 4.10** This expression was first suggested by the Legislative Assembly’s Standing Ethics Committee in 2002, when recommending the extension of the prohibition on bribery to cover third party benefits.<sup>47</sup> The Government’s submission reflects that context, stating that: “[t]he 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”.<sup>48</sup>

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<sup>45</sup> Mr Bob Sendt, Auditor-General, Submission 14 July 2006, p 1

<sup>46</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, pp 5, 13

<sup>47</sup> NSW Legislative Assembly, Standing Ethics Committee, *Review of the Code of Conduct*, June 2002, p 17. The version of the clause recommended by the Committee in that Report was adopted by the Legislative Assembly on 25 March 2006.

<sup>48</sup> The Hon John Della Bosca MLC, Submission, p 5

- 4.11** However, in a submission to the Committee's inquiry, the Auditor-General argued that the inclusion of "knowingly" is unnecessary as the clause is already expressed to apply where the member acts "in return for" a payment which implies knowledge of that payment. He also argued that it is difficult to envisage circumstances in which the conduct referred to in the clause could be other than "improper", and that if there are any circumstances envisaged they should be spelt out as an exception rather than addressed in the manner proposed.<sup>49</sup>
- 4.12** While these objections have validity, the Committee received further information concerning the intended purpose of the amendment at a briefing from officers from the Cabinet Office. At that briefing, the Committee was advised that the intention of the amendment is to make it clear that, to be caught by the clause, a member must have had either actual knowledge of the benefit, or some other form of improper intention such as wilful blindness, and that it is insufficient if the member for example merely suspects that a benefit will result. In that context, it appears that the amendment is intended to indicate the *level* of awareness which is required before a member can be found to have acted "in return for" the benefit.
- 4.13** In its report on the draft amendments, the Legislative Assembly Committee on Parliamentary Privilege and Ethics supports the inclusion of "knowingly", as a statement of the mental element which must be established before a breach of the clause can be found. However, it does not support the inclusion of "improperly", on the basis of the Auditor-General's concerns.<sup>50</sup>
- 4.14** As a result of its briefing with officers of the Cabinet Office responsible for assisting in the preparation of the amended Code, the Committee is now able to understand the intent of the drafters in regard to "knowingly or improperly". The Committee is not however confident that this interpretation will be apparent to a member who reads the clause unguided. This is certainly a difficulty with the phrasing of the amendment.

### **Definition of the benefit**

- 4.15** As it currently stands, clause 2 prohibits a member from promoting a matter in Parliament in return for "payment or any other personal financial benefit". The draft amendments propose to replace that expression with a much wider definition of the benefit. The new definition encompasses "rewards" as well payments (which may potentially include non-financial rewards); benefits which are direct "or indirect"; benefits which are past, present, or future; and benefits received by a specified third party as opposed to the member themselves (that is, a family member, business associate, or other person or entity from whom the member expects to receive a financial benefit).
- 4.16** There are some concerns about the definition of the benefit. The Auditor-General has argued that the words following "direct or indirect", while well-intentioned, are confusing and possibly ambiguous, and should be replaced by a separate paragraph as follows:

An indirect benefit might arise in a number of ways, including:

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<sup>49</sup> Mr Bob Sendt, Auditor-General, Submission 14 July 2006, p 1

<sup>50</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 16

- (a) a member of the Member's family has received, or [is] receiving or expects to receive a benefit
- (b) a business associate of the Member or the person or entity receives a benefit, and the Member receives or expects to receive a benefit in turn.<sup>51</sup>

4.17 He has also suggested that following “remuneration, fee, payment or reward” the words “or benefit in kind” should be added, in line with the equivalent provision in the House of Commons, to make it clear that bribery is not limited to financial benefits.

4.18 The Legislative Assembly Committee in its report has adopted the reference to “or benefit in kind”, and has also adopted the second paragraph proposed by the Auditor-General, but without the reference to “person or entity”, and without requiring that in the case of a business associate the *member* must have received a benefit in turn.<sup>52</sup> The resulting provision is as follows:

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 reward, or benefit in kind, direct or indirect, which the Member, ~~any member of his or her family, a business associate of the Member or any other person or entity from whom the Member expects to receive a financial benefit~~ has received, is receiving or expects to receive.

An indirect benefit might arise in a number of ways, including:

- (a) a member of the Members' family has received, or is receiving or expects to receive a benefit
- (b) a business associate of the Member or the person or entity receives a benefit, and the Member receives or expects to receive a benefit in turn.

4.19 This Committee believes the attempt to define the indirect benefit is problematic. Suggesting an alternative definition is likely to create other unforeseen difficulties.

### “Serious breach”

4.20 The final amendment which is proposed to clause 2 is the insertion of a new paragraph providing:

A breach of the prohibition on bribery constitutes a serious breach of this Code of Conduct.

4.21 The Government has advised that this provision is intended to “make bribery a matter which falls within the definition of ‘corrupt conduct’” under the ICAC Act, and to “make it clear in advance that the ICAC will be able to investigate any complaint or allegation of bribery”.<sup>53</sup>

<sup>51</sup> Mr Bob Sendt, Auditor-General, Submission, p 2

<sup>52</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, pp 16-17

<sup>53</sup> The Hon John Della Bosca MLC, Submission, p 5

- 4.22 “Serious breach” contrasts with “substantial breach” which appears in the definition of “corrupt conduct” in section 9 (1) (d) of the Act. The ICAC has expressed the view a single breach of clause 2 of the Code is more likely to amount to a “substantial” breach than a single breach of clause 4.<sup>54</sup> This is to some extent borne out by the fact that in at least one case (that of the Hon Richard Face MP) the ICAC has found that a member has breached clause 4, but that the breach was not substantial.<sup>55</sup>
- 4.23 The Auditor-General has expressed concern about the use of the word “serious” as it could imply that a breach of other clauses is not serious. He has also suggested that, if a breach of the bribery provision is to be distinguished from other breaches, the word “substantial” should be used rather than “serious”.<sup>56</sup> That suggestion has been adopted by the Legislative Assembly committee, which has recommended that the amendment be adopted but with the word “substantial”.<sup>57</sup> This Committee agrees with that position.

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### Recommendation 7

That if the proposed clause 2 of the Code of Conduct is adopted, the word “serious” should be omitted and replaced with the word “substantial” so as to clarify its relationship to “corrupt conduct” under section 9 (1) (d) of the *ICAC Act*.

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### Draft clause 7

- 4.24 The new proposed clause 7 introduces a new area of accountability into the Code, and aims to give effect to the concerns raised by the ICAC in its investigations into secondary employment. The Government’s submission summarises the intended effect of this complex clause as follows:

Members will be required to make certain disclosures at the start of any proceedings in Parliament where a former or current employer, a person who has engaged or is currently engaging the Member to provide services, or a current or former client of such employers or persons, may have an interest in those proceedings.

The obligation will only apply where the Member proposes to participate in those proceedings other than by voting on the matter and the Member knows or ought to know that these persons have an interest in the proceedings.

The obligation also will only apply where the Member has not already disclosed in the register, the identity of the employer, person, client and the nature of their interest in the proceedings. The obligation extends to any person who has employed or engaged

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<sup>54</sup> ICAC, *Regulation of secondary employment for members of the NSW Legislative Assembly*, September 2003, p 25

<sup>55</sup> ICAC, *Report on investigation into conduct of the Hon J Richard Face*, June 2004, p 55

<sup>56</sup> Mr Bob Sendt, Auditor-General, Submission, p 2

<sup>57</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, pp 16-17



the Member in the previous two years or to any client who has benefited from the Member's services in the previous two years.<sup>58</sup>

- 4.25** The submission goes on to note that the ICAC recommended disclosure should occur even if the interests have already been disclosed in the Register, on the basis of precedents overseas and the premise that the main purpose of disclosure is to ensure transparency in relation to the interests of a member's employer. The submission argues, however, that as disclosure is to be limited to the interests of the *member* in New South Wales, it is appropriate for the obligation to be confined to interests not already disclosed in the Register.<sup>59</sup>
- 4.26** The submission further notes that the ICAC recommended disclosure in respect of all former employers, but the Government considers that such an obligation would be too onerous. For this reason the obligation has been limited to employers and clients from the previous two years.<sup>60</sup>
- 4.27** The Legislative Assembly Committee expressed concern that the clause would have the effect that new members would be required to disclose information about clients prior to being sworn as a member. It also observed that the terminology used in the clause is particularly legalistic and unwieldy, containing a number of component parts and exceptions. It further noted that the Auditor-General has raised concerns in relation to the provision and has suggested that the clause be reworded in view of its intended effect.<sup>61</sup>
- 4.28** In light of these issues the Assembly Committee proposed an amended version of the clause, based on the text of a statement made by the Premier earlier this year foreshadowing the introduction of the amendments.<sup>62</sup>

#### **Secondary employment or engagements**

Members must disclose at the start of a parliamentary debate the identity of any person by whom they are employed or engaged. Members must also disclose 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 before they are sworn as a member).

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 register of members' interests, he or she will not be required to make a further disclosure during the proceedings.

<sup>58</sup> The Hon John Della Bosca MLC, Submission, p 5

<sup>59</sup> Ibid, p 6

<sup>60</sup> Ibid

<sup>61</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 19

<sup>62</sup> The Committee recommended one version of the clause at pp 7 and 19 of its report which specifically reflects the requirements of clause 15A of the draft Regulation, but also proposed an alternative version at page 20 of the report which reflects the text of the Premier's statement. The version reproduced above is from page 20.

**4.29** The amended clause proposed by the Assembly committee is also preferred by this Committee. Apart from addressing the issues noted above, it has the virtue of clarifying precisely which “proceedings of Parliament” are affected by the new obligation, that is, only any contributions to a debate. However this Committee notes that it has not had the opportunity to explore the implications of the rewording of this provision within the time constraints of the current inquiry. Before the Assembly proposal is adopted it would be important to understand the views of the key stakeholders on the possible implications of these words.

## Other suggested changes to the Code

### ICAC

**4.30** In two submissions to the inquiry the ICAC made suggestions regarding improvements to the existing code. These include:

- clarifying “private financial interests” and “decisions in which they participate” in clause 1,
- amending the title of clause 2 to include “Paid advocacy” (a suggestion the Parliamentary Advisor and Ms Lee Rhiannon also supported in their submissions but which was not supported by the Leader of the Government Minister Della Bosca),
- clarifying the distinction between the two types of gifts referred to in clause 3(b),
- clarifying the meaning of “private benefit” in clause 5,
- consider defining “legitimate activities” in clause 6 as those whose principal purpose is for parliamentary or electorate benefit.

**4.31** The Committee records these suggestions so the House and others who read this report are aware of these difficulties with the existing Code. Both ICAC submissions have been published by the Committee, together with all other submissions, and are available on the Committee’s website so that members and the general public are aware of the arguments involved. The Committee notes, however, that each attempt to clarify or define the existing terms may equally have unforeseen consequences, and the case for any of these changes is not unequivocal.

**4.32** The ICAC also made recommendations about member education. The Legislative Council is currently developing its induction briefings for new members for the beginning of the 54th Parliament and within that framework the education of members on their responsibilities under the Code, and the consequences of breaches, will be incorporated. The Member’s Guide is currently being revised as a resource for members with material on entitlements, the Parliamentary Remuneration Tribunal and the Code.

**4.33** The ICAC further argued that the Code should appear more prominently on the Parliament’s website, noting that it is currently located in the “Publications” section. However, there is a link to the Code from the section on Legislative Council/Background/Members, where there is also a description of the role of the Code in the context of the ICAC Act. There is also a link to the Code from the Privileges Committee homepage.

- 4.34 The design of the Parliament’s website is based upon many varied considerations, and there are frequently different views as to which information should be presented on the front page. The Committee notes that, at the time of reporting, the website for government agencies does not appear to give prominence to the codes of conduct for Ministers and senior public sector executives.

### ICAC Inspector

- 4.35 The Inspector of the ICAC, Mr Graham Kelly, suggested the Committee should consider amending the disclosure requirements in clause 1 of the Code so as to resemble the stricter requirements applying to company directors under the Corporations Act 2001. These requirements would impose, for instance, mandatory disclosure rather than the Code’s requirements to “take all reasonable steps” and the exclusion from proceedings when there is a conflict of interest instead of only requiring disclosure.
- 4.36 The Committee is not convinced of the need to import standards developed for a commercial context into the political context in which the Code of Conduct operates. Members are accountable for their actions through the scrutiny given to their behaviour by opposing parties, the media and the public in a way that company directors rarely if ever experience.

### Auditor-General

#### *Clause 6 (“Duties as a member of Parliament”)*

- 4.37 The Auditor-General, Mr Bob Sendt, suggested a re-wording of clause 6 of the Code by giving it a heading “Participation in Political Activities” and re-wording the second sentence to read: “participation in their legitimate activities is not, in itself, prohibited by this Code”. His concern was that the current wording gives a blanket exception to party political activities.<sup>63</sup> The Legislative Assembly committee resolved this by removing clause 6 altogether and putting the statement, as re-worded by the Auditor-General, into the Preamble.<sup>64</sup>
- 4.38 This Committee understands the concern that the current Code could be implied to give blanket exemption to party political activity. However this clause has not prevented the ICAC using clause 4 to investigate misuse of funds related to party political activity in the past. This committee has no strong objections to the approach by its Assembly counterpart although is reluctant to be seen to be removing clauses from the existing code.

#### *Clause 3 (“Gifts”)*

- 4.39 A further concern of the Auditor-General is that in clause 3 (b) the word “corruptly” is used. This confuses the relationship with the ICAC Act, where only a “substantial breach” of the Code is regarded as corrupt.<sup>65</sup> This Committee supports the suggestion that the word

<sup>63</sup> Mr Bob Sendt, Auditor-General, Submission, p 3

<sup>64</sup> NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Review of the proposed amendments to the Code of Conduct and Draft Constitution (Disclosure by Members) Regulation 2006*, September 2006, p 5

<sup>65</sup> Mr Bob Sendt, Auditor-General, Submission, p 3

“corruptly” should be changed to “improperly” to make it consistent with the rest of the code and the operation of the ICAC Act, and notes the Legislative Assembly Committee also supported this change.

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### **Recommendation 8**

That clause 3 (b) of the existing code relating to gifts change the word “corruptly” to “improperly” as recommended by the Auditor-General.

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#### ***Opening statement regarding purpose***

- 4.40** The Auditor-General also expressed concern that the statement which currently appears at the beginning of the Code, regarding adoption for the purposes of section 9 of the Act, could be read as implying that breaches of the Code are unimportant unless they amount to a substantial breach under section 9. On that basis he suggested an alternative formulation which indicates that the Code is “also” adopted for the purposes of the section. The Committee notes however that the statement in its current form reflects the actual terms of the resolution of the House adopting the Code.<sup>66</sup>

#### **Ms Lee Rhiannon**

- 4.41** Ms Lee Rhiannon made two submissions to the inquiry in which she suggested extensions to the existing Code to address specific issues.

#### ***Free admissions***

- 4.42** In the first submission she argued for a new provision in clause 3 of the Code (“Gifts”) concerning free admissions to events or facilities.<sup>67</sup> The proposed provision would prohibit free admission to any event or facility for which an ordinary member of the public would have to pay, unless the event or facility is directly related to the responsibilities of the member. For example, the attendance by the Minister for Arts at an art gallery event would not represent a breach of the prohibition.
- 4.43** A breach of this provision would presumably involve the ICAC making a determination on whether an event is directly related to the responsibilities of the member, and whether attending an event as a guest represents a substantial breach of the Code. None of the accountability bodies who have contributed to the inquiry have suggested extending the clause relating to gifts to this extent.

#### ***Alcohol and other drugs***

- 4.44** In her second submission Ms Rhiannon suggested an additional clause for the Code:

Members of Parliament will not perform their duties as an MP while under the influence of alcohol or any other drug.

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<sup>66</sup> *Minutes of the Proceedings of the Legislative Council*, No. 5, 26 May 1999, entry 3, paragraph 1

<sup>67</sup> Ms Lee Rhiannon, Submission, 19 April 2006, p 2

Members of Parliament will carry out their duties without abusing or harming other parliamentarians or the public.<sup>68</sup>

- 4.45** While the Committee agrees that members of Parliament should not harm or abuse members of the public or perform their duties in a state of intoxication, this provision is arguably of less direct relevance to the defining of “corrupt conduct” which was the original intent of the Code. Standing orders 190, 191 and 192 currently provide a formal mechanism for dealing with the disorderly conduct of members in the House, the suspension of members, and members who are called to order. Further, the House has power to take action against a member for “conduct unworthy of a member”.
- 4.46** The terms “under the influence”, “abusing” and “harming” are open to widely differing interpretations. It is not clear who would be the judge of whether such conduct had occurred. The expression “any other drug” is also uncertain, as it could potentially encompass prescription drugs or drugs available over the counter from chemists, such as tablets for headaches, allergies and various chronic conditions.

### Impact on parliamentary privilege

- 4.47** If the proposed amendments are accepted, the Code of Conduct is likely in the future to lead to further conflicts as to the limits of parliamentary privilege, as it has already done with the Breen matter.
- 4.48** Members of Parliament in New South Wales operate in a unique context. Unlike other Parliaments in Australia there is no statutory codification of privileges and immunities, such as the Commonwealth Parliamentary Privileges Act 1987 which declares the powers, privileges and immunities of the Senate and the House of Representatives. Any dispute as to privilege has to be resolved by reference to an English statute from 1688, the Bill of Rights, as applied in NSW by s 6 of the Imperial Acts Application Act 1969, and by regard to parliamentary practice and the common law.
- 4.49** This unusual situation is further complicated by the fact that NSW members of Parliament have a Code of Conduct which is interpreted by an external body, the ICAC, rather than the Parliament, to determine a statutory offence of corrupt conduct under the Independent Commission Against Corruption Act 1988 (NSW). As discussed earlier, a “substantial breach” of the Code may result in a finding of “corrupt conduct” under section 9 of the ICAC Act.
- 4.50** The lack of a statutory codification of privilege has even in the recent experience of this Committee been very problematic. The difficulties go to the heart of the rights of members of Parliament not to be impeded in their duties. As reported upon in the two inquiries of this Committee into the Breen matter, a situation arose where an external agency conducted a search of a member’s office and removed material, upon which there was a dispute between the member and the ICAC as to what constituted material that was privileged. This dispute became a difference between the view of the ICAC and the Privileges Committee of this House on how to interpret what material was relevant to a “parliamentary proceeding”. Without a Privileges Act this definitional issue remains in dispute, leaving members in an ambiguous position in any future investigations which may involve searches of their office.

<sup>68</sup> Ms Lee Rhiannon, Submission, 14 August 2006, p 1

- 4.51** The current proposed changes to the Code of Conduct and the extension of disclosure requirements introduced by the draft regulation on pecuniary interests increase the areas in which the ICAC can conduct investigations into the activities of members and heightens the prospect of future disputes over parliamentary privilege. Changes to clause 2 and the addition of clause 7 will potentially involve the ICAC examining the actions of a member participating in parliamentary debates and other parliamentary proceedings, despite the qualification in section 122 of the ICAC Act. In a briefing from the Legal Branch of the Cabinet Office to the Committee it was suggested that it may be necessary for privilege to be waived by the House if a member was being investigated under these circumstances.
- 4.52** The Privileges Committee has recommended on a number of occasions that there is a need for a Privileges Act. As the proposed changes increase the likely future conflict between the powers of the ICAC and the privileges of members, the Committee believes it is an essential part of the implementation process that the privileges of each House be codified in statutory form.

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**Recommendation 9**

That the Government enact a statutory codification of the privileges and immunities of both Houses of the NSW Parliament in a similar form to the *Parliamentary Privileges Act 1987* (Cth).

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## **Appendix 1 Draft amendments to the Members' Code of Conduct**





*Tabled Mr Kelly  
7 June 2006*

**URGENT**

Draft amendments to the Legislative Assembly's and Legislative Council's  
Code of Conduct



*The following sets out the full Code of Conduct for Members with the  
proposed amendments underlined.*

That:

1. 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 is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.
- 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.
- Members of Parliament acknowledge that their principal responsibility in serving as Members is to their constituents and 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**

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 reward, direct or indirect, which the Member, any member of his or her family, a business associate of the Member or any other person or entity from whom the Member expects to receive a financial benefit has received, is receiving or expects to receive.

A breach of the prohibition on bribery constitutes a serious 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 corruptly 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 any proceedings in Parliament to which they intend to contribute (other than by voting only) the identity of any person (natural or corporate) who employs or engages the Member (or who has employed or engaged the Member in the previous two years), and the identity of any client or former client of any such person who benefited from the Member's services within the previous two years, and the nature of the interest of the person and any client or former client in the proceedings if:

- (i) the Member is aware, or ought to be aware, that the person, client or former client might have an interest in the proceedings beyond the interest of persons generally; and
  - (ii) the Member's entry in the Register of Pecuniary Interests does not at the time of the start of the proceedings disclose the identity of the person, the client or the former client (as applicable) and the nature of their interest in the proceedings.
2. This resolution has continuing effect unless and until amended or rescinded by resolution of the House.



## **Appendix 2 Draft Constitution (Disclosures by Members) Amendment Regulation 2006**



Tabled M Kelly  
7 June 2006  
&

URGENT

consultation draft



New South Wales



## Constitution (Disclosures by Members) Amendment Regulation 2006

under the  
Constitution Act 1902

Her Excellency the Governor, with the advice of the Executive Council and in compliance with the provisions of section 14A (5) of the *Constitution Act 1902*, has made the following Regulation under the *Constitution Act 1902*.

Premier

### Explanatory note

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

- (a) to require any Member of Parliament who is engaged (whether under an employment contract, as an officer of a corporation or by means of certain other contracts, agreements or arrangements for monetary consideration) by a person (the *principal*) to provide a service involving the use of the Member's parliamentary position to or on behalf of clients of the principal to disclose certain information about the service the Member provides, and
- (b) to require newly elected Members of Parliament to lodge primary returns within 1 month after they take office instead of the current period of 3 months, and
- (c) to require Members of Parliament to disclose certain additional information concerning their sources of income, and
- (d) to make certain consequential amendments to the Regulation, and
- (e) to make other minor amendments in the nature of law revision.

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

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Clause 1 Constitution (Disclosures by Members) Amendment Regulation 2006

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**Constitution (Disclosures by Members) Amendment  
Regulation 2006**

under the

Constitution Act 1902

**1 Name of Regulation**

This Regulation is the *Constitution (Disclosures by Members) Amendment Regulation 2006*.

**2 Commencement**

This Regulation commences on 24 March 2007.

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

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



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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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**Schedule 1 Amendments**

(Clause 3)

**[1] Clause 2 Arrangement**

Omit the clause.

**[2] Clause 3 Interpretation**

Insert in alphabetical order in clause 3 (1):

*first ordinary return date* for a year means:

- (a) except as provided in paragraph (b)—31st March, or
- (b) where there are no Members of the Legislative Assembly on 31st March in that year by reason of the termination, either by dissolution or expiry, of the Legislative Assembly—the date that occurs 1 month after the date on which the Legislative Assembly first meets after 31st March in that year.

*second ordinary return date* for a year means:

- (a) except as provided in paragraph (b)—30th September, or
- (b) where there are no Members of the Legislative Assembly on 30th September in that year by reason of the termination, either by dissolution or expiry, of the Legislative Assembly—the date that occurs 1 month after the date on which the Legislative Assembly first meets after 30th September in that year.

*supplementary return* means a return in or to the effect of Form 3.

**[3] Clause 3 (1), definition of “ordinary return period”**

Omit the definition. Insert instead:

*ordinary return period* means:

- (a) in relation to an ordinary return required to be lodged by a Member before the first ordinary return date for a particular year:
  - (i) if the last return lodged by the Member was an ordinary return—the period of 6 months commencing on 1st July and ending on 31st December in the previous year, or
  - (ii) if the last return lodged by the Member was a primary return—the period commencing on the

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

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primary return date in relation to the Member and ending on 31st December in the previous year, or

- (b) in relation to an ordinary return required to be lodged by a Member before the second ordinary return date for a particular year:
- (i) if the last return lodged by the Member was an ordinary return—the period of 6 months commencing on 1 January and ending on 30th June in that particular year, or
  - (ii) if the last return lodged by the Member was a primary return—the period commencing on the primary return date in relation to the Member and ending on 30th June in that particular year.

**Note.** See clause 24 for a summary of the requirements in respect of the lodgment of returns in the year of 2007.

**[4] Clause 3 (1), definition of "primary return date"**

Omit the definition. Insert instead:

*primary return date*, in relation to a person who becomes a Member (not being a re-elected Member), means the date on which he or she takes the pledge of loyalty required by section 12 of the Act.

**[5] Clause 3 (1), definition of "return"**

Omit the definition. Insert instead:

*return* means any of the following:

- (a) a primary return,
- (b) an ordinary return,
- (c) a supplementary return.

**[6] Clause 3 (2) and (3)**

Omit the subclauses. Insert instead:

- (2) A reference in this Regulation to a primary return or an ordinary return that was last lodged by a Member includes a reference to a primary return or ordinary return in or to the effect of the relevant form set out in Schedule 1 (as in force before its substitution by the *Constitution (Disclosures by Members) Amendment Regulation 2006*) if that was the last return lodged by the Member.
- (3) Notes included in this Regulation (except for directions and other notes in a Form) do not form part of this Regulation.

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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**[7] Clause 3A**

Insert after clause 3:

**3A Forms**

- (1) In this Regulation, a reference to a Form is a reference to a Form in Schedule 1.
- (2) A Form must be completed in accordance with such of the following directions and guidelines (if any) as are consistent with this Regulation:
  - (a) any directions specified in the Form,
  - (b) any guidelines issued or approved from time to time by the appropriate parliamentary committee for the Member completing the Form.
- (3) In this clause, the *appropriate parliamentary committee* for a Member completing a Form means:
  - (a) a committee of the House of Parliament to which the Member belongs that is authorised by that House to issue or approve guidelines of the kind referred to in subclause (2) (b), or
  - (b) if a joint committee of the Houses of Parliament is so authorised by both Houses, that joint committee.

**[8] Clauses 4–6**

Omit the clauses. Insert instead:

**4 Primary returns**

A person who becomes a Member (not being a re-elected Member) must, within 1 month after the date on which he or she takes the pledge of loyalty required by section 12 of the Act, lodge a primary return with the Clerk.

**5 Ordinary returns**

- (1) In each year a Member must lodge an ordinary return with the Clerk both before the first ordinary return date and the second ordinary return date for that year.
- (2) However, a Member is not required to lodge an ordinary return if the primary return date in relation to the Member occurs after the end of the ordinary return period in respect of which the ordinary return is required to be lodged.

**Note.** See clause 24 for a summary of the requirements in respect of the lodgment of returns in the year of 2007.

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1 Amendments

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### 6 Supplementary returns

- (1) If a Member considers it appropriate to do so, the Member may lodge a supplementary return with the Clerk at any time before the date on which the Member is next required to lodge an ordinary return.
- (2) A supplementary return may contain such disclosures as the Member wishes to make concerning any or all of the matters that under this Regulation are required or permitted to be disclosed in an ordinary return.

#### [9] Clause 7 Interpretation: Part 3

Insert in alphabetical order in clause 7 (1):

*entity* means any of the following:

- (a) a corporation or body corporate,
- (b) a partnership or other unincorporated association of persons.

#### [10] Clause 7 (1), definition of "disposition of property"

Omit "his" from paragraph (f) of the definition. Insert "his or her".

#### [11] Clause 7 (1), definition of "income"

Omit "*Income Tax Assessment Act 1936* of the Parliament of the Commonwealth".

Insert instead "*Income Tax Assessment Act 1997* of the Commonwealth".

#### [12] Clause 7 (4)

Insert after clause 7 (3):

- (4) A reference in this Part to a description that is reasonably sufficient to identify a matter is a reference to a description that would enable a reasonable person to identify the nature or the kind of matter.

#### [13] Clause 7A

Insert after clause 7:

##### 7A Use of Member's parliamentary position to provide services

A reference in this Part to a service provided by a Member involving the use of the Member's parliamentary position is a reference to any service provided by the Member to another person that arises from or relates to the use of the Member's

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

position as a Member, including (but not limited to) any of the following services:

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

**[14] Clauses 8 (2), 11 (2) (c) and (f), 12 (1) (a), 13 (a), 14 (3) (d) (ii) and 16**

Omit “he” and “his” wherever occurring.

Insert instead “he or she” and “his or her” respectively.

**[15] Clause 9 Sources of income**

Omit clause 9 (1) (a). Insert instead

- (a) in a primary return—each source of income that the Member received, or reasonably expects to receive, in the period commencing on the primary return date and ending on the next succeeding 30th June or 31st December (whichever is last date of the ordinary return period for the Member’s first ordinary return), and

**[16] Clause 9 (2) (a)**

Omit the paragraph. Insert instead:

- (a) in relation to income from any service provided by a Member:
  - (i) a description that is reasonably sufficient to identify the service provided, or that is reasonably expected to be provided, for that income, and
  - (ii) where the service is provided, or is reasonably expected to be provided, as part of an occupation—a description that is reasonably sufficient to identify the occupation, and
  - (iii) where the service is provided, or is reasonably expected to be provided, as an employee of another person or as the holder of an office—the name and address of the Member’s employer or a description of the office (as the case may be), and
  - (iv) where the service is provided, or is reasonably expected to be provided, in connection with a partnership the Member has entered into with other

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

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persons—the name (if any) under, and address from which, the partnership is conducted, and

- (v) where the service is provided, or is reasonably expected to be provided, under any other contract, agreement or arrangement—the name and address of the person from whom the income was, or is reasonably expected to be, received, or

**[17] Clause 9 (2) (c)**

Insert “that is reasonably” before “sufficient”.

**[18] Clause 9 (2A)**

Insert after clause 9 (2):

(2A) Without limiting subclause (2), if:

- (a) the source of income was, or is reasonably expected to be, received:
- (i) from the Member’s employer, or
  - (ii) for an office held by a Member in an entity, or
  - (iii) under a contract or any other agreement, and
- (b) the Member knows that the source of income was, or is reasonably expected to be, received for the provision by the Member of any service involving the use of the Member’s parliamentary position,

the disclosure required by subclause (1) in relation to that source of income must include a description that is reasonably sufficient to identify the business carried on by the employer, entity or other party to the contract or agreement (as the case may be).

**[19] Clause 15A**

Insert after clause 15:

**15A Provision of client services**

- (1) This clause applies to any Member who is or was engaged by a person (the *principal*) to provide any service that involves the use of the Member’s parliamentary position (a *relevant service*) to or on behalf of any client of the principal regardless of whether or not the Member also received, or is also reasonably expected to receive, a payment, gift or other financial benefit from the client or other person to whom the service is (or is to be) provided.
- (2) For the purposes of this clause, a *client* of a principal is any person to whom a service is, or is to be, provided or made

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**consultation draft**

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

available in circumstances where the principal has received, or is reasonably expected to receive, consideration in money or money's worth for the service.

- (3) For the purposes of subclause (1), a Member is *engaged by a principal* to provide a relevant service to or on behalf of clients of the principal if the Member provides the service in connection with:
- (a) any contract of employment that the Member has entered into with the principal, or
  - (b) where the Member is an officer of the principal—the Member's functions as an officer of the principal, or
  - (c) any other contract, agreement or arrangement that the Member has entered into with the principal under which the Member receives, or is reasonably expected to receive, consideration in money or money's worth.
- (4) For the purposes of this clause, a relevant service is provided *on behalf of a client of the principal* if the client has requested that the service be provided to another person on the client's behalf.
- (5) A Member to whom this clause applies must disclose:
- (a) in a primary return—each relevant service the Member provided, or reasonably expects to provide, to or on behalf of any clients of the principal in the period commencing on the primary return date in relation to the Member and ending on the next succeeding 30th June or 31st December (whichever is last date of the ordinary return period for the Member's first ordinary return), and
  - (b) in an ordinary return—each relevant service provided to or on behalf of any clients of the principal that the Member provided at any time during the ordinary return period.
- (6) A reference in subclause (5) to each relevant service provided, or reasonably expected to be provided, by a Member to or on behalf of any clients of the principal is a reference to:
- (a) a description that is reasonably sufficient to identify the nature of the service, and
  - (b) the names and addresses of the persons that the Member knows, or ought reasonably to know, have directly benefited or are likely to benefit directly from the provision of the service, and
  - (c) a description that is reasonably sufficient to identify the nature of the business carried on by any of the persons referred to in paragraph (b).

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**consultation draft**

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## Constitution (Disclosures by Members) Amendment Regulation 2006

## Schedule 1 Amendments

## (7) In this clause:

*function* includes a power, authority or duty.

*officer*, in relation to a person that is corporation, has the same meaning as officer of a corporation has in section 9 of the *Corporations Act 2001* of the Commonwealth.

**[20] Clause 19 Form of registers**

Omit clause 19 (2) (b). Insert instead:

- (b) There shall be separate parts of a register for the ordinary returns lodged in respect of each ordinary return period, together with:
  - (i) primary returns lodged under clause 4 in respect of primary return dates in that period, and
  - (ii) supplementary returns lodged under clause 6 in that period.

**[21] Clause 24**

Insert after clause 23:

**24 Summary of operation of this Regulation in 2007****(1) Summary of requirements in 2007**

For the avoidance of doubt, this clause summarises the operation of this Regulation (as amended by the *Constitution (Disclosures by Members) Amendment Regulation 2006*) in the year of 2007.

**(2) When first ordinary return is due**

The first ordinary return date for the lodgment of an ordinary return in 2007 (the *first 2007 ordinary return date*) is the date that occurs 1 month after the date on which the Legislative Assembly first meets following the general election to be held on Saturday 24th March 2007 (the *2007 general election*).

**(3) Members required to lodge first ordinary return**

The following Members (other than recently elected Members referred to in subclause (4) (b)) will be required to lodge an ordinary return before the first 2007 ordinary return date:

- (a) any re-elected Member, and
- (b) any Member of the Legislative Council whose term of office does not expire with the 2007 general election.



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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

- 
- (4) However, the following Members (*recently elected Members*) will not be required to lodge an ordinary return before the first 2007 ordinary return date:
- (a) any Member (other than a re-elected Member) who is elected at the 2007 general election,
  - (b) any Member (other than a re-elected Member) who took the pledge of loyalty required by section 12 of the Act in early 2007 before the 2007 general election.
- (5) **Ordinary return period**
- The ordinary return period in respect of the ordinary return required to be lodged before the first 2007 ordinary return date is:
- (a) if the last return lodged by the Member was an ordinary return—the period of 6 months commencing on 1st July 2006 and ending on 31st December 2006, or
  - (b) if the last return lodged by the Member was a primary return and the Member is not a recently elected Member—the period commencing on the date on which the Member takes the pledge of loyalty required by section 12 of the Act and ending on 31st December 2006.
- (6) **Requirements in relation to recently elected Members**
- Instead of lodging an ordinary return before the first 2007 ordinary return date, a recently elected Member elected at the 2007 general election will be required to lodge a primary return within 1 month after the Member takes the pledge of loyalty required by section 12 of the Act.
- (7) Recently elected Members will be required to lodge their first ordinary returns before the second ordinary return date in 2007 (that is, 30th September 2007).
- (8) The ordinary return period for any such ordinary return for a recently elected Member will be:
- (a) the period commencing on the date on which the Member takes the pledge of loyalty required by section 12 of the Act, and
  - (b) ending on 30th June 2007.

**[22] Schedule 1**

Omit the Schedule. Insert instead:



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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

Address of each parcel of real property in which I had an interest on the primary return date	Nature of interest

**Part 2 Sources of income**

- 1** Particulars of the sources of income I received or reasonably expect to receive from any services provided, or to be provided, in the period commencing on the day I took the pledge of loyalty required by section 12 of the *Constitution Act 1902* and ending on the next succeeding 30th June or 31st December (whichever is the last date of the ordinary return period for my first ordinary return):

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1 Amendments

Description that is reasonably sufficient to identify the services that were provided, or are reasonably expected to be provided, for the income	If services were provided, or are reasonably expected to be provided, as part of an occupation—a description of the occupation that is reasonably sufficient to identify the occupation	If services were provided, or are reasonably expected to be provided, as an employee, office holder, in connection with a partnership or under any other contract, agreement or arrangement—the name and address of the employer, partnership or other party to the contract, agreement or other arrangement or a description of the office (as applicable)	If a service involves the use of the Member's parliamentary position—a description that is reasonably sufficient to identify the nature of the business carried on by the employer, partnership, entity in which an office is held or other party to the contract, agreement or other arrangement (as applicable)

**2** Sources of income I reasonably expect to receive from a trust in that period:

Name and address of settlor	Name and address of trustee

**3** Sources of other income I reasonably expect to receive in that period:

**consultation draft**

Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

*(Include description reasonably sufficient to identify the person from whom, or the circumstances in which, that income is expected to be received.)*

.....  
 .....  
 .....  
 .....

**Part 3 Interests and positions in corporations**

Name and address of each corporation in which I had an interest or held a position on the primary return date	Nature of interest (if any)	Description of position	Description of principal objects of corporation (except in case of public company)

**Part 4 Positions in trade unions and professional or business associations**

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) on the primary return date	Description of position

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**consultation draft**

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

**Part 5 Debts**

Name and address of each person to whom I was liable to pay any debt on the primary return date.

.....  
 .....  
 .....

**Part 6 Client services**

Particulars of services involving use of my parliamentary position that I provided, or reasonably expect to provide, to or on behalf of any client of a principal in the period commencing on the day I took the pledge of loyalty required by section 12 of the *Constitution Act 1902* and ending on the next succeeding 30th June or 31st December (whichever is the last date of the ordinary return period for my first ordinary return):

Description that is reasonably sufficient to identify the nature of the services	Names and addresses of the persons who benefited, or are likely to benefit, directly from the provision of the services	Description that is reasonably sufficient to identify the nature of the business carried on by any persons who benefited, or are likely to benefit, directly from the provision of the services

**Part 7 Discretionary disclosures**

.....  
 .....  
 .....

**Form 2 Ordinary return**

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

**Constitution (Disclosures by Members) Regulation 1983**  
**Ordinary Return—Legislative \*Council/\*Assembly**

**consultation draft**

Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

**Directions**

- 1 The pecuniary interests and other matters required to be disclosed in this return are prescribed by clauses 8–15A of the *Constitution (Disclosures by Members) Regulation 1983*.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- 4 Where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.
- 5 Matter marked with an asterisk (\*) is to be omitted if it is not appropriate for the Member concerned.

Disclosures of pecuniary interests and other matters by:

.....  
*(full name of Member)*

in respect of the period from ..... to .....  
*(ordinary return period)*

.....  
*(Member's signature)*

.....  
*(Date)*

**Part 1 Real property**

Address of each parcel of real property in which I had an interest at any time during the ordinary return period	Nature of interest

**consultation draft**

Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

Address of each parcel of real property in which I had an interest at any time during the ordinary return period	Nature of interest

**Part 2 Sources of income**

**1** Particulars of sources of income I received from any services provided at any time during the ordinary return period:

Description that is reasonably sufficient to identify the services that were provided for the income	If services were provided as part of an occupation—a description of the occupation that is reasonably sufficient to identify the occupation	If services were provided as an employee, office holder, in connection with a partnership or under any other contract, agreement or arrangement—the name and address of the employer, partnership or other party to the contract, agreement or other arrangement or a description of the office (as applicable)	If a service involves the use of the Member's parliamentary position—a description that is reasonably sufficient to identify the nature of the business carried on by the employer, partnership, entity in which an office is held or other party to the contract, agreement or other arrangement (as applicable)



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**consultation draft**

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

- 2** Sources of income I received from a trust at any time during the ordinary return period:

Name and address of settlor	Name and address of trustee

- 3** Sources of other income I received at any time during the ordinary return period:  
*(Include description reasonably sufficient to identify the person from whom, or the circumstances in which, that income was received.)*

.....  
 .....  
 .....  
 .....

**Part 3 Gifts**

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

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**consultation draft**

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Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

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**Part 4 Contributions to travel**

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

**Part 5 Interests and positions in corporations**

Name and address of each corporation in which I had an interest or held a position during ordinary return period	Nature of interest (if any)	Description of position	Description of principal objects of corporation (except in case of public company)

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the ordinary return period	Description of position

**Part 7 Debts**

Name and address of each person to whom I was liable to pay any debt at any time during the ordinary return period.

.....  
 .....  
 .....

**Part 8 Dispositions of property**

**1** Particulars of each disposition of real property by me at any time during the ordinary return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to reacquire the property at a later time.

.....  
 .....  
 .....

**2** Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the ordinary return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

.....  
 .....  
 .....

**consultation draft**

Constitution (Disclosures by Members) Amendment Regulation 2006

Schedule 1      Amendments

**Part 9 Client services**

Particulars of services involving use of my parliamentary position that I provided to or on behalf of any client of a principal at any time during the ordinary return period:

Description that is reasonably sufficient to identify the nature of the services	Names and addresses of the persons who benefited, or are likely to benefit, directly from the provision of the services	Description that is reasonably sufficient to identify the nature of the business carried on by any persons who benefited, or are likely to benefit, directly from the provision of the services

**Part 10 Discretionary disclosures**

.....  
 .....  
 .....  
 .....

**Form 3      Supplementary return**

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

**Constitution (Disclosures by Members) Regulation 1983  
 Supplementary Return—Legislative \*Council/\*Assembly**

**Directions**

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

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consultation draft

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Constitution (Disclosures by Members) Amendment Regulation 2006

Amendments

Schedule 1

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4 Matter marked with an asterisk (\*) is to be omitted if it is not appropriate for the Member concerned.

Disclosures of pecuniary interests and other matters by:

.....  
*(full name of Member)*

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

.....  
*(Member's signature)*

.....  
*(Date)*

**Disclosures**

.....  
.....  
.....  
.....



## Appendix 3 List of Submissions

No	Author	Subject
1	Ms Lee Rhiannon MLC	Review of Code
2	Mr David Hawker, Speaker, House of Representatives, Parliament of Australia	Review of Code
3	Mr Peter Alcock, Clerk of the House of Assembly, Parliament of Tasmania	Review of Code
4	Mr Graham Kelly, Inspector, Independent Commission Against Corruption	Review of Code
5	Mr Wayne Berry MLA, Speaker, ACT Legislative Assembly	Review of Code
6	Mr Bob Such MP, former Speaker of the South Australian House of Assembly	Review of Code
7	Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption	Review of Code
8	Mr R J Sendt, Auditor-General, The Audit Office of New South Wales	Draft amdts to Code
9	Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption	Draft amdts to Code
10	Mr Tony McGrady MP, Speaker, Legislative Assembly of Queensland	Draft regulation
11	Mr Bernard Wright, Registrar of Members' Interests, House of Representatives	Draft regulation
12	Ms Lee Rhiannon MLC	Draft amdts to Code
13	Ms Lee Rhiannon MLC	Draft regulation
14	Mr Della Bosca MLC, Leader of the Government in the Legislative Council	Draft amdts to Code and Draft regulation
15	Mr Ian Dickson, Parliamentary Ethics Adviser	Draft amdts to Code and Draft regulation
16	Ms Ruth Webb, Chair, Committee of Senators' Interests, Australian Senate	Draft regulation
17	Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption	Draft regulation
18	Hon. Nick Griffiths MLC, President, Western Australian Legislative Council	Draft regulation





**Appendix 4 Submission of The Hon John Della Bosca  
MLC, Leader of the Government in the  
Legislative Council**





RECEIVED  
16 AUG 2006  
LEGISLATIVE  
COUNCIL  
Leader of the Government in the Legislative Council

Minister for Commerce  
Minister for Finance  
Minister for Industrial Relations  
Minister for Ageing  
Minister for Disability Services  
Leader of the Government in the Legislative Council

The Hon Peter Primrose MLC  
Chair  
Legislative Council Privileges Committee  
Parliament House  
Macquarie Street  
Sydney NSW 2000

14 AUG 2006

Dear Mr Primrose

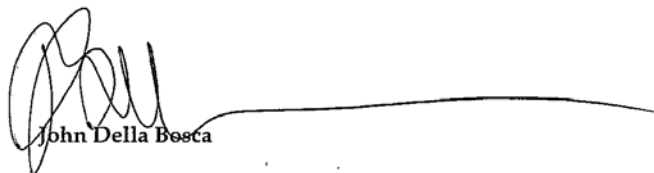
I refer to your letter concerning the draft *Constitution (Disclosures by Members) Amendment Regulation 2006* and the amendments to the Code of Conduct.

The Legislative Council has referred the draft regulation and amendments to the Code of Conduct to your Committee for review. To assist in this review, a briefing note is enclosed as requested. The briefing note covers the background, purpose and precedents for the amendments.

You may also be interested to know, that The Cabinet Office recently provided a briefing to the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics, on these amendments at a meeting of that Committee.

If your Committee would like a similar briefing, please contact Catherine Chang, Principal Legal Officer, Legal Branch, The Cabinet Office on 9228 5545. A briefing could be arranged for a time convenient to your Committee when Parliament resumes in September.

Yours sincerely



John Della Bosca

Encl: Briefing note

Level 30 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Australia  
Tel: (02) 9228-4777 Fax: (02) 9228-4392 E-Mail: office@smos.nsw.gov.au

## **DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION 2006 AND AMENDMENTS TO THE CODE OF CONDUCT**

### **1 BACKGROUND**

In November 2002, considerable public debate arose after it was revealed that a Member had been engaged by PricewaterhouseCoopers (through his private company) to provide consultancy services. This engagement highlighted a number of problems with secondary employment of Members. Uncertainty arose as to whether questions were asked in Parliament as part of the Member's engagement as a consultant.

Such circumstances can create uncertainty in the minds of the public as to whether a Member is acting in the best interests of his or her constituents. While there was no evidence of a UK style "Cash for Questions" scandal in New South Wales, such circumstances highlighted the need for more rigorous disclosure obligations on Members.

In response to community concerns, the Legislative Assembly requested that the Independent Commission Against Corruption (ICAC) report on what steps might be taken in respect of regulating or limiting the engagement of Members to provide advice on public affairs.

ICAC's Report, released in September 2003, recommends a framework to regulate the engagement of Members in the public affairs area. The principal means which ICAC proposed to achieve this was through the disclosure of engagements in the consultancy area.

ICAC did not deal with whether secondary employment of Members should be prohibited. In relation to secondary employment in "public affairs" it noted, however, "that any attempt to define public affairs, with a view to prohibiting it, would be problematic" (page 66). It also noted that almost any type of secondary employment and not just that in public affairs, "may conflict or be seen to conflict, with a Member's parliamentary duties so it raises the broader issue of establishing a disclosure regime that deals with all types of secondary employment" (page 66).

ICAC considered that refining the current system of disclosure would be an effective way of dealing with secondary employment and would "promote a more transparent and accountable framework that could deal with all perceived or actual conflicts arising from any secondary employment" (page 66).

The draft regulation and amendments to the Code of Conduct are the Government's response to ICAC's recommendations and matters raised by the former Legislative Assembly Standing Ethics Committee.

### **2 DRAFT REGULATION - KEY CHANGES**

A key component of the Government's overall strategy to deal with secondary employment and therefore, enhance the public's confidence in Members, is to impose more rigorous disclosure requirements on Members regarding secondary employment.

Disclosure in the register of pecuniary interests.

The main changes proposed by the regulation are to impose more onerous obligations on Members through disclosures in the register of pecuniary interests.

The increased level of disclosure proposed to be required of Members is as follows:

1. Members will be required to describe in the pecuniary interests register, details of the actual services provided in any employment, engagement or other arrangement where services are provided to third parties. This is provided for at item [16].
2. The description of services must be sufficiently detailed so that a reasonable person can determine the nature of the services to be provided. This is provided for at item [16].
3. Where the services relate to the Member's parliamentary position, the Member will also be required to disclose details of the persons to whom services are to be provided, including the nature of the business of each such person. This is provided for at item [18].

The regulation provides that a position relates to a person's position as a Member if the position involves:

- (i) the provision of public policy advice, or
- (ii) the development of strategies or the provision of advice on the conduct of relations with the Government or Members; or
- (iii) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided (See item [13]).

4. Where the services relate to the Member's parliamentary position, the Member will also be required to disclose details of any clients of the person who employs or engages the Member, if those clients benefit from the Member's services, and descriptions of the business of those clients which are reasonably sufficient to identify the nature of those businesses. This is provided for at item [19].

These changes were recommended by ICAC as the current regulation only requires Members to simply describe their occupation in relation to secondary employment but is silent on how extensive that description should be. ICAC noted that generally only the title of the occupation is provided (such as solicitor) and that such descriptions do not provide sufficient information to enable determination of whether or not a Member could potentially have a conflict of interest.

As the register is open to the public to facilitate accountability and transparency, ICAC noted that greater details of the services provided should be required so that the entry in the register is meaningful to the public.

ICAC noted a similar requirement of the British House of Commons as a precedent for the greater level of disclosure proposed if a Member provides services which relate to the Member's parliamentary position.

The Government considers that the obligation to disclose clients will also reduce the attractiveness of engaging Members as consultants in relation to parliamentary matters.

### Updating the register.

The draft regulation also proposes to require Members to update the register every six months instead of every 12 months. This is provided for at items [2], [3] and [8].

ICAC recommended "continuous" disclosure of all pecuniary interests, that is, disclosure within 30 calendar days of any change. However, the Government is concerned that this is considerably more onerous than the current system which only requires yearly disclosures and might be too onerous for Members. Effectively, a new disclosure will be made during the Budget and Spring sittings.

The Government also proposes through amendments to the Code of Conduct to require Members to disclose a matter which affects the interests of a person who employs or engages a Member at the start of proceedings, if details of the person, any clients and the nature of their interest in the proceedings are not already disclosed in the register. This will ensure that any matters not already disclosed in the register will become a matter of public record.

Members also will be permitted to disclose any changes to interests at any time. These measures are considered sufficient to make it easier to identify whether a Member does have a conflict of interest.

The Clerk of the Legislative Assembly and of the Legislative Council will be required to update the register within seven days after receiving a disclosure from a Member. This was recommended by ICAC.

It is proposed that the new requirements will commence on the date of the next election. Transitional arrangements are set out in item [21].

### Forms

As recommended by ICAC, to assist with the updating of the register, a new form has been designed to allow Members to notify changes in interests at any time.

The forms, however, remain complicated. ICAC recommended that the current forms be redesigned to improve usability as it considered the current forms to be poorly designed and not user-friendly. ICAC did not, however, specify how the forms should be redesigned.

The Government is considering strategies for streamlining the forms so that Members will only be required to disclose changes to their previous forms. Currently, Members are required each time to disclose in full all interests held during the relevant reporting period. The Privileges Committee, therefore, has been asked to report on strategies to move to "exceptions based reporting," that is, Members would only be required to notify changes since the last return that was filed.

### Guidelines to assist Members

It is proposed that the Privileges Committee and the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics prepare guidelines to assist Members to comply with their new obligations under the regulation and the Code of Conduct for Members.

This was also recommended by ICAC not only to clarify for Members their obligations but also to bring a level of transparency as to what is required.

ICAC noted that the British House of Commons has such guidelines. Their Guide to the Rules Relating to the Conduct of Members sets out how the disclosure regime operates in practice by setting out in detail how the relevant rules should be interpreted and providing examples of what should or should not be disclosed.

#### **DRAFT REGULATION - RECOMMENDATIONS NOT ADOPTED**

##### Written agreements

ICAC also recommended that Members be required to enter into a written contract where the income received for services which relate to the Member's parliamentary position exceeds one percent of the Member's salary. It was recommended that these agreements set out the duties to be undertaken as part of the services provided and be accessible by the person investigating the engagement for the purpose of investigating any matter relating to a Member's secondary employment.

The Government considers that a written agreement offers little in addition to the requirement that a detailed description of services be disclosed in the register of pecuniary interests. Further the monetary threshold is likely to be confusing and difficult to apply. Accordingly, the Government has not adopted this recommendation.

##### Publication of register on the Internet

ICAC and the former Standing Ethics Committee of the Legislative Assembly also recommended that the register be published on the Internet so that it can be easily accessed by the general public and Members.

The Government is not progressing this recommendation at this stage. The Government considers that the feasibility of adopting this recommendation requires further detailed consideration by Parliament.

#### **CODE OF CONDUCT FOR MEMBERS - KEY CHANGES**

To enhance the public's confidence that Members are acting in the best interests of their constituents, despite any secondary employment, amendments have been proposed to the Code of Conduct principally to prevent Members from advancing in Parliament the interests of persons outside of Parliament with whom they have business relationships.

##### Duty to constituents and the people of New South Wales

The first amendment to the Code of Conduct will include an additional principle in the Preamble to clarify that the principal responsibility of Members is to their constituents and to the people of New South Wales. This was recommended by ICAC noting that the Scottish Code and the British House of Commons' Code explicitly places a "public duty" on Members. It was considered important that such a principle underpin the framework for regulating all parliamentary standards. It would also enhance the public's confidence that Members are acting in their interests and not those of their employers.

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### Bribery

Bribery is currently defined as the taking of action in Parliament in return for payment to the Member. An amendment is proposed to extend this definition so that a Member cannot take action in Parliament in return for benefits to be received in the future or benefits to third parties who are closely associated with a Member. This is provided for in clause 2 of the Code of Conduct.

The Standing Ethics Committee recommended a broader version of this amendment, namely that the prohibition on bribery be extended to catch benefits to any third party. This was recommended because of a concern that bribes can take the form of benefits not only to a Member but also to family members and friends.

The Government's proposed amendment to the Code more clearly defines who a third party includes. The amendment will catch benefits to a family member, business associate or a person with whom the Member has a financial relationship. Accordingly, it will prevent Members from inappropriately asking questions in Parliament for the benefit of any employers or others who engage the Member in secondary employment.

The Government also proposes to limit the prohibition on bribery so that it will apply only where the Member "knowingly or improperly" takes the relevant action in Parliament. This was recommended by the Standing Ethics Committee as a Member cannot be expected to have a complete knowledge of what benefits might accrue to their family or friends as a result of that Member's actions in Parliament. The prohibition on bribery, therefore, 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.

The Government also proposes to make a breach of the prohibition on bribery a serious breach of the Code of Conduct. This is also provided for in clause 2 and was recommended by ICAC. This amendment will make bribery a matter which falls within the definition of "corrupt conduct" under the *Independent Commission Against Corruption Act 1988* and therefore, will make it clear in advance that ICAC will be able to investigate any complaint or allegation of bribery.

### Disclosure during proceedings

Members will be required to make certain disclosures at the start of any proceedings in Parliament where a former or current employer, a person who has engaged or is currently engaging the Member to provide services, or a current or former client of such employers or persons, may have an interest in those proceedings.

The obligation will only apply where the Member proposes to participate in those proceedings other than by voting on the matter and the Member knows or ought to know that these persons have an interest in the proceedings.

The obligation also will only apply where the Member has not already disclosed in the register, the identity of the employer, person, client and the nature of their interest in the proceedings.

The obligation extends to any person who has employed or engaged the Member in the previous two years or to any client who has benefited from the Member's services in the previous two years. This is provided for in clause 7.



ICAC recommended that this disclosure should occur during debate even if relevant disclosures have been made in the register. In doing so, ICAC noted precedents overseas and that the main purpose of such declarations is to ensure that fellow Members and the public are aware of pecuniary interests of employers or others who have engaged the Member in secondary employment which may be relevant to those proceedings.

In New South Wales, however, a Member is only required to make such disclosures in proceedings in relation to that Member's own interests, if the particular details have not already been disclosed in the register.

To maintain consistency with this approach, the Government considers it appropriate that the new obligation should only apply where the disclosures have not already been made in the register. ICAC also recommended that the new obligation apply in relation to all former employers. As this is too onerous, however, the Government considers the obligation should be limited to apply in relation to employers, persons who have engaged the Member and clients from the previous two years.

## CODE OF CONDUCT - RECOMMENDATIONS NOT ADOPTED

### Paid advocacy

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 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.



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## **Appendix 5 Submission of Lee Rhiannon, MLC—Draft Constitution (Disclosures by Members) Amendment Regulation 2006**

*Note:*

As this submission is referred to in the text of the Report it has been reproduced as an Appendix. Ms Rhiannon also tendered two further submissions to the Committee's inquiry, which concerned the Code of Conduct. These submissions (and all other submissions received by the Committee) can be accessed by contacting the Committee Secretariat, or via the Committee's website.



Peter Primrose  
Privileges Committee

14 August 2006

Dear Peter,

**SUBMISSION ON DRAFT REGULATION ON  
THE DISCLOSURE OF PECUNIARY INTERESTS**

Thankyou for the opportunity to comment on the draft regulation on disclosure of pecuniary interests.

Below please find suggested amendments to this regulation.

**Exception Reporting**

I also support "exception reporting". I believe this method of reporting more closely meets our commitment to transparency and accountability.

**Debt v Liabilities**

I would be interested in your Committee's reason for using the term "debts". I noticed that the Senate uses the term "liabilities". Could you comment in your report why you favour the term "debt"? Does the "debt" definition in the NSW Draft Regulation cover the type of liabilities referred to in the Senate regulations (e.g. mortgages, hire-purchase and lease arrangements, personal loans, overdrafts and contingent liabilities)?

Below are my suggested amendments.

I look forward to your decision on these matters.

Yours sincerely

Lee Rhiannon

**SUGGESTED AMENDMENTS – all additions in square brackets**

Part 2 Lodgement of returns by Members [and relatives]

An additional point – possibly insert after 4. Primary Returns and before 5. Ordinary Returns

**Pecuniary interests of Spouse or Partner or Dependent Children**

In addition to the primary return and ordinary returns lodged by Members disclosing their own pecuniary interests, each Member shall, in the case of a new Member, lodge a separate primary return, or, in the case of a re-elected Member, lodge a separate ordinary return with the first ordinary return they lodge following re-election, disclosing the pecuniary interests of which the Member is aware:

(a) of the Member's spouse or partner

(b) of any children who are wholly or mainly dependent on the Member for support

Any alteration of those interests shall be disclosed by a Member in a supplementary return within 28 days of the change occurring.

**Part 3 Pecuniary interests etc to be disclosed****7 Interpretation: Part 3**

Add new definitions:

- [*Hospitality* means: any of the following
  - a) free accommodation, meals and entertainment,
  - b) concessional accommodation, meals and entertainment.

*Assets and investments* means any personal possessions of value other than ordinary household or personal effects.]

**Part 3, Item 9 Sources of Income**

(2)(a)(iv) – amend to read

where the service is provided, or is reasonably expected to be provided, in connection with a partnership the Member has entered into with other persons – the name (if any) under, and the address from which, the partnership is conducted, and [an indication of the nature of the interests and the activities of the partnership]

- (2) (b) – amend to read  
in relation to income from trust[s and nominee companies] – [the name of the trust], the name and address of the settlor or the trustee [and the nature of its operation and beneficial interest], or

(3) – amend to read

The source of any income need not be disclosed by a Member in a primary return or an ordinary return if the amount of income received or is reasonably expected to be received, by the Member from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be, [unless, in the judgment of the Member, it might be sensitive to implications of conflict of interest.]

**Part 3 Item 10 Investments and Assets (new clause)**

We suggest the insertion of a new clause covering investments and assets

**Part 3 Item 10 Investments and Assets**

The member shall disclose in a primary return and an ordinary return:

- (a) the nature of shareholdings in public and private companies (including holding companies) indicating the name of the company or companies
- (b) the nature of any bonds, debentures and like investments
- (c) any savings or investment accounts they have, indicating the nature and the name of the bank or other institutions concerned
- (d) the nature of any other assets (excluding household and personal effects) each valued at more than [\$7500]

**Part 3, Item 11 [formerly 10] Gifts**

We suggest that point (2)(c) be removed

**Part 3, Item 12 [formerly 11] Contributions to travel [and hospitality]**

This section should be expanded to include hospitality as well as travel

The new item, with amendments in square brackets, should read:

(1) A Member shall disclose in an ordinary return:

- (a) The name and address of each person who made any financial or other contribution to any travel undertaken [or hospitality received] by the Member, the Member's spouse or partner or a dependent child at any time during the ordinary return period,
- (b) the dates on which the travel was undertaken and [or hospitality received], and
- (c) the names of the states, territories of the Commonwealth and overseas countries in which the travel was undertaken [or hospitality received]
- (d) serial receipt of hospitality by the Member, the Member's spouse or partner or a dependent child in the case of entertainment if the collective value exceeds \$XXX during the ordinary return period

(2) A financial or other contribution to any travel undertaken [or hospitality received] by a Member need not be disclosed in an ordinary return if:

We suggest that points (2) (b), (2) (c) and possibly (2) (d) be removed

**Part 3, Item 14 [formerly 13] Positions in trade unions and professional or business associations**

We suggest that this item be expanded to include other organisations. Therefore, the new item will read:

**Part 3, Item 14 [formerly 13] Positions in [and financial contributions to organisations]**

(1) A Member shall disclose in a primary return and an ordinary return:

- (a) the name of each [organisation] in which he or she held any position (whether remunerated or not) on the primary return date or at any time during the ordinary return period
- (b) the description of the position held in each such [organisation]
- (c) the names of any organisations to which the Member, the Member's spouse or partner or a dependent child contributes \$300 or more in any single calendar year (excluding membership subscriptions)

**Part 3, Item 15 [formerly 14] Debts**

We suggest that point (3) be removed, apart from (3) (a)

**Part 3, Item 17 [formerly 16] Discretionary disclosures generally**

We suggest that this item be amended for clarity by separating it into two sections

(1) A Member shall disclose in any return any direct or indirect benefits, advantages or liabilities, whether pecuniary or not where a conflict between his or her private interests and his or her public duty as a Member could foreseeably arise or be seen to arise.

(2) A Member may, at his or her discretion, disclose in any return any direct or indirect benefits, advantages or liabilities, whether pecuniary or not, which are not required to be disclosed by any provision of this Part, or which he or she otherwise desires to disclose.



## Appendix 6 Exception reporting in other jurisdictions

Jurisdiction	E.R?	Process
House of Reps	Y	Primary return within 28 days of being sworn; notification of any alterations within 28 days of alteration occurring.
Senate	Y	Primary return within 28 days of first meeting of the Senate or being appointed to fill a casual vacancy; notification of any alterations within 35 days of alteration occurring.
Victoria	Y	Primary return within 30 days of being sworn; annual ordinary return listing amendments to previous return. Member may notify Clerk of any change or variation at any time.
Tasmania	N	Primary return within 3 months of being sworn; annual ordinary returns. Member may notify the Clerk of any change or variation at any time.
South Australia	N	Primary return within 30 days of being sworn; annual ordinary returns. Member may notify Registrar of any change or variation at any time.
Western Australia	Y	Primary return within 30 days of being sworn; annual ordinary return listing amendments to previous return.
Northern Territory	N	Primary return within 60 days of being sworn; annual ordinary return. Compulsory notification of any changes within 60 days of change occurring, unless change takes place after 1 April.
Queensland	Y	Primary return within one month of being sworn; notification of any alterations within one month of member becoming aware of the change.
New Zealand	N	Primary return as at 90 days of being sworn, to be lodged within 30 days; annual ordinary returns.
House of Commons	Y	Primary return within 90 days of election; notification of changes within four weeks of change occurring.



## Appendix 7 Provisions for identification of property in other jurisdictions

Jurisdiction	Description of real property
House of Reps	“real estate, including the location (suburb or area only), and the purpose for which it is owned”
Senate	as above
Victoria	“address or description of any land”
Tasmania	“address of any real property”
South Australia	“address or description of any land”
Western Australia	“address of each parcel of real property”; “address” means “the postal address of the property or the particulars of title”
Northern Territory	“address and description of all land”
Queensland	“interests in real estate (showing location by suburb or area; approximate size; purpose for which property used and intended to be used and nature of interest held”
New Zealand	“location of each parcel of real property”
House of Commons	“nature of the property”
	“Property used for the personal residential purposes of the member or the member’s spouse or partner (that is, homes and second homes) does not need to be registered” (subject to certain exceptions)
	“Entries should be reasonably specific as to the nature of the property and its general location, for example, ‘Woodland in Perthshire’; ‘Dairy farm in Wiltshire’; 3 residential rented properties in Manchester”



## **Appendix 8 Minutes of the Committee's proceedings**



*Note: Asterisks indicate text which has been deleted as it is not relevant to this inquiry.*

## Minutes No. 24

Tuesday 7 February 2006, Parliament House, 10.01 am.

### 1. Members present

Mr Primrose (in the Chair)  
 Ms Forsythe  
 Miss Gardiner  
 Ms Griffin  
 Revd Mr Nile  
 Ms Sharpe

An apology was received from Ms Fazio.

In attendance: Lynn Lovelock, Steven Reynolds, Velia Mignacca, Janet Williams, Jenelle Moore.

### 2. Confirmation of minutes

Minutes no. 23 were confirmed on motion of Mrs Forsythe.

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### 6. Review of members' Code of Conduct

The committee deliberated in relation to a possible review of the members' Code of Conduct.

Resolved, on the motion of Mrs Forsythe: That a draft issues paper outlining possible options for the reform of the Members' Code of conduct be prepared and circulated to the committee for consideration at a later meeting.

### 7. Adjournment

The committee adjourned at 10.55 am sine die.

Lynn Lovelock  
 Clerk to the Committee

## Minutes No. 25

Wednesday 5 April 2006, Parliament House, 1.03 pm.

### 1. Members present

Mr Primrose (in the Chair)  
 Ms Forsythe  
 Ms Fazio  
 Miss Gardiner

Ms Griffin  
Revd Mr Nile  
Ms Sharpe

In attendance: Steven Reynolds, Velia Mignacca, Jenelle Moore.

**2. Confirmation of minutes**

Minutes no. 24 were confirmed on motion of Ms Sharpe.

\*\*\*\*\*

**4. Consideration of draft program on Member's Code of Conduct**

The Committee deliberated in relation to a draft program for the review of the Member's Code of Conduct and a draft letter to members inviting submissions, previously circulated to members of the committee.

Resolved, on motion of Ms Fazio: That the Chair write to Members inviting submissions in relation to the Review of the Code of Conduct by 5.00 pm, 12 May 2006.

Resolved, on motion of Revd Mr Nile: That the Chair write to the Inspector of the Independent Commission Against Corruption, Independent Commission Against Corruption, Chair of the Committee on the Independent Commission Against Corruption, Auditor-General, Parliamentary Ethics Advisor and the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics inviting submissions in relation to the Review of the Code of Conduct by 5.00 pm, 12 May 2006.

Resolved, on motion of Revd Mr Nile: That the Chair write to the Presiding Officers of other Australian parliaments seeking information in relation to their equivalents of the Code of Conduct by 5.00 pm, 12 May 2006.

The Committee deliberated.

Resolved, on the motion of Revd Mr Nile: That a calendar be circulated to the Committee this day for Members to indicate their availability to attend meetings in relation to this inquiry to develop recommendations, confer with the Parliamentary Ethics Advisor and adopt a final report.

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**6. Adjournment**

The committee adjourned at 1.35 pm sine die.

Steven Reynolds  
**Acting Clerk to the Committee**

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**Minutes No. 26**

Tuesday 27 June 2006, Parliament House, 2.06 pm.

**1. Members present**

Mr Primrose (in the Chair)  
Mrs Forsythe  
Miss Gardiner  
Ms Griffin  
Ms Sharpe

An apology was received from Ms Fazio and Revd Mr Nile.

Mr Ian Dickson, Parliamentary Ethics Advisor was also in attendance.

In attendance: Lynn Lovelock, Steven Reynolds, Velia Mignacca, Jenelle Moore.

**2. Confirmation of minutes**

Minutes no. 25 were confirmed on motion of Mrs Forsythe.

**3. Correspondence**

The Chair tabled the following correspondence:

***Correspondence received:***

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Letter dated 19 April 2006 to the Chair from Ms Lee Rhiannon MLC, in response to a letter from the committee inviting comments on the review of the Members' Code of Conduct.

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Email dated 10 May 2006 to the Chair from Mr Peter Alcock, Clerk of the House of Assembly, Parliament of Tasmania, in response to a letter from the committee inviting comments on the review of the Members' Code of Conduct.

Letter dated 9 May 2006 to the Chair from Mr Roy Waldon, Solicitor to the Independent Commission Against Corruption, requesting an extension to the closing date for submissions to the review of the Members' Code of Conduct.

Letter dated 10 May 2006 to the Chair from Mr Graham Kelly, Inspector of the Independent Commission Against Corruption, in response to a letter from the committee inviting comments on the review of the Members' Code of Conduct.

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Letter dated 12 May 2006 to the Chair from Mr Ian Faulks, Manager, Committee on the Independent Commission Against Corruption in response to a letter from the committee inviting comments on the review of the Members' Code of Conduct.

Letter dated 8 May 2006 to the Chair from The Hon. David Hawker, Speaker of the House of Representatives in response to a letter from the committee inviting comments on the review of the Members' Code of Conduct.

Letter dated 16 May 2006 to the Chair from Mr Wayne Berry, Speaker of the ACT Legislative Assembly in response to a letter from the committee inviting comments on the review of the Members' Code of Conduct.

Letter dated 26 May 2006 to the Chair from Mr Bob Such MP, former Speaker to the South Australian House of Assembly in response to a letter from the committee inviting comments on the review of the Members' Code of Conduct.

Letter dated 6 June 2006 to the Chair from The Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption in response to a letter from the committee inviting comments on the review of the Members' Code of Conduct.

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***Correspondence sent:***

Letter dated 18 April 2006 from the Chair to all members inviting submissions to the review of the Members' Code of Conduct.

Letter dated 19 April 2006 from the Chair to the following individuals and organisations inviting submissions to the review of the Members' Code of Conduct:

The Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption  
Mr Graham Kelly, Inspector, Independent Commission Against Corruption  
The Hon. John Price MP, Chair, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics  
Mr Bob Sendt, Auditor-General, The Audit Office of New South Wales  
The Hon. Kim Yeadon MP, Chair, Committee on the Independent Commission Against Corruption.

Letter dated 19 April 2006 from the Chair to the following presiding officers of Australian parliaments inviting submissions to the review of the Members' Code of Conduct:

The Hon. Paul Calvert, President of the Senate, Parliament of Australia  
The Hon. David Hawker MP, Speaker of the House of Representatives, Parliament of Australia  
Mr Wayne Berry MLA, Speaker of the Legislative Assembly, ACT Legislative Assembly  
The Hon. Jane Aagaard MLA, Speaker of the Legislative Assembly, Parliament of the Northern Territory  
The Hon. Anthony McGrady, Speaker of the Legislative Assembly, Parliament of Queensland  
The Hon. Bob Such, Speaker of the House of Assembly, Parliament of South Australia  
The Hon. Ron Roberts, President of the Legislative Council, Parliament of South Australia  
The Hon. Michael Robert Polley, Speaker of the House of Assembly, Parliament of Tasmania

The Hon. Donald Wing, President of the Legislative Council, Parliament of Tasmania  
 Ms Judy Maddigan MP, Speaker of the Legislative Assembly, Parliament of Victoria  
 Ms Monica Gould MLC, President of the Legislative Council, Parliament of Victoria  
 The Hon. Fred Riebeling MLA, Speaker of the Legislative Assembly, Parliament of  
 Western Australia  
 The Hon. Nick Griffiths MLC, President of the Legislative Council, Parliament of Western  
 Australia.

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Letter dated 11 May 2006 from the Chair to Mr Roy Waldon, Solicitor to the Independent Commission Against Corruption, in response to his request for an extension to the closing date for submissions to the review of the Members' Code of Conduct.

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#### **5. Meeting with the Parliamentary Ethics Advisor, Mr Ian Dickson**

Mr Ian Dickson, Parliamentary Ethics Adviser, addressed the meeting.

The Committee deliberated.

Issues to be further considered:

- (a) gifts from constituents, and
- (b) the requirement for members to list their principal place of residence in the pecuniary interests register.

Mr Dickson withdrew from the Committee at 2.38 pm.

#### **6. Review of Member's Code of Conduct and draft regulation for the registration of members' pecuniary interests**

The Clerk briefed the Committee on recent developments in the review of the Members' Code of Conduct, including new terms of reference passed by the House on 8 June 2006.

The Committee deliberated.

Resolved, on the motion of Ms Griffin:

1. That the Committee write to all the stakeholders, including members, from which it has previously sought submissions, providing the amendments to the code and the draft regulation, and seeking their comment by 14 August 2006.
2. That the Committee write to the Leader of the Government, inviting him to comment on the intended purpose of and precedents for the draft amendments and regulation, as these were referred by the House without explanation or debate.

3. That the Committee seek comment from the Parliamentary Ethics Advisor on the amendments to the code and regulation
  4. That at its meeting currently set for 30 August 2006 the Committee consider all submissions received and determine its likely recommendations.
  5. That, prior to producing a final report, the Committee seek a meeting with the Chairs and Deputy Chairs of both Committees.
- 7. Next meeting**  
The committee agreed to schedule the next meeting for Wednesday 30 August 2006, pending any other developments.

Lynn Lovelock  
**Clerk to the Committee**

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### **Minutes No. 27**

Friday 11 August 2006, Parliament House, 2.31 pm.

- 1. Members present**  
Mr Primrose (in the Chair)  
Miss Gardiner  
Ms Griffin  
Ms Sharpe

An apology was received from Ms Fazio, Mrs Forsythe and Revd Mr Nile.

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

Hon Fred Riebeling, Chair  
Mr Max Trenorden  
Mr Peter McHugh, Adviser to the Committee

In attendance: Lynn Lovelock, Steven Reynolds, Velia Mignacca, Jenelle Moore.

- 2. Inquiry into draft Constitution (Disclosure by Members) Regulation 2006 and draft amendments to the Code of Conduct for Members**

The Hon. Fred Riebeling, Chair, Western Australian Legislative Assembly Procedure and Privileges Committee, addressed the meeting.

The Committee deliberated.

### 3. Adjournment

The committee adjourned at 3.05 pm sine die.

Lynn Lovelock  
Clerk to the Committee

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### Minutes No. 28

Wednesday 30 August 2006, Parliament House, 1.04 pm.

#### 1. Members present

Mr Primrose (in the Chair)  
Ms Fazio  
Mrs Forsythe  
Miss Gardiner  
Ms Griffin  
Revd Mr Nile  
Ms Sharpe

In attendance: Lynn Lovelock, Steven Reynolds, Velia Mignacca, Jenelle Moore.

#### 2. Confirmation of minutes

Minutes nos 26 and 27 were confirmed on motion of Ms Griffin.

#### 3. Correspondence

The Chair tabled the following correspondence:

##### *Correspondence received:*

Letter dated 14 July 2006 to the Chair from Mr R J Sendt, Auditor-General in response to a letter from the committee inviting comments on the draft amendments to the Members' Code of Conduct.

Letter dated 17 July 2006 to the Chair from The Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption in response to a letter from the committee inviting comments on the draft amendments to the Members' Code of Conduct.

Letter dated 27 July 2006 to the Chair from Mr Tony McGrady MP, Speaker of the Legislative Assembly of Queensland in response to a letter from the committee inviting comments on the draft Constitution (Disclosure by Members) Regulation 2006.

Letter dated 14 August 2006 to the Chair from Mr Bernard Wright, Registrar of Members' Interests, House of Representatives in response to a letter from the committee inviting comments on the draft Constitution (Disclosure by Members) Regulation 2006.

Letter dated 14 August 2006 to the Chair from Ms Lee Rhiannon MLC in response to a letter from the committee inviting comments on the draft Constitution (Disclosure by Members) Regulation 2006 and draft amendments to the Members' Code of Conduct.

Letter dated 14 August 2006 to the Chair from The Hon. John Della Bosca MLC, Leader of the Government in the Legislative Council in response to a letter from the committee inviting comments on the draft Constitution (Disclosure by Members) Regulation 2006 and draft amendments to the Members' Code of Conduct.

Letter dated 11 August 2006 to the Chair from Mr Ian Dickson, Parliamentary Ethics Adviser in response to a letter from the committee inviting comments on the draft Constitution (Disclosure by Members) Regulation 2006 and draft amendments to the Members' Code of Conduct.

Letter dated 16 August 2006 to the Chair from Ms Ruth Webber, Chair, Committee of Senator's Interest, The Senate in response to a letter from the committee inviting comments on the draft Constitution (Disclosure by Members) Regulation 2006.

Letter dated 18 August 2006 to the Chair from The Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption in response to a letter from the committee inviting comments on the draft Constitution (Disclosure by Members) Regulation 2006.

Letter dated 22 August 2006 to the Chair from the Hon. Nick Griffiths MLC, President, Western Australian Legislative Council in response to a letter from the committee inviting comments on the draft Constitution (Disclosure by Members) Regulation 2006.

***Correspondence sent:***

Letter dated 30 June 2006 from the Chair to Hon John Della Bosca MLC, Leader of the Government in the Legislative Council, inviting comment on the intended purpose of and precedents for the draft amendments to the Members' Code of Conduct and draft regulation tabled on 7 June 2006.

Letter dated 30 June 2006 from the Chair to Mr Ian Dickson, Parliamentary Ethics Advisor, inviting comment on the draft amendments to the Members' Code of Conduct, draft regulation and matters specifically raised in the terms of reference.

Letter dated 30 June 2006 from the Chair to all members inviting submissions to the Committee's inquiry relating to draft amendments to the Members' Code of Conduct tabled by the Government on 7 June 2006.

Letters dated 30 June 2006 from the Chair to the following individuals and organisations inviting submissions to an inquiry relating to draft amendments to the Members' Code of Conduct tabled by the Government on 7 June 2006:

The Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption

Mr Graham Kelly, Inspector, Independent Commission Against Corruption

The Hon. John Price MP, Chair, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics

Mr Bob Sendt, Auditor-General, The Audit Office of New South Wales

The Hon. Kim Yeadon MP, Chair, Committee on the Independent Commission Against Corruption.

Letter dated 30 June 2006 from the Chair to the following presiding officers of Australian parliaments inviting submissions to an inquiry relating to draft amendments to the Members' Code of Conduct tabled by the Government on 7 June 2006:

The Hon. Paul Calvert, President of the Senate, Parliament of Australia  
 The Hon. David Hawker MP, Speaker of the House of Representatives, Parliament of Australia  
 Mr Wayne Berry MLA, Speaker of the Legislative Assembly, ACT Legislative Assembly  
 The Hon. Jane Aagaard MLA, Speaker of the Legislative Assembly, Parliament of the Northern Territory  
 The Hon. Anthony McGrady, Speaker of the Legislative Assembly, Parliament of Queensland  
 The Hon. Bob Such, Speaker of the House of Assembly, Parliament of South Australia  
 The Hon. Ron Roberts, President of the Legislative Council, Parliament of South Australia  
 The Hon. Michael Robert Polley, Speaker of the House of Assembly, Parliament of Tasmania  
 The Hon. Donald Wing, President of the Legislative Council, Parliament of Tasmania  
 Ms Judy Maddigan MP, Speaker of the Legislative Assembly, Parliament of Victoria  
 Ms Monica Gould MLC, President of the Legislative Council, Parliament of Victoria  
 The Hon. Fred Riebeling MLA, Speaker of the Legislative Assembly, Parliament of Western Australia  
 The Hon. Nick Griffiths MLC, President of the Legislative Council, Parliament of Western Australia.

Letter dated 4 July 2006 from the Chair to all members inviting submissions to an inquiry relating to a draft regulation tabled by the Government on 7 June 2006.

Letter dated 4 July 2006 from the Chair to the following individuals and organisations inviting submissions to an inquiry relating to a draft regulation tabled by the Government on 7 June 2006:

The Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption  
 Mr Graham Kelly, Inspector, Independent Commission Against Corruption  
 The Hon. John Price MP, Chair, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics  
 Mr Bob Sendt, Auditor-General, The Audit Office of New South Wales  
 The Hon. Kim Yeadon MP, Chair, Committee on the Independent Commission Against Corruption.

Letter dated 4 July 2006 from the Chair to the following presiding officers of Australian parliaments inviting submissions to an inquiry relating to a draft regulation tabled by the Government on 7 June 2006:

The Hon. Paul Calvert, President of the Senate, Parliament of Australia

The Hon. David Hawker MP, Speaker of the House of Representatives, Parliament of Australia

Mr Wayne Berry MLA, Speaker of the Legislative Assembly, ACT Legislative Assembly

The Hon. Jane Aagaard MLA, Speaker of the Legislative Assembly, Parliament of the Northern Territory

The Hon. Anthony McGrady, Speaker of the Legislative Assembly, Parliament of Queensland

The Hon. Bob Such, Speaker of the House of Assembly, Parliament of South Australia

The Hon. Ron Roberts, President of the Legislative Council, Parliament of South Australia

The Hon. Michael Robert Polley, Speaker of the House of Assembly, Parliament of Tasmania

The Hon. Donald Wing, President of the Legislative Council, Parliament of Tasmania

Ms Judy Maddigan MP, Speaker of the Legislative Assembly, Parliament of Victoria

Ms Monica Gould MLC, President of the Legislative Council, Parliament of Victoria

The Hon. Fred Riebeling MLA, Speaker of the Legislative Assembly, Parliament of Western Australia

The Hon. Nick Griffiths MLC, President of the Legislative Council, Parliament of Western Australia.

#### **4. Inquiry into draft Constitution (Disclosure by Members) Regulation 2006 and draft amendments to the Code of Conduct for Members**

The Committee considered a briefing paper entitled "Draft Regulation", previously circulated to members.

Resolved, on the motion of Ms Fazio:

1. That the Committee request a briefing on the draft regulation and draft amendments to the Code from representatives of the Cabinet office.
2. That the Secretariat seek advice on the progress of the Legislative Assembly Committee on Parliamentary Privilege and Ethics' inquiry into draft amendments to the Code of Conduct for Members and the draft Constitution (Disclosure by Members) Regulation 2006.

#### **5. Adjournment**

The committee adjourned at 1.40 pm sine die.

Lynn Lovelock  
**Clerk to the Committee**

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**Minutes No. 29**

Wednesday 27 September 2006, Parliament House, 1.00 pm.

**1. Members present**

Mr Primrose (in the Chair)  
 Ms Fazio  
 Miss Gardiner  
 Ms Griffin  
 Mr Harwin  
 Revd Mr Nile  
 Ms Sharpe

In attendance: Lynn Lovelock, Steven Reynolds, Velia Mignacca, Jenelle Moore.

**2. Confirmation of minutes**

Minutes no. 28 was confirmed on motion of Ms Fazio.

**3. Correspondence**

Nil.

**4. Inquiry into draft Constitution (Disclosure by Members) Regulation 2006 and draft amendments to the Code of Conduct for Members**

Resolved, on motion of Revd Mr Nile: That the Chair prepare a draft report for consideration by the Committee.

The Chair's draft report entitled 'Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Regulation 2006' was circulated.

The Committee deliberated.

The Committee considered Chapter 1.

Resolved, on motion of Ms Fazio: That Chapter 1 be adopted.

The Committee considered Chapter 2.

Resolved, on motion of Ms Fazio: That Chapter 2 be adopted.

The Committee considered Chapter 3.

Resolved, on motion of Ms Sharpe: That section 3.38 be amended by omitting "introduces a whole new area of accountability" and inserting instead "is too onerous and intrusive on members' families".

Resolved, on motion of Ms Fazio: That section 3.38 be amended by inserting "family" after "private" in line 9.

Resolved, on motion of Miss Gardiner: That section 3.28 be amended by inserting at the end "but not more than three months".

Resolved, on motion of Ms Fazio: That section 3.29 be amended by inserting after "party" where first occurring a footnote reference indicating that the term "party" does not refer to a political party.

Resolved, on of Ms Fazio: That section 3.41 be amended by omitting "or in some cases" and inserting instead "and".

Resolved, on motion of Revd Mr Nile: That Chapter 3, as amended, be adopted.

The Committee considered Chapter 4.

Resolved, on motion of Ms Fazio: That section 4.46 be amended by omitting "pain relief etc" and inserting instead ", allergies and various chronic conditions".

Resolved, on motion of Ms Griffin: That Chapter 4, as amended, be adopted.

## 5. **Adjournment**

The committee adjourned at 1.42 pm until Thursday 28 September 2006 at 1.00 pm.

Lynn Lovelock  
**Clerk to the Committee**

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## **Minutes No. 30**

Thursday 28 September 2006, Parliament House, 1.00 pm.

### 1. **Members present**

Mr Primrose (in the Chair)

Ms Fazio

Miss Gardiner

Ms Griffin

Mr Harwin

Revd Mr Nile

Ms Sharpe

Apologies were received from Miss Gardiner and Revd Mr Nile.

In attendance: Lynn Lovelock, Steven Reynolds.

**2. Inquiry into draft Constitution (Disclosure by Members) Regulation 2006 and draft amendments to the Code of Conduct for Members**

The Committee deliberated.

The Committee considered the Chair's draft report.

Resolved, on motion of Ms Fazio:

1. That the report be adopted.
2. That the report be signed by the Chair and presented to the House.
3. That the submissions and correspondence received by the Committee be tabled with the report and made public.
4. That, upon tabling, the report be circulated to all members of the Legislative Council and the Legislative Assembly, and to all those who contributed submissions and information.

**3. Adjournment**

The committee adjourned at 1.04 pm sine die.

Lynn Lovelock  
**Clerk to the Committee**