

**Submission
No 8**

**REVIEW OF THE CONSTITUTION (DISCLOSURES BY MEMBERS)
REGULATION 1983**

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Standing Committee on Parliamentary Privilege and Ethics
PARLIAMENT HOUSE
SYDNEY NSW 2000

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Dear Chair

Thank you for advising me that the Committee is inquiring into the pecuniary interests regime outlined in the *Constitution (Disclosures by Members) Regulation 1983* (the Regulation), which is made under the *Constitution Act 1902*. I welcome the opportunity, as a former Clerk, to comment on how the Regulation worked in practice.

In my view, the Regulation is now very dated, and piecemeal amendment over time has resulted in unhelpful inconsistencies creeping into a reporting system instituted within the NSW Constitution over 35 years ago. From the date it was introduced the Regulation was considered to be so detailed that guidance would be required. In more recent decades, with increased focus on ethical governance in all aspects of public life, the overly complex and ambiguous structure of the Regulation has in my experience actively served to hinder members who, in good faith, took care to comply with its legal requirements. Despite best efforts, it has proven difficult to publish succinct guide notes or handbooks.

The Committee is urged to bite the bullet and consider a wholesale tidy-up of the Regulation. Simplifying the structure would promote the rationale for reporting of pecuniary and other interests, by enabling members to have confidence that their Primary Returns and updates were compliant. In the past new members have been advised to seek legal advice on the Regulation's requirements. The Regulation and forms should be more straightforward. It is important to note that no change is suggested to the *range* of matters required to be reported; it is the drafting layout of the Regulation, and timing of returns, that hinder effectiveness.

The current six monthly mandatory reporting regime is paper heavy and not particularly timely. In common with some other Australian jurisdictions, a Primary Return, followed by a requirement for continuous disclosure within one month of any change, would be more effective and efficient. The Clerk could issue an annual reminder to all members. There are currently 3 forms prescribed as a Schedule to the Regulation, with a fourth form having been

adopted in practice to enable publication of discretionary disclosures pursuant to clause 16.

It is appreciated that a regulatory reporting system will require some directions and definitions, and cannot be simplified in the same way as say, an aspirational code of conduct. However, the NSW Regulation, and the reporting system it establishes, are unwieldy. Comparing the current NSW Constitution (Disclosures by Members) Regulation 1983 with the Victorian Members of Parliament (Registration of Interests) Regulations 2013, while the types of interests to be reported are largely similar, the NSW Regulation is notably wordier, with important definitions scattered around the Regulation, rather than contained within the pertinent subject clause. In practice, these definitions proved so cumbersome that an attempt was made in 2007 to assist members by incorporating the definitions (eg thresholds, exemptions and cross-references to other Acts) into the design of the mandatory forms. However, as the reporting system is based on signed hard copy documents, the result was production of forms of up to 18 pages in length. Members were required to return signed, marked up forms, even if there had been no change during the reporting period. This initiative was consequently soon reviewed, the forms in the Schedule augmented by example returns and further guidelines published. However, as noted below, there remain ambiguous provisions that have proved difficult to clarify.

The body of the Regulation, the range and extent of interests required to be reported, remain relevant. The matters required to be reported are established by s14A of the Constitution Act 1902, as are the penalty provisions. So to understand the NSW registration of interests system one needs to consult both the Act and Regulation.

Turning to the list of interests required to be reported under the Act, it is noted that the Committee has previously recommended review of the thresholds for disclosure of **income**, **debts** or **gifts** (\$500) and contributions to travel (\$250) as they have not been indexed to inflation since 1983. Looking at the definitions for “debt”, “gift” and “income”, a very wide range of activities or arrangements could be encompassed within these provisions. From my knowledge of past events in NSW, it often seems that problems encountered by members in inadvertently overlooking or misunderstanding reporting requirements stemmed from lack of a nexus between the overly legalistic and complex six-monthly return system, and cultural shortcomings in embedding awareness of potential conflicts, and rationale for reporting, at an early point of a member’s career.

The Committee has also previously drawn attention to the shortcomings and cumbersome nature of Clause 11 Contributions to **travel**. Members tend to take a precautionary approach and declare any “contribution to any travel”, whether estimated to be of financial value above or below \$250; an upgrade; or (invaluable) guest hospitality; whether intrastate or overseas. Ever increasing media interest in members’ private and family lives has not been helpful. It is understandable that lifting the dollar value of the reporting threshold would be welcomed by members who felt that they had properly reported a minor accommodation upgrade received in common with others in a holiday tour group, only then to be subject to local media gossip. Much more problematic conflicts have arisen for members, not due to the value of a flight or accommodation upgrade, nor due to transport conveyance to a local, political party or ministerial event, but due to the name of the person or company which provided the travel assistance, and their business or other involvements. The current wording of Clause 11(2)(c) has caused particular problems, in that the double negative structure would seem to relieve members from reporting any contributions made to private travel, ie “the contribution was made in the ordinary course of any occupation of the Member which is not related to his or her duties as a Member”. The scope of the definition of “**gift**” in Clause 7 is equally unhelpful.

Noting developments in reporting of interests in the broader public sector, for some years now senior executive officers in the NSW public sector have been required to report to their Minister/Presiding Officer on the potential for conflict to arise due to interests held by their spouse or relatives. Contemporary public expectation would no doubt extend to members also being required to report on interests held by relatives, with the proviso that the member could reasonably be expected to have an awareness of those interests. It is important to keep in mind that the purpose of disclosing interests is to ensure avoidance of conflict; accordingly spouses’ or relatives’ interests should not be published or open to public inspection but kept in a separate confidential Register, accessible to the Parliamentary Ethics Adviser.

The Act and Regulation predate the appointment of a Parliamentary Ethics Adviser. I take this opportunity to urge the Committee to recommend that new members have mandatory individual meetings with the Parliamentary Ethics Adviser when they lodge their Primary Return with the Clerk. The Adviser is able to deal with inquiries about the regulatory requirements in a confidential setting, and convey information that is tailored to each member’s circumstances. While new members are extraordinarily busy with much information to absorb, to require that each new member personally meet with

the Adviser within the first three or four months of being elected would ensure that members commence with an accurate understanding of why, and which, interests are recorded.

Thank you for the opportunity to comment. I wish the Committee well with its endeavours in this important area.

Yours sincerely

Ronda Miller