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INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES



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# ANNOTATED CODE OF CONDUCT FOR MEMBERS: A GUIDE FOR MEMBERS OF NSW PARLIAMENT

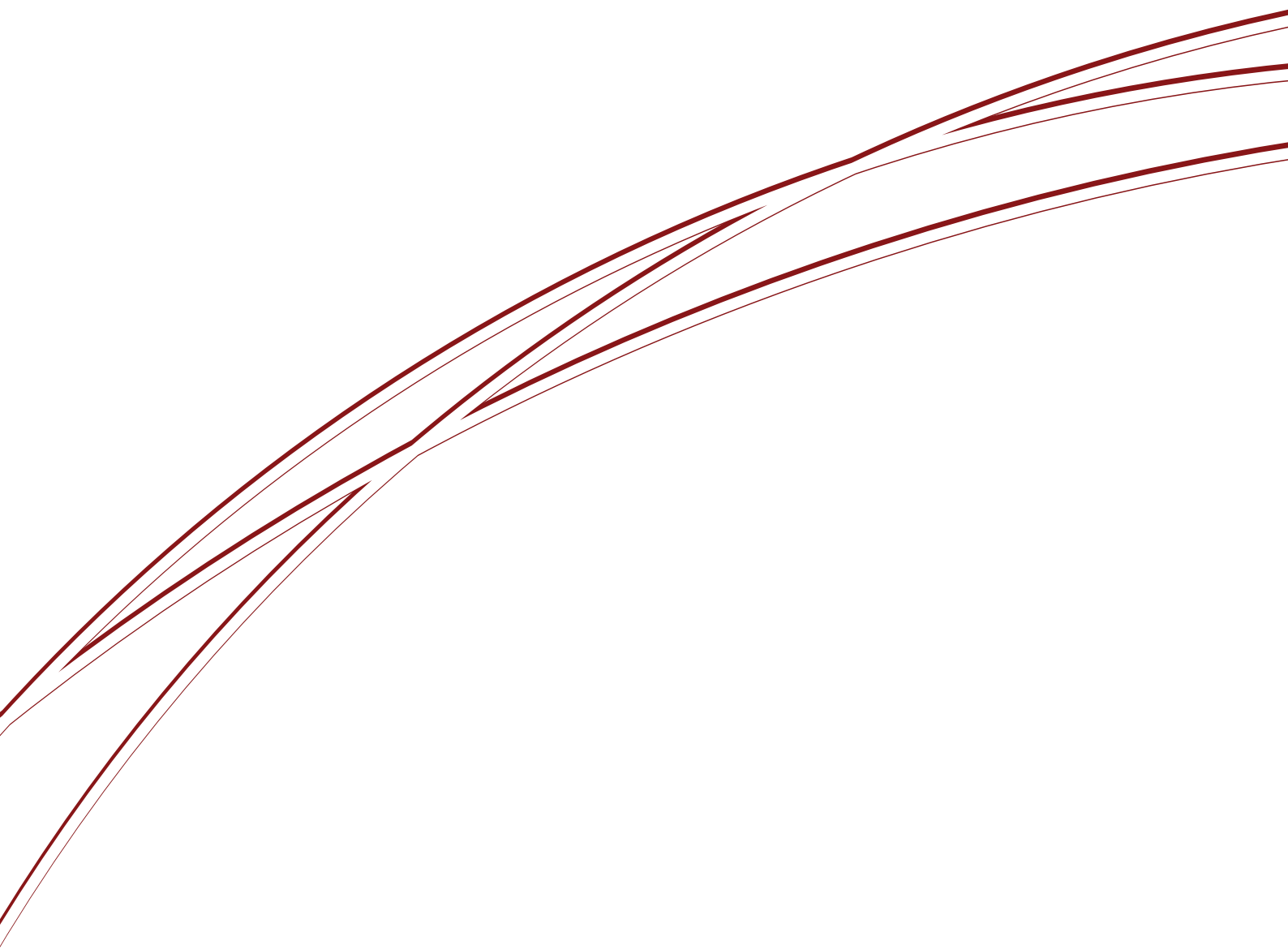
2nd Edition

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**JANUARY 2024**

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ICAC

INDEPENDENT COMMISSION  
AGAINST CORRUPTION

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**ANNOTATED CODE OF  
CONDUCT FOR MEMBERS:  
A GUIDE FOR MEMBERS  
OF NSW PARLIAMENT**

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**January 2024**

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Public sector organisations are welcome to refer to this publication in their own publications. References to and all quotations from this publication must be fully referenced.



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## Foreword

*The more senior the public official the greater the level of public trust in their position and the more onerous the duty that is imposed.*

Beech-Jones J, *R v Obeid (No 12)* [2016] NSWSC 1815 at [79]<sup>1</sup>

The *Code of Conduct for Members* (“the Code”)<sup>2</sup> prescribes standards of ethical behaviour to assist members of Parliament (“members”) in performing their duties with honesty and integrity, respecting the law and the institution and conventions of Parliament, and using their influence to advance the common good of the people of NSW.

Members have significant power and influence and occupy very senior positions in this state.

This Annotated *Code of Conduct for Members*, prepared by the NSW Independent Commission Against Corruption (“the Commission”), assists members to know the standards of acceptable behaviour and avoid conduct that could amount to a finding of serious corrupt conduct. It provides references to relevant past Commission reports and other publications that relate to specific topics within the current Code. It provides key messages, summaries of findings and observations made in specified Commission reports, which are relevant to these topics.

A substantial breach of the Code may constitute corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). Appendix 1 sets out the factors that the Commission takes into account when determining whether conduct amounts to “serious corrupt conduct” or a “substantial breach of an applicable code of conduct”. It also summarises the common law offence of misconduct in public office. Appendix 2 summarises Commission reports involving members of Parliament with reference to relevant sections of the ICAC Act.

In addition, the Commission has produced an *Annotated NSW Ministerial Code of Conduct*, which will help ministers and parliamentary secretaries to comply with the *NSW Ministerial Code of Conduct*.

The Commission wants to provide as much assistance as possible to ensure that members base their conduct on a consideration of the public interest and avoid conflict between personal interests and their duties as a member of Parliament. I hope this publication will support you in achieving this goal.

The Hon John Hatzistergos AM  
Chief Commissioner

January 2024

# Preamble to the Code

## The Preamble to the Code is as follows:

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

## Key messages

*...under this State's constitutional arrangements, and leaving aside the third arm of government, only Ministers occupy a more senior position than that occupied by parliamentarians.*

*Beech-Jones J, R v Obeid (No 12) 2016<sup>3</sup>*

The preamble to the Code performs several important functions as it outlines the Code's objectives, scope, values and principles. The values referenced directly or indirectly are:

- public trust
- public duties
- public interest.

These values are intrinsically connected and relate to the proper exercise of public power and the holding of public office:

*...the representatives who are members of Parliament and Ministers of State are not only chosen by the people but exercise their legislative and executive powers as representatives of the people.*

*ACTV v The Cth (1992) Mason CJ<sup>4</sup>*

Members occupy a position of public trust. The maintenance of public trust requires that members use their position "to advance the common good", resulting in the fundamental duty to act in the public interest. That is why members' duty has also been described as being "analogous to that of a fiduciary".<sup>5</sup>



Three High Court of Australia cases from the early 20<sup>th</sup> century – *Wilkinson v Osborne*,<sup>6</sup> *Horne v Barber*<sup>7</sup> and *R v Boston*<sup>8</sup> – illustrate the duties that members owe to the public. In the latter case, Isaacs J has summed up the public duties of a member as being “*the duty to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community*”.<sup>9</sup> (Original emphasis)

*...the ends for which public power may be exercised legitimately are limited by the law.*

Mahoney JA, *Greiner v ICAC*, 1992<sup>10</sup>

The fundamental legal principle of the rule of law underpins these values of public office:

Further, the preamble refers directly or indirectly to the following principles:

- accountability
- honesty
- integrity
- proper influence.

Members can demonstrate that they act with integrity by aligning their behaviour with the values and principles stated in the preamble.

The standard of behaviour expected of members does take account of the realities of party politics in NSW's system of representative democracy.<sup>11</sup>

However, it is imperative that members know that a “breach of public trust” can lead to a finding of corrupt conduct under the ICAC Act.

## Commission report to illustrate the preamble

### *Operation Jersey (2022)*

*Those who exercise public or official powers in a manner inconsistent with the public purpose for which the powers were conferred betray public trust and so misconduct themselves.*<sup>12</sup>

# Clause 1: Purpose of the Code

## The Code provision at clause 1 is as follows:

*The purpose of this Code of Conduct is to assist all Members in the discharge of their parliamentary duties and obligations to the House, their electorates and the people of NSW.*

*The Code applies to Members in all aspects of their public life.*

*In complying with this Code, Members shall base their conduct on a consideration of the public interest, avoiding conflict between personal interest and their duties as a Member of Parliament. It does not apply to Members in their purely private and personal lives.*

*Members will not act dishonestly for their own personal gain, or that of another person.*

*It is recognised that some members [sic] are non-aligned and others belong to political parties. Organised political parties are a fundamental part of the democratic process. Participation in the activities of organised political parties is within the legitimate activities of Members of Parliament.*

## Key messages

Clause 1 explains that the Code sets the standard of behaviour that is expected of members in the performance of all their parliamentary and public duties. It extends to members performing any public official function or acting in a public official capacity.

The High Court of Australia has endorsed a broad interpretation of the duties of a public officer. In *Herscu v The Queen*, Brennan J held that:

*When the office is such that the holder wields influence ... the wielding of influence ... is a discharge of the duties of the office. Such a wielding of influence is something done in an official capacity.<sup>13</sup>*

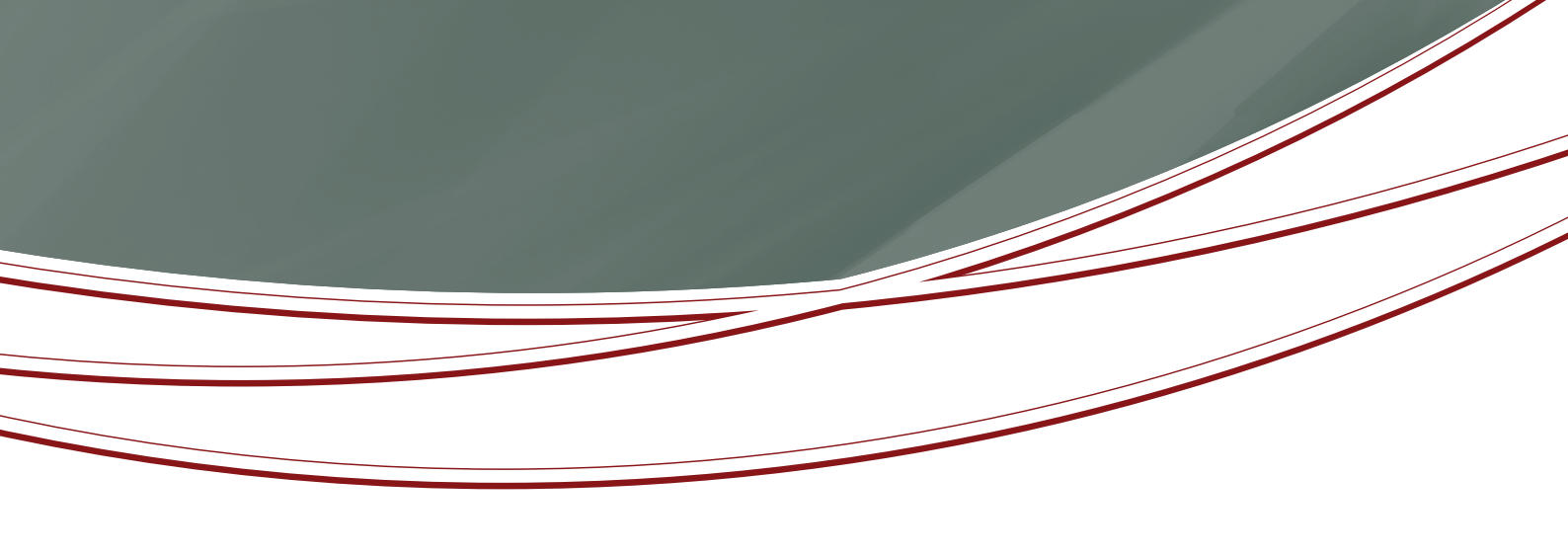
Commission investigation findings demonstrate that if members make representations on behalf of their constituents or their local community, or make use of their title and position, they are performing a public official function. This includes members' use of public resources (see case studies for clause 3).

Clause 1 mandates that the performance of members' duties or their official functions is based on:

- the public interest
- avoiding any conflict of interest
- not acting dishonestly for a personal benefit.

The Code recognises that political parties are part of the democratic process and that members' participation in party political activities is legitimate. However, additional entitlements should not be used to fund activities such as membership drives and party fundraising.

Provided that issues have been fairly and ethically decided in the party room, party discipline can also legitimately



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bind the position that members adopt on various issues in determining what is in the public interest. If members are permitted to exercise a “conscience vote”, their decision must also be driven by the public interest. Professor Gerard Carney has commented:

*... the political process inherently involves the balancing of competing interests ... but this should not occur because the members wish to favour one group over another, but because they believe the final outcome to be in the best interests of the community as a whole.*<sup>14</sup>

From time to time, political parties engage in a degree of negotiation and compromise to form and hold government or advance their policy agenda. Professor Carney’s analysis concludes that certain activities of a political nature may be legitimate (for example, additional resources being provided in exchange for support of a minority government). However, where a member secures a personal, as opposed to a political, benefit, the Code may be breached.<sup>15</sup>

The Code specifies that it does not apply to members’ purely private and personal lives. This exemption is limited and does not apply if the member’s personal or private interests come into conflict with their public duties.

## **Commission reports illustrating the purpose of the Code**

### ***Operation Witney (2022)***

A member used the influence and authority of their official position in attempting to influence the exercise of the official functions of local councillors in a manner that was directed to advantage the property interests of the member’s family.<sup>16</sup>

### ***Operation Credo (2017)***

A minister had failed to act with fidelity for the welfare of the community and breached their fiduciary duty as a public officer. They had arranged for the preparation and submission of a minute to the Budget Committee of Cabinet, with the intention of improperly favouring another member. Their conduct amounted to dishonest or partial exercise of their official functions.<sup>17</sup>

### ***Operation Meeka (2014)***

A member used their position to further their own interests by arranging for a minister to meet with businessmen for the purpose of them promoting the services of a private company to the NSW Government to benefit that company and without disclosing the member’s family’s interests in that company.<sup>18</sup>

## Clause 2: Improper influence

The Code provision at clause 2 is as follows:

- (a) *No member [sic] shall act as a paid advocate in any proceeding of the House or its committees.*
- (b) *A Member must not knowingly and improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive as a consequence:*
  - (i) *The Member;*
  - (ii) *A member of the Member's family;*
  - (iii) *A business associate of the Member; or*
  - (iv) *Any other person or entity from whom the Member expects to receive a financial benefit.*
- (c) *A Member must not knowingly and improperly use his or her influence as a Member to seek to affect a decision by a public official including a Minister, public sector employee, statutory officer or officer of a public body, to further, directly or indirectly, the private interests of the Member, a member of the Member's family, or a business associate of the Member.*

### Key messages

The relationship between elected members and those who seek to influence them must be handled with propriety. This is to maintain the confidence of the public in the decision-making and integrity of representatives in Parliament.

Members should therefore avoid placing themselves under any obligation to people or organisations (for example, lobbyists) that might try to unduly influence their work. Similarly, members should not seek to influence, encourage, or induce others for the purpose of securing a private benefit. This includes interactions with other members, departmental employees and local government.

Members are obliged, therefore, to comply with measures intended to prevent improper influence, including:

- the prohibition of paid advocacy
- not promoting matters for which they, their family, or close associates could obtain a private benefit
- fully disclosing interests and any conflict of interest
- the legislative and regulatory framework on political donations and expenditure.

**...it was a, consistent barrage of pursuing an agenda...**

Response by councillor regarding discussions had with a corrupt member about a planning strategy being considered by a council (Operation Witney, 2022)<sup>19</sup>

## Further information

The Commission's Operation Eclipse report noted that lobbying carries inherent risks of corruption, undue influence, unfair access and biased decision-making.<sup>20</sup>

The term "improper influence" is not found in the ICAC Act, although such influence may, in some circumstances, constitute corrupt conduct. The Commission can provide advice on how to manage the risks of corruption associated with improper influence.

## Commission reports illustrating improper influence

### *Operation Witney (2022)*

A member used the influence and authority of their official position in attempting to influence the exercise of the official functions of councillors.<sup>21</sup>

### *Operation Eclipse (2021)*

The Commission observed that in situations where a lobbyist's insider status is based on a personal, social or political relationship, the prospect of conflicts of interest is a matter of significant concern.<sup>22</sup>

### *Operation Credo (2017)*

A member misused their public office to promote the interests of a company, including with the premier and treasurer, knowing that advancing those interests could financially benefit the interests of their family.<sup>23</sup>

### *Operation Cyrus (2014)*

A member misused their position to make representations to ministers to change government policy regarding certain leases and deliberately failed to disclose their family's interests in these leases.<sup>24</sup>

### *Operation Cabot (2014)*

A member misused their position to benefit their family's financial interests by improperly influencing a public official in the discharge of their duties with respect to the award of water licences.<sup>25</sup>

## Clause 3: Use of public resources

### The Code provision at clause 3 is as follows:

*The use of public resources should not knowingly confer any undue private benefit on the Member or, on any other person, or entity.*

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

### Commentary

There is a range of information available to Members to assist them in determining the accurate and appropriate use of resources, including:

- The Legislative Assembly Members' Guide;
- The Legislative Council Members' Guide;
- The Department of Parliamentary Services Members' Entitlements Handbook; and
- The Parliamentary Remuneration Tribunal's Annual Report and Determination of Additional Entitlements for Members of the Parliament of New South Wales.

In addition, it is open to any Member to seek advice on these matters from the Clerks of the House, Senior Parliamentary Officers or the Parliamentary Ethics Adviser.

### Key messages

Members have access to and are provided with public resources to fulfil their parliamentary duties. These public resources include:

- staff
- electorate or parliamentary offices
- allowances, entitlements or other benefits
- email and other IT systems
- stationery (which bears the crest of the Parliament).

To comply with the Code, members must know and follow the guidelines and rules on the use of these types of public resources. This includes the annual determination made by the Parliamentary Remuneration Tribunal (PRT).

The Commission has made a range of corrupt conduct findings regarding the misuse of public resources, including the misuse of staff, parliamentary offices, stationery and various entitlements.

#### *It may be incorrect but it's just the practice.*

Member's response when questioned about their failure to read the "Member's Declaration" on the sitting day relief entitlement form (Operation Syracuse, 2010)

In Victoria, members were found to have breached their code of conduct by misusing public resources to pursue factional interests. The investigation, known as Operation Watts, found that there was a “deliberate and extensive use of electorate officers and ministerial advisers for party-political purposes” and that this “was unethical and not in-line with community standards in the use of public funds...”.<sup>26</sup>

A previous report by the Victorian Ombudsman found that members and former members had breached Parliament’s members’ guide by certifying payments to electorate officers that were, in fact, used for party political campaigning.<sup>27</sup>

## Further information

In addition to the rules and guidelines referenced in the Code, the clerks of the house, senior parliamentary officers or the parliamentary ethics adviser can provide advice on the appropriate use of public resources.

The PRT has issued relevant guidelines, including that some “intermingling of a Member’s parliamentary duties and non-parliamentary duties is in practical terms not always easily avoided”. Any unavoidable intermingling must be “incidental” or, if not, the member must self-fund the non-parliamentary component.

## Commission reports illustrating the use of public resources

### *Operation Keppel (2023)*

A member used taxpayer-funded resources for private purposes in attempting to monetise their public office. The resources included their office in Parliament House and parliamentary staff.<sup>28</sup>

### *Operation Aero (2021)*

A member used their office in Parliament House and parliamentary resources (scanning machines and an email address that featured their official signature block) as part of an unlawful scheme to circumvent political donation laws.<sup>29</sup>

### *Operations Corinth and Syracuse (2010)*

Members made false declarations regarding the sitting day relief entitlement, which caused Parliament to make payments to staff.<sup>30</sup>

### *Operation Wingate (2004)*

A member misused stationery items and postage stamps and used electorate and ministerial staff for private purposes.<sup>31</sup>

### *Operation Athens (2003)*

A member knowingly misused staff for political campaigning. In addition, there were findings that the member misused their allowances. The member’s conduct amounted to a substantial breach of an applicable code of conduct regarding the use of public resources.<sup>32</sup>

## Clause 4: Use of confidential information

The Code provision at clause 4 is as follows:

*Information which Members receive in confidence in the course of their parliamentary duties should be used only in connection with those duties. It must never be knowingly and improperly used for the private benefit of themselves or any other person or persons.*

### Key messages

From time to time, members will have access to confidential information, which may be written or verbal.

Members need to be cautious in dealing with confidential information, in particular when:

- meeting with lobbyists
- making representations to other public officials that affect the member's private interests
- being requested by friends, family members or associates to provide information
- seeking post-parliamentary employment and/or transitioning into the private sector.

Members must be aware that any unauthorised release or misuse of confidential information might constitute corrupt conduct.

**... [the] document has been leaked!'' ... tell him not to give anyone a copy asap.**

Text messages between individuals who had been provided a confidential report by a member.  
(Operation Spicer, 2016)



## Further information

The NSW Ombudsman oversees the operation of the *Public Interest Disclosures Act 2022* across the NSW public sector. Public interest disclosures, often called “whistleblowing”, involve confidential information and can, in limited circumstances, be made to members.

The NSW Information and Privacy Commission is an independent statutory authority that administers legislation dealing with privacy and access to government information in NSW.

## Commission reports illustrating confidential information

### *Operation Keppel (2023)*

A member obtained and provided confidential information regarding the proposed route of the M9 Outer Sydney Orbital to a business associate in the hope of obtaining a benefit. This was a misuse of the member’s position and breach of trust.<sup>33</sup>

### *Operation Credo (2017)*

The Commission observed that a company was provided with legal advice concerning potential decisions of the Budget Committee of Cabinet, and that this confidential legal advice had most likely been provided by a member.<sup>34</sup>

### *Operation Spicer (2016)*

A member provided a company director with a copy of a confidential NSW Treasury report, which resulted in a finding of misuse of information and corrupt conduct. The report was provided by the member to ingratiate themselves in the hope of securing a future benefit.<sup>35</sup>

### *Operation Jasper (2013)*

A minister provided a member and their family with confidential information to benefit the family. The information included maps, departmental advice regarding coal exploration licences and the related expression-of-interest process.<sup>36</sup>

## Clause 5: Limitation on breach of Code

The Code provision at clause 5 is as follows:

*This code is not breached by reason of a benefit or interest that could be or was advanced or received by the persons set out in 2(b)(i)-(iv) by reason of them being a member of the public or a member of a broad class.*

### Key messages

Clause 5 specifies that the Code is not breached if a member is only affected as a member of the general public or as a member of a broad class within a community.

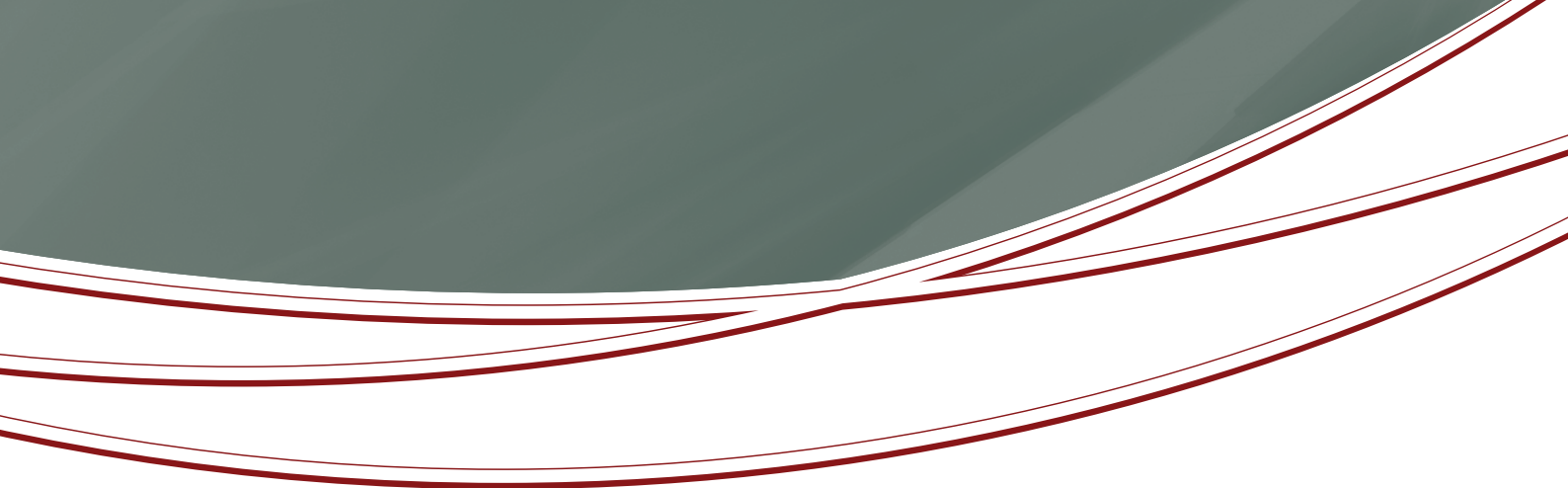
Clause 5 specifically refers to improper influence (see clause 2) and similar wording also appears in clause 7 concerning conflicts of interest.

Members are part of the local communities in which they live. They have multiple interests and connections and are affected by government decisions and policies.

This clause ensures that members can voice their opinions and advocate for change without being accused of improper influence. Similarly, having interests is normal and not every interest will amount to a conflict of interest.

Beech-Jones J has put it as follows:

*... from time to time Parliamentarians may have to make decisions that can affect their personal interests. For example, they may advocate the raising or lowering of taxes. In such a case they are advocating a position that could affect everyone's interest, including their own. There is no misconduct in their doing so provided they act only according to their conscience as to what is in the public interest and that of the electorate and are not doing so with the intention of advancing their own personal pecuniary interests.<sup>37</sup>*



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A member may be a participant in:

- a community group
- activities in their local government area
- a religiously affiliated group
- a sporting club.

Each case will depend on its circumstance. However, if a member has a close association, or is the driving force or instigator, then the interest is likely to amount to a conflict of interest.

For example, in Operation Witney, the Commission did not accept the member's argument that they were representing the views of the local community. Instead, the Commission found that the outcomes pursued by the member were those of their family's property interests, which were inconsistent with what had been determined by the local government authority to be in the public interest.<sup>38</sup> The Commission found the member was acting to advance their private interests while falsely purporting to be acting in the interests of constituents and the community.<sup>39</sup>

## Clause 6: Disclosure of interests

The Code provision at clause 6 is as follows:

*Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members.*

### Commentary

The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that Members lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts.

The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.

Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:

- Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return;
- The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure regime in plain language, with examples where possible; and
- It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.

In conjunction with the Regulation and this code, the following Standing Orders apply in relation to personal or pecuniary interests:

- Legislative Assembly Standing Orders 176-7 and Legislative Council Standing Order 113(2) on voting in divisions; and
- Legislative Assembly Standing Order 276 and Legislative Council Standing Order 210(10) on participating in committee inquiries.

### Key messages

Registers of members' interests are an accountability measure. As occupants of high office, entailing public trust, members must reveal certain interests pursuant to the Regulation.

The purpose of a disclosure regime is to assist members in recognising and avoiding any potential conflicts of interest that could arise between their public role and personal interests. Further, this transparency measure assists others to determine whether a member is potentially conflicted. This clause of the Code is closely related to clauses 7 (conflicts of interest) and 8 (gifts).

Compliance with the disclosure regime is one of the duties attached to the public office of a member.

The registration process of members' interests is formalised through the disclosures register, which is a compilation of members' interests placed on the public record.

Some of the types of interests that members are required to disclose include:

- sources of income (from sources other than parliamentary remuneration, if they exceed \$500)
- certain details regarding real property
- a range of positions, including in corporations.

Following the passage of the *Integrity Legislation Amendment Act 2022* there is now provision for the making of an expanded regulation with respect to the disclosure of pecuniary interests, including interests in trusts, and the interests of immediate family members.<sup>40</sup>

*I was aware that his son had some form of relationship with the company ... and I remember expressing ... my concern that ... there was ... a pecuniary relationship.*

Former premier responding to a question about being contacted by a member (Operation Credo)<sup>41</sup>

## Further information

Details of the disclosure requirements as well as related rules and guidelines are referenced in the Code.

The clerks of the house or the parliamentary ethics adviser also can provide advice on the disclosure of interests.

## Commission reports illustrating the disclosure of interests

### *Operation Keppel (2023)*

A member failed to disclose their interest and position in a company pursuant to the disclosure regime although they knew they were obliged to do so.<sup>42</sup> The non-disclosure of the position and/or the income received from or in connection to the company constituted a dishonest exercise of official functions.<sup>43</sup> This conduct would cause a reasonable person to believe that the member brought the integrity of their office into serious disrepute.<sup>44</sup>

### *Operation Witney (2022)*

A member deliberately failed to declare an interest in real property, which was held as a trustee of a superannuation fund. This was contrary to obligations pursuant to the Code.<sup>45</sup>

## Clause 7: Conflicts of interest

### The Code provision at clause 7 is as follows:

*Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.*

*Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.*

*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.*

### Commentary

Members should be aware of the important distinction between disclosing an interest and having a conflict of interest.

There are certain pecuniary interests that must be disclosed on the Register of Disclosures although these may never come into conflict with a Members' [sic] duties. There are also interests that are not required to be disclosed on the Register of Disclosures but which could give rise to a conflict of interest if they are not managed appropriately.

It is open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.

### Key messages

The purpose of this clause is to demonstrate to the public that members place the public interest ahead of their private interests. This will help maintain public confidence and trust in the integrity of members and Parliament.

It is normal to have private interests. It is important, however, to identify whether a private interest *could* conflict with a member's public duty and, if so, take steps to manage that conflict.

*A conflict of interest exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties.*

NSW ICAC, *Managing conflicts of interest in the NSW public sector*, 2019<sup>46</sup>

Members must be cautious regarding any conflict between their private or personal interests and the public interest.

Personal or private interest refers to the interests that arise from an individual's private or non-work life that can bring financial or other material benefits or result in disadvantages to the public interest or to other people. Importantly, a member's personal interests can include the interests of their family, friends or close associates. It includes pecuniary interests (for example, income, shares, loans or debts) as well as non-pecuniary interests (for example, friendships).<sup>47</sup>

An objective, rather than subjective, test is used in determining whether there is a conflict of interest. The perspective used is that of a hypothetical, fair-minded and informed observer – the reasonable person.<sup>48</sup>

It is important to:

- recognise a conflict of interest, disclose it and ensure that it is managed appropriately
- err on the side of caution and disclose a private or personal interest even if there is a subjective belief by that person that they can still bring an impartial mind to the matter.

In some circumstances, a member's failure to fully disclose a conflict of interest might amount to corruption. Commission investigations in this area have involved members lobbying other public officials, such as ministers and local government officials, to advance the member's interests. Transgressions involving the failure to declare conflicts of interest in Parliament are matters for the Privileges Committees and outside the remit of the Commission.

## Further information

The parliamentary ethics adviser can provide advice on potential conflicts of interest.

The Commission's 2019 publication, *Managing conflicts of interest in the NSW public sector*, provides guidance regarding conflicts of interest. The Commission can also provide advice on how to identify and disclose private interests that could influence a member's public duties and functions.

## Commission reports illustrating the conflicts of interest

### *Operation Witney (2022)*

The Commission found that a member was acting to advance their private interests and those of their family while lobbying councillors over planning matters. The member falsely purported to be acting in the interests of constituents and the community.<sup>49</sup>

### *Operation Credo (2017)*

A member did not raise their or their family's interest in a company when the member asked the premier to intervene in a dispute that a government agency had with that company. The Commission found that such conduct amounted to a misuse of the member's position and a breach of their duty.<sup>50</sup>

### *Operation Cyrus (2014)*

A member made representations to ministers to have leases renewed without a tender process with respect to commercial leases at Circular Quay without disclosing that their family was effectively a lessee and would benefit financially from the policy change.<sup>51</sup>

## Clause 8: Gifts

### The Code provision at clause 8 is as follows:

- (a) *Members must take reasonable steps to disclose 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 knowingly accept gifts that could reasonably be expected to give rise to a conflict of interest or could reasonably be perceived as an attempt to improperly influence the Member in the exercise of his or her duties.*
- (c) *Nothing in this Code precludes the giving or accepting of political donations in accordance with the Electoral Funding Act 2018.*

### Commentary

The Constitution (Disclosures by Members) Regulation 1983 (the Regulation) requires that members lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts.

The Regulation also requires that each clerk compile and maintain a register of disclosures for their respective houses. The purpose of the register of disclosures is to promote greater transparency, openness and accountability in the parliamentary process.

Members' attention is drawn to the following sources of information and advice on compliance with the requirements of the Regulation:

- Schedule 1 of the Regulation outlines the requirements for each type of interest to be disclosed, and gives examples as to how to make entries on the return.
- The respective guides for Members of the Legislative Assembly and the Legislative Council explain the requirements of the pecuniary interest disclosure

regime in plain language, with examples where possible; and

- It is also open to any Member to seek advice on these matters from the Clerks of the House or the Parliamentary Ethics Adviser.

### Key messages

Members must disclose:

- a gift exceeding the value of \$500, or two or more gifts of aggregate value
- contributions to travel valued at \$250 or more
- debts over \$500.

Gifts and hospitality can be used to cultivate an improper relationship with members. Even gifts of a modest value can be used to develop, over time, a relationship where a member feels an obligation or loyalty to the donor. Where a gift is used to reward or induce a favourable decision, it could be construed as a bribe.

Members must carry out their role impartially and with transparency, without any perceived undue influence.

Risks associated with gifts include:

- the perception that a member may be unduly influenced or open to bribery
- that the gift is perceived as an inducement or incentive to act in a certain way
- the tendency for recipients to feel a sense of indebtedness
- the conflict of interest that may be created because of the relationship that may form with the donor.



Lawful political donations are different from gifts but entail some of the same risks.

*Giving and receiving gifts is a significant corruption risk ...*

*NSW ICAC, Investigation into the regulation of lobbying, access and influence in NSW, 2021.<sup>52</sup>*

## Further information

The rules regarding gifts are set out in the Regulation. The clerks of the house and the parliamentary ethics adviser can provide advice.

The Commission's Operation Eclipse report outlines concerns and related recommendations relating to gifts and certain fund-raising events.<sup>53</sup>

## Commission reports illustrating risks associated with gifts and political donations

### *Operation Aero (2021)*

This investigation identified an unlawful \$100,000 cash donation from a prohibited donor.<sup>54</sup>

### *Operation Credo (2017)*

A member failed to disclose a gift of an expensive bottle of wine.<sup>55</sup>

### *Operation Indus (2014)*

The son of a member provided a benefit in the form of a discount on a car (totalling \$10,800) to a minister intending it as an inducement for the minister to show favour in the exercise of their public official functions.<sup>56</sup> The minister did not show favour despite the inducement.

### *Operation Acacia (2013)*

A minister granted a mining exploration licence to a private company at a costly dinner that was paid for by a principal of that company.<sup>57</sup> The report noted that a private person extended "considerable hospitality" to the minister "by paying the restaurant bills".<sup>58</sup>

## Clause 9: Upholding the Code

The Code provision at clause 9 is as follows:

*Members have a duty to cooperate fully with any processes established under the authority of the House concerning compliance with this Code.*

*Breaches of this Code may result in action being taken by the House in relation to a Member.*

*A substantial breach of the Code may constitute corrupt conduct for the purposes of the Independent Commission Against Corruption Act 1988. This resolution has continuing effect unless and until amended or rescinded by resolution of the House.*

### Key messages

Effective enforcement requires that there are consequences for breaches of the Code. Otherwise, codes simply rely on self-regulation. As observed by the Commission, for “a model of regulation to be considered meaningful it must be able to be effectively enforced. There cannot be gaps in the model that allow particular types of misconduct to be protected from investigation.”<sup>59</sup>

Because there are enforcement mechanisms, the Code is aspirational as well as being *prescriptive*.

The following enforcement mechanisms exist regarding the conduct of members:

- In 1969, the NSW Supreme Court recognised that a house has an inherent power to expel a member for conduct unworthy of a member of the house, if the power is exercised in a manner that is necessary to defend the integrity and high standing of the house.<sup>60</sup>
- Section 14A(2) of the *Constitution Act 1902* (NSW) (“the Constitution Act”) provides that if a member of either house wilfully contravenes any regulation made under s 14A(1) of the Constitution Act, including the Constitution (Disclosures by Members) Regulation 1983, the house may declare the member’s seat vacant.
- A substantial breach of the Code may constitute corrupt conduct for the purposes of the ICAC Act.
- The courts have jurisdiction in respect of criminal matters, even though Parliament has the power to deal with contraventions of the Code.<sup>61</sup>

- The parliamentary independent complaints officer (ICO) can consider complaints about alleged breaches of the Code, including misuse of allowances and entitlements, less serious misconduct matters falling short of corrupt conduct and minor breaches of the pecuniary interest disclosure scheme. The ICO can also consider complaints in relation to bullying, harassment and other types of inappropriate behaviour.<sup>62</sup>

To date, the house has not declared a member's seat vacant pursuant to s 14A of the Constitution Act. In 2003, the Commission recommended that a house of Parliament should consider expelling a member. This expulsion motion was due to be debated, but shortly before the house was considering the expulsion motion, the member submitted their resignation to the governor.<sup>63</sup>

The Commission provides oversight and enforcement of members' conduct. Members are reminded that the Code is an applicable code of conduct for the purposes of the ICAC Act. However, the Commission, due to its legislated role, focuses on serious corrupt conduct and systemic corrupt conduct.

*In framing a government ... you must first enable the government to control the governed; and in the next place oblige it to control itself.*

James Madison, founding father and fourth president of the United States of America, 1788<sup>64</sup>

## Further information

The clerks of the house and the parliamentary ethics adviser can provide advice about upholding the Code.

The Commission's role includes the broad function of promoting the integrity and good repute of public administration. It can also provide general assistance on educating public authorities as well as provide advice on examining the laws, practices and procedures of public authorities.

# Appendix 1

Under the ICAC Act, the Commission can make findings of “serious corrupt conduct” against a member, including for a “substantial breach of an applicable code of conduct”.

The information in this appendix summarises the Commission’s approach relevant to its findings of corrupt conduct, whether a substantial breach occurred, and whether the conduct amounted to serious corrupt conduct.

An overview of the common law offence of “misconduct in public office” is also included in this appendix, which is relevant for the threshold set out in s 9(1)(a) of the ICAC Act.

## Corrupt conduct

Corrupt conduct is defined in s 7, s 8 and s 9 of the ICAC Act. It involves deliberate or intentional wrongdoing involving (or affecting) a NSW public official, public authority in NSW or NSW public official functions. It includes dishonesty or partiality or breach of public trust.

Relevantly, for conduct by a member to be considered corrupt, it must constitute or involve a criminal offence or a substantial breach of their code of conduct pursuant to s 9(1)(a) and s 9(1)(d) of the ICAC Act. In addition, conduct by a member that breaches a law and which could bring the integrity of their office or Parliament into “serious disrepute” could justify a finding of corrupt conduct (see s 9(4) and s 9(5) of the ICAC Act). For any conduct to amount to corrupt conduct it must be serious (s 74BA).

## “Substantial breach” of an applicable code of conduct

The Commission’s approach to making a finding as to whether conduct could involve a substantial breach was considered in detail in a 2004 report, *Investigation into conduct of the Hon J. Richard Face* (Operation Wingate).

That report considered what Justice Deane said in *Tillmanns Butcheries Pty Limited v Australasian Meat Industry Employees’ Union* (1979) 42 FLR 331 at 348 about the word “substantial”, including that it can mean “...real or of substance as distinct from ephemeral or nominal. It can also mean large, weighty or big. It can be used in a relative sense or can indicate an absolute significance, quantity or size.”

The Operation Wingate report referred to *Director of Public Prosecutions v Losurdo* (1998) 44 NSWLR 618 at 622, where the NSW Court of Appeal observed that the word “substantial” is “an ordinary English word and must be given its ordinary meaning in the context in which it appears”.

The Commission’s September 2003 report to the Speaker of the Legislative Assembly, *Regulation of Secondary Employment for Members of the NSW Legislative Assembly*, took the approach that a “substantial” breach of the Code will depend on the facts and circumstances of each particular case, and that the word “substantial” is given its natural and ordinary meaning. The view taken by the Commission as to what constitutes a “substantial breach” is outlined at page 25 of that report, namely, that:

*The ICAC is of the view that the meaning should also be considered in the overall context in which the term is used. The Preamble to the Code refers to the responsibility of MPs to perform their duties with honesty and integrity, respecting the law and the institution of Parliament. What constitutes a “substantial” breach will also be influenced by which clause of the Code a Member is alleged to have breached. For example a single instance of a breach of clause 2 (which deals with bribery) may amount to a “substantial” breach, whereas a single instance of a breach of clause 4 (dealing with the use of public resources) may not be regarded as a “substantial” breach. Other factors to consider may include the amount of money or value of gifts involved, whether the conduct could also amount to a criminal offence, the nature and extent of a failure to declare a conflicting interest and the assessment of that conduct by other Members.*

Although the clause numbers and heading names of the Code have changed since 2003, this continues to reflect the Commission's approach to determining whether a breach of an applicable code of conduct is substantial.

## Serious corrupt conduct

The Commission takes a range of factors into account in determining whether conduct could amount to "serious corrupt conduct" pursuant to s 74BA of the ICAC Act. These include, but are not limited to:

- whether the conduct involves a risk to the life, health or safety of one or more persons
- the degree to which the conduct impairs or could impair public confidence in public administration
- the seriousness of any misconduct having regard to the responsibilities of the office and the office-holder, the gravity of their responsibilities to the public, and the nature and extent of the departure from those responsibilities
- the amount of money involved
- the period of time over which the conduct occurred
- whether the conduct involved a substantial breach of trust
- motivation
- the role, functions and seniority of the person involved in the conduct
- the level of sophistication and planning involved
- the number of public sector agencies affected by the conduct
- the number of persons involved in the conduct
- the degree to which the conduct was pre-meditated

- whether the conduct could warrant dismissal or removal from office, and
- in the case where conduct could constitute or involve a criminal offence, the nature of the offence and the available penalty.

This list is not intended to be exhaustive and may be expanded with reference to additional matters that arise in particular investigations.

## Misconduct in public office

For the purposes of s 9(1)(a) of the ICAC Act, the relevant criminal offence includes the common law offence of misconduct in public office. The settled formulation of the elements of the contemporary offence of misconduct in public office is as stated by the Victorian Court of Appeal in *R v Quach* [2010] VSCA 106 at 46 and *Obeid v R* (2015) 91 NSWLR 226; [2015] NSWCCA 309. The offence is committed where:

1. a public official;
2. in the course of or connected to his or her public office;
3. wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
4. without reasonable excuse or justification; and
5. where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.

## Appendix 2: Commission reports making findings pursuant to the ICAC Act involving members of Parliament

Commission report	ICAC Act									
	s 8(1) (a)	s 8(1) (b)	s 8(1) (c)	s 8(1) (d)	s 8(2)	s 9(1) (a)	s 9(1) (d)	s 9(4)-(5)	s 74A(2)	s 74BA
<i>Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel, 2023)</i>		X	X				X		X	X
<i>Investigation into the conduct of the local member for Drummoyne (Operation Witney, 2022)</i>	X	X	X				X		X	X
<i>Investigation into political donations by Chinese friends of Labor in 2015 (Operation Aero, 2021)</i>			X				X		X	X
<i>Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters (Operation Credo, 2017)</i>	X	X	X				X		X	X
<i>Investigation into NSW Liberal Party electoral funding for the 2011 state election campaign and other matters (Operation Spicer, 2016)</i>		X	X	X			X		X	X
<i>Investigations into the conduct of the Hon Edward Obeid MLC and others in relation to influencing the granting of water licences and the engagement of Direct Health Solutions Pty Ltd (Operations Meeka and Cabot, 2014)</i>	X	X	X				X		X	n/a

Commission report	ICAC Act									
	s 8(1) (a)	s 8(1) (b)	s 8(1) (c)	s 8(1) (d)	s 8(2)	s 9(1) (a)	s 9(1) (d)	s 9(4)-(5)	s 74A(2)	s 74BA
<i>Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay retail lease policy (Operation Cyrus, 2014)</i>		X	X		X	X			X	n/a
<i>Investigation into the conduct of Ian Macdonald, John Maitland and others (Operation Acacia 2013)</i>		X	X		X	X			X	n/a
<i>Investigation into the conduct of Ian Macdonald, Edward Obeid Senior, Moses Obeid and others (Operation Jasper, 2013)</i>	X	X	X	X	X	X			X	n/a
<i>Investigation into the conduct of Ian Macdonald, Ronald Medich and others (Operation Jarilo, 2013)</i>		X	X		X	X			X	n/a
<i>Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority (Operation Napier, 2011)</i>		X			X	X			X	n/a
<i>Investigation into the submission of false claims for sitting day relief entitlement by Angela D'Amore MP and some members of her staff (Operation Syracuse, 2010)</i>	X	X	X		X	X	X	X	X	n/a

Commission report	ICAC Act									
	s 8(1) (a)	s 8(1) (b)	s 8(1) (c)	s 8(1) (d)	s 8(2)	s 9(1) (a)	s 9(1) (d)	s 9(4)-(5)	s 74A(2)	s 74BA
<i>Investigation into the submission of false claims for sitting day relief payments by a NSW MP and members of her electorate staff (Operation Corinth, 2010)</i>	X	X	X		X	X	X		X	n/a
<i>Report on investigation into conduct of the Hon J. Richard Face (Operation Wingate, 2004)</i>			X	X	X	X	X		X	n/a
<i>Report on an investigation into the conduct of the Hon. Malcolm Jones MLC (Operation Athens, 2003)</i>			X			X	X		X	n/a
<i>Investigation into Parliamentary Electorate Travel: First report (Operation Encina, 1998)</i>		X	X		X	X			X	n/a

## Table key

**X** Relevant to making corrupt conduct findings.  
See the “Explanatory note” below for further details.

## Key legislative amendments

In 2014, the NSW Ministerial Code of Conduct was prescribed as an applicable Code for the purposes of s 9 of the ICAC Act.

In 2015, the ICAC Act was amended to include s 74BA, which limits the power of the Commission to make findings of corrupt conduct only in relation to cases where there is serious corrupt conduct.



## Explanatory note: Making corrupt conduct findings – the path to findings

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities (see below).

The Commission then determines whether relevant facts as found by the Commission come within the terms of any of subsections 8(1), 8(2) and/or 8(2A) of the ICAC Act.

If they do, the Commission then considers whether the conduct comes within s 9 of the ICAC Act.

In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) were to be proved on admissible evidence to the requisite standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that the person has committed a particular criminal offence.

In the case of subsections 9(1)(b) and 9(1)(c), the Commission considers whether, if the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that the person has engaged in conduct that constitutes or involves a matter of the kind described in those sections.

In the case of subsection 9(1)(d), the Commission considers whether, having regard to the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) and the provisions of the relevant applicable code of conduct, there are grounds on which it could objectively be found that a minister of the Crown or parliamentary secretary or a member of a House of Parliament has substantially breached the relevant applicable code of conduct.

If the Commission finds that the relevant conduct could constitute or involve a matter set out in s 9(1)(a) – (d) of the ICAC Act, the Commission concludes that its findings for the purposes of any of subsections 8(1), 8(2) and/or 8(2A) are not excluded by s 9. If the Commission finds the s 8 conduct is not excluded by s 9(1)(a) – (d), the Commission considers the requirements of s 13(3A).

In the case of subsection 9(1)(a), the Commission determines whether it is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

In the case of subsections 9(1)(b) and 9(1)(c), the Commission determines whether it is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

In the case of subsection 9(1)(d), the Commission determines whether, on the facts as found, it is satisfied there are grounds on which it would objectively be found that a person has engaged in, or is engaging in, conduct that constitutes or involves a substantial breach of an applicable code of conduct.

In the case of subsection 9(4), the Commission considers whether the conduct of a minister of the Crown or parliamentary secretary or a member of a House of Parliament which falls within the meaning of any of subsections 8(1), 8(2) and/or 8(2A) is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

In the case of subsection 9(5), the Commission identifies the relevant civil law and determines whether, having regard to the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) and the provisions of the relevant civil law, it is satisfied there are grounds on which it could objectively be found that a minister of the Crown or parliamentary secretary or a member of a House of Parliament has breached that law.

If satisfied the requirements of s 13(3A) have been met, the Commission then determines whether, for the purpose of s 74BA of the ICAC Act, the conduct the subject of the Commission's finding for the purposes of any of subsections 8(1), 8(2) and/or 8(2A) is serious corrupt conduct.

The Commission then determines whether, for the purpose of s 74BA of the ICAC Act, the conduct the subject of the Commission's finding for the purpose of any of subsections 8(1), 8(2) and/or 8(2A) is serious corrupt conduct.

If the above requirements are satisfied, the Commission may make a finding of serious corrupt conduct.

## Endnotes

<sup>1</sup> *R v Obeid (No 12)* [2016] NSWSC 1815 at [79].

<sup>2</sup> There is a separate Code of Conduct for Members, as adopted both by the Legislative Assembly and the Legislative Council, see [Members' Ethics \(nsw.gov.au\)](https://www.nsw.gov.au/members-ethics), accessed 20 October 2023. The Legislative Council's Code has a variation in clause 9 and an additional clause 10. However, these variations are inconsequential for the current purpose.

<sup>3</sup> Per Beech-Jones, *R v Obeid (No 12)* [2016] NSWSC 1815 at [79].

<sup>4</sup> *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 Mason CJ at 138.

<sup>5</sup> *Obeid v R* [2015] NSWCCA 309 at [148]; see also *R v Macdonald*; *R v Maitland* [2017] NSWSC 638 Adamson J [at 245].

<sup>6</sup> (1915) 21 CLR 89; [1915] HCA 92.

<sup>7</sup> (1920) 27 CLR 494; [1920] HCA 33.

<sup>8</sup> (1923) 33 CLR 386; [1923] HCA 59.

<sup>9</sup> Per Isaacs and Rich JJ, *The King v Boston* [1923] HCA 59; 33 CLR 386 at [400]; see also *Re Day (No 2)* [2017] HCA 14 [at 269].

<sup>10</sup> Per Mahoney JA, *Greiner v ICAC* (1992) 28 NSWLR at [164].

<sup>11</sup> NSW ICAC, *Report on investigation into pork barrelling in NSW*, August 2022, p. 7.

<sup>12</sup> NSW ICAC, *Report on investigation into pork barrelling in NSW*, August 2022, p. 7.

<sup>13</sup> Per Brennan J *Herscu v Queen* [1991] HCA 40.

<sup>14</sup> G Carney, *Members of Parliament: law and ethics*, Prospect Media, St. Leonards, 2000, p. 252.

<sup>15</sup> G Carney, *Members of Parliament: law and ethics*, Prospect Media, St. Leonards, 2000, pp. 281–282.

<sup>16</sup> NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, July 2022, pp. 15, 180.

<sup>17</sup> NSW ICAC, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters*, August 2017 p. 137.

<sup>18</sup> NSW ICAC, *Investigation into the conduct of the Hon Edward Obeid MLC and others in relation to influencing the granting of water licences and the engagement of Direct Health Solutions Pty Ltd*, June 2014, pp. 7, 59.

<sup>19</sup> Transcript of evidence, Operation Witney, line 35, 472T, 7 April 2021.

<sup>20</sup> NSW ICAC, *Investigation into the regulation of lobbying, access and influence in NSW*, June 2021.

<sup>21</sup> NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, July 2022, pp. 15, 180.

<sup>22</sup> NSW ICAC, *Investigation into the regulation of lobbying, access and influence in NSW*, June 2021, p. 32.

<sup>23</sup> NSW ICAC, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters*, August 2017, p. 141.

<sup>24</sup> NSW ICAC, *Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay retail lease policy*, June 2013, p. 60.

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- <sup>25</sup> NSW ICAC, *Investigation into the conduct of the Hon Edward Obeid MLC and others in relation to influencing the granting of water licences and the engagement of Direct Health Solutions Pty Ltd*, p. 44.
- <sup>26</sup> Independent Broad-based Anti-corruption Commission (IBAC) and Victorian Ombudsman, *Operation Watts: Investigation into allegations of misuse of electorate office and ministerial office staff and resources for branch stacking and other party-related activities*, July 2022, p. 142.
- <sup>27</sup> Victorian Ombudsman, *Investigation of a matter referred from the Legislative Council on 25 November 2015*, March 2018, pp. 4, 14–15, 150–151.
- <sup>28</sup> NSW ICAC, *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)*, June 2023, paragraphs 4.347, 4.363, 4.384, 4.386, 4.389.
- <sup>29</sup> NSW ICAC, *Investigation into political donations facilitated by Chinese Friends of Labor in 2015*, February 2022, pp. 222–223.
- <sup>30</sup> NSW ICAC, *Investigation into the submission of false claims for sitting day relief payments by a NSW MP and members of her electorate staff*, July 2010, pp. 26–27; NSW ICAC, *Investigation into the submission of false claims for sitting day relief entitlement by Angela D'Amore MP and some members of her staff*, December 2010, p. 16.
- <sup>31</sup> NSW ICAC, *Report on investigation into conduct of the Hon J. Richard Face*, June 2004, pp. 55–56.
- <sup>32</sup> NSW ICAC, *Report on an investigation into the conduct of the Hon. Malcolm Jones MLC*, July 2003, pp. 28–30.
- <sup>33</sup> NSW ICAC, *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)*, June 2023, paragraphs 1.4.5, 8.309, 8.420, 8.434, 8.453.
- <sup>34</sup> NSW ICAC, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters*, August 2015, p. 107.
- <sup>35</sup> NSW ICAC, *Investigation into NSW Liberal Party Electoral Funding for the 2011 state election campaign and other matters*, August 2016, p. 159.
- <sup>36</sup> NSW ICAC, *Investigation into the conduct of Ian MacDonald, Edward Obeid Senior, Moses Obeid and others*, July 2013, p. 144.
- <sup>37</sup> *Obeid v R* [2017] NSWCCA 221 at [36], quoting from the trial transcript as per Beech Jones J in *R v Obeid (No 12)* [2016] NSWSC 1815.
- <sup>38</sup> NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, July 2022, pp. 6–7.
- <sup>39</sup> NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, July 2022, pp. 35–37.
- <sup>40</sup> Second Reading Speech, Hansard, Legislative Assembly, 9 November 2022.
- <sup>41</sup> Exhibit C34, 2013, Operation Credo. NSW ICAC, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters*, August 2017 p. 84.
- <sup>42</sup> NSW ICAC, *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)*, June 2023, paragraph 4.39.
- <sup>43</sup> NSW ICAC, *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)*, June 2023, paragraph 5.16.
- <sup>44</sup> NSW ICAC, *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)*, June 2023, paragraphs 5.31, 5.33, 5.35.

- <sup>45</sup> NSW ICAC, *Investigation into the conduct of the local member for Drummoynne*, July 2022, pp. 35–37.
- <sup>46</sup> NSW ICAC, *Managing conflicts of interest in the NSW public sector*, 2019, p. 4.
- <sup>47</sup> NSW ICAC, *Managing conflicts of interest in the NSW public sector*, 2019, p. 4.
- <sup>48</sup> NSW ICAC, *Managing conflicts of interest in the NSW public sector*, 2019, p. 5.
- <sup>49</sup> NSW ICAC, *Investigation into the conduct of the local member for Drummoynne*, July 2022, pp. 35–37.
- <sup>50</sup> NSW ICAC, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters*, August 2017 pp. 81, 138.
- <sup>51</sup> NSW ICAC, *Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay retail lease policy*, June 2014, p. 7.
- <sup>52</sup> NSW ICAC, *Investigation into the regulation of lobbying, access and influence in NSW*, June 2021, p. 84.
- <sup>53</sup> NSW ICAC, *Investigation into the regulation of lobbying, access and influence in NSW*, June 2021, pp. 84–86.
- <sup>54</sup> NSW ICAC, *Investigation into political donations facilitated by Chinese Friends of Labor in 2015*, February 2022, p. 105.
- <sup>55</sup> ICAC, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters*, August 2017, p. 126.
- <sup>56</sup> NSW ICAC, *Investigation into the conduct of Moses Obeid, Eric Roozendaal and others*, July 2013, p. 33.
- <sup>57</sup> NSW ICAC, *Investigation into the conduct of Ian Macdonald, John Maitland and others*, August 2013, p. 97.
- <sup>58</sup> NSW ICAC, *Investigation into the conduct of Ian Macdonald, John Maitland and others*, August 2013, p. 13.
- <sup>59</sup> NSW ICAC, *Regulation of secondary employment for Members of the NSW Legislative Assembly*, 2003, p. 76.
- <sup>60</sup> *Armstrong v Budd* (1969) 71 SR (NSW) 386 at 391 per Herron CJ, at 403 per Wallace P, and at 408 per Sugerman JA.
- <sup>61</sup> *Obeid v R* [2017] NSWCCA 221, Bathurst CJ at [141]-[144]; Leeming JA at [291]; R A Hulme J at [336]; Hamill J at [470]; N Adams J at [474].
- <sup>62</sup> See “Independent Complaints Officer Investigations Protocol” as tabled in the Legislative Assembly and the Legislative Council on 17 November 2022.
- <sup>63</sup> L Lovelock and J Evans, “Chapter 5 Members”, *NSW Legislative Council Practice*, The Federation Press, 2008, p. 174.
- <sup>64</sup> J Madison, *The Federalist Papers No 51*, 1788.



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