

# Independent Commission Against Corruption Regulation 2010

[2010-211]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Independent Commission Against Corruption Amendment Act 2016 No 65](#) (not commenced)
  - [Crown Land Legislation Amendment Act 2017 No 17](#) (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Independent Commission Against Corruption Regulation 2010



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Independent Commission Against Corruption Regulation 2010*.

### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

**Note—**

This Regulation replaces the *Independent Commission Against Corruption Regulation 2005*, which is repealed by clause 21.

### 3 Definitions

(1) In this Regulation:

**affiliated health organisation** has the same meaning as it has in the *Health Services Act 1997*.

**approved** means approved for the time being by the Commissioner.

**associated person** is defined in clause 4.

**dependent child** of a person means anyone who is under the age of 18 years and is a child of the person or of the person's spouse.

**financial interest**, in relation to an officer of the Commission or an applicant for a position as an officer of the Commission, means:

- (a) any pecuniary interest or other matter, referred to in section 110 (a) (i)-(xi) of the Act, that relates to the officer or applicant, or
- (b) any such interest or other matter that relates to a person who is associated with the officer or applicant.

**spouse** means:

- (a) a husband or wife, or
- (b) a de facto partner,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

**statutory health corporation** has the same meaning as it has in the [Health Services Act 1997](#).

**the Act** means the [Independent Commission Against Corruption Act 1988](#).

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) For the purposes of section 110 (a) (xii) of the Act, the pecuniary interests or other matters referred to in paragraph (b) of the definition of **financial interest** in subclause (1) are specified.
- (3) The Appendix to this Regulation forms part of this Regulation, but notes included in this Regulation do not form part of this Regulation.

#### **4 Associated persons**

- (1) In this Regulation, a reference to a person who is associated with an officer of the Commission, or an applicant for a position as an officer of the Commission, is a reference to:
  - (a) in the case of an officer or applicant who is an individual, any of the individual’s family or business associates, or
  - (b) in the case of an officer or applicant that is a company engaged under section 104B of the Act:
    - (i) any of the company’s key personnel, or
    - (ii) any of those key personnel’s family or business associates, or
    - (iii) any of the company’s related bodies corporate (within the meaning of the [Corporations Act 2001](#) of the Commonwealth).
- (2) For the purposes of this clause:
  - (a) the following persons are an individual’s family associates:

- (i) the individual's spouse,
  - (ii) the individual's dependent children,
  - (iii) such other members of the individual's household or family as the Commissioner may specify in respect of a particular individual or class of individuals, and
- (b) the following persons are an individual's business associates:
- (i) the individual's employer,
  - (ii) any such employer's key personnel (in the case of an employer that is a company),
  - (iii) the individual's partners in any partnership of which the individual is a member,
  - (iv) such employees of any such partnership, and such other persons having contractual relationships with the partnership, as the Commissioner may specify in respect of a particular partnership or class of partnerships,
  - (v) the individual's employees,
  - (vi) such other persons having contractual relationships with the individual as the Commissioner may specify in respect of a particular individual or class of individuals, and
- (c) the following persons are a company's key personnel:
- (i) the directors of the company,
  - (ii) the secretary of the company,
  - (iii) such officers or employees of the company, such shareholders in the company and such other persons having contractual relationships with the company as the Commissioner may specify in respect of a particular company or class of companies.

## **Part 1A Codes of conduct**

### **4A NSW Ministerial Code of Conduct**

The NSW Ministerial Code of Conduct set out in the Appendix to this Regulation is prescribed as an applicable code of conduct for the purposes of section 9 of the Act.

## **Part 2 Security**

### **5 Disclosure of certain information**

- (1) The Commissioner may at any time require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner a statement of personal particulars, in the approved form, in relation to:
  - (a) the officer or applicant, or
  - (b) any other person who is associated with the officer or applicant.
- (2) The statement must be accompanied by an authority for the release of information, and a consent to conduct inquiries, each in the approved form and each duly executed by the person to whom the statement relates.
- (3) An officer or applicant who is required to furnish to the Commissioner one or more statements under this clause must, when furnishing that statement or those statements, also furnish the Commissioner with a statutory declaration, in the approved form, concerning the officer's or applicant's association (if any) with known or reputed criminals.

### **6 Production of certain documents**

- (1) The Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner such of the documents referred to in subclause (2) or (3) relating to:
  - (a) the officer or applicant, or
  - (b) any other person who is associated with the officer or applicant,as are in the possession of the officer or applicant or to which the officer or applicant has an immediate right of possession.
- (2) The documents to be furnished in the case of an individual are as follows:
  - (a) a birth certificate or a duly certified extract of a birth certificate,
  - (b) a marriage certificate or a duly certified extract of a marriage certificate,
  - (c) a current passport,
  - (d) a current driver's licence,
  - (e) a duly certified copy of any registered deed by which the individual has formally changed the individual's name,
  - (f) a certificate of naturalisation,

- (g) a certificate of discharge from the Defence Force,
  - (h) a certificate evidencing the individual's educational, professional or trade qualifications,
  - (i) the most recent income tax return lodged by, and the most recent income tax assessment issued in relation to, the individual.
- (3) The documents to be furnished in the case of a company or partnership engaged under section 104B of the Act are as follows:
- (a) a copy of the constitution of the company or of the agreement establishing the partnership,
  - (b) the most recent annual report of the company or partnership,
  - (c) the most recent audited financial statement in relation to the company or partnership,
  - (d) the most recent income tax return lodged by, and the most recent income tax assessment issued in relation to, the company or the several partners in the partnership.

## **7 Fingerprints to be furnished**

- (1) The Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner an imprint of the officer's or applicant's fingerprints.
- (2) If the officer or applicant is a company or partnership engaged or to be engaged under section 104B of the Act, the Commissioner may require the officer or applicant to furnish to the Commissioner an imprint of the fingerprints of:
  - (a) any specified associate of the company, or
  - (b) any specified associate of a partner in the partnership.
- (3) Fingerprint imprints obtained by the Commission from an applicant, or an associate of an applicant, are to be destroyed within 6 months after the application is determined unless, within that time, the applicant becomes an officer of the Commission.
- (4) Fingerprint imprints obtained by the Commission from an officer, or an associate of an officer, are to be destroyed within 6 months after the officer ceases to be an officer.
- (5) In the case of an officer:
  - (a) who is under investigation by the Commission when the officer ceases to be an officer, or

- (b) who becomes subject to such an investigation within 6 months after ceasing to be an officer,

the Commission may retain the fingerprint imprints of the officer, or of any associate of the officer, for such further period as is necessary to complete the investigation and any legal proceedings arising from the investigation.

### **8 Changes in personal particulars to be notified**

An officer of the Commission who becomes aware of any significant change in the personal particulars in relation to:

- (a) the officer, or
- (b) any person who is associated with the officer and in respect of whom the officer has previously furnished a statement of personal particulars under this Part,

must immediately furnish a statement of that change, in the approved form, to the Commissioner.

### **9 Conflict of interests to be notified**

If an officer of the Commission becomes aware of any conflict of interest that has arisen, or that could be seen as having arisen, between the officer's duties as an officer and the officer's private interests, the officer must immediately notify the Commissioner of that fact.

## **Part 3 Disclosure of financial interests**

### **10 Disclosure of certain financial information**

- (1) On becoming an officer of the Commission, the officer must furnish to the Commissioner a statement of financial interests, in the approved form, in relation to the officer.
- (2) Without limiting subclause (1), the Commissioner may at any time require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner a statement of financial interests, in the approved form, in relation to:
  - (a) the officer or applicant, or
  - (b) any other person who is associated with the officer or applicant.

### **11 Changes in financial interests to be notified**

An officer of the Commission who becomes aware of any significant change in the financial interests in relation to:

- (a) the officer, or
  - (b) any person who is associated with the officer and in respect of whom the officer has previously furnished a statement of financial interests under this Part,
- must immediately furnish a statement of that change, in the approved form, to the Commissioner.

## **12 Exemptions from this Part**

The Commissioner:

- (a) may at any time exempt any particular officer or class of officers from the requirements of this Part, and
- (b) may at any time impose conditions on any such exemption, and
- (c) may at any time revoke any such exemption or any condition to which any such exemption is subject.

## **Part 4 Miscellaneous**

### **13 Further information**

The Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner such further information as the Commissioner may specify in respect of any matter disclosed to the Commissioner by the officer or applicant for the purposes of this Regulation.

### **14 Statutory declarations**

A statutory declaration that, by or under this Regulation, is required to be made by a company or partnership engaged or to be engaged under section 104B of the Act must be made on behalf of the company or partnership by such of the directors or employees of the company, or by such of the partners in or employees of the partnership, as the Commissioner may direct.

### **15 Compliance with Regulation a condition of employment**

- (1) It is a condition of an officer's employment or engagement with the Commission that the officer complies with the requirements of this Regulation.
- (2) Failure to comply with any such requirement is sufficient ground for terminating the officer's employment or engagement.
- (3) This clause has effect despite any other condition of the officer's conditions of employment or engagement.
- (4) A person does not fail to comply with the requirements of this Regulation merely

because the person fails to disclose matters of which the person is not aware.

## **16 Seal of the Commission**

The seal of the Commission must be kept in the custody of the Commissioner and affixed to a document of the Commission in the presence of the Commissioner, or of an Assistant Commissioner, and of one other member of staff of the Commission.

## **17 Identity cards**

The Commissioner may issue identity cards, in the approved form, to officers of the Commission.

## **18 Definition of “public authority”**

For the purposes of paragraph (g) of the definition of **public authority** in section 3 (1) of the Act the following are declared to be a body within that definition:

- (a) each affiliated health organisation and statutory health corporation,
- (b) each reserve trust established under the [Crown Lands Act 1989](#) in relation to a reserve or part of a reserve that is dedicated or reserved for the purposes of a public cemetery or crematorium or a related purpose.

## **19 Principal officers of public authorities**

- (1) For the purposes of section 11 (5) of the Act, the principal officers of the following public authorities are as follows:
  - (a) the council of a local government area—the general manager of the council,
  - (b) a local health district within the meaning of the [Health Services Act 1997](#)—the chief executive of the local health district,
  - (c) a statutory health corporation—the chief executive of the statutory health corporation,
  - (d) an affiliated health organisation—the person who is responsible to the governing body of the affiliated health organisation for the management of its recognised establishments and recognised services.
- (2) For the purposes of section 11 (6) of the Act, the principal officers in relation to matters concerning the following separate offices of public authorities are as follows:
  - (a) Ambulance Service of NSW, NSW Health Service—the chief executive of the Ambulance Service of NSW,
  - (b) Corrective Services NSW, Department of Justice and Attorney General—the Commissioner of Corrective Services,

- (c) Aboriginal Affairs NSW, Department of Human Services—the Chief Executive of Aboriginal Affairs NSW,
- (d) Ageing, Disability and Home Care, Department of Human Services—the Chief Executive of Ageing, Disability and Home Care,
- (e) Community Services, Department of Human Services—the Chief Executive of Community Services,
- (f) Housing NSW, Department of Human Services—the Chief Executive of Housing NSW,
- (g) Juvenile Justice, Department of Human Services—the Chief Executive of Juvenile Justice,
- (h) Division of Local Government, Department of Premier and Cabinet—the Chief Executive, Local Government.

**19A Transitional provision relating to first appointment of Chief Commissioner and other Commissioners**

- (1) This clause applies to the first appointment of the Chief Commissioner and other Commissioners under the Act, as amended by the *Independent Commission Against Corruption Amendment Act 2016*.
- (2) Before the commencement of the *Independent Commission Against Corruption Amendment Act 2016*:
  - (a) the Minister may refer a proposal that a person be appointed as the Chief Commissioner or other Commissioner to the Joint Committee under section 64A of the Act, and
  - (b) the Joint Committee may consider the proposal and notify the Minister whether or not it has decided to veto the proposed appointment.

For that purpose, section 64A applies as if a reference to the Commissioner were a reference to the Chief Commissioner or other Commissioner.

- (3) A referral and notification under subclause (2) may be relied on for the purposes of clause 2 of Schedule 1 to the Act, as inserted by the *Independent Commission Against Corruption Amendment Act 2016*.
- (4) The Minister is not to refer a proposal to the Joint Committee under this clause to appoint a person as a Commissioner (other than the Chief Commissioner) until the Minister has consulted the person proposed to be appointed as the Chief Commissioner on the proposed appointment. If the person is appointed as Chief Commissioner, that consultation may be relied on for the purposes of section 5 (2) of the Act, as inserted by the *Independent Commission Against Corruption Amendment*

*Act 2016.*

## **20 Savings**

Any act, matter or thing that, immediately before the repeal of the *Independent Commission Against Corruption Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

## **21 Repeal**

The *Independent Commission Against Corruption Regulation 2005* is repealed.

# **Appendix NSW Ministerial Code of Conduct**

## **NSW Ministerial Code of Conduct**

### **1 Preliminary**

- (1) This is the NSW Ministerial Code of Conduct.
- (2) The NSW Ministerial Code of Conduct commences on 20 September 2014.
- (3) The NSW Ministerial Code of Conduct applies to all current and future Ministers and Governments.

#### **Note—**

The NSW Ministerial Code of Conduct is prescribed by the *Independent Commission Against Corruption Regulation 2010* for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*. Under section 9 of that Act, conduct of the type described in section 8 as being in the general nature of corrupt conduct is not “corrupt conduct” unless it could constitute or involve: (a) a criminal offence, (b) a disciplinary offence, (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct. Accordingly, the effect of prescribing the NSW Ministerial Code of Conduct as an applicable code is that a suspected breach of the Code may be investigated by the Independent Commission Against Corruption and, if substantiated, give rise to a finding of corrupt conduct.

### **2 Compliance with oaths of office**

A Minister must comply with their oaths of office as a Member of the Executive Council and as a Minister of the Crown.

#### **Note—**

A Member of the Executive Council swears (or affirms) that “I will perform the functions and duties of an Executive Councillor faithfully and to the best of my ability and, when required to do so, freely give my counsel and advice to the Governor or officer administering the Government of New South Wales for the time being for the good management of the public affairs of New South Wales, and that I will not directly or indirectly reveal matters debated in the Council and committed to my secrecy, but that in all things be a true and faithful councillor”. In addition, a Minister swears (or affirms) that “I will perform the functions and duties of [the relevant Ministerial office] faithfully and to the best of my ability”.

### **3 Compliance with the law**

A Minister must not knowingly breach the law, the NSW Lobbyists Code of Conduct, or any other applicable code of conduct under the *Independent Commission Against Corruption Act 1988*.

**Note—**

There are a range of laws which apply to Ministers in their capacity as public office holders, including: misconduct in public office, which is a common law offence—see *R v Quach*[2010] VSCA 106; *Blackstock v The Queen*[2013] NSWCCA 172; bribery, which is a common law offence—see *R v Allen*(1992) 27 NSWLR 398; *R v Glynn*(1994) 33 NSWLR 139; Part 4A of the *Crimes Act 1900*, which establishes certain statutory offences relating to the receipt or soliciting of corrupt commissions; the *Election Funding, Expenditure and Disclosures Act 1981*, which establishes a number of electoral offences; the *State Records Act 1998* and the *Government Information (Public Access) Act 2009*, which create certain offences relating to record keeping and access to government information.

### **4 Compliance with the Schedule to the NSW Ministerial Code of Conduct**

A Minister must not knowingly breach the Schedule to the NSW Ministerial Code of Conduct. Accordingly, a substantial breach of the Schedule is, if done knowingly, a substantial breach of the NSW Ministerial Code of Conduct.

### **5 Lawful directions to the public service**

- (1) A Minister must not knowingly issue any direction or make any request that would require a public service agency or any other person to act contrary to the law.
- (2) A Minister who seeks advice from a public service agency that is subject to the Minister's direction must not direct that agency to provide advice with which the agency does not agree.
- (3) For the avoidance of doubt, this section does not prevent Ministers discussing or disagreeing with the advice of a public service agency, making a decision contrary to agency advice or directing an agency to implement the Minister's decision (whether or not the agency agrees with it). Nor does this section prevent an agency changing its advice if its own view changes, including following discussions with the Minister.

### **6 Duty to act honestly and in the public interest**

A Minister, in the exercise or performance of their official functions, must not act dishonestly, must act only in what they consider to be the public interest, and must not act improperly for their private benefit or for the private benefit of any other person.

### **7 Conflicts of interest**

- (1) A Minister must not knowingly conceal a conflict of interest from the Premier.
- (2) A Minister must not, without the written approval of the Premier, make or participate in the making of any decision or take any other action in relation to a matter in which the Minister is aware they have a conflict of interest.

- (3) A **conflict of interest** arises in relation to a Minister if there is a conflict between the public duty and the private interest of the Minister, in which the Minister's private interest could objectively have the potential to influence the performance of their public duty. Without limiting the above, a Minister is taken to have a conflict of interest in respect of a particular matter on which a decision may be made or other action taken if:
- (a) any of the possible decisions or actions (including a decision to take no action) could reasonably be expected to confer a private benefit on the Minister or a family member of the Minister, and
  - (b) the nature and extent of the interest is such that it could objectively have the potential to influence a Minister in relation to the decision or action.

**Note—**

See also Part 3 of the Schedule for further requirements regarding conflicts of interest.

## **8 Corrupt private benefits**

- (1) A Minister must not solicit, accept, or agree to solicit or accept, any private benefit as an inducement or reward for doing or not doing something in the exercise of official functions or for showing or not showing favour or disfavour to any person in the exercise of official functions.
- (2) A Minister must not improperly encourage or solicit the giving of any private benefit to any other person as an inducement or reward for that person, the Minister or any other person doing or not doing something in the exercise of official functions or for showing or not showing favour or disfavour to any person in the exercise of official functions.

## **9 Misuse of public property for private benefit**

A Minister must not improperly use public property, services or facilities for the private benefit of themselves or any other person.

## **10 Misuse of information for private benefit**

- (1) A Minister must not improperly use any information acquired in the course of their official functions, including in the course of Cabinet deliberations, for the private benefit of themselves or any other person.
- (2) A Minister must not improperly communicate any such information to any other person for the purpose of the information being used for the private benefit of that person, the Minister, or any other person.
- (3) The obligations in this section continue to apply to former Ministers.

## 11 Definitions

In this Code (including the Schedule), and unless the context otherwise requires:

**business** includes a not-for-profit or charitable undertaking.

**conflict of interest** has the meaning given by section 7 of this Code.

**de facto partner** has the meaning given by section 21C of the [Interpretation Act 1987](#).

**director**, in relation to a company or other business, includes any member however described of the governing body of the company or other business, and **directorship** has a corresponding meaning.

**dishonestly** means dishonestly according to the standards of ordinary people and known by the Minister to be dishonest according to the standards of ordinary people.

**family member**, in relation to a Minister, means:

- (a) the Minister's spouse or de facto partner, or
- (b) a child of the Minister or of the Minister's spouse or de facto partner, or
- (c) a parent of the Minister or of the Minister's spouse or de facto partner, or
- (d) a brother or sister (including step-brother or step-sister) of the Minister, or
- (e) any other person with whom the Minister is in an intimate personal relationship.

**former Minister** means any Minister who ceased to hold office as a Minister after the date of commencement of this Code.

**gift** means something for which no, or no adequate, consideration is given but does not include:

- (a) hospitality, or
- (b) a political donation that is disclosed, or required to be disclosed, under Part 6 of the [Election Funding, Expenditure and Disclosures Act 1981](#).

### Note—

This is a broad definition and could include money, vouchers, tickets (other than a ticket provided as an act of hospitality in respect of an event which the Minister is attending—see below), goods, services, and contributions to travel and accommodation.

**hospitality** means the provision of benefits that are directly associated with, and consumed at and during the course of, a particular event and for which no, or no adequate, consideration is given. For the avoidance of doubt, hospitality does not extend to any travel to and from, or overnight accommodation at, the place at which an event is to be held.

**Note—**

Hospitality may include a ticket or right of entry to the relevant event, as well as food, beverage, entertainment and other consumables provided at the event.

**immediate family member**, in relation to a Minister, means:

- (a) the Minister's spouse or de facto partner, or
- (b) a child of the Minister or of the Minister's spouse or de facto partner if any one or more of the following applies:
  - (i) the child is under 18,
  - (ii) the child is a dependent of the Minister or the Minister's spouse or de facto partner,
  - (iii) the child resides with the Minister or the Minister's spouse or de facto partner.

**knowingly** means with awareness that the relevant circumstance or result exists or will exist in the ordinary course of events.

**Minister** includes:

- (a) any Member of the Executive Council of New South Wales, and
- (b) if used in or in relation to this Code (other than Parts 1 and 5 of the Schedule to the Code)—a Parliamentary Secretary, and
- (c) if used in or in relation to Part 5 of the Schedule to the Code—a former Minister.

**Ministerial Register of Gifts** means the register kept by the Department of Premier and Cabinet on behalf of the Premier in accordance with clause 19 of the Schedule to the Code.

**Ministerial Register of Interests** means the register kept by the Department of Premier and Cabinet on behalf of the Premier in accordance with clauses 6, 7, 9, 11, 16 and 27 of the Schedule to the Code.

**Note—**

The Ministerial Register of Interests is a confidential register kept by the Department of Premier and Cabinet on behalf of the Premier. Its contents are made available only to the Premier and the Cabinet for the sole purpose of enabling them to better avoid and manage potential conflicts of interest. The [Government Information \(Public Access\) Act 2009](#) provides that there is conclusively presumed to be an overriding public interest against the disclosure of the Ministerial Register of Interests.

**Parliamentary Secretary** means a person holding office as a Parliamentary Secretary under Part 4A of the [Constitution Act 1902](#).

**person** includes a natural person, body corporate, unincorporated association, partnership or other entity.

**post-separation employment**, in relation to a Minister, includes any employment of the Minister, or engagement of the Minister to provide services (including indirectly through a business) after the Minister has ceased to hold office as a Minister.

**Note—**

Secondary employment while in office as a Minister is generally prohibited—see clause 3 of the Schedule to this Code.

**private benefit** means any financial or other advantage to a person (other than the State of New South Wales or a department or other government agency representing the State), other than a benefit that:

- (a) arises merely because the person is a member of the public or a member of a broad demographic group of the public and is held in common with, and is no different in nature and degree to, the interests of other such members, or
- (b) comprises merely the hope or expectation that the manner in which a particular matter is dealt with will enhance a person's or party's popular standing.

**ruling** means a ruling by the Premier, in accordance with clause 27 of the Schedule to this Code, under clause 1 (1) or (4), 2 (3), 3 (5) or 12 (2) of the Schedule.

## 12 Interpretative provisions

- (1) The preamble, headings and notes do not form part of the NSW Ministerial Code of Conduct, but regard may be had to them in the interpretation of its provisions.
- (2) The singular includes the plural.
- (3) A reference to law is a reference to the laws of the State of New South Wales and to the laws of the Commonwealth of Australia in so far as they have application in the State of New South Wales.
- (4) If a word or expression is defined in section 11, other parts of speech and grammatical forms of the word or expression have corresponding meanings.
- (5) The word “may”, if used in relation to a power, indicates that the exercise (or not) of the power is discretionary. If a provision states that a person “may” do one thing and other things, the person may do none, some or all of those things.
- (6) The word “must”, if used in relation to a power or duty, indicates that the exercise of the power or duty is mandatory. If a provision states that a person “must” do one thing and other things, the person must do all of those things.

## Schedule to the NSW Ministerial Code of Conduct

### Part 1 Prohibited interests

#### 1 Shareholdings

- (1) A Minister must not hold or acquire, whether legally or beneficially, any security or other interest in any public or private company or business except:
  - (a) as permitted by this clause, or
  - (b) where the Premier, being satisfied that the interest is unlikely to raise any conflict of interest or that any potential conflict of interest can be appropriately managed, has issued a ruling that the particular interest may be held or acquired.
- (2) A Minister must divest any such interest before or, if that is not practicable, as soon as practicable after appointment. Transferring the interest to a family member or to a trust in which the Minister or a family member has a beneficial interest does not constitute divestment for these purposes.

#### Note—

Ministers should also be mindful of the potential for any interests held or acquired by family members or other persons with whom they have a personal relationship to give rise to a conflict of interest for the Minister.

- (3) A Minister may retain, acquire and hold an interest in a superannuation fund, publicly-listed managed fund or other trust arrangement (**fund**) if:
  - (a) the fund is broadly diversified, the Minister has no influence over particular investment decisions of the fund, and the fund does not invest to any special extent in a particular business or business sector that could reasonably be expected to give rise to a conflict of interest (a **diversified arms-length fund**), or
  - (b) the Minister is not aware of the particular investments of the fund, the day-to-day management of the fund is undertaken by a person who is independent of the Minister, that person has discretion as to particular investment decisions of the fund, and the Minister and that person have entered into a legally-binding written agreement that the person is not to disclose or discuss the particular investments of the fund with the Minister (a **blind trust**).
- (4) The Minister may seek a ruling from the Premier that a particular fund meets the criteria of a diversified arms-length fund or a blind trust.
- (5) This clause does not apply to a legal interest in a company or other entity (including a State owned corporation) that is held by a Minister in their official capacity on behalf of the State.

## **2 Directorships and other positions**

- (1) A Minister must not hold or accept any position as a director of a public or private company or any other business.
- (2) A Minister must resign from any such directorship before or, if that is not practicable, as soon as practicable after appointment.
- (3) However, a Minister may retain or accept appointment as a director where:
  - (a) the directorship relates to a personal or family business of the Minister (such as a family farm or a self-managed superannuation fund—provided the fund is a permitted fund under clause 1), and
  - (b) the directorship is not likely to give rise to a conflict of interest, and
  - (c) the Premier gives a ruling that the Premier approves the retention or acceptance of the directorship.

## **3 Secondary employment**

- (1) A Minister must not engage in any form of employment or professional practice, including as a sole trader.
- (2) A Minister must not participate in the management of any business.
- (3) A Minister must not act as a contractor, consultant or advisor, whether paid or unpaid, to any business, other than to the extent that consultation or advice occurs in the context of the proper exercise of the Minister's functions as a Minister or Member of Parliament.
- (4) A Minister must terminate any form of secondary employment or professional practice before or, if that is not practicable, as soon as practicable after appointment.
- (5) However, a Minister may participate in the employment or management of a business where:
  - (a) the participation relates to a personal or family business of the Minister (such as a family farm or a self-managed superannuation fund—provided the fund is a permitted fund under clause 1), and
  - (b) the participation is not likely to give rise to a conflict of interest, and
  - (c) the Premier gives a ruling that the Premier approves the participation (including the nature and extent of participation).

## **4 Divestiture at the direction of the Premier**

In addition to clauses 1-3, a Minister must promptly divest any interest if the Premier,

being satisfied that the interest has the potential to give rise to a conflict of interest, directs the Minister to do so. Transferring the interest to a family member or to a trust in which the Minister or a family member has a beneficial interest does not constitute divestment for these purposes.

## Part 2 Standing disclosures of interests

### Note—

This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

### 5 Disclosures to Parliament

A Minister must comply with their obligations as a Member of Parliament under section 14A of the *Constitution Act 1902* and the *Constitution (Disclosures by Members) Regulation 1983* in relation to the disclosure of their pecuniary and other interests to the Parliament.

### 6 Initial disclosures

- (1) As soon as practicable upon appointment, a Minister must provide to the Premier:
  - (a) a copy of the last return provided to the Parliament under the *Constitution (Disclosures by Members) Regulation 1983*, and
  - (b) a notice in writing of any event that has occurred since that return, the disclosure of which will be required to be included in the next return that is to be provided to the Parliament under the *Constitution (Disclosures by Members) Regulation 1983*, and
  - (c) a notice in writing of any pecuniary and other interests of their immediate family members, the disclosure of which would be required under the *Constitution (Disclosures by Members) Regulation 1983* if the relevant interest were instead that of the Minister.
- (2) The disclosures made under this clause are to be kept on the Ministerial Register of Interests.

### 7 Continuous updating

- (1) A Minister must provide the Premier with:
  - (a) a copy of any return that is provided to the Parliament under the *Constitution (Disclosures by Members) Regulation 1983* at the same time that it is provided to the Parliament, and
  - (b) a notice in writing of any event that has occurred since their most recent Parliamentary return, the disclosure of which will be required to be included in the

next return that is to be provided to the Parliament under the *Constitution (Disclosures by Members) Regulation 1983*, as soon as practicable after the event occurs, and

- (c) a notice in writing of any event that has occurred in relation to the pecuniary and other interests of their immediate family members, the disclosure of which would be required under the *Constitution (Disclosures by Members) Regulation 1983* if the relevant interest were instead that of the Minister, as soon as practicable after the event occurs.

- (2) The disclosures made under this clause are to be kept on the Ministerial Register of Interests.

## **8 Effect of disclosures**

The disclosure of an interest by a Minister under this Part does not affect the Minister's duties under Part 3 if a conflict of interest arises as a result of that interest in respect of a particular matter.

## **9 Schedule to the Ministerial Register of Interests**

- (1) A schedule of the disclosures of current interests made by all Ministers under this Part is to be kept on the Ministerial Register of Interests.
- (2) The schedule is to be available for inspection by all Ministers at any meeting of the Cabinet or any Cabinet Committee and otherwise by arrangement with the Premier.

## **Part 3 Conflicts of interest**

### **Note—**

This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

## **10 Duty to disclose**

- (1) A Minister must promptly give notice to the Premier of any conflict of interest that arises in relation to any matter.
- (2) Such a notice must be given in respect of a matter even if:
  - (a) the Minister has previously disclosed the relevant interest under Part 2 (Standing disclosures of interests) or under Part 3 (Conflicts of interest) in respect of a different matter, or
  - (b) the Minister intends to divest themselves of the relevant interest prior to making a decision or taking action.

## **11 Form of disclosure**

- (1) A notice under clause 10 must:
  - (a) be in writing, signed by the Minister, and
  - (b) specify the nature and extent of the relevant interest, the matter to which it relates, and the reason why a conflict of interest arises, and
  - (c) be placed on the Ministerial Register of Interests.
- (2) If during a meeting of the Executive Council, the Cabinet or a Cabinet Committee a matter arises in which a Minister has a conflict of interest the Minister must (whether or not the Minister has previously given notice to the Premier):
  - (a) as soon as practicable after the commencement of the meeting, disclose to those present the conflict of interest and the matter to which it relates, and
  - (b) ensure that the making of the disclosure is recorded in the official record of the proceedings, and
  - (c) abstain from decision-making if required by, and in accordance with, clause 12, and
  - (d) if notice of the conflict of interest has not previously been given to the Premier under subclause (1)—give such notice as soon as practicable after the meeting in accordance with that subclause.

## **12 Minister to abstain from decision-making**

- (1) A Minister who has a conflict of interest in a matter must abstain from making, or participating in, any decision or from taking, or participating in, any action in relation to the matter.
- (2) However, the Premier may, if satisfied that no conflict of interest arises or that any potential conflict of interest can be appropriately managed, make a ruling authorising the Minister to continue to act.
- (3) A Minister who has a conflict of interest in a matter arising during a meeting of the Executive Council, the Cabinet or a Cabinet Committee must:
  - (a) abstain from participating in any discussion of the matter and from any decision-making in respect of it, and
  - (b) unless the Premier (or the chair of the meeting in the absence of the Premier) otherwise approves—not be present during any discussion or decision-making on it.

### **13 Discretion to disclose and abstain**

A Minister may, if they have some other substantial personal connection with a matter or for any other reason, disclose an interest and abstain from decision-making in relation to a matter in accordance with this Part even if the interest might not comprise a conflict of interest.

### **14 Part does not apply to Ministerial remuneration and entitlements**

This Part does not apply in relation to matters affecting only the remuneration and entitlements of Ministers.

### **15 Other conflicts**

This Part does not affect a Minister's duties to avoid, disclose and otherwise appropriately manage actual or perceived conflicts.

### **16 Disclosure of private benefits to other members of the Government**

- (1) A Minister who is aware that a particular decision to be made or other action to be taken by that Minister could reasonably be expected to confer a private benefit on another Member of Parliament belonging to the governing political party or coalition of parties or any of their family members must give notice to the Premier of the matter before making the decision or taking the action.

**Note—**

A Ministerial decision that relates to another Member's electorate does not necessarily confer a private benefit on the Member if the benefit to the relevant Member only arises because the Member is a part of the relevant community and that benefit is common with, and no different in nature and degree to, the benefit conferred on the other members of the community, or if the benefit to the Member comprises only the prospect that the Minister's decision could enhance the Member of Parliament's popular standing in their community—see definition of **private benefit** in section 11 of the NSW Ministerial Code of Conduct.

- (2) The notice must:
  - (a) be in writing, signed by the Minister, and
  - (b) specify the decision to be made or action to be taken and the private benefit that is expected to be conferred, and
  - (c) be placed on the Ministerial Register of Interests.

## **Part 4 Gifts and hospitality**

**Note—**

This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

## **17 Overarching duty to avoid conflicts and refuse inducements**

- (1) A Minister must not solicit or accept any gift, hospitality or other benefit of any kind that:
  - (a) could reasonably be expected to give rise to a conflict of interest, or
  - (b) could reasonably be perceived as an inducement (or attempted inducement) or reward for doing or not doing something in the exercise of official functions or for showing or not showing favour or disfavour to any person in the exercise of official functions.
- (2) Any such gift, hospitality or benefit (whether offered or suggested, directly or indirectly) must promptly be disclosed in writing by the Minister to the Secretary of the Department of Premier and Cabinet.
- (3) A Minister must otherwise avoid all situations in which it could reasonably be perceived that any person, through the provision of a gift, hospitality or other benefit of any kind, is attempting to secure the influence or favour of the Minister.

### **Note—**

See section 8 of the NSW Ministerial Code of Conduct in respect of corrupt private benefits. The offer of a corrupt private benefit may also trigger an obligation to report the matter to the Independent Commission Against Corruption under section 11 of the *Independent Commission Against Corruption Act 1988*.

## **18 Gifts presented to the Minister as an act of goodwill**

- (1) If the offer of a gift is an act of goodwill towards the people of New South Wales and offence might possibly be given by its rejection, the Minister may accept the gift.
- (2) If such a gift has a market value of more than \$500, the Minister must elect either to:
  - (a) hand the gift to the State, or
  - (b) retain the gift and pay to the State the difference between \$500 and the value of the gift.
- (3) If the Minister elects to keep the gift under subclause (2) (b), the Minister must provide the Secretary of the Department of Premier and Cabinet with a written declaration signed by the Minister:
  - (a) identifying the giver of the gift, and
  - (b) stating that the Minister wishes to retain the gift, and
  - (c) stating the estimated value of the gift (attaching a valuation or details as to the methodology by which the value was estimated), and
  - (d) attaching a cheque payable to the NSW Treasury for the relevant amount.

- (4) If the Minister elects to hand the gift to the State under subclause (2) (a), the Minister must arrange for the gift to be delivered to the Secretary of the Department of Premier and Cabinet together with a written declaration signed by the Minister:
  - (a) identifying the giver of the gift, and
  - (b) stating that the Minister wishes to surrender the gift to the State and relinquish any future claim to ownership, and
  - (c) stating any recommendation the Minister may wish to make as to the manner in which the gift should be kept, displayed or otherwise dealt with by the State.
- (5) Gifts handed to the State by the Minister become the property of the State under the control of the Secretary of the Department of Premier and Cabinet.

**Note—**

Such gifts will generally be transferred to NSW galleries, museums and other appropriate Government establishments.

## **19 Ministerial Register of Gifts**

The Secretary of the Department of Premier and Cabinet is to maintain a Ministerial Register of Gifts containing a copy of any declaration or disclosure of a gift or hospitality offered to a Minister and disclosed under this Part.

## **20 Application of this Part to multiple gifts, gifts given to others, etc**

When applying this Part:

- (a) multiple gifts offered by the same person within any 6 month period are to be treated also as if they were a single gift offered by that person, and
- (b) a gift offered by one person on behalf of another person is to be treated also as a gift offered by that other person.

## **21 Gifts or hospitality to others**

- (1) A Minister must take all reasonable steps to ensure that none of their immediate family members or Ministerial office staff are offered or receive gifts or hospitality in circumstances that:
  - (a) could reasonably be expected to give rise to a conflict of interest, or
  - (b) could reasonably be perceived as an indirect inducement (or attempted inducement) of, or reward to, the Minister for doing or not doing something in the exercise of official functions or for showing or not showing favour or disfavour to any person in the exercise of official functions.
- (2) A Minister who becomes aware of any such gift or hospitality must promptly disclose it

in writing to the Secretary of the Department of Premier and Cabinet.

## **22 Gifts or hospitality that may be accepted**

- (1) Gifts of a token kind and reasonable acts of hospitality may be accepted by the Minister and need not be disclosed under this Part.
- (2) In deciding whether to accept such gifts or hospitality, Ministers must satisfy themselves that doing so will not give rise to a conflict of interest.
- (3) If the hospitality has a market value of more than \$500, the Minister must promptly disclose in writing the receipt of the hospitality to the Secretary of the Department of Premier and Cabinet.

## **Part 5 Employment after leaving Ministerial office**

### **23 Offers of employment received while in office**

A Minister who, while in office, wishes to consider accepting an offer of post-separation employment must, if it relates to any of their current portfolio responsibilities or any portfolio responsibilities held during the previous 2 years of Ministerial office, first obtain the advice of the Parliamentary Ethics Advisor.

**Note—**

The receipt of an offer of post-separation employment is also a private benefit to which provisions of the NSW Ministerial Code of Conduct might also apply.

### **24 Offers of employment received after leaving office**

- (1) A Minister who, within 18 months after ceasing to hold office, wishes to consider accepting an offer of post-separation employment must, if it relates to any of the portfolio responsibilities held during the last 2 years of Ministerial office, first obtain the advice of the Parliamentary Ethics Advisor.
- (2) This clause does not apply to any offer of post-separation employment by the State of New South Wales or any agency representing the State.

**Note—**

The [Lobbying of Government Officials Act 2011](#) imposes additional restrictions on the ability of a former Minister to engage in lobbying activities within 18 months after leaving Ministerial office.

### **25 Advice of the Parliamentary Ethics Advisor**

- (1) The Parliamentary Ethics Advisor may advise against the acceptance of an offer of post-separation employment, either generally or unless certain conditions are met.
- (2) A Minister must not, while in office, accept any offer of post-separation employment if the Parliamentary Ethics Advisor has advised against it.

- (3) If a Minister accepts an offer of post-separation employment (whether or not against the advice of the Parliamentary Ethics Advisor), any advice obtained from the Parliamentary Ethics Advisor in respect of that offer is to be tabled in the House of Parliament to which the Minister belongs or belonged.

## Part 6 Enforcement

### Note—

This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

### 26 Premier to determine sanctions

The enforcement of the requirements of this Schedule, including any sanctions for a breach, is a matter for the Premier.

### Note—

While enforcement of the requirements of this Schedule, including any sanctions for a breach, is a matter for the Premier, the NSW Ministerial Code of Conduct has also been adopted for the purposes of the [Independent Commission Against Corruption Act 1988](#).

### 27 Rulings

- (1) A Minister must, when applying for a ruling from the Premier, include with the application an accurate statement of all material information that is relevant to the decision whether to give the ruling. A ruling that is obtained on the basis of inaccurate or incomplete information is not effective and may not be relied upon by the Minister for the purposes of the NSW Ministerial Code of Conduct.
- (2) A ruling is to be made in writing and dated, and placed on the Ministerial Register of Interests.

### Note—

See clauses 1 (1) and (4), 2 (3), 3 (5) and 12 (2) of the Schedule, which provide for the Premier to issue rulings that a particular course of conduct is permitted.

- (3) A ruling is effective on and from the date it is given and continues in effect until:
  - (a) it is revoked by the Premier, or
  - (b) any conditions specified in the ruling cease to be satisfied, or
  - (c) the information upon which the ruling was given changes materially.

### Note—

If there is a material change of circumstances, the Minister may seek a new ruling from the Premier.

- (4) The Premier may direct that a ruling that has been sought by a Minister has effect as a ruling pending a decision by the Premier on the matter.

(5) A ruling in respect of the Premier may be given if approved by the Cabinet.