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17 MAR 2011
Committee of Senators' Interests

15 March 2011

Mr Richard Pye
Deputy Clerk, and
Secretary to the Committee of Senators' Interests
The Senate
Parliament House
CANBERRA ACT 2600

Dear Mr-Pye *Richard*

Reference is made to your email dated 10 March 2011 regarding an inquiry into the development of a draft code of conduct for Senators being undertaken by the Committee of Senators' Interests.

As discussed, it is noted that the terms of reference for the inquiry are similar to those of an inquiry undertaken recently by the House of Representatives' Standing Committee of Privileges and Members' Interests. While I understand that you have access to the submissions provided to the House of Representatives inquiry, I enclose for your convenience and reference a copy of the submission from the New South Wales Legislative Assembly.

Please do not hesitate to contact me should the Committee require any further information.

Yours faithfully

Russell D. Grove
Clerk of the Legislative Assembly

Submission from Mr Russell D. Grove, Clerk of the Legislative Assembly of New South Wales, to the Standing Committee of Privileges and Members' Interests Inquiry into a draft code of conduct for Members of the Australian Parliament

- **The nature of an appropriate code of conduct for Members of Parliament having regard to your own experience;**
- **Processes for making and investigating complaints;**
- **How a code of conduct might be enforced and what sanctions should be available.**

The adoption of a Code of Conduct for Members of the Parliament of New South Wales was linked to doubts raised, as a result of a court case, about the jurisdiction and powers of the Independent Commission against Corruption (ICAC). This factor influenced not only the initial adoption of the Code, but continues to influence current Members' perceptions of the rationale and operation of the Code. Essentially the Code of Conduct for Members of Parliament was devised to form part of the web of definitional terms of corrupt conduct in sections 8 and 9 of the ICAC Act, which sections establish the boundaries of the kind of acts that might constitute corrupt conduct able to be examined by the ICAC. The result is that an act by a Minister or Member could amount to corrupt conduct if it also amounts to "a substantial breach of an applicable code of conduct".

The genesis of the Code of Conduct was a 1992 ICAC report into the resignation and appointment of a former Minister, Terry Metherell, to a public sector position.

The ICAC was established in 1988, and the Metherell Inquiry was the first ICAC inquiry initiated by a resolution of the Parliament. Following tabling of the ICAC report on the inquiry¹, the former Premier Nick Greiner together with the former Minister Tim Moore successfully commenced legal action seeking a declaration that, amongst other things, the ICAC had no jurisdiction over either the Premier or Minister as a "public official", as the ICAC was not able to make findings that "any conduct of the plaintiffs could involve reasonable grounds for dismissal". The ICAC subsequently published a further report² which noted that the Court of Appeal decision had produced an inequitable result in that the Commission was prevented from being able to address matters of a very serious nature involving one group of public officials, i.e. Members of Parliament. As a result of the court decision, the Parliamentary Committee on the ICAC conducted an inquiry into the ICAC Act. The Committee's report made recommendations for amendments to the ICAC Act to ensure that the ICAC continued to have jurisdiction over Members of Parliament.³

The ICAC Act was accordingly amended in late 1994 to expand the jurisdiction of the ICAC in relation to Ministers of the Crown and Members of Parliament. Specifically, the ICAC was empowered to investigate an allegation that a Minister or Member of Parliament has breached a code of conduct and to make a finding of corrupt conduct against a Minister or Member, on the basis of a substantial breach of the code.

The amending bill provided for the establishment of two Standing Ethics Committees, one for each House of Parliament, to develop draft codes of conduct for the consideration of their respective Houses. The Legislative Assembly Committee had three community Members in addition to the 8 Members of the Legislative Assembly. The Legislative Council Committee was made up of only Members of the Legislative Council. The question of a code of conduct had already been the subject of an inquiry by the Joint Standing Committee on the ICAC which commenced an investigation in 1993 into the adequacy of the existing pecuniary interest provisions applying to Members of

¹ ICAC, *Report into the Metherell Resignation and Appointment*, dated June 1992.

² ICAC, *Second Report on Investigation into the Metherell Resignation and Appointment*, dated September 1992.

³ Committee on the Independent Commission Against Corruption. *Report on Review of the Independent Commission Against Corruption Act 1988* (PP 78) 31 May 1993.

Parliament, and the need for and suggested areas of content to be covered by a code of ethics for Members of Parliament. The ICAC Committee's Discussion Paper on a Code of Ethics for Parliamentarians was tabled in April 1994.⁴

The Legislative Assembly Standing Ethics Committee commenced its inquiry in May 1995 and tabled its Report on a draft Code of Conduct for Members of the Legislative Assembly in 1997.⁵ Appendix A below, an excerpt from a report by Associate Professor Noel Preston and Clem Campbell describes the full process of development of the final version of the Code as adopted by both Houses (*Preston and Campbell, 2002*).⁶ Appendix B is the current text of the Code of Conduct, and Appendix C is the original version of the Code, as first adopted in 1998.

Since its initial adoption in May 1998, the Code has essentially been readopted in each Parliament. Under the provisions of the ICAC Act, a designated committee of each House is required to review the code each Parliament. The first such review was tabled in 2002⁷. The original ICAC Act required a review every two years, but the 2003 amendments⁸ reduced the review cycle to once every four years, which equates to once every Parliament as New South Wales has a four year term.

In 2003 the Standing Ethics Committee was reconstituted following amendment of the relevant sections of the ICAC Act. The amendment provided for a "designated committee" to fulfil the statutory obligation of reviewing the code and ethical standards, and continued the prohibition on the committee considering conduct of individual members. The House, by resolution, established the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, as the designated committee to fulfil the requirements of s72E of the ICAC Act. This Committee as established does not involve community members, although s 72E(1A) does provide for the designated committee to appoint any member of the public for the purposes of assisting with considering draft codes of conduct. A copy of the statutory provisions and resolution of the House are attached below as Appendices D and E respectively.

Since the Code was first adopted, it has been amended a number of times. The amendments resulted from recommendations made by the ICAC when reporting on particular investigations. The ICAC's recommendations are usually considered by the designated committees of each house, and Government considers the committee reports when proposing specific amendments to the Code of Conduct.

One substantial amendment to the Code of Conduct concerns Clause 2 "Bribery". In 2003 following the ICAC's Second Report on the Investigation into Parliamentary and Electorate Travel, a recommendation was made by the ICAC to clarify the application of the clause in the Code pertaining to bribery. The Standing Ethics Committee considered the ICAC recommendation, and consequently reported to the House that Clause 2 of the Code should be amended to extend the scope of the clause beyond activities which resulted in "personal financial benefit". In 2006, as part of a suite of amendments inserted into the Code in relation to secondary employment and bribery, the Government introduced an amendment which increased the scope of Clause 2 even further, to include a member knowingly or improperly agrees to take action in Parliament in return for payment to "a party", including a third party such as a family member, a business associate, or a person with whom the member has a financial relationship.

⁴ Committee on the Independent Commission Against Corruption. *Discussion Paper on a Code of Ethics for Parliamentarians* (PP 57) 13 April 1994.

⁵ New South Wales Legislative Assembly Standing Ethics Committee *Report on a Draft Code of Conduct for Members of the Legislative Assembly*, October 1997.

⁶ Preston, Noel and Campbell, Clem *A research report on the development of codes of conduct in Australian Parliaments (1990-99)*, Centre for the Study of Ethics, School of Humanities and Social Sciences, QUT, 2000.

⁷ Standing Ethics Committee Report on Review of the Code of Conduct, tabled 27 June 2002.

⁸ Independent Commission Against Corruption Amendment (Ethics Committee) Act 2003, No 73

This amendment to the Code was introduced, following consultation with both committees, together with amendment to the Constitution (Disclosure by Members) Regulation which also aimed at strengthening the disclosure obligations on members who hold outside employment or engagements. Members were required to describe the services and activities to be undertaken. In certain circumstances, members are also required to disclose details of the clients to whom the services are to be provided.

The Code of Conduct was also amended to require Members to disclose at the start of a parliamentary debate the identity of any person by whom they are employed or engaged, or the identity of any client of any such person or any former client who benefited from a member's services within the previous 2 years. This is not required if a member is only voting on a bill/motion; and not required if the interest is already disclosed in the Register.

An amendment to the Code also ensured that the ICAC is entitled to investigate any breach of the prohibition on bribery.

The preamble to the Code was also amended in 2006 to include an additional element:
Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.

Neither the ICAC Act, nor the resolution of the House establishing the Standing Committee on Parliamentary Privilege and Ethics make provision for dealing with breaches of the Code. However, the ICAC, when reporting on investigations into conduct of Members of Parliament, upon findings of corrupt conduct can recommend that the Director of Public Prosecutions consider prosecution under the Crimes Act, where applicable.

To date, since the adoption of the Code of Conduct, the Legislative Assembly has only once considered a motion that made reference to a Member's breach of the code of conduct. The censure of a Shadow Minister, on motion of a Minister, was carried on division (Entry 7, Votes and Proceedings No 4, 29 May 2007).

- **The role that an individual person such as a proposed Parliamentary Integrity Commissioner can play in upholding codes of conduct.**

Commencing in 1998, the Parliament has appointed a Parliamentary Ethics Adviser to assist and advise members in resolving ethical problems. The current Parliamentary Ethics Adviser is Mr Ian Dickson, a former electoral commissioner. The role of the Parliamentary Ethics Adviser is to advise members, upon their request, on the use of entitlements and on the interpretation of rules for use of entitlements. In June 2006 the functions of the Parliamentary Ethics Adviser were extended to include the provision of advice to Ministers or former members (who held ministerial positions) in relation to post-separation employment. The Adviser is prohibited from investigating particular complaints against members.

The adviser is also an independent point of contact for Members for advice on more difficult questions arising in relation to exercising the role of a Member of Parliament, such as whether there is a potential conflict of interest in particular circumstances. The Adviser does not provide legal advice and gives an opinion rather than a ruling. It is up to Members how and whether or not they adopt the advice given. The Adviser bases the advice on determinations of the Parliamentary Remuneration Tribunal and the provisions of the Code of Conduct adopted by the Houses.

The Parliamentary Ethics Adviser is appointed by resolution of the Legislative Assembly and the Legislative Council. The terms of reference of the resolution appointing the Parliamentary Ethics Adviser do not extend to investigation. The resolution is appended below as Appendix F.

The relationship between the ICAC, the Parliament and the role of an independent Parliamentary investigator was canvassed in 2005 in a report entitled "Independent Review of the Independent Commission Against Corruption Act"⁹, an inquiry commenced by the Hon Jerrold Cripps SC, and concluded by Mr Bruce McClintock SC following Mr Cripps' appointment as ICAC Commissioner in 2004.

Mr McClintock made a number of findings, including that an Investigator, or Committee, should be able to investigate minor matters involving members of Parliament, which the ICAC was unable to investigate because of Parliamentary privilege (s122 of the ICAC Act overtly preserving the rights and privileges of Parliament in relation to Parliamentary proceedings). This recommendation has not been adopted.

- **The role a relevant parliamentary committee can play in relation to a code of conduct.**

The Legislative Assembly Standing Committee on Ethics was re-established as the Standing Committee on Parliamentary Privilege and Ethics on 4 December 2003. Prior to that date the committee had no function in relation to privilege.

The Committee can only consider and report upon any matters relating to privilege which are referred to it by motion of the House. The motion could either be as a result of the Speaker considering a matter of privilege raised with him in writing, and making a determination that it is such a matter that it should be referred to the committee by a motion of the House. The motion would take precedence under Standing Order 92, or the House could resolve at any other time of its own accord to refer a matter of privilege to the committee.

Standing Order 92 states:

92. Except as provided in standing order 91 and in paragraph (5) of this standing order, a matter of privilege shall be brought before the House as follows:

- (1) A Member desiring to raise a matter of privilege must inform the Speaker of the details in writing.*
- (2) The Speaker must consider the matter within 14 days and decide whether a motion to refer the matter to the Standing Committee on Parliamentary Privilege and Ethics (the Committee) is to take precedence under the standing orders. The Speaker must notify this decision in writing to the Member.*
- (3) While a matter is being considered by the Speaker, a Member must not take any action or refer to the matter in the House.*
- (4) If the Speaker decides that a motion for referral should take precedence, the Member may, at any time when there is no business before the House, give notice of a motion to refer the matter to the Committee. The notice must take precedence under Standing Order 118 on the next sitting day (unless the next sitting day is a Friday sitting).*
- (5) If the Speaker decides that the matter should not be the subject of a notice of referral, a Member is not prevented from giving a notice of motion in relation to the matter. Such notice shall not have precedence.*
- (6) If notice of a motion is given under paragraph (4), but the House is not expected to meet on the day following the giving of the notice or the next sitting day is a Friday sitting, with the leave of the House, the motion may be moved at a later hour of the sitting at which the notice is given.*

⁹Final report of the Independent Review of the Independent Commission Against Corruption Act, by B. McClintock, January 2005 http://www.dpc.nsw.gov.au/data/assets/pdf_file/0020/11369/icac.pdf as at 13.1.2011

The NSW Committee on Parliamentary Privilege and Ethics has an educational role under part 7A Division 2 of the Independent Commission Against Corruption Act, relating to Parliamentary ethical standards including review of the code of conduct.

As noted above, over the last few years there have been almost annual changes to the declaration of interests scheme, and amendments to the code. The Standing Committee on Parliamentary Privilege and Ethics has inquired and reported on each proposed change, and each committee report is subject of a Take Note debate in the House. Thus members' attention has been drawn to the requirements of the code and the disclosure regime, at regular intervals.

APPENDIX "A"



**A RESEARCH REPORT ON
THE DEVELOPMENT OF
CODES OF CONDUCT IN
AUSTRALIAN PARLIAMENTS
(1990-99)**

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Research Associate Clem Campbell**

March 2000

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Report), the Tasmanian Parliament adopted a Code via the device of Standing Orders.²¹ This Code came into force after the 1996 election and consists of a preamble or statement of commitment followed by a nine-clause Declaration of Principles. The Tasmanian Code does not, however, indicate any sanctions or disciplinary actions that will occur if it is not followed. (The Tasmanian House of Assembly also adopted a Code of Race Ethics promoting the rights of racial minorities and reconciliation with aboriginal Australians.)

South Australia, Western Australia, and the Australian Capital Territory have not developed Codes of Conduct at this stage, though in all cases interest and activity to that end has been generated. In April 1996, the Legislative Review Committee of the Parliament of South Australia issued a Discussion Paper calling for submissions on a Code of Conduct for Members of Parliament. To date no report has emerged or subsequent action been taken. In 1999, following urgings by the Commission on Government, Western Australia's Assembly Privileges and Procedures Committee began reviewing the question of a Member's Code with the intention of tabling a report and draft Code.²²

In the Australian Capital Territory there has been a history of active interest in the possibility of a Code for Members, dating back to the 19th September 1990 when the then Leader of the Opposition (Ms Follet) moved unsuccessfully to establish a Standing Committee on Ethics for Members. The question of developing a Code was raised again and debated in 1996 when, on September 26th, the Legislative Assembly referred the matter to the Standing Committee on Administration and Procedures. The Committee has taken submissions but has not yet reported.²³

New South Wales

The impetus leading to a process for developing a Code for Members in the New South Wales Parliament came from the so-called Greiner/Metherell affair.²⁴ This matter led to the resignation of Mr Grenier, New South Wales Premier after an adverse ruling by the Independent Commissioner Against Corruption (ICAC). The subsequent judicial findings identified the need for a Parliamentary Code spelling out the types of behaviour that would be grounds for a Member's or Minister's dismissal or resignation. Introducing a Code became a cause taken up by Independents in the

New South Wales Parliament resulting in 1994 in amendments to the ICAC Act (1988). These amendments provide for the establishment of two Standing Committees in Ethics (one for the Legislative Assembly and the other for the Legislative Council) with the specific purpose of drafting Codes of Conduct for New South Wales MPs. Section 9 of the ICAC Act was changed to read: "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".

These committees (the Legislative Assembly Committee chaired by Mr Peter Nagle MP and the Council Committee by Dr Meredith Burgmann MLC) under the scrutiny of ICAC and the media, pursued the question vigorously through research, several public hearings and various reports – all of which gave some impetus to an interest in MPs Codes in other Australian jurisdictions. Draft versions of two different Codes (one from each House) were published in 1996 and 1997. The Legislative Assembly and Legislative Council Codes were markedly different, and indeed there was considerable tension between the two committees. The Council code was more extensive giving guidance on several topics untouched by the Lower House Code (e.g. Post Employment Restrictions). Furthermore, the Legislative Council Committee proposed a more extensive ethics regime to support the Code, with detailed proposals for ethics education supported by an appointed ethics commissioner. The failure of the two committees to come to agreement reflects several factors such as: (i) the different perceptions about the role of MPs in each Chamber, with some in the Lower House Committee claiming that its members need more flexibility to engage the rough and tumble of constituency representation, (ii) the committees were composed rather differently with the Lower House Committee including three community representatives,²⁵ and (iii) differing political ideologies in the leadership of both committees, Mr Nagle being of the ALP Right wing faction and Dr Burgmann being of the Left.

In any event, despite the merits of the respective codes, this disagreement not only fuelled doubts amongst members regarding the codification exercise, but also provided a justification for executive intervention in the process. On March 31, 1998, the Premier and his Upper House Attorney General released their version of a Code of Conduct. It was a less discursive document than either committee had released.

There are suggestions that this minimalist approach reflected the Government's concern to have a code which avoided alleged legal pitfalls and yet responded to the ICAC pressures. The response of the Legislative Council Privilege and Ethics committee was detailed and full of concern about the Government's action (Report No. 5, June 1988). The Legislative Assembly Committee's response (Second Report, April 1998) was less critical of the Government proposal. Though one of its members, Independent Dr Peter McDonald, recorded his strong objection to this intervention in the Parliament's processes and the resulting dilution of the content of the Code as proposed by the Premier.

Finally, on July 1, 1998, following the endorsement in the Lower House of what became known as the "Premier's Code", the Legislative Council approved that code as an amendment to section 9 of the ICAC Act. The code as adopted covers six topics: disclosure of conflict of interest, bribery, gifts, use of public resources, use of confidential information, duties as a Member of Parliament.

The major concern of Government members in the caucus discussion of the Premier's Code was the need to protect members from accusations that they were in violation of the Code if they used public resources for party political purposes. As a result, the Code's clarification of the duties of an MP now reads: "Organised parties are a fundamental part of the democratic process and participation in their activities is within the legislative activities of Members of Parliament". In its June 1998 response to the Government Code,²⁶ the Legislative Council Committee identified eight topics which its code included but which were omitted by the Premier's Code:-

- "Use of Public Office for Private Gain"
- "Travel" (which clarified when travel expenses from private resources can be accepted by Members)
- "Use of Official Resources for personal Gain"
- "Post Employment Restrictions"
- "No Unjustified Discrimination"
- "Freedom of Speech"
- "Spirit and Letter Provisions"

- "Additional Responsibilities of Parliamentary Office Holders".

The Legislative Council has resolved to accept its own Committee's Code as guidelines for Members' conduct to be read alongside the official Code.

Subsequent to the adoption of a Code, both Houses (the Assembly on 23 September 1998 and the Council on 24 September 1998) resolved to appoint a Parliamentary Ethics Adviser. A retired, former auditor-general, Mr Ken Robson, was appointed to this part-time position for a term of 12 months which may be renewed. Mr Robson has since resigned from the post on health grounds.

No clear picture has emerged about the impact of "the Premier's Code", though a number of those interviewed in this study indicated that clearer procedures for the making and processing of complaints under the Members' Code were needed. Probably, only a minority of New South Wales Members (some of whom have been educated by the exhaustive ethics committee inquiry process) anticipate further development of the Code and its supportive measures. The New South Wales legislative ethics' experiment certainly breaks new ground in the Australian context, and the results of this action of the nation's first Parliament will be influential in how ethics initiatives develop in other Australian legislatures.

If the New South Wales experiment is to be seen as a favourable model for other Parliaments, it will need to be demonstrated that it has actually assisted MPs who are conscientious in the ethical pursuit of their tasks. The stand-off between the Upper and Lower House Committees and the subsequent intervention by the Executive in a matter that requires not only the support of political leaders but also a high degree of Parliamentary consensus, is instructive to those who advocate a Code of Conduct for politicians. The appointment of an ethics adviser was potentially one of the more significant developments in New South Wales. It appears however, that the role was shaped and resourced in a way that limited the capacity of the person to proactively develop, with the Ethics Committees, the legislative ethics agenda, certainly as envisaged by Dr Burgmann's Upper House Committee. This appointment is not to be compared with the Ethics Commissioner appointments in many North American legislatures and now, in the United Kingdom, with its

Parliamentary Commissioner of Standards. They are better resourced and supported by detailed legislation.

Queensland

The original catalyst for the development of a Code of Conduct for Queensland Parliamentarians was the publication by the Electoral and Administrative Review Commission (EARC) of its *Report on the Review of Codes of Conduct for Public Officials* in 1992. EARC was one of the reform commissions established after the inquiry by Commissioner Tony Fitzgerald into "Possible Illegal Activities and Associated Police Misconduct" (the other being the Criminal Justice Commission). EARC's report recommended a Public Sector Ethics Bill to mandate Codes of Conduct for elected and unelected officials, and included an extensive draft Code for elected representatives. The parliamentary Committee (PCEAR) considering this Report endorsed it. Subsequently, the Public Sector Ethics Act 1994 was passed requiring the development of agency-specific codes under a set of fundamental ethical obligations, or principles, enshrined in the Act.²⁷ This legislation was silent about the development of a Code for MPs.

In 1995 the passage of the Parliamentary Committees Act established the Members' Ethics and Parliamentary Privileges Committee (MEPP). Section 16 of the Act provided that the Committee's area of responsibility includes:

- 1 (a) *recommending to the Legislative Assembly a proposed code of conduct for members (other than members in their capacity as Ministers);*
 - (b) *recommending to the Assembly a procedure for complaints about a member not complying with the code of conduct adopted by the Assembly, including, for example, the persons who may make complaints, or the persons who must refer complaints, to the committee; and*
 - (c) *considering complaints against particular members for failing to comply with the code of conduct, reporting to the Assembly about complaints and recommending action by the Assembly.*
- 2 *In recommending a proposed code of conduct for members to the Legislative Assembly, the committee must have regard to:*
 - (a) *the ethics principles and obligations set out in the Public Sector Ethics Act 1994; and*

APPENDIX B

CODE OF CONDUCT FOR MEMBERS – As currently adopted.

(Votes and Proceedings, 8 May 2007, p.34)
(Votes and Proceedings, 21 June 2007, p. 154)

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

PREAMBLE

The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.

Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate has the right to dismiss them from office at regular elections.

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

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

THE CODE

1 Disclosure of conflict of interest

(a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.

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

(c) A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.

2 Bribery

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

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

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

(ii) A business associate of the Member; or

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

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

3 Gifts

(a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.

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

(c) Members may accept political contributions in accordance with part 6 of the Election Funding Act 1981.

4 Use of public resources

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

5 Use of confidential information

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

6 Duties as a Member of Parliament

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

7 Secondary employment or engagements

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

(a) the identity of any person by whom they are employed or engaged or by whom they were employed or engaged in the last two years (but not if it was before the Member was sworn in as a Member);

(b) the identity of any client of any such person or any former client who benefited from a Member's services within the previous two years (but not if it was before the Member was sworn in as a Member); and

(c) the nature of the interest held by the person, client or former client in the parliamentary debate.

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

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

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

APPENDIX C

THE ORIGINAL CODE OF CONDUCT FOR MEMBERS – As originally adopted by the Parliament in 1998.

(Votes and Proceedings 29, Entry No.14, 5 May 1998)

Preamble to the Code of Conduct

The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.

Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.

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

THE CODE

1 Disclosure of conflict of interest

- (a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.
- (b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.
- (c) A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.

2 Bribery

Members must not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for payment or any other personal financial benefit.

3 Gifts

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

4 Use of public resources

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

5 Use of confidential information

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

6 Duties as a Member of Parliament

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

APPENDIX D

Independent Commission Against Corruption Act 1988 No 35

72E Functions of committee

- (1) The functions of the designated committee are:
 - (a) to prepare for consideration by the Legislative Assembly draft codes of conduct for members of the Legislative Assembly and draft amendments to codes of conduct already adopted, and
 - (b) to carry out educative work relating to ethical standards applying to members of the Legislative Assembly, and
 - (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Assembly, but not in relation to actual or alleged conduct of any particular person.
- (1A) The designated committee may appoint any member of the public for the purpose of assisting the committee to carry out any of its functions under this section in relation to a code of conduct.
- (2) The designated committee may seek comments from the public in relation to any of its functions under this section.
- (3) Before presenting a draft code of conduct for consideration by the Legislative Assembly, the designated committee must:
 - (a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public, and
 - (b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice, and
 - (c) specify, in the notice, the period during which submissions may be made to the committee.
- (4) Any person may, during the period referred to in subsection (3) (c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct. The committee must take any such submissions into consideration.
- (5) The designated committee is to review a code of conduct adopted by the Legislative Assembly at least once every 4 years.
- (6) (Repealed)

APPENDIX E

Extract from the Votes and Proceedings of Wednesday 20 June 2007, entry 22 –

Standing Committee on Parliamentary Privilege and Ethics

That notwithstanding anything to the contrary in the standing orders:

- (1) A Standing Committee on Parliamentary Privilege and Ethics (referred to as “the committee”) be appointed to consider and report upon any matters relating to privilege which may be referred to it under standing order 92 or by resolution of the House.
- (2) The committee is the designated committee for the purpose of exercising the functions in part 7A Division 2 of the Independent Commission Against Corruption Act 1988, relating to Parliamentary ethical standards including the review of the code of conduct.
- (3) The committee consist of eight members being: Mr Amery, Mr Costa, Mr Kerr, Ms McMahon, Ms Moore, Mr Pearce, Mr Terenzini and Mr J.H.Turner.
- (4) Any five members of the committee shall constitute a quorum.
- (5) That the committee have leave to make visits of inspection within the state of New South Wales and other states and territories of Australia.
- (6) The committee have power to confer with any similar committee appointed by the Legislative Council.”

APPENDIX F

Parliamentary Ethics Adviser

Mr Aquilina, by leave, moved, That this House directs the Speaker to join with the President to make arrangements for the reappointment of Mr Ian Dickson as Parliamentary Ethics Adviser, on a part-time basis, on such terms and conditions as may be agreed, from the period beginning 1 July 2007, and as follows:

The Parliamentary Ethics Adviser shall have the following functions.

Advice to Members of Parliament

(1) (a) The Parliamentary Ethics Adviser is to advise any member of Parliament, when asked to do so by that member, on ethical issues concerning the exercise of his or her role as a member of Parliament (including the use of entitlements and potential conflicts of interest).

(b) The Parliamentary Ethics Adviser is to be guided in giving this advice by any Code of Conduct or other guidelines adopted by the House (whether pursuant to the Independent Commission Against Corruption Act or otherwise).

(c) The Parliamentary Ethics Adviser's role does not include the giving of legal advice.

Advice to Ministers on post-separation employment

(2) The Parliamentary Ethics Adviser must on request by a Minister provide written advice to the Minister as to whether or not the Adviser is of the opinion that the Minister's:

(a) acceptance of an offer of post-separation employment or engagement which relates to the Minister's portfolio responsibilities (including portfolio responsibilities held during the previous two years of ministerial office); or

(b) decision to proceed, after the Minister leaves office, with a proposal to provide services to third parties (including a proposal to establish a business to provide such services) which relates to the Minister's portfolio responsibilities (including portfolio responsibilities held during the previous two years of ministerial office),

would give rise to a reasonable concern that:

(c) the Minister's conduct while in office was influenced by the prospect of the employment or engagement or the proposal to provide services; or

(d) the Minister might make improper use of confidential information to which he or she has access while in office.

(3) The Adviser must on request by a person who has ceased to hold ministerial office within the previous 12 months ("the former Minister") provide written advice to the former Minister as to whether or not the Adviser is of the opinion that the former Minister's:

(a) acceptance of an offer of employment or engagement which relates to the former Minister's former portfolio responsibilities during the last two years in which the Minister held ministerial office; or

(b) decision to proceed with a proposal to provide services to third parties (including a proposal to establish a business to provide such services) which relate to the former Minister's former portfolio responsibilities during the last two years in which the Minister held ministerial office, would give rise to a reasonable concern that:

(c) the former Minister's conduct while in office was influenced by the prospect of the employment or engagement or the proposal to provide services; or

(d) the former Minister might make improper use of confidential information to which he or she had access while in office.

(4) If the Adviser is of the opinion that accepting the proposed employment or engagement or proceeding with the proposal to provide services might give rise to such a reasonable concern, but the concern would not arise if the employment or engagement or the provision of services were subject to certain conditions, then he or she must so advise and specify the necessary conditions.

(5) The Adviser's advice must include:

(a) a general description of the position offered, including a description of the duties to be undertaken, or the services to be provided, based on material provided by the Minister or former Minister but excluding any information that the Minister or former Minister indicates is confidential; and

(b) the Adviser's opinion as to whether or not the position may be accepted, or the services may be provided, either with or without conditions.

(6) Where the Adviser becomes aware that a Minister or former Minister has accepted a position, or has commenced to provide services, in respect of which the Adviser has provided advice, the Adviser must provide a copy of that advice to the Presiding Officer of the House to which the Minister belongs or to which the former Minister belonged.

Keeping of records

(7) The Parliamentary Ethics Adviser shall be required to keep records of advice given and the factual information upon which it is based.

(8) Subject to clause 6, the Parliamentary Ethics Adviser shall be under a duty to maintain the confidentiality of information provided to him in exercising his function and any advice given, but the Parliamentary Ethics Adviser may make advice public if the person who requested the advice gives permission for it to be made public.

(9) This House shall only call for the production of records of the Parliamentary Ethics Adviser if the person to which the records relate has: in the case of advice given under clause 1(a), sought to rely on the advice of the Parliamentary Ethics Adviser; or given permission for the records to be produced to the House.

Annual meeting with committees

(10) The Parliamentary Ethics Adviser is to meet annually with the Standing Committee of each House designated for the purposes of Part 7A of the Independent Commission Against Corruption Act.

Report to Parliament

(11)

(a) The Parliamentary Ethics Adviser shall be required to report to the Parliament prior to the end of his annual term on the number of ethical matters raised with him, the number of members who sought his advice, the amount of time spent in the course of his duties and the number of times advice was given.

(b) The Parliamentary Ethics Adviser may report to the Parliament from time to time on any problems arising from the determinations of the Parliamentary Remuneration Tribunal that have given rise to requests for ethics advice and proposals to address these problems.

(12) That a message be sent informing the Legislative Council of the resolution.

Question put and passed.

(Votes and Proceedings 27 June 2007)