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AUSTRALIAN SENATE

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31 March 2011

Senator Cory Bernardi
Chair
Standing Committee on Senators' Interests
The Senate
Parliament House
Canberra ACT 2600

Dear Senator Bernardi

Thank you for the opportunity to make a submission to the committee on the development of a draft code of conduct for senators. I apologise for the delay in providing it. Some of the material in this submission was covered at the round table on 21 March 2011.

Before turning to the committee's specific terms of reference, I would like to begin by reiterating existing provisions governing the conduct of senators and, secondly, by sketching the history of previous attempts to develop a Commonwealth code of conduct for members of Parliament.

Existing provisions governing the conduct of senators

The absence of a specific code of conduct for Commonwealth members of Parliament does not mean that there is a vacuum in this area. On the contrary, senators are subject to numerous statutory and other provisions governing their conduct and carrying significant sanctions for non-compliance. Attached to this submission is a Senate publication, one of the series of Brief Guides to Senate Procedure, on provisions governing the conduct of senators. It was based on a paper prepared by my predecessor for the Finance and Public Administration Legislation Committee in May 2001 in connection with its inquiry into four bills regulating political conduct[1], and was produced for the 2008 orientation sessions for new senators as a handy guide.

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1 The bills were as follows: Electoral Amendment (Political Honesty) Bill 2000, Government Advertising (Objectivity, Fairness and Accountability) Bill 2000, Auditor of Parliamentary Allowances and Entitlements Bill 2000 and Charter of Political Honesty Bill 2000, introduced by former Senator

As can be seen from the publication, formal provisions governing the conduct of senators cover ethical issues of conflict of interest as well as strict behavioural matters.

The grounds for disqualification of senators and candidates for election in sections 44 and 45 of the Constitution are largely directed at ensuring that senators do not have conflicts of interests by, for example:

- being beholden to the Crown by holding an office of profit or receiving a pension from Commonwealth revenues;
- having pecuniary interests in contracts with the public service;
- holding allegiance to a foreign power;
- being at the mercy of creditors by being an undischarged bankrupt or insolvent.

Without such encumbrances, senators are free to serve the electors as their first duty.

To ensure that senators' pecuniary and other interests are transparent, the Senate has a scheme for the registration of interests of senators, as well as of their partners or spouses and any dependent children. The system provides for continuous disclosure of interests in that any alterations to interests must be notified to the registrar within 35 days of the alterations occurring. Failure to comply with the requirements of the scheme may be treated as a serious contempt and subject to inquiry by the Committee of Privileges. The scheme also catches receipt of significant benefits by senators in the form of sponsored travel, hospitality or gifts above certain thresholds. A senator who seeks or obtains any benefits in return for exercising his or her duties may be dealt with for contempt.

Finally, there are numerous criminal offences applying generally to Commonwealth public officials, a term which is defined to include members of the Commonwealth Parliament.

The history of Commonwealth codes of conduct

Examination of the idea of a code of conduct began with the appointment of the Joint Committee on Pecuniary Interests of Members of Parliament in 1974. The committee, which reported in September 1975, considered whether arrangements should be made for the declaration of interests of members and senators and, if so, whether a register of interests should be compiled and what it should contain. The committee also examined the concept of a code of conduct which it considered a means of providing flexible guidance to members and senators. The committee recommended a system of declaration of interests in which it was compulsory to declare certain interests while declaration of others was discretionary. A non-specific declaration of interests system was seen as a workable proposal to safeguard and enhance the integrity of members of Parliament without making unjustified inroads into their existing rights of privacy.

Andrew Murray AD, WA (first and last listed bills), Senator Faulkner (third listed bill) and Mr Beazley (second listed bill).

No action was taken as a result of the joint committee's report but in 1978, the then Prime Minister announced the formation of a Committee of Inquiry Concerning Public Duty and Private Interest, chaired by the Chief Justice of the Federal Court, Sir Nigel Bowen. The committee was charged with recommending whether a statement of principles could be drawn up on the nature of private interests, pecuniary or otherwise, which could conflict with the public duty of people holding positions of public trust in the Commonwealth of Australia, including members of Parliament. In its report, tabled in November 1979, the committee concluded that it was not possible to draw up a completely comprehensive and satisfactory statement of principles on the nature of private interests but that it was possible to refine principles which would promote the avoidance and, if necessary, the resolution of conflicts of interest. A statement of such principles would constitute a code of conduct.

In its report, the committee enumerated principles to apply to various categories of persons holding public office or playing a role in public life. These included members of Parliament and their staff, ministers and their staff, public servants, members of the defence forces, consultants, statutory officeholders and staff of statutory authorities, and members of tribunals. The committee also made recommendations in relation to the machinery for regulation of conflicts of interests, and in relation to post-separation employment.

The government of the day adopted the committee's recommendations in relation to ministers, including the confidential disclosure of pecuniary interests, but action in other areas recommended by the committee was still some years away. The recommended principles, however, became known as the Bowen principles and had a significant influence as a model for all later consideration of this issue in Australia. The Bowen principles are at attachment 1.

The adoption of a system of registration of interests of ministers was also a policy of the Hawke government, elected in 1983. The Prime Minister made a statement to the House of Representatives on public duty and private interests in September 1983 when tabling annual returns of ministers. The statement urged both Houses to adopt formal requirements for the registration of interests of members of Parliament and the House of Representatives did so the following year.

Ten years later, in 1994, the Senate followed suit and adopted its resolutions for registration of interests. At the same time, standing order 22A, establishing the Committee of Senators' Interests, was also adopted. While the disclosure requirements applying to members of the two Houses are essentially the same, there are differences in administration, including the different treatment of the interests of spouses, partners and dependent children which are published by the House of Representatives but not by the Senate.

The adoption by both Houses of a system of registration of pecuniary and other interests gave effect to the Bowen recommendations in respect of members of parliament, but in 1992 the suggestion was revived for a code of conduct. A working party comprising representatives of all parties from both Houses was established by the Presiding Officers and met several times before and after the 1993 elections.

Revival of interest in a code of conduct needs to be placed in the context of the times. The Fitzgerald inquiry in Queensland had led to the establishment of the Electoral and Administrative Review Commission in that state; the Independent Commission Against Corruption had been established in NSW following a string of scandals; and a Royal Commission was underway in Western Australia into Commercial Activities of Government and Other Matters (known as WA Inc.). Corruption in public office was seen as the great problem of the times and much law enforcement policy effort was being directed at measures to combat serious and organised crime, including the attendant corruption of public officials.

Events in Britain also contributed to perceptions that a code of conduct was required to set standards for public office. The Nolan Committee (Committee on Standards in Public Life) was established in 1994 under the chairmanship of Lord Nolan following several allegations of impropriety including the infamous "cash for questions" affair (behaviour that in Australia was already subject to being treated as a contempt and potentially a cause of criminal prosecution). The committee recommended the introduction of a code of conduct for members of parliament, to be enforced by the House of Commons with the advice of a Parliamentary Commissioner for Standards. It followed a judicial inquiry by Lord Justice Scott into allegations that ministers had misled Parliament and breached their own policy guidelines over the sale of arms to Iraq. Scandals involving post-separation employment and sexual conduct also contributed to the general perception that "sleaze" had taken over the British polity.

The Nolan Committee proposed seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. An expanded list of the principles is at attachment 2. Other recommendations were for regulation of paid employment and consultancies, declaration of interests, a code of conduct and clarification of the law regarding bribery of members. The committee has access to submissions made to its counterpart committee from witnesses in the United Kingdom about the operation of this system and recent developments.

In my opinion, the Nolan principles are as good a statement as any of the standards expected in public office.

In Australia, the working group established by the Presiding Officers considered two possible approaches to developing a code of conduct:

- a set of general principles to provide guidance on appropriate behaviour in any given situation;
- specific rules to complement those already in existence.

Both approaches were considered to have their own problems and the working group agreed as a first step to consider current guidelines, rules and laws and to identify any deficiencies in that framework which could be addressed by a code of conduct. The current framework was considered to be broadly divisible into two categories:

- avoidance of conflicts between private interests and public duty;
- proper use of entitlements and facilities.

The working group considered that the current framework and information about members' conduct and access to entitlements could usefully be drawn together in one document, although it later acknowledged that information on the second element was bulky and perhaps best dealt with in a self-contained publication. It had been the intention of the working party to develop a draft code of conduct for presentation to both Houses for endorsement, with a view to it being available for use in seminars for new members and senators in particular, and for the guidance of parliamentarians generally. In developing a draft code of conduct, the working party had not envisaged any formal enforcement mechanism.

The outcome of the working party's endeavours was a set of principles, "A framework of ethical principles for Members and Senators", tabled in the Senate on 21 June 1995 by the President of the Senate. A motion to take note of the document was the subject of a general business debate on 24 August 1995. Then Australian Democrats Leader, Senator Kernot, gave notice of a motion to adopt the principles as a code of conduct with certain specific amendments. The motion was debated during general business on 16 November 1995 but was not resolved before the available time expired. Although the motion was restored to the Notice Paper in the new Parliament the following year, no further action occurred. On 31 March 1998, former Senator Murray moved a motion noting the lack of action on the working party's draft principles and calling on the Prime Minister to convene a new working party on the adequacy of existing guidelines and the desirability of establishing supervisory or enforcement bodies to oversee the operation of a code of conduct. The motion was defeated.

The operation of codes of conduct in other parliaments

Codes of conduct exist in several parliaments and the committee will no doubt receive submissions about their operation, and has access to submissions already made to its counterpart committee in the House. A threshold question, however, is 'what is the purpose of a code of conduct for members and senators?' What purpose would a code of conduct serve that is not served by the current framework of regulation? Is it enough for a code of conduct to be aspirational?

In debate on a motion calling on the working party to complete its business on or before the first sitting day in 1993, then Australian Democrats Leader Senator Coulter (the mover of the motion) summed up his view of the purpose of a code of conduct as follows:

> The code will not stop bad behaviour, but it will give us a measure by which we can judge collectively and premeditatively what sort of behaviour we regard as ethical on the part of members and senators and what sort of behaviour we regard as acceptable for Ministers, I believe that will help in making these judgments in the future. It will

> expedite and make less vindictive some of the debates that take place in this chamber regarding the behaviour of some senators and Ministers.

That particular debate occurred in the context of controversy over the behaviour of former Senator Richardson as a minister in relation to the so-called Marshall Islands affair. Some years later, Senator Murray appeared to have a more enforceable creature in mind in his (unsuccessful) motion calling for the idea of an independent commissioner or committees of each House (or a joint committee) to be investigated, along with appropriate enforcement powers.

It is clear that the term 'code of conduct' means different things to different people. It has often been said that a code of conduct is not worth the paper it is written on unless it provides for enforcement of its terms. Examples of enforceable codes of conduct are found in the Public Service Act and the Parliamentary Service Act. These codes are expressed in the language of compulsion and list things that employees of the respective services must or must not do. In both acts there is also a list of values referring to such things as maintaining the highest ethical standards, making merit-based employment decisions, using resources properly and cost-effectively. The code of the conduct and the values are tied together by a provision in the code of conduct requiring employees to behave at all times in a way that upholds the respective values and the integrity and good reputation of the respective service. These codes of conduct are enforced through administrative procedures developed by each Secretary and sanctions may be imposed (the scope of which is specified in the relevant legislation). The point needs to be made, however, that these codes apply to employees and in the context of an employment relationship. A member of parliament is not an employee and has no clear duty statement. He or she is subject only to the discipline of the House of which he or she is a member and to the will of the people at the relevant intervals.

If codes of conduct are merely hortatory and therefore lacking in enforcement measures, the inevitable question asked is whether they serve any useful purpose. Hortatory or advisory codes can become as elastic as the circumstances require and their application is invariably determined by political realities. On the other hand, they can contribute to setting standards for making judgements about what behaviour is or is not appropriate.

Who should be able to make a complaint in relation to breaches of a code and how those complaints might be considered

In considering who should be able to make a complaint, the options are:

- only members of the respective House;
- any person.

The current framework for considering possible contempts requires matters of privilege to be raised by senators because particular procedures are contemplated under the standing orders that are only open to senators (such as giving notice of and moving motions). This does not

preclude any other person raising matters of concern either with individual senators or in the public arena, but the final step to initiate a matter can only be taken by a senator.

If the purpose of a code of conduct is to provide an open and transparent accountability mechanism to reassure the public about the quality and personal behaviour of their members of Parliament, then it would be both logical and reasonable to open the process to any person. If this were done, however, there would need to be some mechanism to filter out trivial or vexatious complaints. There is already such a mechanism in Privilege Resolution 5 which sets out the procedures for consideration of applications for a right of reply. Applications are initially directed to the President who transmits them to the Committee of Privileges if he or she is satisfied:

> (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Committee of Privileges; and
>
> (d) that it is practicable for the Committee of Privileges to consider the submission under this resolution.

A comparable filtering mechanism would be desirable if complaints arising from a code of conduct were able to made by any person.

How such complaints might be considered is a far more difficult question. The main options are:

- by a new domestic committee (a committee of standards);
- by an existing domestic committee taking on the new function (a committee of senators' interests and standards or a committee of privileges and standards);
- by an appointed commissioner for standards or integrity commissioner who reports to the chosen domestic committee;
- by an appointed commissioner for standards or integrity commissioner who reports to the relevant Presiding Officer;
- by an appointed commissioner for standards or integrity commissioner who reports to the relevant House;
- by an independent statutory body.

Most of these arrangements are reflected in existing arrangements adopted by State legislatures or overseas Parliaments and the committee will no doubt wish to question those jurisdictions about how they operate in practice. Details of the schemes operating in various jurisdictions are contained in the Parliamentary Library publication, *Background Note: A survey of codes of conduct in Australian and selected overseas jurisdictions* (issued 26 November 2009, updated 17 December 2009).

The role of the proposed Parliamentary Integrity Commissioner in upholding a code

There are three basic roles that can be performed by an integrity commissioner. One is to provide advice to members and senators about their conduct and the arrangement of their

financial affairs. The second role is an investigative and enforcement role. The third one is an educational role. The third role could be combined with either of the other roles but to combine the advisory and investigative roles is clearly problematic.

There is an inherent conflict between the provision of advice in relation to conduct and the subsequent investigation of it. In his or her advisory role, for example, the commissioner could effectively endorse or clear proposed conduct. That conduct could then be the subject of a complaint and the commissioner, having investigated it, might come to a different conclusion. The commissioner is conflicted and the member has been treated unfairly by being penalised for conduct which the investigating authority has previously cleared. If the investigation cleared the member, doubt would nonetheless be cast on the integrity of the process because the investigator would be perceived as compromised by the advice previously given. There could be no confidence in such a system.

How a code might be enforced and what sanctions could be available to the Parliament

Whether to have an enforceable code is a threshold question. If it is to be enforced then there is a choice of methods between internal mechanisms and extra-parliamentary mechanisms. The choice of an internal mechanism does not preclude the appointment of a commissioner, working to a parliamentary committee after the manner of the UK model. Nor does it preclude the appointment of the same person as commissioner for each House. (A joint supervisory committee, however, is not a suitable model for reasons referred to below.)

The advantage of an in-house model, whether involving a commissioner or not, is that it adheres to fundamental principles of parliamentary practice and the separation of powers, in that Houses of Parliament have exclusive jurisdiction in relation to the conduct of their members as members (the main reason why any joint supervisory committee is unsuitable). This is the basis of the contempt jurisdiction, although it has been theoretically modified by the *Parliamentary Privileges Act 1987* to the extent that the Act creates criminal offences that would be tried by a court.

The disadvantage of this model is one of perception. If the politicians are seen to be accountable only to themselves and judged by themselves, then the system will lack the necessary rigour and will be easy prey to criticism.

The extra-parliamentary option may raise some difficult issues of parliamentary privilege. What is in or out of bounds to the investigatory body needs to be clearly understood. In this context, I draw the committee's attention to the operation of extra-parliamentary bodies in Western Australia and New South Wales, in particular, where problems have arisen when over-enthusiastic inquisitors sought to trespass on the privileges of parliament.[2]

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[2] See, for example, NSW Legislative Council Privileges Committee Report No. 25, *Parliamentary privilege and the seizure of documents by ICAC*, tabled 3 December 2003; The Hon Fred Riebeling, 'Legislate in Haste ... The Corruption and Crime Commission Act 2003 and the Procedure and Privileges Committee of the Western Australian Legislative Assembly', paper given to the 39th Conference of Australian and Pacific Presiding Officers and Clerks, Adelaide, July 2008.

With regard to sanctions, the most effective sanction may well be the inquiry process itself and the publication of findings. Sanctions available for contempt range from admonishment to terms of imprisonment and fines (the last two now provided for in the *Parliamentary Privileges Act 1987*). There are no established sanctions for matters of conduct per se other than those that are imposed informally through internal party processes. Sanctions for disorder include suspension from the sittings of the Senate (standing order 204). In some jurisdictions, the withholding of salary is used as a penalty. Given that section 48 of the Constitution provides for the payment of members of the Commonwealth Parliament, any such penalty would probably need to be provided for by legislation.

In the last sitting week, the report of the committee established to review parliamentary entitlements was tabled. The committee has made numerous recommendations, several of which may have implications for the development of a code of conduct and any enforcement apparatus. See, in particular, recommendations 11 to 13:

> ***Recommendation 11 Transparency***
>
> (i) That the government's decision to publish details of all expenditure on parliamentary entitlements administered by the Department of Finance and Deregulation be underpinned with a legislative basis.
>
> (ii) That all senators and members be required to provide a link on their official parliamentary websites (at www.aph.gov.au) to their individual expenditure reports on the Finance website.
>
> (iii) That the presiding officers be encouraged to publish on a regular basis details of expenditure on services and facilities provided to individual senators and members by the chamber departments.
>
> ***Recommendation 12 Protocol for handling allegations of misuse***
>
> That the government ask the Department of Finance and Deregulation to amend the *Protocol for Handling Allegations of Alleged Misuse of Entitlement by a Member or Senator* to:
>
> (i) clarify that the only threshold test for investigating a complaint is whether the complaint is credible
>
> (ii) reflect the existing practice under which the Special Minister of State writes to a senator or member about an alleged minor misuse of entitlements, and
>
> (iii) reflect the existing practice that a high level departmental advisory committee will notify the Special Minister of State of a decision to refer a matter to the Australian Federal Police at the same time as the referral is made.
>
> ***Recommendation 13 Accountability***
>
> That the Special Minister of State, on the advice of the Department of Finance and Deregulation, table in the parliament:

(i) the name of any sitting or former senator or member who has not substantially complied with a request for information about an alleged entitlement misuse within a reasonable time (for example, 28 days)

(ii) the outcome of the investigation into the complaint, and

(iii) regular reports setting out each senator's and member's compliance with the requirement for certification that entitlements have been accessed in accordance with the relevant legislation, including any justification given by the senator or member for non-compliance with the requirement.

I would be happy to provide supplementary submissions as the committee requires, or to asist it in any other way.

Yours sincerely

(Rosemary Laing)

Attachment 1

The Bowen Principles

The Report of the Committee of Inquiry: *Public Duty and Private Interest* (1979), known as the Bowen Report, sets out the principles that underpin the obligations of people in public life to disclose and manage conflicts.

- An office-holder should perform the duties of his office impartially, uninfluenced by fear or favour.
- An office-holder should be frank and honest in official dealings with colleagues.
- An office-holder should avoid situations in which his private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his public duty.
- When an office-holder possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict with his public duty, or improperly to influence his conduct in the discharge of his responsibilities in respect of some matter with which he is concerned, he should disclose that interest according to the prescribed procedures. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the office-holder should disclose the further information.
- When the interests of members of his immediate family are involved, the office-holder should disclose those interests, to the extent that they are known to him.
- When an office-holder (other than a Member of Parliament) possesses an interest which conflicts or might reasonably be thought to conflict with the duties of his office and such interest is not prescribed as a qualification for that office, he should forthwith divest himself of that interest, secure his removal from the duties in question, or obtain the authorisation of his superior or colleagues to continue to discharge the duties.
- An office-holder should not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for himself or for any other person.
- An office-holder should not:
    - solicit or accept from any person any remuneration or benefit for the discharge of the duties of his office over and above the official remuneration;
    - solicit or accept any benefit, advantage or promise of future advantage, whether for himself, his immediate family or any business concern or trust with which he is associated from persons who are in, or seek to be in, any contractual or special relationship with government;
    - except as may be permitted under the rules applicable to his office, accept any gift, hospitality or concessional travel offered in connection with the discharge of the duties of his office.
- An office-holder should be scrupulous in his use of public property and services, and should not permit their misuse by other persons.
- An office-holder should not allow the pursuit of his private interest to interfere with the proper discharge of his public duties.

Attachment 2

The Nolan Principles

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

NO. 23–PROVISIONS GOVERNING THE CONDUCT OF SENATORS

There is no code of conduct applying to senators although, over the years, there has been a great deal of discussion about the effectiveness and desirability of such a code.

This Brief Guide collects constitutional provisions, rules of the Senate and statutory provisions which regulate the conduct of senators and which cover the types of matters which might otherwise be included in a code of conduct. Unlike standard codes of conduct, however, most of these provisions are enforceable and carry significant sanctions.

The guide includes only those provisions which apply particularly to senators and regulate conduct for which they are personally responsible. It does not include:

- rules which apply generally to all citizens
- procedural rules for the conduct of senators in debate (see chapter 31 of the Standing and other orders of the Senate)
- rules which determine entitlements (a field which is largely the responsibility of the Department of Finance and Deregulation, and the subject of separate guidance from that department).

1. The Constitution

––Disqualification

Sections 44 and 45 of the Constitution provide for the disqualification of senators and candidates for election on various grounds, for which senators are personally responsible. These matters are detailed in Brief Guide No.19–Qualifications of senators and candidates for Senate elections.

––Loss of place for non-attendance

Section 20 imposes a penalty of loss of place on a senator who is absent without leave from the Senate for two consecutive months.

––Penalty for sitting while disqualified

Section 46 provides for a monetary penalty to be imposed on any person who continues to sit as a senator while disqualified. This provision has been modified by subsequent legislation in section 3 of the *Common Informers (Parliamentary Disqualifications) Act 1975*. The penalty is $200 per day.

2. The Standing Orders

––Conflict of interest on a committee

Standing order 27(5) prohibits a senator sitting on a committee if the senator has a conflict of interest in relation to an inquiry. The standing order applies to a situation in which a senator personally has a private interest in the subject of a committee's inquiry which conflicts with the duty of the senator to participate conscientiously in the conduct of inquiry. An example would be an inquiry involving a company in which a senator held shares. Under the standing order, declaration of the interest would not be sufficient.

––Giving evidence elsewhere

Standing order 183 prevents a senator from giving evidence elsewhere about the proceedings of the Senate or a committee without the permission of the Senate. "Elsewhere" would include a court or tribunal or another House. Section 16 of the *Parliamentary Privileges Act 1987* does not prevent reference to the proceedings of parliament in a court or tribunal, merely questioning of them.

3. Other orders of the Senate

Senate Privilege Resolutions

––Senators seeking or obtaining benefits

Privilege resolution No. 6(3) provides that the Senate may treat as a contempt any seeking or obtaining by a senator of any benefit in return for the exercise of the senator's duties.

––The responsibilities of freedom of speech

Privilege resolution 9 enjoins senators to use their great power of freedom of speech responsibly and with regard to several factors including the rights of others and the damage that can be done to reputations and the institution of parliament by allegations made in parliament.

Resolutions on the registration of interests and gifts to the parliament

––Registrable interests

Within 28 days of making and subscribing an oath or affirmation and 28 days after the first meeting of the Senate following the commencement of a new Senate term, senators are required to provide a statement of their registrable interests to the Registrar of Senators' Interests. Any alterations of interests must also be notified to the Registrar within 35 days of alteration occurring.

Failure to comply with these requirements may be treated as a serious contempt. Registrable interests are described in Resolution 3. Resolution 2 extends the requirement to those interests, of which the senator is aware, of a senator's spouse, partner or dependent children. "Partner" is defined as a person who is living with another person in a *bona fide* domestic relationship.

––Gifts

A separate resolution deals with the registration of gifts which are intended by the donor as gifts for the Senate or the parliament. This resolution is likely to be of most relevance to Senate office holders and leaders of parliamentary delegations.

4. Statutory provisions

Crimes Act 1914

While most Commonwealth offences have been updated and codified in the *Criminal Code Act 1995* (see below), some offences remain in the *Crimes Act 1914*.

Under section 28 it is an offence to interfere with the exercise of a political right or duty. This is significant for senators as participants in political processes.

Section 29 creates a general offence of destroying or damaging Commonwealth property which has significance for senators as custodians of public property.

Criminal Code Act 1995

Many offences in the *Criminal Code Act 1995* apply to Commonwealth public officials, a term which is defined to include members of either House of the parliament.

––Corruption and bribery etc

The old offence in the *Crimes Act 1914* of corruption and bribery of members of Parliament has been replaced by several offences in the *Criminal Code Act 1995* relating to Commonwealth public officials. These include:

- section 139.2 – unwarranted demands made by a Commonwealth public official (an unwarranted demand being the equivalent of blackmail or extortion)
- section 141.1 – bribery of a Commonwealth public official (subsection (3) makes it an offence to seek or obtain a benefit in return for the official's duties)
- section 142.1 – corrupting benefits given to or received by a Commonwealth public official (a lesser offence than bribery and the equivalent of the old secret commissions)
- section 142.2 – abuse of public office (a new offence covering the use of influence, conduct or information to dishonestly obtain a benefit or cause detriment).

––Fraudulent claims on the Commonwealth

The *Criminal Code Act 1995* also includes a number of offences pertaining to fraudulent claims on the Commonwealth. These provisions are significant for senators as recipients and claimants of entitlements from the Commonwealth. They include:

- section 132.8 (a broadly-phrased offence of dishonest taking or retention of Commonwealth property)
- section 134.1 (obtaining property by deception)
- section 134.2 (obtaining a financial advantage by deception)
- section 135.1 (dishonestly obtaining gain in some form from the Commonwealth)
- section 135.2 (obtaining a financial advantage – a lesser offence than in section 135.1)
- section 136.1 (making false or misleading statements in applications for Commonwealth benefits).

Commonwealth Electoral Act 1918

––The electoral process

The Commonwealth Electoral Act 1918 contains a number of provisions imposing obligations and prohibitions on participants in the electoral process. The following provision may be thought to have particular significance for senators:

- section 327 – which prohibits interference with political liberty.

Several provisions relating to the qualification of candidates for election are also worth mentioning in addition to the Constitutional provisions referred to earlier.

A person who is a member of the House of Representatives or a State or Territory legislature must resign before being eligible to stand for the Senate (section 43 of the Constitution, section 164, *Commonwealth Electoral Act*). A person may not make multiple nominations (section 165, *Commonwealth Electoral Act*).

A person convicted of certain bribery or undue influence offences is disqualified from being chosen as a senator for two years after the conviction (section 386, *Commonwealth Electoral Act*).

5. Need assistance?

For further assistance on any of the matters covered by this Brief Guide, contact the Clerk of the Senate on extension 3350.

JULY 2008

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