



ACCOUNTABILITY  
ROUND TABLE

## Submission to Joint Select Committee on Parliamentary Standards inquiry into the development of codes of conduct for Commonwealth parliamentary workplaces

### Introduction

This Inquiry is a rare opportunity for the Australian Parliament to develop and adopt a code of ethical conduct of a standard equal to, if not exceeding, those of Australian and foreign democracies, many of which have adopted or revised codes in recent years.

This submission is made by The Accountability Round Table (ART) which is a non-partisan group of citizens with diverse backgrounds (journalists, lawyers, academics, former politicians and judges) and extensive experience in parliament, government and the courts.<sup>1</sup> ART is dedicated to improving standards of accountability, transparency, ethical behaviour and democratic practice in Commonwealth and State parliaments and governments across Australia.

The submission draws on ART's "Integrity, Now!" package of 21 integrity reforms in particular, Recommendation 16.

**“Codes of Conduct:** The code (or network of codes) needs to be more comprehensive in content (most notably workplace bullying and harassment (sexual or otherwise) and reach (covering all MPs, staffers and senior officials with any necessary modifications to reflect their roles). Breaches should be investigated by an ‘Ethics Commissioner’ who should be chosen by the bi-partisan process for other key integrity agencies and their officials. The code should be drafted by a bi-partisan senate committee and be voted on by both houses of parliament. To help ministers, MPs and senior civil servants avoid breaches; an ‘Ethics Counsellor’ should also be appointed who can offer ethics training and ongoing advice”<sup>2</sup>

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<sup>1</sup> Note co-author of this submission Ken Coghill, was lead author of *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*, Commonwealth Parliamentary Association (2015).

Another co-author, Charles Sampford, was lead author of ART's ‘Integrity, Now!’ integrity reforms and lead researcher in a project that recommended the Queensland Integrity Commissioner in 1998. See ‘Prior Advice is Better than Subsequent Investigation’ published in “Fleming and Holland *Motivating Ministers to Morality*, Ashgate, London, 2001 and the 2009 Senate Lecture on ‘Parliament, Political Ethics and National Integrity Systems’ published in *55 Papers on Parliament* February 2011.

<sup>2</sup> Note that *‘Integrity Now!’* (Accountability Round Table 2021) adopted the original Canadian terminology. The rest of this submission will use the terms ‘Independent Public Standards Commission’ from the CPA report. The ‘Ethics Counsellor’ is modelled on the Queensland Integrity Commissioner but that term would create

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The submission argues that there should be a single, comprehensive and integrated code applying to all Members of the Australian Parliament. Whilst it can be argued that the autonomy of each House should be reflected in its adoption of its own code, we see no practical advantage in so recommending. Accordingly, we advocate that a code applying to all Members of the House of Representatives (MHR) and all Senators should be incorporated into an Act of Parliament.

The submission highlights workplace conduct as part of the wider application of the public trust principle by Members, Senators, and others employed in parliamentary workplaces, including parliamentary staff and ministerial staff.

The AHRC Report *Set the Standard* notes that “... parliamentarians are not regulated by a code of conduct in the exercise of their duties and functions. This includes in their role as employers”. In light of the conduct that preceded this inquiry, that is anomalous. The code should be comprehensive in that it should outline and emphasize the ‘positive ethics’ of how MPs should behave as well as alerting a Member or Senator to all potentially unethical or illegal conduct, including conduct that infringes the public trust principle, or involves bullying, sexual harassment, or sexual assault. This can apply at any of the many physical or virtual workplaces, each with its own culture.<sup>3</sup> A separate code or codes dealing with any such type of conduct would risk allegations “falling between stools”, confusion, jurisdiction-shopping and public cynicism.

The Inquiry occurs in the context of the imminent creation of the National Anti-Corruption Commission (NACC). We understand that the NACC would be capable of investigating alleged breaches by MPs that may constitute systemic or serious corruption. See further details of the interaction between the code of conduct and the NACC are considered below.

The code would operate as a key part of the national integrity system, which would include the NACC the Auditor General, the Information Commissioner, a Judicial Commission,

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confusion with the widespread use of ‘Integrity Commission’ for the proposed National Anti Corruption Commission (NACC).

<sup>3</sup> *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (AHRC 2021) AHRC 2021.

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Australian Commission for Law Enforcement Integrity (**ACLEI**), the Federal Police, the Ombudsman, the Auditor-General, Independent Parliamentary Standards Commission (**IPSC**) and the parliament's Ethics Counsellor (i.e., adviser). The need for new and improved integrity institutions should not blind us to the need to strengthen Parliamentary scrutiny – recognizing that Parliament must be the pivotal overarching integrity institution.

Codes cannot rely on written provisions alone. The recommended IPSC and Ethics Counsellor are, along with the Ethics and Privileges Committee, key institutional supports. But ethical conduct is strongly affected by both structure and cultures of the Parliament and of the parties. These interact with each other and external influences e.g., media. In consequence, the code should adopt an encouragement model.

The IPSC and Ethics Counsellor should be chosen by multi-partisan processes.

Our recommendations draw on the Canadian experience of the 1990s, the Queensland experience since 1999 and the Recommendations of the Commonwealth Parliamentary Association (CPA) published in 2015 – prior to bullying, sexual harassment, or sexual assault in parliamentary workplaces attracting wide concern.

Separate provisions should apply to parliamentary staff and ministerial staff.

## Development of Codes<sup>4</sup>

As indicated above, our recommendations draw on the CPA Recommendations. The major deficit in the development and publication of the recommendations was the absence of specific reference to bullying, harassment, sexual harassment and sexual assault.

Our submission also draws on the AHRC Report. For example, we support its Recommendations 20-24.

The code of conduct should encompass a comprehensive, integrated range of misconduct including but not limited to integrity matters, conflicts of interest and misconduct referred to collectively as workplace bullying, sexual harassment and sexual assault and any conduct that

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<sup>44</sup> Term of Reference a

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would be prohibited by the Codes of Conduct recommended by AHRC in 5.4 ‘Standards, reporting and accountability’.

The code should apply to all MHRs and Senators, including Prime Minister, Ministers and Presiding Officers.

## Ministerial staff

Ministerial staff are subject to the Ministerial Staff Code of Conduct (formerly to the Statement of Standards of Ministerial Staff). This code provides that they:

7. Conduct themselves in a manner that supports a safe and respectful workplace for everyone.
8. Treat with respect and courtesy all those with whom they have contact in the course of their employment.

The AHRC Report notes that: “... it is not clear how these standards are regulated.” ... “The Standards do not directly address workplace bullying, sexual harassment and sexual assault. No independent accountability or clear sanctions ...”

The Ministerial Staff Code of Conduct should be regulated in similar manner to that provided for the APS.

In the same way, it should be counter to the code for Ministerial staff to decline, refuse or be instructed to refuse to appear before a parliamentary committee. However, whilst ministerial staff may provide factual information, the code must provide that they must not be required to comment on policy.<sup>5</sup>

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<sup>5</sup> Consistent with legal advice to the Victorian Legislative Council drawing a distinction between the compulsion of public servants and ministerial advisers to attend to give evidence, and the compulsion to answer a particular question. The advice referred to a convention that neither is asked to answer questions about policy ‘in such a way as to endanger the necessary confidence between Ministers and public servants’ but that ‘there is no reason why such persons should not be required to give evidence outside that conventionally proscribed area. **In particular, Ministerial advisers are not a caste which has been given the benefit of parliamentary precedent in this direction, let alone as at 1855**’: Legal opinion obtained from Bret Walker SC, Select Committee on Gaming Licensing – First Interim Report, July 2007, p47. 1855 is the year the Colony of Victoria Act was passed, establishing responsible government in the State.

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The code must be founded on the principle that ministers and their staff are responsible to the Parliament, which requires that they answer to Parliament and its committees.

Ultimately, either house of Parliament has the right to demand any document and require any witness to appear before it. A minister may claim public interest immunity but it is a matter for the relevant Committee to decide such claims.<sup>6</sup> Once the Committee has ruled, the Minister must accept the decision. That should be written into the Ministerial code and be part of the advice of the Ethics Counsellor and the expected finding of the IPSC.

A ministerial instruction to a staff member or public servant directing them to refuse to give evidence or produce documents should constitute a breach of the ministerial code and denied legal effect by an amendment of the ADJR Act to make this crystal clear.<sup>7</sup>

Ultimately, government can move a motion that the relevant house of parliament overrule the Committee or introduce a Bill to allow refusal. These two options are, in effect, the same.

### Codes of conduct in other parliamentary systems<sup>8</sup>

There are separate titles of codes e.g., codes of conduct and conflict of interest – the latter used by the Canadian House of Commons, reflecting the focus of their national and provincial codes. Canada has a separate code referring to sexual harassment between Members.

ART advocates a single, comprehensive integrated code of conduct.

Codes should be comprehensive and integrated. As indicated above, a separate code dealing with any such type of conduct would risk allegations “falling between stools”, confusion, jurisdiction-shopping and public cynicism.

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<sup>6</sup> This will be found within the statute that establishes statutory committees, the resolution establishing the committee or merely the long standing rights of the House of Commons at Federation which are bequeathed to each Australian House under s49 of the Constitution. See *Egan v Willis* [1998] HCA 71 and *Egan v Chadwick* [1999] NSWCA 176.. See also <https://www.ags.gov.au/sites/default/files/br109.pdf>.

<sup>7</sup> While proceedings of parliament are not subject to judicial review, the instruction of a minister to a civil servant not to attend or produce documents is a matter entirely within the executive and goes to the powers of the minister.

<sup>8</sup> Addresses Term of Reference **b i**.

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## Codes of Australian States and Territories.

State and Territory Codes are reviewed and revised infrequently. One of the more recent is the Victorian code<sup>9</sup>, introduced as part of a comprehensive Act that also dealt with matters such as remuneration. The design of the code closely follows the CPA Recommendation. As such, it does not deal with bullying, sexual harassment or sexual assault.

The NSW Parliament recently received the independent review into bullying, harassment, and sexual misconduct in NSW Parliament workplaces.<sup>10</sup> It reported “[b]ullying, harassment and sexual misconduct are not even included in the NSW MPs Code of Conduct”.

The Northern Territory’s Parliament appears to have not yet adopted a code

Queensland’s Parliament has a particularly comprehensive Code of Ethical Standards (2018) that includes “Members should not use abusive, obscene or threatening language (either oral or written) or behaviour towards any officer, employee or member of the public.” Bullying, sexual harassment and sexual misconduct are not specified but are understood to be covered. Anomalously however, members of parliament are omitted from those protected from such conduct.

South Australia’s Parliament appears to have not yet adopted a code, notwithstanding a review commenced in 2021.

Tasmania’s parliamentary code of conduct states as values “integrity, honesty, accessibility, accountability, fairness, transparency, courtesy, respect and understanding, without harassment, victimisation or discrimination” but is otherwise silent on bullying, sexual harassment, and sexual assault.

Plans to introduce a code in Western Australia were announced in early 2022.

## Foreign Codes

Canada has separate codes dealing with (i) conflict of interest and (ii) sexual harassment between members (the latter adopted 2018). These are embedded in Standing Orders.

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<sup>9</sup> *Members of Parliament (Standards) Act* 1978 (Victoria) - amended 2019.

<sup>10</sup> Broderick Review, 2022.

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New Zealand relies upon “Behavioural Statements for the parliamentary workplace” and codes applying to staff of the Parliamentary Service.

The UK Parliament MP Code of Conduct states that Members must treat their staff and all those visiting or working for or with Parliament with dignity, courtesy and respect.

The UK MP Code of Conduct is complemented by the Behaviour Code which states that it is expected of those visiting or working in Parliament or Westminster or elsewhere, respect and value everyone – that bullying, harassment and sexual misconduct are not tolerated. It also expects that people speak up about unacceptable behaviour that they observe.

Complaints are received by the UK Independent Complaints and Grievance Scheme (ICGS). Subject to preliminary review, investigations are carried out by external independent investigators. The UK Independent Parliamentary Standards Authority (IPSA) regulates MPs’ staffing and business costs.

### **Ministerial Staff**

Code provisions applying to ministerial staff should reflect the provisions of the APS Values and Code of Conduct

### **Parliamentary Staff**

Code provisions applying to parliamentary staff should reflect the provisions of the APS Values and Code of Conduct.

### **Codes to prevent bullying, harassment and sexual assault<sup>11</sup>**

The role of codes in prevention must recognise that conduct is affected by both structure and culture. Structure is a necessary but not sufficient condition to minimise misconduct.

Accordingly in addition to well-designed and resourced integrity structures, details of the intended operation of the integrity system, every candidate should be provided with

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<sup>11</sup> Addresses Term of Reference **b ii**

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information on the code at the time of nomination and included in detail in induction for newly elected Members and Senators.

The code should be framed as, and emphasize, the positive ethics of respect for persons, their rights and dignity – linking these to the necessary commitment of MPs to democracy. The code should identify and encourage good behaviour with sanctions available for unacceptable behaviour. It should also emphasize that behaviour ignored is behaviour condoned.

Continual professional development principles and adult learning techniques should be applied. This could include the use of vignettes, available on a smart phone app, depicting hypothetical ethical dilemmas (adapted from real-life examples) which the viewer is invited to address.

In-person sessions should be supported by online sessions for MHRs and Senators unable to participate in particular sessions and, after appropriate passage of time, to re-fresh learnings.

Participation should be a condition of payment of allowances, suspended other than base MP/Senator salary and travel and accommodation expenses between Parliament House and their principal residence.

Similar programmes, re-orientated to each of ministerial staff and parliamentary staff, should be made available, subject to participation as a condition of employment.

### Expectations of respectful and professional behaviour<sup>12</sup>

These expectations should be emphasised in induction for newly elected Members and Senators, and new ministerial staff and parliamentary staff.

These expectations should continue to be emphasised in ongoing professional development for MHRs and Senators, ministerial staff, and parliamentary staff.

### Views of Commonwealth parliamentary workplace occupants<sup>13</sup>

ART endorses the data included in the AHRC Report *Set the Standard*.

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<sup>12</sup> Addresses Term of Reference **b iii**.

<sup>13</sup> Addresses Term of Reference **b iv**.

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## Advice on applicability of codes<sup>14</sup>

### Ethics Counsellor

An ethics counsellor<sup>15</sup> should be appointed by the parliament to provide confidential advice on integrity issues. Conduct consistent with written advice may be taken into account in the investigation of an alleged breach of the code. The appointment process should be bi-partisan (the Queensland model requires support by the majority of the relevant parliamentary committee with that majority required). The Counsellor should put the facts stated by the MP or other person seeking advice and state that advice. This letter is confidential but could be used by the MP if their action was later called into question. Provided the facts were accurately described and the MP followed the advice then this should leave the MP in the clear. If there is a problem, it is that of the Ethics Counsellor who might need to reconsider their approach to such issues. Of course, if the MP has been economical with the facts or has not followed the advice then the letter is effectively condemnatory rather than excusatory. This might be an incentive for the unethical MPs to merely not go to the Counsellor. However, the media should be actively encouraged to ask the MP if they had sought advice and what it was.

This leads to another possibility – that an unethical person may make false or misleading statements about the letter.<sup>16</sup>

### Release of advice

The original intention was that any MP relying on the letter would produce it. We would recommend that the Ethics Counsellor would be empowered to release the letter if the MP does not or misleads others about the advice. This would pre-empt any arguments about the accuracy of the MPs account of the advice.

The only exception (and it is an important one) is that the only advice that would be released would be that covering action that was actually taken. If an MP is contemplating a range of actions it is good to seek ethical advice on each. If they are told that they shouldn't and they

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<sup>14</sup> Addresses Term of Reference **b v**

<sup>15</sup> Either 'ethics advisor' or 'ethics counsellor' would work. The term 'counsellor' was chosen by the Canadians – though he was not used as such. The Queensland term 'Integrity Commissioner' may be a confusing choice in the Commonwealth Integrity System. And in any case the term 'commissioner' sounds more like an enforcer than an advisor – as the IPSC would be.

<sup>16</sup> The ethics and practical politics of this dynamic are discussed in considerable detail in 'Prior Advice is Better than Subsequent Investigation' cited above

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don't then there is no need to release that part of the advice that deals with such contemplated actions not taken.

The process of considering options is a valuable form of ethical education and development. And if the MPs consideration of rejected options had to be released for the MP to demonstrate that what they did do was ethically acceptable, then they would be less likely to seek advice on options and less willing to release the relevant advice on the actions taken. These requirements should be included in the relevant Commonwealth legislation.

**Who should be entitled to this advice?**

While the Queensland legislation originally limited the range of persons who could seek advice by refusing to include opposition MPs over the express wishes of the then opposition, it was extended in 2010 to include all MPs and most senior civil servants and many public sector board members.

**Conflicts of Interest**

The Queensland Integrity Commissioner and other similar organisations frequently have responsibility for the Register of Interests. This is appropriate as many of the ethical issues on which advice is sought is over potential conflicts of interest. However, there is also an educational opportunity when MPs have to first fill out their declarations of interests to address a wide range of matters including spousal/family interests and trusts controlled by family members. New members are likely to be receptive to that part of the parliamentary induction program that deals with conflict of interests. We would recommend adoption of a process that was used by the US Office of Government Ethics. Each presidential nominee who had to be cleared by the Senate would be given individual assistance and advice on filling out the declaration of interests and advising which interests might be in conflict with their duties. While an important motivation was to avoid embarrassment during the nomination hearing, it is a great way for the nominees to understand their obligations under conflict of interest provisions.

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## Enforcement of codes<sup>17</sup>

Subject to code design encouraging observance and compliance, the applicability and enforcement of the code should be equal to or more stringent than other legislation of Australia (federal) and any other parliament or workplace. The oft-repeated statement that ‘this would not happen in a commercial workplace’ is a sad statement about institutions that should be exemplary.

The enforcement of the code should be informed by best practice and the standards that apply to complaint handling, such as ISO 10002:2004: *Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations*. It should also be informed by a co-design process including those the code will cover.

The code should be consistent with Australian workplace relations law, in which bullying is defined in a consistent way.

Section 789FD(1) of the *Fair Work Act 2009* (Cth) provides that a worker is bullied if:

- (a) while the worker is at work,
- (b) an individual (or group of individuals) repeatedly behaves unreasonably towards the worker (or a group of workers of which the worker is a member), and
- (c) the behaviour creates a risk to health and safety.

Section 789FD(2) clarifies ‘reasonable management action carried out in a reasonable manner’ is not bullying.

Relevantly, the Fair Work Act definition requires:

- (a) unreasonable behaviour. This is an objective test met by behaviour including ‘victimising, humiliating, intimidating or threatening’ a person;
- (b) the unreasonable behaviour be repeated; and
- (c) the unreasonable behaviour creates a risk to health and safety.

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<sup>17</sup> Addresses Term of Reference **b v**.

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Safe Work Australia's *Guide for Preventing and Responding to Workplace Bullying* recommends that the risks of workplace bullying be minimised through '[a] combination of control measures aimed at the organisational level and at individual levels'.

These include:

- (a) '[d]emonstrated senior management commitment in identifying, preventing and responding to workplace bullying';
- (b) setting and enforcing 'clear standards of behaviour through a code of conduct ... that outlines what is and is not appropriate behaviour and what action will be taken to deal with unacceptable behaviour'; and
- (c) implementing 'reporting and response procedures'. These include 'making it clear that victimisation of those who make reports will not be tolerated', 'ensuring consistent, effective and timely responses to reports', and 'being transparent about dealing with workplace bullying by regularly providing information on the number of reports made, how they were resolved and what actions were taken'.

We would add the opportunity for advice about what is reasonable management action carried out in a reasonable manner (s789FD(2) above) and advice outside the chain of command to those who feel they are being bullied.

### Review of alleged breach of code<sup>18</sup>

Allegations that a parliamentarian has breached the code (i.e., issues of misconduct and non-compliance) should be investigated by IPSC (as recommended by the AHRC report, 2021 and consistent with the CPA Recommendations, the IBAC Operation Watts report and other models).

IPSC would report findings in relation an MP or Senator to the relevant Presiding Officer who would be required to forthwith transmit the report to the Privileges Committee for consideration and report to the House. The Privileges Committee report would be a public document.

As part of the Commonwealth Integrity System, the IPSC would have complementary relationships with the NACC, ACLEI, the Federal Police, the Ombudsman, the Auditor-General and Parliament's Ethics Counsellor.

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<sup>18</sup> Addresses Term of Reference **b.viii**.

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IPSC must not provide advice to parliamentarians. That is the role of the Ethics Counsellor. Combining the two would naturally make MPs, staffers and public servants wary of seeking advice from a body that might investigate them. Furthermore, it would be almost impossible for the IPSC to give procedural fairness in considering complaints.<sup>19</sup>

### Enforcement body established by the Parliament<sup>20</sup>

The report and recommendations of the Privileges Committee in relation an MHR or Senator should be subject to final decision by the relevant House. Like the Privileges Committee, it will be heavily influenced by the IPSC and a failure to follow IPSC recommendations may be politically costly. But the relevant House is the decision-making body – not an appellate forum.

Ministerial staff and parliamentary staff would be subject to similar provisions to those applying in the Australian Public Service

### Appeal mechanisms<sup>21</sup>

As discussed above. The ultimate decision is taken by Parliament and there is no appeal from its decision.

### Enforcement of code<sup>22</sup>

Sanctions and penalties provided for in Commonwealth parliaments include:

- Private letter to the member concerned drawing attention to the breach and advising the member to avoid such conduct in the future;
- Public report or statement giving details of the breach but not recommending any further sanction
- Rectification (MP to deal with complaint);

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<sup>19</sup> The Canadians initially planned to have an Ethics Counsellor to advice and an Ethics Commissioner to investigate breaches. In the end, they only appointed a counsellor but used him for investigations.

<sup>20</sup> Addresses Term of Reference **b.ix.**

<sup>21</sup> Addresses Term of Reference **b.viii.**

<sup>22</sup> Addresses Term of Reference **c.i.**

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- Apology demanded;
- Warning/ Caution;
- Admonition/ censure/ rebuke/ reprimand;
- Admonition to refrain from presenting at the House for a certain period of time;
- Suspension (from office);
- Severe rebuke;
- Fine;
- Loss of salary;
- Loss of seniority;
- Order to withdraw;
- Disqualification from membership on ground of defection;
- Expulsion;
- Committal;
- Imprisonment

Of these, order to withdraw (i.e., resign), expulsion or equivalent should not be accepted as a penalty due to its potential conflict with ss44(ii), 46 Constitution.

Committal and imprisonment should only be applied if the matter has been prosecuted through the courts, guilt determined and a penalty imposed by the court. If the maximum sentence applicable to the offence is one year or more then the MP is disqualified under s44 of the Constitution.

Parliament should not have a separate right to expel an MP. If a minister were to persist in preventing the appearance of witnesses or production of documents, suspension from the relevant house would be appropriate. Disqualification from membership on ground of defection is not relevant to the Australian model.

The remaining sanctions should be available to be imposed by the relevant House.

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## Review of the operation of code<sup>23</sup>

The ACT Assembly practice is to remind Members of the Code at the beginning of each new Assembly, whereby all Members affirm or reaffirm their commitment to abide by the Code of Conduct.

The Tasmanian “Code will be reviewed every four years by the Parliamentary Joint Standing Committee on Integrity”.

The code should be reviewed & re-adopted following every election – this is intended to have the effect that it has been adopted and therefore more likely to have been enculturated by the current parliamentarians

Following dissolution of Parliament for the election, a Citizens’ Assembly (or equivalent non - partisan body) should be convened to review the Parliamentarians Code and the Ministerial Code and report with recommendations on the first sitting day of the following Parliament; each revised code to be examined by each Privileges Committee and to be adopted automatically within one calendar month, unless amended by both Houses. This leaves the codes in the control of the Parliament but moderated by a non-partisan assembly.

## Ministerial code<sup>24</sup>

The previous PM’s current code of practice (the Statement on Ministerial Standards) articulates the concerns for accountability and public trust and emphasizes the positive ethical duties of MPs. “The Australian people deserve a government that will act with integrity and in the best interests of the people they serve”.<sup>25</sup> However, like all previous codes, it fundamentally fails in leaving decisions on whether there has been a breach of Ministerial Standards and the consequences of that breach in the hands of the PM. Here the PM is fundamentally and irredeemably conflicted because wrongdoing by ministers is likely to reflect upon the government.

Seeking the advice of a Departmental Secretary whom governments can dismiss without notice and without reason<sup>26</sup> cannot redeem that conflict.

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<sup>23</sup> Addresses Term of Reference **c.ii.**

<sup>24</sup> Addresses Term of Reference **d.**

<sup>25</sup> Department of the Prime Minister and Cabinet, *Statement of Ministerial Standards* (30 August 2018).

<sup>26</sup> *Barratt v Howard* [1999] FCA 1132.

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The Ministerial Code of Conduct should be established and endorsed by the Parliament, consistent with the concept of responsible government (i.e., the Executive is responsible to the Parliament), which is diminished if the Standards are in the hands of the Executive.<sup>27</sup>

A Prime Minister could add to the Standards but not diminish them.

## Conclusion

“An independent office/officer with strong exclusive powers to investigate and report on violations of the rules seems indispensable”, according to Bovend’Eert (2020) in a review of the Netherlands, US and UK lower houses.

The AHRC *Set the Standard* Report reflects similar conclusions, particularly Recommendation 4.

We argue that the reforms addressing parliamentary workplace issues must form an integral part of the national integrity system and not run the risk issues “falling between stools”.

The workplace conduct that preceded your inquiry is a serious special case that points to a failure of the national integrity system. It must be addressed as part of comprehensive reforms of the system

Accordingly, we recommend systems reform that goes beyond “[a]n independent office/officer with strong exclusive powers to investigate and report”. These include an Independent Parliamentary Standards Commission (as recommended by the AHRC) and an Ethics Counsellor – the two to be separate and distinct, the former with strong investigatory and reporting powers, the latter to provide confidential advice.

Although the submission focuses on a code of conduct for Members and Senators, it raises associated issues such as the anomalous status of the Ministerial Code – anomalous in that in a system of responsible government, parliament should set the standards to be observed by the executive i.e., Ministers.

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<sup>27</sup> McLeod, F. *Easy Lies and Influence*, (2021) Monash University Publishing

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Prime Ministers should not be left in an irredeemable conflict of interest when a minister faces allegations of misconduct in addressing her/his ministerial responsibilities.

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The Appendix adapts the Victorian provisions to illustrate the design of a code as recommended by ART.

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Appendix: Recommendations for Code of  
Conduct for Parliamentarians

**Recommendations for Parliamentary Standards<sup>28</sup>**

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<sup>28</sup> Adapted and revised from the Member of Parliament (Standards) Act 1978 (Victoria)

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## Recommendations for Parliamentary Standards

A Code of Conduct for Members and Senators of the Parliament of Australia.

### Part 1—Preliminary

#### 1 Short title and commencement

- (1) This Act may be cited as the **Members of Parliament and Senators (Standards) Act (Cth)**.
- (2) This Act shall come into operation on the day upon which it receives the Royal Assent.

\*

#### 2 Definitions

- (1) In this Act—

***beneficial interest*** means a beneficial interest specified in section 20 (1) or 21(1) and includes an interest in a private superannuation fund;

***Budget*** means the Electorate Office and Communications Budget;

***debt*** does not include a personal debt of the Member or Senator—

- (a) owed to a Member or Senator of the Member's or Senator's family;  
or
- (b) owed to an ADI;<sup>29</sup> or
- (c) owed to a person whose ordinary business includes the lending of money; or
- (d) arising from the supply of ordinary household or office-related goods and services;

***domestic partner*** of a person means—

- (a) a person who is in a registered domestic relationship with the person;  
or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
  - (i) for fee or reward; or

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<sup>29</sup> Authorised deposit-taking institution

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- (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

***ethics counsellor*** is appointed by the parliament to provide confidential advice Members, Senators, parliamentary staff, and ministerial staff on integrity issues

***family***, in relation to a Member or Senator, means the Member or Senator's spouse, domestic partner, child, grandchild, parent or grandparent, or any other person reasonably considered to be a Member or Senator of the Member or Senator's family;

***gift*** includes a transfer of property or the conferral of a financial benefit, including hospitality, made without consideration or without adequate consideration, but does not include—

- (a) a political donation; or
- (b) a gift made by a Member or Senator of the Member or Senator's family;

***hospitality*** does not include hospitality provided to the Member or Senator when the Member or Senator is acting in an official capacity;

***income*** has the same meaning as ***assessable income*** has in the Income Tax Assessment Act 1997 of the Commonwealth but does not include—

- (a) any parliamentary salary or work-related parliamentary allowances, the Budget or any other public resources; or
- (b) income from savings or investment accounts and public superannuation funds;

***IPSC*** is the Independent Parliamentary Standards Commission<sup>30</sup>

***listed corporation*** has the same meaning as in section 9 of the Corporations Act;

***Member or Senator*** means Member or Senator of the House of Representatives or a Senator of the Parliament of Australia;

***official capacity***, in relation to a Member or Senator, means acting as, or on behalf of—

- (a) a Member or Senator; or
- (b) a Minister;

***political donation*** has the same meaning as in the ...;

***prescribed*** means prescribed by regulations made under this Act;

***private superannuation fund*** means a self managed superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth);

***public duties*** includes the following—

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<sup>30</sup> IPSC was recommended by the AHRC report, 2021

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- (a) committee business;
- (b) electorate business;
- (c) Ministerial business;
- (d) parliamentary business;

***public resources*** means the work-related parliamentary allowances and other funding, resources or facilities, including the Budget, provided for use by Member or Senators in the performance of their public duties but does not include the following—

- (a) basic salaries and additional salaries payable under (provisions equivalent to those of the **Victorian Act**);
- (b) the separation payment under (provisions equivalent to those of the **Victorian Act**);

***public superannuation fund*** means a superannuation fund that is not a private superannuation fund;

***Register*** means the Register of Interests continued and maintained under ...;

***return period***, in relation to an ordinary return of a Member or Senator, means—

- (a) in the case of a Member or Senator whose last return was a primary return, the period between the date of the primary return and 31 January or 30 June next following; and
- (b) in the case of any other Member or Senator, the period between the date of the Member or Senator's last ordinary return and 31 January or 30 June next following;

***specified person*** means—

- (a) a Member or Senator of the Member or Senator's family; or
- (b) a corporation or entity in which the Member or Senator has an interest as an officer, a person with a controlling beneficial interest or a Member or Senator; or
- (c) a creditor or debtor of the Member or Senator, except where the debt is owed to or by a Member or Senator of the Member or Senator's family, an ADI or other persons whose ordinary business includes the lending of money or the supply of ordinary household or office-related goods or services; or
- (d) a donor of a gift to the Member or Senator;

***trade or professional organisation*** means any body corporate or unincorporate of employers or employees of persons engaged—

- (a) in primary, secondary or tertiary industry; or
- (b) in any profession, trade or other occupation—

any of the objects of which is the furtherance of the industrial or economic interest of the body or any of its Member or Senators;

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*work-related parliamentary allowances* means the following allowances under (provisions equivalent to those of the Victorian Act)—

- (a) a (provisions equivalent to those of the Victorian Act);
  - (b) a (provisions equivalent to those of the Victorian Act)... allowance;
  - (c) any other prescribed allowance.
- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered domestic relationship* has the same meaning as in the ... Act; and
  - (b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in (provisions equivalent to those of the Victorian Act) as may be relevant in a particular case; and
  - (c) a person is not a domestic partner of another person only because they are co-tenants.

### **3 Objective of Act**

The objective of this Act is to ensure that the responsibilities and obligations of Member or Senators reflect community expectations and community standards.

## **Part 2—Statement of Values**

### **4 Statement of Values**

Member or Senators should demonstrate the following values carrying out their public duties—

- (a) serving the public interest;
- (b) upholding democracy;
- (c) integrity;
- (d) accountability;
- (e) respect for the diversity of views and backgrounds within the Australian community;
- (f) diligence;
- (g) leadership
- (h) inform, empower, support and encourage everyone to speak up and take action on bullying, sexual harassment and sexual assault in Parliamentary workplaces.

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## **Part 3—Code of Conduct**

### **5 Outline of Part**

- (1) This Part sets out the Code of Conduct that Members and Senators must observe when carrying out their public duties.
- (2) The Code of Conduct sets out the manner in which a Member or Senator demonstrates the values set out in section 4.

### **6 Effect of Code of Conduct**

The Parliament does not intend that the Code of Conduct—

- (a) creates in any person any legal right or gives right to any civil cause of action; or
- (b) affects in any way the interpretation of any Act or law in force in the Commonwealth other than this Act.

### **7 Upholding democracy and respecting others regardless of background**

A Member or Senator must—

- (a) make the performance of their public duties their prime responsibility; and
- (b) exercise reasonable care and diligence in performing their public duties; and
- (c) submit themselves to the lawful scrutiny appropriate to their office; and
- (d) treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

### **8 Conflicts of interest**

- (1) A Member or Senator must avoid any actual or perceived conflict of interests with their private interests.
- (2) Without limiting subsection (1), a Member or Senator has a conflict of interest if the Member or Senator —
  - (a) participates; or
  - (b) makes a decision—

in the execution of the Member or Senator's or Senator's office which furthers the private interests of the Member or Senator or the private interests of a specified person.

- (3) Without limiting subsection (1), a Member or Senator does not have a conflict of interest if the Member or Senator or a specified person is affected as a Member or Senator of the public or a broad class of persons.

### **9 Using position for profit**

- (1) A Member or Senator must not—
  - (a) receive a fee, payment, retainer or reward; or

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- (b) permit any compensation to accrue to their beneficial interest or the beneficial interest of a specified person—

for, or on account of, or as a result of the use of, their position as a Member or Senator.

- (2) Subsection (1) does not apply to any parliamentary salary or work-related parliamentary allowances, the Budget, electorate allowances, expense allowances (if any), the motor vehicle allowance (if claimed) or other prescribed allowances or other public resources under (provisions equivalent to those of the Victorian **Act**).

## **10 Outside employment and activities**

A Member or Senator may engage in employment, business and community activities outside of their duties as a Member or Senator but must avoid any actual or perceived conflict of interest that might arise from those activities, including where the activities compromise the Member or Senator's ability to fulfil their public duties.

## **11 Accepting any gift, hospitality or other benefit**

A Member or Senator must not accept any gift, hospitality or other benefit which—

- (a) creates an actual or perceived conflict of interest; or
- (b) might create a perception of an attempt to influence the Member or Senator in the exercise of their public duties.

## **12 Use of influence**

A Member or Senator—

- (a) must exercise their influence as a Member or Senator responsibly; and
- (b) must not use their influence to improperly further their private interests or the private interests of a specified person.

## **13 Use of public resources**

A Member or Senator must comply with—

- (a) the (provisions equivalent to those of the Victorian **Act**) and any regulations made under that Act; and
- (b) any other law, rule or guidance regarding the use of public resources.

## **14 Personal conduct**

- (1) A Member or Senator must ensure that their conduct as a Member or Senator does not bring discredit upon the Parliament.
- (2) A Member or Senator—
  - (a) must act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties; and

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- (b) must not deliberately mislead the Parliament or the public about any matter relating to the performance of their public duties.
- (3) A Member or Senator must be fair, objective and courteous—
  - (a) in their dealings with the community; and
  - (b) without detracting from the importance of robust public debate in a democracy, in their dealings with other Member or Senators or Senators.

**15 Managing confidential and personal information**

- (1) A must not use confidential information gained in the performance of their public duties to further their private interests or the private interests of a specified person.
- (2) A Member or Senator must respect the confidentiality of information they receive in the course of their public duties.

**16 Post-retirement activities**

- (1) A former Member or Senator must not take improper advantage of any office held as a Member or Senator of Parliament after they cease to be a Member or Senator.
- (2) In this section, *improper advantage* means—
  - (a) using official information—
    - (i) that is not in the public domain; or
    - (ii) that was obtained in the course of their public duties—  
for advantage or benefit to themselves or another person; or
  - (b) breaching confidentiality obligations regarding information obtained in the course of their public duties for financial or commercial advantage or benefit to themselves or another person; or
  - (c) using their status as a former Member or Senator to obtain preferential treatment or privileged access to Government after ceasing to be a Member or Senator of Parliament.
- (3) A former Member or Senator is not to be taken to have breached confidentiality obligations regarding information obtained in the course of their public duties if the former Member or Senator was—
  - (a) required by law to disclose that information; or
  - (b) otherwise acting lawfully in disclosing that information.

**17 Constitution not affected**

Nothing in this Part is intended to repeal, alter or vary, or affect the operation of, the **Constitution**.

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## Part 4—Register of Interests

### 18 Submission of primary returns

- (1) A person who is a Member or Senator as at (provisions equivalent to those of the Victorian ~~Act - the commencement of section 78 of the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019~~) must submit a primary return to the Clerk of the Parliaments within 28 days after that commencement.
- (2) A person who becomes a Member or Senator after (provisions equivalent to those of the Victorian ~~Act - the commencement of section 78 of the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019~~) must submit a primary return to the Clerk of the Parliaments within 28 days after taking and subscribing the oath or affirmation as a Member or Senator.

### 19 Submission of ordinary returns

A Member or Senator must submit an ordinary return to the Clerk of the Parliaments within 28 days after 31 January and 30 June each year.

### 20 Information to be included in primary returns

- (1) A primary return must be in the prescribed form and contain the following information as at the date of the primary return—
  - (a) income—the source of any income that the Member or Senator has or expects to have before 30 June next following, including the name and address of the payer, but if the address is a residential address the Member or Senator may provide alternative contact details, and, where the income arises from services provided by the Member or Senator, a description of those services;
  - (b) beneficial interest—
    - (i) the name of any corporation, partnership or other body in which the Member or Senator holds a beneficial interest, or in which a private superannuation fund holds a beneficial interest for the benefit of the Member or Senator; and
    - (ii) a description of that interest including an indication of the range in which the value of the shares falls being the following—
      - (A) greater than \$2000 but less than \$10 000;
      - (B) greater than or equal to \$10 000 but less than \$50 000;
      - (C) greater than or equal to \$50 000—but if it is not reasonably practicable for the Member or Senator to make the calculations for the purpose of providing that indication, then the Member or Senator may instead provide the number of shares that constitutes that interest; and
    - (iii) except in the case of a listed corporation, the address of the corporation, partnership or body, but if the address is a residential

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address the Member or Senator may provide alternative contact details, and a description of its objects and activities;

- (c) land—the location by suburb or town or, where that is not applicable, the nearest town, of any land in which the Member or Senator holds a beneficial interest, other than by way of security for a debt, that is used as a primary or secondary place of residence by any person;
- (d) beneficial interest in other land—the address or, if there is no address, a precise description of the location, of any land, other than land referred to in paragraph (c), in which the Member or Senator holds a beneficial interest, other than by way of security for a debt;
- (e) office holder—the name of any corporation, partnership or other body in which the Member or Senator holds office, a description of that office and, except in the case of a listed corporation, the address of the corporation, partnership or body, and a description of its objects or activities;
- (f) personal debt—a description of any personal debt held by the Member or Senator, including the name of the creditor;
- (g) trusts—a description of any trust under which the Member or Senator holds a beneficial interest or in respect of which the Member or Senator is a trustee and a Member or Senator of the Member or Senator's or Senator's family holds a beneficial interest, and a description of the activities of the trust;
- (h) trusts—in the case of a trust referred to in paragraph (g)—
  - (i) the information referred to in paragraphs (a) to (d), of which the Member or Senator is aware or ought to be aware, as if a reference in paragraphs (a) to (d) to the Member or Senator were a reference to the trust; and
  - (ii) any other substantial interest held or received by the trust, of which the Member or Senator is aware or ought to be aware, whether of a pecuniary nature or not, that would raise, or reasonably be seen to raise, a material conflict between the Member or Senator's private interest and their public duties;
- (i) estate—the name of an estate in which the Member or Senator is appointed as executor and holds a beneficial interest, and a description of that interest;
- (j) Member or Senatorship—the name of any political party, body or association or trade or professional organisation of which the Member or Senator is a Member or Senator;
- (k) other membership or association—the name of any other organisation of which the Member or Senator is a Member or Senator or with which the Member or Senator is otherwise associated, if a conflict of interest could arise, or reasonably be seen to arise, because of that membership or association;

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- (1) other interest—a description of any other interest that the Member or Senator has where a conflict of interest could arise, or reasonably be seen to arise, because of that interest.
- (2) If a Member or Senator holds a beneficial interest in a blind trust, the Member or Senator is not required to comply with subsections (1)(g) and (1)(h) in respect of the blind trust, but in the primary return the Member or Senator must provide—
  - (a) a description of the blind trust: and
  - (b) the name and address of the person who manages the blind trust.
- (3) In addition to the requirements under subsections (1)(j) and (1)(k), the Member or Senator may include the name of any other organisation of which the Member or Senator is a Member or Senator or with which the Member or Senator is otherwise associated, if the Member or Senator chooses to do so.
- (4) This section is subject to sections 23 to 25.

**21 Information to be included in ordinary returns**

- (1) An ordinary return must be in the prescribed form and contain the following information in relation to the return period—
  - (a) the information specified in section 20(1)(a) to (1)(l);
  - (b) gift—a description of any gift received by the Member or Senator, including the name and address of the donor;
  - (c) travel—a description of any travel undertaken by the Member or Senator outside of Australia that was funded fully or partially by another person, other than the Commonwealth or a Member or Senator or the Member or Senator's family, including the dates, destinations and purposes of that travel, and the name and address of the donor of the travel contribution.
- (2) A Member or Senator is not required to comply with subsection (1)(a) in respect of information specified in section 19(1)(g), (1)(h) or 20(1)(b) in respect of a trust under which the Member or Senator holds a beneficial interest if the trust is a blind trust but in the ordinary return the Member or Senator must provide the name and address of the person who manages the blind trust.
- (3) In addition to the requirement under subsection (1)(a) in respect of information specified in section 19(1)(j) and (1)(k), the Member or Senator may include the name of any other organisation of which the Member or Senator was a Member or Senator or with which the Member or Senator was otherwise associated, if the Member or Senator chooses to do so.
- (4) This section is subject to sections 22 to 24.

**22 Further requirement to submit information**

If a Member or Senator becomes aware of a material change in any information required to be submitted under section 20 or 21, the Member or Senator must

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submit a description of the material change in the prescribed form to the Clerk of the Parliaments as soon as is practicable.

**22 Threshold amounts for information submitted**

- (1) Subject to subsection (3), a Member or Senator is not required to include in a return submitted under this Part information relating to—
  - (a) a source of income—if the total amount of income from that source does not exceed the threshold amount for income; or
  - (b) a beneficial interest—if the total value of the beneficial interest of that kind does not exceed the threshold amount for beneficial interests; or
  - (c) a personal debt with a particular creditor—if the total value of personal debts with that creditor does not exceed the threshold amount for debts; or
  - (d) a gift from a particular source—if the total value of gifts received from that source does not exceed the threshold amount for gifts; or
  - (e) travel contributions from a particular source—if the total value of travel contributions received from that source does not exceed the threshold amount for travel contributions.
- (2) For the purposes of subsection (1), the value of any income, beneficial interests or gifts held or received by a trust referred to in section 19(1)(g) (other than a blind trust) is to be taken into account in determining the total value of income, beneficial interests or gifts.
- (3) A Member or Senator is required to include in a return submitted under this Part information relating to an interest referred to in subsection (1) if—
  - (a) the Member or Senator holds or receives on 2 or more occasions any income, beneficial interests or gifts with or from a particular source; and
  - (b) the total amount of the value of the income, beneficial interests or gifts exceeds the threshold amount for income, beneficial interests or gifts.

**24 Threshold amounts for year ending 30 June 2023**

- (1) The threshold amounts for the matter referred to in section 19(1)(b)—beneficial interest—for the year ending 30 June 2023 are as follows—
  - (a) \$2000;
  - (b) \$10 000;
  - (c) \$50 000.
- (2) The threshold amounts for the matters referred to in section 22 for the year ending 30 June 2023 are as follows—
  - (a) for income—\$2000;
  - (b) for beneficial interests—\$2000;
  - (c) for debts—\$2000;
  - (d) for gifts—\$500;
  - (e) for travel contributions—\$500.

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**25 CPI adjusted threshold amounts**

(1) A threshold amount for a matter referred to in section 23 for the year ending 30 June 2024 and for each subsequent year is the CPI adjusted threshold amount for that matter for that year.

(2) A *CPI adjusted threshold amount* is to be determined in accordance with the following formula—

$$C = \frac{T \times A}{B}$$

where—

**C** is the CPI adjusted threshold amount being determined, rounded down to the nearest 2 decimal places;

**T** is the threshold amount for the previous year;

**A** is the All Groups Consumer Price Index number for Melbourne for the December quarter in the preceding financial year as last published by the Australian Bureau of Statistics for that quarter;

**B** is the All Groups Consumer Price Index number for Melbourne for the December quarter in the financial year preceding the financial year referred to in A as last published by the Australian Bureau of Statistics for that quarter.

(3) The CPI adjusted threshold amount determined for a matter in section 19(1)(b) or section 22(1)(a), (b) or (c) is to be rounded up or down to the nearest \$500.

(4) The CPI adjusted threshold amount determined for a matter in section 22(1)(d) or (e) is to be rounded up or down to the nearest \$100.

**26 Notice of CPI adjusted threshold amounts**

The Clerk of the Parliaments must notify Member or Senators of a CPI adjusted threshold amount determined in accordance with section 25 before 30 June 2020 and before 30 June for each subsequent year.

**27 Register of Interests**

(1) The Clerk of the Parliaments must continue to maintain the Register of Interests for Member or Senators established under ... **Act** as in force immediately before the commencement of ... **Act**.

(2) The Clerk of the Parliaments must enter into the Register the information included in returns submitted under this Part.

(3) The Clerk of the Parliaments or any authorised person must not make a record of, or communicate to any person, any information received under this Act by the Clerk of the Parliaments or authorised person, or use that information for any purpose, other than in accordance with this Act.

(4) For the purposes of subsection (3), *authorised person* means any person appointed or employed for the purposes of this Act or authorised to discharge any functions of the Clerk of the Parliaments for or on behalf of the Clerk of the Parliaments.

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**28 Reporting of Member or Senators**

The Clerk of the Parliaments must report a Member or Senator to the Presiding Officer of the Member's or Senator's House if—

- (a) the Member or Senator does not submit a return within the time required under this Act and, after the Clerk of the Parliaments has given the Member or Senator a further reasonable period to submit the return, the return is still not submitted; or
- (b) the Clerk of the Parliaments reasonably believes that a Member or Senator has submitted an inaccurate or incomplete return and, after the Clerk of the Parliaments has given the Member or Senator a reasonable opportunity to correct the return, the return remains inaccurate or incomplete.

**29 Restriction on publication**

A person must not publish, whether in the Parliament or outside of the Parliament—

- (a) any information derived from the information entered into the Register unless that information amounts to a fair and accurate summary of the information entered into the Register; or
- (b) any comment on the information entered into the Register unless that comment is fair and published in the public interest without malice.

**30 Tabling of returns**

The Clerk of the Parliaments must cause a return submitted under this Part to be laid before the House of Parliament of which the Member or Senator submitting the return is a Member or Senator—

- (a) within 14 days of the return being submitted if that House of Parliament is then sitting; or
- (b) if that House of Parliament is not then sitting, within 14 days of the next sitting of that House of Parliament.

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## **Part 5—General**

### **31 Referral of alleged breach of Part 3 or 4**

- (1) A person who considers that there has been a contravention of a requirement under Part 3 or 4 may refer the alleged contravention to the Presiding Officer of the House of which the Member or Senator who is alleged to have contravened the requirement is a Member or Senator, or to the IPSC.
- (2) A Presiding Officer who receives a referral under subsection (1) must refer the alleged contravention to the IPSC, unless the alleged conduct may involve conduct that may constitute a criminal offence.
- (3) If a Presiding Officer or IPSC determines that a referral under subsection (1) may involve conduct that may constitute a criminal offence, the alleged contravention must be referred to the appropriate law enforcement agency.

### **32 Failure to comply with Part 3 or 4**

- (1) Any wilful contravention of a requirement under Part 3 or 4 by any person is a contempt of the Parliament and may be dealt with accordingly.
- (2) In addition to any other punishment that may be awarded by either House of the Parliament for contempt of the Parliament, the House of Parliament of which the Member or Senator is a Member or Senator may determine to impose any of the following penalties—
  - (a) Private letter to the Member or Senator concerned drawing attention to the breach and advising the Member or Senator to avoid such conduct in the future;
  - (b) Public report or statement giving details of the breach but not recommending any further sanction;
  - (c) Rectification (Member or Senator is advised to deal with the complaint);
  - (d) The Member or Senator demanded to make an apology;
  - (e) The Member or Senator issued with a Warning or Caution;
  - (f) The Member or Senator issued with an admonition, censure, rebuke or reprimand;
  - (g) The Member or Senator issued with a severe rebuke;
  - (h) The Member or Senator issued with an admonition to refrain from presenting at the House for a certain period of time;
  - (i) The Member or Senator is issued with a suspension (from office);
  - (j) The Member or Senator issued with a fine;
  - (k) The Member or Senator issued with a loss of salary for a certain period of time.<sup>31</sup>

### **33 Regulations**

The Governor General in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

### **34 Construction of references**

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<sup>31</sup> Except in the case of disqualification due to conviction (convicted and under sentence or subject to be sentenced for an offence punishable by imprisonment for one year or longer), sanctions equivalent to expulsion from the House should not be applied by Parliament e.g., Order to withdraw; Disqualification from membership on ground of defection; Expulsion; Committal; Imprisonment.

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Any reference to (provisions equivalent to those of the Victorian **Act**) in any Act, subordinate instrument, agreement or other document, so far as it relates to any period after the commencement of the relevant **Act**, is to be construed as a reference to this **Act**, unless the contrary intention appears.

## **Part 6—Review**

### **35 Conduct of Review**

The Presiding Officers must jointly—

- (a) cause a review to be made of the operation of this Act between the opening and the dissolution of the Parliament; and
- (b) appoint, a Citizens' Assembly (or equivalent non - partisan body) upon dissolution of the Parliament, to review the Parliamentarians Code and the Ministerial Code and report with recommendations on the first sitting day of the following Parliament;
- (c) refer each code as revised by the Citizen's Assembly to be examined by the Privileges Committee of each House; and
- (d) cause a copy of a report by the each Privileges Committee to be laid before each House of Parliament forthwith; and
- (e) to be adopted automatically within one calendar month, unless amended by both Houses.<sup>32</sup>

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<sup>32</sup> This process would leave the codes in the control of the Parliament but moderated by a non-partisan Citizens Assembly.

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