

Introduction

Background to the inquiry

Earlier consideration of a code of conduct

- 1.1 Consideration of a possible code of conduct for Federal parliamentarians is not new. A Joint Committee on Pecuniary Interests of Members of Parliament in a 'Report on Declarations for Interests' presented to both Houses in September 1975 noted that, while the issue of a code of conduct was beyond its terms of reference, it 'felt that a precise and meaningful code of conduct should exist'. It recommended that a Joint Standing Committee be established and be given the task of drafting a code, but this recommendation was not implemented.¹
- 1.2 An inquiry into public duty and private interest, chaired by Sir Nigel Bowen (the Bowen Committee) reported in July 1979 and recommended that a code of conduct be implemented for officeholders, including members of parliament. The code focussed largely on matters to do with pecuniary interests rather than broader ethical issues.² A code was not implemented, although a regime for the registration of the interests of members was implemented in 1984.

1 Referred to in Deirdre McKeown, Codes of Conduct in Australia and related overseas parliaments, Parliamentary Library, Background Note, April 2011, p. 6.

2 'Public interest and private duty', Report of the Committee of Inquiry established by the Prime Minister on 15 February 1978, AGPS, 1979.

- 1.3 In 1991 the then Prime Minister proposed that a working group of parliamentarians be established to develop a seminar on the standards of conduct expected of senators and members. This subsequently evolved into a working group looking to develop a code of conduct. That working group did not complete its task before the 1993 election.
- 1.4 The then Presiding Officers reconvened a working group in the 37th Parliament to look at the development of a code of conduct for both Senators and Members and for Ministers. The then Speaker of the House, the Hon Stephen Martin MP, presented to the House on 21 June 1995 the outcomes of the work of the group. The working group proposed ‘A framework for ethical principles for Members and Senators’ and ‘A framework of ethical principles for Ministers and Presiding Officers’. Copies of these two framework documents are at Appendix 1. In presenting the documents, Speaker Martin said:
- Members will share with me, I am sure, a concern for the public esteem in which we are held as parliamentarians by the Australian community. In my view, it is only by individually observing the principles outlined in these frameworks that we will begin to redress the public perceptions.
- 1.5 Progress on these frameworks seems to have lapsed at the end of the 37th Parliament and they were not revisited.³
- 1.6 Nevertheless Ministers have been subject to a code of conduct. A code of conduct was first implemented for Ministers by Prime Minister Howard in 1996. In 2007, Prime Minister Rudd introduced new Standards of Ministerial Ethics. These have been continued by Prime Minister Gillard. These arrangements have been matters for the Prime Minister alone and have not had any formal parliamentary approval or involvement

Consideration by the Committee

- 1.7 In the course of conducting an inquiry into the exchange between two members in the Main Committee in 2008, the Committee of Privileges and Members’ Interests concluded that the exchange raised issues that were more to do with appropriate standards of behaviour and conduct of members, than to do with any matters of privilege. The Committee

3 House of Representatives Hansard, 21 June 1995, p. 1983.

considered that the framework to cover such conduct, or the conduct of members more generally, was inadequate.⁴

1.8 At the time, the Committee considered that the question of a code of conduct or ethics for members should be revisited. It should also be noted that, in its guise as the Committee overseeing Members' Interests, the Committee is charged with considering possible changes to any code of conduct adopted by the House.⁵

1.9 The Committee expressed the view that there were strong reasons for a code being established, not least of which were community expectations about standards of behaviour by parliamentarians. The Committee indicated it proposed to review the question of a code of ethics for members and report back to the House.⁶

1.10 Subsequent to the Committee's conclusion, there was an incident within the parliamentary precincts involving the then Member for Dawson. In commenting on this incident, the Speaker noted the limit on his powers in relation to the matter and remarked that it was a reminder of the desirability of considering having a code of ethics for members. The Speaker referred this incident to the Committee, in the context of its proposed review of a code, as an example of the sort of conduct that could arise and for which there did not seem to be an adequate framework with which to deal with the matter.⁷

1.11 The Committee had not completed its consideration of this matter at the conclusion of the 42nd Parliament.

Agreements for parliamentary reform

1.12 As part of the process of negotiations for a minority government in the 43rd Parliament a number of agreements were reached. These agreements made provision (in slightly different ways) for a code of conduct to be implemented for Federal parliamentarians and for the appointment of a Parliamentary Integrity Commissioner who would have responsibility for, among other things, upholding the code and investigating complaints in

4 House of Representatives Standing Committee of Privileges and Members' Interests 'Report on the issue of the exchange between the Member for Robertson and the Member for Indi on 28 May 2008 and the subsequent withdrawal and apology by the Member for Robertson on 29 May 2008, October 2008, pp. 9-10.

5 Standing Order 216(a)(v).

6 Report on exchange between the Member for Robertson and the Member for Indi, op.cit, p. 10.

7 House of Representatives Hansard, 4 December 2008, p. 12225.

relation to the code. The detailed provisions in the various agreements are at Appendix 2.

Referral of inquiry

- 1.13 On 22 November 2010, the House referred to the Committee the development of a draft code of conduct for Members of Parliament. The Committee was also asked to examine:
- a) the operation of codes of conduct in other parliaments;
 - b) who could make a complaint in relation to breaches of a code and how those complaints might be considered;
 - c) the role of the proposed Parliamentary Integrity Commissioner in upholding a code; and
 - d) how a code might be enforced and what sanctions could be available to the Parliament.
- 1.14 In conducting its work the Committee was asked to consult with the equivalent committee in the Senate (the Committee of Senators' Interests) on the text of the proposed code with a view to developing a uniform code, together with uniform processes for implementation for Members and Senators. In moving the motion to refer the inquiry, the Leader of the House noted that it fulfilled a commitment in the various agreements. He stated:

It is the government's hope and expectation that the work of these committees and the eventual adoption by parliament of a code of conduct for members and senators will make a positive contribution to parliamentary standards and the standing of parliament in the general community.⁸

Purpose of Committee's inquiry

- 1.15 Although the agreements made after the election committed the parties to the implementation of a code of conduct and the inquiry referred to the Committee asked it to develop a draft code, the Committee considered it should address the threshold issue of whether a code of conduct should be adopted. The adoption of a code of conduct is a very significant matter for all Members of Parliament and the Committee considered that it should
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8 House of Representatives Hansard, 23 November 2010, pp. 3442-43.

make a thorough examination of the competing views in relation to adopting a code, and this examination is outlined in Chapter 3.

1.16 The Committee has decided not to reach a concluded view on the merits of adopting a code of conduct and now presents its work on the inquiry as a discussion paper. The discussion paper addresses the terms of reference and includes a consideration of the various aspects of such a code. These aspects are presented as set out below:

- the nature of a proposed code and a process for its implementation (Chapter 4);
- the role of a possible Parliamentary Integrity Commissioner in relation to a code (Chapter 5);
- possible procedures for receiving and investigating complaints under a code (Chapter 6);
- the role a House committee could play in overseeing a code and the handling of complaints (Chapter 7); and
- possible sanctions that could be imposed for breaches of a code and processes in the House for dealing with reports or complaints and imposing sanctions (Chapter 8).

The inquiry process

1.17 After the inquiry was referred, the Chair wrote to all members informing them of the inquiry and inviting them to make submissions or comments. The Chair also wrote to key representatives in selected jurisdictions which already have codes of conduct and invited submissions. A list of the submissions received is at Appendix 3.

1.18 The Committee considered that a roundtable discussion would be the best means of obtaining different perspectives on the issues which it had to address. All members were invited to attend. The Committee also invited representatives from other Australian parliamentary jurisdictions who had made submissions to attend so that the Committee could learn firsthand about their experiences. The members of the Committee of Senators' Interests also participated after the Senate referred a similar inquiry to that Committee. The Clerks of the Senate and House of Representatives and Professor Gerard Carney, an expert on parliamentary privilege and members' ethics, also were invited to attend. A list of the

participants in the roundtable, which was held on 21 March 2011, is at Appendix 4.

- 1.19 The Committee considered it was essential to hear directly from the international jurisdiction with experience most relevant to the House of Representatives – the United Kingdom House of Commons. This was done by means of a video conference link up on 21 June 2011. The details of those with whom the Committee spoke is at Appendix 4.
- 1.20 The Committee was pleased it was able to work with the Committee of Senators' Interests on this inquiry. It would be highly desirable that, if there is to be a code of conduct to apply to Members of the House of Representatives, it also apply to Senators and that there is a similar framework for receiving and considering complaints.

