

**Parliament of Australia  
House of Representatives  
Standing Committee of Privileges and Members' Interests**

**Submission to the Committee from Dr Malcolm Jack,  
Clerk and Chief Executive of the United Kingdom House of Commons**

1. Thank you for your invitation of 13 December 2010 to contribute a submission to your Committee's inquiry into a Code of Conduct for Members of the Australian Parliament.
2. I understand that your Committee has invited separate submissions from Rt Hon Kevin Barron MP, Chair of the UK House of Commons Select Committee on Standards and Privileges, and from Mr John Lyon CB, the UK House of Commons Parliamentary Commissioner for Standards.

***the nature of an appropriate code of conduct for Members of Parliament having regard to our own experience***

3. The first point I would wish to emphasise is the paramount importance in a parliamentary democracy of the House itself retaining jurisdiction over the conduct of its own proceedings. It would in my view be a great error to transfer jurisdiction over Members' behaviour to the courts, for example by establishing a statutory code.
4. I attach a copy of the current (2009) Code of Conduct applicable to Members of the House of Commons, with The Guide to the Rules relating to the conduct of Members. In accordance with precedent, the Parliamentary Commissioner for Standards will soon begin a consultation as part of his review of the Code. The Commissioner will report to the Committee on Standards and Privileges later in the year, so that the Committee may decide what changes, if any, to propose to the House before publishing an updated Code of Conduct.
5. In carrying out their parliamentary and public duties, Members are expected to observe the general principles of conduct identified in May 1995 by the independent and non-statutory Committee on Standards in Public Life (CSPL). These "Nolan Principles" (named after the CSPL's first Chairman) are taken into consideration when any complaint is received of breaches of the provisions in other sections of the Code.

**NOLAN PRINCIPLES**

**Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material 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 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 that 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.

***any comments on processes for making and investigating complaints;***

6. A robust complaints investigation process contributes to public confidence in the institution of Parliament.
7. There is a risk that the making of complaints may come politicised, with tit-for-tat complaints made with an eye to short-term political advantage from either side combining over the longer term to a lowering of the prestige of the entire parliamentary process in the eyes of the public. It is essential therefore that, despite these pressures, the process of actually investigating complaints should be strictly impartial.
8. A number of areas are outside the Commissioner's remit. As a result, he is unable to consider complaints about policy matters or a Member's views or opinions, a Member's handling of or decision about an individual case (whether or not the individual is a constituent of the Member), the funding of political parties, alleged breaches of the separate Code governing the conduct of government ministers in their capacity as Ministers (the 'Ministerial Code'), or about what Members do in their purely private and personal lives. The Commissioner will not entertain anonymous complaints: I regard this as an important safeguard. In December 2010 the House agreed that the Commissioner may investigate matters that come to his attention without the prior requirement of a complaint having being made. Conduct in the Chamber is a matter for the Speaker. If the allegation is of criminal misconduct which may more appropriately be investigated by another agency, the Commissioner will advise the complainant to approach that agency.
9. Under the Human Rights Act 1998, the European Convention of Human Rights is directly applicable in UK courts to public authorities, including all government Departments. Although the House of Commons is not a public authority under the Act, and therefore cases under the Human Rights Act cannot be brought against the House, or any person exercising functions in connection with proceedings in Parliament, in a UK court, there remains the right of individual petition to the European Court of Human Rights (ECtHR) in Strasbourg. There is a risk, therefore,

that a person aggrieved by defects in the process of investigating complaints might seek to sue the UK in the ECtHR on the grounds that the proceedings of the legislature involve the UK in a breach of its international obligations under the Convention. It is prudent therefore to reflect on whether our essentially inquisitorial processes are reasonably compliant with relevant ECHR principles, in particular with the right to a fair trial under Article 6 ECHR.

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

10. Following a recommendation from the CSPL, the Parliamentary Commissioner for Standards is appointed for a single five year non-renewable term. In 2007 the post was advertised in the national press, supplemented by a search by recruitment consultants. After a rigorous sifting and interview process, the Interview Board recommended two candidates for final interview by the House of Commons Commission.
11. The House of Commons Commission was established by the House of Commons (Administration) Act 1978 and is the overall supervisory body of the House of Commons Administration. It is chaired by the Speaker and comprises in addition the Leader of the House, the shadow Leader of the House and three Members appointed by the House, drawn from each of the three largest parties. Its responsibilities include appointing staff of the House and preparing and laying before the House the Estimates for the House of Commons Service.
12. For the interviews, Commissioners were joined by the then Chairman of the Committee on Standards and Privileges, Rt Hon Sir George Young MP. Following the exacting process set out above, the House of Commons Commission recommended to the House Mr John Lyon CB, then the Director General of Legal and Judicial Services in the Ministry of Justice responsible for relations between the judiciary and executive. The Commission was confident that he had the necessary standing, ability and personal authority for the role, and that he would bring to it the independence, discretion, and strength of character required to ensure that the system of Parliamentary self-regulation continued to work effectively, and that it was seen to do so both inside and outside the House.
13. Mr Lyon's appointment was approved by the House without a division. The Commissioner may be dismissed only following a resolution of the House, moved for by a Member of the House of Commons Commission, after the Committee on Standards and Privileges has reported to the House that it is satisfied that the Commissioner is unfit to hold his office or unable to carry out his functions; and any such report shall include a statement of the Committee's reasons for its conclusion.
14. The annual cost of the Office of the Parliamentary Commissioner for Standards (which produces the Registers of Financial Interests as well as investigating complaints) is less than £600,000.

***the role a relevant parliamentary committee can play in relation to a code of conduct;***

15. The House of Commons Committee on Standards and Privileges is by custom chaired by a senior Opposition Member, who is paid a supplemental salary in the same way as Chairs of departmentally-related select committees. In a departure from normal practice, and following a CSPL recommendation, no one party has a majority on the Committee, rather than reflecting the composition of the House as a whole.
16. The Law Officers (Attorney General, Advocate General and Solicitor General) receive the Committee's papers and any of them may attend any Committee meeting (if he or she is a Member of the House) though it is now very rare for any Law Officer to do so.
17. The Procedure Committee is currently considering how to take forward a proposal from the CSPL that at least two lay members should play a full part in the work of the Committee on Standards and Privileges, which has hitherto operated as select committee composed entirely of Members of Parliament. This proposal raises questions of whether such lay members would themselves be protected by parliamentary privilege.

***how a code of conduct might be enforced and what sanctions should be available.***

18. The consequences for a Member who is found to have breached the code of conduct are two-fold: damage to the Member's reputation and any formal sanction or penalty. The scale and nature of the formal penalty may influence the extent of the reputational damage.
19. In the business of politics, reputational damage may threaten or terminate a parliamentary career; the consequences could range from a temporary loss of prestige to a suspension of the Whip to a Member being permanently deprived of their position as a future candidate for their political party.
20. The first requirement of any credible enforcement or sanction system is that it should be public. The Reports of the Committee on Standards and Privileges are published in hard copy and on the parliamentary website. The Committee invariably publishes the memorandum submitted by the Parliamentary Commissioner to which any relevant correspondence, including representations from the subject of the complaint may be appended. All the relevant documentation is published, subject to redactions only of irrelevant personal data.
21. The UK House of Commons has had a provision for many years that minor errors in the Register of Members' Financial Interests could be settled by a "rectification" procedure. This principle was extended to "restitution" in comparatively minor cases of errors involving the use of facilities and allowances. In December 2010, the House of Commons adopted proposals from the Committee on Standards and Privileges to amend the Standing Order in order to provide more openness about the progress and outcome of investigations by the Parliamentary Commissioner for Standards, so that all decided cases are now published on the parliamentary website.

22. Depending on the seriousness of the breach, and taking into account the Member's response to the Commissioner's findings, the Committee on Standards and Privileges has recommended —
- An apology, in the form of a letter for publication;
  - A formal apology, by way of a personal oral statement to the House;
  - Withdrawal of a retiring Member's Resettlement Grant;
  - Repayment of expenses incorrectly claimed;
  - Withdrawal of an ex-Member's Palace of Westminster photo-pass;
  - Suspension (with loss of pay) from the service of the House for a short period, ranging from a few days to whole month.
23. The reputational damage suffered by the individual Member may rub off and tarnish the image or dent the popularity of a political party, with serious electoral consequences. Allegations of "sleaze" can be a potent weapon in the media battle between the incumbent Government and the aspirant Opposition parties. The appetite of the media to pursue such matters cannot be underestimated. Taken together, the effect of a flood, or even of a steady trickle, of complaints about Members tends to supplant a healthy civic scepticism with a cynicism that could ultimately damage the readiness of all but the most thick-skinned and personally wealthy to come forward as public servants in the political arena.

**Malcolm Jack**  
**Clerk and Chief Executive of the House of Commons**

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*Suggested reference sources:*

Standing Orders No. 149 and No. 150:

<http://www.publications.parliament.uk/pa/cm201011/cmstords/700/700.pdf>

Parliamentary Commissioner for Standards: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/pcfs/>

Members' Code of Conduct: <http://www.publications.parliament.uk/pa/cm/cmcode.htm>

House of Commons Select Committee on Standards and Privileges:

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/standards-and-privileges-committee/>

Committee on Standards in Public Life: <http://www.public-standards.org.uk/>