



17 March 2011

Mr Richard Pye  
Committee Secretary  
Senate Standing Committee of Senators' Interests  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Pye

### **Code of Conduct for Members of Parliament - Pros and Cons**

In response to the Senate's referral to the Committee of Senators' Interests for an inquiry on:

The development of a draft code of conduct for senators, with particular reference to:

- (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.

I make the following submission.

The Legislative Council of Western Australia, unlike the Legislative Assembly, has not adopted a specific code of conduct for its members. The Legislative Council does, like all Houses of Parliament, have a set of standing orders regulating the conduct of Members when in the House.

The Standing Committee on Procedure and Privileges has considered a code of conduct but decided against the adoption of such a code at this stage. Many of the aspects of the Legislative Assembly code of conduct are codification of the law as it currently stands.

Over the last 20 years or more there has been much discussion on codes of conduct and the adoption of various types of codes. However, has that lead to a better standing in the community about members of Parliament? Have codes of conduct both in the public sector



and Parliament been effective? Any decision to adopt a code of conduct must surely be based on history and the effectiveness of such codes.

Western Australia established the Corruption and Crime Commission in 2003 (CCC). The CCC has made a number of adverse findings of misconduct against members and former members of Parliament. I should also point out that to date no court action arising from those adverse findings has been successful. However reputations and political damage to those investigated has been immense. The *CCC Act 2003* s.4 defines misconduct as:

Misconduct occurs if —

- (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment;
- (b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;
- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or
- (d) a public officer engages in conduct that —
  - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;
  - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;
  - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
  - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute —

- (v) an offence against the *Statutory Corporations (Liability of Directors) Act 1996* or any other written law; or
- (vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

**A public officer** has the meaning given by section 1 of *The Criminal Code*;

The *Criminal Code* definition of public officer includes:

- (aa) a Minister of the Crown;

- (ab) a Parliamentary Secretary appointed under section 44A of the *Constitution Acts Amendment Act 1899*;
- (ac) a member of either House of Parliament;

A public officer or any other person may report to the Commission any matter which that person suspects on reasonable grounds concerns or may concern misconduct that —

- (a) has or may have occurred;
- (b) is or may be occurring;
- (c) is or may be about to occur; or
- (d) is likely to occur.

In my view no jurisdictions with codes of conduct have seen any demonstrable improvement in conduct of members or compare more favourable against those jurisdictions that have not adopted codes. There have been numerous incidents around the world of reported misconduct by various bodies, including by the Houses themselves. Has the presumed increase of misconduct been a result of more oversight bodies or is the standard of conduct of members declining? It could also be that community expectation the standards of members of Parliament has risen.

One of the reasons for adopting codes of conduct is to improve the low level of public confidence in the integrity of members of Parliament as a result of public scandals. Members of Parliament are constantly subjected to substantial public scrutiny by the media, political opponents and political party processes, and rightly so. However, every aspect of their lives including unfortunately, their family, is exposed to public scrutiny. It has become more difficult for political parties to find suitable candidates to stand for election. Why would anyone want the public exposure and scrutiny as a politician when many of those people in society retain better reputations and earn significantly more in the private sector with no such adverse impact on their lives?

I recommend the committee members read Gerard Carney's book on *Members of Parliament: law and ethics*. It comprehensively considers all aspects of conduct. As Carney states "*the opposition to a code is based primarily on three grounds: a code only states the obvious in terms of ethical standards; it may encourage attacks on the integrity of members; and as a gimmick, it can only increase public cynicism of the political system*". I think that has been the case to date.

However, as Carney suggests, an aspirational code can at least remind members of the fundamental duties and standards which they must observe. The key though is how a member determines in their view what the code means. Members each have differing ethical values and morals. What for example does "*to maintain public confidence and trust in the integrity of parliamentarians individually and the respect and confidence that society places in Parliament as an institution*"<sup>1</sup> mean to each member. I suspect it varies considerably and decisions will not always be black and white in certain circumstances. It has been said that the main reason for having ethical guidelines is not to provide a cookbook solution to every practice-related problem, but to aid in the decision-making process for situations that involve ethical questions.

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<sup>1</sup> This is part of the proposed code for the Federal Canadian Parliament (June 1999).

Like standing orders, I expect with codes there will be very few members who will read them more than once and will only refer to a code when an issue arises. I doubt any code will be a constant reminder of the ethical standards a member should uphold.

However, in my view a publication should be provided to members outlining the compulsory requirements for members of Parliament which would include, in Western Australia, the references to the Criminal Code, members of Parliament Financial Interests returns, Corruption and Crime Commission Act and extracts of the standing orders regarding the conduct of members in the House.

## ***WA History***

In 1990 the WA Government adopted a code of conduct for Ministers. *See attachment "A"*.

The first time Western Australia considered a code of conduct for members was in the report of the Parliamentary Standards Committee, 1989, chaired by Hon K E Beazley Snr, former member of the House of Representatives.

The Parliamentary Standards Committee reviewed the issue of parliamentary privilege abuse. It not only examined the various ways Parliament had previously dealt with it, such as by appointing select committees, but also whether any changes were required in the way abuses were handled. One option explored was whether Parliament should cede jurisdiction over privilege to another body.

The report stated there can be little doubt that the events leading to the establishment of this Committee had more to do with the potential misuse of the freedom of speech than with matters such as potential conflicts of interest or bribery.

The possibility that there is a connection between a call for a code of conduct and what was formerly regarded as a breach or abuse of privilege should be recognised. While it is reasonably safe to say that, under common law, Parliament always expects its Members to act both fairly and honestly toward it, it is doubtful whether passing a law for that purpose will have the slightest effect on the behaviour of Members.

Almost without exception those who made a submission to the Committee did not support the notion of providing for a Code of Conduct for parliamentarians in Western Australia. Their grounds for not favouring this move have usually been on the basis that the Standing Orders already provide such a Code of Conduct and/or that it is the behaviour of Members generally which determines the degree of respect or otherwise in which the institution of Parliament is held and this would be little affected by the provision of such a Code.

The Australian Institute of Public Policy (AIPP) in its submission gave the most detailed consideration to this issue. On the matter of whether a Code of Conduct was desirable for regulating the conduct of Members one to another (i.e. for "internal" purposes) the Institute's argument was that the conventions, practices and Standing Orders of Parliament already provided the rules necessary for "the civilised conduct of competitive (sometimes intensely competitive) debate and argument" and the failure of the rules means either that the rules have not been applied with sufficient rigor or that other forms of misconduct have arisen which have eluded the application of the rules.

With reference to the former consideration the proposition is advanced that failure to enforce the rules in all probability reflects less on the occupants of the posts of Speaker and President than on governments and this issue is discussed further in Chapter 9 of the report. Insofar as supposed new forms of parliamentary misconduct have arisen the Institute argued that a generalised new set of rules would not necessarily ensure any improvement in conduct while a more detailed set would almost certainly create the search for loopholes in the same way as is manifested constantly with anti-tax avoidance legislation.

The Institute was equally sceptical about the advantages of a code regulating the behaviour of Members towards non-Members (i.e. for "external" purposes) and in particular lessening the misuse of privilege. Since at best only the manner of exercising parliamentary privilege could be affected without seriously restricting the privilege itself, the Institute argued that the solution had to lie in forms of redress such as have been discussed in Chapter 6 of the report.

In short the Institute concluded that -

" ... a Code of Conduct for Members of Parliament seems unnecessary given present Standing Orders, and undesirable as a limitation on privilege".

Mr Marquet, a former Clerk of the Legislative Council, came to very similar conclusions suggesting that a code could not be made to work-"unless it formed part of standing orders and ... standing orders already provide such a code". While accepting that the rules require periodic review he argued that "when they are examined in detail one is left the impression that they cover almost every conceivable parliamentary situation". Accordingly-

"To set up a Code of Conduct which in large part would incorporate existing rules of behaviour cannot ensure a standard of behaviour better than current levels of toleration. If members' conduct is to improve, the will must stem from a personal and collective realization of the worth and dignity of the institution, not only by members but society".

Again former MLC Hon A A Lewis considered that -

"A Code of Conduct could not be enforced any better than the Standing Orders are at the present moment ..."

The Committee concluded that matters of privilege could only be determined by Parliament, not by any outside tribunal, and recommended that each house of Parliament give serious consideration to the establishment of a Standing Committee on Privilege.

Further, where remarks made in the House were at issue, the Committee identified a number of steps that might be taken by the Presiding Officer and the House concerned against the offending member, including that: '... the Presiding Officer may interrupt the Member with a warning that the Member be careful not to abuse his or her privileges'; '... the Presiding Officer may, at some later stage, issue a general warning about abuse of the privilege of freedom of speech'; and '... the house may exercise its power to censure, suspend or expel the Member' (PSC, 1989: I 40).

In addition, the Committee proposed a general code of conduct for members, ‘... with the recommendation that it might be used for educational rather than disciplinary purposes’ (Black, 1991: 419). This was subsequently adopted by the Legislative Assembly in May 1992:

10. (1) In speaking in the House or in a committee, Members should take the following matters into account -

- (a) the need to exercise their valuable right of freedom of speech in a responsible manner;
- (b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
- (c) the limited opportunities for persons other than Members of Parliament to respond to allegations made in Parliament;
- (d) the need for Members, while fearlessly performing their duties, to have regard to the right of others; and
- (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based. (V & P, LA, 5 May 1992: 65)

The next development in WA was the report of the *Royal Commission into Commercial Activities of Government and other Matters in 1992*. The report recommended a comprehensive code of conduct for Ministers. A code of conduct was developed and is currently in place (See attachment “B”). The report also recommended the establishment of an Office of the Commissioner for the investigation of corrupt and improper conduct.

Improper Conduct was defined as:

- (i) any conduct of any person (whether or not a public official) that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority;
- (ii) any conduct of a public official or former public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions;
- (iii) any conduct of a public official or former public official that constitutes or involves a gross departure from the standards of administration which the public is entitled to expect; or
- (iv) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her own benefit or for the benefit of any other person.

The definition of public official included members of Parliament.

Commission on Government 1995 noted:

No formal code of conduct applies to Members of Parliament in Western Australia. New members must swear an oath or affirmation of allegiance.

While in Parliament, members must comply with Standing Orders and abide by any resolutions of the House in which they are a member, or decisions of the relevant Presiding Officer. There are Standing Orders that attempt to:

- establish acceptable standards of behaviour;
- maintain the privileges and freedom of action of members; and
- regulate possible conflicts of interest.

The *Members of Parliament (Financial Interests) Act 1992* establishes a register of certain interests of members which is available for public inspection.

### *What type of Code*

As the Commission on Government noted, in developing codes of conduct for elected officials it may be necessary to clarify the basic duty of a Member of Parliament. Is a duty owed to the electorate of the member, to Parliament, or to the wider community?

The codes of conduct developed, contain general principles dealing with such issues as the use of confidential information gained from office; the need to avoid situations where private interest may conflict with public duty; honesty; and the appropriate use of influence, public property and services. Some attempt to spell out the primary duties and responsibilities of members, such as the primacy of the public interest in the resolution of conflicts.

The UK House of Commons report by the Nolan Committee observed that:

We cannot say conclusively that standards of behaviour in public life have declined. We can say that conduct in public life is more rigorously scrutinised than it was in the past, that the standards which the public demands remain high, and that the great majority of people in public life meet those high standards. But there are weaknesses in the procedures for maintaining and enforcing those standards. As a result people in public life are not always as clear as they should be about where the boundaries of acceptable conduct lie. This we regard as the principal reason for public disquiet. It calls for urgent remedial action. (U.K., Committee on Standards in Public Life, 1995: 3)

The UK Parliament established, in 1994, a Parliamentary Commissioner for Standards to provide advice and guidance to members on matters of conduct and investigate alleged breaches of misconduct. I think recent history demonstrates how ineffective the code has been. Whether this is due to the lack of penalties or the general ethic of individuals is perhaps unknown. I'm sure most members with adverse findings against them would disagree with the findings. In its Ninth Report of Session 2010–11 it states:



The range of sanctions available to the House when dealing with such a breach must be regarded as very limited. The options of requiring an apology on the floor of the House or of suspension from the service of the House are of course no longer applicable in such cases. It is commonly supposed that the House has untrammelled power to fine or to imprison offenders, but no-one has been fined by the Commons since 1666 and the last committal of an offender was in 1880.<sup>10</sup>

The use of these powers would be a major step; it is not a step we invite the House to take. It is also some time since anyone was summoned to the bar of the House to be reprimanded or to apologise, the last case being in 1957.<sup>11</sup>

The House may not interfere with the pension entitlement of a former Member, which is a matter governed by statute.<sup>12</sup> The House does, however, retain control over access to its precincts. The current rules allow former Members to apply for and be issued with a photopass, which grants them privileged access to parts of the Parliamentary estate and to some of the facilities located on the estate. This entitlement can be suspended or withdrawn.

The principal sanction, however, is and will in all likelihood remain the damage which an adverse finding by the Commissioner, backed up by a critical Report from this Committee, inflicts on someone whose status and, in some cases, livelihood depends in large part on their public reputation.

<sup>10</sup> *Erskine May*, 23<sup>rd</sup> Edition, pp 156-160

<sup>11</sup> *Erskine May*, 23<sup>rd</sup> Edition, p 163

<sup>12</sup> *Erskine*

As I stated previously adverse findings do have a significant impact. Additionally, as we have seen with the CCC, open hearings also can adversely “inflict on someone whose status and, in some cases, livelihood depends in large part on their public reputation”. In many instances these people have had no adverse findings at the conclusion of those hearings, yet the damage has been done.

Report No.1 of the Commission’s on Government mentioned that many submissions expressed dissatisfaction with the conduct and performance of Members of Parliament, particularly in respect of alleged misuses of privilege. Accordingly, the Commission recommended that a Standing Committee on Privilege be established in each House with the task of preparing a uniform code of conduct for the guidance and governance of members in relation to possible breaches of parliamentary privilege.

## **Conclusions**

If a code is to be developed in my opinion it should be based on the UK model. In the United Kingdom, the House of Commons established the Nolan Committee following a spate of controversies involving politicians, including allegations about certain members accepting money for asking parliamentary questions. In its first report it examined standards of conduct of all holders of public office and set out seven general principles of conduct which were considered to underpin all areas of public life. These principles are:

- selflessness;
- integrity;
- objectivity;
- accountability;
- openness;
- honesty; and
- leadership.

If a Parliamentary Integrity Commissioner is established it should have the power to receive complaints from anyone in relation to breaches of a code. The Parliamentary Integrity Commissioner should be responsible to review the code, advising members, investigate complaints, educating members and the public about the code.

The same principles as observed by the police and the courts should apply. If the accusatorial system is to function justly, the Commissioner must bring its finding in all cases of breaches of the code before the House to which the member is elected. It is for the House to decide whether punishment is merited. This structure will ensure the privileges of each House to discipline its own members apply, unless of course, criminal conduct was involved, which would fall within the jurisdiction of the courts.

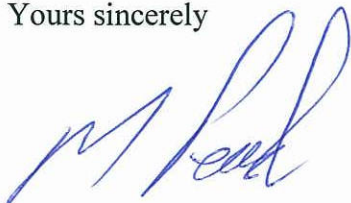
A speech by Commissioner Len Roberts-Smith QC to University of Notre Dame Australia on Tuesday 19 May 2009, in regards to s 7B of the CCC Act, stated:

*The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself to investigate cases of misconduct, particularly serious misconduct.*

In my view the Commissioner is right - the public authority, in this case the Parliament, should continue to investigate cases of misconduct. In regards to serious misconduct that is involving corruption or criminal conduct, the CCC Act does not state what should happen. However, if the Commission did receive an allegation of serious misconduct, it would deal with it as any other allegation, not referring it to the Presiding Officer.

If the Senate adopts an aspirational code it will indicate to members the fundamental duties and standards which they should observe. However, I doubt a code will have any significant impact on the media's portrayal of or the community attitude towards members of Parliament as a whole.

Yours sincerely



**Malcolm Peacock**  
Clerk of the Legislative Council

A289616



GOVERNMENT OF WESTERN AUSTRALIA

# MINISTERIAL CODE OF CONDUCT

SEPTEMBER 2008



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## **1. Introduction**

Ministers have significant discretionary power and make decisions that can greatly affect individuals and the community. Consequently, it is necessary to set higher standards of conduct for them than for other categories of elected office holders.

Being a Minister of the Crown demands the highest standards of probity, accountability, honesty, integrity and diligence in the exercise of their public duties and functions. They must ensure that their conduct does not bring discredit upon the Government or the State.

This code of conduct has been developed in response to widespread public concern about the conduct and accountability of public officials. The need for the development of such a code was highlighted in the 1992 Royal Commission into Commercial Activities of Government which stated that:

Criminal Law provides no more than the base level below which officials must not fall. It does not address the standards to which they should aspire, even if these, to some degree, always remain an ideal or counsel of perfection (Royal Commission 1992 4.6.2, cited in Commission on Government Report No. 3 p. 136)

In the spirit of the findings of the Royal Commission, the primary intention of this code is to provide some direction to Ministers about the conduct the public expects of them and to which they should aspire.

## **2. Administration of the Code**

The Cabinet Secretary is responsible to the Premier through the Director General of the Department of the Premier and Cabinet for the record-keeping and Administration associated with this Code.

All Ministers are to cooperate fully with the Cabinet Secretary in respect to their responsibilities under this Code.

## **3. Conformity with the Westminster principles of accountability and collective and individual responsibility**

Under the Westminster system of government, Ministers have both collective and individual responsibilities.

A Minister's responsibility to act as a trustee of the public interest should always be paramount in the performance of their functions.

The Westminster system requires that Ministers are answerable to Parliament, and through Parliament to the people.

In addition, Ministers are accountable to both the community and Parliament for the administration of their departments, authorities and statutes. Ministers should be as open as possible, and give reasons for, their decisions and actions to ensure they are working in the public interest.

Ministerial responsibility requires the collective responsibility of Cabinet to Parliament for the whole conduct of government administration.

All Ministers will acknowledge that the collective decisions of Cabinet are binding on them individually. They are obligated to publicly support those decisions.

#### **4. Official Conduct**

Ministers have a high standing in the community and they should provide leadership by striving to perform their duties to the highest ethical standards.

The inclusion of Ministers in the definition of "public officer" in section 1 of the Criminal Code ensures there is an overarching framework for scrutiny of Ministerial conduct.

They are to act with integrity in the performance of official duties, and are to be scrupulous in the use of official information, equipment and facilities.

#### **5. Conflicts of Interest**

Public duties must be carried out objectively and without consideration of personal or financial gain. Circumstances which could give rise to a serious conflict of interest are not necessarily restricted to those where an immediate advantage will be gained. They may instead take the form of a promise of future benefit, such as a promise of post-parliamentary employment. Any conflict between a Minister's private interest and their public duty which arises must be resolved promptly in favour of the public interest. The same is as true for a perceived conflict of interest as an actual conflict.

#### **6. Disclosure of Pecuniary and Other Interests**

To assist in the avoidance of any conflict of interest arising, a Minister shall disclose to the Cabinet Secretary all pecuniary and other interests.

Ministers shall provide the Cabinet Secretary with:

- a copy of each return that they lodge under the *Members of Parliament (Financial Interests) Act 1992* when lodging that return; and
- at the same time, a statement disclosing all the pecuniary and other interests of the Minister not already disclosed in their return, as well as the pecuniary and other interests of the Minister's spouse, de facto partner and all dependent members of the Minister's family.



Significant changes in the declared interests of the Minister or those of their spouse, de facto or dependent family members shall be disclosed to the Cabinet Secretary in a supplementary statement within four weeks of the Minister becoming aware of those changes.

Some pecuniary interests may be sufficiently indirect so as to minimise the disclosure requirements expected from a Minister. Appendix F contains guidelines to assist Ministers in providing an appropriate level of detail in completing their disclosure statements. The responsibility of making adequate disclosure of all pecuniary and other interests of the Minister and the Minister's spouse, de facto partner and dependent family members, lies solely with the Minister.

Ministers shall disclose all pecuniary or other interests held under a private company or other entity or arrangement that operates a family farm, family business or family investments or trust.

All disclosed information is to be recorded and retained by the Cabinet Secretary. In the event of real or perceived conflicts of interests for a Minister in relation to a matter before Cabinet arising out of the disclosed information, whether in relation to a Minister or a Minister's spouse, de facto partner or dependent family members, the Minister is to draw that conflict of interest to the attention of the Premier in Cabinet.

## **7. Divestment of Conflicting Positions**

Immediately after appointment, Ministers shall take action to divest themselves of shareholdings in any company and interests in partnerships and trusts, by virtue of which a conflict exists, or could reasonably be expected to exist, with their portfolio responsibilities. The transfer of interests to a spouse, de facto partner or dependent family member or to a nominee or trust is not an acceptable form of divestment.

Ministers shall resign from all positions held in business or professional associations and trade unions, as identified by the Member in their primary or annual return under section 12 of the *Members of Parliament (Financial Interests) Act 1992*. Individual membership of an organisation does not constitute a "position" in that organisation.

Upon appointment, Ministers shall resign from all directorships in public and/or private companies. An exception is where a Minister holds a directorship in a private company that operates a family farm, family business or family investments, provided that the directorship is not likely to conflict with the official duty of the Minister.

Ministers are also required to resign from other positions that may present real or perceived conflicts of interest. If in doubt, Ministers should consult the Cabinet Secretary.

## **8. Declaration of Conflict of Interest**

Ministers shall advise the Premier in Cabinet should they find themselves in a situation of conflict of interest, or where there is a potential for conflict, in respect to any item before Cabinet. In case of doubt, the final determination as to whether there is a conflict (or a potential conflict) will be made by the Premier. Where it is determined that there is a conflict of interest or potential conflict, the Minister shall withdraw from the Cabinet room while the relevant item is under discussion. The Cabinet Secretary shall record in the Cabinet minutes that the Minister so declared his or her pecuniary interest, conflict of interest, or potential conflict, and withdrew from the Cabinet room.

A Minister must disclose to the Premier in Cabinet any pecuniary or other interests of the Minister's spouse, de facto partner or dependent family members of which the Minister is aware, if those interests potentially are relevant to a matter before Cabinet. Such disclosures will be recorded in the Cabinet minutes.

The Premier may require that the Minister be absent from all Cabinet discussions about an issue on the basis of the disclosed pecuniary and other interests of a Minister's spouse, de facto partner or dependent family members.

The Cabinet Secretary may independently raise in Cabinet any conflict of interest or potential conflict of a Minister or his or her spouse, de facto partner or dependent family members. The Cabinet Secretary's role in this regard does not derogate from the Minister's responsibility under this Part.

The reasons for the Minister's absence and the details of the disclosed interests will be recorded in the Cabinet minutes.

## **9. Use of Confidential Information**

Ministers will maintain the confidentiality of information committed to their secrecy in the Executive Council, in Cabinet or otherwise in accordance with their duties.

Ministers shall undertake not to use information obtained in the course of official duties to gain for themselves or any other person a direct or indirect financial advantage. They will not solicit or accept any benefit in respect of the exercise of their discretion, whether for themselves or any other person.

In particular, a Minister shall scrupulously avoid investments and transactions about which he or she has confidential information as a Minister which may result in an advantage which is unreasonable or improper.

On resignation, retirement or dismissal, a Minister shall maintain the confidentiality of information acquired in office.

## 10. Ministerial Expenses and Use of Public Resources

Ministers shall make economical use of the public resources which are made available to them as office holders and will make every endeavour to prevent misuse by other persons. Those resources must only be used in connection with official duties and not for personal benefit.

Ministers are reminded of their responsibility under section 52 of the *Financial Management Act 2006* for the financial management of the services under the control of their portfolio agencies, and for monitoring the functions of the accountable authorities of those agencies.

See Appendix A for guidelines on Ministerial expenditure and use of public resources, and Appendix B for guidelines for expenditure on official hospitality.

## 11. Gifts

Under section 10 of the *Members of Parliament (Financial Interests) Act 1992*, Ministers, as Members of Parliament are required to disclose in an annual return, the details of any person who made financial or other contributions to their travel.

Details of the correct procedures to be followed in respect to Ministerial travel are contained in Appendix C.

Under section 9 of the *Members of Parliament (Financial Interests) Act 1992*, Ministers, as Members of Parliament, are required to disclose in an annual return the details of any gift received by the Minister. However, the potential for conflict of interest issues to arise in the process of gift-giving necessitates further guidance than simple adherence to the reporting requirements of that Act.

Ministers, their spouses, de facto partners and dependent families shall avoid circumstances in which the acceptance of an offer by way of a gift or any other consideration could result in a conflict of interest with public duty, or in circumstances in which an offer is made with the objective of securing, or in return for, favour or preferment.

When there is any doubt about conflict arising, Ministers should refer the matter to the Premier who may refer it to Cabinet. In no circumstances will Ministers be able to accept money or gifts in kind by way of free accommodation or free air travel. Where accommodation or travel is offered on a 'guest of government' basis, or by private organisations, prior endorsement by the Premier will be required. Ministers may:

- a) accept on behalf of the Government gifts from representatives of governments either overseas or in Australia;
- b) accept on behalf of the Government gifts from private organisations or individuals in those overseas countries where it is customary to do so;

- c) accept personal gifts from organisations or individuals only if the gift is in the nature of a souvenir, a memento, or a symbolic item of low material value. These would include such items as cuff links, brooches, plaques and books. Such gifts may be retained by the Minister.

Additional guidelines for the acceptance and giving of gifts by Ministers are contained in Appendix D.

## **12. Relations with the Public Service**

Ministers' obligations in relation to the establishment of proper relations between Ministerial officers and departments and agencies are set out in section 74 of the *Public Sector Management Act 1994*.

## **13. Recordkeeping Responsibilities**

The *State Records Act 2000* came into effect in March 2001. The Act governs how government records are created, maintained, destroyed or permanently preserved as State archives. A Minister of the Crown is defined as a government organisation under the Act and therefore Ministers are required to keep records that properly and adequately record the performance of the Ministers' functions, in compliance with the provisions of the Act.

Additional information relating to Ministers' recordkeeping responsibilities is provided in Appendix E.

## **14. Conduct during the caretaker period**

By convention, the Government assumes a 'caretaker' role in the period immediately before a State General Election. This role commences from the date of the dissolution of the Legislative Assembly and continues until the election result is clear, or in the event of a change of government, until the new government is formally sworn-in. In this period, efforts are made to ensure that decisions are not taken which would bind an incoming government and limit its freedom of action.

The arrangements adopted apply generally in terms of the operations of government and public sector agencies and are intended, wherever possible to ensure that:

- significant appointments are not made;
- major policy decisions are not taken which would be likely to commit an incoming government (including the implementation of new policies or approval of major projects within government programs);
- no commitments are made to major contracts or undertakings;
- Members of Parliament do not undertake air travel at public expense for electioneering purposes;

- electioneering is not undertaken through government advertising, publications or electronic communications;
- public sector officers do not use public resources or their positions to support party political activities.

Ministers shall adhere to guidelines issued by the Premier during the caretaker period.

#### **15. Staff responsibilities**

A Minister will also be responsible for ensuring that members of his or her Ministerial staff are made aware of their ethical responsibilities and will require of staff such disclosure, divestment of personal interests or other action as seems appropriate to the Minister and the Premier.

#### **16. Post separation employment**

Ministers leaving government should exercise care in taking up employment or business activities in the period immediately after leaving government. In particular, they should take care in accepting offers of employment from bodies:

- which are in a contractual relationship with the State Government;
- which are in receipt of subsidies or benefits from the Government not received by a section of the community or the community at large;
- in which the Government is a shareholder;
- which are in receipt of government loans, guarantees or other forms of capital assistance; or
- with which the departments or branches of government are, as a matter of course, in a special relationship.

In all areas, confidential information gained during office must not be used and care should be taken to ensure that preferential treatment for the new employer or the business is not obtained by the use of contacts and personal influence by the former Minister.

#### **17. Corruption and Crime Commission**

The Corruption and Crime Commission was established in January 2004 to replace the Anti-Corruption Commission. The Commission's role includes the investigation of misconduct, corruption and criminal conduct by a Western Australian public officer. Under the *Corruption and Crime Commission Act 2003* a "public officer" has the meaning given by section 1 of *The Criminal Code*, which includes "a Minister of the Crown".

Detailed Guidelines on Dealing with Misconduct in the Public Sector can be accessed via the Corruption and Crime Commission of Western Australia website.

**18. Contact with Lobbyists**

Legislation will be introduced to regulate the conduct of lobbyists in Western Australia. In the meantime, Ministers and Parliamentary Secretaries must comply with the Contact with Lobbyists Code which came into effect on 16 April 2007. Under the Code, Ministers and Parliamentary Secretaries are not to permit lobbying by a lobbyist who is not listed on the Government's Register of Lobbyists. The Contact with Lobbyists Code applies to Ministers and Parliamentary Secretaries acting in an official capacity or undertaking official duties.

Details of the obligations of Ministers and Parliamentary Secretaries are provided in the Contact with Lobbyists Code. A copy of the Code is provided in appendix H.

The Register of Lobbyists is available on the Department of the Premier and Cabinet's website at <http://www.lobbyistsregister.dpc.wa.gov.au>.

## **APPENDIX A: GUIDELINES FOR MINISTERIAL EXPENSES AND USE OF PUBLIC RESOURCES**

### **Credit Cards**

- All credit card bank statements are to be certified by the cardholder as follows: "This expenditure was incurred on official government business and has not been subject to a claim on funds from any other source."
- The bank statement must also be signed and dated by the cardholder.
- All credit card bank statements must be supported with credit card sales vouchers and receipts at the time of processing for payment.
- Monthly bank statements for credit card charges must be referred to the Ministerial office for certification and attachment of support documents before payment is made by the agency.
- Cardholders must not certify payments as "Incurring Officer", for expenditure on credit cards issued to themselves, unless approved for payment by the Minister.
- Ministerial Offices, in incurring expenditure in the area of hospitality, should abide by the guidelines for expenditure on official hospitality and should certify such expenditure accordingly.
- All expenditure in relation to credit cards must be noted and appropriate records must be retained by the Incurring Officer of each Ministerial Office.
- Ministerial office staff should be reminded that if they are travelling, or purchasing, on government business at government expense, they should not claim gifts, free travel or other benefits for personal use.
- No personal expenditure is to be incurred on credit cards.
- Tips are not to be permitted by credit cardholders in Ministerial Offices unless it is customary to do so when travelling overseas.
- Credit cards must not be used for cash advances unless approved by the Principal Accounting Officer, Financial and Administrative Services Branch, Department of the Premier and Cabinet.
- Cardholders making purchases over the Internet should ensure that the supplier web site displays the 'locked padlock' icon in their web browser. Cardholders should consider the following when making purchases over the Internet:
  - How well do you know the supplier?
  - How much information is provided by the supplier on the security of the transaction, for example, is information provided on the encryption?
  - Are other options for procurement available? If so, do the benefits of using the Internet outweigh any potential risks?

## **Taxis**

- Usage is to be strictly monitored, and accounted for, by Ministerial Offices to reduce the level of usage. Taxi vouchers must be controlled within a Ministerial Office by a designated officer and appropriate recording methods should be maintained to account for all taxi usage.
- All taxi travel to and from the workplace, for commuting purposes, must be authorised and used only where travel by public transport would cause hardship or threat to an officer.
- Taxi usage must be authorised and related to official government business at all times.
- Employees, if authorised to use a taxi voucher to commute home, must use the voucher within a reasonable time from the cessation of duties.
- Tips for the use of taxis are not to be permitted by Ministerial Offices.
- Separate accounts for each Ministerial Office should be established with Cabcharge to ensure that all taxi vouchers are forwarded to that Office and charges are checked for correct authorisation and usage prior to the payment of the monthly account.
- If separate accounts for each Ministerial Office are not established with Cabcharge, all taxi vouchers relating to the Ministerial Office must be referred to that Office for approval prior to payment being made by the agency.

## **Guidelines for use of official vehicles**

Ministers and certain Parliamentary Office Holders are provided with a government vehicle to assist in carrying out the functions of their offices.

The following guidelines should be observed in the use of these vehicles:

- The primary reason for the provision of the vehicle is for the use of the person to whom it has been allocated. The car should always be available for official purposes.
- At other times, the vehicle may be used in the same manner as those vehicles allocated to Senior Officers covered by the Salaries and Allowances Determination. This provides for private usage by the Minister/Office Holder and others authorised by him or her.
- It is the responsibility of the Minister/Office Holder to ensure that any private usage of the vehicle is appropriate.
- The Minister/Office Holder to whom the vehicle is allocated is responsible for ensuring that any person, who is not a public sector employee, permitted to drive the vehicle holds a valid driver's licence.
- The Minister/Office Holder is responsible for the proper care of the vehicle.



Appendix A

- It is expected that the vehicles will not be taken outside the State, other than in exceptional circumstances, and only with the prior approval of the Premier.

## **APPENDIX B: GUIDELINES FOR EXPENDITURE ON OFFICIAL HOSPITALITY**

As a general guide, expenditure on official hospitality can be incurred in the following circumstances:

- To facilitate the conduct of government business through persons who can contribute either by advice or service or because of their vocational or business interests.
- To reciprocate hospitality, provided it serves the same general purposes.
- To extend hospitality to overseas visitors when the Minister has an interest in, or obligation towards, facilitating the visit.
- To extend hospitality to the diplomatic and consular corps.
- To extend hospitality to representatives of the media on those occasions when media attendance is considered appropriate.
- To meet the cost of “working meals” where:
  - A full day’s meeting has been scheduled and there are cost advantages in continuing the meeting through the meal break; or
  - The meal is attended by a person or persons from an organisation other than the host department or agency and is for the purpose of transacting business with that person or persons.

Working meals should not be a regular occurrence. They should be held at the work/meeting location and be of a simple standard involving low charges per head eg sandwiches, fruit and tea/coffee; salad and tea/coffee; light luncheon. Working meals would not normally involve alcohol.

- To purchase minor gifts of a protocol or public relations nature where presentation of such gifts is in conformity with a Minister’s functions.

### **General Principles**

- The over-riding principle is that the level of entertainment or hospitality provided should be appropriate to the role of the Minister and to the purpose of the occasion. Any concerns or queries in this regard should be referred to the Department of the Premier and Cabinet
- Except in special circumstances, expenditure must not be incurred on hospitality associated with functions of an interdepartmental or intraorganisational nature.
- As a general rule, and unless significant cost advantages can be demonstrated, Ministers should not operate accounts at restaurants, hotels or other such premises for the purpose of entertaining or providing hospitality. Any such accounts must be authorised by the Director General, Department of the Premier and Cabinet.

## Appendix B

- Officers should not claim reimbursement from their employer or allowances under the Public Service Award and other agreements in respect of meals charged against official hospitality.
- Where officers are travelling as a team or delegation, the leader of the team should be responsible for any expenditure charged to hospitality funds.
- Hospitality accounts submitted for payment must:
  - state the purpose of the hospitality provided and the names of those who were entertained or on whose behalf the expenditure was incurred (for FBT purposes).

However, on occasions where it is not considered appropriate to identify individuals due to the sensitive or confidential nature of the discussions, the types and numbers of people should be provided.
  - be incurred by a senior officer other than the officer responsible for providing the hospitality.
  - be certified by the officer responsible for providing the hospitality to the effect that: "This expenditure was incurred for official hospitality purposes in accordance with the approved guidelines".
- Tips or gratuities should only be paid where it is customary to do so when travelling overseas or where deemed appropriate by the Minister.
- The purchase of excessive quantities of alcohol is not considered an acceptable use of hospitality funds.
- Hospitality funds should not be used as a general rule for functions to farewell officers on the occasion of their retirement or transfer or to celebrate other personal events such as promotions, weddings, births etc.

## **APPENDIX C: GUIDELINES FOR MINISTERIAL TRAVEL**

### **Class of Travel**

Ministers are entitled to "Business" class travel.

One staff member of a Minister's office who is accompanying the Minister on official business may also travel "Business" class. Other personnel accompanying the Minister are to travel according to the class of travel appropriate to their category.

### **Approval Procedures**

All overseas travel by Ministers requires the Premier's prior approval.

Requests for approval should be submitted a minimum of two weeks, but preferably a month, prior to the proposed travel using the travel proposal form.

Ministers may undertake domestic air travel under their own authority.

### **Approval Guidelines**

Travel is not to be undertaken unless it is demonstrated that it is the most cost effective and efficient method of performing the function or obtaining the required information and all other methods have been considered.

No overseas travel is to be undertaken unless it is demonstrated that such a function could not be undertaken by existing Western Australian Government overseas offices.

If officers or other persons are accompanying a Minister whilst travelling on official business, the number of such people is to be kept to a minimum.

Ministers will only be given approval to be accompanied on overseas travel by their spouse or partner with the written approval of the Premier.

### **Acting Arrangements**

The need to seek the appointment of an acting Minister during absences overseas or while on leave is at the discretion of Ministers. However, it is recommended that such appointments should be considered on every occasion to ensure that should an emergency arise there is no disruption to the executive government process. In any event, where an absence of three days or more is planned, the Director General, Department of the Premier and Cabinet, must be provided with the name of a Minister who has agreed to act in the relevant portfolios during that time.

To ensure that the formal processes can be properly undertaken, the details of the acting arrangement must be forwarded to the Department of the Premier and Cabinet no later than one week prior to the Minister's departure.

If travel plans are cancelled or amended after approval of the acting arrangements is received, the Department of the Premier and Cabinet must be notified in writing immediately.

### **Reporting**

Ministers are required to submit detailed reports on any overseas travel. The report must be submitted to the **Director General of the Department of the Premier and Cabinet** within two months of the completion of each overseas trip.

The following information should be included:

- Dates of travel
- Destinations
- Details of all members of the official party
- Costs incurred and the source of funding
- Statement on the purpose and benefits derived from the trip

### **Frequent Flyer Points**

Ministers and Public Sector officers are obliged to comply with the provisions of Premier's Circular 2004/13 which, among other things, provides that frequent flyer points or benefits under any other incentive or loyalty schemes, accumulated in the course of official travel, must not be used for private purposes.

The value of travel incentives can be converted for the benefit of an individual or agency as a whole, provided that the benefit or ticket upgrade is in accord with the Minister's or officer's entitlement.

## **APPENDIX D: GUIDELINES FOR THE ACCEPTING AND GIVING OF GIFTS BY MINISTERS**

These guidelines apply to all Ministers (and their immediate families) who receive gifts in the course of their official duties.

### **Definition of Gift**

For the purposes of these guidelines, the term "gift" includes items of commercial, historical, cultural or religious value, property (real estate or otherwise), transfers of money, loans of money or property, free air travel and/or accommodation, and sales at valuations significantly below proper valuations.

The definition does not include items which can be regarded as souvenirs or mementos such as craft items, cuff links, brooches, ties, scarves, books, stationery and the like, the manufacturer's recommended retail value of which does not exceed \$A300 at the time and place of purchase.

The definition also does not include gifts given to Ministers or their immediate families by family members or personal friends in a genuinely personal capacity.

### **Gifts Received**

Ministers and members of their immediate families should not under any circumstances accept gifts:

- which could give the appearance of a conflict of interest with a Minister's duties (past, present or future);
- which are given with the object of securing, or returning, favour or preferment;
- which involve the transfer of moneys, regardless of value, eg. cash or loans.
- which involve free accommodation or free air travel.

If there is any doubt in this regard, Ministers should refer the matter to the Premier who may refer it to Cabinet.

### **Declaration of Gifts Received**

Gifts received in the course of official duty are to be declared:

- When received overseas, to Australian Customs, at the point of entry if the gift falls outside the normal duty free passenger concession, or if the gift is subject to quarantine inspection. These concessions/products are shown on the Customs, Quarantine and Wildlife Statement that must be completed on arrival in Australia.

If an overseas gift does not qualify for duty free entry under the normal passenger concession, customs duty and GST are payable at the appropriate rates.

- Whether received overseas or within Australia, to the Chief of Protocol, Department of the Premier and Cabinet, within 30 days of receipt or on return to Australia (if received overseas), where the value of the gift is believed to exceed the stated valuation limit or where there is likely to be some particular sensitivity associated with the gift.

### **Valuation of Gifts**

Should the Minister wish to retain a gift, a formal valuation should be obtained if the value of a gift exceeds the stated valuation limit or if there is any doubt about its value. The valuation should be obtained by the Minister's office and the valuation certificate submitted, together with the Minister's declaration, to the Chief of Protocol, Department of the Premier and Cabinet.

Valuations are to be obtained from valuers competent to value in the field. Any costs incurred in obtaining the valuation are to be borne by the Minister's office.

Should the Minister wish to surrender the gift, a formal valuation is not required, but an approximate valuation should be provided if possible.

### **Retention or Surrender of Gifts**

Gifts in excess of the stated valuation limit may be retained by the Minister if the Minister elects to pay the difference between the stated valuation limit and the value of the gift.

Where a payment is required to meet this difference, the payment should be made payable to the Department of the Premier and Cabinet and forwarded with the valuation certificate and completed declaration form to the Chief of Protocol, Department of the Premier and Cabinet.

Where the value of the gift exceeds the stated valuation limit and the Minister elects not to pay the difference, the gift is to be surrendered by the Minister to the Chief of Protocol, Department of the Premier and Cabinet. The recommendation for the future use of surrendered official gifts (which all Ministers are requested to provide) should be accompanied by a formal acknowledgment relinquishing the Minister's claim to ownership to allow the appropriate disposal action to be taken.

Gifts surrendered to the Department of the Premier and Cabinet may be:

- transferred on loan to Ministers' Offices, State Government Agencies, the Museum, Art Gallery, libraries, archives and special interest collections, educational or community institutions.
- donated to a nominated non-profit organisation or charity at the discretion of the recipient and/or the Department of the Premier and Cabinet; or

- disposed of in an appropriate manner by the Department of the Premier and Cabinet.

The Chief of Protocol, the Department of the Premier and Cabinet, maintains a "Register of Gifts Received" and is responsible for maintaining it on a permanent basis. The register records the following details:

- a full description of the gift received;
- estimated or assessed value;
- identity of the person or body making the gift; and
- the method of disposal (purchase by Minister, public display, retention by Minister's office etc).

### **Giving of Gifts**

Within 30 days of a gift, the value of which exceeds \$A150, being given by a Minister, or within 30 days of return to Australia if the gift is given overseas, the following details must be provided (in writing) by the Minister's Office to the Chief of Protocol, Department of the Premier and Cabinet:

- A full description of the gift
- its retail or assessed value
- the date the gift was given; and
- the identity of the person, group or body to whom or which the gift was given.

The Chief of Protocol, Department of the Premier and Cabinet will record the details in the "Register of Gifts Presented".

Advice in respect of the nature and type of gifts to be given by Ministers and/or their staff is available from the Protocol Branch and should be sought prior to presentations being made, to avoid any duplication of gifts by Ministers.

### **Breaches of the Policy**

Where the Internal Auditor of the Department of the Premier and Cabinet becomes aware of any breach of this policy by a Minister, the Officer shall report the breach to the Director General.



## **APPENDIX E: RECORDKEEPING RESPONSIBILITIES UNDER THE STATE RECORDS ACT 2000**

The Department of the Premier and Cabinet is the agency designated with recordkeeping responsibility for Ministers and Parliamentary Secretaries. Ministers, their Parliamentary Secretaries and employees and contractors providing services to or on behalf of Ministers, are required to comply with the Department's recordkeeping plan.

The Department's plan establishes recordkeeping policy and programs for ministerial records and provides a framework for systematic and consistent recordkeeping. The ministerial recordkeeping program, prepared in accordance with the recordkeeping plan, establishes the minimum recordkeeping requirements for the government records of Ministers and Parliamentary Secretaries.

Ministers, their Parliamentary Secretaries and staff should:

- Understand their recordkeeping responsibilities.
- Have knowledge of records management procedures.
- Be familiar with and follow the Ministerial recordkeeping principles and practices.
- Be aware of and follow the electronic recordkeeping advice.
- Understand that records may only be disposed of in accordance with approved disposal authorities, and may not be removed from records systems or altered without authority.

The authority to destroy government records is subject to State Records Commission authorisation and the Director General of the Department of the Premier and Cabinet is required to certify the destruction of records under the approved authority.

Under section 78 of the Act it is an offence:

- Not to keep a record in accordance with the recordkeeping plan;
- To transfer government records to unauthorised persons;
- To destroy government records unless authorised by the recordkeeping plan; and
- To have unauthorised possession of government records.

### **Electorate Office and Party Political Business**

Recordkeeping practices must clearly distinguish Minister's constituency, party political and personal documents as these are not subject to the *State Records Act 2000* or the *Freedom of Information Act 1992*.

For the purposes of the Act, party political records are limited to records relating to the Minister's political party business only. Any records of a political nature created or received as part of the Minister's functions are government records. Records received or created by the Minister's electorate office relating to the Minister's constituency business are not government records.

Electorate and party political records held in a Minister's Office must be retained separately from government records or the records could be considered government records.

Records of parliamentary business are covered under the Legislative Assembly and Legislative Council (Parliamentary) Recordkeeping Plans. Parliamentary records are considered "state records" and are subject to the *State Records Act 2000*. Refer to Parliamentary Recordkeeping Plans when dealing with these records.

Information regarding the Department's recordkeeping plan, as well as general recordkeeping advice and assistance, is available from the Corporate Information Branch of the Department of the Premier and Cabinet.

For further information please contact:

Manager Corporate Information Branch  
Tel: (08) 9222 9416

## APPENDIX F: INDIRECT PECUNIARY INTERESTS (REMOTE AND DERIVATIVE)

### Remote Interests

Ministers may have pecuniary interests that are sufficiently remote from their influence and control that they do not pose a realistic risk of conflict. Examples would include:

- membership of a large superannuation scheme with numerous members and widely diversified investments; or
- an interest in a managed fund, where a Minister has no control over investment decisions, and where the investment profile of the fund is broadly spread.

Where a Minister has a remote interest of this type, it may be declared in summary form. That is, the Minister should declare membership or investment in the relevant superannuation fund, managed fund or other entity. Details of the investments of that entity are not required.

Once a remote interest has been declared in summary form no further declaration or disclosure is required unless a Minister becomes aware of special circumstances that might give rise to a real or perceived conflict of interest.

For the purpose of determining whether an interest should be treated as a remote interest, the following factors are relevant:

- the extent to which the Minister can influence investment decisions of the entity;
- the extent to which the Minister is involved in the management of the entity;
- the extent to which a Minister reasonably may be expected to have a detailed knowledge of the investments of the entity; and
- the extent to which an entity's investments are sufficiently diversified that the value of a Minister's interest would be unlikely to be significantly affected by decisions of Cabinet.

Ministers must seek the advice of the Cabinet Secretary before disclosing an interest as a remote interest. In case of doubt, interests should be disclosed in the usual fashion, rather than making the disclosure in summary form. Categorisation of an interest as a remote interest is the sole responsibility of the Minister concerned.

The remote interest classification and the less onerous reporting requirements apply to the interests of the spouse, de facto partner and dependent family members of a Minister as well.

## **Derivative Interests**

Ministers may have pecuniary interests several steps removed from themselves that are sufficiently indirect so as not to pose a realistic risk of conflict.

The most common instance of a derivative interest is where a Minister holds shares in a company which is not itself affected by a Cabinet or other government decision, but where that company in turn holds shares in another company that will be affected by such a decision. These situations may arise at multiple removes so that the company affected by the relevant decision may be several steps distant from the company in which the Minister has an interest.

While a derivative interest may give rise to a conflict of interest in some circumstances, the derivative interests of the Minister will often be so distant and insignificant so as to pose no realistic perception of a conflict of interest. In many cases such interests will be unknown to a Minister, especially when the interest resides with a Minister's spouse or de facto partner. Whether it is reasonable for a Minister to have been unaware of a derivative interest when involved in a related Cabinet decision will depend on all the circumstances, including the size and value of the interest concerned, its degree of remoteness from the Minister and the nature of the decision being made.

**APPENDIX G: DISCLOSURE STATEMENT**

**1. PERSONAL DETAILS**

Ministers are to list all people whose interests they are required to disclose under the Code of Conduct and indicate in the box to the right the relationship they have with that person as follows: **S** – Spouse; **D** – De Facto Partner; **F** – Dependent Family Member.

Party	Full Name
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Minister: \_\_\_\_\_

Person A \_\_\_\_\_

Person B \_\_\_\_\_

Person C \_\_\_\_\_

Person D \_\_\_\_\_

Person E \_\_\_\_\_

Person F \_\_\_\_\_

Person G \_\_\_\_\_



**B. Sources of Income**

**(i) Income from trade, profession or vocation**

Description of trade, profession of vocation (with partnership name, if applicable)	Name and address of employer or description of the office held	Holding Party

**(ii) Income from trusts**

Name and address of settlor	Name and address of trustee	Holding Parties

**(iii) Other sources of income**

Details	Holding Parties

**C. Interests in trusts**

Name and address of settlor	Name and address of trustee	Holding Parties







**G. Debts for which liable**

Name of lender	Address of lender	Holding Parties

**H. Dispositions of Property where benefit or interest retained**

Details	Holding Parties



## CONTACT WITH LOBBYISTS CODE

### 1. Preamble

Free and open access to the institutions of government is a vital element of our democracy.

Lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with relevant Government Representatives.

In performing this role, there is a public expectation that Lobbyists will be individuals of strong moral calibre who operate according the highest standards of professional conduct.

The Government has established the Contact with Lobbyists Code to ensure that contact between Lobbyists and Government Representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

### 2. Application

2.1 The Contact with Lobbyists Code has application through the Codes of Conduct of public sector bodies.

2.2 The Contact with Lobbyists Code creates no obligation for a Government Representative to have contact with a particular Lobbyist or Lobbyists in general.

2.3 The Contact with Lobbyists Code does not serve to restrict contact in situations where the law requires a Government Representative to take account of the views advanced by a person who may be a Lobbyist.

### 3. Definitions

"Director General" means Director General of the Department of the Premier and Cabinet.

"Lobbyist" means a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative. "Lobbyist" does not include:

- (a) an association or organisation constituted to represent the interests of its members;
- (b) a religious or charitable organisation; or
- (c) an entity or person whose business is a recognised technical or professional occupation which, as part of the services provided to third parties in the course

of that occupation, represents the views of the third party who has engaged it to provide their technical or professional services.

“Lobbyist’s Details” means the information described under clause 5.1.

“Government Representative” means a Minister, Parliamentary Secretary, Ministerial Staff Member or person employed, contracted or engaged by a public sector agency.

“Ministerial Staff Member” means a person employed under section 68 of the *Public Sector Management Act 1994*; a person seconded to a Ministerial office under section 66 of the *Public Sector Management Act 1994*; or a person otherwise placed, contracted or engaged in a Ministerial office.

#### **4. Contact between Lobbyists and Government Representatives**

4.1 A Government Representative shall not at any time permit lobbying by:

- (a) a Lobbyist who is not on the Register of Lobbyists;
- (b) any employee, contractor or person engaged by a Lobbyist to carry out lobbying activities whose name does not appear in the Lobbyist’s Details noted on the Register of Lobbyists in connection with the Lobbyist;
- (c) any Lobbyist or employee, contractor or person engaged by a Lobbyist to carry out lobbying activities who, in the opinion of the Government Representative, has failed to observe any of the requirements of clause 4.3.

4.2 Contact with a Government Representative for the purposes of lobbying activities by a Lobbyist includes:

- (a) telephone contact;
- (b) electronic mail contact;
- (c) written mail contact; and
- (d) face to face meetings.

4.3 When making an initial contact with a Government Representative about a particular issue on behalf of a third party for whom the Lobbyist has provided paid or unpaid services, the Lobbyist must inform the Government Representative:

- (a) that they are a Lobbyist or employee, contractor or person otherwise engaged by the Lobbyist who is currently listed on the Register of Lobbyists;
- (b) that they are making the contact on behalf of a third party;

(c) the name of the third party; and

(d) the nature of that third party's issue.

## **5. Register of Lobbyists**

5.1 There shall be a Register of Lobbyists which shall contain the following information:

(a) the business registration details of the Lobbyist, including names of owners, partners or major shareholders as applicable;

(b) the names and positions of persons employed, contracted or otherwise engaged by the Lobbyist to carry out lobbying activities;

(c) the names of third parties for whom the Lobbyist is currently retained to provide paid or unpaid services as a Lobbyist; and

(d) the names of persons for whom the Lobbyist has provided paid or unpaid services as a Lobbyist during the previous three months.

5.2 A Lobbyist wishing to have contact with a Government Representative for the purposes of lobbying activities may apply to the Director General to have their Lobbyist's Details recorded in the Register of Lobbyists.

5.3 The Lobbyist shall submit updated Lobbyist's Details to the Director General in the event of any change to the Lobbyist's Details.

5.4 The Lobbyist shall provide to the Director General within 10 business days of each of 30 March, 30 June, 30 September and 30 December each year a confirmation that their Lobbyists Details are up to date.

5.5 The registration of a Lobbyist shall lapse if a confirmation is not provided to the Director General by the dates referred to under clause 5.4.

## **6. Access to the Register of Lobbyists**

6.1 The Register of Lobbyists shall be a public document.

6.2 The Director General shall ensure that the Register of Lobbyists is readily accessible to members of the public.

## **7. Principles of Engagement with Government Representatives**

7.1 Lobbyists shall observe the following principles when engaging with Government Representatives:

(a) Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment;

- (b) Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies;
- (c) Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions; and
- (d) Lobbyists shall keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party.

## **8. Registration**

The Director General may at his or her discretion:

- 1) refuse to accept an application to be placed on the Register of Lobbyists; and
- 2) remove from the Register of Lobbyists the details of a Lobbyist

if, in the opinion of the Director General,

- (a) any prior or current conduct of the Lobbyist or his employee, contractor or person otherwise engaged to provide lobbying services for the Lobbyist has contravened any of the terms of this Code; or
- (b) any prior or current conduct of the Lobbyist or association of the Lobbyist with another person or organisation is considered to be inconsistent with general standards of ethical conduct; or
- (c) the registration details of the Lobbyist are inaccurate; or
- (d) not confirmed in accordance with the requirements of clause 5.4; or
- (e) there are other reasonable grounds for doing so.

8 February 2007



## RESOLUTIONS OF THE HOUSE

**CODE OF CONDUCT FOR  
MEMBERS OF THE LEGISLATIVE  
ASSEMBLY**

Adopted by the House on 28 August 2003, V. &  
P., p. 776.

**Code of Conduct****Preamble**

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

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

**The Code****(1) Purpose of this Code**

The purpose of the Code of Conduct is to assist members of the Legislative Assembly in the discharge of their obligations to the Legislative Assembly, their constituents and the public at large.

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### **(2) Conduct**

Members shall accept that their prime responsibilities are to –

(a) perform their public duty in an objective manner and without consideration of personal or financial interests, including a duty to declare any relevant private interests; and

(b) represent the interests of their own electorate and their constituents.

### **(3) Disclosure of conflict of interest**

(a) A conflict of interest exists where a member participates in or makes a decision in the execution of their office knowing that it will improperly and dishonestly further the Member's private interest or another person's private interest directly or indirectly.

(b) A conflict of interest also exists where the member executes, or fails to execute, any function or duty knowing that it will improperly and dishonestly benefit their or another person's private interests directly or indirectly.

(c) Members are individually responsible for preventing conflicts of interest and must carry out their official functions and duties and arrange their private affairs to the best of their endeavours to prevent such conflicts of interest arising.

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

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(e) This may be done through declaring their interests under the *Members of Parliament (Financial Interests) Act 1992* or any rule or order of the House that may so require through declaring their interest when speaking on the matter in the Legislative Assembly or a Committee, or in any other public and appropriate manner.

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

### **(4) Bribery**

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

### **(5) Gifts**

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

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

(c) Members may accept political contributions in accordance with Part VI of the *Electoral Act 1907*.

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### **(6) Use of public resources**

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

### **(7) Use of confidential information**

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

### **(8) Proper relations with Ministers and the public service**

(a) Members should not approach Ministers, public servants or public bodies on a matter connected with a private interest without appropriate disclosure.

(b) Members shall not use improperly their influence in order to obtain appointment, promotion, advancement, transfer or any other advantage within the public sector on behalf of themselves or another or to affect the proper outcome of any procedure established under the legislation for the management of the public sector.

### **(9) Freedom of Speech**

Members must be mindful of the privileges conferred when speaking in the Legislative Assembly and should consciously avoid causing undeserved harm to any individual who does not enjoy the same privileges.

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### **(10) Misleading the Parliament or the Public**

Members must not knowingly mislead the Parliament or the public in statements they make and are obliged to correct the Parliamentary record as soon as possible when incorrect statements are made unintentionally.

### **(11) Participation in Political Parties**

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

### **(12) Parliamentary Behaviour and Tolerance**

(a) It is recognised that a balanced and diversity-respecting Parliament benefits the society it reflects and represents. A sense of tolerance and respect of different political positions should direct the working environment in the Parliament.

(b) Members must apply high standards of behaviour and consciously avoid personal abuse and denigration of Parliamentary colleagues.

### **Procedure for breaches of the Code**

Alleged breaches of the Code of Conduct should, at the earliest opportunity be dealt with under the procedures prescribed for raising a matter of privilege under the Standing Orders.

