



Queensland Parliamentary Service

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Your Ref: Our Ref: IEPPC

7 February 2011

Ms Anna Burke MP
Chair
Standing Committee of Privileges and Members' Interests
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Ms Burke

Inquiry into draft code of conduct for the Members of the Australian Parliament

I would like to thank your committee for the opportunity to make a submission to the above inquiry.

I have addressed each of the five areas that your committee has identified for discussion in turn.

Nature of appropriate code of conduct for Members of Parliament

The Queensland Parliament's Code of Ethical Standards was last adopted by the House in 2004 with the last hard copy version published in 2006. Since then there have been some minor amendments to the code which have been reflected in the version published on the internet at

<http://www.parliament.qld.gov.au/view/committees/documents/MEPPC/other/ethicalStandards/CodeOfEthicalStandards.pdf>

The Integrity, Ethics and Parliamentary Privileges Committee (IEPPC) is a statutory committee of the Queensland Parliament established under the *Parliament of Queensland Act 2001* (POQA).

The IEPPC's area of responsibility about the ethical conduct of members, pursuant to s 92 of the POQA, includes—

- publishing and reviewing a code of ethical conduct for members¹ (other than members in their capacity as ministers), including procedures for complaints about a member not complying with the code: s 92(1)(a).

In 2010, the current IEPPC conducted a review of the Code in accordance with its statutory responsibilities. Please find enclosed a copy of the IEPPC's Report No. 112 which is currently being considered by Government.

In report 112, the IEPPC notes that the current version of the Code has evolved over time and with new sections being added such that it has become a comprehensive but nonetheless complex document (65 pages). The committee noted the current format of the document may make it difficult for a new member to quickly come to terms with their responsibilities and obligations under the Code.

¹ Code of Ethical Standards: Legislative Assembly of Queensland: September 2004: as amended 30 June 2006, 9 February 2009, 11 May 2009, Brisbane, Queensland Legislative Assembly.

Accordingly, the committee prepared a draft simplified version of the code for the purposes of discussion. This draft focused on the fundamental principles of ethical behaviour applying to members and the key obligations arising out of these principles. The draft was conceived on the assumption that it is not possible to detail all possible ethical situations or dilemmas that a member may face. Rather the draft Code serves to remind Members of their obligations and to guide Member's decision making in relation to ethical issues.

The current committee's approach is slightly at odds with the previous Members' Ethics and Parliamentary Privileges Committee's (MEPPC) approach. The MEPPC's Report No. 21 which first canvassed the MEPPC's responsibility to promulgate a code of conduct, pages 13-14 of that report referred to the Western Australian Commission on Government (COG), *Report No. 3*, April 1996 where COG described and summarised the four major categories of codes of conduct as follows:

- *those that attempt to provide guidance on every possible issue that the official is likely to encounter;*
- *those that set out a limited number of general principles to assist officials in reaching their own decisions when confronted with an ethical dilemma;*
- *those that set out optimal ethical standards in an endeavour to encourage officials to choose the highest achievable standards; and*
- *those that prescribe minimum standards which must not be transgressed.*

The COG noted, and the MEPPC repeated, that criticisms could be made of each category. For example:

... The code that attempts to cover all possible contingencies will be likely to be bulky, inflexible and possibly difficult to use. Furthermore, as it is never possible to foresee all dilemmas that may arise, officials who rely upon such a code and are not aware of the ethical principles that underlie it, may not be able to resolve such dilemmas.

On the other hand, a code that enunciates only general principles may be difficult to apply to practical situations unless it is supported by an organisational climate that encourages officials to discuss ethical problems and provides suitable ethical training.

Aspirational codes that seek to encourage the highest possible standards of behaviour may be too vague to apply in practical situations where trade offs must be made because of resource restraints.

Codes that set minimum standards may result in a public sector where the lowest possible standard of conduct is favoured and excellence is neither sought nor rewarded.

The MEPPC's report 21 at page 15 stated:

The committee carefully analysed the arguments raised in submissions, as well as options put forward by other organisations such as the former EARC, COG and NSW ethics committee.

On balance, the committee agrees with the general viewpoint expressed by the NSW ethics committee that a code of conduct for members of Parliament should be more than a statement of principles, and that it should have some specific provisions to provide members with guidance relating to ethical issues.

...

Based on this discussion, the committee concludes that a code of conduct which is a reasonably prescriptive agency specific code would be most appropriate for Queensland members. The committee envisages that the code would be built around pre-existing, although generally unknown, obligations on members.

It is apparent from this discussion that the current Code of Ethical Standards is a hybrid – being a combination of both the first and third category of documents described by COG. It is both a comprehensive

document that attempts to provide guidance on most issues that members are likely to encounter and sets out optimal ethical standards in an endeavour to encourage members to choose the highest achievable standards.

Queensland's current Code of Ethical Standards benchmarks very highly against other codes from other Parliaments because it provides a single document that contains all of the rules existing in a myriad of sources, and organised in accordance with principles. It is a 'one-stop' shop that provides a basis for education or a source book when an issue arises.

A less comprehensive code, runs the risk of not only being more difficult to enforce, but, in the words of the GOC, of being '*difficult to apply to practical situations unless it is supported by an organisational climate that encourages officials to discuss ethical problems and provides suitable ethical training*'. Nonetheless, in the context of recent developments in the Public Sector such as the proposed Draft Single Code of Conduct for the Queensland Public Service, then the IEPPC's approach of reducing the nature/size of the Members' Code of Ethical Standards compares well.

Processes for making and investigating complaints

In Queensland, the process for making and investigating complaints involves an allegation by a Member that another Member has breached the Code made in writing to the Speaker under Standing Order 269. The Speaker can then ask the parties for a submission on the matter to assist him/her with a decision of whether to refer the matter to the IEPPC for further investigation as to a possible breach of privilege or contempt.

To date there has not been a referral to the IEPPC or its predecessor committee directly and exclusively relating to a breach of the Code. For example, while matters have been referred to the committee relating to failure to register an interest, the obligation to register an interest is set out in relevant legislation and standing orders as well as the Code.

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

In Queensland, the Integrity Commissioner has a role in providing advice to both Members of Parliament and Senior Public Servants on ethics and integrity issues, particularly in relation to the identification and management of Conflicts of Interest. Under the current regime all government Members of Parliament are required to consult with the Integrity Commissioner on an annual basis.

The Integrity Commissioner is no doubt cognisant of the Code in providing advice to Members. The IEPPC also seeks the Integrity Commissioner's views in performing its function of reviewing the code. This is an appropriate and legitimate role for an Integrity Commissioner to play.

The role a relevant parliamentary committee can play in relation to a code of conduct

As detailed above, in Queensland the IEPPC has a statutory function in publishing and reviewing the code of ethical conduct for members. I believe that an all party committee is the appropriate and legitimate body to perform this role.

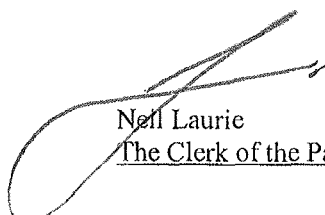
How a code might be enforced and what sanctions should be available

To a large extent the great value of the Code is that it sets a standard that a Member's conduct might be viewed against. The mere fact that a Code is in place means that Members may be challenged by their peers, the media, or members of the public as to whether their conduct complies with the standards as set out in the code. In a sense, for a Member of Parliament to be publicly called to account for his/her conduct in terms of failure to comply with the code is a significant sanction in itself.

In addition, should the failure to comply with the code be found by the IEPPC to amount to a breach of privilege or a contempt then the member would be subject to the range of sanctions that the House may order upon receipt of an adverse finding of the IEPPC.

I hope these brief comments assist your committee in its inquiry.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil Laurie', is written over the typed name and title.

Neil Laurie
The Clerk of the Parliament