



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

Dear Richard,

Please see attached submission to the committee's inquiry into the development of a draft code of conduct for senators.

The submission is confined to comments in relation to paragraph (a) of the terms of reference, namely 'the operation of codes of conduct in other parliaments' and provides a brief overview of the development of the ACT Legislative Assembly's code of conduct for MLAs since the inception of the Assembly in 1989.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Tom Duncan".

Tom Duncan
Clerk

23 March 2011

Introduction

While there have been Assembly debates on, and numerous Assembly committee inquiries into, the desirability of a code of conduct for ACT MLAs since the Assembly's inception in 1989, it was not until 25 August 2005 that the Assembly agreed to a resolution effecting a comprehensive code of conduct applying to all members of the Assembly.

The *Code of Conduct for all members of the Legislative Assembly for the Australian Capital Territory* is aspirational in nature in that it doesn't set out particular penalties for breaches, nor a process for investigating noncompliance, but instead exhorts members to live up to the spirit of its contents and to observe certain expected standards of propriety and probity. The code contains provisions in relation to:

- Duties as members of the Assembly;
- Conflicts of interest;
- Disclosure of pecuniary interests;
- Receipt of any gifts, payments, fees or rewards;
- Advocacy/bribery;
- Use of confidential information;
- Conduct as employers;
- Conduct towards Assembly staff;
- Use of entitlements;
- Use of public resources/property or services; and
- Continuing support for the code by former members of the Assembly.

Code of conduct - Chronology

After its formation in 1989, it did not take long for the ACT Legislative Assembly to grapple with the desirability of a code of conduct for MLAs. Below is a chronology of the inquiries and events that preceded the adoption of a code of conduct by the Assembly in 2005¹.

¹ See McRae et al (2009) *Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory* pp 60-61 accessed at: <http://www.parliament.act.gov.au/companion/04.pdf>

- The 1991 report of the Standing Committee on Administration and Procedures, *Inquiry in the Proposed Ethics Committee/Code of Conduct*², recommended that a code of conduct be instituted and included a proposed draft for the Assembly's consideration. The Assembly did not give effect to the recommendation.
- The first code of conduct for ministers in the Legislative Assembly was presented by the Government in May 1995 and various codes of conduct have been conceived and promulgated by the ACT executive since this time;
- In his 1996 report, *1995 Taxi Plates Auction*, the ACT Auditor-General reflected on the importance of a codes of conduct and recommended that the Queensland Code of Conduct be utilised as a basis for developing guidelines for Members of the ACT Legislative Assembly and public officials³;
- Report No. 18 of the Standing Committee on Public Accounts recommended that the government develop a draft code of conduct for members of the Legislative Assembly⁴;
- In September 1996, the Assembly referred the development of a code of conduct for all members of the Legislative Assembly to the Standing Committee on Administration and Procedure. The committee did not report during the life of the Third Assembly and the reference lapsed.
- In June 1999, the report of the Select Committee on the Report of the Review of Governance recommended that a code of ethics be developed and a commissioner for parliamentary ethics be appointed⁵.
- The issue of a code of conduct for members was again referred to the Standing Committee on Administration and Procedure in the Fourth Assembly which tabled its report in August 2001 recommending the adoption of an 'aspirational' code of conduct incorporated in the Assembly's standing orders (a draft was included in the report for adoption by the Assembly). The committee recommended against the appointment of an ethics

² <http://www.parliament.act.gov.au/downloads/reports/AP%20Ethic%20Committees.pdf>

³ Auditor General's Office *1995 Taxi Plates Auction* p 31 accessed at:
<http://www.audit.act.gov.au/auditreports/reports1996/taxiplts.pdf>

⁴ Standing Committee on Public Accounts (3rd Assembly) *Review of Auditor General's Report No. 2. 1996 Taxi Plates Auction* p 8 accessed at: <http://www.parliament.act.gov.au/downloads/reports/3PAC18.pdf>

⁵ Report of the Select Committee on the Report of the Review of Governance (1999) p 32 accessed at:
<http://www.parliament.act.gov.au/downloads/reports/governance.pdf>

commissioner⁶. No further action was taken to implement a code of conduct during the 4th Assembly.

- On 12 December 2002 the Legislative Assembly resolved that the Standing Committee on Administration and Procedure inquire and report on the 'appropriateness of a code of conduct for members and their staff'. In its report on the inquiry tabled in August 2004, the committee recommended that a code of conduct [along the lines of the draft code provided in the Standing Committee on Administration and Procedure's (Fourth Assembly) report Number 8] be adopted as a resolution of continuing effect of the Assembly and that it be reviewed three years after its adoption⁷. The Fifth Assembly took no further action and did not proceed to adopt a code of conduct.
- On 25 August 2005, after the then Speaker lodged a notice of motion, the Assembly adopted *The Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory* based largely on the draft set out in the Standing Committee on Administration and Procedure's report tabled in August 2004.
- The Standing Committee on Administration and Procedure resolved to undertake a review of the operation of the code of conduct on 6 May 2008 and, in its report presented 5 August 2008, the committee recommended that 'the restriction on Members employing family members be removed from the Code of Conduct for Members' and that 'the Code of Conduct for Members be amended by omitting the following words in paragraph (8) "Members should not appoint close relatives to positions in their offices or any other place of employment where the Member's approval is required". It should be noted that the Speaker who chaired the committee dissented to the report's recommendations. The Assembly did not act on the recommendations contained in this report and on 21 August 2008 the Speaker, Wayne Berry MLA, successfully moved amendments to the *Legislative Assembly (Members' Staff) Act 2004* prohibiting the employment of family members by MLAs⁸.

Contents of the code

McRae et al notes that the code of conduct:

... supplements the statutory obligations placed on Members and the provisions of standing orders and resolutions of the Assembly. It reminds Members of their general obligations to

⁶ Standing Committee on Public Accounts (3rd Assembly) *Inquiry into a Code of Conduct for Members of the Legislative Assembly and a Parliamentary Ethics Adviser for the ACT* Report Number 8 p ii accessed at <http://www.parliament.act.gov.au/downloads/reports/A08codeofconduct.pdf>

⁷ Standing Committee on Administration and Procedure (2004) *Inquiry into the appropriateness of a code of conduct for members and their staff* p 1 accessed at: <http://www.parliament.act.gov.au/downloads/reports/ap06codeofconduct.pdf>

⁸ Section 5(2)

act in the interests of the electorate and to ensure that their actions do not diminish the reputation of the Assembly. Specific requirements with regard to conflict of interest, pecuniary interests, receipt of gifts, advocacy and the use of confidential information consolidate various existing statutory and other requirements. The code also sets standards for the conduct of Members as employers. For example, it reminds them of the need to conform to community standards with regard to terms and conditions of employment and treatment of staff and to avoid any appearance of nepotism in the appointment of staff. Members are also reminded of the need to 'extend professional courtesy and respect to all staff of the Assembly'. Lastly, Members are reminded that the entitlements, services and other resources that they receive in their public capacities must be used appropriately and for legitimate purposes⁹.

A copy of the code is at Attachment A.

Other matters

Declaration of members interests

On 24 May 1989, only two months after the commencement of the First Assembly, and the third sitting day of the Assembly's existence, the Assembly introduced (by way of an order of continuing effect of the Assembly (Continuing Resolution 6)) requirements in relation to declaring private interests of members and their immediate families.

The Assembly's resolution on declaration of members' interests is at Attachment B.

On 10 December 2009, the Assembly agreed to a motion moved by the Speaker, Shane Rattenbury MLA, to amend Continuing Resolution 6 requiring that declarations of members' interests be published on the Assembly website.

These are available at: <http://www.parliament.act.gov.au/members/interests.asp>

Ethics and Integrity Adviser

On 10 April 2008, the Assembly passed a motion requesting that the Speaker appoint an Ethics and Integrity Adviser to provide advice on the operation of the code of conduct, allowing members to seek counsel about particular matters to promote and facilitate ethical decision-making. In the Sixth Assembly an Adviser, Mr Stephen Skehill SC, was appointed to the role and has continued to hold this position since this time.

The resolution requesting that the Speaker appoint an ethics and integrity adviser is at Attachment C. The Adviser is required to report annually and his reports are available on the Legislative Assembly website.

⁹ Op cit McRae p 61.

Travel and DOA reports

On 4 December 2009, the Standing Committee on Administration and Procedure agreed to publish details of Members' travel and Discretionary Office Allocation expenditure on the Assembly website.

ACT Self-Government Act

In addition to the operation of the code of conduct, MLAs are also bound by a number of obligations and legal requirements once elected. Sections 14, 15, and 67 of the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* provide for the disqualification of Members in the event of a conflict of interest.

ATTACHMENT A

Continuing resolution 5

CODE OF CONDUCT

FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

This resolution provides for a code of conduct for Members of the Legislative Assembly.

Resolution agreed by the Assembly

25 August 2005 (as amended 16 August 2006)

That—

(1) Preamble

Members of the Legislative Assembly acknowledge their diversity of background and personal beliefs and that of Australian society, and maintain their loyalty to the Commonwealth of Australia and to the people of the Australian Capital Territory.

In so doing, Members agree to respect and uphold the law, not to discredit the institution of Parliament, and to maintain their commitment to the public good through personal honesty and integrity in all their dealings.

(2) Duties as Members of the Assembly

Members should avoid any decision or action which may depreciate the reputation of the Assembly and endeavour to reasonably adhere to the Assembly's code of conduct to ensure that their personal conduct meets generally accepted standards and does not discredit or call into question their office or the Assembly.

Members acknowledge that they have an obligation to electors to make decisions on their behalf and as such place emphasis on their dedication to this obligation. As elected representatives, Members will act honestly in all their dealings to maintain the public trust placed in them.

Code of Conduct

(3) Conflict of interest

Members have an obligation to use the influence conferred upon them in the public's interest and not for personal gain.

Notwithstanding the provisions set out in section 15 of the *Australian Capital Territory (Self-Government) Act 1988* and standing order 156 of the Legislative Assembly, Members are individually responsible for preventing personal conflicts of interest or the perception of a conflict of interest, and must endeavour to arrange their private affairs to prevent such conflicts arising or take all reasonable steps to resolve any conflict that does arise.

(a) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private interest or will improperly and dishonestly further the private interest of another person.

(b) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or as a broad class of persons.

(4) Disclosure of pecuniary interests

The actions and decisions taken by Members are accountable through the Assembly to the people of the Australian Capital Territory. Members' actions and decisions should be transparent and bolster public confidence in the Assembly and the legislative process. In accordance with this transparency, Members are required to disclose their pecuniary interests pursuant to the resolution of the Assembly "Declaration of Private Interests of Members" agreed to on 7 April 1992 (as amended 27 August 1998 and 17 March 2005).

(5) Receipt of any gifts, payments, fees or rewards

Members must register all gifts, payments, fees or rewards valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources. This does not include gifts, payments, fees or rewards received by Members, the Member's spouse, immediate family or personal friends in a purely personal capacity, unless it may pose a conflict of interest. Registration should be made in accordance with the Member's Statement of Registrable Interests.

(6) Advocacy/bribery

In accordance with the provisions of section 14 of the *Australian Capital Territory (Self-Government) Act 1988*, Members must not solicit, accept or receive any remuneration, benefit or profit in exchange for services rendered in the Assembly or one of its committees other than the remuneration and allowances provided for pursuant to section 73 of the Act.

(7) Use of confidential information

Members are reminded of their obligations pursuant to the standing orders concerning the publication of confidential information.

Members in the course of their duties often are also the recipients of information which is either confidential or unavailable to the general public. Members are privileged to receive this information. It is provided to assist them in their decision making for the benefit of the Territory. The status of this information should not be compromised.

Members are not to misuse any confidential information received, particularly for personal gain or the personal gain of others.

(8) Conduct as employers

Members will observe the obligations placed on them as employers with respect to the terms and conditions of those who work for them. Members should extend these obligations to contractors and consultants (however employed or recruited). Members need to be aware of the requirements of the following policies: occupational health and safety; discrimination, harassment and bullying; equal employment opportunity; acceptable use of information technology and any other relevant policies and legislation.

Members should not appoint close relatives to positions in their own offices or any other place of employment where the Member's approval is required.

Members must ensure that their staff are aware of and abide by the relevant codes of conduct applicable to Members' staff.

Members must ensure that, where relevant, their staff also comply with the Members' Code of Conduct and that they are aware that they are obliged to support the Member's compliance with the code.

(9) Conduct toward Assembly staff

It is expected that Members and their staff will extend professional courtesy and respect to all staff of the Assembly. Members should ensure that through their own conduct and that of their staff, reasonable employment conditions for all building occupants are maintained.

If problems or concerns with the performance or conduct of an Assembly staff member arise, these should be dealt with through appropriate policies and procedures.

(10) Use of entitlements

Members have a personal duty to ensure that entitlements and allowances of office pursuant to Remuneration Tribunal Determinations and as summarised in the Members' Guide are used appropriately in the service of the people of the Australian Capital Territory and not for personal gain.

Members should familiarise themselves with the entitlements available and must ensure the accuracy of all claims made in accordance with the guidelines outlined in the Members' Guide. Members should be aware that items purchased using a Member's allowance remain the property of the Assembly.

(11) Use of public resources/property or services

Members must ensure that the resources provided to them at public expense as Members of the Legislative Assembly for the Australian Capital Territory, are only used for legitimate parliamentary and electorate purposes. Members must not misuse or permit the misuse by any other person or body of these resources.

Members shall not misuse funds allocated for official purposes.

(12) Continuing support

This code of conduct has been established to assist Members as they serve and represent the people of the Australian Capital Territory. The Legislative Assembly respectfully requests that former Members support the spirit of this code as private citizens. This resolution has effect from the date of its passage in the Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.

ATTACHMENT B

Continuing resolution 6

DECLARATION OF PRIVATE INTERESTS OF MEMBERS

This resolution provides that Members shall, within 28 days of taking their seats, declare their private interests. The resolution also sets out how those interests may be accessed.

Resolution agreed by the Assembly

7 April 1992 (amended 27 August 1998, 17 March 2005, 6 March 2008 and 10 December 2009)

That—

- (1) within 28 days of the making and subscribing of an oath or affirmation as a Member of the Legislative Assembly for the Australian Capital Territory each Member of the Legislative Assembly shall provide to the Clerk of the Legislative Assembly a declaration of the private interests of themselves and their immediate family in the form as presented to the Assembly on 17 March 2005¹⁵ and shall notify any alteration of those interests to the Clerk within 28 days of that alteration occurring;
- (2) under the general direction of the Speaker, the Clerk shall store the declarations of private interests made by each Member and arrange for the declarations for that Assembly to be placed on the Legislative Assembly website on the internet. Any alterations shall be placed on the Legislative Assembly website on the internet every six months. When a Member vacates his or her seat and is not re-elected at the next general election for the Assembly, the Clerk shall destroy all declarations made by that Member in his/her custody and remove those declarations from the Legislative Assembly website on the internet;
- (3) any declaration stored by the Clerk be made available for perusal to any person on request; and
- (4) that this resolution has effect from the commencement of the Second Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.

ATTACHMENT C

Continuing resolution 6A

ETHICS AND INTEGRITY ADVISER

This resolution allows the Speaker to appoint an Ethics and Integrity Adviser.

Resolution agreed by the Assembly

10 April 2008 (amended 21 August 2008)

That this Assembly requests the Speaker to appoint an Ethics and Integrity Adviser for Members of the Legislative Assembly for the Australian Capital Territory with the following functions:

Provision of advice

(1) Advise Members of the Legislative Assembly, when asked to do so by that Member, on ethical issues concerning the exercise of his or her role as a Member (including the use of entitlements and potential conflicts of interest).

(2) Giving advice that is consistent with any code of conduct or other guidelines adopted by the Assembly, but does not include the provision of any legal advice.

Records

(1) The Ethics and Integrity Adviser shall be required to keep records of advice given and the factual information upon which it is based.

(2) The Ethics and Integrity Adviser shall be under a duty to maintain the confidentiality of information provided to him/her in exercising the function and any advice given, but may make public any advice if the person who requested the advice gives permission for it to be made public.

(3) The Assembly shall only call for the production of records of the Ethics and Integrity Adviser if the person to which the records relate has sought to rely on the advice given in relation to paragraph (1) or given permission for the records to be produced to the Assembly.

(4) The Ethics and Integrity Adviser is to meet at least annually with the Standing Committee on Administration and Procedure for a discussion on matters raised and possible proposals to address them.

(5) The Ethics and Integrity Adviser shall report to the Assembly on an annual basis detailing the number of ethical matters raised with him/her and the number of Members who sought advice on any issues concerning Members' entitlements that have given rise to requests for ethics advice and suggest proposals to address these issues.

(6) The Speaker shall, after each Assembly is elected or whenever the office becomes vacant, appoint an Ethics and Integrity Adviser for the life of that Assembly and the period of three months after each election.

(7) Before appointing an Adviser, the Speaker shall consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.

(8) The Ethics and Integrity Adviser may resign in writing to the Speaker, or may be removed from office for proved misbehaviour or mental incapacity on a resolution agreed to by the Assembly.

This resolution has effect from the date of its agreement by the Legislative Assembly and continues in force unless amended or repealed by this or a subsequent Assembly.