

## Codes of conduct in Westminster style parliaments<sup>1</sup>

### Introduction

- 2.1 As part of its inquiry, the Committee was asked by the House, to give consideration to ‘the operation of codes of conduct in other parliaments’. Increasingly, Westminster style parliaments are establishing codes of conduct to guide the behaviour of members of parliament. The Committee examined the operation of a code of conduct in some of these Parliaments. As the inquiry concerns the adoption of a code of conduct in a national parliament, the Committee gave particular attention to the now well developed frameworks for codes of conduct which have been implemented in the United Kingdom House of Commons and the Canadian House of Commons. The Committee also looked at the frameworks which have been implemented in a number of Australian States.
- 2.2 The Commonwealth Parliamentary Association has consistently recommended that parliaments adopt codes of conduct for members, addressing standards of behaviour generally and incorporating anti-corruption measures. This is perhaps best reflected in the Commonwealth (Latimer House) principles.

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1 This chapter draws in part on a research paper prepared as part of the ANZACATT Parliamentary Law, Practice and Procedure Course by Kai Swoboda in February 2009 and on Deirdre McKeown, ‘Codes of conduct in Australian and selected overseas parliament’, Australian Parliamentary Library Background Note, June 2011.

2.3 Principle VI) – Ethical Governance states:

Ministers, Members of Parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.<sup>2</sup>

## National parliaments and codes of conduct

### United Kingdom

- 2.4 The UK House of Commons code of conduct was introduced following a major review of ethics and conduct of public officials undertaken by the Committee for Standards in Public Life chaired by Lord Nolan.
- 2.5 It was adopted in 1995 and is drawn from resolutions of the House. The application of the code is determined by the House, the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges under standing orders.
- 2.6 The code contains both aspirational and directive elements and aims to provide guidance to members on the standards of conduct expected of them in discharging their parliamentary and public duties. The code of conduct itself is a relatively brief document that re-states the seven principles of public life (which were developed as part of a broader examination of standards of behaviour by public officials) covering selflessness, integrity, objectivity, accountability, openness, honesty and leadership.<sup>3</sup> These are the so called ‘Nolan principles’ developed in the first report of the Committee of Standards in Public Life referred to earlier. The principles are reproduced in full at Appendix 6. It also provides for rules of conduct and the registration and declaration of interests.
- 2.7 In his submission to the Committee, the Clerk of the House of Commons emphasised that a code should be implemented by means of resolution or standing orders. He stated it:

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2 *Commonwealth (Latimer House) Principles on the Three Branches of Government*, Commonwealth Heads of Government Meeting, Abuja, Nigeria, 2003, p. 11.

3 UK House of Commons, *The Code of Conduct together with The Guide to the Rules relating to the conduct of Members 2009*.

... is of paramount importance in a parliamentary democracy of the House itself retaining jurisdiction over the conduct of its own proceedings. It would in my view be a great error to transfer jurisdiction over Members' behaviour to the courts, for example by establishing a statutory code.<sup>4</sup>

2.8 A number of important features of the UK code are that it:

- defines its scope as extending to members in all aspects of their public life, but 'does not seek to regulate what members do in their purely private and personal lives';
- defines duties, to be 'faithful and bear true allegiances to the monarch'; to uphold the law, 'including the law against discrimination, and to act on all occasions in accordance with the public trust placed in them'; and a 'general duty to act in the interests of the nation as a whole, and a special duty to their constituents';
- specifies arrangements in relation to conflict of interest – Members to behave in 'consideration of the public interest and avoid conflict between personal interest and their public interest'; and includes provisions relating to the registration and declaration of interests (disclosure requirements have applied since 1975);
- includes a 'catch all' clause relating to conduct, 'Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute'; and
- designates responsibility for enforcement action – application of the code is a matter for the House, the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards. Members are required to 'cooperate, at all stages, with any investigation into their conduct by or under the authority of the House'.

2.9 The accompanying guide to the code of conduct largely relates to the Register of Members Interests, providing detailed explanations of registrable categories and definitions for different types of interest such as property and the provision of services. Provisions relating to the operation of the Parliamentary Standards Commissioner, who is appointed by resolution of the House, are covered by the standing orders.<sup>5</sup>

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4 Submission from Dr Malcolm Jack, Clerk and Chief Executive of the UK House of Commons, p. 1.

5 UK House of Commons, *Standing Order no 150*.

2.10 The commissioner's main responsibilities are:

- overseeing the maintenance of and monitoring the operation of the Register of Members' Interests;
- providing advice on a confidential basis to individual members and to the Committee on Standards and Privileges about the interpretation of the Code of Conduct and Guide to the Rules relating to the Conduct of Members;
- preparing guidance and providing training for members on matters of conduct, propriety and ethics;
- monitoring the operation of the Code of Conduct and Guide to the Rules and, where appropriate, proposing possible modifications of it to the committee; and
- receiving and investigating complaints about Members who are allegedly in breach of the Code of Conduct and Guide to the Rules, and reporting those findings to the Committee on Standards and Privileges.

2.11 Importantly, the jurisdiction of the commissioner does not extend to policy issues and members' views or opinions, Members' handling of constituency casework, actions taken by members in their capacity as government Ministers, and what members do in their purely private and personal lives.<sup>6</sup> The commissioner is supported by the committee which follows up on investigations by the commissioner and reports these to the House, together with its conclusions and recommendations for action. It is then up to the House to determine any course of action.

2.12 In 2009-10, 317 formal complaints and allegations were received by the Parliamentary Commissioner for Standards. This was the highest number ever and seemed to relate to the parliamentary allowances scandal. Of these, only 72 were accepted for investigation; 21 were the subject of a memorandum to the Committee of Standards and Privileges, with 14 less serious complaints being concluded without a formal report and 16 complaints not upheld. In reporting to the Committee of Standards and Privileges, the Commissioner makes findings on the complaints but does not make any recommendations about penalties. The consideration of penalties is a matter for the Committee to consider and recommend to the House. The Commissioner can discontinue an investigation at any time or can find an alternative remedy to satisfy the complaint.

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6 Code of Conduct, op. Cit., p. 40.

- 2.13 Since the establishment of the Independent Parliamentary Standards Authority (IPSA) to make provision relating to salaries and allowances of members of the House of Commons, complaints about Members' alleged misuse of expenses and allowances have been referred to a Compliance Officer working with IPSA.
- 2.14 The House of Lords adopted a code of conduct in July 2001 by resolution.<sup>7</sup> While the code includes the seven principles of public life and provisions for a register of interests that feature in the House of Commons code, some of the key differences include:
- there is no 'catch all' provision relating to conduct; and
  - enforcement of the code is the responsibility of the Sub-Committee on Lords' Interests, with no role for a third party in providing advice or investigating breaches.

## Canada

- 2.15 The Canadian House of Commons' standing orders include an appendix covering a conflict of interest code for members.<sup>8</sup> The code is primarily concerned with preventing and enabling disclosure of relevant financial interests that may give rise to actual or perceived conflicts of interest. In addition to establishing the framework for a disclosure of interests, the code sets out behavioural rules in relation to potential conflicts of interest including not acting in any way to further their private interests. The code was adopted by resolution of the House in 2004, alongside amendments to the Parliament of Canada Act which created the Office of the Ethics Commissioner (now the Conflict of Interest and Ethics Commissioner – see below). The commissioner is appointed by the Governor-in-Council following approval by the House. The commissioner reports annually to the parliament in relation to the administration of the code and register of interests.<sup>9</sup> In general terms the commissioner enjoys the privileges and immunities of the House and its members.<sup>10</sup>
- 2.16 The establishment of the code by means of standing orders rather than by statute was referred to in the submission from the Clerk of the Canadian

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7 UK House of Lords, *Code of Conduct (from 31 March 2002)*,

8 Canadian House of Commons, *Standing Orders, Appendix, Conflict of Interest Code for House of Commons Members*.

9 Office of the Conflict of Interest and Ethics Commissioner, *About the office*.

10 Parliament of Canada Act, s. 72.05(2).

House of Commons as giving the House the right to regulate its own affairs.<sup>11</sup>

- 2.17 The code sets out processes relating to the disclosure of financial interests, interactions with members to provide advice and inquiry processes. Members of the House of Commons may request the commissioner to offer a confidential opinion in respect of their obligations under the code at any time. Any member who is of the opinion that another member has not fulfilled his or her obligations under the code may request that the commissioner conduct an inquiry into the matter. The commissioner may also conduct an inquiry on his or her own initiative or on a motion of the House.
- 2.18 The code provides guidance on how the commissioner undertakes inquiries. Following the conclusion of an inquiry, the commissioner presents a report to the Speaker who tables it in the House, at which point it is available publicly. In the reports the commissioner can:
1. conclude that the code was not contravened;
  2. find that there was a mitigated contravention of the code (ie the Member took reasonable steps to prevent non-compliance or that the non-compliance was trivial, and may recommend no sanctions); or
  3. conclude that a Member has not complied with the code, without any mitigating circumstances, and recommend appropriate sanctions.<sup>12</sup>
- 2.19 A separate 'Ethics Officer' and code of conduct applies to regulating conflict of interest issues in Canada's Senate. The *Conflict of Interest Code for Senators*, adopted by resolution of the chamber in May 2005, appears to be a more modern document compared to the code for the House, with similar but simpler statements about the purposes of the respective codes.<sup>13</sup>
- 2.20 Despite the establishment of similar models of regulating the conduct of members of parliament in Canadian provinces and territories since around 1988, the main impetus for the adoption of the code of conduct and appointment of an ethics commissioner in 2004 at a federal level was a series of scandals in 2002.<sup>14</sup> The initial proposal was for a single commissioner with responsibility for both Houses, but this was opposed
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11 Submission from Ms Audrey O'Brien, Clerk of the Canadian House of Commons, pp.1-2.

12 Ibid, p. 3.

13 Canadian Senate, *Conflict of interest code for Senators*.

14 Office of Senate Ethics Commissioner, *Emergence of a distinctive Canadian parliamentary ethics model: 1988-2008, Remarks by Jean T. Fournier, Senate Ethics Officer*, p. 3.

by the Senate (citing the need to maintain constitutional separation)<sup>15</sup> resulting in the adoption of a model with separate commissioners and codes of conduct for each House.

## Codes of conduct at selected Australian state parliaments

2.21 Houses of the parliaments of New South Wales, Queensland and Victoria have adopted codes of conduct.

### New South Wales

2.22 Codes of conduct for members of the NSW Parliament were adopted by resolution of the Legislative Assembly in May 1998 and by the Legislative Council in the following year.<sup>16</sup> The codes are linked to a broader regulation of corruption by public officials under the Independent Commission Against Corruption Act 1988 (NSW), which states that (s. 9(1)):

conduct does not amount to corrupt conduct unless it could constitute or involve: (a) a criminal offence, or (b) a disciplinary offence, or (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.

2.23 The code adopted by each chamber is identical in content, with the latest revised version adopted by the Assembly in June 2007.<sup>17</sup> The Independent Commission Against Corruption Act (Part 7A) also requires the establishment of standing ethics committees for each House, which are required to review the code of conduct at least once every four years.<sup>18</sup>

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15 Canadian Parliament Senate Standing Committee on Rules, Procedures and the Rights of Parliament, *Interim report of the Standing Committee on Rules, Procedures and the Rights of Parliament*, Eighth report, para 3.12.

16 Parliament of NSW Legislative Assembly, *Votes and proceedings, Third session of the 51st Parliament*, No 29, 5 May 2008, pp. 544-548; Parliament of NSW Legislative Council, *Minutes of the proceedings of the Legislative Council, First session of the 52nd parliament*, 26 May 1999, pp. 91-92.

17 NSW Legislative Assembly, *Members Handbook*.  
NSW Legislative Council, *Code of conduct for members*.

18 Independent Commission Against Corruption Act 1988 (NSW), s. 72C and 72E.

The NSW code is a two-page document that is primarily concerned with conflict of interest and bribery but also includes broader statements that members 'acknowledge that their principal responsibility in serving as members is to the people of New South Wales' and that 'organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament'.<sup>19</sup>

- 2.24 At the time of the adoption of the initial code in 1998, both Houses also resolved to appoint a 'Parliamentary Ethics Adviser'. Resolutions of appointment for an individual also define the roles and functions of the adviser.<sup>20</sup> The role of the adviser is limited to providing independent advice and assistance to members in resolving ethical issues and problems and does not extend to investigating breaches of the code of conduct. However, the adviser is required to keep a record of any advice given in response to a member's request and also the factual information on which the advice was based. These records are to remain confidential unless the member who requested the advice gives permission for the adviser to make the advice public. The House can call for the production of the records of the adviser if the member to which the records relate has sought to rely on the advice of the adviser or has given permission for the records to be produced to the House.
- 2.25 Members are also required to disclose their pecuniary interests via a statute-based framework introduced in 1981.<sup>21</sup> Under the Constitution Act 1902 (NSW) and regulations made under s. 14A, members are required to declare in a register on a biannual basis a broad range of pecuniary interests including property, sources of income, gifts, interests, debts and positions held in corporations. The Constitution Act provides that if a member 'wilfully' breaches the regulations, that the House to which the member belongs may declare the member's seat vacant.

## Queensland

- 2.26 A code of conduct for Queensland House of Assembly members was first adopted in 2001. The code primarily deals with conflicts of interest and includes arrangements for a register of interests.<sup>22</sup> Importantly, the code includes a 'statement of fundamental principles', which covers the roles and duties of members in the areas of integrity of the Parliament, primacy

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19 NSW Legislative Council, *Code of conduct for members*.

20 NSW Legislative Assembly, *A short guide to procedure*.

21 Constitution (Disclosures by Members) Amendment Act 1981 (NSW).

22 Queensland Parliament, *Code of ethical standards, Legislative Assembly Queensland*.



of the public interest, independence of action, appropriate use of information, transparency and scrutiny, and appropriate use of entitlements.

- 2.27 In 2010, the then Members' Ethics and Parliamentary Privileges Committee, following a comprehensive review, recommended the adoption of a much more simplified version of the Code which focuses on the fundamental principles of ethical behaviour applying to Members and the key obligations arising from these principles.<sup>23</sup> The revised code has not yet been adopted by the House.
- 2.28 Following amendments to the *Parliament of Queensland Act 2001*, the Committee of the Legislative Assembly now has the responsibility for publishing and reviewing the code of conduct for members and establishing the legislation and standing orders about the ethical conduct of members. The Members' Ethics and Parliamentary Privileges Committee has been retitled as the Ethics Committee and is responsible for dealing with complaints about the ethical conduct of individual members.
- 2.29 Members (including ministers and senior public officials) are able to seek advice regarding conflict of interest issues from the Queensland Integrity Commissioner.<sup>24</sup> The commissioner is not an officer of the parliament but has obligations to report to the Premier if s/he 'reasonably believes that the person has an actual and significant conflict of interest' and the member fails to resolve the conflict to the commissioner's satisfaction within 7 days after being given the advice.<sup>25</sup> The Premier may also ask for the advice at any stage.

## Victoria

- 2.30 The Members of Parliament (Register of Interests) Act 1978 (Vic) provides a framework for declaring potential financial conflicts of interest and also includes a 'code of conduct' provision that has broader relevance for regulating behaviour and conduct. While most of the Act is concerned with conflicts of interest including the establishment of a register of interests, other conduct is addressed by a provision that binds members to ensuring that 'their conduct as members must not be such as to bring discredit upon parliament'.

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23 Queensland Integrity, Ethics and Parliamentary Privileges Committee, 'Review of Code of Ethical Standards', October 2010.

24 Queensland Integrity Commissioner, *Requesting Advice from the Integrity Commissioner*.

25 Public Sector Ethics Act 1994 (Qld), s. 34.

- 2.31 Under the Register of Interests provisions members are required to provide information on a range of matters such as income source, company positions and financial interests, political party membership, gifts, and other substantial interests. Infringement of the code constitutes a contempt for which the member may be fined up to \$2000 by his or her House. The non-payment of this fine renders the member's seat vacant.
- 2.32 The Victorian Parliament Law Reform Committee presented a report in 2009 recommending among other matters that:
- ⇒ the Members of Parliament (Register of Interests) Act 1978 be renamed as the Members of Parliament (Standards) Act;
  - ⇒ the existing code be replaced with a broader code;
  - ⇒ the privileges committees in each House become privileges and standards committees with the responsibility to investigate and report on alleged breaches of the Act; and
  - ⇒ appointing an ethics adviser to provide confidential advice to members of parliament.<sup>26</sup>
- 2.33 The then Labour Government introduced the Members of Parliament (Standards) Bill 2010 to implement the recommendations. The bill lapsed when the 56<sup>th</sup> Parliament was prorogued.
- 2.34 The current Victorian Government has indicated that it is examining a number of measures including a new code of conduct for members.

## **Some observations from other jurisdictions**

- 2.35 This discussion of the experience of codes of conduct in other parliamentary jurisdictions leads to some general observations that are relevant to the Committee's terms of reference:
1. Codes of conduct are now a well established part of the framework in a number of parliamentary jurisdictions, including those with which Australia usually wishes to compare itself - the United Kingdom and Canada. The implementation of a code of conduct could be seen as a 'better practice' to be adopted by all democratic parliaments as proposed in the Latimer House principles.

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26 Victorian Parliament Law Reform Committee, *Review of the Members of Parliament (Register of Interests) act 1978*, December 2009.

2. Codes of conduct probably are better adopted by standing orders or resolution of the House rather than by statute. There is a strong argument that adoption by standing orders or resolution enables the House to retain jurisdiction over its own affairs, rather than seeing those exercised by the courts.
3. There seems to be benefit in having a code that is relatively simple and more aspirational in nature. There is of course no reason why the code cannot provide a framework for, or reference, other key related aspects eg: arrangements for the registration of members' interests, the conduct of members in the Chamber, the use by members of their entitlements etc.
4. There seems to be value in having an independent person or body to review and investigate complaints in relation to Members' conduct (the United Kingdom and Canada). Some jurisdictions have used an independent person essentially as an ethics adviser to members rather than as an investigator of complaints (New South Wales and Queensland).
5. Typically there is a bipartisan parliamentary committee to oversight arrangements for a code and report to the House. The role of such a committee can vary from:
  - reporting to the House on complaints and recommending sanctions (perhaps after an investigation by an independent person);
  - reviewing the code periodically and recommending changes; and
  - undertaking educative work in relation to ethical standards for members.