



House of Representatives
Standing Committee of Privileges
and Members' Interests

Draft Code of Conduct for Members of
Parliament

Discussion Paper

November 2011

The Parliament of the Commonwealth of Australia

DRAFT CODE OF CONDUCT
FOR MEMBERS OF
PARLIAMENT
DISCUSSION PAPER

House of Representatives
Standing Committee of Privileges and Members' Interests

November 2011
Canberra

© Commonwealth of Australia 2011

ISBN 978-0-642-794441-3 (Printed version)

ISBN 978-0-642-79442-0 (HTML version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website:

<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



Contents

Membership of the Committee	vii
Terms of reference	ix

REPORT

1 Introduction	1
Background to the inquiry.....	1
Earlier consideration of a code of conduct	1
Consideration by the Committee	2
Agreements for parliamentary reform.....	3
Referral of inquiry.....	4
Purpose of Committee's inquiry	4
The inquiry process	5
2 Codes of conduct in Westminster style parliaments.....	7
Introduction	7
National parliaments and codes of conduct	8
United Kingdom.....	8
Canada	11
Codes of conduct at selected Australian state parliaments.....	13
New South Wales.....	13
Queensland.....	14
Victoria	15
Some observations from other jurisdictions	16


3	Should there be a code of conduct?	19
	Introduction	19
	Arguments in favour of a code	20
	Guidance on ethical issues and an improved framework	21
	Satisfying community expectations and building political trust	22
	Confidence in the institution of Parliament	22
	Codes of conduct are widespread for public officials	23
	Arguments against a code	24
	Interference with Members' duties	24
	Members are subject to many rules	25
	Code of conduct would not improve behaviour	25
	Complaints would be pursued for political purposes	26
	Parliamentarians are different from other officeholders	26
	Observations	27
4	The nature of a code of conduct	29
	Introduction	29
	Character of a code – prescriptive or aspirational	29
	Observations	32
	Other rules and guidelines affecting Members	33
	Observations	33
	Process for implementing a code	34
	Observations	35
5	Parliamentary Integrity Commissioner	37
	Introduction	37
	Options for a Parliamentary Integrity Commissioner	38
	Option 1 – No Parliamentary Integrity Commissioner	38
	Option 2 – Parliamentary Integrity Commissioner as ethical adviser	39
	Option 3- Parliamentary Integrity Commissioner - Receive and investigate complaints.....	41
	Observations	43
	Appointment of a Parliamentary Integrity Commissioner	44

6	Complaints procedure	45
	Introduction	45
	Limits in relation to complaints about a Member	46
	Observations	47
	Consideration and investigation of complaints	47
	Observations	49
	Reports in relation to complaints	49
	Observations	50
7	Role of an oversight committee	51
	Introduction	51
	Roles of an oversight Committee	53
8	Role of the House in relation to a code	55
	Introduction	55
	Legal authority for a code of conduct and the imposition of sanctions	56
	The role of the House	57
	Sanctions	57

APPENDICES

	Appendix 1 – Frameworks of Ethical Principles - 1995	61
	Appendix 2 – Extracts from the Agreements	69
	Agreement for Parliamentary Reform – between Government, Opposition and Mr Katter, Mr Oakeshott and Mr Windsor	69
	Agreement between The Hon Julia Gillard MP and Mr Andrew Wilkie MP	70
	Agreement between the Australian Greens and the Australian Labor Party	70
	Appendix 3 - Submissions	71
	Appendix 4 - Witnesses	73
	Roundtable discussion.....	73
	Video-conference discussion	73

Appendix 5 – Draft Code of Conduct for Members of the House of Representatives.....	75
Purpose of the Code	75
Scope of the Code.....	75
Key Principles	76
Registration of interests	77
Duties in relation to the Parliamentary Integrity Commissioner	77
Additional Guidance	77



Membership of the Committee

Chair Ms Anna Burke MP

Deputy Chair Mr Patrick Secker MP

Members Mr John Alexander OAM MP

Mr Darren Cheeseman MP

Hon Joel Fitzgibbon MP (nominee of Leader of the House)

Mr Geoff Lyons MP

Mr Don Randall MP

Ms Michelle Rowland MP

Hon Alex Somlyay MP (nominee of Deputy Leader of the Opposition)

Mr Mike Symon MP

Mr Tony Windsor MP

Committee Secretariat

Secretary	Mr David Elder
Research Officer	Ms Claressa Surtees
Administrative Officer	Ms Laura Gillies



Terms of reference

The House of Representatives referred the following matter to the Committee on 22 November 2010:

- (1) the Privileges and Members' Interests Committee (the Committee):
 - (a) develop a draft Code of Conduct for Members of Parliament; and
 - (b) report back to the House by the end of the Budget 2011 sittings;

- (2) in considering the matters in paragraph 1 above, the Committee give consideration 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; and

- (3) the Committee consult with the equivalent committee in the Senate on the text of a Code of Conduct with the aim of developing a uniform code, together with uniform processes for its implementation for Members and Senators.

Introduction

Background to the inquiry

Earlier consideration of a code of conduct

- 1.1 Consideration of a possible code of conduct for Federal parliamentarians is not new. A Joint Committee on Pecuniary Interests of Members of Parliament in a 'Report on Declarations for Interests' presented to both Houses in September 1975 noted that, while the issue of a code of conduct was beyond its terms of reference, it 'felt that a precise and meaningful code of conduct should exist'. It recommended that a Joint Standing Committee be established and be given the task of drafting a code, but this recommendation was not implemented.¹
- 1.2 An inquiry into public duty and private interest, chaired by Sir Nigel Bowen (the Bowen Committee) reported in July 1979 and recommended that a code of conduct be implemented for officeholders, including members of parliament. The code focussed largely on matters to do with pecuniary interests rather than broader ethical issues.² A code was not implemented, although a regime for the registration of the interests of members was implemented in 1984.

1 Referred to in Deirdre McKeown, Codes of Conduct in Australia and related overseas parliaments, Parliamentary Library, Background Note, April 2011, p. 6.

2 'Public interest and private duty', Report of the Committee of Inquiry established by the Prime Minister on 15 February 1978, AGPS, 1979.

- 1.3 In 1991 the then Prime Minister proposed that a working group of parliamentarians be established to develop a seminar on the standards of conduct expected of senators and members. This subsequently evolved into a working group looking to develop a code of conduct. That working group did not complete its task before the 1993 election.
- 1.4 The then Presiding Officers reconvened a working group in the 37th Parliament to look at the development of a code of conduct for both Senators and Members and for Ministers. The then Speaker of the House, the Hon Stephen Martin MP, presented to the House on 21 June 1995 the outcomes of the work of the group. The working group proposed 'A framework for ethical principles for Members and Senators' and 'A framework of ethical principles for Ministers and Presiding Officers'. Copies of these two framework documents are at Appendix 1. In presenting the documents, Speaker Martin said:
- Members will share with me, I am sure, a concern for the public esteem in which we are held as parliamentarians by the Australian community. In my view, it is only by individually observing the principles outlined in these frameworks that we will begin to redress the public perceptions.
- 1.5 Progress on these frameworks seems to have lapsed at the end of the 37th Parliament and they were not revisited.³
- 1.6 Nevertheless Ministers have been subject to a code of conduct. A code of conduct was first implemented for Ministers by Prime Minister Howard in 1996. In 2007, Prime Minister Rudd introduced new Standards of Ministerial Ethics. These have been continued by Prime Minister Gillard. These arrangements have been matters for the Prime Minister alone and have not had any formal parliamentary approval or involvement

Consideration by the Committee

- 1.7 In the course of conducting an inquiry into the exchange between two members in the Main Committee in 2008, the Committee of Privileges and Members' Interests concluded that the exchange raised issues that were more to do with appropriate standards of behaviour and conduct of members, than to do with any matters of privilege. The Committee

3 House of Representatives Hansard, 21 June 1995, p. 1983.

considered that the framework to cover such conduct, or the conduct of members more generally, was inadequate.⁴

1.8 At the time, the Committee considered that the question of a code of conduct or ethics for members should be revisited. It should also be noted that, in its guise as the Committee overseeing Members' Interests, the Committee is charged with considering possible changes to any code of conduct adopted by the House.⁵

1.9 The Committee expressed the view that there were strong reasons for a code being established, not least of which were community expectations about standards of behaviour by parliamentarians. The Committee indicated it proposed to review the question of a code of ethics for members and report back to the House.⁶

1.10 Subsequent to the Committee's conclusion, there was an incident within the parliamentary precincts involving the then Member for Dawson. In commenting on this incident, the Speaker noted the limit on his powers in relation to the matter and remarked that it was a reminder of the desirability of considering having a code of ethics for members. The Speaker referred this incident to the Committee, in the context of its proposed review of a code, as an example of the sort of conduct that could arise and for which there did not seem to be an adequate framework with which to deal with the matter.⁷

1.11 The Committee had not completed its consideration of this matter at the conclusion of the 42nd Parliament.

Agreements for parliamentary reform

1.12 As part of the process of negotiations for a minority government in the 43rd Parliament a number of agreements were reached. These agreements made provision (in slightly different ways) for a code of conduct to be implemented for Federal parliamentarians and for the appointment of a Parliamentary Integrity Commissioner who would have responsibility for, among other things, upholding the code and investigating complaints in

4 House of Representatives Standing Committee of Privileges and Members' Interests 'Report on the issue of the exchange between the Member for Robertson and the Member for Indi on 28 May 2008 and the subsequent withdrawal and apology by the Member for Robertson on 29 May 2008, October 2008, pp. 9-10.

5 Standing Order 216(a)(v).

6 Report on exchange between the Member for Robertson and the Member for Indi, op.cit, p. 10.

7 House of Representatives Hansard, 4 December 2008, p. 12225.

relation to the code. The detailed provisions in the various agreements are at Appendix 2.

Referral of inquiry

- 1.13 On 22 November 2010, the House referred to the Committee the development of a draft code of conduct for Members of Parliament. The Committee was also asked to examine:
- 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.
- 1.14 In conducting its work the Committee was asked to consult with the equivalent committee in the Senate (the Committee of Senators' Interests) on the text of the proposed code with a view to developing a uniform code, together with uniform processes for implementation for Members and Senators. In moving the motion to refer the inquiry, the Leader of the House noted that it fulfilled a commitment in the various agreements. He stated:

It is the government's hope and expectation that the work of these committees and the eventual adoption by parliament of a code of conduct for members and senators will make a positive contribution to parliamentary standards and the standing of parliament in the general community.⁸

Purpose of Committee's inquiry

- 1.15 Although the agreements made after the election committed the parties to the implementation of a code of conduct and the inquiry referred to the Committee asked it to develop a draft code, the Committee considered it should address the threshold issue of whether a code of conduct should be adopted. The adoption of a code of conduct is a very significant matter for all Members of Parliament and the Committee considered that it should
-

⁸ House of Representatives Hansard, 23 November 2010, pp. 3442-43.

make a thorough examination of the competing views in relation to adopting a code, and this examination is outlined in Chapter 3.

1.16 The Committee has decided not to reach a concluded view on the merits of adopting a code of conduct and now presents its work on the inquiry as a discussion paper. The discussion paper addresses the terms of reference and includes a consideration of the various aspects of such a code. These aspects are presented as set out below:

- the nature of a proposed code and a process for its implementation (Chapter 4);
- the role of a possible Parliamentary Integrity Commissioner in relation to a code (Chapter 5);
- possible procedures for receiving and investigating complaints under a code (Chapter 6);
- the role a House committee could play in overseeing a code and the handling of complaints (Chapter 7); and
- possible sanctions that could be imposed for breaches of a code and processes in the House for dealing with reports or complaints and imposing sanctions (Chapter 8).

The inquiry process

1.17 After the inquiry was referred, the Chair wrote to all members informing them of the inquiry and inviting them to make submissions or comments. The Chair also wrote to key representatives in selected jurisdictions which already have codes of conduct and invited submissions. A list of the submissions received is at Appendix 3.

1.18 The Committee considered that a roundtable discussion would be the best means of obtaining different perspectives on the issues which it had to address. All members were invited to attend. The Committee also invited representatives from other Australian parliamentary jurisdictions who had made submissions to attend so that the Committee could learn firsthand about their experiences. The members of the Committee of Senators' Interests also participated after the Senate referred a similar inquiry to that Committee. The Clerks of the Senate and House of Representatives and Professor Gerard Carney, an expert on parliamentary privilege and members' ethics, also were invited to attend. A list of the

participants in the roundtable, which was held on 21 March 2011, is at Appendix 4.

- 1.19 The Committee considered it was essential to hear directly from the international jurisdiction with experience most relevant to the House of Representatives – the United Kingdom House of Commons. This was done by means of a video conference link up on 21 June 2011. The details of those with whom the Committee spoke is at Appendix 4.
- 1.20 The Committee was pleased it was able to work with the Committee of Senators' Interests on this inquiry. It would be highly desirable that, if there is to be a code of conduct to apply to Members of the House of Representatives, it also apply to Senators and that there is a similar framework for receiving and considering complaints.

Codes of conduct in Westminster style parliaments¹

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.

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.²

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.³ 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:

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.⁴

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.⁵

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.⁶ 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.

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.⁷ 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.⁸ 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.⁹ In general terms the commissioner enjoys the privileges and immunities of the House and its members.¹⁰
- 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

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.¹¹

- 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.¹²
- 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.¹³
- 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 2002.¹⁴ The initial proposal was for a single commissioner with responsibility for both Houses, but this was opposed

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)¹⁵ 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.¹⁶ 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 2007.¹⁷ 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.¹⁸

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'.¹⁹

- 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.²⁰ 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 1981.²¹ 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.²² 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

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.²³ 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.²⁴ 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.²⁵ 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'.

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.²⁶
- 2.33 The then Labour Government introduced the Members of Parliament (Standards) Bill 2010 to implement the recommendations. The bill lapsed when the 56th 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.

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.

Should there be a code of conduct?

Introduction

- 3.1 Although the terms of reference presume, and the various reform agreements commit most political parties and individual members to, the implementation of a code of conduct, introducing a code would be a very significant development for all members. The Committee considered that it should assess the reasons for and against adopting a code of conduct for members.
- 3.2 There are already a number of 'rules' in place which govern various aspects of the conduct of Members of the House of Representatives. These rules can be found in the Constitution, civil and criminal law, *Commonwealth Electoral Act 1918*, *Parliamentary Privileges Act 1987*, standing and sessional orders of the House, resolutions of the House, Register of Members' Interests and various guidelines and conventions associated with them.¹ In addition, there is the complex meld of rules which comprise the parliamentary entitlements regime.² However, there is no framework which collates these rules as a structured set of obligations on members, and it is uncertain whether the area of members' conduct is sufficiently covered.
- 3.3 In some jurisdictions, the introduction of codes of conduct for parliamentarians has been precipitated by events of misconduct. The

1 Most of these are well canvassed in *House of Representatives Practice*, ed. I C Harris, Fifth Edition, Canberra, 2005.

2 The major components of this regime have been drawn together in Committee for the Review of Parliamentary Entitlements, *Review of Parliamentary Entitlements*, Australian Government, Committee Report, April 2010, see Figure 3-1 at p. 41.

genesis of the current review in an environment of reform rather than one of crisis, provides the House with an opportunity to take the initiative, and members, a valuable time for measured self reflection. This is a far more favourable situation in which to devise a code of conduct than responding during the heightened sensitivity of a misconduct scandal, when there could be significant pressure on political leaders to impose a code of conduct and enforcement regime with little or no involvement of the members themselves.

- 3.4 Codes of conduct are increasingly common in professions and fields of endeavour throughout Australian society. The federal and state parliaments have given force of law to a number of professional or industry codes, by including or referring to them in legislation. In addition, many professions have responded to stakeholder expectations of high standards of professional conduct by devising and adopting through self regulation, voluntary codes of conduct.
- 3.5 On a daily basis, there are stories in the media critical of the conduct of persons in one field or another. Parliamentarians are not exempt from this media scrutiny, although the publication of reports on such matters are rightly characterised as of a recurring nature rather than sustained. Nevertheless, there seems to be a trend of increasing public scrutiny of parliamentarians. Community expectations, as reflected in the media, indicate that behaviour of a very high standard, higher than for others in the community is expected of members of parliament. When members merely access approved allowances and entitlements in proper ways, this can generate media stories about whether those expenditures are somehow inappropriate, even though there is no evidence that the individual members acted outside the relevant rules or guidelines.
- 3.6 It is against this background that the Committee assessed arguments in favour of and against a code of conduct.

Arguments in favour of a code

- 3.7 Arguments in favour of implementing a code of conduct could be categorised broadly as strengthening the overall ethical framework to guide members in their behaviour and improving public perceptions of Parliament and parliamentarians.

Guidance on ethical issues and an improved framework

- 3.8 Members are elected to office with little formal guidance about what might be expected of them as members. A code of conduct provides a consistent frame of reference for all members about their conduct while in office. In circumstances where rules related to individual measures affecting members do not provide sufficient guidance, or for those aspects of their duties that are not otherwise covered by formal rules, a code would provide specific guidance on ethical issues.
- 3.9 This aspect of a code was commented on by Mr Neil Laurie, Clerk of the Queensland Parliament, in his submission: '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'.³
- 3.10 As referred above, there are already many rules which apply to the various aspects of a Member's life as a parliamentarian, which could at best be described as a collection. An express code of conduct could overcome any gaps there may be in the existing ethical requirements, put principles in place and consolidate the rules, thereby providing a useful, structured statement in relation to members' conduct.
- 3.11 Two recent incidents provide support for the view that ethical guidance is required. The first illustration was the reference by the Speaker in the 42nd Parliament about the conduct of the Member for Dawson in the parliamentary precincts. The Speaker considered that incident might fall for consideration under a code of conduct, although it did not seem to fit within the existing formal rules applying to parliamentarians.⁴ The second illustration, also in the 42nd Parliament, was the exchange between the Member for Robertson and the Member for Indi in the Main Committee, which this Committee received as a reference. The Committee concluded that the incident had more to do with appropriate standards of behaviour and conduct of members rather than with any matter of privilege.⁵

3 Submission from Mr Neil Laurie, Clerk of the Queensland Parliament, p. 3.

4 See, House of Representatives Debates (4.12.2008) p. 12725.

5 See, *Report on the issue of the exchange between the Member for Roberson and the Member for Indi on 28 May 2008 and the subsequent withdrawal and apology by the Member for Robertson on 29 May 2008*, House Standing Committee of Privileges and Members' Interests, 23 October 2008.

Satisfying community expectations and building political trust

- 3.12 The community rightly has expectations of a high standard of conduct of their elected representatives. There is no formal recorded basis on which members of the community can express any concerns or complaints they have about the conduct of members. They have no frame of reference to which they can refer to judge whether the conduct of members is within accepted standards, other than indistinct 'community expectations'. The adoption of a code would provide reassurance to the community about standards of behaviour they should be able to expect of members and provide also a distinct reference for them for any issues they might have with members' conduct. This aspect is recognised in jurisdictions where parliamentary codes of conduct are already in place. Mr Russell Grove, Clerk of the Legislative Assembly, Parliament of New South Wales, expressed this view: 'I think the code is a way of parliament saying to the public at large: "We are like everybody else in public office in the community. We are accountable and we are prepared to live by a code"'.⁶
- 3.13 There are numerous, often contradictory perceptions about parliament and its members.⁷ However, unfortunately it seems that the Australian community has deep concerns about standards in public life and the media give prominence to ethical issues in their commentary in this regard.⁸ A code of conduct could assist in building a stronger relationship of trust between elected members and their individual constituents and the community at large. A code would serve as a reminder to members of the political trust they owe to their constituents.
- 3.14 In some jurisdictions parliamentarians make an oath to uphold a code of conduct, thereby reinforcing appropriate standards through a specific formal and public commitment to good conduct.

Confidence in the institution of Parliament

- 3.15 At the federal level in Australia, staff supporting the institution of Parliament have long been subject to rules in relation to appropriate standards of behaviour in performing their duties. Currently, the Australian parliamentary service is established pursuant to the *Parliamentary Service Act 1999*, and all staff employed under the Act, from

⁶ Transcript of roundtable discussion, 21 March 2011, p. 6.

⁷ J Warhurst, 'Fifteen (contradictory) perceptions of parliament: five good, five bad and five ugly', *Australasian Parliamentary Review*, Autumn 2011, Vol. 26(1), pp. 83-87.

⁸ Bob Bennett, 'Candidates, Members and the Constitution', *Research Paper No. 18 2001-02*, Department of Parliamentary Library, 2002.

the most senior leaders to the most junior ranks of staff, are obliged to meet the standards set by the values and code of conduct provided for in the Act. This code provides a transparent standard against which the behaviour of staff who support the institution of Parliament can be judged.

- 3.16 If the House of Representatives adopted a code of conduct for its members, this would serve as further reassurance for the community, in relation to its elected representatives, that the institution of Parliament is responsive to its concerns. Mr Bernard Wright, Clerk of the House of Representatives, said to the Committee: ‘... I do think that it [adopting a code] is probably a helpful thing to do in terms of showing a bit of self-awareness on the part of a house of parliament. A house of parliament that adopts a code is perhaps showing awareness of a perception problem which can become a reality’.⁹

Codes of conduct are widespread for public officials

- 3.17 In democratic societies, codes of conduct are widely considered to be the norm for public officials in all aspects of governance, and in Australia, most public officials are subject to a code of conduct. Most state and territory legislatures have adopted codes of conduct and other prescribed measures to establish standards of conduct for members of their houses. In addition, most local councils have standards imposed, and many of these codes are prescribed by law.
- 3.18 At the federal level, the conduct of public servants and parliamentary service staff is already subject to codes of conduct and related service values, prescribed by the Parliament.¹⁰ In addition, since 1996 successive Prime Ministers have established rules to guide the conduct of those parliamentarians who are ministers in the *Guide to Key Elements of Ministerial Responsibility*.¹¹ In addition, over the same period Prime Ministers have established a register of lobbyists, thereby providing a level of transparency in negotiations in relation to government policies, programs and activities.
- 3.19 The authoritative standards worldwide, on parliamentary best practice, state that parliamentary accountability is enhanced through measures to promote good governance, including the establishment of codes of

⁹ Transcript of roundtable discussion, 21 March 2011, at p. 8.

¹⁰ See, *Public Service Act 1999* and *Parliamentary Service Act 1999*.

¹¹ See, http://www.pmc.gov.au/guidelines/docs/ministerial_responsibility.rtf

conduct for all parliamentary staff and for all parliamentarians.¹² Not to have a code of conduct is counter to the standards of what is considered to be parliamentary best practice both within Commonwealth legislatures and within national parliaments worldwide. As referred above in chapter 2, the Commonwealth Parliamentary Association (CPA) has determined in the Latimer House Principles that it is a fundamental value of the Commonwealth to establish ethical governance, with attendant appropriate guidelines for parliamentarians on ethical conduct.¹³ In addition, the Inter Parliamentary Union (IPU), the foremost association of national parliaments, has reported that it is a key characteristic of a democratic parliament that members of parliament are accountable for their performance in office and integrity of conduct. The institutional means by which this objective is realised is through the development of standards and an enforceable code of conduct.¹⁴

- 3.20 Of additional relevance in the parliamentary context, comparable national legislatures with systems of parliamentary government similar to Australia's have codes of conduct, for example, the Houses of Commons in both the United Kingdom and Canada.

Arguments against a code

- 3.21 The Committee has also explored the arguments against the implementation of a code of conduct for members.

Interference with Members' duties

- 3.22 A code of conduct might impose restrictions on members that would prevent them from freely and fully performing their duties. Therefore, the ideal of imposing a standard of behaviour for members might compete with another ideal of ensuring that members are able to pursue their duties without any impediment or restriction. This concern is perhaps more a theoretical one than a practical one. If a code is expressed in more general terms and refers to broader values and principles, then it is less likely that a code might unnecessarily impede the actions of members.

12 See, R Stapenhurst and R Pelizzo, 'Legislative Ethics and Codes of Conduct', *World Bank Institute Working Papers*, Series on contemporary Issues in Parliamentary Development, 2004.

13 See, *Commonwealth (Latimer House) Principles on the Three Branches of Government*, CPA adopted July 2009.

14 See, *Parliament and Democracy in the Twenty-First Century: a guide to good practice*, ed David Beetham, Inter-Parliamentary Union, Switzerland, 2006.

Further, if the effect of a code is to restrain conduct that is not appropriate for members and this expresses community expectations, then any 'restraint' might support rather than impede members in performing their duties in a proper manner.

Members are subject to many rules

- 3.23 It could be argued that the conduct of members is already subject to a range of guidelines and rules, therefore a separate code of conduct is not necessary. The range of rules applying to members is outlined above and is similar to the provisions applying to Senators, as referenced in one of the Senate's guides to procedure.¹⁵ While extensive rules and guidelines apply to the actions and behaviour of members, they currently do not cover broader ethical values and principles, nor are they drawn together in any structured manner.
- 3.24 Professor Carney noted that part of the value of a 'code', was in bringing those obligations together, and 'It brings a philosophical basis to these obligations that have developed through the common law, through statutory provisions and through resolutions of the houses from the United Kingdom through to Australia ...'.¹⁶ He also thought such a consolidation would be of practical benefit and educational value to members. The comments of Mr Kerry Shine, Chair of the Integrity, Ethics and Parliamentary Privileges Committee, Queensland Parliament, appear to support this view: 'The fact that all these obligations are in one document, one code, is of help as a practising member of parliament.'¹⁷

Code of conduct would not improve behaviour

- 3.25 It has been argued that it is not possible to improve the behaviour of individuals simply by implementing a code of conduct. It is perhaps difficult to assess the impact that the introduction of a code of conduct would have on the standards of conduct of members. The mere existence of a code does not guarantee that individuals might not behave in ways they should not. Nevertheless, the logic of this argument suggests that codes of conduct would not be implemented for any public officials at all, but codes do exist for most such officials because they are seen to have value.

15 Transcript of roundtable, 21 March 2011, p. 6, and see, 'No. 23—Provisions governing the conduct of Senators' *Brief guides to Senate procedure*, July 2008.

16 Transcript of roundtable, 21 March 2011, p. 7.

17 Transcript of roundtable, 21 March 2011, p. 5.

- 3.26 Codes have in fact been accepted widely as a guide to ethical behaviour and as communicating with the community about its expectations of the standards to be expected of public officials.

Complaints would be pursued for political purposes

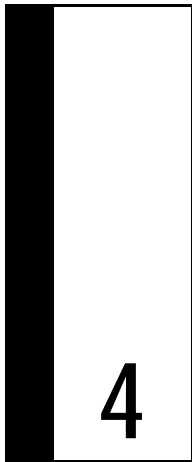
- 3.27 Another argument raised in the debate is that complaints under a code of conduct would be pursued against members purely for political reasons. There could be a variety of motivations for complaints, including for political purposes. A rigorous and independent process for dealing with complaints would be required to enable those matters that are raised purely for political purposes to be dismissed as such.
- 3.28 In the political contest between government and opposition, many opportunities can be taken to seek political advantage. It is possible that an allegation of misconduct could be raised in a frivolous way to make a political point. There are examples where matters of privilege can be raised, more for political reasons than because there is a serious matter of privilege involved. While there is the potential for misuse of any formal mechanism for regulating the conduct of individuals, there would need to be built into any review or investigation of complaints raised as code of conduct matters the opportunity to filter and exclude those that are merely frivolous or vexatious. While a fair and proper investigation process might not prevent matters from being raised for purely political purposes, it should limit the opportunity for such matters to be pursued. It should also be noted, that raising such serious matters in a frivolous manner can often reflect adversely on the person who raises them.

Parliamentarians are different from other officeholders

- 3.29 A further argument that is made is that members of Parliament are unlike other officeholders in that they are subject to elections, and judgements are made about the conduct of members at elections by their individual parties and by the general body of electors. However, there can be a considerable period of time between any conduct of a member that raises concerns and the next election. Furthermore, elections are typically about a variety of issues, with the conduct of a member during a parliamentary term being only one issue to be taken into account. Conduct of a relatively minor nature may be of little significance in the broader election context. A code of conduct could enable an appropriate and more timely response to any incidents.

Observations

- 3.30 The competing arguments identified in relation to implementing a code of conduct raise serious issues which are deserving of careful consideration. The overall standing of the Parliament and parliamentarians in the community is not as strong as would be desirable, and there is a range of factors involved in those perceptions. A code of conduct for members is not a panacea for a dramatic change in the overall perceptions about parliamentarians. However, it could make a modest contribution to an improvement in perceptions.
- 3.31 Were the House to implement a code, this would be a further demonstration of its rights, in accordance with the powers granted by section 50 of the Constitution to each House, to make rules and orders with respect to the mode in which its powers, privileges and immunities might be exercised and upheld, and the order and conduct of its business and proceedings.
- 3.32 The Committee is mindful that the introduction of a code will not be a guarantee against the behaviour of members being found to fall short of the standards set by the code. The recent scandals at Westminster stand as a reminder that mistakes can be made and misconduct can occur even when a code of conduct for members is in place. The Committee notes also that the number of cases of proven misconduct was relatively small although the media reports might lead to a different impression. When these events were revealed the individual Members could be and were measured against the code and this provided certainty.



The nature of a code of conduct

Introduction

- 4.1 The Committee has considered the issue of the style or nature of any code of conduct, that is, whether it would be preferable for a code to be prescriptive or aspirational in nature. The experience of other jurisdictions indicates that once this issue has been settled the code will evolve over time.
- 4.2 Associated important issues to be determined are how the code relates to other rules and guidelines applicable to members, including those applying to entitlements, and the authority and status of the code.

Character of a code – prescriptive or aspirational

- 4.3 Of the codes of conduct examined by the Committee they seemed to fall into the two categories identified above – prescriptive or aspirational. One approach is to establish a more directive or prescriptive code which would include quite detailed rules and be a rather lengthy statement. The aim of a prescriptive code is to provide a comprehensive account of the conduct required of members in all conceivable situations.
- 4.4 The alternative approach is for a more aspirational code, which declares a set of principles from which each member must determine his or her own behaviour. An aspirational code aims to provide a frame of reference for making decisions that involve competing values.

- 4.5 Since the earliest considerations of a code of conduct for members, comments and findings have highlighted the practical difficulty of any attempt to draft a completely comprehensive statement in relation to conduct which would apply to members, or indeed to public officeholders at large.¹ Mr Russell Grove, Clerk of the Legislative Assembly, Parliament of New South Wales, expresses concerns in relation to a prescriptive style of code in this way: ‘The danger of a defined set is that you will leave some out. If something happens, and it is the wrong thing, and it should be in the code but it is not there. Okay, you are not guilty under the current code’.²
- 4.6 The Committee was mindful of the proposed code drafted in the 1990s by the Australian Parliament and notes that it was developed at a time when the conduct of members of parliament in some Australian jurisdictions was being scrutinised in the context of independent commissions investigating claims of misconduct or corruption. In presenting the draft framework of ethical principles, Speaker Stephen Martin told the House that the choice of approach was of primary concern to the working group of Members and Senators. The Committee recognised a familiar theme, noting that much of the debate was about whether the code should consist of a very detailed set of rules and procedures governing all aspects of the behaviour of a member, or should be an aspirational set of principles and values within which a member could make decisions about their own behaviour. A majority of those on the working group favoured the aspirational approach.
- 4.7 The code of conduct for members of the House of Commons at Westminster, as referred in chapter 2, can be described as an aspirational style of code although it also has some directive detail. Members are expected to observe a set of seven principles or values, the ‘standards of public life’, at the core of the code, in carrying out their parliamentary and public duties.³
- 4.8 The principles, referred to as the ‘Nolan Principles’ are taken into consideration when any complaint is received of breaches of the provisions in other sections of the code. The code is used as a reference point for each member in making decisions concerning his or her own behaviour. In this respect, Mr John Lyon CB, Parliamentary Commissioner for Standards, considered that a code can have a unifying effect for the

1 For example, see submission 6 from the Hon Philip Ruddock MP, Member for Berowra.

2 Transcript of round table discussion, 21 March 2011, p. 33.

3 Submission from Dr Malcolm Jack, Clerk and Chief Executive of the House of Commons, United Kingdom, pp. 1 and 2.

body of members because it sets up common minimum standards for members from disparate backgrounds, in addition to providing a basis on which any complaints and concerns can be examined.⁴

- 4.9 The code of conduct for members of the House of Commons in Canada, as referred in chapter 2, is titled a 'Conflict of interest code' and it focuses on preventing and enabling disclosure of relevant financial interests that may give rise to actual or perceived conflicts of interest.⁵ At its core this code has a short statement of principles, and at the same time has considerable directive detail which tries to anticipate a range of circumstances and situations. This code seems to fit more within the prescriptive or directive category of code.
- 4.10 Most codes the Committee reviewed contained broad statements of principles and values and appeared to be more aspirational in style. The Queensland Parliament had originally implemented a more detailed and prescriptive style of code of conduct. The Committee found it most instructive that a recent review of the code by the Integrity, Ethics and Parliamentary Privileges Committee, has resulted in that committee recommending the adoption of a more simplified code built around key principles. The review concluded there was a concern that members, especially new members, might find that the existing relatively long and complex document made it difficult to understand their obligations and responsibilities under the code.⁶ Mr Kerry Shine, Chair of the Queensland committee, stated: 'We believe fundamentally in that approach of recording principles as opposed to setting out in codified form every possible circumstance that might arise'.⁷
- 4.11 Mr Shine commented further: 'I think it is important, particularly from the public perception point of view, that you have a limited number of aspirational principles ... so that a constituent can see where I as a member of parliament have, in that constituent's view, breached a particular principle'.⁸ In commenting on the recommended reform of the code to adopt a principles based approach, Mr Neil Laurie, Clerk of the Queensland Parliament, explained: 'The draft was conceived on the

4 Transcript of video conference, 21 June 2011, p. 1.

5 Submission from Ms Audrey O'Brien, Clerk of the House of Commons, Canada, pp.1-2.

6 Submission from Mr Kerry Shine, Chair of the Integrity, Ethics and Parliamentary Privileges Committee, Queensland Parliament, p. 1.

7 Transcript of round table discussion, 21 March 2011, p. 2.

8 Transcript of round table discussion, 21 March 2011, p. 8.

assumption that it is not possible to detail all possible ethical situations or dilemmas that a member may face.’⁹

- 4.12 The desire for simplicity in style, while capturing the important elements seems to be an important factor in the evolution of the Queensland Parliament’s code of conduct. The Committee notes also that there is a draft proposal for the codes of conduct regimes of the Australian Public Service and the Australian Parliamentary Service to simplify the two, aspirational style, codes. Each of the two separate, but similar regimes, currently contains 15 separate values and 13 individual elements of the code. It is proposed to retain the ideal of complete coverage of conduct, but to reduce the number of principles by more than 50 per cent.

Observations

- 4.13 The Committee recognises that members must individually observe a code of conduct and make appropriate decisions about their own behaviour.
- 4.14 The Committee considers that it would be difficult for one document to anticipate and capture every possible circumstance in which a complaint might be made about the conduct of a member. Nor is it possible to prescribe all appropriate behaviour in these hypothetical situations.
- 4.15 The Committee notes that criminal matters would not be dealt with under a code. Any such matters would be dealt with quite separately by the public prosecutors and the courts.
- 4.16 The Committee considers that it would be preferable for a code of conduct for members to be broad in nature and reflect key principles and values as a guide to conduct. The framework for ethical principles for members and senators that was developed in the mid-1990s provided a starting point for the Committee to draft a possible code, which is included at Appendix 5.
- 4.17 The Committee notes also that over time a code would evolve and the House would develop a body of interpretative and explanatory material which has regard to individual cases and contemporary values. However, the Committee considers that starting from the implementation of a code, there would be a need for initial explanatory material and for clearly identifying related rules and guidelines affecting members, so considers this matter next.

9 Submission from Mr Neil Laurie, Clerk of the Parliament, Queensland, p. 2.

Other rules and guidelines affecting Members

- 4.18 As discussed above, the Committee considers that a code of conduct based on aspirational principles and values would be preferable to a directive code, and it also considers that such a code should be cross-referenced to other key rules and guidelines that relate to the various aspects of a member's role and behaviour as a member. These other rules were identified above, in chapter 3, as including constitutional provisions, standing orders, resolutions of the House, the Register of Members' Interests, the entitlements regime, etc. The Committee notes that such additional guidance was also cross-referenced in the draft framework of ethical principles prepared by the Parliament in 1995¹⁰, and that the Senate publishes a guide about such other requirements.¹¹
- 4.19 The codes of conduct of other parliaments also include references to specific rules and guidelines affecting their parliamentarians, which sit outside the individual codes.
- 4.20 The issue of entitlements features expressly in the codes of conduct for members of many parliaments, as many Houses have the principal responsibility for deciding and administering members' entitlements. However, this is not the case for the great majority of entitlements paid to Members and Senators of the Australian Parliament, although the Presiding Officers have responsibility for services provided to Members and Senators at Parliament House. At the federal level, most entitlements are established either by the Remuneration Tribunal or the Executive, and the great majority are administered by the Executive.

Observations

- 4.21 The Committee considers that if there were a code of conduct it would be helpful to both the community and to members of the House to have a single point of reference for the rules and guidelines which address the various obligations and conduct of members. The Committee recognises that the Executive administers the great majority of members' entitlements and that they are subject to an extensive regulatory regime in relation to which the House does not have a direct role. Nevertheless, the Committee considers that entitlements should be referenced to any code of conduct as members must ensure they satisfy the rules and guidelines, laid down elsewhere, in relation to parliamentary entitlements.

¹⁰ See, Appendix 1 below.

¹¹ See, *Brief Guide to Senate Procedure – 'No. 23 – Provisions governing the conduct of Senators'*.

Process for implementing a code

- 4.22 The Committee has reviewed how codes of conduct have been implemented in various other parliaments, and has found that there seem to be three options for implementing a code. A code could be adopted by resolution of a House and included in its standing orders. This is the process followed by Canada's House of Commons which has resolved that the code of conduct be part of its standing orders, where it is placed in a separate appendix. Another option is for a House to adopt a code as a separate resolution, and such is the case in the United Kingdom's House of Commons which has adopted a code of conduct by resolution. A third option is for a code of conduct to be part of an Act of Parliament, and Victoria's Legislative Assembly and Legislative Council are each bound by a common code of conduct which is part of the Members of Parliament (Register of Interests) Act 1978 (Vic), s. 3.
- 4.23 The Committee noted above, in chapter 2, the strongly held views expressed both by the Clerk of the UK House of Commons¹² and the Clerk of the Canadian House of Commons¹³ that a code of conduct should be adopted by resolution and not be statutory. These statements reflect the deliberately non statutory nature of the codes adopted in those Houses. The approach of adoption by resolution would ensure that the respective House itself retained control over its own affairs including the conduct of its members, and that these matters then would not be contestable in the courts. The courts would not have a role in, or be able to pass judgement on, what is regarded as essentially an internal matter, the appropriateness of the behaviour of members as assessed against the standard set by the Houses.
- 4.24 If this approach were followed in the Australian Parliament, clearly the House of Representatives would retain control over its members, although it is noted that the courts would still potentially have jurisdiction in relation to conduct matters if they raised some aspects of parliamentary privilege. The Committee notes also that while the House would retain jurisdiction in relation to misconduct matters under a code of conduct adopted by resolution, any criminal investigation related to the same facts would be a matter for the courts and therefore quite a separate process.

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

13 Submission from Ms Audrey O'Brien, Clerk of the Canadian House of Commons, pp.1-2.

4.25 In addition, The Rt Hon Kevin Barron, Chair, Committee on Standards and Privileges, House of Commons, United Kingdom told the Committee that one of the greatest strengths of the adoption of the House of Commons code by resolution was ‘the flexibility of being able to alter the code in terms of what is happening at any one time in parliament ...’.¹⁴ The Committee recognises that it would be highly desirable to be able to easily review and amend a code in the light of developments, thereby quickly addressing any problems or weaknesses in the code. All the jurisdictions examined by the Committee have amended their codes and changed their processes following developments over time and specific or annual reviews. The Committee expects that the normal course would be for a code of conduct to change from time to time.

Observations

- 4.26 The Committee considers that it would be preferable for any code of conduct to be adopted by resolution of a House. It would be important that members see a code as their own, one they have debated and agreed to, and not as a measure that has been imposed on them remotely. The Committee considers that information and education for members about a code would be an important means for Members to learn how the code would support them in their role as Members, see chapter 7 below.
- 4.27 A statutory code appears to be a less favourable option because as a practical effect its interpretation could directly involve the courts in matters of members’ conduct, which would prevent flexibility and responsiveness if changes are required.

¹⁴ Transcript of video conference, 21 June 2011, p. 1.

Parliamentary Integrity Commissioner

Introduction

- 5.1 The Committee has been asked to examine ‘the role of the proposed Parliamentary Integrity Commissioner in upholding a code’.
- 5.2 The proposal for a Parliamentary Integrity Commissioner was included in the various agreements that led to the formation of the minority Labor Government. The agreements referred to the appointment of a Parliamentary Integrity Commissioner and to a number of roles for the Commissioner.
- 5.3 The agreement between the government, Opposition and Mr Katter MP, Mr Oakeshott MP and Mr Windsor MP stated in relation to the proposed Parliamentary Integrity Commissioner:

This commissioner would be supervised by the privileges committee from both House and Senate to provide advice, administration and reporting on parliamentary entitlements, investigate and make recommendations to the Privileges Committees on individual investigations, provide advice to parliamentarians on ethical issues and uphold the Parliamentary Code of Conduct and control and maintain the Government’s Lobbyists register.
- 5.4 The agreement between Hon Julia Gillard MP and Mr Andrew Wilkie MP and between the Australian Greens and the Australian Labor Party made reference in very similar terms to the role of a Parliamentary Integrity Commissioner (see Appendix 2 for extracts of the agreements).

- 5.5 The Committee's task is to examine the possible role for a Parliamentary Integrity Commissioner in relation to a code of conduct. Therefore, the Committee has not considered the wider possible role of a Parliamentary Integrity Commissioner in relation to the use of parliamentary entitlements or in relation to the control and maintenance of the Government's lobbyists register, other than that these issues may relate to a matter of conduct. For example, the use by a member of their parliamentary entitlements may raise questions about the economical use of public resources, even if the use was within entitlement. Similarly, contact with lobbyists could give rise to issues to do with the proper exercise of influence by members.
- 5.6 Despite the commitment made in the agreements to the appointment of a Parliamentary Integrity Commissioner, the Committee considered it should assess all possible options, including whether there should be a Parliamentary Integrity Commissioner at all.

Options for a Parliamentary Integrity Commissioner

- 5.7 The Committee considered three options for a Parliamentary Integrity Commissioner.

Option 1 – No Parliamentary Integrity Commissioner

- 5.8 The Committee considered firstly whether there should be a Parliamentary Integrity Commissioner at all. The presumption would be that, without a person such as a Parliamentary Integrity Commissioner, any role needing to be performed in relation to a code of conduct for members, such as advising on ethical issues or receiving and investigating complaints, could be performed by a relevant parliamentary committee.
- 5.9 Such an approach is often referred to as a 'self-regulatory' approach. It was described well in the report of the Committee of Inquiry into 'Public duty and private interest' (the Bowen Report) in 1979:
- the regulatory process should be one in which:
 - the desired standard is set in general terms;
 - performance against that standard is ordinarily assessed by those familiar with the context because they work there themselves; and

- to the extent that performance falls below the desired standard, they decide whether the penalty is appropriate and what the penalty should be.¹

5.10 However, the Bowen Report itself noted the potential limitations of self-regulation stating:

This approach has its dangers. Self-regulation may be abused to the point that there is no regulation at all.² [and]

Further, there is the important matter of the extent to which the public is prepared to place its confidence in self-regulation.³

5.11 The Clerk of the New South Wales Legislative Assembly also referred to the limitations of a purely self-regulatory approach:

I do not think a code which is controlled by single committees of houses where decisions are taken carried enough public acceptance. It is sort of Caesar appealing to Caesar and judging your own. There probably needs to be some sort of external guide running alongside it to give it some sort of legitimacy and perhaps public confidence.⁴

5.12 The Committee considers that these limitations would result in any approach of pure self-regulation lacking sufficient credibility. A purely self-regulatory approach could undermine the purpose of implementing a code of conduct in that it would lack public confidence and support.

Option 2 – Parliamentary Integrity Commissioner as ethical adviser

5.13 The second option the Committee considered was that a Parliamentary Integrity Commissioner could have a role as an ethical adviser to members, but the role would not extend to receiving and investigating complaints. This is very much the model that applies in the New South Wales Legislative Assembly and the Queensland Legislative Assembly.

5.14 The approach taken to the role of a Parliamentary Integrity Commissioner in New South Wales and Queensland was supported by Professor Gerard Carney of Bond University who proposed that the

1 *Public duty and private interest*, Report of the Committee of Inquiry established by the Prime Minister, 15 January 1978, chaired by N.H. Bowen, AGPS, Canberra, 1979, p. 20.

2 *Ibid*, p. 21.

3 *Ibid*.

4 Transcript of round table discussion, 21 March 2011, p. 3.

House appoint, by resolution, a Parliamentary Ethics Adviser (possibly a former Member) who would:

- monitor the code of conduct; and
- make recommendations to the House on ethical issues.⁵

5.15 The submission from the Clerk of the New South Wales Legislative Assembly referred to the role of the Parliamentary Ethics Adviser in New South Wales as being to advise members, on request, on the use of entitlements and the interpretation of rules relating to the use of entitlements. It had been extended to include the provision of advice to Ministers and former Ministers on post-separation employment matters. The Adviser also provides an independent point of contact for members to advise on more difficult questions relating to their responsibilities as members. The Adviser was prohibited from investigating particular complaints against members.⁶

5.16 The Chair of the NSW Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, Mr Paul Pearce, noted in giving evidence to a Victorian Legislative Assembly Committee that there were limitations to this role:

The role of that ethics adviser is fairly limited in that he cannot give legal advice. Consequently, the amount of work he does is fairly low. Members do inquire from time to time, but it is advice of a generic nature, rather than specified legal advice⁷

5.17 In Queensland, there is an Integrity Commissioner who has a role in providing advice on integrity and ethics issues both to members of Parliament and to senior public servants. This advice particularly is in relation to managing conflicts of interests. Under current arrangements, all government members of Parliament are required to consult with the Integrity Commissioner annually.⁸ As in New South Wales, the Integrity Commissioner has no role in investigating complaints. Any complaints are made to the Speaker who then decides whether to refer them to the Legislative Assembly Integrity, Ethics and Parliamentary Privileges Committee for investigation.⁹

5 Submission from Professor Gerard Carney, p. 2.

6 Submission from Mr Grove, op.cit.

7 Evidence to the Victorian Legislative Assembly Law Reform Committee, 17 August 2009, p. 2.

8 Submission from Mr Neil Laurie, Clerk of the Queensland Legislative Assembly, p. 3.

9 Ibid.

5.18 Having an independent person available to advise members on ethical issues would be of value to members in working within the framework of a code of conduct. Such a person also could perform a broader educative role for members in relation to ethical issues and regularly review the code. The appointment of an integrity commissioner with such an advisory role would respond in part to community expectations that a self-regulatory regime would have sufficient checks and balances and an independent perspective. However, it leaves a gap as to how to approach the receipt and investigation of complaints.

Option 3- Parliamentary Integrity Commissioner - Receive and investigate complaints

5.19 The final option the Committee examined was a Parliamentary Integrity Commissioner whose primary role would be as an independent person who would receive and investigate complaints about breaches of the code of conduct for members. This model would broadly be along the lines of the approach in the United Kingdom House of Commons and the Canadian House of Commons.

5.20 The Chair of the United Kingdom House of Commons Committee on Standards and Privileges, the Rt Hon Kevin Barron MP, referred in his submission to the importance of an independent complaints handling process:

... it is vital that the complaints handling process is carried out with rigor, and independently of the Committee. In my view, the United Kingdom experience has shown the importance of having a strong, independent commissioner, who decides (other than in specified, exceptional circumstances) which complaints should be investigated; who carries out the investigation; and who finds whether the complaint should be upheld.¹⁰

5.21 This view was strongly supported by the Clerk of the United Kingdom House of Commons who stated that 'A robust complaints investigation process contributes to public confidence in the institution of Parliament'.¹¹

5.22 In both the United Kingdom and Canada, the Commissioners play a broader role in relation to the codes of conduct, although the investigatory role is central.

10 Submission from Rt Hon Kevin Barron MP, Chair of the United Kingdom House of Commons Committee on Standards and Privileges, p. 2.

11 Submission from Dr Malcolm Jack, op. Cit, p. 2.

- 5.23 In the United Kingdom, the Parliamentary Commissioner for Standards also advises the Committee on Standards and Privileges and individual members on the interpretation of the code and on questions of propriety, and monitors the code and makes recommendations for change. The latter responsibility usually involves a review of the code each Parliament (roughly every five years). In providing confidential advice to members, the Commissioner is very conscious of the possibility of a conflict of interest if subsequently there is to be an investigation of a member. The Commissioner normally would decline to give advice if the matter is likely to give rise to a complaint.¹²
- 5.24 Finally, the Commissioner also is responsible for maintaining the Register of Members' Financial Interests.
- 5.25 The Commissioner is appointed for a single five year non-renewable term. The appointment is made by the House of Commons Commission following a rigorous selection process.
- 5.26 In Canada, a Conflict of Interest and Ethics Commissioner is appointed as an independent officer of Parliament, primarily to investigate allegations of breaches of the code of conduct of Members of the House of Commons. A inquiry can be initiated by the Commissioner:
- on the written submission of a Member that there has been a breach and the Commissioner has reasonable grounds to believe an infraction has occurred;
 - following a motion of the House of Commons referring a matter to the Commissioner; or
 - on his or her own initiative if there is reasonable grounds for believing an infraction has occurred.¹³
- 5.27 The Commissioner also:
- provides confidential advice to Members about conflict of interest and ethical matters;
 - prepares and maintains a public summary of the confidential disclosure statements made by Members;
 - submits an annual report to Parliament on the administration of the code; and

12 Submission from Mr John Lyon, Parliamentary Commissioner for Standards.

13 Submission from Ms Audrey O'Brien, Clerk of the Canadian House of Commons, p. 2.

- is mandated to organise educational activities for members and the general public about the code and the role of the Commissioner.¹⁴
- 5.28 The Commissioner is appointed by the Governor in Council for a seven year term following consultations with the leaders of political parties and a resolution of the House. The appointment can be renewed for one or more terms of up to seven years.
- 5.29 Both the United Kingdom and Canadian frameworks provide a wide ranging and robust role for their respective parliamentary standards or ethics commissioners. The role centres on one of the receipt and investigation of complaints, but extends to providing advice, reviewing the code and conducting awareness raising and educational responsibilities relating to the code.

Observations

- 5.30 The Committee considers that the implementation of an independent and rigorous process for the receipt and investigation of complaints under a code of conduct for members would be essential to ensuring the credibility of the code. Although the Committee can see merits in both the purely self-regulatory option and the option for a parliamentary integrity commissioner in the role of an ethics adviser, it considers that neither option may provide the credibility required properly to support the code in the mind of the public.
- 5.31 Thus if a code of conduct were to be adopted, the Committee would see value in the appointment of an independent Parliamentary Integrity Commissioner whose central role would be to receive and investigate complaints under the proposed code of conduct. In the next chapter, the Committee will discuss in detail a possible complaints procedure.
- 5.32 In addition to a central role of receiving and investigating complaints of breaches of a code, the Committee considers a Parliamentary Integrity Commissioner could have related roles of:
- providing advice to members on matters relating to the code of conduct and ethical issues generally, subject to such advice not creating a potential conflict with any possible investigations;
 - periodically (every Parliament) reviewing the code of conduct and reporting to the relevant House Committee; and

¹⁴ Ibid, pp. 4-5.

- undertaking an educative role for Members in relation to the code and ethics matters generally.

Appointment of a Parliamentary Integrity Commissioner

- 5.33 The Committee would see it as desirable that a Parliamentary Integrity Commissioner be seen to be independent of government and the political parties. The arrangement for a Commissioner, including the process of appointment and functions, should be established by resolution of a House.
- 5.34 The process to select a Commissioner should be overseen by the relevant Committee of a House given responsibility for the arrangements for the code of conduct (in this House, possibly the Committee of Privileges, Ethics and Members' Interests – see Chapter 7). Were an appointment to be made, the Commissioner and associated staff and other resources should be funded from the budget of the Department of the House of Representatives with the necessary additional appropriation for the Commissioner being provided to the Department. The Commissioner should be appointed as an Officer of the House by resolution of the House following a recommendation to the House to be made by the proposed Committee of Privileges, Ethics and Members' Interests. The Commissioner should be appointed for a non-renewable term of seven years ensuring the independence of the position. The Commissioner should only be able to be removed from office by resolution of the House following a report from the Committee of Privileges, Ethics and Members' Interests to the House that the Commissioner is unfit to hold the office or is unable to carry out the duties of the office.
- 5.35 It is unclear what the extent of responsibilities of a Parliamentary Standards Commissioner would mean in terms of workload until the position commenced and complaints were made. However, the Committee envisages that such a role might only be a part time one, although a Commissioner would require some supporting resources. The Committee considers such supporting resources would not be extensive.

Complaints procedure

Introduction

- 6.1 It would be essential to the integrity of any code of conduct and to building confidence in a new system to support appropriate standards of members' conduct that a complaints procedure be established, and that it should be open and robust. As noted in the previous chapter, an independent Parliamentary Integrity Commissioner could be appointed as part of the support framework for the code, and could have responsibility for the receipt and investigation of complaints under the code of conduct.
- 6.2 A Parliamentary Integrity Commissioner could be seen as independent of government and the political parties and the discussion in chapter 5 explores this aim. The arrangements for the Commissioner could be established by resolution of the House, with the Commissioner to be appointed as an Officer of the House by resolution following a recommendation to be made by the relevant Committee of the House (see Chapter 7). The Commissioner could be appointed for a non-renewable term of seven years. The Commissioner could only be removed from office by resolution of the House following a report from the relevant Committee of the House that the Commissioner is unfit to hold the office or is unable to carry out the duties of the office.
- 6.3 In keeping with the aim to establish a complaints procedure that instils a high degree of community confidence, the Parliamentary Integrity Commissioner could have considerable licence to establish independent processes in how complaints would be dealt with. Nevertheless, it is also useful to consider the basic features of a complaints procedure including,

what limits there might be in relation to complaints about a member and how the complaints might be dealt with, investigated and reported on.

Limits in relation to complaints about a Member

- 6.4 In Canada complaints may only be made by a member of the parliament, the House itself or the Commissioner. This approach would leave the way open for other potential complainants to raise their concerns with a member of the House or with the Commissioner who might then raise a complaint on their behalf. The complaint mechanism in the UK is more liberal, and the Parliamentary Commissioner for Standards can receive complaints from members of parliament or from members of the public who can be clearly identified, meaning no anonymous complaints will be accepted.
- 6.5 Consistent with an open process for making complaints, the Committee notes that for most state parliaments any person can make a complaint, and considers that a suitable procedure should enable complaints to be lodged by a wide range of persons in the community. However, it would be reasonable to put some limits on complaints and the Committee closely reviewed the approach at the UK House of Commons.
- 6.6 In the United Kingdom, a number of areas of complaint are outside the remit of the Parliamentary Commissioner for Standards. These areas are: policy matters or a Member's individual views or opinions, a Member's handling of or a decision about an individual case (whether a constituent or another person), the funding of political parties, the conduct of members in a ministerial capacity (where the application of the Ministerial Code may be relevant), or the purely private or personal lives of members.
- 6.7 In addition, as referred above, the Commissioner will not accept anonymous complaints, or those relating to matters in the Chamber, which are considered to be within the domain of the Speaker. If the complaint is in the nature of a criminal misconduct, and more appropriately dealt with by a different office, the Commissioner will advise the complainant to approach the appropriate office.
- 6.8 The 2009-10 annual report of the UK Parliamentary Standards Commissioner indicates that the overwhelming majority of complaints, approximately 90 per cent, do not merit a final report to the Committee on Standards and Privileges. Some 317 formal complaints and allegations were received, of these, 72 (14 of which were referred by members) were

investigated further by the Commissioner. Only 21 of the 317 formal complaints were reported to the committee; of the rest, the Commissioner concluded 14 less serious matters but did not report these to the committee, did not uphold 16 others, which were not reported, and the remaining matters are not yet finalised.

- 6.9 The Committee notes that there is a considerable difference in the number of original complaints made and the number of formally registered complaints. It is vital that the complaints process be sufficient to address complaints about whether members are acting in the public interest. Matters of a personal nature or those dealt with elsewhere should rightly be excluded from the process. The Committee considers that it is reasonable to exclude the areas referred to above in relation to members' conduct and would support their exclusion from any complaints procedure adopted. The Committee considers that anonymous complaints should not be accepted because they would raise difficulties if further information was required during an investigation.
- 6.10 With the exception of these exclusions, an appropriate complaints process should be open to any member of the public, under detailed arrangements to be established by a Commissioner.

Observations

- 6.11 The Committee considers that a Commissioner could receive complaints from any person, as long as the individual can be clearly identified, and that no anonymous complaints should be pursued. Also, in relation to the Chamber, the Speaker is the appropriate authority in relation to members' conduct within the Chamber.
- 6.12 The Committee considers further, that a Commissioner could receive any complaint, saving only the following exclusions: policy matters or a Member's views or opinions, a Member's handling of or a decision about an individual case (whether a constituent or another person), the funding of political parties, the conduct of members in a ministerial capacity (recognising that the application of the ministerial code may be relevant), or the purely private or personal lives of members.

Consideration and investigation of complaints

- 6.13 The Committee considers that a Parliamentary Integrity Commissioner should have the responsibility to establish a robust complaints process

that ensures there is natural justice both to the complainant and to the Member about whom the complaint is lodged. It is clear that the Commissioner would need guidelines in relation to the exercise of his or her responsibilities. The whole process needs to be fair to all parties and conducted in accordance with proper procedures.

- 6.14 The process adopted would need to instil confidence that no complaint would be decided on the basis of the subjective or personal view of the Commissioner rather, the evidence should be tested against the terms of the code in accordance with the rules that underpin the code. As Mr John Lyon, Parliamentary Commissioner for Standards, UK House of Commons has told the Committee, those rules must be fair and transparent.¹
- 6.15 It would be necessary for all members to cooperate with any investigation undertaken by a Commissioner, although it is not considered that the Commissioner would have the power to call for persons and records.
- 6.16 In addition, the Committee considers that a Commissioner should have several options available in order to respond appropriately in relation to complaints. There would be no good purpose served, and potentially harm caused, were all complaints to be published in circumstances where a Commissioner could not find evidence to support them. The Committee believes that a Commissioner should have the option of dismissing a complaint in circumstances where the complaint is outside jurisdiction or there is no evidence to support the complaint. Further, if a breach is not found on preliminary inquiry, the Commissioner could have the option to dismiss a complaint, or if an issue might have arisen, the Commissioner could have the option to resolve a complaint to the satisfaction of the parties.
- 6.17 The Committee considers that even though a Commissioner could have carriage of receiving and investigating complaints, it would be appropriate for the Commissioner to make reports about complaints to a parliamentary committee, in keeping with the established processes of the House. That committee, in turn, would consider the report and present any recommendation to the House. This process would be similar to established processes of the House in relation to the consideration of complaints of breach of privilege. The Committee considers this matter in more detail below in chapter 7.

1 Transcript of video conference, 21 June 2011, p. 1.

Observations

- 6.18 The Committee considers that a complaints process would need to be as transparent as possible and at the same time be characterised as fair and proper to all parties. A Parliamentary Integrity Commissioner could have the following options available in addressing complaints:
- dismissing a complaint immediately if it is outside jurisdiction (for any of the reasons outlined above as exclusions) or if there is insufficient evidence to support the complaint;
 - dismissing a complaint after having conducted preliminary inquiries, including seeking comment from the Member involved, on the basis that the Commissioner finds there is not a breach of the code;
 - having investigated a complaint and found that there might be an issue, attempting to rectify or resolve the matter to the satisfaction of the parties; or
 - having investigated a complaint and found that there is an issue, reporting on the matter to the relevant House committee.

Reports in relation to complaints

- 6.19 The Committee considers the Parliamentary Integrity Commissioner should report on complaints to a relevant committee of the House (see Chapter 7). That committee in turn would have the responsibility for reporting to the House, including whether there are findings of a breach of the code and making recommendations for the imposition of any sanctions.
- 6.20 As the information in relation to the United Kingdom complaints procedure and independent commissioner illustrates, the large majority of complaints about the conduct of members are dismissed at some point of the process of investigation. Nevertheless, the Committee considers that in the interests of transparency of process the oversight committee could receive information from the Commissioner in relation to how each complaint is dealt with. This level of reporting would provide valuable information about the overall operation of the complaints procedure and the role of the Commissioner.

- 6.21 The Committee considers that it would be appropriate for a Commissioner to report to the oversight committee in varying detail depending on the option followed. The Commissioner could report, identifying the number of cases where complaints are dismissed before any investigation, briefly where a complaint is dismissed after preliminary investigation, including a summary where a complaint is investigated and action is taken to resolve a matter, and with a full report where a matter has been investigated and a finding of a breach of the code is made.

Observations

- 6.22 The Committee considers that a Parliamentary Integrity Commissioner could have several options in relation to reporting on complaints which reflect a high level of transparency, but also fair and proper process to the complainant and any member involved.
- 6.23 In particular, the Committee considers it would be appropriate for a Commissioner to report to the oversight committee as follows:
- where complaints are dismissed before any investigation – report general statistics periodically;
 - where complaints are dismissed after preliminary investigation – report periodically with a brief summary of each matter;
 - where complaints are investigated and some action is taken to rectify or resolve the matter – report periodically with a brief summary of the matter and the action taken to rectify or resolve it; and
 - where matters have been investigated and a finding of a breach of the code is made – report with the details of the investigation and any conclusions or findings that are made.

Role of an oversight committee

Introduction

- 7.1 The approach to a code of conduct for members as discussed in this paper includes that a committee of the House should have an oversight role in relation to a code.
- 7.2 The Clerk of the Canadian House of Commons referred the Committee to the view taken in Canada when the code of conduct for members was first introduced. It was envisaged that the Ethics Commissioner would investigate complaints about breaches of the code and report to the relevant House of Commons Committee (the Standing Committee on Procedure and House Affairs). That Committee stated in a report on this matter:

... the Code **as introduced** provide[s] for a committee to play a very major role in dealing with complaints that Members have not lived up to their obligations under the Code. It was proposed that the Ethics Commissioner would investigate and report to the committee. In serious cases where the facts are disputed and no agreement on a remedy was reached between the Ethics Commissioner and the Member involved, the committee would actually conduct its own inquiry, and then report to the House ... **[U]pon further reflection we have now concluded that this model contains some serious flaws. Members are concerned about the possibility of excessive partisanship and complexity that the committee process could introduce ... We also have doubts that a committee is an effective mechanism to conduct a**

detailed, factual inquiry in which an individual's rights and reputations may be at stake, and in which procedural fairness is important. [Emphasis added]¹

- 7.3 Consequently, the Conflict of Interest and Ethics Commissioner reports directly to the House of Commons and it is for the House of Commons to take action in respect to the Commissioner's reports.
- 7.4 The Chair of the UK House of Commons Committee on Standards and Privileges cautioned the Committee that any committee dealing with issues to do with the standards of members 'has to operate in a non-partisan way'.² He noted that:
- In a committee that deals with standards cases, there are many tempting opportunities to score political points and to wrong-foot, discomfort or even destroy political opponents.³
- 7.5 Nevertheless, he concluded that the UK Committee had operated in an impartial way and so the approach had worked. It was assisted by the make up of the Committee which did not give one party (or party grouping) a majority and having the Committee chaired by an Opposition Member.⁴ The UK Committee also now is considering a proposal to appoint lay members.
- 7.6 The Committee sees the role of such an oversight committee as vital in mediating between the work of a Parliamentary Integrity Commissioner and the House. The Committee does not agree with the perspective taken by the Canadian Committee referred to earlier.
- 7.7 The Committee considers that the House committee that is best placed to take on an oversight role in relation to a code of conduct for members is the Committee of Privileges and Members' Interests, which might be renamed the Committee of Privileges, Ethics and Members' Interests, because of an extended role. The Committee has a long record of bipartisan operation and therefore there should be no need for any change to the existing membership along the lines of the UK Committee on Standards and Privileges. The Committee has considerable experience of conducting detailed investigations, including of matters involving members. The Committee also has very well developed procedures to ensure that any inquiry would be conducted with regard to procedural

1 Submission from Ms Audrey O'Brien, p. 6.

2 Submission from Rt Hon Kevin Barron MP, p. 1.

3 Ibid.

4 Ibid, p. 1-2.

fairness. These procedures could be amended to include dealing with complaints relating to the code of conduct.

- 7.8 The Committee would envisage that the work of detailed investigation largely would be a matter for a Parliamentary Integrity Commissioner who would report to the Committee. It would only be in unusual circumstances that the Committee might need itself to undertake any form of code of conduct investigation. The purpose of having an independent Parliamentary Integrity Commissioner to investigate complaints is to ensure that the process is at one step removed from the political sphere.

Roles of an oversight Committee

- 7.9 The Committee considers that the possible Committee of Privileges, Ethics and Members' Interests could have the following roles in relation to a code of conduct for members:
- oversight the process for the selection of the Parliamentary Integrity Commissioner and make a recommendation to the House;
 - consider any matter relating to the conduct of members, including complaints made for alleged breaches of the code which have been investigated and reported on by the Parliamentary Integrity Commissioner and report to the House on such matters as required including making any findings and recommending sanctions;
 - recommend to the House any proposed changes to the code of conduct following reviews undertaken by the Parliamentary Integrity Commissioner; and
 - assist with the education of members and the public about the code of conduct and the consequent expectations of the ethical standards and behaviour to be shown by members.

Role of the House in relation to a code

Introduction

- 8.1 The House of Representatives is central to the operation of a code of conduct for members as the House provides the legal authority for the framework which the Committee has discussed and, ultimately, provides the authority for any sanctions against members taken as a result of any breach of the code.
- 8.2 The Committee considers that the approach it has taken in this discussion paper to handling matters that are raised under a code of conduct for members appropriately places the House at arm's length from the detail of the matters which might arise. A Parliamentary Integrity Commissioner, independently of the House and its members, could have the primary responsibility for receiving complaints and determining whether complaints should be investigated, and then investigating the complaints. The proposed Committee of Privileges, Ethics and Members' Interests could receive and review the reports of the Commissioner and, in turn, report to the House with any findings and recommendations for sanctions.
- 8.3 Once any matters raised under the code have reached the House, the House should be able to be well informed about the matters and have a reasoned proposed course of action put to it that has been examined in a bipartisan political context by the proposed Committee of Privileges, Ethics and Members' Interests.

Legal authority for a code of conduct and the imposition of sanctions

8.4 The Clerk of the Canadian House of Commons in referring to the enforcement of the code of conduct in Canada noted that ‘The sanctions available to the House in response to legal or ethical breaches by its members are largely dependent on the will of the House itself’.¹ Quoting *Canadian House of Commons Procedure and Practice*, the general authority of the House of Commons in relation to its members, the Clerk noted that it is evident that: ‘By virtue of parliamentary privilege, only the House has the inherent right to decide matters affecting its own membership’.²

8.5 In the United Kingdom House of Commons the power of the House to deal with members is equally as strong. An historical authority on procedure in the House of Commons has noted:

The penal jurisdiction of the House has ... always extended far beyond the bounds of debate, and in certain directions the House claims unlimited power over the persons of its members.³

8.6 The implementation of a code of conduct in the UK has developed from a recognition that the conduct of members cannot always be dealt with as one of a contempt of the House. As noted in Erskine May’s *Parliamentary Practice* in relation to matters such as corruption or impropriety: ‘Some have been seen as raising issues of whether the standards which the House is entitled to expect of its members have been observed’.⁴ The adoption by the House of Commons and the House of Lords of codes of conduct for their members has ‘considerably altered the approach taken by both Houses to the punishment of offences of this kind [matters of corruption or impropriety]’.⁵

8.7 In the Commonwealth Parliament the authority for the House to set a framework for the conduct of its members and to impose sanctions rests on sections 49 and 50 of the Constitution. These provide:

- **49.** The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until

1 Submission from Ms Audrey O’Brien, p. 7.

2 Ibid.

3 J Redlich, *The Procedure of the House of Commons, A Study of its History and Present Form*, Volume 3, trans by A E Steinthal, Archibald Constable & Co Ltd, London, 1908, p. 71.

4 Erskine May, *Parliamentary Practice*, 23rd edition, Lexis Nexis, 2004, p. 133.

5 Ibid.

declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

- 50. Each House of the Parliament may make rules and orders with respect to -
 - (i.) The mode in which its powers, privileges, and immunities may be exercised and upheld;
 - (ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

8.8 The implementation of any code might recognise, as noted earlier in the discussion paper and as referred to in *May*, that the traditional contempt processes of the House might not properly cover the sorts of actions which may give rise to complaints about the conduct of members.

The role of the House

8.9 In addition to providing the overall framework for a code of conduct, only the House is able to take action against members for any breaches of the code of conduct. As noted earlier, the framework the Committee has discussed for dealing with complaints should ensure that the House has all the evidence before it in relation to any matter and recommendations as to how it should deal with the matter.

Sanctions

8.10 The question of sanctions to be imposed for breaches of a code is an important one.

8.11 In relation to sanctions the Clerk of the UK House of Commons noted:

The consequences for a Member who is found to have breached the code of conduct are two-fold: damage to the Member's reputation and any formal sanctions or penalty. The scale and nature of the formal penalty may influence the extent of the reputational damage.

In the business of politics, reputational damage may threaten or terminate a parliamentary career; the consequences could range

from a temporary loss of prestige to a suspension of the Whip to a Member being permanently deprived of their position as a future candidate for their political party.⁶

8.12 The impact on a member of findings of a breach of a code also was referred to by the Chair of the UK House of Commons Committee on Standards and Privileges:

I think it is important to remember that even where no sanction is recommended, an adverse finding can have severe consequences for a Members' public standing. The reputational damage may even bring about a premature end to a Member's political career and damage prospects for future employment. Sanctions need to be proportionate and in deciding on them the relevant committee and the House need to have due regard to precedent and to consideration of fairness.⁷

8.13 In the United Kingdom, the Committee on Standards and Privileges has recommended the following individual penalties, having first taken account of a report from the Parliamentary Commissioner for Standards:

- an apology, in the form of a letter for publication;
- an apology, by way of a personal oral statement to the House;
- withdrawal of an allowance to which a retiring member would have been entitled;
- repayment of expenses incorrectly claimed;
- withdrawal of a former member's parliamentary pass; and
- suspension from the service of the House for a short period.⁸

8.14 In the video-conference discussion with the Committee, the Chair of the UK Committee on Standards and Privileges referred to the escalating range of sanctions available to the UK Committee to recommend for breaches of the code, with the imposition of suspensions being the most serious. The strongest sanction that has been recommended to date is the suspension of a member for 18 sitting days.⁹

8.15 The Committee considers that a sanctions regime associated with the enforcement of a code of conduct could have the following characteristics:

6 Submission from Dr Malcolm Jack, p. 4.

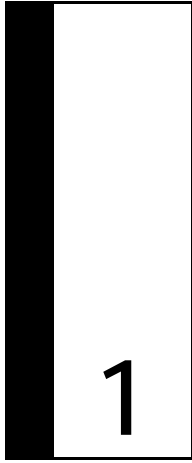
7 Submission from Rt Hon Kevin Barron MP, p. 2.

8 Submission from Dr Malcolm Jack, p. 5.

9 Transcript of evidence, 21 June 2011, p. 3.

- the sanctions regime be distinct from the regime that applies to questions of contempt;
- sanctions should be proportionate to the breach of the code to which they relate;
- sanctions should have regard not only to the individual breach of the code but to the wider public perception of members and the parliamentary institution created by the breach; and
- procedural fairness and natural justice must be built into the sanctions regime.

8.16 The Committee considers that any sanctions regime should not be prescribed in exhaustive detail as there should be flexibility to respond to individual cases with sanctions that are appropriate to the circumstances. Any arrangement that is put in place for a code of conduct should refer in general terms to the form of sanctions which could be recommended by the Committee. The penalties could range from seeking apologies to the imposition of suspensions for more serious breaches. In relation to procedural fairness, the Committee considers that the procedures for the protection of witnesses could make specific provision for allegations that there may have been a breach of the code of conduct or complaints about members conduct. These procedures provide safeguards to ensure procedural fairness when allegations have been made in relation to a person. The procedures also provide the opportunity for a person to respond where there is a proposal to make a recommendation for the imposition of a penalty.



Appendix 1 – Frameworks of Ethical Principles - 1995

[DRAFT PROPOSED BY WORKING GROUP]

**A FRAMEWORK OF ETHICAL PRINCIPLES
FOR MEMBERS AND SENATORS**

The principles which follow are intended to provide a framework of reference for Members and Senators in the discharge of their responsibilities. They outline the minimum standards of behaviour which the Australian people have a right to expect of their elected representatives. They incorporate some relevant ethical standards which should guide the considerations of Members of Parliament, and which should be a continuing reference point for former Members.

It is by adherence to such principles that Members of Parliament can maintain and strengthen the public's trust and confidence in the integrity of the Parliamentary institution and uphold the dignity of public office.

This framework does not seek to anticipate circumstances or to prescribe behaviour in hypothetical cases. While terms such as "the public interest" or "just cause" are not capable of definition in the abstract, over time, each House will develop a body of interpretation and clarification which has regard to individual cases and contemporary values.

Each House of the Parliament will consider matters which are raised by Members and Senators under the framework and a majority of two thirds of Members of a House will be necessary to resolve a matter.

THE PRINCIPLES

1. Loyalty to the Nation and Regard for its Laws

Members and Senators must be loyal to Australia and its people. They must uphold the laws of Australia and ensure that their conduct does not, without just cause as an exercise of freedom of conscience, breach or evade those laws.

2. Diligence and Economy

Members and Senators must exercise due diligence, and in performing their official duties to the best of their ability, apply public resources economically and only for the purposes for which they are intended.

3. Respect for the Dignity and Privacy of Others

Members and Senators must have due regard for the rights and obligations of all Australians. They must respect the privacy of others and avoid unjustifiable or illegal discrimination. They must safeguard information

obtained in confidence in the course of their duties and exercise responsibly their rights and privileges as Members and Senators.

4. Integrity

Members and Senators must at all times act honestly, strive to maintain the public trust placed in them, and advance the common good of the people of Australia.

5. Primacy of the Public Interest

Members and Senators must base their conduct on a consideration of the public interest, avoid conflict between personal interest and the requirements of public duty, and resolve any conflict, real or apparent, quickly and in favour of the public interest.

6. Proper Exercise of Influence

Members and Senators must exercise the influence gained from their public office only to advance the public interest. They must not obtain improperly any property or benefit, whether for themselves or another, or affect improperly any process undertaken by officials or members of the public.

7. Personal Conduct

Members and Senators must ensure that their personal conduct is consistent with the dignity and integrity of the Parliament.

8. Additional Responsibilities of Parliamentary Office Holders

Members and Senators who hold a Parliamentary office have a duty to exercise their additional responsibilities with strict adherence to these principles. They must have particular regard for the proper exercise of influence and the use of information gained from their duties as Parliamentary office holders. They must also be accountable for their administrative actions and for their conduct insofar as it affects their public duties.

ADDITIONAL GUIDANCE

In individually considering these principles, Members and Senators should also have regard to:

- . sections 44 and 45 of the Constitution;
- . provisions of the *Parliamentary Entitlements Act 1990*;
- . standing and sessional orders of the House of the Parliament of which they are members;

- . resolutions of continuing effect of the House of the Parliament of which they are members;
- . decisions and determinations of the relevant Presiding Officer and the appropriate Minister concerning the obligations and entitlements of Members and Senators;
- . determinations of the Remuneration Tribunal; and
- . section 73A of the *Crimes Act 1914*.

Interpretation

In this Framework, the term Parliamentary office holder includes Leaders of Parties, Shadow Ministers and Shadow Parliamentary Secretaries, Party Whips, Deputy President of the Senate and Chairman of Committees, Deputy Speaker, Second Deputy Speaker and Chairs of Parliamentary Committees.

[DRAFT PROPOSED BY WORKING GROUP]

**A FRAMEWORK OF ETHICAL PRINCIPLES
FOR MINISTERS AND PRESIDING OFFICERS**

All Members of the Commonwealth Parliament are obliged to meet a number of ethical and administrative requirements in respect of their behaviour and personal interests. A fundamental obligation in respect of ethical behaviour is to comply with the Framework of Ethical Principles for Members and Senators. In respect of the pecuniary interests of Ministers and public office holders, the Code of Conduct on Public Duty and Private Interest recommended by the Bowen Committee is accepted as the model for general application. Declarations of interest, dealing with lobbyists, hospitality, benefits and gifts are the subject of procedures laid down by successive governments. Guidance to Ministers on administrative procedures and requirements pertaining to Cabinet is provided in the *Cabinet Handbook*.

The Prime Minister enunciates standards and determines the penalty for any failings of Ministers, but it is to Parliament and, through it, the people, that Ministers and the Presiding Officers are accountable. Ministers and the Presiding Officers are responsible for the competence with which they handle their public duties, the relevant actions of their personal staff and their departments, and their personal conduct insofar as it affects their public role.

Because of the greater trust placed in them, and the power and discretion they exercise in the performance of their duties, Ministers and the Presiding Officers must also conform to a set of ethical standards more stringent than those required of Members and Senators. The principles which follow are intended to provide a framework of reference for Ministers and the Presiding Officers. This supplements the Framework of Ethical Principles for Members and Senators and the provisions of the Standing Orders of both Houses. For the purposes of this framework, "Ministers" includes Parliamentary Secretaries, and "Presiding Officers" means the Speaker of the House of Representatives and the President of the Senate.

Subject to action taken by the Prime Minister and Cabinet, each House of the Parliament may consider matters raised by Members and Senators under this Framework and a majority of two thirds of members of a House will be necessary to resolve a matter.

THE PRINCIPLES

1. Impartiality

In the performance of their public duties Ministers and the Presiding Officers must act impartially, uninfluenced by fear or favour.

2. **Honesty**

Ministers and the Presiding Officers must be frank and honest in their public dealings and in particular must not mislead intentionally the Parliament or the public. Any misconception caused inadvertently by a Minister or Presiding Officer must be corrected at the earliest opportunity.

3. **Use of Influence**

Ministers and the Presiding Officers must not exercise the influence obtained from their public office to further their personal interests, obtain any improper advantage or benefit for themselves or another, or any promise of future advantage.

4. **Gifts, Benefits and Hospitality**

Ministers and the Presiding Officers may accept gifts, benefits or hospitality offered in connection with their public office only if in doing so they conform and report in accordance with applicable procedures enunciated publicly by Parliament, the Prime Minister, or relevant Commonwealth Departments.

5. **Public Property and Services**

Ministers and the Presiding Officers must ensure that their use of public property and services is in accordance with the entitlements of their public office, and that the same standards are maintained by those under their authority who use public property and services.

6. **Official Information**

Ministers and the Presiding Officers must not use official information for personal gain.

7. **Administrative Accountability**

In the performance of their duties, Ministers and the Presiding Officers must:

- . be accountable to Parliament and to the public;
- . have proper regard to advice and guidance offered by their departments;
- . apportion discretionary funds on established principles and on the basis of legitimate public purposes; and
- . document and substantiate adequately their decisions.

8. Compliance by Staff

Ministers and the Presiding Officers must ensure that the actions of members of their staff are consistent with these principles.

9. Continuing Obligation

Ministers and the Presiding Officers must ensure that their actions after leaving public office are consistent with these principles. In particular they must not seek or appear to seek improper advantage from any influence they may retain with their former colleagues or public officials.

Appendix 2 – Extracts from the Agreements

Agreement for Parliamentary Reform – between Government, Opposition and Mr Katter, Mr Oakeshott and Mr Windsor

18. *Parliamentary Integrity Commissioner*

This commissioner would be supervised by the privileges committee from both House and Senate to provide advice, administration and reporting on parliamentary entitlements, investigate and make recommendations to the Privileges Committees on individual investigations, provide advice to parliamentarians on ethical issues and uphold the Parliamentary Code of Conduct and control and maintain the Government's Lobbyists register.

19. *Establish a formal code of conduct for Members and Senators*

A cross-party working group and inquiry process will be established to draft a code of conduct for members of the House and the Senate. Once established, this code will be overseen by the Privileges committee.

Agreement between The Hon Julia Gillard MP and Mr Andrew Wilkie MP

Improved processes and integrity of Parliament

- 4.2 (i) Establishing a Code of Conduct and behavioural standards for Members of the House and Senate.
- 4.3 (b) Establishing within 12 months a Parliamentary Integrity Commissioner, supervised by the Privileges Committee from both houses to:
- i. provide advice, administration and reporting on parliamentary entitlements to report to the Parliament;
 - ii. investigate and make recommendations to the Privileges Committee on individual investigations, to provide advice to parliamentarians on ethical issues; and
 - iii. uphold the Parliamentary Code of Conduct and to control and maintain the Government's lobbyists register.

Agreement between the Australian Greens and the Australian Labor Party

Improved processes and integrity of Parliament

- 4.3 (b) Establishing within 12 months a Parliamentary Integrity Commissioner, supervised by the Privileges Committee from both houses to:
- i. provide advice, administration and reporting on parliamentary entitlements to report to the Parliament;
 - ii. investigate and make recommendations to the Privileges Committee on individual investigations, to provide advice to parliamentarians on ethical issues; and
 - iii. uphold the Parliamentary Code of Conduct and to control and maintain the Government's lobbyists register.

Appendix 3 - Submissions

1. John Lyon CB, *Parliamentary Commissioner for Standards*, House of Commons, UK
2. Mary Dawson, *Conflict of Interest and Ethics Commissioner*, House of Commons, Canada
3. Rt Hon Kevin Barron MP, *Chair of the Committee on Standards and Privileges*, House of Commons, UK
4. Oonagh Gay, *Head of Parliament and Constitution Centre*, House of Commons Library, UK
5. Dr Malcolm Jack, *Clerk and Chief Executive of the United Kingdom House of Commons*
6. Hon Philip Ruddock MP, *Shadow Cabinet Secretary*, Australian Parliament
7. Mr Neil Laurie, *Clerk of the Queensland Parliament*
8. Mr Russell Grove, *Clerk of the Legislative Assembly*, NSW
9. Mr Paul Pearce MLA, *Chair, NSW Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics*
10. Kerry Shine MLA, *Chair, Integrity, Ethics and Parliamentary Privileges Committee*, Queensland Parliament
11. Ms Audrey O'Brien, *Clerk, House of commons*, Ottawa, Ontario, Canada
12. Professor Gerard Carney, *Professor of Law*, Bond University



Appendix 4 - Witnesses

Roundtable discussion

Monday 21 March 2011- Canberra

Professor Gerard Carney, Professor of Law – Bond University

Mr Russell Grove, Clerk, New South Wales Legislative Assembly

Dr Rosemary Laing, Clerk of the Senate, Australian Parliament

Ms Ronda Miller, Clerk Assistant Procedure, New South Wales Legislative Assembly

Mr Kerry Shine, MLA, Chair, Integrity, Ethics and Parliamentary Privileges Committee, Queensland Parliament

Mr Bernard Wright, Clerk of the House of Representatives, Australian Parliament

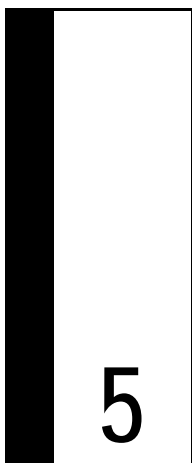
Video-conference discussion

Tuesday 21 June 2011- Canberra

The Rt Hon Kevin Barron MP, Chair – Committee on Standards and Privileges, House of Commons, United Kingdom

Sir Malcolm Jack KCB, Clerk of the House of Commons, United Kingdom

Mr John Lyon CB, Parliamentary Commissioner for Standards, House of Commons, United Kingdom



Appendix 5 – Draft Code of Conduct for Members of the House of Representatives

Purpose of the Code

The purpose of the code is to provide a framework of reference for Members in the discharge of their responsibilities. It outlines the standards of behaviour which the Australian people can expect of their elected representatives. It refers to the key ethical principles which should guide the consideration of Members.

It is by adherence to these standards that Members can maintain and strengthen the public's trust and confidence in the integrity of the parliamentary institution and not undertake any action which would bring the House of Representatives, or its Members generally, into disrepute.

Scope of the Code

The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.

The Code complements the obligations on Members to abide by the standing orders and the rulings of the Chair.

Members who are Ministers have other obligations relating to the Ministerial Code of Conduct.

Members who hold a Parliamentary Office must have particular regard for the proper exercise of influence and use of information gained from their duties as

office holders. They must also be accountable for their administrative actions and for their conduct related to these duties.

Key Principles

1. Loyalty to the Nation and Regard for its Laws

Members must be loyal to Australia and its people. They must uphold the laws of Australia and ensure that their conduct does not breach or evade those laws.

2. Diligence and Economy

Members must exercise due diligence in performing their official duties to the best of their ability. They must apply public resources, including the use of their entitlements, economically and only for the purposes for which they are intended.

3. Respect for the Dignity and Privacy of Others

Members must have due regard for the rights and obligations of all Australians. They must respect the privacy of others and safeguard information obtained in confidence in the course of their duties. They must avoid unjustifiable or illegal discrimination against others and exercise responsibly their rights and privileges as Members.

4. Integrity

Members must at all times act honestly, strive to maintain the public trust placed in them, and advance the common good of the people of Australia.

5. Primacy of the Public Interest

Members must base their conduct on a consideration of the public interest, avoid conflict between personal interests and the requirements of public duty, and resolve any conflict, real or apparent, quickly and in favour of the public interest.

Members must exercise the influence gained from their public office only to advance the public interest. They must not obtain improperly any property or benefit, whether for themselves or another. They also must not seek to affect improperly any process undertaken by officials or members of the public.

6. Personal Conduct

Members must ensure that their personal conduct is consistent with the dignity of the Parliament. They should act at all times in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its Members.

Registration of interests

Members shall meet the requirements of the House in respect of the registration of their interests in the Register of Members' Interests. Members also should draw attention to any relevant interests relating to votes of the House (SO 134) or the inquiries of committees (SO 271).

Duties in relation to the Parliamentary Integrity Commissioner

The application of this Code will be a matter for the House of Representatives, the Committee of Privileges, Ethics and Members' Interests and the Parliamentary Integrity Commissioner in accordance with the relevant standing orders and resolutions of the House.

Members shall cooperate at all stages with any investigation into their conduct by, or under the authority of, the House.

Additional Guidance

In individually considering these principles, Members should also have regard to:

- sections 44 and 45 of the Constitution;
- provisions of the *Parliamentary Entitlements Act 1990*;
- standing and sessional orders and resolutions of the House of Representatives.

These matters are covered in the attached note on provisions relating to the conduct of Members.

