



Committee on Standards and Privileges

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From Rt hon Kevin Barron MP, Chair of the Committee

Anna Burke MP, Chair
Standing Committee of Privileges and Members' Interests
Parliament of Australia, House of Representatives
P O Box 6021, Parliament House
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Dear Anna

Thank you for your letter of 13 December. I am pleased to have this opportunity to contribute evidence to your Committee's inquiry into a draft code of conduct for Members of the Australian Parliament. I have seen the evidence submitted by the Parliamentary Commissioner for Standards, John Lyon, and by the Clerk of the House, Malcolm Jack. Rather than repeat the comprehensive descriptions of the Commons' systems and procedures for regulating Members' conduct set out in that evidence, I propose to offer a few comments based on my experience as a member, and since July 2010 as Chair, of the Committee on Standards and Privileges. I should make it clear that these are personal comments, which do not necessarily represent the views of my colleagues on the Committee.

The first and most important point I wish to make is that any Committee of Parliament dealing with standards issues has to operate in a non-partisan way. The adversarial nature of the Westminster Parliamentary system is in my view one of its strengths. However, it does mean that MPs can find that working in a non-partisan way is counter-cultural. 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. A committee whose members give way to such temptation lacks integrity and will soon lose all credibility both inside and outside Parliament. For that reason, I tell any Member appointed to the Committee to leave their politics at the door when they enter the Committee room. They can of course pick them up as they leave, but so far as their work with the Committee is concerned, they have to be utterly impartial. I can honestly say that, in my experience, this approach has worked. Whatever criticisms may have been made of the Commons' handling of the expenses scandal, no-one has been able credibly to accuse the Committee of acting in a partisan way.



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The Committee is helped to avoid partisanship by its unique (in Commons terms) composition. Whereas all other committees of the House reflect the representation of the parties in the House, which usually provides the largest Party with a majority of the seats, by convention no one Party may have a majority on the Committee on Standards and Privileges. This encourages a consensus-based approach to the Committee's work. Another established convention—that the Committee is chaired by an opposition Member—helps to reinforce that approach. The proposal by the Committee on Standards in Public Life to appoint lay members to the Committee—which I and my colleagues strongly support—will, when implemented, reinforce it further. As a former lay member of the General Medical Council myself, I am confident that lay members will bring to the Committee an external perspective that it currently lacks, as well as providing it with greater credibility outside Parliament.

The second point I wish to make is that it is vital that the complaints handling process is carried out with rigour, 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. The Commissioner requires sufficient powers to ensure that a Member who is the subject of an investigation complies with it and he or she may on occasion need the support of the Committee to enforce those powers.

The Committee is of course free to disagree with the Commissioner's findings. Although in my experience there have been occasional differences of emphasis between the Committee and the Commissioner, there has been no outright disagreement. The Committee always publishes the Commissioner's memorandum reporting on his investigation as an appendix to its own Report. The status of the Commissioner's memorandum is evidence to the Committee, which means that it is not edited or otherwise amended by the Committee. Evidence may also be provided—and almost invariably is provided, in writing or in person—by the Member who has been the subject of an investigation. Like any Parliamentary committee, the Committee on Standards and Privileges must base its Report and any conclusions and recommendations on the evidence it has received, explaining how it has arrived at those conclusions. This gives the Commissioner considerable moral authority; any decision by the Committee not to endorse a finding of the Commissioner would be transparent and would have to be justified in its Report.

In the Westminster system, the Commissioner has no involvement in recommending a sanction. The Commissioner does give an indication of the seriousness of a breach in his memorandum to the Committee, but it is the Committee alone that decides on any recommendation that a Member should repay money, apologise to the House, or be subject to a Parliamentary sanction, such as suspension or loss of salary. Where a Parliamentary sanction is recommended, the agreement of the House is required. I have noticed some comment in the British press about 'light punishments' meted out to Members. I think it is important to remember that even where no sanction is recommended, an adverse finding can have severe consequences for a Member's 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 both the relevant committee and the House need to have due regard to precedent and to considerations of fairness.



Finally, I suggest that it is helpful if, as provided for in the Standing Orders of the House of Commons, there is provision for the Commissioner to rectify relatively minor and unintentional breaches of the code of conduct or its associated rules. Rectification involves acceptance by the Member concerned that he or she has breached the code, an apology for the breach and action to put right the wrong that has been found to have occurred, without reference to the Committee or to the House. In my view, rectification is a proportionate and effective way of dealing with relatively minor transgressions. It is, however, important that such procedures should be transparent. There was much ill-informed comment in the British press about "secret deals", until the House agreed to allow the Commissioner to publish details of cases he has rectified. Now that such details are published, negative comment in the press has declined considerably.

I hope that these comments are of some use to you and your Committee as it undertakes its important inquiry. I wish you well. If I can be of any further assistance, do let me know.

Yours

Kevin Barron

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