

Submission

To: Deputy Clerk, House of Representatives

From: Gerard Carney, Professor of Law, Bond University

Date: 29 March 2011

Re: Privileges and Members Interests Roundtable 21 March 2011

The following points reflect my comments at the roundtable on 21 March 2011. I am happy to elaborate on them if you require further clarification.

1. I support the adoption of a code of conduct for members of both the House of Representatives and the Senate.
2. The code of conduct I have in mind is one which articulates the fundamental principles of ethical conduct for members of parliament, rather than precise enforceable rules. For convenience, the vast body of specific rules which are already in force, might be annexed to the general code.
3. I support the adoption of a code of general principles for the following reasons and subject to certain conditions:
 - a. It will satisfy public expectation.
 - b. All other public officials are already subject to a code of conduct – many prescribed by parliament.
 - c. To guide members in the resolution of ethical dilemmas, especially when the detailed rules may not provide sufficient guidance.
 - d. To remind members of the highest level of public trust which they owe their constituents.
 - e. To fill whatever gaps may remain in the ethical regime for members.
 - f. To help reinforce public confidence in the institution of parliament.
4. The conditions are:
 - a. a process is established to receive public complaints about members.
 - b. adequate education is given to new members on the unique nature of their ethical obligations.
 - c. the code and the complaints process accommodate the inherent tensions of political life.
 - d. each code is developed by the members themselves; consequently it is not essential to have the same code in each House; although undesirable to have substantially different codes, given that their ethical obligations should be the same.
5. Even better if:
 - a. Political parties foster early induction of candidates in the ethical regime of elected members.

- b. Former politicians act as mentors to new members.
6. Submission (3e) above indicates that the vast bulk of the ethical regime of members is already in place without a code. That regime encompasses specific rules which have evolved during the last few centuries initially for members of the UK Parliament and more recently in Australia, by the common law, parliamentary privilege, statute, standing orders, parliamentary resolutions, and custom. These rules include:
- a. common law and statutory offences relating to political corruption and bribery
 - b. grounds of disqualification
 - c. obligations of ad hoc disclosure of conflicts of interest
 - d. obligation to declare personal interests to a register
 - e. statutory obligations in relation to member entitlements
 - f. duties of confidentiality
7. The over-arching fundamental ethical and legal obligation of a member of parliament is the duty to act only in the public interest. This needs to be at the forefront of any code of conduct for members of parliament.
8. The enforcement process should remain with each House - except for breach of a specific rule which has its own enforcement procedure. Otherwise each House should retain its authority to enforce the code in the following manner:
- a. Each House by resolution appoint a Parliamentary Ethics Advisor (possibly a former MP):
 - i. from whom members can seek ethical advice
 - ii. to monitor the code of conduct
 - iii. to make recommendations to the House on ethical issues
 - b. Each House establish a Parliamentary Ethics Committee (or use its existing privileges committee) to:
 - i. receive complaints from the public
 - ii. the Committee Secretariat determines whether each complaint raises a potential breach of the code
 - iii. if no breach is apparent, the Secretariat responds accordingly
 - iv. if a breach is apparent, the Committee investigates the matter or refers it to law enforcement authorities
 - v. where the Committee investigates, it will advise the House if action is required
 - vi. the House makes the final determination
 - vii. impose any fine or other punitive penalty should be imposed by a court of law, not a House.
