

Submission

To

The Senate Finance and Public Administration Committee

Regarding

**Inquiry into Bills concerning political honesty and
accountability**



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Author's details: I have recently been appointed as a visiting fellow to the Griffith University Key Centre for Ethics, Law, Justice and Governance to co-ordinate the 2001 Asia Pacific Earth Charter conference for the Queensland Earth Charter Committee. I retired in 1998 after 15 years in the Queensland Parliament, the first chairman of the Parliamentary Members Ethics and Parliamentary Privileges Committee and served on the committee to bring down the reports on a Code of Conduct for members of parliament and review of the members pecuniary interests register. I was a research associate with Noel Preston to produce a QUT Research Report on the Development of Codes of Conduct in Australian Parliaments (1990-99)

Submitted: February 2001

1. I make one comment regarding Government Advertising Campaigns. The proposed Government Publicity Committee has merit but to be effective its major role should be to give prior approval to significant government advertising programs. It will be too late to send government advertising material to the committee after the material has been aired or circulated widely. Major government advertising campaigns are not produced overnight and often have a long production period. The Government Publicity Committee could be directed to report timely – within one or two weeks – on any aspect of a program that does not meet the guidelines. Reporting after the release of a questionable government advertising program will largely still remain a political slanging match.
2. The two approaches to cover a broadly similar area of ministerial and members conduct – use of allowances and entitlement both have shortcomings. Firstly a Parliamentary Joint Committee on a Code of Conduct for Ministers and other Members fails to adequately appreciate the Westminster system of ministerial appointments. The ministers ultimately are answerable to the prime minister and it is the prime minister who appoints or terminates the services of a minister. Subsequently a Commissioner for Ministerial and Parliamentary Ethics should report to the prime minister on the conduct of a minister. A copy of these reports should be sent to the joint parliamentary committee at the same time. The Canadian Commissioner, Howard Wilson, reports his investigations directly to the prime minister and my understanding is that various prime ministers have over time always accepted his recommendations. Also it should be remembered that Howard Wilson plays a very proactive role in reducing potential conflicts of interest for ministers in Canada. This issue could possibly be clarified under the functions of the committee to develop a code of conduct for ministers. It is my view that on balance it would probably be more beneficial to appoint separate people as an ethics adviser/counsellor for the prime minister and ministers and a commissioner to report and investigate.
3. The proposal to establish an Auditor of Parliamentary Allowances and Entitlements will be a costly and bureaucratic approach to determine, investigate and report on the use of allowances and entitlements by members. The investigation of complaints etc could be conducted by the present auditor-general without the need to appoint an auditor of parliamentary allowances and entitlements.
4. The appointment of this special auditor will not necessarily reduce the number of complaints of misuse of entitlements or improve the use of entitlements by members. There are so many grey areas of parliamentary duties and private benefits – as perceived by the public and media, that these costly processes and appointments do not necessarily achieve the objective to improve the public standing and behaviour of members of parliament.
5. A more cost effective method to the issue of members entitlements and allowances would be to introduce ‘Global Budgeting’ This approach provides

one single payment to a member to cover salary, superannuation and all allowances and entitlements. The Remuneration Tribunal would make the determinations as it presently does. This approach does greatly diffuse the public debate and issue of members' entitlements and allowances.

6. For example – use of motor cars. The Queensland Parliament provides an electorate car allowance to members of approximately \$9,000 per year. The public appears to accept this allowance – I have not heard of one public complaint in 18 years that a member shouldn't receive a car allowance for carrying out their duties or that the allowance is too high. In other words it is not a public issue. However, ministers and the speaker are provided with the use of a car and fuel card. Over the same period, there have been many public outcries of the wrongful use of these cars – holiday use, personal use such as driving to the dump, and complaints of family members driving the car. The provision of a car allowance is a simple administrative procedure, publicly acceptable, and is a non issue for the media. The member is required to claim their car expenses in their tax return.
7. This principle of providing all entitlements and allowances in this way would result in a global budget which would be transparent – reported to the parliament, accountable by members in their tax returns, very low cost to administer – efficient, and neutralises a major area of public criticism.
8. Many complaints of rorts and scandals will continue with the present approach even with the appointment of a special auditor. The Reith phone card scandal was just waiting to happen as this scandal had occurred several years earlier with a state senator in America. Travel rort exposures will continue even with added reporting requirements, as there will still be the double effect of public duty and cost with perceived private benefit. The use of frequent flyer points has still not been resolved satisfactorily in any administration to my knowledge.
9. A sleeping issue that could erupt at any time is the misuse of the electorate office. It is extremely difficult to clearly define acceptable guidelines for all circumstances. For example what services can be provided to constituents? Should community groups be allowed to photocopy newsletters, if so which groups? What personal business can be conducted from an electorate office? It will only be a matter of time before an unsuspecting member runs fowl of the public and media. For example, a member has an entitlement of being provided with a residential phone with all phone calls paid. The home residence is also the farm business. Try and publicly justify that all the phone calls for the farm business should be paid for by the taxpayer!
10. The added benefit of a global budget is that the member takes all the responsibility for their actions. For example, there are several state parliaments, if not the federal parliament, facing unlawful dismissal cases. The individual member takes no responsibility for staff dismissal decisions made by a member – the parliament is left carrying the can! Many laws that small business people complain about would be simplified if the members were subject to the same reporting and responsibility requirements as the public

11. France provides a global budget to their senators and there is no public issue of the misuse of entitlements by members. The Australian system, and the similar approach taken in American legislatures, of specific allowances and detailed guidelines has produced a climate of excessive scrutiny and often unwarranted public criticism of allowances received for elected office
12. Details of this alternative of global budgeting could be further explored if so desired by the committee.
13. A most important issue is the need for the education of ethics to members of parliament to help them resolve real and potential conflicts of interest. The development of a Code of Conduct will only be beneficial if members are provided with the skills and knowledge to act appropriately as leaders and elected representatives
14. Attached is a copy of a presentation given in 1999 that provides more background to the issue of Codes of Conduct

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Attach: header.htm
Subject: C of C - Scope and Future Direction

CODE OF CONDUCT FOR PARLIAMENTARIANS

ITS SCOPE AND FUTURE DIRECTION

FOR CANBERRA PRESENTATION - OCTOBER 1999 - C. CAMPBELL

Dr Andrew Brien has provided a most comprehensive and up-to-date review of the concepts and complexity of this issue and the major considerations of a Code of Conduct for Parliamentarians. This presentation will not revisit all the aspects of a Code of Conduct for Parliamentarians covered so adequately by Dr. Brien.

However, there is a remarkable similarity of the processes followed by the individual parliaments of Australia in considering Codes of Conduct.

Scandal driven / Inquiry driven

Overseas experience, UK and USA, has shown that the adoption or implementation of a Code of Conduct for their parliamentarians/legislators has been a response to a political scandal (i.e. reactive)

The Australian experience, I would prefer to describe as "Inquiry Driven".

WA Royal Commission Investigations, NSW-ICAC, Queensland – Fitzgerald Report are examples of inquiries into unethical or corrupt behaviour of parliamentarians and recommendations for considering Codes of Conduct for Parliamentarians.

To date Tasmania, Victoria and recently NSW Parliaments, have adopted Codes of Conduct for parliamentarians, although there have been no reported breaches in these jurisdictions.

Qld, WA and SA and the Federal Parliament have gone through the investigation, public consultation and, in some cases, produced a draft code. However they have hit a brick wall with the introduction and adoption of a Code of Conduct. There appears to be a great reluctance by parliamentarians to introduce a code.

There are probably two explanations for this brick wall. One is fear. Introduce a Code of Conduct and parliamentary colleagues will be caught by the Code of Conduct and punished.

A major concern is that the 'slick' and 'cunning' members will still escape the Code while other members will inadvertently be 'tripped up' ---US examples campaign funding

The second is Executive Control. Just as a government will attempt 'toughening it out' over allegations of ministerial misconduct and subsequently ministers survive dismissal, so too governments will through discipline and solidarity of party numbers in the parliament, 'tough it out' over scandals alleged against government members. The pressure comes from the government leaders for the parliamentary committee to put the Code of Conduct issue on the back burner.

'We will look after our own' maintains the loyalty of government party members to the leadership and acts as a deterrent to pursue a Code.

As Dr. Brien has noted 'Trust in parliamentarians is at an all time low' and 'disillusionment with the conduct of parliamentarians has been a feature of political discussion'. As discussed at the 1988 NSW PIPAA conference, 'Political Accountability Parliament' and reported in the March 1999 Australian Journal of Public Administration, Ministerial accountability is determined by – 'politics, not theories of accountability, determines the fate of ministers' and ' a ministerial resignation may be sought as a damage limitation strategy'!

It is only damage to the government that is important to the executive and damage to the institution of Parliament is not a consideration. Although the Working Group of the Commonwealth Parliament produced a draft Code of Conduct for Members in 1995, no further action has been taken.

It appears that the implementation of a Code of Conduct for parliamentarians is not on the Government Agenda, even though there has been the numerous resignations of ministers of the Howard Government. Political reality is that while a Code of Conduct may be an election policy of a party, it is not a government agenda priority after an election.

The government is not interested in the public respect of parliament –an objective of a Code of Conduct – but rather a damage minimisation strategy for the government.

It is only through the 'latest scandal' and public and media pressure that the final act of the implementation and adoption of a Code of Conduct occurs (it becomes a Government Agenda priority). NSW threat of an ICAC imposed Code of Conduct had the Premier introduce and impose the Code of Conduct rather than adopt the draft Code recommended by the Parliamentary committee.

The 'Net Bet' scandal in Queensland will probably initiate the adoption of a Code of Conduct in the near future in Queensland. The path of Codes of Conduct for parliamentarians, I describe as being scandal initiated, inquiry driven, media imposed and self regulated (the parliament rather than an outside body administers and enforces the code)

The difficulty for an effective Code of Conduct is the conflict of roles of a parliamentarian and the impact of a Code of Conduct on the individual.

The parliamentarian has a responsibility to

- the institution of parliament
- their constituents and electorate
- their political party
- particular interest groups and the community as a whole

Of particular importance is the role of the parliamentarian and their political party. This appears to be an issue that has not been greatly discussed in the debate concerning Codes of Conduct, yet I believe is of the utmost importance in determining behaviour of a parliamentarian.

Dr. Brien reflected on the behaviour of former Senator – Graham Richardson, ‘lack of clear and unambiguous moral guideposts’ and quoted from Marion Wilkinson – ‘he never learnt the finer points of ethical behaviour’. I suggest that Richardson’s behaviour is not unique but the norm for the ‘power broker’s/ faction leaders’ of political parties and that this unethical party behaviour is simply carried into their parliamentary career.

The ‘power brokers’ ‘number crunchers’ ‘head kickers’ are rewarded for their party service (and unethical behaviour) with an elected parliamentary position. This attitude of unethical behaviour and trading in favours, mateship and deals is rewarded in the party system and would be expected to be rewarded in the parliamentary system. (We knew them as ‘the bullies’ and they belong to all political parties)

It is the political parties and their operatives who have the attitude of ‘win at all costs’ and quite unashamedly play the ‘dirty tricks’ campaigns.

The impact of party political behaviour is not, I believe, fully appreciated as an influence on parliamentary behaviour. Thus the potential conflict – unethical party political, and subsequently unethical parliamentary behaviour is rewarded while a code is attempting to provide a foundation of responsible and appropriate ethical behaviour for an honourable public life. Who wins – the parliamentarian with the attitude ‘just give me the numbers’ and has a history for being rewarded for unethical behaviour or the parliamentarian promoting moral/ethical development and respect for the institution.

In other words, consideration should be given to having a Code of Conduct/Ethics for political parties to promote ethical behaviour in the political party which is the fore runner for most in political life (ie. a parliamentarian).

The interesting aspect of the party political impact on Codes of Conduct is now the role of independents and minor political parties.

In NSW, the independent member made a strong contribution to the debate and committee reporting on a Code of Conduct. With independent members holding the balance of power, the more open and accountable initiatives in parliament are progressed.

On the Federal level, the Australian Democrats in the 1998 Federal election campaigned strongly on their Accountability of Government policies.

The other significant aspect of unethical behaviour is the concept, as described by ethicists, of 'dirty hands' – the acceptance that unethical behaviour is necessary to achieve the common good outcome.

This then leads into the next aspect of the scope of a Code of Conduct – a Code of Conduct for the media.

In essence, the Media rewards unethical behaviour in the party and in the parliament. The person who leaks the story subsequently is repaid the favour by the media. The 'head kicker' is given the run in the media. Unethical behaviour is highlighted in the parliamentary media coverage. The official leak is now an accepted aspect of political life. As a government back bencher, I would read the budget in the media for days before the presentation of the budget to parliament. This – rewarding unethical behaviour - is a major difficulty for any procedure, including a Code of Conduct, promoting ethical behaviour and promoting trust in the institution of parliament and in parliamentarians themselves.

'The idea is and if parliamentarians know the standards, live by them and apply them then trust in the system will be enhanced and promoted'

However, the media reports conflict in the parliament rather than the ethical behaviour of parliament.

The issue of potential media conflicts was raised in discussions with Mr Gregory Evans, Integrity Commissioner in Ontario. The example was given that the spouse or partner of a political journalist (assigned to parliament) is a media adviser to a government minister. The Integrity Commissioner responded that this relationship would not be allowed in Ontario due to a potential conflict of interest and either the political journalist or the media adviser would be required to resign from their position.

A similar observation to this issue was made by the then Senator and President of the Senate, Michael Beahan in his paper entitled 'Parliamentary Ethics – Political Realities' presented to the 27th Conference of Presiding officers and clerks in 1996 – 'Finally and unsurprisingly, the media – with the exception of financial journalists – remains immune from all public declarations of personal interests or any meaningful Code of Conduct, voluntary or otherwise!'

Current Observations

Political scandals undermine the public trust and respect for parliament and parliamentarians. Publicity spreads knowledge or scandals around the world and soon similar unethical behaviour may be also found at the local level. Similarly scandals in one area – Olympic cronyism, John Laws sponsorship for favourable comment, raise public awareness and investigation in other areas.

Unethical behaviour can be seen as individual or institutional and undermining the principles of leadership, respect for laws, integrity etc. which are often described in a Code of Ethics.

Institutional

Case 1. John Laws and the Banks:

There was strong criticism of seemingly unethical actions of John Laws to accept a substantial financial contract to provide favourable comment on the banks. Does one now ask - Do politicians receive favourable treatment from banks? My understanding is that federal ministers, for example, would have their accounts held at a special Head Office division. If special consideration is provided to these accounts – preferential interest rates etc. then this behaviour could have an influence on the government's decisions concerning the banking industry – charges and fees on bank accounts won't be an issue if one personally doesn't pay any of these fees.

Case 2. FBT – Fringe Benefit Tax

Leadership and respect for the law are regarded as important qualities for parliamentarians. However I believe that probably there is no parliament that pays its full fringe benefits tax and it appears that the Taxation Department isn't interested in pursuing the matter. In other words, even the institution of parliament may not provide the leadership for community standards with regards tax collection (example FBT paid on the use of a ministers phone (100% refunded) at his home which may also be the family farm).

There is also ongoing public perception of 'snouts in the trough' regarding members entitlements – travel, superannuation etc.

Former senator Michael Macklin in a submission to the Qld. Members Ethics and Parliamentary Privileges Committee, suggested that perhaps these issues could be removed from the public concern by providing a global budget to members. In France for example, a global budget is provided to the national senators and there is little to no public issue of members entitlements (perks).

The other major concern is the seemingly lack of fairness and consistency in the present enforcement of Code of Conduct. A Code of Conduct that is not fairly and consistently imposed is worse than no Code of Conduct at all in terms of building public trust and confidence in the institution of parliament.

The strong party system and subsequent discipline of members is an important factor to consider in the development and adoption of a Code of Conduct for parliamentarians. Failure to acknowledge all the roles of a parliamentarian, an appreciation of the 'dirty hands' concept, and the fair and consistent imposition of a Code will lead to a flawed Code of Conduct and failure to enhance the public trust and respect in the institution of the parliament.

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