

**Legislative Assembly
Standing Ethics Committee**

**Sixth Report
of the Committee of the 52nd Parliament**

December 2002

Chairman's Foreword

As the Parliament draws to a close in the run up to an election March 2003 there is unprecedented interest and investigatory activity, both within the Parliament and in the media, about the requirements for declaration of financial interests, the proper extent of activities of members, and the coverage and adequacy of the existing Members Code of Conduct.

This year has seen reviews of the Codes adopted by the Parliament in 1998, and reports tabled by my Committee and the Legislative Council Committee on Parliamentary Privilege and Ethics. No doubt their recommendations will be reflected in the Codes adopted when the two Houses sit after the opening of the 53rd Parliament in 2003.

This year has also seen the development and adoption of new ethics codes in a number of jurisdictions in Australia. As one of the first jurisdictions to ask a parliamentary committee to draft a code, and then request public comment on the proposed draft code, we have been particularly interested in comparing how each jurisdiction is approaching the task of developing a code, and what they have included. Furthermore, as the only parliamentary committee in Australia which has community members as full members of the committee, the New South Wales Legislative Assembly Standing Ethics Committee now has a significant body of experience.

In the course of the inquiry into the review of the Code, which resulted in a report tabled in the Assembly in June this year, the Committee also had the advantage of conferring with parliamentary committees in other states and territories. The information shared by the delegations in frank discussions with their colleagues confirmed that while New South Wales is on the right track with the coverage and operation of the Code of Conduct, registration of interests remains the heart of an effective ethics regime.

This Parliament also saw an inquiry by our committee into one aspect of the disqualification provisions in the New South Wales Constitution. The uncertainty surrounding the terminology of s13B, which provides amongst other things that a Member receiving a second "office of profit under the Crown" has their seat declared vacant, has long been of concern. The Committee's report, which was tabled in November 2002, recommended a number of amendments to clarify the operation of this section.

This Committee is required to meet with the Parliamentary Ethics Adviser, Mr Ian Dickson, once per year, and our meeting with him in December is also recorded in this report. I would like to thank him on behalf of the Committee for his availability and assistance.

The Committee also owed a debt of gratitude to the three community members who were appointed to the Committee after responding to an advertisement calling for expressions of interest. The community and the Parliament have been served well by their representatives, Mr Rod Caldwell, Dr Fran Flavel and Mr Shane Godbee.

Their range of experience and knowledge, interest and dedication have been a valuable sounding board for the Committee.

Throughout the year the Committee's reports have stressed the importance of education of Members and staff regarding existing statutory and administrative obligations, and the requirements of the Code of Conduct. As we move towards a new Parliament, we would draw attention to the recommendations made to date, which are re-iterated in the final section of this report. As the orientation of new Members falls under the guidance of the Speaker and the Clerk of the Legislative Assembly, it is appropriate to thank them, and the Clerk-Assistant (Procedure), on behalf of the Committee for their input in relation to past inquiries and for the work that lies ahead in preparing for the new Parliament.

JOHN PRICE
Deputy Speaker and
Committee Chairman

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Ethical standards – other jurisdictions

Under s72E of the Independent Commission Against Corruption Act the Committee is required to consider amendments to a code of conduct already adopted by the Parliament, and to have an educative function relating to ethical standards applying to members of the Legislative Assembly. The Committee has therefore been closely watching developments as new governments in other jurisdictions such as Queensland, the Northern Territory and Western Australia review the registration of pecuniary interest schemes or propose introduction of aspirational codes of conduct.

Consultation with the Standing Orders Committee of the Northern Territory Parliament, November 2002

A delegation of the Legislative Assembly Standing Ethics Committee was invited to Darwin in November for discussions in relation to the introduction of new ethics regime for members of the Northern Territory Legislative Assembly.

One part of the platform of the new ALP Government was the introduction of a code of conduct and an overhaul of the Act governing the Register of Members' Interests.

On 20 June 2002 the Chief Minister, the Hon Clare Martin, tabled a draft Members Code of Conduct and Ethical Standards and Draft Amendments to the Legislative Assembly (Register of Members' Interests) Act, being the first instalments of a suite of instruments relating to ethics and accountability matters. Later instalments would include a draft code for ministers, ministerial officers and senior public servants, and possibly an umbrella act – the Legislative Assembly Members Code of conduct and Ethical Standards Act - which would create some offences in relation to prohibited or restricted conduct of members and include certain conduct arising after members have left public office.

The draft documents were referred to the Standing Orders Committee by resolution of the House on 20 June, and consequently advice was sought from other jurisdictions in relation to the draft code, and comparable statutory requirements. The draft code of conduct and draft amendments to the Legislative Assembly (Register of Members' Interests) Act as tabled by the Chief Minister, are appended to this report.

The draft Code of Conduct

The Northern Territory draft code used the Western Australian code of conduct as a starting point, but is more extensive in having 3 parts. The first part sets out the principles concerned, the second part concerns standards of behaviour, and the third part relates to the implementation of a new act.

An investigatory mechanism was proposed that gave the Auditor-General the initial task of fact-finding, and then report to the Privileges Committee.

Points of inquiry

The Northern Territory Parliament was considering what the ramifications of a code of conduct might be, and whether in fact the judge of personal behaviour of members should be the electorate rather than an external watchdog.

A mechanism for declaration and control of conflicts of interest had been in place in most Parliaments for many years and was recognised as necessary. The Northern Territory had had legislation requiring a Register of Members Interests since 1982, and a Register since 1978, and had been the second Australian legislature to have had a statutory requirement for reporting members' interests. Codes of conduct differ from that type of legislation in that they have the capacity to touch on personal behaviour of members, only some of which is relevant to their role as parliamentarians.

A delegation of the Committee had previously met with the Clerk of the Northern Territory Legislative Assembly in 2001, who advised that the context of the Northern Territory differed from states such as New South Wales in that the Northern Territory is a state with a small polity, and only 25 members in a unicameral legislature. This means there is access to members and proximity between the members, the government and the executive, and also between private and public organisations, which is not possible, say, in the federal parliament. Things have occurred in other states that resulted in those states adopting a code of conduct have not occurred in the Territory. Members' travel for example, is closely monitored, and the Territory has had a register of pecuniary interests for nearly 25 years. The existing registration of interests scheme is similar to that in operation in NSW, whereas the proposed new scheme for registration of pecuniary interests, based on that of Queensland, is much more comprehensive.

New framework for registration of pecuniary interests

The proposed changes to the legislation for registration of members' interests was likely to have a number of consequences for existing parliamentary bodies.

The Clerk of the Northern Territory Parliament advised the delegation that the reporting framework put in place in 1982 had been operating fairly effectively in that members complied in large part with the timeliness and detail of their returns, and that no significant conflict of interest issues had arisen. The registers were scrutinised regularly by officers of both parties and entries were checked against other public documents.

The proposed new legislation changed the arrangement whereby the Clerk is registrar to giving the Auditor-General that role, as well as the function of receiving complaints or queries about conflicts of interest.

Other changes strengthened the requirement for reporting interests and proposed a report for the first time on the disposal of any interests which members may have identified in a previous statement.

The proposed amendments also provided for members to lodge a return of interests of related persons. "Related persons" in the draft act means the spouse of a member, the child of a member who is wholly or substantially dependent on the member or any other person who is wholly or substantially dependent on the member or whose affairs are so closely connected with the affairs of the members that a benefit derived by a person or a substantial part of it could pass to the member.

The Northern Territory scheme appears to closely follow the Queensland format, with explanatory material emphasising the purpose of the Register. The Queensland Code notes:

"Public disclosure by members seeks to provide information which might be thought to affect a member's conduct as a member, or influence their speeches or votes in Parliament. In summary, the public declaration of interests provides some basis upon which the integrity of members can be judged" (p 4 Queensland Code of Ethical Standards).

The New South Wales Code of Conduct catches a similar need for transparency in clause 1, which states that Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.

In comparison with the Queensland Code and the proposed draft scheme being considered the Northern Territory, the New South Wales registration of pecuniary interests regulation is less comprehensive and is deficient in its lack of explanatory guidelines. Given the relationship between the Code of Conduct and the regulation the Committee considers that future reviews of the Code should also include greater review of the operation of the registration scheme.

It is noted that the recent report of the Legislative Council Standing Committee on Parliamentary Privilege and Ethics on their Inquiry into the Pecuniary Interests Register Supplementary Returns, has recommended that the Constitution (Disclosure by members) Regulation 1983 be amended to provide for supplementary returns by members. In addition, the Committee has recommended that there should be a broad ranging review of matters related to pecuniary interests disclosure, including the Pecuniary Interests Register. Noting that any amendment to the Regulation would require matters to be considered by each House, the Legislative Council on 3 December 2002 agreed to the following reference to the Legislative Council Standing Committee:

That the Legislative Council Standing Committee on Parliamentary Privilege and Ethics inquire into and report on the possible amendment of Standing Order 126 to include reference to the direct pecuniary interests of a Members' spouse or the member's children, and any other relevant and associated matters.

While this reference will lapse with the dissolution of the Parliament prior to the March 2003 election, in light of current issues being considered by our Parliament and the Independent Commission Against Corruption, and other states, it is open to the next Legislative Assembly Standing Ethics Committee to undertake a broad ranging review of matters relating to pecuniary interests disclosure.

Proposed Role of the Auditor General

In his meeting with the delegation the Auditor General of the Northern Territory Mr Blake advised the delegation that the proposed role for the Auditor General in the draft scheme was not supported, in that it would be inappropriate for the Auditor to be the Registrar, and then to have the role of investigating and commenting on the Register.

Transparency was also necessary in relation to Board Members, especially with MPs being asked to sit on boards of statutory corporations.

The Auditor General noted the clarity of the draft regulation, with the proposed amendments clearly spelling out what was required to be registered. In his view, the Code should be as concise and simple as possible, otherwise it becomes unenforceable. For example, the inclusion of extended family members is very difficult as it is hard to enforce.

The format of the Register should clearly reflect the requirements of the regulation. The delegation agreed that in New South Wales there was room for improvement in this regard, and that explanatory notes should be devised, with the community being consulted on what should have to be registered.

Comments on the draft Code of Conduct

Our committee was interested in the steps being taken in the Territory as a further development on the introduction of codes in Queensland and Western Australia, two states which previously had no codes in place prior to the 1990s. As part of our review of the Code of Conduct for NSW parliamentarians, our committee has also been considering why codes of conduct have not been issues in jurisdictions such as Victoria, which has long had a code in place, or the federal Parliament, which has had a number of recommendations in relation to codes or statements of ethical standards, but which had ultimately never adopted such a code.

At the week of the delegation's visit to Darwin in November 2002, the New South Wales Legislative Council was in the throes of an issue concerning the alleged involvement of a Minister in a proposed development and anomalies in registration of business interests, and the Government raised an issue in the Legislative Assembly concerning the registration by the Leader of the Opposition of income from a consultancy. Our committee therefore was considering the proposed Territory code in the light of how New South Wales was dealing with these ethics issues, and whether or not the Code was being used as a benchmark or reference point, and if not, why not.

A detailed commentary on the Territory Code, referring to issues raised in discussions held at the time of the drafting of the initial NSW Code, and in the course of the review of the Code, was provided to the Standing Orders Committee to assist their inquiry.

Future Work

Review of the Code of Conduct

As this Parliament draws to a close, the Independent Commission Against Corruption has responded to a resolution of the Legislative Assembly of 21 November 2002, to look into the “matters” related to pecuniary interests of the Leader of the Opposition, and to report to the Speaker on “what measures might be taken in respect of regulating or limiting the employment of Members of Parliament to provide advice on public affairs”. In particular, the Assembly requested the ICAC to consider the adequacy of the provisions of the code of conduct for members of the Legislative Assembly, and to consider provisions of the United Kingdom House of Commons Code of Conduct and Guide to the Rules Relating to the Conduct of Members, the code of conduct for Members of the Scottish Parliament in relation to paid consultancies and advocacy, and any other relevant provisions in other jurisdictions.

The Commissioner, Ms Irene Moss, was reported in the press on 17 December, as having written to all Members of the New South Wales Parliament asking them if the code of conduct should be tightened to prevent MPs from taking second jobs involving “public affairs” after being elected to Parliament. It is expected that the ICAC will report on this inquiry in 2003, and that this Committee would consider any recommendations concerning the Code of Conduct forthcoming from the ICAC.

Education of Members

As this report is tabled, New South Wales is approaching an election in March 2003 in which nearly one-third of the Assembly could be new members. Our committee has a statutory educational role, which it needs to act on within the next few months.

As previously noted, in addition to orientating Members, there is a need to instruct electorate staff and Ministerial staff on the standards and obligations of Members of Parliament. Staff play an important role in supporting and organising Members’ daily work, and should be aware of the existence of the Code and the regulatory requirement to register interests, which is intended to highlight the need to avoid conflicts of interest. There is a need for information on these obligations to be widely dispersed, not only to members, but to others working for them, that there is now a statement of standards that members need to observe. In appointing staff members need to be aware that, while experience staff are highly valued, there is a risk that they may not be aware of new ethics regimes, and import out of date or inappropriate practices.

It appears that there is a need for clearer guidelines for Members on the requirements of the Pecuniary Interests Regulation, and for more emphasis to be placed on the purpose of the Register.

This committee has also recommended that Members receive greater information about the application of parliamentary privilege, its protection to speeches in the House and within committee proceedings, and the lack of protection afforded to

communications between constituents and members, or members and ministers, on constituency matters.

Other jurisdictions have suggested the value to new members of a committee handbook, setting out the role and function of members of parliamentary committees, together with greater information about their powers and protections.

It is noted that in a recent report entitled *Review of the Members' Code of Conduct*, the Legislative Council Standing Committee on Parliamentary Privilege and Ethics recommended:

That as part of its educative role, the Committee compile, publish, and maintain a compendium of all the current provisions and guidelines concerning Members' conduct, pecuniary interests and resources.

This Committee also recommends that such a compendium be prepared for the next Parliament.

Inquiry into review of the Code of Conduct and Inquiry into s13B of the Constitution - Record of interviews in other states and territories:

Tuesday 10 July 2001

Delegation comprised of Chairman Mr John Price MP, Deputy Chairman Mr Matt Brown MP, Dr Fran Flavel, Mr Shane Godbee, Mr Kerry Hickey MP and Mr Andrew Fraser MP met with Speaker Hon Fred Riebeling MLA, Leader of Opposition Business Hon John Day MLA, Clerk of the Legislative Assembly Mr Peter McHugh, Clerk of the Legislative Council Mr Laurie Marquet, Deputy Clerk of the Legislative Assembly Mr Doug Carpenter and Mr Ben Harvey, officer of the Ministry of Premier and Cabinet to discuss the draft code of conduct proposed for the Western Australian parliament and disqualification provisions.

The delegation also met with Mr Brian Moore from the Salaries and Allowances Tribunal and Mr Rod Spencer from the Ministry of Premier and Cabinet.

Wednesday 11 July 2001

The delegation met with the Clerk of the Northern Territory Parliament, Mr Ian McNeill and the Auditor General of the Northern Territory Mr Iain Summers.

Wednesday 17 July 2002

A delegation comprised of the Chairman, Mr John Price, Mr Matt Brown, Deputy Chair, Ms Alison Megaritty, Mr Shane Godbee, Dr Fran Flavel and Mr Rod Caldwell met with Professor Gerard Carney of Bond University Law School to discuss comparative constitutional disqualification provisions, and privilege attaching to members' correspondence and documentation.

The delegation also met with the Chair, Mrs Julie Attwood and representatives of the Members' Ethics and Parliamentary Privileges Committee (MEPPC), and Mr Neil Laurie, Deputy Clerk and Clerk of Committees and Research Directors of the Legal, Constitutional and Administrative Review Committee and the MEPPC.

A meeting was held with Mr Len Scanlan, Queensland Auditor General, regarding a recent report concerning former Members and access to Ministers, and other matters regarding accountability and transparency.

Thursday 18 July 2002

The delegation met with Mr Ian Harris, Clerk of the House of Representatives, Mr Bernard Wright, Deputy Clerk and Mr David Elder, Clerk-Assistant (Procedure) regarding the history of Code of Conduct proposals in the House of Representatives, recent development in administrative guidelines and disqualification of members for holding and "office of profit".

At the Australian Capital Territory Legislative Assembly the delegation met with the Speaker, Mr Wayne Berry and the Deputy Clerk, Mr Tom Duncan prior to receiving a briefing from an officer of the Chief Minister's Department on the Executive Code of Conduct that applies to Ministers in the ACT.

Tuesday 26 November 2002

Delegation comprised of Chairman Mr John Price, Deputy Chairman Mr Matt Brown, Dr Liz Kernohan and Mr Rod Caldwell attended a meeting of the Standing Orders Committee of the Northern Territory Parliament in regard to their inquiry on the proposed new Code of Conduct and Ethical Standards and amendments to the Registration of Interests Scheme.

The delegation also met with Mr Mike Blake, the Northern Territory Auditor-General regarding his role in oversight of the pecuniary interest regulation.

**RECORD OF THE COMMITTEE'S ANNUAL MEETING WITH THE
PARLIAMENTARY ETHICS ADVISER, HELD 19 DECEMBER 2002.
Waratah Room, Parliament House, Sydney.**

The Committee met with the Parliamentary Ethics Adviser, Mr Ian Dickson at 10.05am on 19 December, 2002.

Mr Dickson gave a report on his year's activities, and advised on the types of issues that had been raised with him during the year. Queries had been received about use of the electoral mail out allowance, the Logistical Support Allowance, rulings made by the Parliamentary Remuneration Tribunal, pecuniary interest registration, conflict of interests, campaigning, use of parliamentary resources and handling of Ministerial representations. The Adviser also reported that he had received a request from a former Member of Parliament.

Mr Dickson commented on the position of independent members, who do not have a party structure or support for advice. He also suggested that some of the issues that have been considered and resolved over the past few years should form part of an educational interaction for new members in 2003. Mr Dickson asked members about their files, and how they intended to archive them if retiring, and best practice options were discussed.

It was resolved on the motion of Mr Hickey, seconded Mr Fraser, that the report be received.

Mr Brown, Deputy Chairman, thanked Mr Dickson for his report, and being the last meeting of the 52nd Parliament, he extended thanks on behalf of the Chairman and the rest of the Committee to the Community Members, and to Dr Kernohan, who would be retiring at this election.

The formal proceedings were concluded at 10.45am.