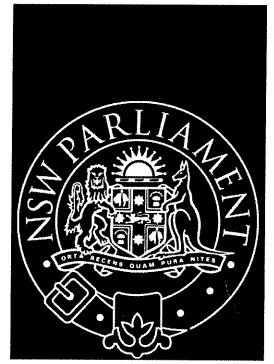


LEGISLATIVE ASSEMBLY



# Standing Committee on Parliamentary Privilege and Ethics

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Parliamentary Commissioners, Advisers and Auditors—Ethics  
Education, Information and Assistance to Members: New South Wales  
and other jurisdictions

May 2006

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Parliamentary Commissioners, Advisers and Auditors—  
Ethics Education, Information and Assistance to Members:  
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## **CHAIRMAN'S FOREWORD**

By the end of the 53<sup>rd</sup> Parliament, it will be over a decade since the first incarnation of this Committee, the Legislative Assembly Standing Committee on Ethics, first considered a code of conduct for members of the New South Wales Parliament.

In accordance with the legislation which established the Committee, the Code has been formally reviewed once, and will again be reviewed before the end of the Parliament. In the course of considering recommendations in a recent report to the Legislative Assembly by the Independent Commission Against Corruption, the Committee has had cause to compare the New South Wales Code of Conduct with provisions in other jurisdictions.

There has been some pressure for NSW to consider, or adopt, provisions which were introduced in other jurisdictions in response to particular sets of circumstances. The committee has consequently had to closely examine whether the scope and implementation of current NSW provisions for "standards" for Members of Parliament are adequate and appropriate.

Review of the code is only part of our Committee's work. Re-established in 2004 with increased responsibilities for overseeing issues of parliamentary privilege in addition to ethics, our Committee has focused its attention this year on improving the information and guidelines available to members to assist their understanding of the purpose and intent of the registration of interests requirements, and of the provisions of the code of conduct.

The title of this report reflects the topics that have consistently arisen in the course of the Committee's inquiries over the past two years, as are noted in the body of the report. The report also records the outcomes and findings of the study tour undertaken in May 2005, which has informed the Committee's work on review of aspects of the pecuniary interest regulations, and the development of guidelines, orientation materials and a handbook for members.

During the First Session of the Fifty-Third Parliament, the Committee has continued to press for implementation of its earlier recommendations for reform of section 13B of the Constitution, and the amendment recommended to paragraph 2 of the Code of Conduct.

On behalf of the Committee, I commend the report to the House.

John Price MP  
Deputy Speaker  
Committee Chairman



## CHAPTER 1

### **Role and function of the Legislative Assembly Committee on Parliamentary Privilege and Ethics**

The Committee on Parliamentary Privilege and Ethics, a standing committee of the Legislative Assembly, was established in December 2003. This committee has assumed all the functions and powers of the Standing Committee on Ethics, which was established by amendment to the Independent Commission Against Corruption Act in 1995. The principal function of the Standing Committee on Ethics was to prepare a draft code of conduct for Members of the Legislative Assembly, and to review any code introduced. A Code of Conduct for Members of Parliament was first adopted by the Assembly in May 1998, and readopted in 1999, 2002 and 2003.

The Committee is also the designated committee for the purposes of s 72E of the ICAC Act, which includes review of codes of conduct already adopted, educative work relating to ethical standards applying to members of the Legislative Assembly, and advising on ethical standards in response to requests for advice by the Legislative Assembly.

The Committee has no power to advise on actual or alleged conduct of any particular person.

Since December 2003 the Committee has been given power to consider and report on any matters relating to privilege which may be referred to it by the House. The Committee also has power to examine and deal with contempts of Parliament and to consider issues relating to the control of proceedings and the publication of parliamentary debates and reports.

The resolution establishing the Committee on Parliamentary Privilege and Ethics forms Appendix 4 to this report, and s72E of the Independent Commission Against Corruption Act forms Appendix 2.

## **CHAPTER 2**

### **Work of the Committee in the 53rd Parliament.**

During this Parliamentary session the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics has focussed on a number of topics in addition to its statutory responsibilities. Contemporary events involving individual members of the Legislative Council and Legislative Assembly have given rise to matters coming before the Committee as a result of reports or actions of the Independent Commission Against Corruption.

For example, as a result of the ICAC's execution of a search warrant on the Parliament House office of Peter Breen MLC, the Committee examined the vulnerability of members' documents to subpoena, and is considering recommending a protocol for execution of search warrants in Parliament House by investigating authorities. This Committee is currently considering the report of the Legislative Council Privileges Committee on this matter and its recommendations for determining disputed claims about whether or not a particular item should attract privilege as a result of it being prepared for the purpose of, or incidental to, parliamentary proceedings. Our Committee expects to report on this matter before the end of 2006.

This Committee also continued to liaise with the Legislative Council Privileges Committee and the Government about the need to review the provisions of s13B of the NSW Constitution, the "office of profit" provisions. The two committees reported separately and were unanimous in their findings about the undesirability of sections 13 and 13B as currently drafted. However, the two committees' recommendations for remedying the mischief differed, with our Committee recommending redrafting and the Legislative Council Committee recommending repeal. Nevertheless, the two Committees concur in finding that the need for protection of the Parliament's independence from subversion by the executive government remains valid today. At the date of this report, agreement has not been reached between the two committees on the way forward.

Another major area of work has been examination of the recommendations made by the Independent Commission Against Corruption in its report of late 2003 on Regulation of Secondary Employment by Members of the Legislative Assembly. This report was in response to a resolution of the Legislative Assembly at the end of the 52<sup>nd</sup> Parliament requesting the ICAC to look into issues raised in a motion of censure against John Brogden MP which related to his employment as a public affairs consultant, and allegations that he had asked questions in Parliament that furthered the interests of his employer.



The ICAC made a number of recommendations concerning regulation and education of members of Parliament, including that the Parliament:

- Consider provisions for appropriate declaration and management of all forms of secondary employment and the extent to which they may conflict, or appear to conflict, with a member's parliamentary duties.
- Define paid advocacy in the Code of Conduct
- Prohibit paid advocacy
- Consider whether to prohibit members from being employed as parliamentary strategists, advisers or consultants, or whether such secondary employment should be permitted within the current disclosure regime.
- Consider whether the level of detail required to be given about secondary employment under the current registration of pecuniary interests legislation is sufficient, including whether the Register should disclose details about clients of any consultancy employing a Member.
- Consider provisions for updating of the register of pecuniary interests, and whether the Register should be available on-line to the public.
- Improve guidelines and the amount of information available to members about declaration of pecuniary interests.
- Consider how to deal with serious allegations of breach of the Code of Conduct, including appointment of an officer of the Parliament on a case-by-case basis to investigate particular matters and report to the House on whether a breach has occurred.

The ICAC also considered the adequacy of the Code of Conduct provisions (to deal with secondary employment issues) and looked at codes and regulations in the United Kingdom, the Scottish Parliament and other jurisdictions that pertain to disclosure of, or restrictions on, employment as an adviser on public affairs, parliamentary strategist or consultant, or lobbyist.

## CHAPTER 3

### Response to the ICAC recommendations

As the ICAC Report made specific recommendations relating to the Code of Conduct and the declaration of pecuniary interests, the Committee resolved on 18 February 2004 to examine the ICAC's recommendations. The Committee reported to the House, tabling its report on "Regulation of Secondary Employment for Members of the Legislative Assembly" on 23 September 2004.

The Committee recommended:

- That to address any possible problem that may arise in relation to a member's secondary employment, emphasis should be on registration of interests and transparency, augmented by raising awareness about how to avoid conflict between a member's personal interests and their public duty.
- That the current registration of interests scheme be improved by use of clearer forms, improved and more detailed explanatory material, and a requirement to update the Register within a reasonable time of changes occurring.
- That the threshold limits for registration of gifts and travel be amended to reflect the CPI rise since the original regulation was introduced.
- That education of members underpin the work already undertaken on developing the Code and Members' Handbook.
- That detailed information and case studies be provided to members regarding registration of interests, and avoidance of conflict between private interest and public duty.
- That increased access to expert advice on these areas be made available to Members.
- That the Parliamentary Ethics Adviser's role be expanded, requiring the Adviser to give legal advice on ethical issues and advice on interpretation of the pecuniary interest laws.

In 2005, in addition to working towards implementing the above recommendations, the Committee met with a delegation from the Council for the Korean Pact on Anti-Corruption and Transparency (K-PACT) on Monday 21 November 2005, and with the newly appointed Registrar of Pecuniary Interests of Members of Parliament, Judge Anand Satyanand, a former New Zealand Ombudsman (and as of April 2006 Governor-General of New Zealand). As New Zealand amended their Standing Orders in August 2005 to provide a system for registration of member's pecuniary interests, the Committee was

most interested in discussing with Judge Satyanand the problems that had been encountered with the New South Wales forms and guidelines.

The Committee has also received and noted the very clear Explanatory notes and forms published by the New Zealand Parliament, and the Summary of Annual Returns tabled by the Registrar as at 31 January 2006.

## **CHAPTER 4**

### **Implementation of ICAC and committee recommendations**

#### **Pecuniary Interests Regulation**

The Committee Chairman wrote to the Premier advising of the Committee's recommendations for amendment of the Constitution (Disclosure by Members) Regulation, as it is a matter for the Government to consider preparation of such an amendment, which would then be required to be considered by a committee of the House, pursuant to the Regulation.

#### **Educational Materials**

The Committee has developed draft training materials for new members which directly address the need to raise awareness of avoidance of conflict of interests. The Committee is preparing a handbook for Members and proposes to take an active role in raising awareness amongst Members of the Code's provisions and the provisions of the registration of interests regulation through developing training programs for the education of members, and raising staff awareness of the regulation and standards.

The explanatory documents available to assist Members in fulfilling their annual registration of interests requirements have also been redrafted as a result of the Committee's review, and are currently being considered by the Committee prior to being tabled in the House.

## **CHAPTER 5**

### **2005 Study Tour to examine and compare programs and regulations**

In accordance with the recommendations contained in its report on Regulation of Secondary Employment for Members of the Legislative Assembly, the Committee is actively reviewing the role of the Parliamentary Ethics Adviser, comparing the role of the New South Wales Parliamentary Adviser with that of newly introduced positions, such as the Standards Commissioner in Scotland.

The Independent Commission Against Corruption Report which led to the Committee's recommendations makes frequent reference, as requested by the House, to codes of conduct and conflict of interest regimes in Scotland, Wales and the United Kingdom. The Committee has been following recent developments and changes in the ethics regimes in the UK and the newly devolved Scottish and Welsh assemblies. Each of these jurisdictions has active parliamentary committees charged with investigation of complaints about breach of standards, and the relationships between the committees and independent investigators has in each been subject to review and fine-tuning, based on the experience since instigation.

As part of the review, the Committee resolved that a delegation comprised of the Chairman, Mr John Turner MP accompanied by the Clerk to the Committee, undertake a study tour to Scotland, Ireland, Wales, the House of Commons and the Riksdag. The tour took place between 7-20 May 2005, and the Chairman reported back to the Committee on 5 June 2005. The schedule of meetings is appended to this report as Appendix 1.

The primary objective of the study tour was to meet with parliamentary commissioners, auditors and advisers, and members of parliamentary committees that worked with the commissioners, to ascertain their views of their roles, functions and working relationships.

A further aim of the study tour was to examine the programs and materials being prepared by different parliaments, and to elicit from members and Parliamentary Commissioners their views on what have been the most effective educational mechanisms in their jurisdictions.

The delegation also sought the latest available information on parliamentary privilege issues, relationships between the Parliament and the courts, the Parliament and the media, and "conduct" issues that may have arisen in each jurisdiction which are not publicised, but relevant to ethics regimes in each country or province. In particular, the Committee was interested in whether consideration had ever been given to specific legislation to ensure privilege attracts to parliamentary proceedings, apart from the protection under statutory defamation laws.

Other privilege issues discussed were whether consideration had ever been given to provision of a mechanism to waive parliamentary privilege, and any

information or guidance provided to members about the status of their correspondence and its vulnerability to subpoena. One Parliament in Australia has recommended legislative protection of members' correspondence and electronic files, and this is currently an issue in NSW as we currently have no formal protocols with investigative agencies seeking to seize members' documents.

## CHAPTER 6

### The Scottish Parliament

- **Dr James Dyer, Parliamentary Standards Commissioner.**
- **Meeting with cross party Members (Trish Marwick MSP, Deputy Convenor of the Committee on Standards and Lord James Douglas Hamilton) to discuss privilege issues.**
- **The Committee on Standards and Public Appointments**

The delegation met with Ms Margaret Neal, Assistant Secretary CPA to be briefed on devolution in the Scottish Parliament context, and the effect that this history of devolution had on the introduction of the current ethics regime, the regulations and code of conduct. The development of the Scottish Parliament involved community input, and there was a strong emphasis on access, transparency, committees and high standards, probably in reaction to contemporary problems at Westminster.

The NSW Committee is familiar with the detailed Scottish Code and accompanying explanatory materials, having examined it in the course of preparation of our own Code of Conduct, and in relation to the ICAC report on regulation of secondary employment for Members of Parliament.

The Scottish Parliament has an extensive Code of Conduct, including an 8 point code and detailed guidelines on the Members' Interests Order. The Code includes registration and declaration of interests, and dealing with complaints against Members. The delegation was advised that one of the factors contributing to the comprehensive nature of the Code was that the Scottish Parliament was a new legislative body, and there was a feeling that one document should lay down all the principles to be adhered to.

In discussions with officers of the Scottish Parliament the delegation heard that the code and accompanying regulations, while highly aspirational, is in some aspects unrealistic in its ideal standards.

Some of the key principles set out in the Code, derived from the "Nolan" committee standards, are problematic, such as the aspirational standards of "openness", "selflessness" and "accessibility". For example, there have been complaints that members should not require constituents to make an appointment, but should hold an "open surgery". All complaints go to the Commissioner for investigation. There have also been problems arising from the fact that in Scotland there are multi-member electorates, elected by different electoral systems. These "Annex 5" complaints, as they are known, are now solved by letter to the Presiding Officers.

Also, some of the standards set for disclosure are now appearing to be too rigorous. At the time of the delegation's visit, the Parliamentary Commissioner for Standards was considering a complaint that the Chief Minister had received a painting as a gift from his wife for Christmas, which he had used to illustrate his Christmas cards, but that the gift had not been declared as is required under their regulation. The Scottish Parliament is now giving consideration to whether gifts between spouses should be required to be declared and registered.

Another current issue concerned the close relationship between interest groups and the Scottish Parliament. The new parliamentary building has extensive meeting rooms, that are available to cross-party groups, such as charities or industry/regional support groups. Cross party groups have been part of the Scottish Parliament since establishment, and are serviced by citizens. There are Cross Party Groups on Palestine, Malawi, Women, Autism, Cancer, Human Rights, Enterprise in Scotland etc. While very popular, there have been some issues with conflicts of interests.

At the first meeting of any committee, members are required to declare their interests. This practice is now part of the first meeting, and is not considered to be out of the ordinary by members.

The Scottish Parliament does not enjoy same privilege as Westminster, in that debate does not attract absolute privilege.

All committee submissions are subject to claim under Freedom of Information laws. FOI was introduced only recently, and a very large number of documents have been requested in relation to members of parliament.

### **Dr James Dyer, Parliamentary Standards Commissioner.**

The Standards Committee recommended in an early report that legislation be introduced to establish the Parliamentary Standards Commissioner.

Dr Dyer was appointed in January 2003, the first statutorily appointed commissioner. The Standards Commissioner is not an ethics adviser for members. He has a formal role under the Scottish Parliamentary Standards Commissioner Act (established in June 2002) to deal with complaints against Members. The Commissioner is an independent investigator of complaints, he is restricted from giving advice. The function of giving advice falls to the Clerk, who advises members to err on the side of caution. Dr Dyer, in discussion with the delegation, said that there could be benefits in the Commissioner being able to give advice, in that the Commissioner would then have a positive role, as well as an investigative one. However, the original intent was for the Commissioner not to give advice, so that he would not be in position of investigating his own advice.

From January – March 2005 the Commissioner received 31 complaints, a higher number than usual due to the UK election. After discussion with the Standards Committee, the Commissioner adopted the practice of neither



confirming nor denying receipt of a complaint, because the Act requires the investigation to be done privately. In practice this has been less than satisfactory, as the complainant receives a draft report. While the delegation was in attendance, an issue arose when a complainant publicly released the draft report he had been given by the Commissioner (for comment/information) prior to the release of the Commissioner's final report. There is currently no restriction on such an action.

Of the 31 complaints received by the Commissioner, 4 were withdrawn, 4 failed at Stage 1, 23 were admissible, 1 was withdrawn at Stage 2. The others are at stage 2.

Dr Dyer said "it is a safety system as much as anything. With a safety system you don't expect to receive a lot of major complaints".

Dr Dyer's first report found that a Member had breached the Code of Conduct. The Committee reviewing the report disapproved of the member's behaviour but decided not to uphold the breach.

Commissioners should not be in the position of policing the quality of service by members; they should be dealing with anti-corruption issues. Similarly, there should be an awareness that the 7 Nolan principles of standards in public life are aspirational. It is very easy to complain about lapses in reaching or applying these standards. The Parliamentary Commissioner in the UK is specifically excluded from dealing with "level of service" complaints; the ballot box is the answer.

The Standards Commissioner has devised and published his own code of conduct, and has issued a formal statement regarding his Information Strategy, including what sort of press statements he might issue.

The Commissioner prepares an annual report for the Parliament. He is able to commission legal advice from a firm about certain legal applications.

### **The Standards Committee**

The Committee is currently reviewing the Members Interests Order (breach of which is a criminal offence) and has reported on the need for the order to be replaced. Currently any gift valued over 250 pounds needs to be registered. It is recommended that there be an objective influence test, and that the threshold be an amount equivalent to more than 0.5% of an MSP's salary. This would remove the problem of gifts between spouses.

Currently the rule for registration of shareholdings refers to the market value of shares, not their nominal value. There are inconsistencies also in requirements for registration of residences, and for interests required to be reported held by spouses/cohabitants.

There is also a need for proportionality to be considered. For example, there is a requirement for non-financial interests to be registered, but possibly breach

of this requirement should not be a criminal offence. There are a number of cultural issues in play here, in that membership of certain societies in Scotland has sometimes been considered to have had a hidden influence.

It should especially be noted that the Scottish regulatory system is on a different footing from the Westminster system. The decisions of the Scottish Parliamentary Standards Commissioner are on a statutory footing, and open to judicial review. The Scottish Commissioner also has independent powers to compel witnesses attendance and to produce documents. The Scottish Commissioner does not have a function of giving advice on standards issues.

The delegation also met with Ms Jennifer Smart and Ms Sarah Robertson, Clerk of the Standards Committee to discuss Members' conduct in relation to the code of conduct, Members' interests and other matters relating to Parliamentary duties. The delegation also asked about the processes for adopting, amending and educating members about the code of conduct. With respect to the registration of interests, while the Clerks can advise on how to make entries and change entries, it is members' own responsibility at the end of the day to be aware of the requirements of the Code.

Again, the delegation heard that people felt that the terms of the Code were "very draconian", and that it was too severe and not meant to capture things such as gifts between spouses.

Ms Jackie Giulianotti, Head of Allowances, briefed the delegation on the systems of accountability and regulations associated with members' entitlements.

Corporate services and personnel spearheaded the training and induction of new members. Committee clerks prepared information for new committee members, including information on declaration of interests at the first meeting. The Clerks offered party groups induction briefings.

The Scottish Parliament emphasises public access and awareness and has an active program involving open house visits, speakers and musical events in the Parliament. As Mr Price is also co-chair of our Parliament's Sesquicentenary Committee, which is planning a week of celebrations and events in May 2006, the delegation was briefed on the most recent festival activities undertaken in the parliamentary precincts and received copies of publications which had been widely distributed.

## CHAPTER 7

### The Dail Eireann (The Irish Parliament)

- **The Ethics Committee (Chair, Mr Noel Davern)**
- **The Ceann Comhairle (Dr. Rory O'Hanlon, Speaker) and Clerk of the Dáil (Mr. Kieran Coughlan)**
- **Mr Brian Allen, Secretary to the Standards in Public Office Commission**
- **Mr Noel Davoren, Mr Dempsey and Deputy McCormick.**

The Dail adopted a Code of Conduct (an 11 point code) in 2002.

Registration of members' interests comes under the Ethics in Public Office Act, 1995. This Act provides for disclosure of interests by certain holders of public offices (including parliamentarians) and directors or employees of certain public bodies.

The Ethics Committee is established under the Act and has a statutory function to consider and investigate complaints about contravention of the registration requirements, or the failure of a member to declare a material interest when speaking on a motion in the House.

The Dail also has a Committee on Members Interests and a Committee on Procedure and Privileges. The Dail has some very live issues involving privilege, especially privilege attaching to members' documents and correspondence with constituents. Other contemporary issues concern natural justice in relation to committee proceedings and a committee's reports of findings.

There is a holistic ethics and disclosure regime. The delegation was told that Members' disclosure requirements were introduced in response to high taxation rates in the 1990s, when offshore tax havens and tax minimisation schemes abounded. These environmental factors led to a requirement that Members do a Tax Compliance declaration (a statutory declaration), and then also their spouses.

The Ethics Committee has a strong role, in that it deals with breaches of the Code and recommends penalties. It refers matters to and from the Public Standards Commissioner.

The Standards in Public Office Commission includes officers from various backgrounds: judge, clerks, ombudsman, a former minister. They are a panel, assisted by the Official Secretary.

If the code is breached, there is no legislative basis for taking legal action. There is a potential problem with the legislation as the Code is defined in a very loose way, and some terminology is vague.

If a citizen wants to make a complaint they write to the Clerk, who prima facie determines whether the matter should be referred to the Committee.

The Parliamentary Commissioner will advise Ministers and members. The Committee will also issue advice if required by a member. The advice is in writing and must be acted on by the member.

### Registration of interests

Registered pecuniary interests are reported on retrospectively: published 31 January 2005 back to 1 January 2004. There is a mechanism for a statement of additional interests outside the usual reporting period.

The Dail has acted in relation to failure to declare interests before. Previously one Minister of State did not declare his interest in processing of food. He spoke against legislation, he appeared before a committee, and eventually he was suspended from the House for 30 days.

Standards legislation applies to Ministers as well as elected members. While members are required to register interests of spouses and immediate family, a member can't report what he does not know, and is not required to report. Nevertheless, members are encouraged to make a verbal disclosure about interests of sons and daughters that may conflict with a matter before the House.

The Commissioner makes a presentation to new members. Every year guidelines are circulated advising how to complete the form. If an issue arises there is capacity for "a non-binding advisory note". This mechanism was devised by the Committee for issues where there is general applicability.

### Privilege

A separate committee on the Committee of Procedure and Privileges deals with privilege. There has recently been a court case based on the constitutional rights of a non-incumbent, versus those of the incumbent, at the time of an election. This court case was brought down the day before the election. As a result there are now guidelines being drafted on what is a "parliamentary" activity, what's campaigning, what's allowed, and what isn't. Thus a definition of parliamentary duties is being devised by the Committee, which will report back on 6 June with definitions. For example the terms "Member of the Dail" "elected representative" and "public representative" are all used interchangeably.

Our delegation was able to assist the Dail Committee by providing rulings of the Parliamentary Remuneration Tribunal which set out what did and did not constitute parliamentary activities in New South Wales.

Other current issues have involved misuse of resources, for example envelopes. Members get stamped envelopes to use, and they were sent to county councillors. A number of deputies have been up before the committee on this basis. They have repaid the money and apologised. The Committee will recommend bar-coding the envelopes, and this will stop the practice.

Use of equipment etc for campaigning is not prohibited provided the member reimburses the value of the work or service.

The recent Irish High Court case requires Ministers to value their office space, ministerial vehicle, and phones. A second high court case is currently considering the issue of ministerial staff, in the sense of what activities officers were undertaking during the election campaign period". The outcome of the case may well lead to substantial changes in the way government operates in the run up to an election.

## CHAPTER 8

### The Swedish Riksdag

- **Dr Ingvar Mattsson, Deputy Head of the Secretariat , Committee on the Constitution**
- **Mr Ulf Christoferrsson, Head of Secretariat of the Chamber**
- **Mr Per Persson, Deputy Secretary General, Secretariat of the Chamber and Head of Department for the Parliamentary Record.**
- **Mr Soren Lekberg, Chairman of the Board of the National Audit Office and Mr Gert Jonsson, Principal Director of the National Audit Office (Riksrevisionen)**
- **Mr Henrik S Järrel, Member of the Swedish Parliament, and Ms Eva Zorn**

Sweden does not have a code of conduct, nor a Parliamentary Commissioner, but fosters a culture of high accountability and sound social democratic government through other mechanisms. Extensive laws on freedom of the press and freedom of expression serve as a check and balance in the Swedish system. It is the home of the “Ombudsman”, with an active National Audit Office (Riksrevisionen) which was substantially restructured in 2003.

The European Union is also an influence in Sweden. The EU has a range of codes of conduct in operation. Prior to the EU there was a strong oral tradition confirming “what the code is” to new members of the Riksdag. The parties also have written codes about standards. Parties are highly recognised in the Constitution of Sweden, and the rules of the Riksdag.

There is a voluntary register of interests, with around 75% of members entering their details. The register is available online. When questioned about the value of a voluntary register, the delegation was advised that members saw registration of memberships of groups etc, as a way to assert that they were not in Parliament to further the interests of themselves, or of particular groups.

Sweden recently had two cases where members were been forced to resign from the Riksdag (both moderates). One owned a newspaper and received subsidies from the state via false premises. The DPP reported that as the matter was fraud, the members should resign, and the court so found. Members are immune in regard to their actions in the Parliament, but not immune to criminal or civil charges.

The second case involved a Member accused of assaulting his wife. The member held a position as a prosecutor, and he subsequently resigned from the Parliament. One problem is that Ministers are changing more frequently

than in previous years, with the consequence that “revolving door” conflicts could become an issue for members in the future.

Parliament has 16 standing committees, Government has 20 ministers and there are approximately 270 government agencies.

### **RIKSREVISIONEN (National Audit Office)**

- **Mrs Eva Lindström, Auditor General**
- **Mr Sören Lekberg, Chairman of the Board of the National Audit Office**

The Board of the Riksrevisionen (NAO) is not like an ordinary board, but has prescribed functions and undertakes special projects. The Norwegian Board is made up of current sitting members of Parliament, and is part of the whole auditing process. In Sweden it is quite different, the Board does not take part in the auditing process. So it was a compromise to have sitting MPs, some of whom are very busy, and some former Members on the Board,

The three Auditors General work very closely together. They have the power to audit the parliamentary administration and agencies under the Parliament, as well as the consolidated finances. From 1 July 2003 part of the reform of the National Audit Office was to give the NAO power to look at Parliament. Prior to that Parliament had internal auditors. In 2004 the NAO presented 24 performance audit reports which were discussed with the Board. Nearly all of them were presented to Parliament, but not all.

The Freedom of Expression Act and access to tax papers are an important part of the Swedish accountability environment.

The Board submits proposals (arising from NAO reports) to the Parliament. The Board prepares the budget for the National Audit Office, and the Government has to accept it. The Parliament’s Finance Committee then considers the budget.

The NAO has the power to undertake an integrated and comprehensive audit of the whole government administration, and can follow the government dollar into the private sector. The NAO has only recently received power to audit the central government, especially in terms of performance audit.

The Standing Committee of Finance audits the NAO, by appointing an outside auditor. Sweden does not have a public accounts committee.

The NAO doesn’t audit individual members of the Riksdag. The NAO does the financial audit of the Parliamentary administration, but cannot examine individual members, as they don’t work in Parliament. The NAO has only had this power for one and a half years, and this is an emerging issue.

The NAO does examine the internal control mechanisms within the Parliamentary administration. Mr Lekberg advised that in Sweden the media was very effective because of the public availability of information to citizens and the media.

The media has strong powers to call for travel receipts etc. Investigations can often be instigated as a result of the media calling attention to the use, say of taxis taken by a particular member. The member will then reimburse the amount or otherwise address the problem satisfactorily, or the Riksdag administration will investigate the claim.

The NAO has special functions in relation to corruption which may arise in the course of auditing, and has power to work with the DPP.



## CHAPTER 9

### HOUSE OF COMMONS, LONDON

- **Sir Philip Mawer, Parliamentary Commissioner**

The Parliamentary Commissioner in Westminster is highly independent, and the role has changed slightly since the 8<sup>th</sup> report of the Committee on Standards in Public Life.

Members want to keep arrangements as non-legalistic as possible and the Commissioner tries to follow rules of natural justice.

In discussion on the Code of Conduct the Commissioner advised the delegation that he had reported to the Review of the Code to the Parliamentary Committee. The Committee has now reported to the House. There were 26 responses, all stating that the Code was pretty much on the right course, and confirming avoidance of too many detailed provisions which have the propensity to “trip members up”.

The revised Code is more coherent and logical than the original one. In response to a question from the delegation, Sir Philip advised that the reference in the Code to a “special duty to constituents” was not a cause of complaint. Sir Philip has a threshold before investigating and does not look into complaints about MPs handling of particular issues (there is a leaflet he puts out on complaints that covers this). The Commissioner tries to be strategic, focussing on issues with substance which might lead to avoidance of problems before they arise, and also tries to be proportionate, taking into consideration the degree of importance of a complaint.

The Commissioner doesn't deal with complaints about an MP's views on an issue, their opinions or party policy. This is a matter of public debate for the electorate to deal with.

With reference to “conduct unbecoming” issues, “morality” issues such as mistresses are largely not a matter for the Commissioner, provided they are not paid for by a member's allowance or entitlements, and not against the law. The proper judges of these types of morality or conduct unbecoming issues are the constituents. It was noted that a member who had misused a parliamentary travel warrant to pay for his mistress's travel to constituency was returned at the last election. Sir Philip had reported on the matter; the member had admitted the mistake.

The Register of Member's interests is in the Code of Conduct. The purpose of the Register is essentially transparency, [see point 9, page 8 of the Code]. The crucial words are “be thought by others”. The Parliamentary Commissioner is now bound to look at the Code and the Guidelines once every parliament.

It is a register of members' direct and pecuniary interests. There is a difference between what has to be declared (unremunerated directorships) and what has to be registered. Members only have to declare income from work in their capacity as members of parliament. Members can have an interest provided it is registered, or declared in debate. But they cannot do anything in the House that would give an "exclusive benefit" to anyone or group. To do otherwise would prevent anyone who knew about something eg farming, from working on that subject matter.

With respect to avoidance of conflicts in terms of "paid advocacy", if a member is being paid for giving advice about how to deal with legislation, then the member must lodge a copy of the contract. The contract must include a statement that he will not be asked to do anything in conflict with his role or duties as an MP. There are two categories of the code which would require declarations in respect of paid advisory consultancies while a member.

The Register is published annually, and updated on the web every 6 weeks or so. The register is published within 3 months of the closing date. This year 650 forms were processed.

With respect to registration of interests, the Registrar is the first port of call for giving advice. The Registrar is also the first port of call for considering and investigating complaints.

If a member apologises for an oversight in registering a matter, then a late entry, in italics, is put in the register.

#### Education of members:

Members are presented with a folder by the Commissioner, containing the Code of Conduct and guidelines. There are also "Advice Notes" issued by the Commissioner that deal with specific issues.

There are Procedural Notes that set out complaints issues, and how the Commissioner deals with the press. There is the Electoral Office policy on donations, and a comprehensive index.

Orientation is not compulsory. In the post-election period, there are many briefing sessions arranged. Parties are arranging briefings and each of the 3 big parties have invited the Commissioner to brief their new members.

The Clerk of the House has also arranged a series of briefings, and the Commissioner is one of the speakers in these sessions.

In June (a little further into the new Parliament) there will be more detailed briefings on such topics as "How to avoid damaging headlines". Experience has been that it is difficult to get members to attend, although the whips have a good relationship with the Commissioner as they all had concerns about the reputation of the House.

The June briefing will include the Department of the Financial Controller and the Serjeant at Arms so that they can answer questions about the use of resources, stationery, meeting rooms etc.

The Commissioner, and the parliamentary officer who assists him as Registrar of Interests, are putting emphasis on avoiding problems. The UK Commissioner can give protection (verbal and written) if MPs take their advice.

- **Mr Robert Rogers , Clerk of the Journals**

Recent privilege issues coming to the Committee include an attempt to intimidate a witness, where a person on the Board of the Courts and Advisory Service was dismissed as a result of evidence they had given to a parliamentary committee. As a result of the Committee's report, the Lord Chancellor apologised.

Cases such as this are important in that they remind public servants that privilege is a live issue. It is interesting to note that European parliaments do not have privilege in this way.

In 1998-99 the Joint Committee on Parliamentary Privilege recommended that there be a Parliamentary Privilege Act, but in hindsight this proposal was very much a response to issues of the time. An Act is no longer considered to be advisable for the following reasons:

- An act would be judiciable, and judges would become involved.
- The Human Rights Act has passed and applies to Parliament.
- In 2000 the Freedom of Information Act came into force and applies to the House of Commons Internal Commission (members' expenses and travel allowances, although there is an exemption under the Act for information disclosure of which would breach the privileges of Members).

As a result the House of Commons has had to adopt a more "predictive" approach to documents. Clerks now identify what is or is not a "proceeding", especially in relation to briefing notes, agendas etc.

With respect to the Human Rights Act, the question is whether challenging, say, imprisonment of a citizen under legislation, would run into Article 9 of the Bill of Rights.

On a broader scale, with the current Committee on Standards in Public Life report on Standards Board review of complaints against local government recommending change, it is becoming apparent that the whole post-Nolan swing to accountability has made the public service extremely heavily regulated. Possibly people are being deterred from serving as local councillors. Some of the very prescriptive framework of the early codes is now much less relevant – there is a feeling that some of the prescription and regulation could now be wound back.

## **Dr Christopher Ward, Clerk of the Standards and Privileges Committee and the Registrar of Interests**

The Standards and Privileges Committee is comprised of experienced, senior members and runs in a non-party aligned way, with even numbers from Government and non-government. The Committee does not wish to see standards become a political football.

The House is dedicated to self-regulation, so the committee would wish to be able to adopt the Commissioner's "indicative finding" based on his factual findings on a particular matter he has investigated. The Commissioner has in the first instance, shown his draft report to the member being investigated to narrow the area of disagreement. Then he adds an indicative finding, which goes to the Committee.

On occasions that the Chairman has tabled a report censuring a member, the proceeding is brief. The House has a presumption that the tabling of these reports will not be political debates.

The House intends to write into the Code a requirement for members to cooperate with the Parliamentary Commissioner for Standards.

The House wants the process to maintain integrity. The Commissioner's role in making an indicative finding has now been codified; it is made public, and is viewable on the web.

There are observable trends in complaints: originally there were a number of complaints concerning paid advocacy, or failure to register interests. More recently, complaints concern abuse of allowances. There was an increase in complaints before the election about use of stationery and postage.

The Parliamentary Committee views the Committee on Standards in Public Life as a "barometer" organisation. The Committee on Standards in Public Life has found the Parliament's code and dealings with complaints satisfactory. However, public confidence in MPs has not increased, although some "opinion formers" are changing their views.

Previously the Parliamentary Committee did not show the Commissioner's findings or conclusions to the member who was the subject of the report. However, a concern for natural justice meant a change to this practice, so that members would be able to make an appearance or give further evidence in relation to the Commissioner's findings.

The committee has on occasion taken evidence from others. It does receive submissions. The current Commissioner goes to great lengths to set out the facts, and to give all sides of a story. The Committee has been briefed by the Commissioner when he delivered his draft report to the Committee. He also attends all meetings of the committee.

The Committee has a range of options or recommendations that it can make in response to a Commissioner's report. In some cases it has not recommended any action, when, based on the facts found by the committee a member has set out to do the right thing. It could suggest that a member apologise. A member who had a number of contracts as a TV presenter, but who had failed to register the contracts when the aggregate value passed the threshold for registration, apologised to the House.

The Committee can recommend suspension of a member, and to date has never recommended suspension for longer than a month. Members would lose salary and loss of facilities. The Committee did threaten "indefinite suspension" if Mr Sayed refused to apologise for a second time.

The House has now determined that it can impose a financial sanction, since it logically follows that if salary can be suspended while a member is suspended from attending the House, then the House can "fine" a member without suspending them from the service of the House.

The Parliamentary Committee takes note of the issues that the Committee on Standards of Public Life are looking at. Even if the Parliamentary Committee doesn't agree with the recommendations that the Committee on Standards in Public Life makes, it does seriously look at how the problems identified could be avoided by alternative means.

### **Committee on Standards in Public Life**

- **Mr Rob Behrens, Secretary to the Committee**

The Committee, initially chaired by Lord Nolan, originally reported on the 7 principles of standards in public life.

The Committee, now chaired by Sir Alistair Graham, has reported on a number of issues relevant to the integrity of the organs of government.

This month the committee has just issued a report on the results of a quantitative and qualitative survey of what the public thinks about MPs. This survey enables benchmarking of public opinion, and an objective measurement of the outcome of the work of the Committee. The survey will be repeated in Scotland and Northern Ireland.

The survey showed that the public considered that "honesty" is more important than "competence". Also, despite the fact that MPs say that their behaviour is objective, it does not appear to the public to be as objective as members think it is. "Spin" is now the issue, as it affects honesty.

The Committee's 8<sup>th</sup> report recommended reforms which were adopted by the Parliamentary Committee as helpful to restoring the public trust in the system. The parliamentary committee did not want lawyers to become intensely involved in their proceedings, as an overly legalistic process derived from the parliament's own privilege.

There has also been a period of tension between the Committee and the government, which probably the only way that the Committee can work.

The Committee has no coercive powers, but 70% of the Committee's recommendations have been implemented.

The Committee has been successful in building consensus – the three major parties all have their own nominee on the Committee. This also builds an element of realpolitik into the process.

The Committee has a long term framework for its inquiries and reports. It returns to issues a couple of times, and eventually the Government will pick it up.

At the time of the delegation's discussions, the Committee was to engage in a post-election consultation exercise.

The media is very important in defining how citizens feel about their MPs. Politicians say the press is unfair, but the Committee takes the view that politicians will also have to change.

## CHAPTER 10:

### NATIONAL ASSEMBLY FOR WALES

#### **Standing Committee on Standards of Conduct**

- **Kirsty Williams AM, Committee Chair**
- **Andrew George, Head of Chamber Secretariat and Clerk to Standards of Conduct Committee**
- **Gareth Rogers, Second Deputy Clerk to the Standards of Conduct Committee.**

Wales has a Code of Conduct for Members of the Assembly which appears to be very stringent. The Code includes General Standards of Conduct; imports the seven principles of conduct identified by the Nolan Committee on Standards in Public Life, as well as the specific requirements for declaration and registration of certain interests, use of resources, access to information and the process for dealing with complaints of breach of the Code. The Presiding Officer is very clear that the National Assembly should set standards for the public sector in Wales, so there is an element of social modelling in seeking to have this influence.

The Committee on Standards of Conduct investigates complaints about members' non-compliance with the Code ("adopted Standards of conduct") and also about failures to register or declare certain financial or other interests. They have published a number of reports on these investigations.

Failure to register interests is a breach of a regulation, and a criminal offence. Two members (from different parties) who failed to register the interests of their spouses, were interviewed by Police officers. The Register of Interests is available on-line, and is updated as entries are received. Registration of a member's spouse's interest is only "to the best of a member's knowledge".

A key function of the Committee is to consider complaints referred to it by the Commissioner for Standards and any matters of principle relating to the conduct of Assembly Members generally. The Committee also oversees the Register of Members' Interests. The Register is maintained and published by the Table Office in accordance with Standing Orders.

In Wales, the committee is also able to receive complaints about breach of the Ministerial code, as well as breach of the Member's code. The Standards Committee may move away from looking at the Minister's code, which is probably inevitable and appropriate given that the Welsh Assembly is in the process of devolving further.

#### Education of members:

The committee is attempting to further raise members' awareness of the standards requirements. Members' breaches, such as failure to report on

spouses, is as a result of ignorance. The problem is that the National Assembly for Wales was created at a time when the Westminster Parliament was particularly beset by scandals. As a result there was a mass of regulation imposed on the Assembly.

The early days of the Welsh Assembly were very idealistic and there was a plethora of codes and guidelines. The Welsh community was closely consulted on how it wanted the Assembly to operate. There was a National Assembly Advisory Group which heard from the community that they wanted to address police corruption and zoning favouritism. As in Scotland, there was also a perception about the influence of freemasonry. Currently, members need to declare any memberships of closed clubs or organisations.

It was only with the 2002 report reviewing the Code of Conduct that it became apparent that the Codes need to be more easily understood.

The Committee now has a task in seeking to produce information on the Code that members can access easily, and a handbook is being drafted. Consideration is also being given to redesigning the form for registering interests.

The Welsh Assembly has recently reviewed aspects of its requirements for registration of pecuniary interests, including the design of the form used for reporting.

The Committee has had to deal with very few cases. The prescriptive nature of the system means that members take it very seriously.

There are also administrative rules about the use of stationery, and issued by the Electoral Commission.

- **Mr Richard Penn, the Commissioner for Standards.**

The National Assembly Commissioner for Standards is a post created in 2005. The Commissioner is an independent adviser on standards of conduct who can assist the Committee or advise and assist the Presiding Officer on any matter relating to conduct of members. His role is mainly limited to investigating factual matters. He does not receive complaints directly.

Since 1999 when the National Assembly was first established there was always a provision for an independent adviser role. The position was intended to be an adviser to the Presiding Officer on standards matters, as the Presiding Officer was the official recipient of complaints. It was intended that the Standards Committee would also have capacity for an independent adviser. In practice, Mr Penn, who held the position of Independent Adviser, was adviser to both the Speaker and the Committee. The new position of Commissioner has greater autonomy, and can refer complaints directly to the Committee for consideration.



In 2002 the Committee commissioned an independent review of the Standards Committee, the complaints procedure and role of the position of Independent Adviser (which preceded the formation of the Standards Commissioner role). The resulting “Woodhouse Report” recommended a statutory commissioner. The Committee considered the recommendation, and ultimately recommended that a commissioner role be created, but not a statutory one. The role of the Commissioner is more than just investigative, it has a role in assisting members and helping to foster a standards culture in the Assembly.

Previously the Presiding Officer made threshold decisions about whether a matter warranted a preliminary investigation. Now that decision falls to the Commissioner, who does a preliminary review, and then refers the matter if warranted to the Standards Committee.

The Commissioner receives complaints not just about breach of the Code of Conduct, but also breach of the guidelines and protocols. Currently the Commissioner does not have power to call witnesses. He has received over 100 complaints, and over 48 investigations have warranted being subject of a report to the Speaker; 9 matters warranted being referred to the committee, and of those only 3-4 have gone on as subject of a report to the Assembly.

Failure to register or declare interests does not fall within the Commissioner’s purview, but is a possible criminal offence, so Police can examine these matters.

The Woodhouse Report noted that the investigative processes were not very open or transparent. The committee now meets in public.

Sanctions include naming and shaming, although there is provision to exclude/suspend for the most serious cases. Recent procedural changes give the commissioner power to discontinue an investigation if a breach complained of was minor, and the member apologises.

There is very little evidence that citizens want to make complaints about members. Most complaints were made by another Assembly member, a local authority, or a political party member. As the Welsh Assembly does not deliver services, but is a consultative body, most complaints are about behaviour.

The Commissioner also has a counselling role, that promotes members acting sensibly to avoid legal action.

As a consequence of the Woodhouse Report, the Committee is now also considering appointing an Appeals Panel.

The delegation also received a briefing on Assembly business procedures and chamber technology from Mr Andrew George, Head of Chamber Secretariat and Clerk to the Standards Committee, prior to attending the Chamber to view Questions to the Assembly Ministers.



## **APPENDIX 1**

### **LEGISLATIVE ASSEMBLY STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**

**Study Tour 7- 20 May 2005**

Monday 9 May

#### **Scottish Parliament.**

Grahame Wear, Liaison Officer.

Margaret Neal, Assistant Secretary CPA

Cross party Members and Deputy Presiding Officer

Elizabeth Watson, Head of Committee Office

Dr James Dyer, Standards Commissioner.

Tuesday 10 May

#### **Scottish Parliament.**

The Standards Committee.

Sarah Robertson, Clerk of the Standards

Jackie Giulianotti, Head of Allowances

Wednesday 11 May

#### **Irish Dail**

Attend Leaders questions

Meeting with Ethics Committee (Chairman Noel Davern)

Ceann Comhairle (Dr. Rory O'Hanlon, Speaker) and Clerk of the Dáil (Mr Kieran Coughlan) re. CPP matters

Brian Allen, Secretary to the Standards in Public Office Commission

Friday 13 May

**Swedish Riksdag**

Dr Ingvar Mattsson, Deputy Head of the Secretariat of the Committee on Constitution

Mr Ulf Christoferrsson, Head of Secretariat of the Chamber

Mr Per Persson, Deputy Secretary-General and Head of Department for the Parliamentary Record.

Mr Soren Lekberg, Chairman of the Board of the National Audit

Mrs Eva Lindström, Auditor General, Riksrevisionen

Monday 16 May

**House of Commons, London**

Secretary of the Committee on Standards in Public Life

Parliamentary Commissioner for Standards

Tuesday 17 May

**House of Commons, London.**

Clerk of the Standards and Privileges committee

**National Assembly for Wales, Cardiff**

Dr John Marek AM, Deputy Presiding Officer

Ms Diane Bevan, Deputy Clerk

Wednesday 18 May

**National Assembly for Wales, Cardiff**

Peter Kellam, Assembly Parliamentary Service Overseas and External Relations Unit.

Andrew George, Head of Chamber Secretariat and Clerk to the Standards Committee.

Standards of Conduct Committee. Kirsty Williams AM, Committee Chair  
Gwenda Thomas AM  
Jocelyn Davies AM  
David Davies AM

Mr Richard Penn, Standards Commissioner.

## **APPENDIX 2**

### **Independent Commission Against Corruption Act 1988 No 35**

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#### **72E Functions of committee**

- (1) The functions of the designated committee are:
  - (a) to prepare for consideration by the Legislative Assembly draft codes of conduct for members of the Legislative Assembly and draft amendments to codes of conduct already adopted, and
  - (b) to carry out educative work relating to ethical standards applying to members of the Legislative Assembly, and
  - (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Assembly, but not in relation to actual or alleged conduct of any particular person.
- (1A) The designated committee may appoint any member of the public for the purpose of assisting the committee to carry out any of its functions under this section in relation to a code of conduct.
- (2) The designated committee may seek comments from the public in relation to any of its functions under this section.
- (3) Before presenting a draft code of conduct for consideration by the Legislative Assembly, the designated committee must:
  - (a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public, and
  - (b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice, and
  - (c) specify, in the notice, the period during which submissions may be made to the committee.
- (4) Any person may, during the period referred to in subsection (3) (c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct. The committee must take any such submissions into consideration.
- (5) The designated committee is to review a code of conduct adopted by the Legislative Assembly at least once every 4 years.

## **APPENDIX 3**

### **CODE OF CONDUCT**

#### **FOR MEMBERS OF THE NEW SOUTH WALES PARLIAMENT**

##### ***Preamble to the Code of Conduct***

*The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.*

*Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.*

*Members of Parliament accordingly acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.*

##### **THE CODE**

###### ***1 Disclosure of conflict of interest***

*(a) 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.*

*(b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.*

*(c) A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.*

###### ***2 Bribery***

*Members must not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for payment or any other personal financial benefit.*

###### ***3 Gifts***

*(a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.*

*(b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the member in the exercise of his or her duties.*

*(c) Members may accept political contributions in accordance with part 6 of the Election Funding Act 1981.*

#### **4 Use of public resources**

*Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.*

#### **5 Use of confidential information**

*Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.*

#### **6 Duties as a Member of Parliament**

*It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.*



## **APPENDIX 4**

### **STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**

Hansard, page: 6058

#### **Establishment**

**Mr TONY STEWART** (Bankstown—Parliamentary Secretary) [1.02 p.m.]: I move:

That notwithstanding anything to the contrary in the standing orders:

1. A Standing Committee on Parliamentary Privilege and Ethics (referred to as "the Committee") be appointed to consider and report upon any matters relating to privilege which may be referred to it by the House.

2. The Committee is the designated committee for the purpose of exercising the functions in part 7A division 2 of the Independent Commission Against Corruption Act 1988, relating to parliamentary ethical standards including the review of the code of conduct.

3. The Committee consist of the eight members being: five members nominated by the Premier, two members nominated by the Leader of the Opposition and one member nominated by Independent members. Nominations for membership of the Committee are to be in writing to the Clerk of the House within seven days of the date of this resolution.

4. (1) The Premier is to nominate the Chair of the Committee in writing to the Clerk of the House.

(2) The Deputy Chair of the Committee will be elected by the Committee.

(3) The Deputy Chair is to act as Chair when the Chair is absent from a meeting.

(4) In the absence of both the Chair and Deputy Chair from a meeting, a member of the Committee is to be elected by the members present to act as Chair for that meeting.

(5) The Chair, Deputy Chair or other member acting as Chair at a meeting has a deliberative vote and in the event of an equality of votes a casting vote.

(6) Any five members of the Committee shall constitute a quorum.

5. The Committee have power to make visits of inspection within New South Wales and elsewhere in Australia.

6. The Committee have power to confer with any similar Committee appointed by the Legislative Council.

7. A member may raise a matter of privilege suddenly arising relating to proceedings then before the House. The matter will be determined in accordance with Standing Order 101.

8. Except as provided in paragraph 7 and in paragraph 8 (e), a matter of privilege shall be brought before the House as follows:

(a) A member desiring to raise a matter of privilege must inform the Speaker of the details in writing.

(b) The Speaker must consider the matter within 14 days and decide whether a motion to refer the matter to the Committee is to take precedence under the standing orders. The Speaker must notify his decision in writing to the member.

(c) While a matter is being considered by the Speaker, a member must not take any action or refer to the matter in the House.

(d) If the Speaker decides that a motion for referral should take precedence, the member may, at any time when there is no business before the House, give notice of a motion to refer the matter to the Committee. The notice must take precedence under Standing Order 127 on the next sitting day (unless the next sitting day is a Friday sitting).

(e) If the Speaker decides that the matter should not be the subject of a notice of referral, a member is not prevented from giving a notice of motion in relation to the matter. Such notice shall not have precedence.

(f) If notice of a motion is given under paragraph 8 (d), but the House is not expected to meet on the day following the giving of the notice or the next sitting day is a Friday sitting, the motion may be moved at a later hour of the sitting at which the notice is given with the leave of the House.

**Motion agreed to.**

Votes and Proceedings, 4 December 2003.