

Submission

No 2

**INQUIRY INTO RECOMMENDATIONS OF THE ICAC
REGARDING ASPECTS OF THE CODE OF CONDUCT FOR
MEMBERS, THE INTEREST DISCLOSURE REGIME AND A
PARLIAMENTARY INVESTIGATOR**

Organisation: House of Lords
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HOUSE OF LORDS

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Trevor Khan MLC and John Sidoti MP
Parliament of New South Wales

13 February 2014

Dear Mr Khan and Mr Sidoti,

Thank you for your letter dated 22 January 2014 inviting me to contribute to your joint inquiry into recommendations of the Independent Commission Against Corruption. I am conscious that my role as the House of Lords Commissioner for Standards was designed to meet the needs of a unique legislative chamber and that New South Wales will require a standards regime which reflects the legislative and cultural traditions of your jurisdiction. That said, set out below are a few issues and lessons gleaned from my experience, which I trust will be of help to you in your deliberations.

I attach for your information a copy of the Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct:

<http://www.publications.parliament.uk/pa/ld/ldcond/code.pdf>

1. I was unable to identify in the background papers you helpfully supplied a specific reference to the relationship between a standards regime and the criminal law as it applies in NSW. In the House of Lords' standards regime, priority is explicitly given to criminal misconduct investigations if they are related to an alleged breach of the Code of Conduct (paragraph 112 of the Guide). I would also suspend an investigation if related civil proceedings were before a court, such as an action for defamation. Bribery is a criminal offence and primacy would always be given to relevant investigatory bodies.
2. My jurisdiction and the application of the Code of Conduct is explicitly limited to members in the discharge of their parliamentary duties; the Code does not extend to members' performance of duties unrelated to parliamentary proceedings, nor to their private lives. However, that there has recently been discussion about a proposal to introduce an offence of "bringing the House into disrepute". As things stand there are no plans to broaden the Code in such a way.
3. The requirement to register interests is limited and does not extend to a members' children or wider family. Spouses are covered in certain cases.
4. I draw your attention to the seven general principles of conduct identified by the Committee on Standards in Public Life, sometimes known as the Nolan Principles, which are in paragraph 9 of the Code. I am able to take these principles into consideration when investigating alleged breaches of specific Code provisions. The descriptions of the

principles are due to change shortly, following a recommendation from the Committee on Standards in Public Life.¹

5. If you decide that a parliamentary investigator should be appointed, I strongly suggest that the appointment should be conducted in accordance with your rules for other senior non-political appointments. It is important that the investigator is non-party political and seen to be so. In my case, my selection was ratified by the House of Lords as a whole; whilst I am an officer of the House, I am wholly independent and am classified as self-employed. A fixed tenure is desirable. My experience indicates that a part-time role is all that is required. The workload may vary significantly over the course of a year.
6. My role was created as a result of a series of cases involving allegations of misbehaviour by members of the House of Lords. Previously, complaints and allegations were investigated by the Clerk of the Parliaments (if they related to use of expenses, as he is Accounting Officer of the House) and/or a sub-committee of five members. It was felt that this arrangement was no longer viable and that the introduction of an independent investigator would strengthen public confidence in the system. My role is to investigate complaints and to determine if a breach has occurred. If I find that a member has breached the Code but the breach is minor and acknowledged by the member concerned, the option is open for me to agree remedial action with that member. In all other cases of breach the question of sanction is decided by the sub-committee. An appeal against both sanction and finding lies to the Committee for Privileges and Conduct, with the final decision on whether a member has breached the Code and what sanction should apply being made by the House as a whole.

In conclusion, I reiterate my view that you will wish to develop a regime suitable for the Parliament of New South Wales, to meet your needs and complement the wider legal and cultural environment. However, if I can be of further assistance I would be pleased to do so.

Yours sincerely,

Paul Kernaghan CBE QPM
Commissioner for Standards

¹ Committee on Standards in Public Life, 14th report (January 2013, Cm 8519), chapter 3. http://www.public-standards.gov.uk/wp-content/uploads/2013/01/Standards_Matter.pdf