

Submission

No 7

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

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Date Received: 8/03/2014

Inquiry into recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator

Submission from Sir Robert Rogers KCB, Clerk of the House of Commons

1. Thank you for your invitation to make a submission to the inquiry into the recommendations of the Independent Commission against Corruption. I have been asked by Mr Speaker to respond on his behalf as well as my own. Since similar invitations to submit evidence have been sent to Kevin Barron MP, Chair of the Committee on Standards and Kathryn Hudson, the Parliamentary Commissioner for Standards, rather than burden the inquiry with several submissions making the same point, they have contributed to this reply.

2. We do not feel that we can comment on what would be appropriate for the Parliament of New South Wales, given that it operates within a subtly different legal framework from that at Westminster. Nonetheless, we trust the following observations on the way in which matters relating to your terms of reference are dealt with at Westminster will be helpful. Given your interest in our experience of a parliamentary investigator, we have concentrated on this point, but offer some comments on the Code and Guide, and in particular the way in which the rules relate to the interests of Members' families.

ICAC recommendations 22 and 24

3. As successive Committees on Parliamentary privilege have said: “Parliament needs the right to regulate its own affairs, free from intervention by the government or the courts. Members need to be able to speak freely, uninhibited by possible defamation claims”.¹ It follows that breaches of parliamentary rules should be sanctioned internally by the House, and only if the behaviour is such that it would be in breach of the criminal law should it become a matter for the police, and if necessary the Courts.² Members of Parliament have no immunity from criminal law, and parliamentary privilege relates only to proceedings in parliament. The rules relating to Members’ conduct require a higher standard than simple avoidance of illegal conduct, although some behaviour can be both criminal and a breach of parliamentary rules. Misuse of influence might, in some circumstances, fall into such a category.

4. In the United Kingdom corruption is a criminal offence. The principle followed by successive Committees has been that “as a general principle criminal proceedings against members should always take precedence over the House's own disciplinary proceedings”³ In the last Parliament (2005–10) the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards agreed a concordat with the police to ensure that matters were investigated by the appropriate body, and this concordat has recently

¹ Report from the Joint Committee on Parliamentary Privilege, Session 1998–99, HL Paper 43-I, HC 214-I, cited in Joint Committee on Parliamentary Privilege, Report of Session 2013–14, [Parliamentary Privilege](#), HL Paper 30, HC 100, para 1

² Committee on Standards, Seventh Report of Session 2013-14, [The House of Commons Code of Conduct and the Criminal Law](#), HC 903

³ *Ibid.*, para 3.2

been revisited and republished by the Committee on Standards, the successor body. Its report on the matter also sets out to correct some misconceptions about the interplay between parliamentary privilege and criminal proceedings in the United Kingdom.⁴

5. The House’s conduct and disciplinary system can be found in *The Code of Conduct and Guide to the rules relating to the conduct of Members*.⁵ The Code sets out high-level principles, and the Guide more detailed rules. Both are agreed by the House itself. The Code and the rules should be reviewed each Parliament; the Parliamentary Commissioner for Standards is responsible for making recommendations to the Committee on Standards, which in turn reports its recommendations to the House. The Code was updated in March 2012, but the Committee on Standards and Privileges made recommendations for updating the Guide to the rules in December 2012 which still await debate by the House.⁶

6. There is an expectation in the House of Commons that when Members are carrying out their parliamentary and public duties they will observe the *Seven Principles of Public Life* (also known as the ‘Nolan Principles’ after the first Chairman of the non-statutory Committee on Standards in Public Life (CSPL)).⁷ These principles are considered when any complaint is received which relates to a potential breach of the *Code of Conduct*. The *Seven Principles of Public Life* are set out below in their revised (2013) form:⁸

Principle	Revised description
<i>Preamble</i>	The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.
<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not

⁴ HL Paper (2013–14) 30; HC (2013–14) 100

⁵ House of Commons, Session 2010–12, [The Code of Conduct together with The Guide to the Rules relating to the conduct of Member—2012](#), HC 1885

⁶ Committee on Standards and Privileges, Third Report of Session 2012–13, [Proposed Revisions to the Guide to the Rules relating to the conduct of Members](#), HC 636

⁷ Committee on Standards in Public Life, [Standards in Public Life](#), May 1995, Cm 2850–I, p 14

⁸ Committee on Standards in Public Life, [Standards matter: A review of best practice in promoting good behaviour in public life, Committee on Standards in public life](#), January 2013, Cm 8519, p 24, figure 4

	act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<i>Openness</i>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

7. There is a balance to be struck between the public interest served by openness about the interests of Members, and that balance is achieved by preserving the right of individuals who are not themselves Members to privacy. The House of Commons regime deals with this by requiring that interests of close family members should be declared where they are relevant, whether or not they are registrable, while limiting the amount of information about family members' interests which is required to be registered. The rules prohibiting lobbying for reward or consideration apply equally in the case of benefits received by family members by blood or by marriage or relationship with the marriage.⁹

8. The occupations or individual interests of Members' spouses or family are not registrable, unless they are paid by parliamentary allowances. The registration requirements for gifts or overseas visits relating to membership of the House or political activity extended to Members' spouses/partners. Certain shareholdings must also be registered. The guidance is clear that:

when determining whether shareholdings are registrable under the criteria set out above, Members should include not only holdings in which they themselves have a beneficial interest but also those in which the interest is held with, or on behalf of, their spouse or partner or dependent children¹⁰

⁹ HC (2010–12) 1885, para 93

¹⁰ *Ibid.*, para 54

9. The current proposals for changes to the Guide to the Rules would tighten this requirement by preventing Members from initiating matters where they or family members might expect to benefit from material rewards from a third party. The Committee also considered the question of the registration of family members' interests, particularly those of family members involved in lobbying, and concluded:

We [...] also agree that there should be a new category under which Members should register family members engaged in lobbying the public sector. The original proposal was that this category should include details of the clients of any such family members. We consider that this not only raises practical difficulties, it also intrudes too much on the privacy of family members and their clients, and have amended the proposed Guide accordingly.

The full details of these proposals, and the rationale for them, are available in the Committee's report and the Commissioner's memorandum, which is published with it.

10. The wider system is also kept under regular review. In November 2013 the Committee on Standards reported on *All-Party Parliamentary Groups*, which looked at the regulatory regime for APPGs and their registration requirements.¹¹ That Committee also launched a consultation on the *Interests of Committee Chairs* in January 2014.¹²

ICAC recommendation 25

11. Each House has its own independent Parliamentary Commissioner for Standards. The House of Commons introduced an independent Commissioner in 1995 in response to a recommendation from the CSPL, which had recommended that:

The House should:

[...]

- appoint a Parliamentary Commissioner for Standards;
- establish a new procedure for investigating and adjudicating on complaints in this area about Members¹³

12. Following a recommendation from the CSPL, the Parliamentary Commissioner for Standards is appointed for a single five year non-renewable term. In both 2007 and 2012 the post was advertised in the national press, supplemented by a search by recruitment consultants. After a rigorous sifting and interview process, the Interview Board recommended two candidates for final interview by the House of Commons Commission. The Chair of the Committee of Standards and Privileges was involved in each of the two most recent appointment processes, in one case joining the Commission at the final interview, and in the other, sitting on the Interview Board.

¹¹ Committee on Standards, Sixth Report of Session 2013–14, [All-Party Parliamentary Groups](#), HC 357

¹² Committee on Standards, Eighth Report of Session 2013–14, [Interests of Committee Chairs: a consultation](#), HC 997 para 36

¹³ Cm(1995)2850–I, para 2.59

13. The House of Commons Commission was established by the House of Commons (Administration) Act 1978 and is the overall supervisory body of the House of Commons Administration. It is chaired by the Speaker and comprises in addition to the Leader of the House, the shadow Leader of the House and three Members appointed by the House, one from each of the three largest parties. Its responsibilities include employing staff of the House and preparing and laying before the House the Estimates for the House of Commons Administration.

14. The motions for the Commissioner's appointment have been approved by the House without a division. The Commissioner may be dismissed only following a resolution of the House, moved by a Member of the House of Commons Commission, after the Committee on Standards has reported to the House that it is satisfied that the Commissioner is unfit to hold his or her office or unable to carry out his or her functions; any such report would have to include a statement of the Committee's reasons for its conclusion.

15. The annual cost of the Office of the Parliamentary Commissioner for Standards (which produces the Registers of Financial Interests as well as investigating complaints) is less than £500,000.

16. The specific role of the Parliamentary Commissioner for Standards is set out in Standing Order No. 150:

(1) There shall be an Officer of this House, called the Parliamentary Commissioner for Standards, who shall be appointed by the House.

(2) The principal duties of the Commissioner shall be

(a) to maintain the Register of Members' Financial Interests and any other registers of interest established by the House, and to make such arrangements for the compilation, maintenance and accessibility of those registers as are approved by the Committee on Standards or an appropriate subcommittee thereof;

(b) to provide advice confidentially to Members and other persons or bodies subject to registration on matters relating to the registration of individual interests;

(c) to advise the Committee on Standards, its subcommittees and individual Members on the interpretation of any code of conduct to which the House has agreed and on questions of propriety;

(d) to monitor the operation of such code and registers, and to make recommendations thereon to the [Committee on Standards](#) or an appropriate subcommittee thereof; and

(e) to investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members and to report to the

Committee on Standards or to an appropriate sub-committee thereof, unless the provisions of paragraph [\(4\)](#) apply.

(3) In determining whether to investigate a specific matter relating to the conduct of a Member the Commissioner shall have regard to whether in his view there is sufficient evidence that the Code of Conduct or the rules relating to registration or declaration of interests may have been breached to justify taking the matter further.¹⁴

The Commissioner also presents an annual report to the House of Commons on the work of her office.

17. The Standing Order makes provision for an Investigatory Panel, chaired by the Commissioner and consisting of two others, a legal assessor, to be appointed by the Commissioner, and a Member of the House, who is not a member of the Committee, to be appointed by the Speaker. While such a panel could be used if the Commissioner or the Committee wished, in practice it has never proved necessary to appoint one.

18. While the Commissioner is overseen by the Committee on Standards, this oversight is of a general kind. The Committee agrees to significant general communications which the Commissioner wishes to make to Members, such as guidance on particular rules; receives a regular report in general terms of her workload; and discusses those parts of her work programme which are not dictated by the flow of complaints. The Committee would also consider using its power to send for persons, papers and records, if the Commissioner considered it necessary to obtain particular documents for an inquiry. The Committee does not interfere in the process of individual investigations.

19. I attach a copy of the note setting out the Commissioner's Procedure for Inquiries, as agreed by the then Committee on Standards and Privileges.¹⁵ This procedure also sets out the Commissioner's remit, the relationship between the Commissioner and the Committee, and their respective roles in the complaints process.

20. The system is based on openness, but also deals with matters proportionately. Complaints must be made in writing, and anonymous complaints are not entertained. Most complaints are not accepted for investigation either because they do not meet the evidential requirements or, more usually, because they do not concern matters which are within the Commissioner's remit. There is no publication of such rejected complaints.

21. If a complaint is accepted for investigation, the outcome will become public. This can happen in a number of ways.

22. If on investigation the Commissioner finds that there is no case to answer, this finding and correspondence relating to the case will be published on the Commissioner's webpages.

¹⁴ [Standing Order No. 150](#)

¹⁵ Parliamentary Commissioner for Standards, April 2012, [Procedural note: procedure for inquiries](#)

23. If a breach of the rules is established, but it is minor or inadvertent and the Member concerned co-operates, the Commissioner has powers to proceed through the “rectification” procedure. The Member will apologise and, where appropriate, take action to rectify the breach, such as by making a formal point of order to apologise for failure to declare interests in a previous debate. Again, relevant correspondence is published on the Commissioner's webpages.¹⁶

24. This openness is a matter of principle. It has also had the advantage that since it is clear that many complaints deal with relatively trivial matters and will be dealt with administratively the press appears somewhat less likely to overreact when there are claims that a Member has behaved improperly. Nonetheless, the media have a keen interest in parliamentary standards, and allegations are frequently publicised.

25. Only the more serious matters, or those where the Member concerned considers there is a principle at stake, will come to the Committee. In these cases, the Commissioner submits a memorandum to the Committee: the Committee provides the Member concerned an opportunity to make a written or oral submission, and then makes a Report to the House. When the Report is published, the evidence, including the Commissioner's memorandum is made public—but until then proceedings take place in private. The Committee does its utmost to proceed quickly, but complex cases may require time. It is frequently a matter of public knowledge that the Commissioner's memorandum has been submitted to the Committee, so there can be press speculation and pressure during the period before the final report is published.

26. Depending on the seriousness of the breach, and taking into account the Member's response to the Commissioner's findings, the Committee on Standards and Privileges has recommended—

- An apology, in the form of a letter for publication;
- A formal apology, by way of a personal oral statement to the House;
- Withdrawal of a retiring Member's Resettlement Grant;
- Repayment of expenses incorrectly claimed;
- Withdrawal of an ex-Member's Palace of Westminster photo-pass; and
- Suspension (with loss of pay) from the service of the House for a short period, ranging from a few days to whole month.

¹⁶ The process is authorised by Standing Order No. 150:

(4) No report shall be made by the Commissioner

(a) in any case where the Member concerned has agreed that he has failed to register or declare an interest, if it is the Commissioner's opinion that the interest involved is minor, or the failure was inadvertent, and the Member concerned has taken such action by way of rectification as the Commissioner may have required within any procedure approved by the Committee for this purpose; and

(b) in any case involving parliamentary allowances, or the use of facilities or services, if the Commissioner has with the agreement of the Member concerned referred the matter to the relevant Officer of the House for the purpose of securing appropriate financial reimbursement, and the Member has made such reimbursement within such period of time as the Commissioner considers reasonable.

27. In principle, the Committee also has power to recommend withholding a Member's pay without imposing a suspension, but the Committee has said it does not expect to do this. It considers that:

Suspension (which also entails loss of salary) is the appropriate penalty for any Member who commits a breach of the rules so great that a monetary penalty is appropriate. Failure to comply with a recommendation to repay money would also warrant suspension. Suspension makes clear that standards matter to the House as a whole, and are a collective as well as an individual responsibility.¹⁷

28. While Members may comply with recommendations to make apologies or to repay monies without any further process, and the Speaker has the power to order withdrawal of passes, significant penalties such as suspension are imposed by the House itself. A motion is normally tabled by the Leader of the House within a few days of the Committee's report, to the effect that the House agree with the Report and imposes the appropriate penalty.

29. For completeness, it should be added that the House of Commons retains the power to expel its Members (unlike for example the House of Representatives in the Commonwealth of Australia, where this power was abolished by section 8 of the Parliamentary Privileges Act 1987). Only one case comes to mind where expulsion was even considered as a sanction by the Committee: in that case the Committee recommended suspension without pay for a full 12 months and the Member (who later went to jail) resigned within hours of the Committee's Report being published. The House endorsed the Committee's report a few days later.

30. In addition to the independent Commissioner, since January 2013 the membership of the Committee on Standards has included three lay members, that is non-elected members of the public. The Committee can meet only if a lay member is present. Although lay members do not have the power to vote, they each have the power to have their own or collective opinion published with any Report agreed by the Committee. In these circumstances, the Committee proceeds by consensus, with the lay members playing a full part in its proceedings. The capacity to have an opinion published would put them in a very strong position if they ever considered that the Committee was not acting properly.

31. The inclusion of a strong independent element in the House's disciplinary system is a strength in itself. The House of Commons system allows minor infractions of the rules to be dealt with speedily by an independent investigator. Nonetheless, the Committee on Standards and, ultimately, the House itself, retain responsibility for adjudicating on serious breaches of the Code of Conduct and for deciding on the House's own disciplinary rules.

5 March 2014

¹⁷ Committee on Standards, First Report of Session 2013–14, [Guide to the Rules relating to the conduct of Members: GRECO Report and other developments](#), HC 724, para 25