



No. 138

PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE COUNCIL

STANDING COMMITTEE ON  
PARLIAMENTARY PRIVILEGE AND ETHICS

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REPORT

ON

INQUIRY INTO THE  
ESTABLISHMENT OF A  
DRAFT CODE OF CONDUCT  
FOR MEMBERS

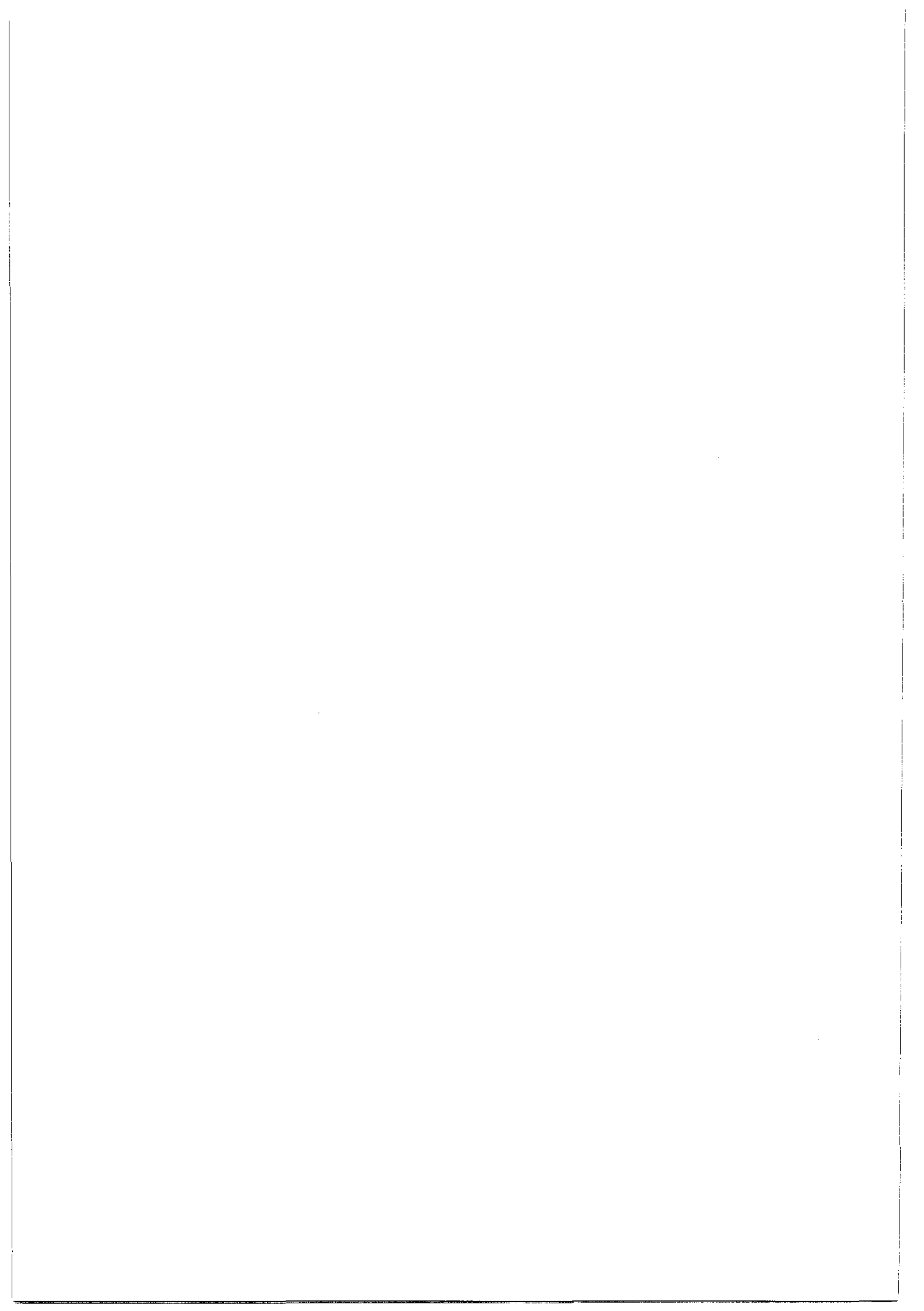
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REPORT NO. 3

OCTOBER 1996



# Foreword by the Chair

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The current inquiry was established as a result of amendments to the *Independent Commission Against Corruption Act 1988 (NSW)* in 1994. The amendments expanded the definition of "corrupt conduct" within the *ICAC Act* to include conduct by a Member of Parliament which could constitute or involve a "substantial breach" of a code of conduct adopted by the relevant House for the purposes of the Act. In addition, a new Part 7A was inserted into the Act which required the establishment of a committee in each House to undertake certain functions relating to Members' ethical standards, including the development of codes of conduct for presentation to the House. The Standing Committee on Parliamentary Privilege and Ethics was designated as the Legislative Council committee for these purposes by resolution of the House on 24 May 1995.

During the course of the inquiry the Committee looked at a range of different issues, including the existing measures which regulate the conduct of Legislative Council Members (Chapter 2), and developments in other Parliaments regarding the implementation of codes of conduct (Chapter 3). The Committee also undertook extensive public consultation in relation to the type of code which should be adopted and the provisions which it should contain. Numerous public hearings were conducted over several months. Public submissions were called for in relation to the subject of the inquiry generally, and subsequently in relation to the draft code of conduct proposed by the Committee. Many of the suggestions contained in the public submissions on the published draft were incorporated into the code finally adopted by the Committee, as can be seen from the amended code reproduced at Chapter 5.5 of the Report.

The Committee's principal aims in developing the draft code of conduct were to clarify the ethical standards and expectations to which Members must adhere, and to devise a code which, if adopted by the House for the purposes of the *ICAC Act*, would be workable within the context of the conduct regime established by that Act. After detailed and extensive consideration of the matter, the Committee concluded that a purely aspirational type of code would be inadequate for these purposes and that some level of detail and prescriptiveness would be necessary, particularly in the area of Members' financial interests. A reasonably prescriptive type of code would assist Members by providing greater clarity and certainty as to the nature of their obligations. The need for clarity and precision in the terms of the code is particularly important given the consequences in terms of possible "corrupt conduct" to which a breach of the code may lead. A prescriptive code

would also provide a more effective basis for responding to the well-documented widespread community concerns regarding the ethics and integrity of parliamentarians.

During the inquiry the Committee recognised the desirability of having a single code of conduct for all Members of the NSW Parliament. A single code would allow greater clarity, easier implementation and more straightforward monitoring of compliance. However, despite a concerted effort by both this Committee and the Legislative Assembly Standing Ethics Committee which is responsible for developing a draft code of conduct for lower House Members, a compromise could not be reached on a single code acceptable to both Committees.

In view of this, and given that the Committee believes that a single code for both Houses is the most sensible outcome, the Report presents three different draft Codes for consideration by the House: (a) the draft Code of conduct originally proposed by this Committee; (b) the draft Code as finally adopted by this Committee incorporating changes arising from public submissions and advice from the Crown Solicitor; and (c) the draft Code of conduct proposed by the Legislative Assembly Standing Ethics Committee. The Report recommends that a Free Conference of Managers from both Houses be convened to consider all the Codes which have been presented by the Legislative Council and the Legislative Assembly Committees, with a view to resolving the differences between the Codes.

The final Chapter of the Report looks at possible mechanisms for implementing and enforcing the code of conduct. The Chapter describes three possible models, based on practice in a number of other Parliaments where codes of conduct are currently in force.

As Committee Chair, I wish to acknowledge the co-operation and contributions of the Members of the Legislative Council who served on the Committee. The Committee also wishes to thank the Clerk to the Committee and Deputy Clerk of the Legislative Council, Ms Lynn Lovelock, the Senior Project Officer, Ms Velia Mignacca, and the Secretary to the Office of the Clerk, Ms Phillipa Gately, and to acknowledge the assistance provided by Ms Roza Lozusic, Legislative Council Project Officer.



**HON DR MEREDITH BURGMANN MLC  
CHAIR  
STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**

# Background to the Committee

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The Committee was first established as the Standing Committee Upon Parliamentary Privilege by resolution of the Legislative Council on 9 November 1988. It was re-established under the 50th Parliament on 16 October 1991. On 24 May 1995 at the commencement of the 51st Parliament the Committee was reconstituted as the Standing Committee on Parliamentary Privilege and Ethics.

The Committee has two main roles:

- (1) to consider and report on any matters relating to parliamentary privilege which may be referred to it by the House or the President; and
- (2) to carry out certain functions relating to ethical standards for Members of the Legislative Council under Part 7A of the *Independent Commission Against Corruption Act 1988 (NSW)*.

# Terms of Reference

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The terms of reference for this inquiry are contained in s.72C(1)(a) of the *Independent Commission Against Corruption Act 1988*. Other provisions within s. 72C are also relevant to the inquiry. Section 72C provides:

- 72C.** (1) The functions of the designated committee<sup>1</sup> are:
- (a) to prepare for consideration by the Legislative Council draft codes of conduct for members of the Legislative Council 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 Council; and
  - (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Council, but not in relation to actual or alleged conduct of any particular person.
- (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 Council, 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.

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<sup>1</sup> The Standing Committee on Parliamentary Privilege and Ethics was designated as the relevant committee by resolution of the Legislative Council on 24 May 1995 (Minutes No. 2, p. 42).

(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) No later than 30 September 1996, the designated committee is to present for consideration by the Legislative Council a draft code of conduct for members of the Legislative Council.

(6) The designated committee is to review the code of conduct at least once in each period of two years.

# Committee Membership

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The Hon Dr Meredith Burgmann, MLC Chair	Australian Labor Party
The Hon Jenny Gardiner, MLC	National Party
The Hon Charlie Lynn, MLC <sup>2</sup>	Liberal Party
The Hon John Johnson, MLC	Australian Labor Party
The Hon Richard Jones, MLC	
The Hon Andrew Manson, MLC	Australian Labor Party
The Hon Bryan Vaughan, MLC	Australian Labor Party
The Hon Helen Sham-Ho, MLC <sup>3</sup>	Liberal Party

## SECRETARIAT

Ms Lynn Lovelock	Clerk to the Committee
Ms Velia Mignacca	Senior Project Officer
Ms Phillipa Gately	Committee Officer

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<sup>2</sup> From 14 November 1995 (Legislative Council Minutes of Proceedings No. 23, 14 November 1995)

<sup>3</sup> Until 14 November 1995 (Legislative Council Minutes of Proceedings No. 23, 14 November 1995)



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# Summary of Recommendations

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## Recommendation No. 1

That the words "or any infamous crime" be deleted from s. 13A(e) of the *Constitution Act*.

## Recommendation No. 2

That the House refer to this Committee an inquiry on the need for:

- (a) the introduction of measures to enable persons or corporations to reply to adverse statements made by Members of the House under parliamentary privilege, and
- (b) the introduction of guidelines concerning the use of the right of freedom of speech, to encourage Members to make use of that right in a responsible manner with due regard to the damage which may be caused by unfounded allegations.

## Recommendation No. 3

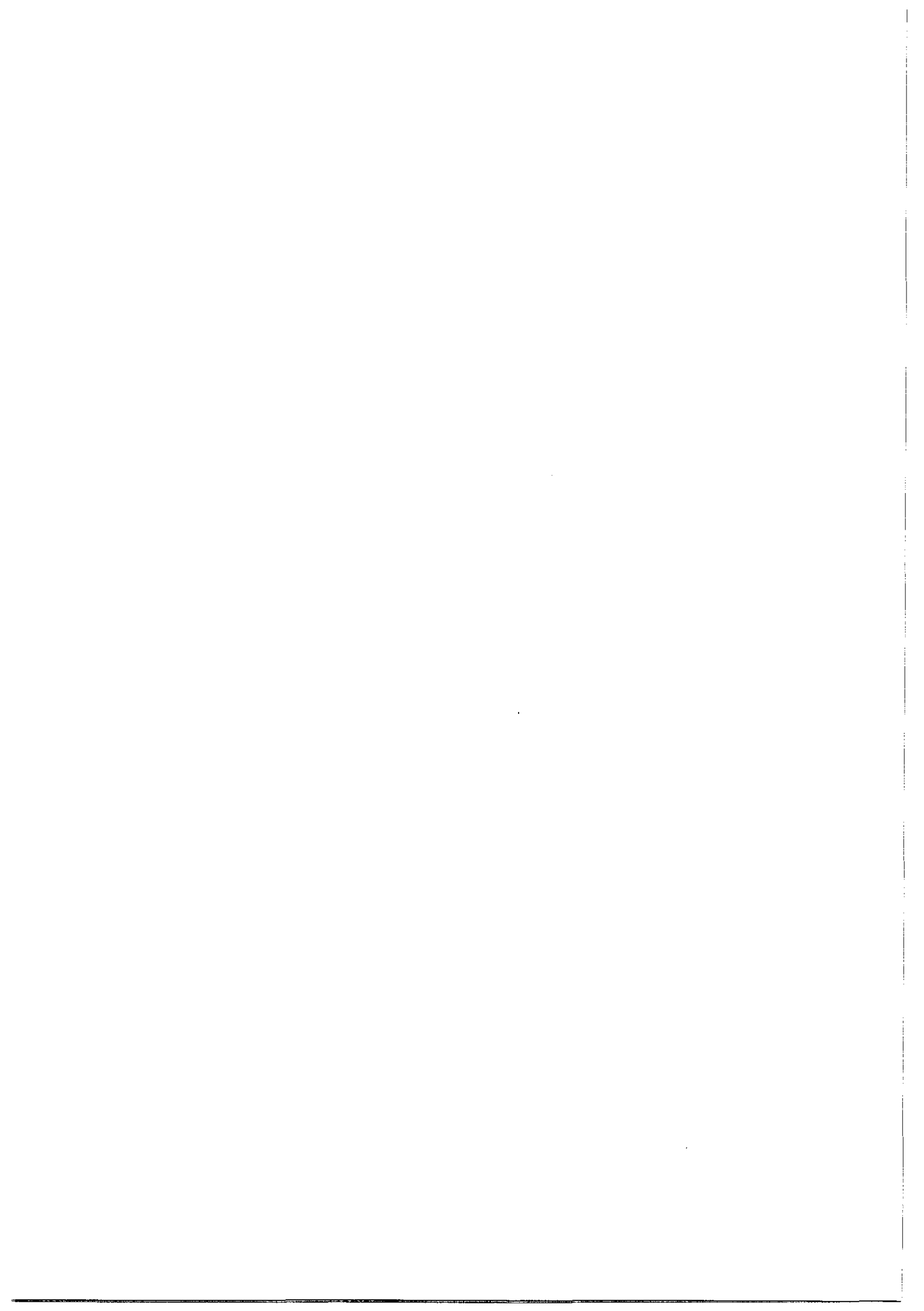
That the *Anti-Discrimination Act 1977* be clarified to ensure that the provisions of the Act cover Members of the House with respect to their parliamentary staff.

## Recommendation No. 4

That the House refer to the Standing Orders Committee a review of the current sitting hours of the House, with a view to accommodating the needs of Members with family responsibilities.

## Recommendation No 5

That a Free Conference of Managers of the Legislative Council and the Legislative Assembly be convened to consider the draft Codes of Conduct presented by the Legislative Council Standing Committee on Parliamentary Privilege and Ethics and the Legislative Assembly Standing Ethics Committee and to recommend the adoption for all Members of the NSW Parliament, a single Code of Conduct based on these Codes.



# Chapter One

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## 1 BACKGROUND TO THE INQUIRY

### 1.1 PREVIOUS INQUIRIES

- 1.1.1 The need for a code of conduct for Members of Parliament has been addressed in two previous inquiries in NSW. The first inquiry was the investigation by the Independent Commission Against Corruption (ICAC) concerning Richard Mochalski, a Member of the Legislative Assembly, and John Neal, one of the Member's constituents.<sup>4</sup> In the particular matter which was the subject of investigation, the ICAC found that the Member had placed himself in a position of conflict between the duty he owed to the constituent and his own personal interests. However, it also considered that the matter highlighted a more general problem, the lack of adequate guidance for Members of Parliament as to the conduct which is expected of them and the manner in which they should resolve their various and sometimes competing roles. In its report on the matter, the ICAC suggested that further guidance for Members should be provided through the establishment of training and induction programs, and by the development of a code of conduct.<sup>5</sup>
- 1.1.2 The second inquiry concerning the need for a code arose, in part, from the ICAC's comments in the Report on Neal and Mochalski. In December 1991, the Parliament referred to the Joint Committee on the ICAC an inquiry regarding the need for a code of ethics for Members of Parliament and certain other matters. The Joint Committee did not produce a final report, but issued a Discussion Paper in April 1994.<sup>6</sup> In relation to the code of ethics reference, the Discussion Paper summarised the evidence which the Committee had received and raised various issues for consideration. These issues included the nature of the legal and ethical duties and responsibilities of Members of Parliament; the purposes which a code of ethics might serve; and whether a general, or specific, form of code would be appropriate.
- 1.1.3 The *Report by the ICAC on the Investigation into North Coast Land Development*, dated July 1990, should also be mentioned in this context. Although the Report did not address the particular issue of a code of

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<sup>4</sup> *Report on investigation concerning Neal and Mochalski*, April 1991.

<sup>5</sup> *Ibid.*, pp. 33-34.

<sup>6</sup> *Discussion Paper on Pecuniary Interest Provisions for Members of Parliament and Senior Executives and a Code of Ethics for Members of Parliament*.

conduct, certain parts of the Report dealt with matters relating to standards of conduct and integrity for Members of Parliament. In particular, the Report considered the principles which should guide Members when making representations to Government on behalf of third parties.<sup>7</sup>

## 1.2 BACKGROUND TO THE *ICAC (AMENDMENT) ACT 1994*

1.2.1 The statutory basis for the current inquiry lies in amendments to the *ICAC Act 1988* brought about by the *ICAC (Amendment) Act 1994*. To place the current inquiry in its proper context, it is necessary to examine the events which led to the introduction of the amendments.

### "Greiner - Metherell affair"

1.2.2 On 10 April 1992 a Member of the Legislative Assembly, Dr Terry Metherell, resigned from the Legislative Assembly and was appointed to a senior position in the NSW public service within the Environment portfolio. At the time, the Liberal/National Party Coalition Government under Premier Nick Greiner did not control a majority of seats in the Legislative Assembly in its own right. Dr Metherell was one of five Independent Members who held the balance of power in the House.<sup>8</sup>

1.2.3 Dr Metherell had been a member of the Liberal party for most of his parliamentary career. However, a few months before the events in question took place, he had resigned from the Party, remaining as the Member for Davidson, a safe Liberal seat.

1.2.4 Dr Metherell's resignation from Parliament and appointment to the public service were the subject of wide-spread public controversy. Allegations were made that the public service position had been arranged for Dr Metherell by the Premier and the then Minister for the Environment, Tim Moore, for political motives. It was also claimed that Dr Metherell's appointment was a case of "jobs for the boys", as he was a friend of the Minister, and a past Cabinet colleague of both the Minister and the Premier.

1.2.5 The Parliament referred the circumstances relating to Dr Metherell's resignation from Parliament and subsequent appointment to the ICAC for

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<sup>7</sup> See Chapters 10 and 33.

<sup>8</sup> The other Independent Members in the House at the time were Tony Windsor (who generally voted with the Government), and three non-aligned Members, Clover Moore, John Hatton, and Dr Peter Macdonald.



investigation. One of the principal matters which the ICAC was required to determine was whether any "corrupt conduct" had occurred within the meaning of the *ICAC Act 1988*. To make sense of the ICAC's determination on this issue it is necessary to examine the definition of corrupt conduct which is contained in the Act.

#### Definition of "corrupt conduct"

1.2.6 Under s. 7 of the *ICAC Act*, corrupt conduct is conduct which falls within s. 8 and s. 9. The relevant part of s. 8 in summary states that corrupt conduct is conduct which:

- (a) adversely affects the honest or impartial exercise of official functions by any public official; or
- (b) involves the dishonest or partial exercise by a public official of his or her official functions; or
- (c) involves a breach of public trust by a public official.

(s. 8(1)(a)-(c)).

1.2.7 The relevant part of s. 9 at that time provided:

9. (1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence; or
- (b) a disciplinary offence; or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official.

1.2.8 The definition of corrupt conduct is significant, as it is one of the principal factors in the *ICAC Act* which determine the scope of the ICAC's investigatory jurisdiction. For example, under s. 13(1)(a), the ICAC can investigate a matter where there are allegations, or circumstances implying, that "corrupt conduct" has occurred. In the course of such investigations the ICAC may hold hearings and use its coercive powers. In addition, the ICAC may make findings that persons have engaged in "corrupt conduct" (s. 13(5)(a)), and such findings may be made public (s.78(2)).

#### Determination by the ICAC

1.2.9 The ICAC's findings on the matters referred by the Parliament were contained in its *Report on investigation into the Metherell resignation and appointment*, dated June 1992. In that Report, the ICAC determined

that Premier Greiner and the Minister for the Environment had engaged in corrupt conduct as defined in the *ICAC Act* on the ground that the relevant conduct:

- involved the partial exercise of official functions by public officials, and a breach of public trust, within the meaning of s. 8(1)(a)-(c), *and*
- could constitute reasonable grounds for dismissal within the terms of s. 9(1)(c).

1.2.10 Following the release of the ICAC's Report, both the Premier and the Minister brought proceedings in the Supreme Court of NSW challenging the validity of the ICAC's determinations. Both sets of proceedings were removed to the Court of Appeal for determination because of the public importance of the issues involved.<sup>9</sup>

#### **Court of Appeal decision**

1.2.11 The Court of Appeal found that the ICAC's determination that Mr Greiner and Mr Moore had engaged in corrupt conduct within the meaning of the Act was a nullity and wrong in law. The Court upheld the ICAC's finding that the conduct fell within s. 8(1). However the majority of the Judges were not satisfied that the conduct could constitute or involve reasonable grounds for dismissal within the terms of s. 9(1)(c).

1.2.12 The majority of the Court held that the test of whether conduct could constitute reasonable grounds for dismissal within s. 9(1)(c) is an objective test which requires the application of legally recognised standards. In the majority view, no objective standards or recognised criteria had been shown which would justify the conclusion that there were grounds for dismissing the Premier or the Minister in the circumstances of the case.

1.2.13 The Court of Appeal decision showed that the ICAC's power to investigate the conduct of Ministers and Members was limited in scope because of the way that corrupt conduct was defined in s. 9(1). Clearly, the ICAC could investigate allegations that suggested that Ministers or Members had engaged in criminal activity under s. 9(1)(a). However, the other bases for corrupt conduct within s. 9(1)(b) and (c) could have very little practical operation to Ministers and Members.

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<sup>9</sup> *Greiner v ICAC*, CA 40346/92; *Moore v ICAC*, CA 40347/92.

- 1.2.14 Section 9(1)(b) could have no operation to Ministers and Members, as there are no disciplinary proceedings to which such officers are subject.<sup>10</sup> Section 9(1)(c) could have only limited application to Ministers, as the Court of Appeal decision demonstrated that the power of dismissal is exercised by the Governor only in exceptional circumstances. Section 9(1)(c) could have no application at all to Members, as Members do not hold offices from which they can be “dismissed”, though the Parliament may expel them for its own protection, and they may lose office in certain circumstances specified in the *Constitution Act 1902*.<sup>11</sup>
- 1.2.15 The object of the *ICAC Amendment Act 1994* was to overcome the limitations on the ICAC’s jurisdiction in relation to Ministers and Members which the Court of Appeal decision had brought to light.<sup>12</sup> The Bill was introduced into Parliament following detailed negotiations between the Government and the three non-aligned Independent Members who held the balance of power in the Legislative Assembly at that time.<sup>13</sup> The principal provisions of the amending Act are considered in the following section.

### 1.3 *ICAC (AMENDMENT) ACT 1994 - PRINCIPAL PROVISIONS*

- 1.3.1 The principal amendment brought about by the *ICAC (Amendment) Act 1994* was to expand the definition of corrupt conduct in relation to Ministers and Members. This was achieved by inserting an additional ground within s. 9(1), paragraph (d), and a corresponding definition within s. 9(3). The relevant part of s. 9 now provides:

9. (1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence; or
- (b) a disciplinary offence; or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official; or

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<sup>10</sup> Joint Committee on the ICAC, *Review of the ICAC Act*, May 1993, Appendix 2, Crown Solicitor’s advice 17 March 1993, p. 7.

<sup>11</sup> *ibid.*

<sup>12</sup> *Parliamentary Debates*, Legislative Council, Minister’s Second Reading Speech, 27 October 1994, p. 4772.

<sup>13</sup> *Parliamentary Debates*, Legislative Assembly, Second Reading debate, 26 October 1994, p. 4724 (Dr Macdonald), p. 4725-6 (Ms Moore), p. 4726-7 (Mr Hatton).

- (d) in the case of conduct by a Minister of the Crown or a member of a House of Parliament - a substantial breach of an applicable code of conduct.

9.(3) For the purposes of this section:

"applicable code of conduct" means, in relation to:

- (a) a Minister of the Crown - a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations; or
- (b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown) - a code of conduct adopted for the purposes of this section by resolution of the House concerned.

1.3.2 The second important amendment established by the 1994 Act was the creation of a new Part 7A, headed *Parliamentary Ethical Standards*. Part 7A establishes an ethics committee for each House of Parliament, with the task of developing draft codes of conduct for the Members of the House and undertaking certain other functions relating to Members' ethical standards. The provisions relating to the Legislative Council are contained in Division 1 of Part 7A; Division 2 relates to the Legislative Assembly.

1.3.3 Under Division 1, a committee of the Legislative Council is to be designated by resolution of the House for the purposes of the Division (s. 72B(1)). The Standing Committee on Parliamentary Privilege and Ethics was so designated on 24 May 1995.<sup>14</sup> The functions to be performed by the committee are set out in s. 72C(1). The first function listed, the preparation of codes of conduct for consideration by the House, is the statutory basis for the current inquiry -

72C (1) The functions of the designated committee are:

- (a) to prepare for consideration by the Legislative Council draft codes of conduct for members of the Legislative Council 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 Council; and

<sup>14</sup>

Legislative Council Minutes of Proceedings No. 2, 24 May 1995, p. 42.

(c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Council, but not in relation to actual or alleged conduct of any particular person.

- 1.3.4 Under s. 72C(2) - (4) the Committee may seek comments from the public in relation to any of its functions. It must make publicly available its proposed code of conduct prior to presenting a draft code to the House, and must take into consideration any written submissions on the proposed code which it receives.
- 1.3.5 The Committee must review the code of conduct at least once every two years: s. 72C(6).
- 1.3.6 The equivalent committee in the Legislative Assembly is the Standing Ethics Committee, which is established by s.72D. This Committee, unlike the Legislative Council committee, comprises non-parliamentary or "community" members, as well as Members of the House.
- 1.3.7 Initially, the *ICAC (Amendment) Bill* proposed a joint ethics committee to consist of the members of the Joint Committee on the ICAC plus five community members. This proposed structure was rejected by the Legislative Council for two reasons. Firstly, it was considered that it would not be appropriate to give jurisdiction over the conduct of Legislative Council Members to a committee, such as the Committee on the ICAC, which has a majority of Legislative Assembly Members. Secondly, it was argued that the appointment of community representatives to such a committee would be inconsistent with the Legislative Council's role as a sovereign and independent House.<sup>15</sup> It was also considered that the inclusion of non-parliamentary members on the committee was unnecessary given the provisions regarding community consultation which are contained in s. 72C(2)-(4). Also, since non-parliamentary members are not elected, and are not bound by the Standing Orders of the House, they are not accountable in the way that elected Members of Parliament are accountable.<sup>16</sup>

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<sup>15</sup> *Parliamentary Debates*, Legislative Council, 27 October 1994, pp. 4779 - 4784; 1 December 1994, p. 6071, 6084.

<sup>16</sup> *Parliamentary Debates*, Legislative Council, 27 October 1994, p. 4780

## 1.4 CONDUCT OF THE INQUIRY

### Meetings and hearings

- 1.4.1 The Committee first met to consider this inquiry on 9 June 1995. The Committee held a total of 34 meetings and 5 briefings in relation to the matter, and nine public hearings. Certain meetings and hearings were conducted in conjunction with the Legislative Assembly Standing Ethics Committee.

The Minutes of Committee meetings are reproduced at Appendix 13; the transcripts of hearings are contained in a separate volume.

### Advertisements and submissions

- 1.4.2 In July 1995 the Committee placed advertisements in a range of metropolitan, regional and foreign language newspapers, calling for submissions from interested persons and bodies in relation to the development of a draft code of conduct for Members of the Legislative Council. The Committee received seven submissions in response to these advertisements. These submissions are listed at Appendix 2.
- 1.4.3 On 6 July 1996 the Committee advertised the release of its proposed draft code of conduct and invited public submissions in relation to that code, in accordance with s. 72C(3) of the *ICAC Act*. The Committee received 15 submissions, which are also listed at Appendix 2.
- 1.4.4 In addition to submissions received in response to advertisements, the Committee received a further 11 written submissions from witnesses who gave evidence in relation to the inquiry.

### Study tour

- 1.4.5 In January 1996, a delegation from the Committee comprising the Chair and the Hon Jenny Gardiner MLC, accompanied by the Clerk to the Committee, undertook a study tour to several overseas Parliaments. The delegation examined different approaches to the regulation of Members' conduct in various Parliaments in India, Europe, and North America. The Chair tabled the Report of the study tour in the Legislative Council on 23 May 1996.

### Extensions of reporting date

- 1.4.6 When the *ICAC (Amendment) Act* was passed in 1994, s. 72C(5) stated that the Committee was to present a draft code of conduct to the Legislative Council within 12 months after the commencement of Division 1. As Division 1 commenced operation with the rest of the Act at proclamation on 20 January 1995, the draft code of conduct was to have been presented to the House by 20 January 1996. However, s. 72C(5) was later amended to extend the reporting date to 1 July 1996,<sup>17</sup> to 30 September 1996,<sup>18</sup> and subsequently to 29 October 1996.<sup>19</sup> This final extension was a last minute unsuccessful attempt to resolve the differences between the Legislative Assembly and Legislative Council Codes of Conduct.
- 1.4.7 One reason for the extensions to the reporting date was the additional workload of the Committee. During the period of this inquiry the Committee received three additional references on matters relating to parliamentary privilege and completed inquiries in relation to two of those references. Another relevant factor was the effect on the Committee's status of the prorogation of Parliament on 27 January 1996. As appropriate legislation had not been passed in the 1995 parliamentary session to enable the Committee to operate while the House stood prorogued, the Committee was unable to meet and transact business from the date of prorogation until the Parliament resumed on 16 April 1996.

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<sup>17</sup> *Statute Law (Miscellaneous Provisions) Act (No 2) 1995*, Schedule 1, s. 1.9 [1].

<sup>18</sup> *Statute Law (Miscellaneous Provisions) Act 1996*, Schedule 1, s. 1.20 [1].

<sup>19</sup> *Independent Commission Against Corruption (Codes Of Conduct) Amendment Act 1996*.

# Chapter Two

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## 2 EXISTING MEASURES REGULATING MEMBERS' CONDUCT

2.0.1 There are two broad types of measures which regulate the conduct of Members of the Legislative Council at present. Firstly, Members are held accountable for their conduct, to varying degrees, through mechanisms such as:

- peer pressure
- the ballot box
- party discipline
- debate in the House
- media scrutiny

Secondly, certain regulatory measures are established under the Standing Orders and inherent powers of the House, the *Constitution Act 1902*, statute and common law, and determinations of relevant tribunals and bodies. This Chapter provides a brief overview of existing measures of the second type. In general, rules governing Members' conduct in the sense of decorum in the House, and laws which apply to the conduct of all citizens, are not considered.

### 2.1 STANDING ORDERS AND POWERS OF THE HOUSE

#### Standing Orders

2.1.1 Standing Orders 126 and 238 regulate Members' conduct in relation to matters in which they have a pecuniary interest. Standing Order 126 relates to a Member's right to vote in divisions in the House:

No Member shall be entitled to vote in any Division upon a Question in which he has a direct pecuniary interest, not in common with the rest of Her Majesty's subjects and on a matter of State policy, and the vote of the Member so interested shall be disallowed.

Standing Order 238 concerns Members sitting on committees:

No Member shall sit on a Select Committee who shall be pecuniarily interested in the inquiry before such Committee.



- 2.1.2 Although both Standing Orders or equivalent provisions have been in existence for over a hundred years, there are only three recorded cases where Standing Order 126 or its predecessor has been raised in the House,<sup>20</sup> and no recorded cases involving Standing Order 238. Only one of the cases involving Standing Order 126 actually resulted in a Member with a pecuniary interest in a matter not voting on that matter.<sup>21</sup>

#### **Inherent powers of the House**

- 2.1.3 The Legislative Council has an inherent power to expel a Member from the House and declare his or her seat vacant if it adjudges the Member guilty of "conduct unworthy of a Member". The existence of this power was confirmed by the Supreme Court of NSW in *Armstrong v Budd* (1969) 71 SR (NSW) 386. The Court held that the power to remove and replace a dishonest Member is necessary to maintain that level of integrity "which is essential to mutual trust and confidence amongst ... Members".<sup>22</sup>
- 2.1.4 The Legislative Council has exercised the inherent power of expulsion only once in its history, in the matter which was before the court in *Armstrong v Budd*. The conduct which led to the Member's expulsion in that case included being a party to an arrangement to procure false evidence for the divorce court, and stating in evidence before a court of law that he would consider bribing a judge.
- 2.1.5 Further indication of the type of conduct which amounts to "conduct unworthy of a Member" may be obtained by considering practice in the Legislative Assembly. The Assembly has exercised a power of expulsion on this ground on the basis of:
- misappropriation by a Member of funds paid to a company by way of compensation pursuant to a vote of Parliament, in circumstances where the Member was a director and trustee of the company (E A Baker, Member for Carcoar, 1881);<sup>23</sup>

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<sup>20</sup> *Parliamentary Debates*, Legislative Council, Vol. 32, 10 May 1888, p. 4634; Vol. 127, 16 June 1931, p. 3313; Vol. 50, 18 March 1964, p. 7917. See also *Journals*, Vol. 9, 1862, pp. 178, 181, 183; Vol. 10, 1863-64, pp. 26, 35, 37, 38, 41, where a Member's personal interest in the subject of a vote led to the introduction of the Standing Order which preceded Standing Order 126.

<sup>21</sup> *Parliamentary Debates*, Legislative Council, Vol. 50, 18 March 1964, p. 7917.

<sup>22</sup> Sugerman J. A. at p. 409.

<sup>23</sup> *Legislative Assembly Votes and Proceedings*, 8 November 1881, Vol. 32, p. 296.

- making allegations of improper conduct against a Government Minister “wantonly and recklessly, and without any foundation whatsoever” (R A Price, Member for Gloucester, 1917).<sup>24</sup>

## 2.2 CONSTITUTION ACT

### Disqualifications

- 2.2.1 Sections 13, 13A and 13B of the *Constitution Act 1902* set out various matters which result in disqualification from membership of either House of Parliament. Sections 13 and 13B may be characterised as conflict of interest provisions, as the grounds for disqualification which they contain relate to the holding of pecuniary interests in matters involving the State or Crown. For example, under s. 13(2), a Member’s seat is declared vacant if the Member enters into a contract or agreement for or on account of the Public Service of NSW. Under s. 13B(2), a Member’s seat becomes vacant if the Member accepts an “office of profit under the Crown” or a pension from the Crown.
- 2.2.2 Section 13A lists various miscellaneous types of conduct which result in disqualification, ranging from failure to attend in the House for the duration of a parliamentary session, to becoming bankrupt, to being “convicted of ... any infamous crime” (s. 13A(e)).

### Disclosure of pecuniary interests

- 2.2.3 Section 14A of the *Constitution Act* states that the Governor may make regulations with respect to the disclosure by Members of either House of Parliament of all or any of the pecuniary interests or matters listed in the section. If any Member wilfully contravenes any regulation made under the section, the House may declare the Member’s seat vacant: s. 14A(2)
- 2.2.4 The *Constitution (Disclosures by Members) Regulation 1983* was made pursuant to s. 14A. The Regulation requires Members of both Houses to lodge annual returns with the Clerk of the respective House setting out various matters, including:
- interests held in real property
  - sources of income

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<sup>24</sup>

*Parliamentary Debates*, Legislative Assembly, 18 October 1917. The power exercised in that case was based on a Standing Order which has no equivalent in the Legislative Council, Standing Order 391 (now 294).

- gifts over \$500
- contributions to travel
- interests or positions in corporations
- positions in trade unions or professional or business associations;
- debts
- certain dispositions of property.

2.2.5 A Register containing the returns of all Members of the House is available for public inspection, and tabled in the House.

### 2.3 STATUTORY PROVISIONS

#### **Section 9(4) of the *ICAC ACT 1988***

2.3.1 Section 9(4) was inserted into the *ICAC Act* in 1994 with the other amendments to s. 9 which are discussed in Chapter 1. Like those amendments, subsection (4) extends the jurisdiction of the ICAC by expanding the definition of "corrupt conduct" in relation to Ministers and Members. However, the conduct with which subsection (4) is concerned does not involve breaches of a code of conduct.

2.3.2 Under s. 9(4) conduct of a Minister or Member amounts to "corrupt conduct" if it falls within s. 8 *and* if it is conduct that -

would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

2.3.3 The ICAC is not entitled to make a finding or opinion in a Report that a person has engaged in "corrupt conduct" on the basis of s. 9(4), unless it is satisfied that the conduct could also constitute a breach of a law apart from the *ICAC Act*: s. 9(5).

#### ***Election Funding Act 1981***

2.3.4 Part 6 of the *Election Funding Act 1981* requires political parties and candidates nominated for election to disclose political contributions received above certain specified amounts. The types of contributions which must be disclosed and the method by which disclosure is to be made are set out in Part 6.

2.3.5 The ICAC's *Report on the Investigation into North Coast Land Developments* dated June 1990 highlighted the importance of compulsory disclosure of political donations as a means of controlling the incidence of political corruption. The Report examined cases where

donations to party funds had the potential to influence back-bench Members to use their contacts with Ministers and other Government decision-makers for the benefit of the donors. The ICAC commented:

So long as substantial donations can be made to political parties or candidates without public disclosure, they can be used to purchase influence. The law that allows secret political donations, creates conditions conducive to corrupt conduct.<sup>25</sup>

## 2.4 CRIMINAL OFFENCES

### *Crimes Act 1900*

- 2.4.1 Various offences set out in Part 4A of the Crimes Act, headed *Corruptly receiving commissions and other corrupt practices*, are of potential relevance to Members. These include s. 249D, which relates to the corrupt solicitation of a benefit for the giving of advice.

#### **Bribery**

- 2.4.2 At common law it is an offence for a Member of Parliament to solicit or receive a bribe, or to corruptly enter into an agreement with someone relating to voting in Parliament or the exercise of his or her position as a Member of Parliament.<sup>26</sup> Prosecutions for such offences are rare: e.g. *Crick v Harnett* (1907) 7 SR 126; *R v Boston* (1923) 33 CLR 386; *R v Jackson and others* (1987) 30 A Crim R 230 (all involving Members of the NSW Legislative Assembly).

#### **Official misconduct**

- 2.4.3 There is a broad category of common law offences described variously as "official misconduct", "breach of official trust", or "misbehaviour in public office", involving misconduct by public officials acting in their official capacity. The law on this topic is reviewed in an article by Paul Finn entitled "Official Misconduct" (1978) 2 *Crim LJ* 307.

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<sup>25</sup> ICAC, *Report on the Investigation into North Coast Land Developments*, June 1990, p. 527

<sup>26</sup> *Submission*, Keith Mason QC, Solicitor General, 18 September 1995, p. 4.

## 2.5 GUIDELINES CONCERNING USE OF OFFICIAL RESOURCES

### Allowances and entitlements

- 2.5.1 Members of the Legislative Council receive a range of allowances and entitlements to assist them with the performance of their parliamentary duties. The allowances and entitlements cover matters such as photocopying, postage, stationery, printing, and travel. The Parliamentary Remuneration Tribunal recommends the amounts of such allowances pursuant to ss. 9 and 11 of the *Parliamentary Remuneration Act 1989*. In some cases Tribunal recommendations expressly state that the relevant allowance is to be used in connection with "parliamentary" or "official" business. Occasionally, the Tribunal draws a distinction between "parliamentary business" and "party business".<sup>27</sup>
- 2.5.2 General guidelines as to the use of parliamentary allowances and entitlements are set out in the *Members' Guide*, an internal document issued to Members by the Department of the Legislative Council. In most cases the guidelines provided are confined to principles such as "parliamentary business" or "parliamentary duties". Within these broad guidelines, the purposes for which allowances and entitlements may be used are left largely to the discretion of individual Members. No definition or indication of what constitutes "parliamentary business" is provided.

### Other resources

- 2.5.3 Members of the Legislative Council have access to research and secretarial staff, an office at Parliament House, and office equipment. All of these facilities are provided by the Parliament. As with allowances and entitlements, the *Members' Guide* offers general guidance concerning the purposes for which these facilities may be used.

<sup>27</sup>

E.g. Report of the Parliamentary Remuneration Tribunal dated 31 May 1995, *NSW Government Gazette* No. 70, 9 June 1995, p. 3091.

# Chapter Three

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## 3 RECENT DEVELOPMENTS IN OTHER PARLIAMENTS

### AUSTRALIA

#### 3.1 Commonwealth

##### *Bowen Report*

3.1.1 In 1978 the Commonwealth Government appointed a committee to inquire into certain matters relating to the public duty and private interests of Members, Senators, Ministers and certain other public office holders. The Committee, chaired by the Chief Judge of the Federal Court, Sir Nigel Bowen, reported on 22 November 1979.<sup>28</sup> In its Report the Committee recommended, among other matters, the adoption of a code of conduct for all persons holding positions of public trust. The proposed code consisted of a statement of principles designed to promote the avoidance/ resolution of conflicts of interest.

3.1.2 The Government announced that it broadly accepted the recommendations of the Committee. However, only procedures relating to Ministers were put in place.

##### *Working Group*

##### Proposed code

3.1.3 In 1992 an informal Working Group of Members and Senators was formed with the aim of developing a code of conduct for the Members of both Houses. The group was established following dispute over the "Marshall Islands Affair" and was given further impetus by later conduct cases such as the "Sports Rorts Affair".<sup>29</sup> The group consisted of 12 members including representatives from all parties and independent representatives, chaired jointly by the Presiding Officers.<sup>30</sup>

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<sup>28</sup> *Public Duty and Private Interest*, Report of the Committee of Inquiry, 1979.

<sup>29</sup> Senator the Hon. Michael Beahan, President of the Senate, "Parliamentary Ethics - Political Realities", *27th Conference of Presiding Officers and Clerks*, Hobart 1996, pp. 9-10.

<sup>30</sup> Tabling speech by the Speaker, House of Representatives, Presentation of the draft codes of conduct, 21 June 1995.

3.1.4 In 1995 the Working Group issued two separate draft codes of conduct, entitled respectively:

- *A Framework of Ethical Responsibilities for Members and Senators;*  
and
- *A Framework of Ethical Responsibilities for Ministers and Presiding Officers.*

Both documents were tabled in Federal Parliament on 21 June 1995 (copy at Appendix 5).

3.1.5 The introduction to the draft Framework for Members and Senators sets out the purpose of the document and outlines the means by which matters to be raised under the Framework will be dealt with. There follow eight general principles of an aspirational nature, framed around such statements as "Primacy of the Public Interest", "Proper Exercise of Influence", and "Integrity". The Framework for Ministers and Presiding Officers contains a further nine aspirational principles which holders of higher office must observe in addition to the eight principles applying to all Members. Lastly, the Framework for Members and Senators refers to other sources of rules governing Members' conduct, such as the Standing Orders, relevant Constitutional provisions, the *Parliamentary Entitlements Act*, and determinations of the Remuneration Tribunal.

3.1.6 Neither House has adopted the draft Framework documents, which lapsed on the Notice Paper at the dissolution of Parliament prior to the last general election.

#### Enforcement

3.1.7 The Framework states that each House will consider matters which are raised by Members and Senators under the framework, and a majority of two thirds of Members of a House will be necessary to resolve a matter.

### 3.2 Australian Capital Territory

#### Recommended code

3.2.1 In 1990 the ACT Legislative Assembly referred to the Standing Committee on Administration and Procedures an inquiry concerning the development of a code of ethics for Members, and related matters. In its Report dated June 1991, the Committee recommended the adoption of

a code of conduct consisting of a general introduction declaring the standards which the community is entitled to expect from its elected representatives, and ten aspirational principles (copy at Appendix 6).<sup>31</sup>

- 3.2.2 Due to a change of Government, the Committee's Report was not considered by the Legislative Assembly and no action has been taken in relation to the proposed code of conduct. However, a Code of Conduct for Ministers was introduced by the ACT Government in April 1995.<sup>32</sup>

### Enforcement

- 3.2.3 The Committee recommended that alleged breaches of the code be referred by the House to the Committee on Administration and Procedures for investigation, which would report its findings to the House for its consideration.<sup>33</sup>

## 3.3 South Australia

- 3.3.1 The joint parliamentary Legislative Review Committee is currently inquiring into the development of a code of conduct for Members of the South Australian Parliament, pursuant to a resolution of the Legislative Council.

- 3.3.2 In April 1996 the Committee issued a *Discussion Paper concerning a Code of Conduct for Members of Parliament*. The Discussion Paper proposes for consideration a draft Code of Conduct (copy at Appendix 7) which is closely modelled on the Commonwealth Parliament's draft *Framework of Ethical Principles for Senators and Members*. The Committee is still considering this matter and has no fixed reporting date.

## 3.4 Tasmania

- 3.4.1 In 1994 the House of Assembly Reform of Parliament Select Committee issued a Report which recommended the adoption of *A Code of Ethical Conduct for Members*.<sup>34</sup> The recommended Code was based on the Code of Ethics of the Legislative Assembly of the Canadian Province of Saskatchewan (discussed at 3.10).

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<sup>31</sup> Standing Committee on Administration and Procedures, *Inquiry into the Proposed Ethics Committee/Code of Conduct*, May 1991.

<sup>32</sup> ACT Parliamentary Debates, 2 May 1995, p. 52.

<sup>33</sup> Standing Committee on Administration and Procedures, *Op. cit.*, p. 31.

<sup>34</sup> Reform of Parliament Select Committee, House of Assembly, *Reform of Parliament*, 14/1994.



3.4.2 On 22 May 1996 the recommended Code was incorporated into the Standing Orders of the House of Assembly by resolution (Appendix 8). Under the amended Standing Orders, Members are required to subscribe to the Code after taking the oath or affirmation and making the declaration under the Electoral Act (Standing Order 2(d)).

3.4.3 The Tasmanian Legislative Council has not adopted a code of conduct to date, but has recently taken steps to introduce a register of pecuniary interests for Members.

### 3.5 Victoria

#### Code of conduct

3.5.1 Part 1 of the *Members of Parliament (Register of Interests) Act 1978* contains a Code of Conduct for Members of both Houses (Appendix 9). The Code consists of six broad aspirational principles concentrating on conflicts of interest.

#### Enforcement

3.5.2 Any wilful contravention of the provisions of the Act constitutes a contempt of Parliament and may be dealt with accordingly (s. 9). There have been no reported breaches of the code to date.

### 3.6 Western Australia

#### Code of conduct

3.6.1 The need for a code of conduct for parliamentarians in Western Australia has recently been considered by the Western Australian Commission on Government, which was established by the Parliament in 1994 to inquire into various matters relating to public administration and the prevention of corruption in the public sector. The Commission's *Report No. 3*, dated April 1996, examines ethical standards for Members of Parliament, among other matters.

3.6.2 The Report recommends that a Standing Committee be appointed in each House with responsibility for preparing a code of conduct for Members, providing advice to Members on ethical issues, and conducting induction programs and education on ethical issues for Members.

3.6.3 The parliamentary Joint Standing Committee on the Commission on Government is considering the Commission's recommendations and is due to report in 1997.

### Enforcement

- 3.6.4 The Commission recommended that the proposed Standing Committee consider alleged breaches of the code and make appropriate recommendations to the respective House on appropriate sanctions.

## 3.7 Queensland

### *Electoral and Administrative Review Commission (EARC)*

- 3.7.1 The Queensland Electoral and Administrative Review Commission (EARC) issued a Report on *Review of Codes of Conduct of Public Officials* in May 1992. The inquiry was undertaken in response to certain recommendations of the Fitzgerald Report (1989).
- 3.7.2 The EARC Report recommended the adoption of a comprehensive approach to ethics regulation across the public sector. First, it identified a number core ethical principles which it considered should apply to all public officials, both appointed and elected, and recommended that these principles be enshrined in legislation. Secondly, it recommended that codes of conduct for different categories of public officials be developed around the core principles.
- 3.7.3 Using this approach, the EARC Report proposed a model for a Code of Conduct for Elected Representatives, including both members of local councils and Members of Parliament (Appendix 10). The proposed code is the lengthiest and most discursive of all the codes operating or proposed in Westminster-style Parliaments which the Committee examined, although like those codes, it is largely aspirational. The introductory part of the code discusses the concept of "the public interest", the role of the code within the proposed Queensland public sector ethics regime, and other preliminary matters designed to set the code in context. The body of the code examines the ways in which each of the core ethical obligations applies to elected representatives. The final section contains additional principles applicable to Ministers.
- 3.7.4 The code states that breaches of the code may be dealt with as determined by the Parliament.<sup>35</sup>

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<sup>35</sup> EARC, *Report on the Review of Codes of Conduct for Public Officials, May 1992*, Appendix G, p. G3, para. 2.2.

- 3.7.5 The Parliamentary Committee for Electoral and Administrative Reform endorsed the EARC's view in its 1993 *Report on Codes of Conduct of Public Officials*, and recommended that a code of conduct be prepared for Members of the Legislative Assembly.

*Current position*

- 3.7.6 At present, the Members' Ethics and Parliamentary Privileges Committee of the Queensland Parliament is inquiring into the development of a draft code of conduct for Members of the House, and a procedure for complaints regarding breaches of the code, under s. 16 of the *Parliamentary Committees Act 1995*. Under the Act the Committee is to consider complaints against particular Members for failure to comply with the code of conduct, and report to the Assembly recommending action in relation to such complaints.
- 3.7.7 In August 1996 the Committee released an Issues Paper which invited public submissions concerning the development of the code of conduct and procedures for implementation of the code. The Committee is still considering the matter.

## OVERSEAS PARLIAMENTS

- 3.8 United Kingdom House of Commons

*Nolan Committee*

- 3.8.1 In 1994 the United Kingdom Government appointed the Committee on Standards in Public Life, chaired by an independent Judge, Lord Nolan. The Committee was established in response to public concern over matters such as allegations that certain Members of Parliament had received cash payments for asking Questions in the House of Commons, and the growing number of Members with paid consultancies relating to their parliamentary activities. The First Report of the Committee, entitled *Standards in Public Life*, was issued in May 1995.
- 3.8.2 Among the many recommendations of the Committee was that the House of Commons should draw up a code of conduct setting out the broad principles which should guide the conduct of Members.<sup>36</sup> A draft code of conduct was included in the Report (copy at Appendix 11). The Committee also recommended that the House appoint an independent Parliamentary Commissioner for Standards, to advise Members on the

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<sup>36</sup> *Standards in Public Life*, p. 40.

code of conduct and on questions of propriety, and to consider complaints regarding alleged breaches of the code.<sup>37</sup>

*House's decisions following the Nolan Report*

3.8.3 Following the tabling of the Nolan Committee Report in May 1995, the House of Commons appointed the Select Committee on Standards in Public Life to examine the Report's recommendations. The Select Committee issued two Reports which dealt with a range of matters relating to Members' conduct, including the need for a code of conduct, measures for enforcing the code, and the disclosure of parliamentary consultancies.<sup>38</sup> The House of Commons adopted many of the Select Committee's recommendations by a series of resolutions on 19 July 1995 and 6 November 1995.

3.8.4 In summary, the effect of these various resolutions was to establish -

1. an independent Parliamentary Commissioner for Standards to be appointed by the House;
2. the Select Committee on Standards and Privileges; and
3. a code of conduct for Members of the House.

1. *Parliamentary Commissioner for Standards*

3.8.5 The Parliamentary Commissioner for Standards has responsibilities in relation to Members' ethics, including the code of conduct, and the Register of Members' Interests.

3.8.6 In relation to Members' ethics, the Commissioner -

- advises individual Members, and the Committee on Standards and Privileges, on the interpretation of the code of conduct and questions of propriety;
- receives, and if the Commissioner thinks fit, investigates specific complaints from Members and the public in respect of the propriety of Members' conduct, and reports findings to the Committee;
- prepares guidance and induction courses for new Members on matters of conduct, propriety and ethics; and

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<sup>37</sup> Ibid., p. 43.

<sup>38</sup> *First Report*, July 1995; *Second Report*, 1 November 1995.

- **monitors** the operation of the code of conduct and makes recommendations concerning the code to the Committee.

3.8.7 The House of Commons approved the appointment of the first Parliamentary Commissioner for Standards, Sir Gordon Downey KCB, a former Comptroller and Auditor General, by a majority of 231 votes to 71.

## 2. *Select Committee on Standards and Privileges*

3.8.8 Like the Parliamentary Commissioner for Standards, the Select Committee on Standards and Privileges has functions in relation to Members ethics and the Register of Interests. In addition, the Committee has taken over the responsibilities of the former Committee of Privileges.

3.8.9 In relation to Members' ethics, the Committee:

- **considers matters relating to the conduct of Members, including specific complaints** in relation to alleged breaches of the code of conduct which have been drawn to the Committee's attention by the Commissioner;
- **oversees** the work of the Commissioner; and
- **was responsible for preparing a code of conduct for approval** by the House (see below).

## 3. *Code of Conduct*

3.8.10 The Committee on Standards and Privileges issued its Third Report entitled *The Code of Conduct and the Guide to the Rules relating to Conduct of Members*, in July 1996. The Report recommended for adoption by the House a Code of Conduct for Members, and a Guide to assist Members in interpreting their obligations under resolutions of the House regarding registration and disclosure of interests and the prohibition of paid advocacy. The House adopted the Code and the Guide recommended by the Committee, without amendment, by resolution on 24 July 1996.

3.8.11 The Code of Conduct consists of a brief exposition of the general principles governing Members' public duties and personal conduct, incorporating various principles previously recommended by the Nolan Committee (Appendix 11).

**3.9 Canada - Federal**

- 3.9.1 There is no code of conduct for parliamentarians at the federal level in Canada. Provisions governing conflicts of interest are contained in the *Parliament of Canada Act* and the *Criminal Code*, as well as the Standing Orders of the Houses.
- 3.9.2 A *Conflict of Interest and Post-Employment Code for Public Office Holders* applies to Ministers and Parliamentary Secretaries, but not to other Members and Senators. An independent Ethics Counsellor administers this Code, provides advice on conflict of interest and lobbying issues to the Prime Minister and Ministers, and can, at the request of the Prime Minister, investigate allegations of impropriety against Ministers and senior officials.
- 3.9.3 In 1995 the Federal Parliament established a Special Joint Committee to develop a code of conduct to assist Members and Senators in reconciling their official responsibilities with their personal interests, including their dealings with lobbyists. The Committee is also examining options for the enforcement of the code. The Committee is expected to report in 1996.

**3.10 Canada - Provinces**

- 3.10.1 Most provinces in Canada have a conflict of interest or code of conduct regime for legislators. In most cases the provincial legislature appoints a commissioner or other individual to oversee public disclosure of interests and to investigate complaints. The Committee examined in some detail the regime operating in the Province of Saskatchewan.

**Saskatchewan***Code of Conduct*

- 3.10.2 The Saskatchewan Legislative Assembly adopted a Code of Ethical Conduct for Members by resolution in June of 1993 (Appendix 12). The Code consists of a short Preamble; a "Statement of Commitment" setting out the ethical duties and loyalties owed by Members of the Assembly to the electorate, constituents and colleagues; and a "Declaration of Principles", consisting of nine aspirational principles.
- 3.10.3 No particular form of sanction applies in respect of breaches of the code, other than possible investigation under the *Members' Conflict of Interest*

*Act* (see below). In 1995 a Private Member's Bill was introduced to establish measures for enforcing the code, but the Bill lapsed when the Assembly was dissolved for a provincial general election.<sup>39</sup>

*Conflict of Interest Commissioner*

- 3.10.4 The *Members' Conflict of Interest Act* (Chapter M-11.11, 1993) imposes certain obligations on Members in relation to the disclosure of interests and the avoidance and resolution of conflicts of interest. The Act also establishes the office of the Conflict of Interest Commissioner. The Commissioner oversees the disclosure of Members' interests, provides advice to Members in respect of their obligations under the Act, and investigates suspected conduct violations.
- 3.10.5 The Commissioner's advice or opinion may be sought:
- (a) in relation to a Member's compliance with the Act (regarding conflicts of interest or disclosure of interests):
    - (i) by the Member concerned (this advice remains confidential unless the Member authorises its publication);
    - (ii) by another Member; or
    - (iii) by the Legislative Assembly.
  - (b) in relation to other aspects of a Member's conduct (including a Member's compliance with the Legislative Assembly code of conduct):
    - (i) by the Legislative Assembly.
- 3.10.6 The Commissioner may investigate the conduct of a Member either in relation to the Member's compliance with the Act, or on receiving a request from the Assembly in relation to other aspects of a Member's conduct. In each case, the Commissioner reports to the Speaker, who tables the report in the House.

<sup>39</sup>

Bill No. 15 of 1995, *An Act to provide for the Enforcement of the Code of Ethical Conduct for Members of the Saskatchewan Legislative Assembly (Anti-corruption)*.

3.10.7 Where the Commissioner finds that a Member has contravened any provision of the Act, the Commissioner may recommend in a report that:

- (a) the Member be ordered to comply with the Act on such terms and conditions as the Assembly considers appropriate;
- (b) the Member be reprimanded;
- (c) the Assembly impose a fine on the Member in an amount to be determined by the Assembly;
- (d) the Member be suspended; or
- (e) the Member's seat be declared vacant.

3.10.8 The Commissioner is appointed by resolution of the Legislative Assembly. The first and current Conflict of Interest Commissioner is Mr Derril McLeod QC, appointed on 1 February 1994 in an acting capacity, and confirmed by unanimous resolution of the House on 9 May 1994.

### 3.11 United States Houses of Congress

#### Codes of conduct

3.11.1 Each House of the US Congress has its own Code of Official Conduct for Members and staff. The Codes are contained within the Rules of each House and are supplemented by interpretative rulings of the relevant House's ethics committee. In addition, there are detailed rules governing the standards of conduct for Members/Senators and employees in various civil and criminal statutes, and in other determinations of the Houses.

3.11.2 The ethics rules for US legislators cover a wide range of areas including gifts and sponsored travel, post-employment restrictions, dealings with lobbyists, acceptance of honoraria (fees for speeches and appearances), and the disclosure of pecuniary and other interests. Many of the rules are detailed, technical and prescriptive. For example, the amended Gift Rule adopted by the House of Representatives on 7 December 1995 is the subject of a ten page explanatory memorandum issued by the House Committee on Standards of Official Conduct, which sets out numerous, finely-distinguished situations where the acceptance of gifts is or is not permitted. The *House Ethics Manual*, a compendium of rules and interpretative guidelines applying to Members and officers of the House of Representatives, runs to some 500 pages.

#### Enforcement

3.11.3 The Senate Select Committee on Ethics, and the House of Representatives Committee on Standards of Official Conduct, have



jurisdiction over the Members and officers of the respective Houses with respect to ethical rules and standards. The Committees investigate allegations of improper conduct, recommend the imposition of sanctions for violations of the rules, and issue advisory opinions to Members and officers on the application of relevant rules and laws. Each Committee operates independently of the other.

- 3.11.4 The membership of both Committees is equally divided between the two major parties; if there is a deadlock, a matter does not proceed. Both Committees have the power to appoint independent Counsel to assist in proceedings, and there are formal procedures for the bringing of complaints. The Committees may recommend to the relevant House the imposition of particular sanctions in respect of violations of ethical standards, or in some cases may issue a reprimand to the Member concerned.
- 3.11.5 The ethics regime in the US Congress has been the subject of more wide-spread scrutiny and evaluation by commentators than the regimes operating in other legislatures, possibly because the US ethics committees have been in existence for longer than counterparts in other legislatures. Advantages of the US system include:
- The enforcement of ethical standards by a committee of the House itself (self-regulation) means that (a) the House retains sovereignty over its own Members, and (b) regulation is undertaken by people who understand the system within which Members operate.
  - The ability of both Committees to appoint independent Counsel gives a measure of objectivity to committee proceedings.
  - The structure of the Committees, with equal numbers from each party, has in the past fostered a bipartisan approach to ethics.
- 3.11.6 Criticisms which have been levelled against the US system include:
- Self-regulation has little credibility with the public.<sup>40</sup>
  - The Committees are becoming increasingly partisan; division along party lines is now standard.<sup>41</sup>

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<sup>40</sup> Alan Rosenthal, "Administering Ethics to Legislators", *Spectrum: The Journal of State Government* Vol. 68, No. 3, Summer 1995, p. 28.

<sup>41</sup> "Ethics Committees Stumble in Era of Partisanship", *New York Times*, August 14, 1995, p. A-10.

- The Committees act as investigators, prosecutors, judges and jury.<sup>42</sup> In particular, there is no effective separation of the investigatory and adjudicatory functions.<sup>43</sup>
- Serving on the Committees is very time-consuming for Committee members, and is perceived as a painful and thankless task. As a result, legislators are reluctant to serve on the Committees.<sup>44</sup>

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<sup>42</sup> E N Carney, "The Cloud over the Ethics Process", *National Journal*, September 16, 1995, p. 2316.

<sup>43</sup> Dennis Thompson, *Ethics in Congress*, The Brookings Institution, 1995, Chapter 6, Tribunals of Legislative Ethics.

<sup>44</sup> Alan Rosenthal, *op. cit.*, p. 28.

# Chapter Four

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## 4 ISSUES

This Chapter examines the evidence received by the Committee from witnesses and via public submissions in relation to various issues which the Committee took into account when developing the proposed code of conduct.

### 4.1 ROLES AND RESPONSIBILITIES OF MEMBERS OF THE LEGISLATIVE COUNCIL

4.1.1 As discussed in Chapter 1, between 1991 and 1994 the Joint Committee on the ICAC conducted an inquiry into the need for and the types of provisions to be included in a code of ethics for Members of the NSW Parliament. One of the issues to emerge from that inquiry was the importance of taking account of the roles and responsibilities which Members of Parliament undertake, when determining the standards of conduct which Members should observe. Several witnesses before that Committee took the view that it is not possible to formulate appropriate standards of conduct without having a clear understanding of Members' various roles.<sup>45</sup>

4.1.2 The need for clarification of Members' roles and responsibilities as a preliminary step to developing ethical standards was also raised by the ICAC in its submission to this Committee.<sup>46</sup> Many other witnesses also discussed this matter. This section provides an overview of the principal areas which were canvassed in the evidence received by the Committee on this issue.

#### Conflicts inherent in Members' roles

4.1.3 Mr Gary Sturgess, former Director General of the NSW Cabinet Office, argued that the conventions which govern the behaviour of politicians inside or outside of Parliament are not amenable to codification.<sup>47</sup> This is because, in the world of politics, there is a confusion of public interest and private interest — the private interest of being elected and staying elected to government. Furthermore, Members of Parliament operate in

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<sup>45</sup> *Discussion paper on pecuniary interest provisions for Members of Parliament and senior executives and a code of ethics for Members of Parliament*, April 1994, p. 65 - 66.

<sup>46</sup> *Submission*, August 1995, pp. 3-4.

<sup>47</sup> *Evidence*, 3 October 1995, p. 188.

an environment which brings together groups of political opponents whose avowed purpose is to win or retain government.<sup>48</sup> Mr Sturgess maintained that although this view may not be popular with the general public, any code which fails to recognise these fundamental conflicts will be nothing more than a meaningless statement of values, without relevance to the real world.<sup>49</sup> By ignoring these issues, according to Mr Sturgess, the EARC and UK (Nolan Committee) codes are no more than a set of general motherhood statements.<sup>50</sup>

- 4.1.4 The Auditor General, Mr Tony Harris, also drew attention to the inherent weakness in the Parliamentary system whereby the needs of the electorate can become identified with the personal electoral aspirations of the politician. In his view, this system encourages the perception that *any* action taken by Members to ensure their re-election is validated by that re-election, provided such action meets the minimum standard of legality.<sup>51</sup> Despite this inherent conflict, Mr Harris considered that it is possible to draw boundaries around types of conduct which, though legal, are inappropriate.<sup>52</sup>

*Party versus parliamentary roles*

- 4.1.5 Mr Harris' evidence emphasised the distinction between Members' *party* roles and responsibilities, and their *parliamentary* roles and responsibilities. He categorised those acts which are performed by Members *for the good of the party* (e.g. fund-raising, party speech-making, photocopying for party or campaign purposes) as being forms of self-interested conduct, as distinct from conduct undertaken in the course of Members' public or parliamentary duties.<sup>53</sup> Similarly, he appeared to consider that acts performed by Members for the good of other types of sectional interests (e.g. Boy Scouts; charities) do not generally form part of Members' "parliamentary" activities.<sup>54</sup> Accordingly, he submitted that the code of conduct for Members of the

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<sup>48</sup> *Submission*, op. cit., p. 2.

<sup>49</sup> *ibid.*, pp. 1-2.

<sup>50</sup> *ibid.*, p. 2.

<sup>51</sup> *Submission*, 13 September 1995, p. 1.

<sup>52</sup> *ibid.*

<sup>53</sup> *Evidence*, 13 September 1995, pp. 13-14.

<sup>54</sup> *ibid.*; *Submission*, 13 September 1995, p.3.

Legislative Council should not only prohibit Members from deriving improper *personal* benefit from their public position,<sup>55</sup> but should also prohibit them from applying public resources “for the benefit of *related parties*, including for a *related political party*” (emphasis supplied).<sup>56</sup>

- 4.1.6 Mr Harris did recognise that in some cases it is difficult to draw a line between personal, party, and parliamentary matters.<sup>57</sup>

*Delegates or representatives*

- 4.1.7 A further issue which was examined by Mr Harris is the role of party loyalty in the context of Members’ roles as representatives. Mr Harris believed that Members are elected in their own right, to exercise their public responsibilities for the public good, not merely as functionaries or delegates of a particular political party. Accordingly in his view, if a Member does not agree with the party on a particular issue, the Member should stand against the party on that issue even if it means being expelled from the party.<sup>58</sup> Mr Harris submitted that the fundamental principle at the heart of this question should be embodied in the code of conduct in the following terms:

Members must not be constrained by others, and must not constrain themselves, so as to nullify the exercise of public responsibility for the public good.<sup>59</sup>

- 4.1.8 However he acknowledged that some Members sincerely believe that it is in the overriding public interest for their party to succeed, and would be prepared to take whatever steps are legally available to ensure that success.<sup>60</sup>

- 4.1.9 Dr Simon Longstaff, Executive Director of the St James Ethics Centre, considered that the proper role of Members of Parliament is as *representatives* of the electorate, rather than *delegates* of the electorate or the party. He described the role of a delegate as follows:

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<sup>55</sup> *Submission*, 13 September 1995, p. 2.

<sup>56</sup> *ibid.*, p. 3.

<sup>57</sup> *Evidence*, 13 September 1995, p. 14.

<sup>58</sup> *ibid.*, p. 16.

<sup>59</sup> *Submission*, 13 September 1995, p. 3; *Evidence*, 13 September 1995, p. 16.

<sup>60</sup> *Evidence*, p. 16.

A delegate is required to communicate the views of those who have endorsed or elected the delegate to speak for them in the deliberative body. As such, the delegate is not the author of that which is said and must vote according to the wants of the electorate.<sup>61</sup>

- 4.1.10 By contrast, in his view, Members of Parliament are required to exercise their own judgement, based on a well-informed conscience, as to the needs of the electorate.<sup>62</sup> He considered that party loyalty should only be maintained to the extent that it is compatible with an ability to impartially represent the entire electorate, and if it is in all good conscience the right thing to do in order to promote the interests of the electorate.<sup>63</sup> He submitted that the code of conduct should reflect these principles.

“Public good” and “public interest”

- 4.1.11 Several witnesses before the Committee highlighted the ambiguity of terms such as “public good” and “public interest”, which often appear in parliamentary codes and rules of conduct.
- 4.1.12 The ICAC Commissioner, the Hon Barry O’Keefe, AM, QC, considered that the overriding concept by which Members should operate is the public good, or the individual Member’s concept of the public good.<sup>64</sup> He observed however that in serving the public good, it is possible that on occasion a particular group of constituents may seem to be favoured. He pointed out that this tension between particular interests and the “common good” is inherent in our system of government, and that diversity and compromise are healthy characteristics of that system. He concluded that the code of conduct should acknowledge such practicalities of government and not be too theoretical.<sup>65</sup>
- 4.1.13 Dr Damian Grace expressed the view that Members are elected to serve the public interest rather than particular constituencies.<sup>66</sup> However, he agreed that in some circumstances it could be said to be in the public

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<sup>61</sup> Submission on proposed code of conduct, 31 July 1996, p. 4

<sup>62</sup> *Evidence*, 3 October 1995, p. 145.

<sup>63</sup> *Submission*, 31 July 1996, pp. 4-5.

<sup>64</sup> *Submission*, 22 September 1995, p. 1.

<sup>65</sup> *Submission*, p. 2.

<sup>66</sup> *Evidence*, 18 September 1995, p. 114.

interest for a Member to act on behalf of particular constituents to the possible detriment of the wider constituency, provided that the Member held a genuine belief that this was for the public good, and was prepared to explain his or her reasons. Dr Grace conceded that the concept of "the public interest" is nebulous and can be interpreted in a number of ways. Nevertheless he considered it to be a useful concept as it provides an opportunity for standards of behaviour to be tested and clarified:

Making a claim for the public interest is an invitation to other people to test your understanding of it, what it means and what you have done on the basis of it.<sup>67</sup>

### Nature of Upper House constituency

#### *Special Interest Constituencies*

- 4.1.14 Members of the Legislative Council are elected on a State-wide franchise; their constituency encompasses the whole of New South Wales. However, several Council Members have been elected to represent special interest constituencies, such as conservative Christians, environmentalists, and shooters. Ethical as well as political concerns arise for these independent and minor party representatives, particularly when they hold the balance of power.
- 4.1.15 One such concern is the extent to which such Members can be said to have an ethical or moral duty to represent the interests of their constituents, even if this would frustrate the implementation of the electoral mandate of the majority party. Another concern is whether it is legitimate for such Members to use their position to engage in practices such as vote-trading, or "log-rolling", to achieve their electoral agenda.
- 4.1.16 Mr Sturgess submitted that there was a case for this Committee to address the ethical issues associated with log-rolling, both in the sense of trading votes for votes, and trading votes for benefits from the Executive Government bestowed on particular (interest-based) constituencies.<sup>68</sup> He went so far as to suggest that it is difficult to distinguish between log-rolling and bribery, in the sense of trading "this for that".<sup>69</sup> On the other hand, Professor Michael Jackson considered

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<sup>67</sup> *ibid.*

<sup>68</sup> *Submission*, 2 October 1995, p. 5.

<sup>69</sup> *Evidence*, 3 October 1995, p. 197.

that this type of political compromise could be acceptable in some circumstances, provided it is not done unconscionably.<sup>70</sup> The Hon Barry O'Keefe also took the view that compromise and the giving of concessions is part of the political process and not necessarily "corrupt conduct".<sup>71</sup>

*Differences between the Houses*

- 4.1.17 The Committee discussed with several witnesses the question of whether the differences between the roles of the two Houses of the Legislature impose different types of ethical obligations on their respective Members. The Hon Barry O'Keefe considered that the same general ethical principles should apply to the Members of each House, and that the requirements of each code of conduct should have a similar core.<sup>72</sup> However he suggested that the different electorate/constituency responsibilities might result in different expectations concerning the way in which Members should act in certain matters.<sup>73</sup> For example, in his view, it may not be unreasonable to expect there to be some obligation on a Member with an electorate of 30,000 people to reply to correspondence within a given time. However it may not be feasible to impose such a time constraint on a Member with a State-wide electorate. Mr O'Keefe suggested that these differences would express themselves only at the periphery of the codes.<sup>74</sup>
- 4.1.18 Dr Simon Longstaff considered that the different constituencies of the two Houses do result in differences between the perspectives and type of Members elected, which are reflected in the different lengths of their terms of office.<sup>75</sup> However, like Mr O'Keefe, he felt that the differences between the roles of the Members of each House are marginal, given their essentially similar role as elected representatives in a liberal democracy.<sup>76</sup>

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<sup>70</sup> *Evidence*, 13 October 1995, p. 48.

<sup>71</sup> *Evidence to Legislative Assembly Standing Ethics Committee*, 8 March 1996, p. 7.

<sup>72</sup> *Evidence*, 22 September 1995, pp. 129-30.

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

<sup>75</sup> *Evidence*, 3 October 1995, p. 144.

<sup>76</sup> *ibid.*



### Comment

- 4.1.19 The Committee's examination of Members' roles and responsibilities highlighted several issues of significance for the development of the code of conduct. Firstly, the conflicting nature of many of the roles which Members undertake, and the impossibility of resolving such conflicts at an abstract level, suggested that it is preferable for the code of conduct to be framed in broad, general terms, rather than with a high level of detail and prescriptiveness. A brief code based on general principles would provide Members with guidance as to the standards of conduct which they are expected to observe, while at the same time acknowledging that there are inherent conflicts which can only be resolved in the context of the circumstances of particular cases.
- 4.1.20 Secondly, the evidence received by the Committee indicated that in many areas there is a lack of consensus concerning the nature of Members' roles and responsibilities. For example, while one witness saw vote-trading or log-rolling as being akin to bribery, other witnesses viewed such conduct as being an unavoidable part of the political process. While some believe that Members should act according to their own conscience in all matters involving the performance of public duties, others take the view that the community accepts that the party system imposes certain restrictions on Members' independence. In the Committee's view, this lack of consensus provides further evidence for the view that the code of conduct should not be unduly prescriptive. While the code should unequivocally proscribe conduct that is clearly unacceptable (such as taking personal financial benefit from public office), it should not attempt to define Members' roles and responsibilities in areas where there is room for a legitimate conflict of views.

## **4.2 PURPOSES OF THE CODE OF CONDUCT**

- 4.2.1 This section examines the statutory purpose of the code of conduct, other possible purposes for the code, and the limitations of codes and rules of conduct.

### A. Statutory purpose of the code

- 4.2.2 The statutory purpose of the code is to provide a mechanism for bringing the conduct of Members within the jurisdiction of the ICAC. Under the ICAC Act, a "substantial breach" of an applicable code of conduct by a

Member of Parliament is one element of the definition of "corrupt conduct" which determines the extent of the ICAC's investigatory powers.

- 4.2.3 The fact that the code will operate in such a complex and technical regulatory scheme, and that a breach can lead to investigation by a body with such far-reaching statutory powers, has ramifications for the content and style of code to be adopted. It suggests that the code should be drafted with precision and clarity, and that its provisions should be confined to matters of major ethical concern. The Crown Solicitor, Mr Ian Knight, highlighted the need for the code to be drafted with clarity and precision so that there can be little room for doubt as to whether or not a breach of the code had occurred. This was particularly important in view of the consequences in terms of possible corrupt conduct which could flow from a substantial breach of the Code.<sup>77</sup>
- 4.2.4 The implications of the code's statutory purpose were discussed by the Deputy Ombudsman, Mr Chris Wheeler, during evidence before the Committees:

The fact that it enlivens the ICAC's jurisdiction ... is something which I think supports the view that the code should only contain very serious matters and other matters may be dealt with in some associated document, possibly a guideline or manual.

It is also important that whatever is in the code is very clear, is very precise, and that Members have sufficient guidance as to what it means and what standards of behaviour or conduct are required so that they can easily avoid the punitive results of a breach of that code.<sup>78</sup>

- 4.2.5 Mr Wheeler also suggested that aspirational or open-ended terms which may be ambiguous in meaning should not be used in the code where sanctions are to be imposed:

While the duty to act in the public interest could be referred to in any code of conduct for parliamentarians, as the "public interest" is a concept that is incapable of clear and comprehensive definition, it should not be included as a requirement to which any sanction is attached.<sup>79</sup>

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<sup>77</sup> *Advice*, 19 September 1996, p. 2

<sup>78</sup> *Evidence*, 13 October 1995, pp. 52-53.

<sup>79</sup> *Submission*, 13 September 1995, p. 2.

4.2.6 The Committee agrees that the use of vague, aspirational terms which are open to multiple interpretations should be kept to a minimum given the nature of the enforcement mechanism to which the code of conduct is linked under the ICAC Act. However, some use of terms such as “the public interest” or “the common good” has proven to be unavoidable during the process of drafting the code, as such terms encapsulate the concept of public trust which is at the heart of Members’ ethical obligations.

**B** Other purposes

*1. Clarification of ethical standards*

4.2.7 Several witnesses before the Committee submitted that the purpose of the code of conduct should be to clarify the ethical standards which are expected of Members and the values which Members should uphold.<sup>80</sup> The code of conduct should serve as a common reference point across political and other differences,<sup>81</sup> define ethical expectations in areas of uncertainty,<sup>82</sup> and assist Members to manage the conflicts of interest which can arise from their diverse and sometimes competing roles.<sup>83</sup>

4.2.8 Critics of codes of conduct often argue that an informal understanding already exists among Members concerning the standards of conduct which should be observed, that an unspoken ‘honour system’ already guides Members in their ethical decision-making. This view assumes that the principles embodied in the informal ethics system are well-understood by all participants.<sup>84</sup> However, a survey of NSW parliamentarians’ perceptions of corruption conducted in 1990 revealed a lack of consensus among Members about what constitutes ethical behaviour.<sup>85</sup>

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<sup>80</sup> E.g. Damian Grace, *Submission*, 18 September 1995, p. 2; ICAC, *Submission*, August 1995, p. 2; Michael Hogan, *Evidence*, 13 September 1995, p. 58; Dick Humphry, *Evidence*, 3 October 1995, p. 180.

<sup>81</sup> Damian Grace, *Submission*, op. cit., p. 3.

<sup>82</sup> ICAC, *Submission*, August 1995, p. 3.

<sup>83</sup> Michael Jackson, *Evidence* 13 October 1995, p. 26.

<sup>84</sup> Michael Jackson, *Evidence*, 13 October 1995, p. 26.

<sup>85</sup> Michael Jackson and Rodney Smith, “Everyone’s doing it! NSW parliamentarians’ perceptions of corruption, *Australian Journal of Public Administration* Vol. 54, No. 4, December 1995.

- 4.2.9 The survey, conducted by Michael Jackson and Rodney Smith of the University of Sydney, obtained the views of over 100 Members of Parliament in relation to ten hypothetical scenarios, each designed to reflect different degrees of corruption. Participants were asked whether they considered the conduct involved in each case to be corrupt. Consensus among Members ranged from 52% to 93%; in no case was there complete agreement.
- 4.2.10 Jackson and Smith concluded that disagreement about what is corrupt is strong among NSW parliamentarians.<sup>86</sup> This finding accords with the results of similar studies which have been conducted among legislators in the US,<sup>87</sup> Canada<sup>88</sup> and Britain.<sup>89</sup> The authors of the NSW survey suggest that the development of a code of ethics may provide the means to discuss and resolve such dissensus.<sup>90</sup>
- 4.2.11 A later survey conducted among NSW electors showed that members of the public are more likely than parliamentarians to judge conduct as corrupt, particularly in relation to cases weighted by the researchers as less serious.<sup>91</sup> Not only is there disparity between the views of individual Members in relation to ethical standards, but the views of the community are different again. Jackson and Smith submit that the development and continued scrutiny of a parliamentary code of conduct would provide an arena for asserting the role of public opinion in shaping parliamentarians' ethical norms.<sup>92</sup>

## 2. *Process of elaborating the code clarifies ethical expectations*

- 4.2.12 The ICAC submitted to the Committee that the *process* of developing the code of conduct, as much as the code itself, can contribute to raising

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<sup>86</sup> *ibid*, p. 492.

<sup>87</sup> J. Peters and S. Welsh, "Political corruption in America", *American Political Science Review*, 1978, 72(3).

<sup>88</sup> M. Atkinson and M. Mancuso, "Do we need a code of conduct for politicians?", *Canadian Journal of Political Science*, 1985, 18(3).

<sup>89</sup> Maureen Mancuso, *The Ethical World of British MPs*, McGill-Queen's University Press, Montreal, 1985.

<sup>90</sup> Jackson and Smith, *op. cit.*

<sup>91</sup> Michael Jackson, *Evidence*, 13 October 1995, p. 25.

<sup>92</sup> Jackson and Smith, *op. cit.*, p. 493.

awareness of ethical issues and achieving agreement on standards.<sup>93</sup> Jackson and Smith have expressed a similar view.<sup>94</sup> These comments accord with the Committee's own experience during this inquiry. The process of formulating the proposed draft code of conduct has required Committee Members to identify, debate and struggle with a range of ethical issues and dilemmas to which there were no clear cut "right" answers. This process has been invaluable in clarifying the Committee's understanding of Members' ethical responsibilities.

- 4.2.13 The process of *reviewing* the code of conduct once the code has been formulated will provide further opportunities for clarifying standards and expectations. The Committee is required to review the code at least once every two years under the ICAC Act, and additional reviews will no doubt be necessary in light of the code's application to specific cases.

3. *Enhance public perceptions of the status of Members*

- 4.2.14 A number of witnesses before the Committee submitted that the introduction of a code of conduct would enhance public perceptions of the status of Members of the Legislative Council. For example, Damian Grace considered that a code would reinforce trust in legislators and confidence in the institution of Parliament, and be a sign to the electorate of the Parliament's commitment to agreed and objective standards and principles.<sup>95</sup> The ICAC submitted that a code of conduct would improve the community's perceptions of the ethics and honesty of Members of the Legislative Council.<sup>96</sup>

C. Limitations of codes of conduct

- 4.2.15 The limitations of codes and rules of conduct should be acknowledged if the code is to operate effectively within realistic parameters. No code of conduct will *create* honesty and integrity, or stop Members who deliberately set out to do wrong from acting on their intentions. Further, a code of conduct by itself is unlikely to lead to reform of the *institutional* factors which impact on Members' conduct, such as a rigid party system. Finally, a code of conduct alone may have no significant

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<sup>93</sup> ICAC, *Submission*, August 1995, p. 2.

<sup>94</sup> Michael Jackson and Rodney Smith, *op. cit.*, p. 484.

<sup>95</sup> *Submission*, 18 September 1995, p. 3.

<sup>96</sup> *Submission*, August 1995, p. 3.

effect on community perceptions that standards of integrity and honesty among Members of Parliament are low (as demonstrated by a recent Morgan poll in which only 12% of those surveyed rated State parliamentarians as "high" for ethics and honesty).<sup>97</sup>

4.2.16 However, the Committee believes that the code of conduct has an important role to play in combination with other factors. In particular, it considers that:

- combined with an effective program of ethics training and induction, the code of conduct will heighten Members' awareness of ethical issues such as conflicts of interest;
- combined with appropriate tools (such as a casebook of specific examples illustrating the principles embodied in the code) the code will provide guidance in areas where Members are uncertain or confused as to the nature of their ethical obligations;
- combined with an effective enforcement mechanism which is applied fairly and in a non-partisan manner, the code of conduct may enhance public confidence in the institution of Parliament by demonstrating that Members of the Legislative Council are accountable for their conduct;
- combined with strong accountability mechanisms in other areas of political life (e.g. an effective parliamentary committee system), and continuing public debate concerning the nature of Members' roles and responsibilities, the code of conduct may contribute to the enhancement of ethical standards.

### 4.3 TYPE OF CODE

4.3.1 In its 1992 Report *Review of Codes of Conduct of Public Officials*, the Queensland EARC identified two different models for a code of conduct: a detailed, specific, prescriptive type of code which endeavours to provide a fully articulated set of regulations and principles to cover all situations; and a general, aspirational code which is limited to declaring broad principles and values.<sup>98</sup> The EARC described the first type of code as the "Justinian Code" model (after the Roman Emperor Justinian who

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<sup>97</sup> Morgan Poll, annual survey of ratings for ethics and honesty among Australian professions, *The Bulletin*, 30 April 1996.

<sup>98</sup> EARC, Report on *Review of Codes of Conduct of Public Officials*, May 1992, p. 35.

instigated extensive legal codification), and the second type as the "Ten Commandments" model.

- 4.3.2 Each model has advantages and disadvantages. A highly prescriptive code will provide clarity, certainty and consistency in the regulation of ethical standards and responsibilities and will minimise the need for interpretation, but may prove to be inflexible in its application to specific cases. An aspirational code may have greater flexibility, but its lack of detail may cause ambiguity and uncertainty, and may, when combined with a sanctions provision, create real problems in implementation. A purely aspirational code may also attract criticism for appearing too "soft".
- 4.3.3 Although most codes of conduct would probably fall somewhere in between the two extreme models described by the EARC, the typology which the models represent constitutes a useful tool for determining the form of code to be adopted. For example, the Commonwealth Parliament's Working Group considered that the relative merits of prescriptive and aspirational codes raised questions of fundamental significance for the development of the *Framework of Ethical Principles for Members and Senators* (discussed at 3.1).<sup>99</sup> The code ultimately proposed by the Group is aspirational in character, but anticipates that the Houses will develop a body of interpretation and clarification over time which will overcome any ambiguity which might arise from the general, abstract nature of the document.<sup>100</sup>
- 4.3.4 Witnesses who appeared before the Committee during this inquiry took a range of different views on this issue. The Auditor General, Mr Tony Harris, considered a prescriptive code to be desirable:

In any area of administration that I have dealt with you go from the general to the prescriptive very quickly because people either do not wish to see or do not see the principle generally expressed. The Taxation Act, by dint of bitter experience, has to be itemised because people will seek every opportunity to go around it...<sup>101</sup>

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<sup>99</sup> *A Framework of Ethical Responsibilities for Members and Senators*, p. 1, Introduction.

<sup>100</sup> *ibid.*, p. 3.

<sup>101</sup> *Evidence*, 13 September 1995, p. 21.

- 4.3.5 The President of the NSW Council for Civil Liberties, Mr John Marsden, also favoured a Justinian type of code:

[W]e believe it is a total waste of time to set out some type of statement of principles or values within which each member of Parliament must make appropriate decisions...

... if a standard of ethics and principles is going to work, it will only work if one adopts ... the Justinian code, which will endeavour to provide an exhaustive, fully articulated set of regulations and principles for every eventuality.<sup>102</sup>

- 4.3.6 By contrast, the Hon John Jobling MLC, Liberal Party Whip in the Legislative Council, submitted that a "simple broad-brush code" would be adequate, given the array of existing factors which already exert pressure on Members to conform to appropriate ethical standards, such as peer judgement, party discipline, media scrutiny and electoral accountability.<sup>103</sup>

- 4.3.7 The Director of the Public Interest Advocacy Centre, Mr Michael Hogan, advocated the adoption of a broad statement of principles, supplemented by additional guidelines which would interpret and elaborate the principles in light of changing circumstances and particular cases.<sup>104</sup> This is similar to the position adopted in the Commonwealth Parliament's draft *Framework* document.

- 4.3.8 The Committee considers that a statement of general principles, combined with interpretative guidelines and a body of precedents, would clarify standards of conduct for Members while allowing for the exercise of discretion in particular cases. However, in areas of conduct involving Members' personal *financial* interests, such as conflicts of interest and the acceptance of gifts, the Committee considers that a greater degree of specificity and prescriptiveness is required. Members of the Legislative Council are elected for two continuous terms of the Legislative Assembly; they serve for a period of eight years before having to account to the electorate for their conduct in office. During that time, Members have access to resources, information, and government decision-makers far beyond the level of access available to

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<sup>102</sup> *Evidence*, 18 September 1995, p. 82.

<sup>103</sup> *Evidence*, 3 October 1995, p. 169.

<sup>104</sup> *Evidence*, 13 September 1995, p. 58.



many ordinary citizens. The code of conduct should provide clear and specific guidelines to minimise the potential for these circumstances to be used for personal financial benefit.

4.3.9 Accordingly, the draft code of conduct proposed by the Committee is mostly framed in broad, general terms. However, more detailed and extensive coverage is given to the area of conflicts of interest, in an attempt to alert Members to the range of circumstances in which such conflicts can arise. A supplementary casebook of examples illustrating the principles embodied in the code will be developed by the Committee which will assist with the interpretation and application of the code.

4.3.10 One area which was not addressed when taking evidence in relation to the Code, was whether having the Code linked to sanctions in a "legal" sense by virtue of s. 9 of the ICAC Act impacted on the type of Code which the witnesses believed should be adopted. It is intended that this issue will be addressed during the first review of the Code which must take place within 2 years of the adoption of the initial Code by the House.

#### 4.4 EDUCATION

4.4.1 The need for a program of education and training for Members to facilitate the effective operation of the code emerged as an issue of critical significance during the inquiry. If the principal purpose of the code is to clarify and achieve consensus in relation to standards of conduct and to raise Members' awareness of their ethical obligations, it is important for Members to have an appropriate forum in which to consider and discuss such standards and obligations.

4.4.2 The Committee gave consideration to this issue not only because of its significance to the current inquiry, but also in light of the Committee's obligations under s. 72C(1)(b) of the *ICAC Act* to carry out educative work relating to ethical standards applying to Members of the Legislative Council.

4.4.3 The majority of the evidence received by the Committee on this issue suggested that informal discussions based on case studies illustrating the principles embodied in the code would be more effective than formal lectures and seminars. The Executive Officer of The St James Ethics Centre, Dr Simon Longstaff, recommended the establishment of a process which would provide:

an opportunity for Members ... to meet in a confidential environment to discuss some of the ethical questions which they face. The

reason for that is that rules and principles in the abstract are often either set aside because people do not see their practical application or they are subject to multiple interpretation. As well as that there are many cases when ideological differences will cause a lack of understanding about the particular judgements which individuals are wrestling with if they come from different parts of the political spectrum.<sup>105</sup>

- 4.4.4 Dr Longstaff stressed the importance of obtaining the agreement of all those who participate in such discussions to respect the confidence of anything that is said during the discussion.<sup>106</sup>
- 4.4.5 Mr Gary Sturgess argued that the most effective form of training in this area would be a 'round table' case study approach 'behind closed doors', in which Members from all sides of politics can engage in frank discussions about the kinds of ethical dilemmas they have confronted. A similar view was taken by ICAC Commissioner Hon Barry O'Keefe,<sup>107</sup> Dr Damian Grace,<sup>108</sup> and Mr Richard Humphry, who pointed out that the application of the provisions of the code to actual cases during such exercises may provide a useful forum for exposing areas where the code may require amendment.<sup>109</sup>
- 4.4.6 The Hon. John Jobling MLC submitted to the Committee that there was more to be gained from education programs in schools dealing with the roles and responsibilities of Members of Parliament, than from the provision of ethics training to Members, given that the parties and the preselection process already play an important role in shaping Members' ethical norms.<sup>110</sup> While the Committee acknowledges the importance of school and community education programs in this area, it favours the view of the majority of witnesses on this issue.

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<sup>105</sup> *Evidence*, 3 October 1995, p. 150.

<sup>106</sup> *ibid.*

<sup>107</sup> *Evidence*, 22 September 1995, p. 132.

<sup>108</sup> *Evidence*, 18 September 1995, p. 119

<sup>109</sup> *Evidence*, 3 October 1995, p. 178

<sup>110</sup> *Evidence*, 3 October 1995, p. 167.

4.4.7 On the basis of the evidence received, the Committee proposes a program of training and induction based on the following elements:

1. A casebook to be compiled by the Committee containing specific examples illustrating the principles set out in the code.
2. Induction sessions for new Members of the House highlighting their obligations under the code of conduct and other relevant rules.
3. Informal, confidential group discussions for Members, based on a case study approach, relating specific situations and ethical dilemmas to the standards of conduct determined by the code.

#### 4.5 OTHER ISSUES RELATING TO MEMBERS' CONDUCT

4.5.1 As discussed in Chapter 2, to understand the context in which the ethical standards to be embodied in a code of conduct would operate, the Committee examined some of the legal obligations which apply to Members of the Legislative Council. In most cases, the Committee was concerned to obtain only a general overview of the relevant rules or laws. However, three particular issues were explored in greater detail:

- (i) the "infamous crime" provision within s. 13A(e) of the *Constitution Act*;
- (ii) the use of Members' right of freedom of speech;
- (iii) the application of the *Anti-Discrimination Act 1977 (NSW)* to Members.

While these issues are not directly relevant to the content of a code of conduct, the Committee considers that they raise important questions concerning the regulation of Members' conduct and should therefore be addressed in this Report.

##### (i) Loss of seat for conviction of "infamous crime"

4.5.2 Section 13A *Constitution Act* states in part -

13A. If a Member of either House of Parliament:

...

- (e) is attainted of treason or convicted of felony or any infamous crime,

his seat as a Member of either House shall thereby become vacant.

- 4.5.3 The Committee received evidence which suggested that the term "infamous crime" within s. 13A(e) is archaic and uncertain in meaning and scope.
- 4.5.4 The Solicitor General for NSW, Mr Keith Mason QC, advised the Committee that "infamous crime" is an ancient expression which was used in the context of the law of evidence and criminal procedure in the eighteenth and nineteenth centuries. The concept of infamous crime was adopted as a ground of disqualification from membership of Parliament in the nineteenth century.<sup>111</sup>
- 4.5.5 The meaning of the term "infamous crime" in the NSW Constitution has been considered in the courts on only one occasion. In *Re Trautwein* (1940) SR (NSW) 371 Maxwell J referred to crimes such as forgery, perjury and attempts to pervert the course of justice as falling within this category. However he stated that no definition of the term had been attempted. The particular offence before the Court was characterised as an "infamous crime" on the ground that it was a crime which was "contrary to the faith, credit and trust of mankind" (at 380).
- 4.5.6 The Solicitor General advised the Committee that, while it is possible to state the general types of offences which fall within the category of infamous crime, the exact meaning of the term is uncertain. The Solicitor General considered that the vagueness of the term is undesirable given that the entry of a conviction against a Member automatically triggers vacation of office.<sup>112</sup>
- 4.5.7 The Solicitor for Public Prosecutions, Mr Stephen O'Connor, drew the Committee's attention to a 1988 report of the Victorian Legal and Constitutional Committee which considered the use of the term "infamous crime" in the context of the criminal law. That Committee concluded that the term "infamous crime" should be avoided in criminal legislation. It took the view that those acts for which a citizen may be punished should be clearly enunciated, not left loose and undefined.<sup>113</sup>
- 4.5.8 Mr O'Connor also advised the Committee that he was not aware of any provisions in other Australian jurisdictions, other than Queensland, which use "infamous crime" in the context of ineligibility to retain a seat in

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<sup>111</sup> *Evidence*, 18 September 1995, pp. 103-104.

<sup>112</sup> *ibid.*

<sup>113</sup> *Evidence*, 13 September 1995, p. 2.

Parliament.<sup>114</sup> No similar type of provision exists in any of the jurisdictions visited by the Committee delegation during the course of its overseas study tour in January 1996 (including the United States, Canada and Germany). In fact, in the United States a person currently serving a prison term may stand for and be elected to Congress.

4.5.9 In April 1996 the ICAC issued a Report which addressed the infamous crime provision in s. 13A(e) among other matters.<sup>115</sup> The Report concluded that the term is the subject of widely differing interpretations and out of tune with modern notions.<sup>116</sup> It recommended that the words "or any infamous crime" be deleted from the Constitution, and gave various alternative models for its replacement should the Parliament consider replacement to be necessary.<sup>117</sup>

4.5.10 The evidence before the Committee indicated that the concept of infamous crime is ill-defined and steeped in outmoded notions of moral "taint". In the Committee's view, if it is considered that there are certain types of offences which warrant the automatic forfeiture of a Member's seat, those offences should be specified clearly, unambiguously, and by objective criteria, for example, the length of sentence imposed on the Member. The Committee recommends:

**Recommendation No. 1**

**That the words "or any infamous crime" be deleted from s. 13A(e) of the *Constitution Act*.**

**(ii) Use of right of freedom of speech**

4.5.11 The President of the NSW Council for Civil Liberties, Mr John Marsden, gave evidence before the Committee in relation to the need for Members of Parliament to exercise their right of freedom of speech in a responsible manner. At law, statements made by Members in the course of

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<sup>114</sup> *ibid.*, pp. 3-4; *Submission*, dated 14 September 1995, p. 1.

<sup>115</sup> ICAC, *Investigation into circumstances surrounding the payment of a parliamentary pension to Mr P M Smiles, Second Report*.

<sup>116</sup> *ibid.*, p. 5.

<sup>117</sup> *ibid.*, p. 6.

parliamentary proceedings are absolutely protected. However, Mr Marsden considered that Members have an obligation to take steps to "check the facts" before making damaging allegations against citizens.<sup>118</sup>

4.5.12 Several Houses of Parliament in Australia have adopted measures which recognise a need to balance Members' unfettered right to freedom of debate against the interests of private citizens who may be the subject of damaging and unfounded allegations. Two types of measures have been adopted:

- (i) Resolutions setting out factors which Members are required to take into account when exercising the right of freedom of speech. Such factors include the damage which may be done by allegations made in Parliament to those who are the subject of such allegations, and the desirability of ensuring that statements reflecting adversely on persons are soundly based.<sup>119</sup>
- (ii) Procedures which enable citizens to reply to adverse statements made about them in Parliament by incorporation of a reply in Hansard.<sup>120</sup>

4.5.13 In the NSW Legislative Assembly, a notice of motion proposing the introduction of a similar procedure for that House is currently on the Business Paper for debate by the House. There are no proposals to establish such a procedure in the Legislative Council.

4.5.14 Mr Marsden did not favour the introduction of a right of reply procedure. In his view such a procedure would not be capable of redressing the damage which can be caused by allegations which receive wide media attention. He considered that, where the privilege of freedom of speech is abused, the Member concerned should be dealt with by the Parliament and that in serious cases the Parliament should have the right to expel the Member.<sup>121</sup>

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<sup>118</sup> *Evidence*, 18 September 1995, p. 83-84.

<sup>119</sup> *Senate - Resolutions concerning parliamentary privilege agreed to by the Senate on 25 February 1988*, Resolution No. 9, Exercise of freedom of speech, *Odgers' Australian Senate Practice*, 7th ed., p. 588; ACT - *Minutes of Proceedings of the Legislative Assembly*, No. 76, 16 September 1993, p. 433, item 9.

<sup>120</sup> *Senate*, *ibid.*, p. 582, Resolution No. 5, Protection of persons referred to in the Senate; ACT, *ibid.*, p. 432-3, item 8, Citizen's Right of Reply; Queensland Legislative Assembly, *Votes and Proceedings*, 18 October 1995, item 5.

<sup>121</sup> *Evidence*, 18 September 1995, p. 84.

- 4.5.15 In the Committee's view this issue warrants further examination, in light of Mr Marsden's evidence and the current trend of Australian Houses towards the establishment of right of reply procedures. Accordingly the Committee recommends:

**Recommendation No. 2**

That the House refer to this Committee an inquiry on the need for:

- (a) the introduction of measures to enable persons or corporations to reply to adverse statements made by Members of the House under parliamentary privilege, and
- (b) the introduction of guidelines concerning the use of the right of freedom of speech, to encourage Members to make use of that right in a responsible manner with due regard to the damage which may be caused by unfounded allegations.

(iii) ***Application of Anti-Discrimination Act 1977 (NSW)***

- 4.5.16 The *Anti-Discrimination Act* prohibits discrimination on the grounds of race, sex, marital status, disability, and homosexuality, within certain defined areas. These areas include employment, the provision of goods and services, education and accommodation. In addition, the Act makes unlawful the public vilification of persons or groups on the grounds of race, homosexuality, or HIV/AIDS.

- 4.5.17 Within these defined areas, the provisions of the Act apply to Members of Parliament in the same way as they apply to other citizens. However, the application of the Act in relation to Members of Parliament is subject to several qualifications:

- (i) The Act would not apply to statements made or acts performed by Members in the course of proceedings in Parliament. This qualification derives from Article 9 of the Bill of Rights 1689 which states:

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

- (ii) There is doubt as to whether the Anti Discrimination Act applies to Members of Parliament in their dealings with their parliamentary staff, or to Ministers' dealings with Ministerial staff. This issue

arose in 1994 in connection with allegations that a former Minister for Police, the Hon Terry Griffiths MP, had engaged in sexual discrimination and harassment in relation to certain members of his Ministerial staff. The Independent Inquiry which was conducted into the matter concluded that there is uncertainty as to whether a Member of Parliament falls within the ambit of the Act in these circumstances.<sup>122</sup> This is because it is unclear whether the definition of "employer" contained in s. 4(7) includes a Member of Parliament. The Report recommended that s. 4(7) be amended to make it clear that the definition of "employer" includes Members of Parliament.<sup>123</sup> It stated:

There is nothing in the Act which would indicate that the Legislature intended to preclude Members of Parliament from the operation of the Act. Indeed, it can be said that there are strong public policy and community expectations that Members of Parliament should be covered by legislation of the Parliament and act in accordance with the laws of the State. For these reasons the Inquiry considers it essential that the NSW Anti-Discrimination Act be amended to cover Members of Parliament and their staff.<sup>124</sup>

- 4.5.18 The Committee endorses the Inquiry's comments in this regard. The Committee recommends:

**Recommendation No. 3**

That the *Anti-Discrimination Act 1977* be clarified to ensure that the provisions of the Act cover Members of the House with respect to their parliamentary staff.

- 4.5.19 Such an amendment would have no operation in relation to cases of sexual discrimination against, or harassment of, *Members* by fellow Members. It is true that a Member who is harassed by another Member could have certain rights under current law, provided that the relevant conduct occurred outside of "proceedings in Parliament" which are absolutely protected under the Bill of Rights. For example, the Member subjected to harassment might, depending on the circumstances, be

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<sup>122</sup> *Report of the Independent Inquiry into matters relating to the resignation of the former Minister for Police and Minister for Emergency Services, Terence Allan Griffiths MP, 21 October 1994, pp. 25 - 27.*

<sup>123</sup> *ibid.*, p. 27.

<sup>124</sup> *ibid.*, pp. 26-27.



entitled to bring a civil action in trespass, or to lay an information leading to criminal prosecution in more serious cases involving sexual assault. However, many types of conduct which are prohibited under anti-discrimination legislation, are not prohibited in the case of the conduct of a Member in relation to another Member. The Committee considers that this issue highlights the importance of drawing attention to the spirit of the *Anti-Discrimination Act* in the code of conduct for Members.

4.5.20 Another issue which the Committee considered in this context was the inequitable operation of extended parliamentary sitting hours in relation to Members and staff who have the care of young children or other family responsibilities. The absence of child care facilities at Parliament House aggravates this problem. The earlier sitting hours introduced by the House in November 1994 and continued in the current Parliament have to some extent exacerbated these difficulties because:

- although the House now rises earlier (usually around 7.00 p.m.), it is still too late at night for Members to attend to family responsibilities and the care of young children;
- the House now commences at 11:00 a.m. on Wednesdays instead of 2:30 p.m., which limits the time available for family responsibilities during the day.

As a result, Members and staff with young children are disadvantaged in their ability to perform their parliamentary duties. Modifying sitting hours would also assist to address the issue of sobriety in the House which was raised in the submission of the Hon Ian Cohen on the proposed draft Code of Conduct.<sup>125</sup> This was the only submission which raised the issue of sobriety. The Committee recommends:

**Recommendation No. 4**

That the House refer to the Standing Orders Committee a review of the current sitting hours of the House, with a view to accommodating the needs of Members with family responsibilities.

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<sup>125</sup> Submission, 21 August, 1996

# Chapter Five

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## 5 PROPOSED CODES OF CONDUCT

### 5.1 CONDUCT OF THE INQUIRY

- 5.1.1 When receiving submissions and taking evidence in relation to the code, a number of issues concerning the provisions of the code emerged. Firstly, it was considered that the code would need to address Members' conduct generally, setting out the types of goals to which Members should aspire in their everyday attitudes and behaviour. Secondly, the code would need to deal more specifically with financial matters, particularly in relation to conflicts of interest and the use of publicly funded resources. Finally, the use of influence gained from the holding of public office and the advantages which could flow from such office, needed to be addressed.
- 5.1.2 After considering the public submissions and evidence, as well as the Committee's findings following the overseas study program, a draft Code of Conduct was released for public comment on 26 June 1996. Advertisements were placed in the Sydney Morning Herald, Australian and Daily Telegraph newspapers on Saturday, 6 July 1996, advising of the draft Code and inviting public comment. Copies of the draft Code were also sent to various libraries and institutions, and to the witnesses who had appeared before the Committee. This original draft Code of Conduct is reproduced at section 5.4 of this Chapter.
- 5.1.3 Submissions in response to the draft Code of Conduct were received, and given detailed consideration by the Committee at several meetings between August and October 1996. Many of the suggestions put forward in the submissions were incorporated into the draft Code, and form part of the draft Code as amended. As well, the advice of the Crown Solicitor was sought as to the consequences in terms of possible corrupt conduct which could flow from a substantial breach of the Code. Further changes were incorporated following receipt of this advice. The amended Code, as finally adopted by the Committee, is reproduced at section 5.5 of this Chapter. The changes made as a result of public consultation and the Crown Solicitor's advice are shown in shaded text.
- 5.1.4 During the course of the inquiry, the Committee was conscious of the fact that the Legislative Assembly Standing Ethics Committee was also developing a code of conduct for Members of the Legislative Assembly. In a spirit of cooperation, and also as an attempt to develop a single Code of Conduct for all Members of the New South Wales Parliament, several joint briefings were held at which witnesses addressed Members

of both Committees. Nevertheless, the draft Codes which emerged from the respective Committees were significantly different. Despite several joint meetings, both between the Committees and between the two Chairs, a compromise over a single joint Code of Conduct for both Houses could not be reached. The Code finally adopted by the Legislative Assembly Committee is reproduced in section 5.5 of this Chapter.

## 5.2 DRAFTING THE CODE

### (a) Evidence and submissions

- 5.2.1 In the course of the inquiry several witnesses highlighted particular issues which they felt should be addressed in the code. The Solicitor General, Mr Keith Mason QC, stated in his evidence that "a code of conduct ought to have at least five goals: first, an aspirational goal; second, an educational one; third, the goal of being specific; fourth, the goal of being illustrative; and fifth, the goal of being remedy effective."<sup>126</sup> Whilst acknowledging that perfection is not attainable, he claimed "the aim is nevertheless to set aspirational aims to which a code should be directed".<sup>127</sup>
- 5.2.2 Mr Michael Hogan, Director, Public Interest Advocacy Centre, felt that the code should contain specific provisions concerning "...[the] duty to act in the public interest ... respect for the system of government ... respect for the law... [and] respect for the human rights of people".<sup>128</sup>
- 5.2.3 Dr Damian Grace stated that regard for public interest and the institution of Parliament, honesty, democratic leadership, respectability, confidentiality and trustworthiness, and diligence and accountability are key aspects of any code of conduct.<sup>129</sup>
- 5.2.4 In its submission to the Committee the ICAC pointed out that respect for the law and system of government, respect for persons, integrity, diligence and economy and efficiency should form the cornerstone of a code of conduct for Members of Parliament.<sup>130</sup>

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<sup>126</sup> *Evidence*, 18 September 1995, p. 99.

<sup>127</sup> *ibid.*

<sup>128</sup> *Evidence*, 13 September 1995, p. 60.

<sup>129</sup> *Submission*, 18 September 1995.

<sup>130</sup> *Submission*, 14 September 1995.

- 5.2.5 The Deputy Ombudsman, Mr Chris Wheeler, suggested that the code would need to address such issues as honesty, conflict of interest, and disclosure of interests, improper or undue influence and misuse of information as well as gifts and benefits.<sup>131</sup>
- 5.2.6 The Auditor General, Mr Tony Harris, was quite specific in relation to the types of provisions which the code should contain and in particular offered the following:
- Members of the Legislative Council are not entitled to profit from that membership beyond the benefits laid down by the Parliament.
  - Where a Member of the Council would benefit, beyond holding that membership, by making an act, the Member should inform the Council before making that act or should abstain from making that act.
  - Members of the Legislative Council are not entitled, other than under law, to apply public resources for the benefit of related parties, including for a related political party.
  - A Member in exercising membership must not intentionally mislead and must, when able take urgent steps to correct any unintentional misleading.
  - A Member must be openly accountable to the Council and to the public for all matters associated with membership of the Legislative Council.
  - Members must not be so constrained by others and must not so constrain themselves as to nullify the exercise of their public responsibilities for the public good.<sup>132</sup>
- 5.2.7 Dr Simon Longstaff, Executive Director of the St James Ethics Centre, was also specific in relation to the particular provisions which should be contained within the code, suggesting that Members of Parliament:
- should always be truthful and at least never knowingly lie;

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<sup>131</sup> *Submission*, 13 September 1995.

<sup>132</sup> *Submission*, 13 September 1995.

- should always vote according to their conscience, bearing in mind the need to further the interests of their electorates in a just and equitable manner;
- should always be ready to provide reasons for any course of action proposed or supported as a Member of Parliament, in other words to try and make transparent the decision-making process so that the community can see that this was not just whimsical, and there was some basis for it;
- respect the inherent dignity of persons and institutions related to the Parliament of New South Wales and, when opposing, attack the arguments and not the people; and
- should be mindful of the privileges conferred when speaking in the House and seek to avoid causing harm to any individual who does not enjoy the same privileges when seeking to reply.<sup>133</sup>

**(b) Provisions of the Code**

General Conduct of Members

- 5.2.8 The Committee felt that certain general provisions were important in setting the context of the code of conduct. For this reason the Code includes in its preamble a general statement or mission statement. This recognises the importance of Members aspiring to a common goal.
- 5.2.9 A provision covering conduct in general was also included to cover such matters as honesty,<sup>134</sup> duty to act in the public interest,<sup>135</sup> and proper exercise of influence,<sup>136</sup> which were identified in various submissions to the Committee.
- 5.2.10 Dr Grace suggested that the public expects high standards of its political office holders.<sup>137</sup> The Committee concurs with this view and would add that the public probably expects higher standards from their political leaders than from other members of the community. It is important, in

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<sup>133</sup> *Evidence*, 3 October 1995, p. 153.

<sup>134</sup> Mr Chris Wheeler, *Submission*, 13 September 1995.

<sup>135</sup> Mr Michael Hogan, *Evidence*, 13 September 1995, p. 60.

<sup>136</sup> Mr Chris Wheeler, *Submission*, 13 September 1995.

<sup>137</sup> Dr Damian Grace, *Evidence*, 18 September 1995, p. 115.

the Committee's view, to acknowledge and reflect this attitude in the code of conduct. The provision relating to personal conduct attempts to address this.

- 5.2.11 The Committee felt it was important to emphasise that Members are not immune from the law. Mr Hogan argued that since the central function of a parliamentarian's role is to formulate and enact legislation, abiding by the law is crucial.

If parliamentarians are not respecting and abiding by the law, it can only bring disrepute and undermine confidence in the system of law.<sup>138</sup>

- 5.2.12 However, the Committee also agreed with Hon. Barry O'Keefe and the EARC's recommended code for elected officials, in recognising that there are exceptional occasions when a Member may have to make a choice between a law of the state and a moral law or precept which the Member genuinely believes should take precedence.<sup>139</sup> It should be noted that the proviso regarding "freedom of conscience" included in the draft Code does not prevent the Member from being prosecuted under the law, but merely protects the Member from double jeopardy.

#### Financial Provisions

- 5.2.13 Most parliaments examined by the Committee have adopted extensive rules and regulations in relation to conflict of interest, either by statute or within a code of conduct. In the case of Saskatchewan and a number of other Canadian provinces, an Independent Conflict of Interest Commissioner has been appointed to oversee Members' pecuniary interests.
- 5.2.14 Members of the New South Wales Parliament are already subject to certain rules regarding their personal finances. For example, disclosure of pecuniary interests is provided for under the *Constitution (Disclosure by Members) Regulation 1983* under section 14A of the *Constitution Act 1901*. Standing Orders 126 and 238 also regulate Members' conduct in relation to participating in debate and voting on matters in which they are financially interested. Despite these various provisions, the Committee believes there is a need for greater clarification concerning conflict of interest.

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<sup>138</sup> *Evidence*, 13 September 1995, p. 60.

<sup>139</sup> Hon Barry O'Keefe, *Submission*, 22 September 1995, p. 2; EARC, *Report on the Review of Codes of Conduct for Public Officials*, p. G5.

- 5.2.15 Several witnesses also favoured clear conflict of interest provisions within the code. Mr Harris argued that "...Members of the Legislative Council should not be entitled to profit from that membership beyond the benefits laid down by the Parliament...therefore, if there is...collateral benefit to be involved, that should be tabled, or the Member should abstain from taking the action".<sup>140</sup>
- 5.2.16 Conflict of interest is addressed in clause 4 of the code. The clause is separated into three sections: definition; obligation of Members; and procedure on conflict of interest. The definition seeks to fully explain conflict of interest so that Members may determine when a conflict of interest exists. There have been previous cases such as those outlined in Chapter One, where the lack of clarity regarding conflict of interest has led to Members being placed in a position of conflict between their public duty and their personal interests. The second section of the clause outlines the responsibility of Members in relation to conflict of interest, requiring that they organise their financial matters to avoid conflict, and to disclose conflicts if and when they arise. The third section outlines the procedure to be followed if Members find themselves in a position of conflict.
- 5.2.17 Apart from conflict of interest, the Committee also considered the issue of the use of public office for private gain, the acceptance of gifts and payment for travel, since these all involve payment of some kind to a Member. In relation to the use of public office for private gain the draft Code stipulates that Members must not use their office in such a way as to take improper advantage of their status as a Member of Parliament. Provisions pertaining to gifts were considered integral to a code of conduct as bribery can often exist under the guise of 'a receipt of gifts'. This clause consequently sets out the types of gifts which are prohibited and those which are acceptable, including a specified financial amount over which such gifts should not be accepted. The clause relating to travel stipulates that Members should only accept travel expenses from private sources if that travel relates to the Member's official duties.

#### Use of Influence

- 5.2.18 Several clauses of the code relate to the use of influence. They include:
- Inside Information
  - Use of Official Resources for Personal Gain
  - Post Employment Restrictions

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<sup>140</sup> *Evidence*, 13 September 1995, p. 15.

- 5.2.19 In line with earlier provisions concerning Members' personal conduct, not taking improper advantage of the information gained or resources available to them whilst in office was also seen as integral to the code. It was also considered important to state that Members should not take improper advantage of their former position when they have left office, even though the Committee recognises that this provision cannot be enforced under the code. Mr John Marsden, in his evidence, appeared to capture the public mood when he stated:

...there is an increasing concern in the community that when some members of Parliament leave the institution they use their position to lobby parliamentarians or to work in lobbyists' firms or organisations...There is a perception that that person has greater access to public servants, to Members of Parliament and to the ... Government than would the average person in the street."<sup>141</sup>

- 5.2.20 The inclusion of a provision requiring Members to observe the spirit of the *Anti-Discrimination Act 1977 (NSW)* was in response to the confusion which exists in relation to the application of the Act to Members of Parliament. As stated earlier, the Act would not apply to statements made or acts performed by Members in the course of proceedings in Parliament. This qualification derives from Article 9 of the Bill of Rights 1689 which states:

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside of Parliament.

- 5.2.21 There is doubt as to whether the Act applies to Members of Parliament in their dealings with their parliamentary staff, or to Ministers' dealings with Ministerial staff. The Committee was concerned enough by this apparent situation to include a requirement to ensure that not only Members' staff, but Members themselves are protected against discrimination and harassment. However, by including this provision, it is not intended to in anyway restrict the freedom of speech of Members, which is guaranteed by the Bill of Rights.
- 5.2.22 The remaining provisions of the code simply require that Members do not abuse their privileges in relation to freedom of speech, and that they observe the spirit and letter of the code. Additional responsibilities associated with the holding of a Parliamentary Office are also addressed.

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<sup>141</sup> Evidence, 18 September 1995, p. 90.



### **5.3 RECOMMENDATIONS**

- 5.3.1** The Committee recognises the desirability of having a single Code of Conduct for all Members of the New South Wales Parliament. Although the differences between the membership of the two Houses in particular the different basis of election and representation were acknowledged, these differences were not considered significant enough to warrant the adoption of separate Codes. A single Code would allow for greater clarity, easier implementation and more straightforward monitoring. A situation where a Member could be found in breach of one Code, but not of the other, would not, in the Committee's view, enhance the status of Members in the eyes of the community and could reflect on the dignity of the Parliament.
- 5.3.2** However, despite a concerted attempt by both this Committee and the Legislative Assembly Standing Ethics Committee, as well as several meetings between the respective Chairs of the Committees to iron out differences, a compromise could not be reached on a single Code acceptable to both Committees.
- 5.3.3** In view of this, and given that the Committee believes a single Code for both Houses is the most sensible outcome, the Committee has decided to present to the House the three versions of the Code which have emerged. The original draft Code, published in June, contains those provisions which the Committee developed following extensive inquiry and research. In line with the provisions of section 72 of the ICAC Act this draft Code was advertised extensively and public comment invited. The Crown Solicitor was also invited to comment on the draft Code, as indicated above.
- 5.3.4** The amended draft Code which the Committee prepared following public consultation incorporating amendments, is published as the second version and the Committee believes that this draft Code would be a better Code than the original version.
- 5.3.5** The draft Code adopted by the Legislative Assembly Standing Ethics Committee is also presented here. This draft Code, while having merit, may not take sufficient account of the Crown Solicitor's advice to this Committee with respect to the possible implications of any decision by the House to adopt an aspirational Code as distinct from a prescriptive Code for the purposes of the ICAC Act. Given the sanctions which naturally flow from having the ICAC involved in implementing and monitoring the Code, the Committee believes that Members should be aware that there is an inherent danger in providing less, rather than more, detail.

- 5.3.6 The Committee remains committed to having a single Code adopted by both Houses. To this end, the Committee recommends that a free conference of Managers from both Houses be convened to consider all the draft Codes presented to both the Legislative Council and the Legislative Assembly with a view to resolving the differences between the Codes. Therefore, the Committee recommends:

**Recommendation No 5**

**That a Free Conference of Managers of the Legislative Council and the Legislative Assembly be convened to consider the draft Codes of Conduct presented by the Legislative Council Standing Committee on Parliamentary Privilege and Ethics and the Legislative Assembly Standing Ethics Committee and to recommend the adoption for all Members of the NSW Parliament, a single Code of Conduct based on these Codes.**

## 5.4

### ORIGINAL CODE

(As published and distributed for public comment)

#### PREAMBLE

*The Members of the Legislative Council, as elected representatives, acknowledge their commitment to maintain the integrity of their office and the dignity of Parliament. To this end, elected Members accept the responsibility to respect the law and the institution of Parliament, other Members and members of the public. At all times Members should ensure that they observe the highest level of integrity and exercise diligence and care in relation to their duties and responsibilities as a Member of Parliament.*

#### 1 CONDUCT - GENERAL

Members must at all times act honestly, strive to maintain the public trust placed in them, and advance the common good of the people of New South Wales.

#### 2 PERSONAL CONDUCT

Members must ensure that their personal conduct is consistent with the dignity and integrity of the Parliament.

#### 3 UPHOLD THE LAW

Members must be loyal to Australia and its people. They must uphold the laws of the state and Australia and ensure that their conduct does not, without just cause as an exercise of freedom of conscience, breach or evade those laws.

#### 4 DILIGENCE AND ECONOMY

Members must exercise due diligence, and in performing their official duties to the best of their ability, apply public resources economically and only for the purposes for which they are intended.

## **5 CONFLICT OF INTEREST**

### **(a) Definition**

For the purposes of this Code, a Member has a conflict of interests when the Member, the Member's spouse or a dependent in relation to the Member has significant private interests that afford the opportunity for the Member to benefit, whether directly or indirectly, as a result of the execution of, or the failure to execute, any office of the Member.

A conflict of interest also exists where a Member makes a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest, his or her family's private interest or the private interest of an associate.

A conflict of interest does not exist where the Member/spouse/dependent benefits only as a member of the general public, or a member of a broad class of persons.

### **(b) Obligations of Members**

Members of this Council must carry out their official duties and arrange their private affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.

Every Member is individually responsible for preventing potential and actual conflicts of interest, and must endeavour to arrange private financial affairs in a manner that prevents such conflicts from arising.

A Member must not promote any matter in Parliament in return for payment.

If a Member, directly or indirectly, holds an interest which conflicts with his or her public duty, or which could improperly influence his or her conduct in the discharge of his or her responsibilities, the Member shall disclose that interest prior to speaking to or voting on that matter within the Council or committee or other relevant meeting.

If circumstances change after the initial disclosure has been made the Member shall disclose the nature of those changes.

When the interest of a Member's immediate family are involved, the Member shall disclose those interests to the extent that they are known

to the Member. Immediate family is taken to include the Member's spouse and dependant children. It also shall be taken to include other members of his or her household or family when they are closely connected with the Member's interests.

Where, in the pursuit of a Member's Parliamentary duties, the existence of a personal financial interest is likely to give rise to a conflict with the public interest, the Member has a personal responsibility to resolve that conflict either by disposing of the interest or by standing aside from the public business in question.

In any dealings with or on behalf of an organisation with whom a financial relationship exists, a Member must always bear in mind the overriding responsibility which exists to constituents and to the national interest. This is particularly important in respect of activities which may not be a matter of public record, such as informal meetings and functions.

**(c) Procedure on conflict of interest**

A Member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the House or a committee, shall, if present at a meeting considering the matter:

- (i) disclose the general nature of the conflict of interest; and
- (ii) withdraw from the meeting without voting or participating in consideration of the matter.

**6 USE OF PUBLIC OFFICE FOR PRIVATE GAIN**

Members of the Council must carry out their duties objectively and without consideration of personal or financial interests.

Members must not engage in personal conduct that exploits for private reasons their positions or authorities.

A Member shall not use the resources and status of the Member's public office to seek to influence a decision by another person to further, directly or indirectly, a private interest of the Member or the Member's family.

A Member shall not use improperly their influence in order to obtain appointment, promotion, advancement, transfer or any other advantage

within the public sector on behalf of another or to affect the proper outcome of any procedure established under legislation for the management of a unit of the public sector.

## **7 GIFTS**

Members of the Council must not accept gifts, benefits or favours that are connected directly or indirectly with fulfilling the duties of the office of the Member, except for incidental gifts or customary hospitality of nominal value.

For the purpose of this rule, the term "gift" means any gratuity, favour, discount, payment for Member's staff, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Members shall not solicit or accept for personal benefit, any form of benefit whatsoever (eg. gifts, loans, discounts, considerations) in connection with the performance of official duties, except as may be provided as part of their determined entitlements in accordance with their terms and conditions of remuneration as Members and in accordance with the electoral laws of NSW.

## **8 TRAVEL**

Members may accept travel expenses from private sources when necessary to enable them to give a speech or otherwise to participate substantially in an event or to conduct fact-finding related to their official duties, provided that the amount of time which the Member spends at the destination is reasonable having regard to the duration of the event or fact-finding mission. A spouse or one other family member may accompany the traveller at the sponsor's expense.

## **9 INSIDE INFORMATION**

Members must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain.

## **10 USE OF OFFICIAL RESOURCES FOR PERSONAL GAIN**

The funds, goods, services and premises provided to Members are to be used for the carrying out of their parliamentary functions. These funds, goods, services and premises should not be used for personal financial benefit.

## **11 POST EMPLOYMENT RESTRICTIONS**

Members, when leaving public office and when they have left public office, must not take improper advantage of their former office.

## **12 NO UNJUSTIFIED DISCRIMINATION**

Members shall observe the provisions of the *Anti-Discrimination Act 1977 (NSW)* which prohibit sexism, racism and sexual harassment.

## **13 MAINTAIN CONFIDENTIALITY**

Members must safeguard information obtained in confidence in the course of their parliamentary duties.

## **14 "SPIRIT AND LETTER" PROVISIONS**

Members of this Council must act not only lawfully but also in a manner that will withstand the closest public scrutiny; this code is not designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

## **15 ADDITIONAL RESPONSIBILITIES OF PARLIAMENTARY OFFICE HOLDERS**

Members who hold a Parliamentary office have a duty to exercise their additional responsibilities with strict adherence to these principles. They must have particular regard for the proper exercise of influence and the use of information gained from their duties as Parliamentary office holders. They must also be accountable for their administrative actions and for their conduct insofar as it affects their public duties.

## 5.5

## AMENDED CODE

(As adopted by the Committee following public response and Crown Solicitor's advice - changes are indicated by shaded text)

## DRAFT CODE OF CONDUCT FOR MEMBERS OF THE LEGISLATIVE COUNCIL

**NOTE:** THE CODE OF CONDUCT AND THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT ("ICAC ACT")

1. This code of conduct has been adopted for the purposes of s. 9 of the ICAC Act by resolution of the Legislative Council on ... (Minutes No. ..., item ...) [information to be supplied once code adopted by the House].
2. Members should be aware that conduct by a Member which comes within s. 8 of the Act is not excluded from amounting to "corrupt conduct" within the meaning of the Act if it is conduct which could constitute or involve a "substantial breach" of the code (s. 9(1)(d)).
3. In addition, subject to s. 9(5), conduct which comes within s. 8 of the Act is not excluded from amounting to "corrupt conduct", if it is conduct which would cause a reasonable person to believe that it would bring the integrity of the Member's office of Parliament into serious disrepute (s. 9(4)).

### PREAMBLE

- (a) *The Members of the Legislative Council, as elected representatives, acknowledge their responsibility to maintain the public trust placed in them, to work diligently and with integrity to exercise their functions and powers as elected office-holders to advance the common good of the people of New South Wales.*
- (b) *To that end, Members agree to respect the law, the institution of Parliament, and members of the public.*



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## 1 CONDUCT - GENERAL

- 1.1 Members must at all times act honestly ~~and in good conscience~~, strive to maintain the public trust placed in them, and exercise the influence gained from their public office to advance the public interest.

## 2 PERSONAL CONDUCT

- 2.2 Members must conduct themselves in accordance with the provisions and spirit of this code of conduct and ensure that their conduct does not bring the integrity of their position or the Parliament into serious disrepute.

## 3 UPHOLD THE LAW

- 3.1 Members must be loyal to Australia and its people. They must uphold the laws of the state and nation and ensure that their conduct does not, without just cause as an exercise of freedom of conscience, breach or evade those laws.

## 4 CONFLICT OF INTEREST

### (a) Definition

- 4.1 For the purposes of this Code, a Member has a conflict of interest ~~(s' deleted)~~ when the Member, the Member's spouse/~~(partner)~~ or a dependant in relation to the Member has significant private interests that afford the opportunity for the Member/~~Member's spouse/(partner) or a dependant~~ to benefit, whether directly or indirectly, as a result of the execution of, or the failure to execute, any function or duty of the Member.
- 4.2 A conflict of interest also exists where a Member makes a decision ~~or refrains from making a decision~~ in the execution of his or her position and at the same time knows that in the making of the decision ~~or non-decision~~ there is the opportunity to further his or her private interest, his or her family's private interest or the private interest of an associate.

4.3 A conflict of interest does not exist where the Member/spouse/~~(partner)~~/dependant benefits only as a member of the general public, or a member of a broad class of persons.

~~4.4 (For the purpose of this section, a "private interest" is an interest amounting to \$10,000 or more.)~~

**(b) Obligations of Members**

4.5 Members of the Legislative Council must carry out their official duties and arrange their private affairs in a way which is not contrary to the public interest and enhances public confidence and trust in Parliament and in the highest standards of ethical conduct in public office.

~~(Every Member is individually responsible for preventing potential and actual conflicts of interest, and must endeavour to arrange private financial affairs in a manner that prevents such conflicts from arising.)~~

4.6 A Member must not promote any matter in Parliament in return for payment or any other direct or indirect personal financial benefit.

4.7 If a Member, directly or indirectly, holds an interest which conflicts with his or her public duty, or which could improperly influence his or her conduct in the discharge of his or her responsibilities, the Member shall disclose that interest prior to speaking to or voting on that matter within the Legislative Council or parliamentary committee or other relevant meeting.

4.8 If circumstances change after the initial disclosure has been made the Member shall disclose the nature of those changes.

4.9 When the interest of a Member's immediate family is involved, the Member shall disclose that interest to the extent that it is known to the Member. Immediate family is taken to include the Member's spouse/~~partner~~ and dependent children. It also shall be taken to include other members of his or her household or family when those members are closely connected with the Member's interests.

4.10 Where, in the pursuit of a Member's Parliamentary duties, the existence of a personal financial interest is likely to give rise to a conflict with the public interest, the Member has a personal responsibility to resolve that conflict. ~~Apart from disclosing the~~

general nature of the conflict of interest, this may include disposing of the interest, or standing aside from the public business in question.

4.11 In any dealings with or on behalf of an organisation with whom a financial relationship exists, a Member must always bear in mind the overriding responsibility which exists to constituents and to the public interest. This is particularly important in respect of activities which may not be a matter of public record, such as informal meetings and functions.

**(c) Procedure on conflict of interest**

4.12 A Member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the House or a parliamentary committee, shall, if present at a meeting considering the matter:

- (i) disclose the general nature of the conflict of interest; and
- (ii) may choose not to participate in the deliberations or vote on the matter.

**5 USE OF PUBLIC OFFICE FOR PRIVATE GAIN**

5.1 Members will not at any time act in a manner that takes improper advantage of their status or position as a Member of Parliament.

5.2 Members must not engage in (personal) conduct that exploits for private reasons their positions or authorities.

5.3 Members shall not use the resources and status of their public office to seek to influence a decision by another person to further, directly or indirectly, their private interests or the private interests of their family.

5.4 Members shall not use improperly their influence in order to obtain appointment, promotion, advancement, transfer or any other advantage within the public sector on behalf of themselves or another or to affect the proper outcome of any procedure established under legislation for the management of (a unit of) the public sector.

**5.5** Members should not approach Ministers, public servants or public bodies on a matter connected with a private interest, without appropriate disclosure.

## **6 GIFTS**

**6.1** Members of this Legislative Council must not solicit or accept gifts, benefits or favours that are connected directly or indirectly with fulfilling the duties of the office of the Member. However, a Member may accept incidental gifts or customary hospitality of nominal value (to the value of \$100 or less).

**6.2** Members shall not solicit or accept for personal benefit, any form of benefit whatsoever (eg. gifts, loans, discounts, considerations) in connection with the performance of official duties, except as may be provided as part of their determined entitlements in accordance with their terms and conditions of remuneration as Members and in accordance with the electoral laws of NSW.

**6.3** For the purpose of this section, the term "gift" means any gratuity, favour, discount, payment for Member's staff, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

## **7 TRAVEL**

**7.1** Members may accept travel expenses from private sources when necessary to enable them to give a speech or otherwise to participate substantially in an event or to conduct fact-finding related to their official duties, provided that the amount of time which the Member spends at the destination is reasonable having regard to the duration of the event or fact-finding mission.

**7.2** However, information regarding travel expenses must be disclosed in accordance with the requirements of the *Constitution (Disclosures by Members) Regulation 1983*.

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## **8 INSIDE INFORMATION**

- 8.1 Members must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain.

## **9 USE OF OFFICIAL RESOURCES FOR PERSONAL GAIN**

- 9.1 The funds, goods, services and premises provided to Members are to be used economically and only for the carrying out of their parliamentary functions. These funds, goods, services and premises should not be used for personal financial benefit.

## **10 POST EMPLOYMENT RESTRICTIONS**

- 10.1 Members, when leaving public office and when they have left the service of the House, must not take improper advantage of their former position ~~or confidential information gained during service.~~

## **11 NO UNJUSTIFIED DISCRIMINATION**

- 11.1 Members shall observe the spirit of the *Anti-Discrimination Act 1977 (NSW)*.

## ~~12 FREEDOM OF SPEECH~~

- ~~12.1 Members should be mindful of the privileges conferred when speaking in the House and should seek to avoid causing undeserved harm to any individual who does not enjoy the same privileges.~~

## **13 "SPIRIT AND LETTER" PROVISIONS**

- 13.1 Members of this Legislative Council must act not only lawfully but also in a manner that will withstand the closest public scrutiny; this code is not designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more

stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust. Where any doubt exists as to the scope, application or meaning of any aspect of this code or any other provision to which Members may be subject, the good faith of the Member concerned must be the guiding principle.

## **14 ADDITIONAL RESPONSIBILITIES OF PARLIAMENTARY OFFICE HOLDERS**

- 14.1 Members who hold a Parliamentary office have a duty to exercise their additional responsibilities with strict adherence to these principles. They must have particular regard for the proper exercise of influence and the use of information gained from their duties as Parliamentary office holders. They must also be accountable for their own administrative actions and for their own conduct insofar as it affects their public duties.

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## 5.6 CODE ADOPTED BY LEGISLATIVE ASSEMBLY STANDING ETHICS COMMITTEE

### Preamble to the Code of Conduct

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*The Members of the Legislative Assembly, as elected representatives, acknowledge their responsibility:*

- *to maintain the public trust placed in them*
  - *to work diligently and with integrity*
  - *to use the influence gained as elected office-holders to advance the common good of the people of New South Wales*
  - *to respect the law and the institution of Parliament, and*
  - *to foster an understanding of parliamentary decision making which involves balancing the interests of constituents, the electorate and the State of New South Wales.*
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## Code of Conduct

1. Members must always act honestly, strive to maintain the public trust placed in them, and exercise the influence gained from their public office to advance the public interest.
2. Members must conduct themselves in accordance with the provisions and spirit of the code of conduct and ensure that their conduct does not bring the integrity of their office or the Parliament into serious disrepute.
3. Members are individually responsible for preventing conflicts of interest and must endeavour to arrange their private financial affairs to prevent such conflicts of interest arising.
4. Members whose private financial interests give rise to a conflict with the public interest must take all reasonable steps to resolve that conflict.

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5. (i) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private financial interest or another person's private financial interest directly or indirectly.  
  
(ii) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or a broad class of persons.
  6. (i) If Members directly or indirectly hold an interest which conflicts with their public duty, or which could improperly influence their conduct when discharging their responsibilities, they shall disclose that interest before speaking in a debate or voting on the matter in Parliament or in a Parliamentary Committee.  
  
(ii) A Member is not prevented from speaking in a debate or voting on a motion when they personally are the subject of the debate or motion.
  7. Members may not solicit, accept or receive any remuneration, benefit or profit in exchange for promoting or voting on a bill, a resolution or any question put to Parliament or a Parliamentary Committee.
  8. (i) Members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their official duties.  
  
(ii) Members must declare all gifts and benefits arising from or in connection with their official duties in accordance with the requirements of the Pecuniary Interest Register.  
  
(iii) Members may accept incidental gifts and customary hospitality.
  9. Members must apply public resources for proper purposes, and not for private financial benefit.
  10. Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for personal gain, or the personal gain of others.



# Chapter Six

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## 6 ENFORCEMENT MECHANISMS

The terms of reference for the current inquiry are confined to the development of a code of conduct (*ICAC Act*, s. 72C(1)(a)) and do not expressly extend to the operation of the code or the method by which breaches of the code will be dealt with. Nevertheless, in the Committee's view, the way in which the code will operate is of critical significance to the subject of the inquiry. Accordingly, this section of the Report examines several possible mechanisms for enforcing the code.

### 6.1 A. ROLE OF ICAC

6.1.1 The *ICAC Act* itself provides an enforcement mechanism in the case of conduct of a Member which amounts to a "substantial breach" of a code of conduct adopted by the House for the purposes of the Act. Broadly stated, conduct which amounts to a "substantial breach" of such a code, and which satisfies s. 8 of the Act, amounts to "corrupt conduct" and thereby becomes subject to the investigatory and associated powers of the ICAC (s. 9(1)(d) and (3)).

6.1.2 During the inquiry, the Committee sought the views of the Commissioner of the ICAC, Hon Barry O'Keefe, concerning two particular issues: the meaning of "substantial breach"; and the possible interrelation between the ICAC and other enforcement mechanisms which might be established by the House.

#### Meaning of "substantial breach"

6.1.3 The Hon Barry O'Keefe considered that it was not appropriate to attempt to define substantial breach as it appears in the Statute, since he believes it will depend on the circumstances of each particular case and the prevailing mores of the time:

This is a matter of judgement in each case. In some cases the answer will be clear one way or the other, in others not. It is not desirable to seek to define "substantial" as it appears in the statute, especially as the statute is to apply over time to varying situations and against the background of differing community attitudes and perceptions. This is the type of approach which the Courts have adopted to the word "reasonable" and "reasonable doubt".<sup>142</sup>

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<sup>142</sup> *Submission*, 22 September 1995, p. 3.

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Possible interrelation between the ICAC and other enforcement mechanisms

- 6.1.4 Mr O'Keefe also felt that there is long standing legal precedent which would govern the actions of the ICAC in relation to the enforcement of the code of conduct. He suggested that where a breach of an adopted code of conduct was dealt with by the Parliament it would be quite inappropriate for a court or an agency such as the ICAC to second guess the Parliament and take further action.

The Parliament, governing its own procedure and having acted, should not have an outside body reviewing its action, because the jurisdiction of such a body does not extend to the Parliament; it extends to members of the Parliament only acting in their capacity as members but not to the corporate body.<sup>143</sup>

- 6.1.5 He stated that the role of the ICAC as contemplated by s. 9, and in particular the amendments to subsections (1), (4) and (5), was restricted to those instances where the Parliament did not act in the face of a breach of the code. In this case the ICAC under its own volition could investigate the breach. The difficulty in this approach lies in those cases where the Parliament having considered a matter, determines, in the face of the evidence, to take no action. However, even in this instance it was his view that there is no role for a body such as the ICAC to act in what would virtually be an appellate capacity in respect of the decision of the Parliament.<sup>144</sup>
- 6.1.6 In evidence before a joint meeting of the Legislative Assembly and Legislative Council Committees, however, Mr O'Keefe expanded his views on the role of the ICAC where a breach of the code brings the integrity of the Parliament into serious disrepute under s. 9(4). In this case he adopted the view that while the decision of the House must be given respect, it would not be conclusive. Therefore, although the Parliament or a committee of the Parliament may determine that a particular breach either is or is not a serious breach, the ICAC can still make a determination under s. 9(4).<sup>145</sup>

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<sup>143</sup> *Evidence*, 22 September 1995, p. 126.

<sup>144</sup> *ibid.*

<sup>145</sup> *Evidence to Legislative Assembly Standing Ethics Committee*, 8 March 1996, p. 9.

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## 6.2 B. OTHER MECHANISMS

6.2.1 There are several ways in which the Parliament can go about investigating breaches of the code of conduct. The Standing Committee considered three different models, derived from the practice in other Parliaments where codes of conduct are currently in force. These are:

**Model 1: Independent Parliamentary Commissioners for Standards, responsible for giving advice and investigating alleged breaches, who would report directly to the House.**

**Model 2: Independent Parliamentary Commissioners for Standards, responsible for giving advice and investigating alleged breaches, who would report to a Standing Committee on Parliamentary Ethics. This committee would then consider any findings and make recommendations to the House regarding possible sanctions.**

**Model 3: A standing Committee on Parliamentary Privilege and Ethics, responsible for giving advice and investigating alleged breaches, and making recommendations to the House regarding possible sanctions.**

6.2.2 In each of these models the appointment of a single individual/committee responsible for both giving advice and investigating alleged breaches could, in the Committee's view, lead to a fundamental conflict, since Members would be placed in a situation of seeking advice from the person or body which would ultimately be responsible for passing judgement on their actions. The Committee therefore felt that it would be preferable to separate these two functions and has proceeded on this basis.

6.2.3 In addition, there are a range of issues relating to the making of a complaint which the Committee feels would be relevant to any adopted model. These are addressed as a separate section following the outlines of the three models below.

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**Model 1: Parliamentary Commissioners for Standards reporting directly to the House****Appointment**

- 6.2.4 This model proposes that the Legislative Council appoint two Parliamentary Commissioners for Standards. The general functions of the Commissioners would be to provide advice to Members in relation to their obligations under the code of conduct, and investigate complaints regarding breaches of the code. The appointment of two Commissioners would enable the advisory and investigatory roles to remain separate in relation to any particular matter, so that where one Commissioner provides advice to a Member on a particular matter and a complaint is later lodged against that Member in relation to the matter, the consideration and investigation of the complaint would be undertaken by the other Commissioner.
- 6.2.5 To minimise the politicisation of the Commissioners, the Committee felt that their appointment should be on the basis of a two-thirds majority vote of the House rather than a simple majority. Arrangements for the selection of the Commissioners would be made by the President at the beginning of each Parliament, and the Commissioners would hold office for the duration of that Parliament (unless one or other is dismissed by resolution of the House, resigns, dies, or becomes unfit by reason of legal incapacity).
- 6.2.6 The salary of the Commissioners, and the resources available to them, would need to be sufficient, and set by a mechanism which is free from political interference e.g. by statute; by determination of the Parliamentary Remuneration Tribunal; or by linking the Commissioner's salary to that of other appropriate officers.

**Functions**

- 6.2.7 The functions of the Commissioners would be to:
- (a) give confidential advice to Members on their obligations under the code of conduct, and provide advice in response to requests from the House in respect of ethical standards applying to Members;
  - (b) receive, and if the Commissioner thinks fit, investigate specific complaints from Members and from members of the public in respect of alleged breaches of the code of conduct, and report to the House in relation to such matters;

- 
- (c) monitor the operation of the code of conduct and make recommendations thereon to the Standing Committee on Parliamentary Privilege and Ethics.

### Complaints

- 6.2.8 Complaints, whether from Members or from members of the public, alleging that conduct of a Member is in breach of the code of conduct should be addressed in writing to the relevant Commissioner. The Commissioner would not entertain anonymous complaints.
- 6.2.9 If the Commissioner decided that the complaint did not have sufficient substance to merit further inquiry, s/he may at his/her discretion reject the complaint without further reference to the House. The receipt of a complaint by the Commissioner would not be interpreted as an indication that a *prima facie* case had been established.
- 6.2.10 If the Commissioner was satisfied that sufficient evidence had been tendered in support of the complaint to justify his/her taking the matter further, s/he would ask the Member to respond to the complaint and would then conduct a preliminary investigation. There are two possible outcomes from such an investigation:
- (1) The Commissioner decides, after some inquiry, that there is no evidence of a breach. The Commissioner would inform the complainant and the Member concerned, but no details of the complaint would be published.
  - (2) The Commissioner decides there is sufficient evidence of a breach, or that the matter raises issues of wider importance. In that case, the Commissioner would either agree on an appropriate remedy with the Member concerned, if appropriate, or where such a remedy was not considered feasible, report the facts and his/her conclusions to the House, together with recommendations as to what further action is required.

### Advice

- 6.2.11 A Member of the Legislative Council would be able to request, in writing, that the relevant Commissioner give an opinion or recommendations on any matter concerning the obligations of the Member under the code of conduct.

- 6.2.12 No Member would be placed in jeopardy by merely making such a request to the Commissioner or acting on the advisory opinion as long as the information supplied was true and correct and they have acted in good faith and in accordance with the written advisory opinion.
- 6.2.13 The Commissioner would have the power to make any inquiries deemed appropriate and provide the Member with a written opinion and recommendations.
- 6.2.14 If the Commissioner was of the opinion that a Member had, or may have a conflict of interest, the Commissioner may specify a time by which the Member must resolve the conflict of interest in accordance with the code.

**Model 2: Independent Parliamentary Commissioners for Standards reporting to a Standing Committee on Parliamentary Ethics**

Appointment

*Commissioners*

- 6.2.15 This model also proposes that the Legislative Council appoint two Parliamentary Commissioners for Standards. The general functions of the Commissioners would be the same as in Model 1: that is, to provide advice to Members in relation to their obligations under the code of conduct, and investigate complaints regarding breaches of the code. Again, the appointment of two Commissioners would enable the advisory and investigatory roles to remain separate in relation to any particular matter. Unlike the Commissioners in Model 1 however, these Commissioners would report to a Standing Committee on Parliamentary Ethics appointed for that purpose.
- 6.2.16 As with Model 1, to minimise the politicisation of the Commissioners, their appointment should be on the basis of a two-thirds majority vote of the House rather than a simple majority. Arrangements for the selection of the Commissioners would be made by the President at the beginning of each Parliament, and the Commissioners would hold office for the duration of that Parliament (unless one or other is dismissed by resolution of the House, resigns, dies, or becomes unfit by reason of legal incapacity).

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- 6.2.17 The salary of the Commissioners, and the resources available to them, would need to be sufficient, and set by a mechanism which is free from political interference e.g. by statute; by determination of Parliamentary Remuneration Tribunal; or by linking the Commissioner's salary to that of other appropriate officers.

*Committee*

- 6.2.18 The Committee could be appointed by a resolution of the House in a similar manner to other Standing Committees. It would then have the same powers as any Standing Committee of the House.

Functions

*Commissioners*

- 6.2.19 The functions of the Commissioners, under this model, would be to:
- (a) give confidential advice to Members on their obligations under the code of conduct, and provide advice in response to requests from both the House and the Standing Committee in respect of ethical standards applying to Members;
  - (b) receive, and if the Commissioner thinks fit, investigate specific complaints from Members and from members of the public in respect of alleged breaches of the code of conduct, and report to the Standing Committee on Parliamentary Ethics in relation to such matters; and
  - (c) monitor the operation of the code of conduct and make recommendations thereon to the Standing Committee on Parliamentary Privilege and Ethics.

*Committee*

- 6.2.20 The functions of the Committee would be:
- (a) to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches of the code of conduct which have been drawn to the Committee's attention by the Commissioner;
  - (b) to report to the House about such matters;

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- (c) to recommend action by the House; and
  - (d) to oversee the Parliamentary Commissioner for Standards.

### Complaints

- 6.2.21 Complaints, whether from Members or from members of the public, alleging that conduct of a Member is in breach of the code of conduct should be addressed in writing to the relevant Commissioner. The Commissioner would not entertain anonymous complaints.
- 6.2.22 If the Commissioner decided that the complaint did not have sufficient substance to merit further inquiry, s/he may at his/her discretion reject the complaint without further reference to the House. The receipt of a complaint by the Commissioner would not be interpreted as an indication that a *prima facie* case had been established.
- 6.2.23 If the Commissioner was satisfied that sufficient evidence had been tendered in support of the complaint to justify his/her taking the matter further, s/he would ask the Member to respond to the complaint and would then conduct a preliminary investigation. There are two possible outcomes from such an investigation:
- (1) The Commissioner decides, after some inquiry, that there is no evidence of a breach. In this case the Commissioner would report that conclusion briefly to the Committee (or subcommittee).<sup>146</sup> The Committee would not normally be expected to disagree with the Commissioner's finding in such a case. The Committee would inform the complainant and the Member concerned, but no details of the complaint would be published.
  - (2) The Commissioner decides there is sufficient evidence of a breach, or that the matter raises issues of wider importance. In that case, the Commissioner would report the facts and his/her conclusions to the Committee, together with recommendations as to what further action is required. The Committee could, if it felt it was necessary, hold a hearing in relation to the matter. The Committee would then adjudicate on the matter and make recommendations to the House on whether further action was required. The Commissioner's findings would be attached as an annex to the Committee's report to the House.

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<sup>146</sup> In the United Kingdom system, a sub-committee receives Commissioner's report, unless there is *prima facie* evidence of a breach.



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Advice

- 6.2.24 A Member of the Legislative Council would be able request, in writing, that the relevant Commissioner give an opinion or recommendations on any matter concerning the obligations of the Member under the code of conduct.
- 6.2.25 No Member would be placed in jeopardy by merely making such a request to the Commissioner or acting on the advisory opinion as long as the information supplied was true and correct and they had acted in good faith and in accordance with the written advisory opinion.
- 6.2.26 The Commissioner would have the power to make any inquiries deemed appropriate and provide the Member with a written opinion and recommendations.
- 6.2.27 If the Commissioner was of the opinion that a Member had, or may have a conflict of interest, the Commissioner may specify a time by which the Member must resolve the conflict of interest in accordance with the code.

**Model 3: Standing Committee on Ethics**

Appointment

- 6.2.28 The Committee could be appointed by a resolution of the House in a similar manner to other Standing Committees. It would then have the same powers as any Standing Committee of the House.
- 6.2.29 The Committee should also have the power to appoint independent investigators and/or counsel, to assist in the investigation of complaints.
- 6.2.30 In order to separate the investigatory role of the Committee from its advisory role, the Committee could appoint an advisory sub-committee to deal with requests for advice.

Functions

- 6.2.31 The functions of the Committee would be:
- (a) to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches of the code of conduct;

- (b) to report to the House about such matters;
- (c) to recommend action by the House in relation to breaches of the Code; and
- (d) to give an advisory opinion upon the request of any Member of the Legislative Council with respect to the general propriety of any current or proposed conduct of such Member. The Committee would not be bound to give advice.

### Complaints

- 6.2.32 Complaints, whether from Members or from members of the public, alleging that conduct of a Member is in breach of the Code of Conduct should be addressed in writing to the Committee. The Committee would not entertain anonymous complaints.
- 6.2.33 If the Committee decided that the complaint did not have sufficient substance to merit further inquiry, it may reject the complaint without further reference to the House. The receipt of a complaint by the Committee would not be interpreted as an indication that a *prima facie* case had been established.
- 6.2.34 If the Committee was satisfied that sufficient evidence had been tendered in support of the complaint to justify it taking the matter further, the Committee would request the Member to respond to the complaint and would then conduct a preliminary investigation. There are two possible outcomes from such an investigation:
- (1) The Committee decides, after some inquiry, that there is no evidence of a breach. In this case the Committee would inform the complainant and the Member concerned, but no details of the complaint would be published.
  - (2) The Committee decides there is sufficient evidence of a breach, or that the matter raises issues of wider importance. In that case, the Committee could, if it felt it was necessary, hold a hearing in relation to the matter. The Committee would then adjudicate on the matter and make recommendations to the House on whether further action was required.

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Advice

- 6.2.35 A Member of the Legislative Council would be able to request, in writing, that the advisory sub-committee give an opinion or recommendations on any matter concerning the obligations of the Member under the code of conduct.
- 6.2.36 No Member would be placed in jeopardy by merely making such a request to the sub-committee or acting on the advisory opinion as long as the information supplied was true and correct, and they had acted in good faith and in accordance with the written advisory opinion.
- 6.2.37 The sub-committee would have the power to make any inquiries deemed appropriate and provide the Member with a written opinion and recommendations.
- 6.2.38 If the sub-committee was of the opinion that a Member had, or may have, a conflict of interest, the sub-committee may specify a time by which the Member must resolve the conflict of interest in accordance with the code.

**6.3 PROCEDURES COMMON TO THE THREE MODELS**

- 6.3.1 As indicated above there are a number of procedures which the Standing Committee feels should be embraced, regardless of which particular model for implementation is adopted. These are:
- (a) a complaint may be received from any resident of NSW alleging a substantial breach of the code of conduct by any Member, or Members of the House;
  - (b) a complaint must be in writing in the form of a dated statutory declaration;
  - (c) the person making the complaint must provide a copy of the complaint to the Member so named within seven days of the lodgement of the complaint;
  - (d) a complaint must be factual and must particularise in detail the alleged substantial breach of the code of conduct and supply all evidence in support of that allegation;
  - (e) a Member of the House may lodge a complaint or may forward a complaint received from a constituent.

- (f) complaints lodged within 60 days of an election, in which the respondent Member is a candidate, shall not be accepted and shall be returned to the complainant. However, one month after the election the complaint can be re-lodged.
- (g) frivolous, vexatious, trivial, offensive or anonymous complaints will not be considered, and the relevant parties will be advised when a complaint is rejected;
- (h) there will be no investigation of any conduct which occurred before the passing of the resolution to adopt a code of conduct;
- (i) upon receipt of a copy of the complaint, the Member shall within 28 days provide a written response, unless advised that the complaint has been dismissed;
- (j) if, during the course of the investigation or hearing of a complaint, it appears that the subject matter of the complaint involves the commission of a crime, the matter will be referred to the appropriate law enforcement body. No further action may occur until any legal action by the law enforcement body, or Member, is completed;
- (k) if the complaint is dismissed, the member and the complainant must be notified in writing within 14 days;
- (l) if the complaint is upheld, a report is to be presented to the Legislative Council (or to the Clerk if the House is not sitting) and sent to the Member within 14 days of the decision;
- (m) where a complaint has been or is being investigated by the ICAC, no other investigation may take place until such time as the matter is finalised by the ICAC;
- (n) all investigations in relation to a complaint will remain confidential and will not be released without the consent, in writing, of the Member concerned, unless and until a report is presented to the House;
- (o) any breach by any Member of the confidentiality of an investigation into any allegation of a breach of the code of conduct should be itself a substantial breach of the code of conduct;

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- (p) all hearings are to be in-camera, unless the Member requests, or in the case of a committee, the committee resolves, that they be in public; and
  - (q) the provision of advice to a Member, by either an independent Commissioner, or a committee or sub-committee appointed for that purpose, does not protect a Member from any legal consequences which may arise from the Member's actions.

#### **6.4 MEASURES TO PROTECT NATURAL JUSTICE**

6.4.1 While the Committee has not considered the issue of natural justice in detail, it nonetheless feels that there are certain measures which should be considered when implementing the code of conduct. These are:

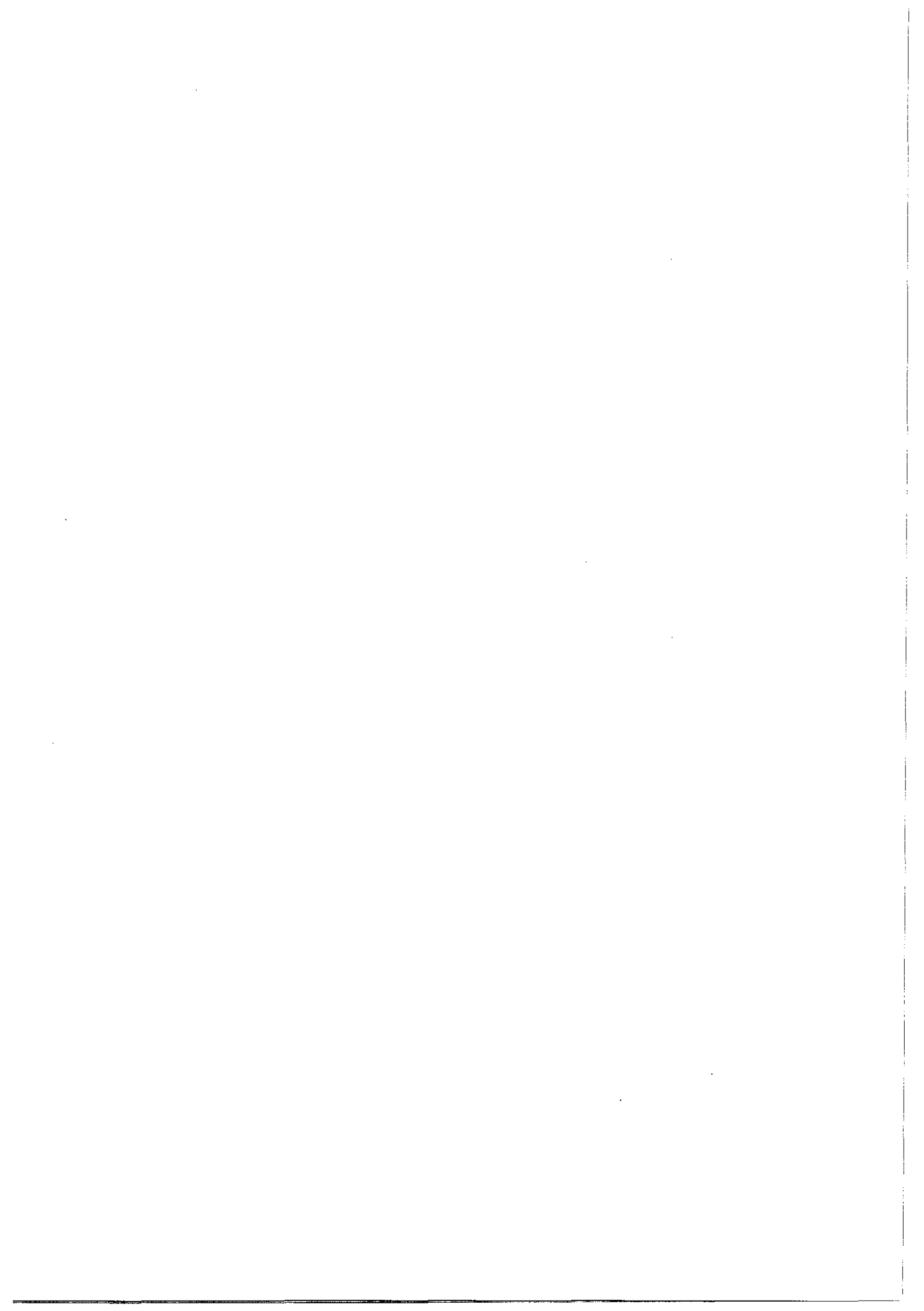
- (1) Members who are the subject of a complaint should have the right to be accompanied by an advisor at every stage of a case. The role of such advisor must be confined to the giving of advice, passing of notes etc, and the advisor would not be able to speak unless, in the case of a committee hearing, formally invited to attend as a witness.
- (2) The Member whose conduct is under investigation should have the right to attend any meeting of the Committee at which other witnesses relevant to the case are giving evidence and to cross-examine them. The Member concerned would not, however, be permitted to take part in the deliberations of the Committee and would have to withdraw as soon as the relevant oral evidence had been completed.
- (3) The Member under investigation should have the right to see written evidence from other witnesses. The Member's advisor has a right to be present while the complainant is being examined. The complainant has the right to hear the relevant Member's evidence.
- (4) The Member under investigation has the right to submit a written statement to the Committee, rebutting or challenging any findings of the Commissioner.
- (5) The Member under investigation should have the right to request the sidelining of any written evidence submitted to him/her. In deciding whether to accede to such a request, the Committee

would be required to weigh carefully the respective demands of fairness to the Member concerned, on the one hand, and the public interest in openness on the other.

## **6.5 GENERAL COMMENTS**

- 6.5.1 The Committee has considered the evidence of various witnesses, and examined different models from other Parliaments, in particular those of the Saskatchewan Legislative Assembly, the United States Congress, and the United Kingdom House of Commons.
- 6.5.2 The House of Commons and Saskatchewan models have only one Commissioner who both advises and investigates. On the other hand, the US House of Representatives Committee on Standards of Official Conduct (where there is no independent commissioner) has a separation of advisory and investigatory roles, so that information obtained by the Advice section of the Committee in relation to a particular matter must not be divulged to the Investigation section, and vice versa.
- 6.5.3 The appointment of the Commissioner in both the House of Commons and the Saskatchewan Legislative Assembly only requires a simple majority. However, the Saskatchewan Commissioner was actually appointed by unanimous vote. The appointment of the UK Commissioner took place in two stages. In the first stage, the House resolved that the appointment be set in hand under arrangements to be made by the Speaker on the advice of the House of Commons Commission and in accordance with the recommendations of the Select Committee on Standards in Public Life. Once a candidate had been selected, the House then resolved that person be appointed as the Commissioner on the basis set out in the Report of the House of Commons Commission.
- 6.5.4 The United Kingdom and Saskatchewan Commissioners also administer the **Register of Members' Interests**, provide confidential advice to members in relation to their obligations under the Register, maintain confidential information regarding Members' interests, and investigate possible breaches of Members' obligations regarding disclosure and registration of interests. In addition, the United Kingdom Commissioner prepares guidance and induction courses for new members on matters of conduct, propriety and ethics.

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- 6.5.5 If Model 1 is adopted, the Commissioners would require the power to call for (in the sense of compel production of) papers, persons and records, in order to conduct any investigation. This may require the enactment of specific legislation in this regard. Under Model 2, it would be possible for the Commissioners to call for persons and papers through the Committee.
- 6.5.6 Communications between a member of the public and any Commissioner would not be covered by parliamentary privilege, nor would such communications be privileged at law. This could possibly hinder the effective functioning of the Commissioner in investigating complaints.
- 6.5.7 Given the time constraints imposed by the statutory deadline of 29 October 1996, the Committee was unable to give full and appropriate consideration to the type of model which should be adopted for enforcement of the Code. For this reason, only brief outlines of the Models have been provided at this time. It is intended that a later, more detailed, report on enforcement of the code will be presented by the Committee, following adoption of a Code of Conduct by the House.

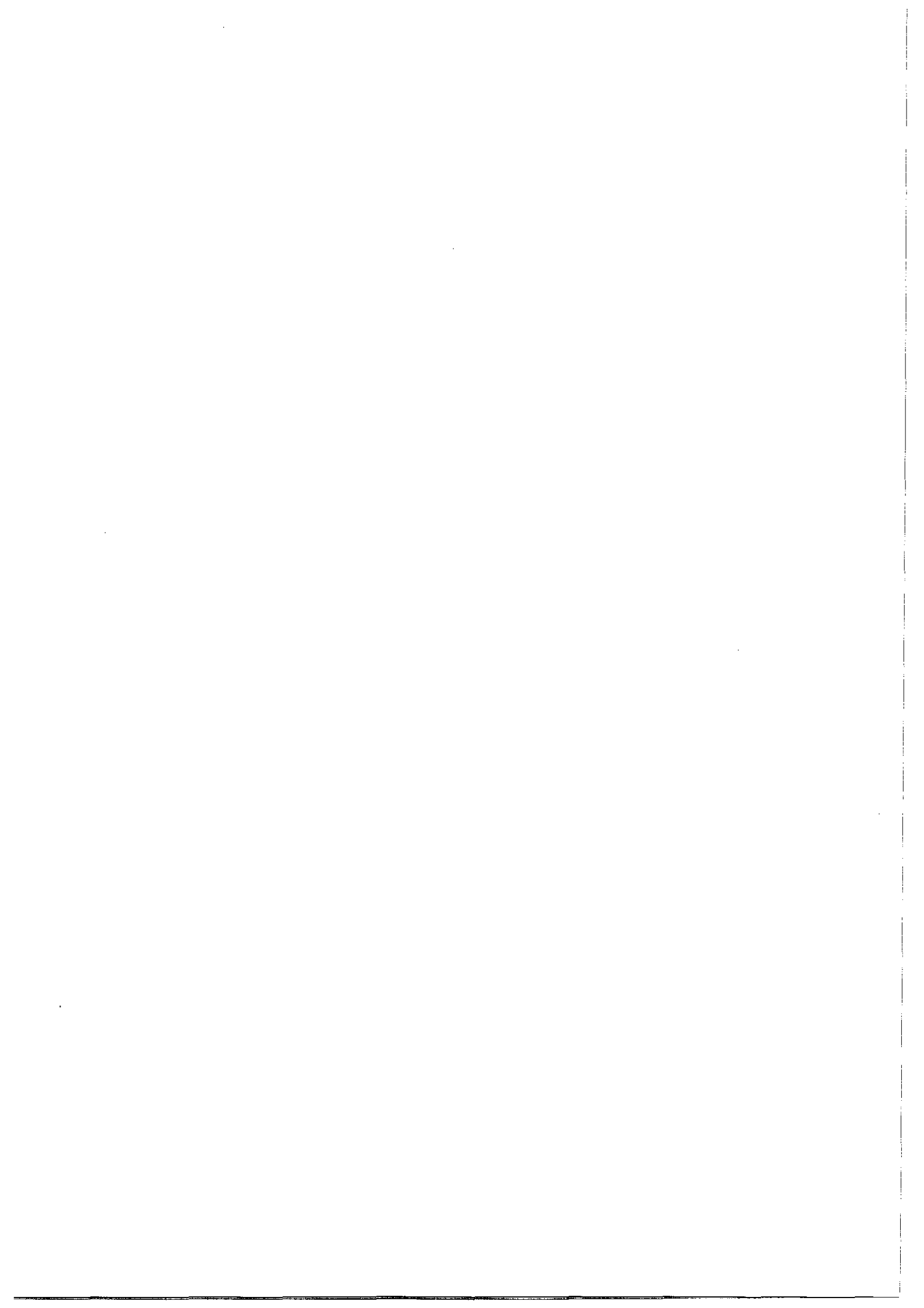




# Appendix 1

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## **DRAFT CODE OF CONDUCT ADOPTED BY THE COMMITTEE**



## LEGISLATIVE COUNCIL

### DRAFT CODE OF CONDUCT FOR MEMBERS OF THE LEGISLATIVE COUNCIL

**NOTE:** THE CODE OF CONDUCT AND THE *INDEPENDENT COMMISSION AGAINST CORRUPTION ACT*. ("ICAC ACT").

1. This code of conduct has been adopted for the purposes of s. 9 of the *ICAC Act* by resolution of the Legislative Council on .... (Minutes No. ..., item ...) [information to be supplied once code adopted by the House].
2. Members should be aware that conduct by a Member which comes within s. 8 of the Act is not excluded from amounting to "corrupt conduct" within the meaning of the Act if it is conduct which could constitute or involve a "substantial breach" of the code (s. 9(1)(d)).
3. In addition, subject to s. 9(5), conduct which comes within s. 8 of the Act is not excluded from amounting to "corrupt conduct", if it is conduct which would cause a reasonable person to believe that it would bring the integrity of the Member's office of Parliament into serious disrepute (s. 9(4)).

### PREAMBLE

- (a) *The Members of the Legislative Council, as elected representatives, acknowledge their responsibility to maintain the public trust placed in them, to work diligently and with integrity to exercise their functions and powers as elected office-holders to advance the common good of the people of New South Wales.*
- (b) *To that end, Members agree to respect the law, the institution of Parliament, and members of the public.*

## **1 CONDUCT - GENERAL**

- 1.1 Members must at all times act honestly and in good conscience, strive to maintain the public trust placed in them, and exercise the influence gained from their public office to advance the public interest.

## **2 PERSONAL CONDUCT**

- 2.2 Members must conduct themselves in accordance with the provisions and spirit of this code of conduct and ensure that their conduct does not bring the integrity of their position or the Parliament into serious disrepute.

## **3 UPHOLD THE LAW**

- 3.1 Members must be loyal to Australia and its people. They must uphold the laws of the state and nation and ensure that their conduct does not, without just cause as an exercise of freedom of conscience, breach or evade those laws.

## **4 CONFLICT OF INTEREST**

### **(a) Definition**

- 4.1 For the purposes of this Code, a Member has a conflict of interest when the Member, the Member's spouse or a dependant in relation to the Member has significant private interests that afford the opportunity for the Member/Member's spouse or a dependant to benefit, whether directly or indirectly, as a result of the execution of, or the failure to execute, any function or duty of the Member.
- 4.2 A conflict of interest also exists where a Member makes a decision or refrains from making a decision in the execution of his or her position and at the same time knows that in the making of the decision or non-decision there is the opportunity to further his or her private interest, his or her family's private interest or the private interest of an associate.
- 4.3 A conflict of interest does not exist where the Member/ spouse/dependant benefits only as a member of the general public, or a member of a broad class of persons.

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**(b) Obligations of Members**

- 4.5 Members of the Legislative Council must carry out their official duties and arrange their private affairs in a way which is not contrary to the public interest and enhances public confidence and trust in Parliament and in the highest standards of ethical conduct in public office.
- 4.6 A Member must not promote any matter in Parliament in return for payment or any other direct or indirect personal financial benefit.
- 4.7 If a Member, directly or indirectly, holds an interest which conflicts with his or her public duty, or which could improperly influence his or her conduct in the discharge of his or her responsibilities, the Member shall disclose that interest prior to speaking to or voting on that matter within the Legislative Council or parliamentary committee or other relevant meeting.
- 4.8 If circumstances change after the initial disclosure has been made the Member shall disclose the nature of those changes.
- 4.9 When the interest of a Member's immediate family is involved, the Member shall disclose that interest to the extent that it is known to the Member. Immediate family is taken to include the Member's spouse and dependent children. It also shall be taken to include other members of his or her household or family when those members are closely connected with the Member's interests.
- 4.10 Where, in the pursuit of a Member's Parliamentary duties, the existence of a personal financial interest is likely to give rise to a conflict with the public interest, the Member has a personal responsibility to resolve that conflict. Apart from disclosing the general nature of the conflict of interest, this may include disposing of the interest, or standing aside from the public business in question.
- 4.11 In any dealings with or on behalf of an organisation with whom a financial relationship exists, a Member must always bear in mind the overriding responsibility which exists to constituents and to the public interest. This is particularly important in respect of activities which may not be a matter of public record, such as informal meetings and functions.

**(c) Procedure on conflict of interest**

- 4.12 A Member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the House or a parliamentary committee, shall, if present at a meeting considering the matter:
- (i) disclose the general nature of the conflict of interest; and
  - (ii) may choose not to participate in the deliberations or vote on the matter.

**5 USE OF PUBLIC OFFICE FOR PRIVATE GAIN**

- 5.1 Members will not at any time act in a manner that takes improper advantage of their status or position as a Member of Parliament.
- 5.2 Members must not engage in conduct that exploits for private reasons their positions or authorities.
- 5.3 Members shall not use the resources and status of their public office to seek to influence a decision by another person to further, directly or indirectly, their private interests or the private interests of their family.
- 5.4 Members shall not use improperly their influence in order to obtain appointment, promotion, advancement, transfer or any other advantage within the public sector on behalf of themselves or another or to affect the proper outcome of any procedure established under legislation for the management of the public sector.
- 5.5 Members should not approach Ministers, public servants or public bodies on a matter connected with a private interest, without appropriate disclosure.

**6 GIFTS**

- 6.1 Members of this Legislative Council must not solicit or accept gifts, benefits or favours that are connected directly or indirectly with fulfilling the duties of the office of the Member. However, a Member may accept incidental gifts or customary hospitality of nominal value (to the value of \$100 or less).
- 6.2 Members shall not solicit or accept for personal benefit, any form of benefit whatsoever (eg. gifts, loans, discounts, considerations) in connection with the performance of official duties, except as may be provided as part of

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their determined entitlements in accordance with their terms and conditions of remuneration as Members and in accordance with the electoral laws of NSW.

- 6.3 For the purpose of this section, the term "gift" means any gratuity, favour, discount, payment for Member's staff, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

## **7 TRAVEL**

- 7.1 Members may accept travel expenses from private sources when necessary to enable them to give a speech or otherwise to participate substantially in an event or to conduct fact-finding related to their official duties, provided that the amount of time which the Member spends at the destination is reasonable having regard to the duration of the event or fact-finding mission.
- 7.2 However, information regarding travel expenses must be disclosed in accordance with the requirements of the *Constitution (Disclosures by Members) Regulation 1983*.

## **8 INSIDE INFORMATION**

- 8.1 Members must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain.

## **9 USE OF OFFICIAL RESOURCES FOR PERSONAL GAIN**

- 9.1 The funds, goods, services and premises provided to Members are to be used economically and only for the carrying out of their parliamentary functions. These funds, goods, services and premises should not be used for personal financial benefit.

## **10 POST EMPLOYMENT RESTRICTIONS**

- 10.1 Members, when leaving public office and when they have left the service of the House, must not take improper advantage of their former position or confidential information gained during service.

## **11 NO UNJUSTIFIED DISCRIMINATION**

- 11.1 Members shall observe the spirit of the *Anti-Discrimination Act 1977 (NSW)*.

## **12 FREEDOM OF SPEECH**

- 12.1 Members should be mindful of the privileges conferred when speaking in the House and should seek to avoid causing undeserved harm to any individual who does not enjoy the same privileges.

## **13 "SPIRIT AND LETTER" PROVISIONS**

- 13.1 Members of this Legislative Council must act not only lawfully but also in a manner that will withstand the closest public scrutiny; this code is not designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust. Where any doubt exists as to the scope, application or meaning of any aspect of this code or any other provision to which Members may be subject, the good faith of the Member concerned must be the guiding principle.

## **14 ADDITIONAL RESPONSIBILITIES OF PARLIAMENTARY OFFICE HOLDERS**

- 14.1 Members who hold a Parliamentary office have a duty to exercise their additional responsibilities with strict adherence to these principles. They must have particular regard for the proper exercise of influence and the use of information gained from their duties as Parliamentary office holders. They must also be accountable for their own administrative actions and for their own conduct insofar as it affects their public duties.



**LIST OF WITNESSES  
AND SUBMISSIONS**



# List of Witnesses and Submissions

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## WITNESSES

### *13 September 1995*

- Mr Steve O'Connor, Solicitor for Public Prosecutions
- Mr Anthony Harris, NSW Auditor General
- Mr David Landa, Former NSW Ombudsman
- Mr Chris Wheeler, Deputy Ombudsman
- Mr Chris Warren, Joint Federal Secretary, Media Entertainment and Arts Alliance
- Mr Michael Hogan, Director, Public Interest Advocacy Centre

### *18 September 1995*

- Ms Angela Chan, Chairperson, Ethnic Communities Council of NSW
- Mr John Cauchi, Member of the Ethnic Communities Council of NSW
- Mr John Marsden, President, Council for Civil Liberties
- Mr Keith Mason, QC, NSW Solicitor General
- Dr Damian Grace, School of Social Work, University of NSW

***22 September 1995***

- Mr Barry O'Keefe, QC, Commissioner, Independent Commission Against Corruption

***3 October 1995***

- Dr Simon Longstaff, Executive Director, St James Ethics Centre
- The Hon John Jobling, MLC
- Mr Richard Humphry, Former Director of the Premier's Department
- Mr Gary Sturgess, Former Director General of the Cabinet Office

**WITNESSES APPEARING AT HEARINGS AND BRIEFINGS  
ARRANGED BY THE  
LEGISLATIVE ASSEMBLY STANDING ETHICS COMMITTEE**

***13 October 1995***

***Hearing***

- Mr Michael Costigan, Australian Catholic Social Justice Council
- Professor Michael Jackson, Department of Government, University of Sydney
- Mr Chris Wheeler, Deputy Ombudsman
- Mr Anthony Harris, Auditor General of NSW

***9 November 1995***

***Hearing***

- Dr Simon Longstaff, Executive Director, St James Ethics Centre
- Mr Nicholas Meagher, Law Society of NSW
- Ms Virginia Shirvington, Law Society of NSW
- Mr Gary Still, Law Society of NSW
- Mr David Mendelssohn, President, Australian Democrats (NSW)
- Mr Robert McDougall, Barrister and Queen's Counsel, Member of the Bar Association's Professional Conduct Committees, Ethics Governor of the BAR Association

***9 November 1995***

***(Hearing in camera)***

- Mr John Della Bosca, General Secretary of the Australian Labor Party (NSW Branch)
- Mr Tony Nutt, State Director, Liberal Party of Australia (NSW)

***16 November 1995***

***Briefing***

- The Hon Kevin Rozzoli, MP, Former Speaker of the Legislative Assembly

***24 November 1995***

***Briefing***

- Dr Noel Preston, Senior Lecturer in Applied Ethics within the School of Humanities, Queensland University of Technology

***8 December 1995***

***Hearing***

- Mr Ken Cripps, Commissioner, Public Employment Office
- Mr Barry Moynahan, Manager, Ministerial Liaison Unit, Public Employment Office
- Professor David Flint, Chairman, Australia Press Council
- Mr Steve Chase, President of the NSW Press Gallery

***15 March 1996***

***Hearing***

- Mr John Price, MP
- Mr Peter Rooke, Chief Executive, Transparency International Australia

## SUBMISSIONS

### **1** *From original advertisement*

The Hon Richard Jones, MLC	7 July 1995
Ms Judith Hopwood, Student of Ethics	8 August 1995
The Hon Elisabeth Kirkby, MLC	8 August 1995
Mr Stephen Bingle	10 August 1995 15 August 1995 29 August 1995
Independent Commission Against Corruption	August 1995

### **2** *Submissions from witnesses who appeared before the Committee*

- Mr Steve O'Connor  
Solicitor for Public Prosecutions 14 September 1995
- Mr Anthony Harris  
NSW Auditor-General 13 September 1995
- Mr Chris Wheeler  
Deputy Ombudsman 13 September 1995
- Mr Keith Mason, QC  
NSW Solicitor General 18 September 1995
- Dr Damian Grace  
School of Social Work  
University of NSW 18 September 1995
- Mr Barry O'Keefe (answers to questions)  
Commissioner, Independent  
Commission Against Corruption 27 September 1995
- The Hon John Jobling, MLC 29 September 1995
- Mr Gary Sturgess  
Sturgess Australia 2 October 1995

- Dr Noel Preston 24 November 1995
- Professor Michael Jackson 13 October 1995
- Mr Michael Costigan 13 October 1995

**3 *From advertisement of 6 July 1996***

- Australian Democrats 11 October 1996
- Dr R L Cope, Visiting Associate  
University of NSW 9 October 1996
- The Hon Ian Cohen, MLC 21 August 1996
- Mr Phillip Neuss 13 August 1996
- Mr Isaiah Komaravalli 12 August 1996
- Call to Australia Group 2 August 1996
- Dr Simon Longstaff  
St James Ethics Centre 2 August 1996
- The Hon R Bull, MLC 1 August 1996
- Mrs Wendy Marie Azadegan 25 July 1996
- The Hon Janelle Saffin, MLC 24 July 1996
- Mr Peter Rooke, Transparency International 24 July 1996
- Mr J Owens 19 July 1996
- Mr N R Cowdery QC  
Director of Public Prosecutions 17 July 1996
- Mr R J Thornton 16 July 1996
- Mr A C Harris, NSW Auditor-General 15 July 1996



**INDEPENDENT COMMISSION  
AGAINST CORRUPTION ACT  
1988 -**

**SECTIONS 7, 8, 9 (Unamended)**



### PART 3—CORRUPT CONDUCT

#### Corrupt conduct

7. (1) For the purposes of this Act, corrupt conduct is any conduct which falls within the description of corrupt conduct in either or both of subsections (1) and (2) of section 8, but which is not excluded by section 9.

(2) Conduct comprising a conspiracy or attempt to commit or engage in conduct that would be corrupt conduct under section 8 (1) or (2) shall itself be regarded as corrupt conduct under section 8 (1) or (2).

(3) Conduct comprising such a conspiracy or attempt is not excluded by section 9 if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in that section.

#### General nature of corrupt conduct

8. (1) Corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust; or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);
- (b) bribery;
- (c) blackmail;
- (d) obtaining or offering secret commissions;
- (e) fraud;
- (f) theft;

- (g) perverting the course of justice;
- (h) embezzlement;
- (i) election bribery;
- (j) election funding offences;
- (k) election fraud;
- (l) treating;
- (m) tax evasion;
- (n) revenue evasion;
- (o) currency violations;
- (p) illegal drug dealings;
- (q) illegal gambling;
- (r) obtaining financial benefit by vice engaged in by others;
- (s) bankruptcy and company violations;
- (t) harbouring criminals;
- (u) forgery;
- (v) treason or other offences against the Sovereign;
- (w) homicide or violence;
- (x) matters of the same or a similar nature to any listed above;
- (y) any conspiracy or attempt in relation to any of the above.

(3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.

(4) Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.

(5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:

- (a) matters arising in the State or matters arising under the law of the State; or
- (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.

(6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

**Limitation on nature of corrupt conduct**

9. (1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence; or
- (b) a disciplinary offence; or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official.

(2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.

(3) For the purposes of this section:

“criminal offence” means a criminal offence under the law of the State or under any other law relevant to the conduct in question;

“disciplinary offence” includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.



## Appendix 4

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# **INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) ACT 1994**





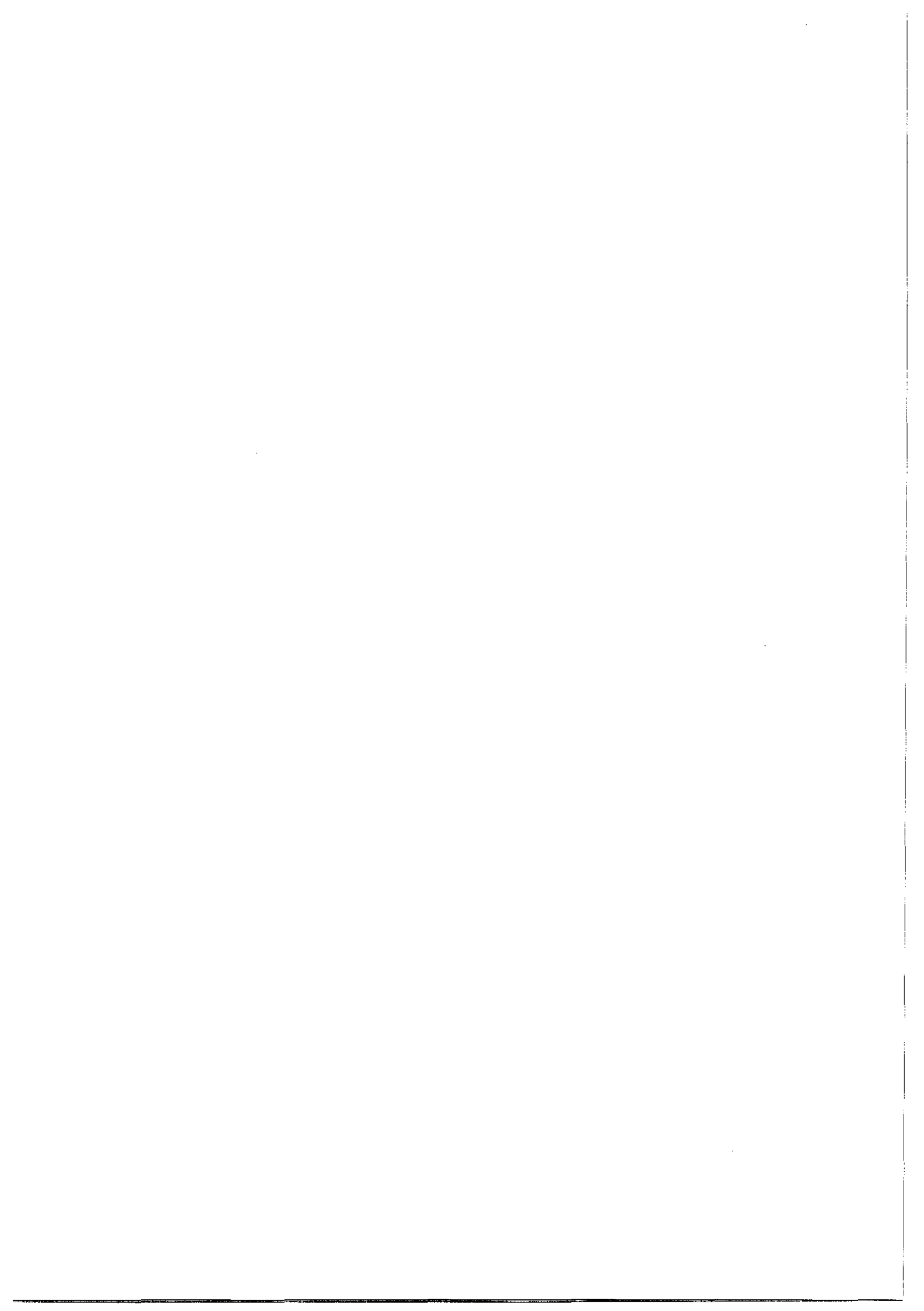
**INDEPENDENT COMMISSION AGAINST CORRUPTION  
(AMENDMENT) ACT 1994 No. 86**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
  2. Commencement
  3. Amendment of Independent Commission Against Corruption Act 1988 No. 35
-



**INDEPENDENT COMMISSION AGAINST CORRUPTION  
(AMENDMENT) ACT 1994 No. 86**

**NEW SOUTH WALES**



**Act No. 86, 1994**

An Act to amend the Independent Commission Against Corruption Act 1988 in relation to the nature of corrupt conduct. [Assented to 12 December 1994]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Independent Commission Against Corruption (Amendment) Act 1994.

**Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Independent Commission Against Corruption Act 1988 No. 35**

3. The Independent Commission Against Corruption Act 1988 is amended:

(a) by inserting at the end of section 9 (1) (c) the following:

; or

(d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.

(b) by inserting in section 9 (3) in alphabetical order:

“applicable code of conduct” means, in relation to:

(a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations; or

(b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

(c) by inserting after section 9 (3) the following:

(4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

(5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred

to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct could also constitute a breach of a law (apart from this Act) and the Commission identifies that law in the report.

(d) by inserting after Part 7 the following:

## **PART 7A—PARLIAMENTARY ETHICAL STANDARDS**

### **Division 1—Legislative Council**

#### **Definition**

72A. In this Division:

“**designated committee**” means the committee of the Legislative Council that is for the time being designated under section 72B.

#### **Designation of committee**

72B. (1) As soon as practicable after the commencement of this Division and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Division.

(2) Another committee of the Legislative Council may be designated by such a resolution from time to time in place of any previously designated.

(3) The designation of a committee under this section does not affect the functions that the committee has apart from this Division.

#### **Functions of committee**

72C. (1) The functions of the designated committee are:

- (a) to prepare for consideration by the Legislative Council draft codes of conduct for members of the Legislative Council 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 Council; and
- (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Council, but not in relation to actual or alleged conduct of any particular person.

(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 Council, 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) Within 12 months after the commencement of this Division, the designated committee is to present for consideration by the Legislative Council a draft code of conduct for members of the Legislative Council.

(6) The designated committee is to review the code of conduct at least once in each period of two years.

### **Division 2—Legislative Assembly**

#### **Constitution of Standing Ethics Committee**

72D. There is constituted by this Division a committee, to be known as the Standing Ethics Committee.

#### **Functions**

72E. (1) The functions of the Standing Ethics 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.

(2) The Standing Ethics 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 Standing Ethics 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 Standing Ethics Committee with respect to the provisions of the draft code of conduct. The Committee must take any such submissions into consideration.

(5) Within 12 months after the commencement of this Division, the Standing Ethics Committee is to present for consideration by the Legislative Assembly a draft code of conduct for members of the Legislative Assembly.

(6) The Standing Ethics Committee is to review the code of conduct at least once in each period of two years.

### **Membership**

72F. (1) The Standing Ethics Committee is to consist of 9 members, comprising:

- (a) 6 parliamentary members, being the persons who are for the time being the members of the Committee on the Independent Commission Against Corruption and who are also members of the Legislative Assembly; and
- (b) 3 community members, being persons who are appointed by at least 4 of the parliamentary members from applicants following public advertisement.

(2) A person cannot be appointed as a community member if the person is a member of either House of Parliament or a member of a party registered under Part 4A of the Parliamentary Electorates and Elections Act 1912.

(3) Community members may, but need not, be appointed for a specific term, but in any case may be discharged from office at any time by at least 4 of the parliamentary members.

#### **Vacancies**

72G. (1) A member of the Standing Ethics Committee ceases to hold office:

- (a) when the Legislative Assembly is dissolved or expires by the effluxion of time; or
- (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary; or
- (c) if, being a parliamentary member, the member ceases to be a member of Joint Committee; or
- (d) if, being a community member, the member becomes a member of the Legislative Council or Legislative Assembly; or
- (e) if, being a community member, the member becomes a member of a party registered under Part 4A of the Parliamentary Electorates and Elections Act 1912; or
- (f) if, being a community member appointed for specific term, the term expires; or
- (g) if, being a community member, the member is discharged from office by at least 4 of the parliamentary members.

(2) At least 4 of the parliamentary members may appoint a person who is or has been an applicant following public advertisement (being a person who is eligible for appointment in terms of section 72F) to fill a vacancy among the community members.

#### **Chairman and Vice-Chairman**

72H. (1) There are to be a Chairman and a Vice-Chairman of the Standing Ethics Committee, who are to be elected from the parliamentary members by at least 4 of the parliamentary members.

(2) A member of the Standing Ethics Committee ceases to hold office as Chairman or Vice-Chairman of the Committee if:

- (a) the member ceases to be a member of the Committee; or
- (b) the member resigns the office by instrument in writing presented to a meeting of the Committee; or
- (c) the member is discharged from office by at least 4 of the parliamentary members.



(3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of Chairman or there is a vacancy in that office, the Vice-Chairman may exercise the functions of the Chairman under this Division.

### **Procedure generally**

72I. (1) The procedure for the calling of meetings of the Standing Ethics Committee and for the conduct of business at those meetings is, subject to this Division, to be as determined by the Committee.

(2) The Clerk of the Legislative Assembly is to call the first meeting of the Standing Ethics Committee in each Parliament in such manner as the Clerk thinks fit.

(3) At a meeting of the Standing Ethics Committee:

(a) except in the cases mentioned in paragraph (b)—5 members constitute a quorum, of whom 4 must be parliamentary members and one must be a community member; or

(b) in cases where this Division confers functions on at least 4 of the parliamentary members of the Standing Ethics Committee without the involvement of community members—4 parliamentary members constitute a quorum.

(4) The Chairman or, in the absence of the Chairman, the Vice-Chairman or, in the absence of both the Chairman and the Vice-Chairman, a parliamentary member of the Standing Ethics Committee elected to chair the meeting by the parliamentary members present is to preside at a meeting of the Committee.

(5) The Vice-Chairman or other parliamentary member presiding at a meeting of the Standing Ethics Committee has, in relation to the meeting, all the functions of the Chairman.

(6) The Chairman, Vice-Chairman or other parliamentary member presiding at a meeting of the Standing Ethics Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) A question arising at a meeting of the Standing Ethics Committee is to be determined by a majority of the votes of the members present and voting.

(8) The Standing Ethics Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.

(9) The Standing Ethics Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

**Status of committee**

72J. (1) The Standing Ethics Committee may request the attendance of persons before it and may request the production of papers and records to it.

(2) The Defamation Act 1974 and the Parliamentary Papers (Supplementary Provisions) Act 1975 apply to the Standing Ethics Committee as if it were a joint committee of both Houses of Parliament.

(3) The Parliamentary Evidence Act 1901 does not apply to the Standing Ethics Committee.

**Validity of certain acts or proceedings**

72K. Any act or proceeding of the Standing Ethics Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee; or
- (b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

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*Minister's second reading speech made in—  
Legislative Assembly on 22 September 1994  
Legislative Council on 27 October 1994]*

Queensland, EARC Report on the Review of Codes of Conduct  
for Public Officials, May 1992

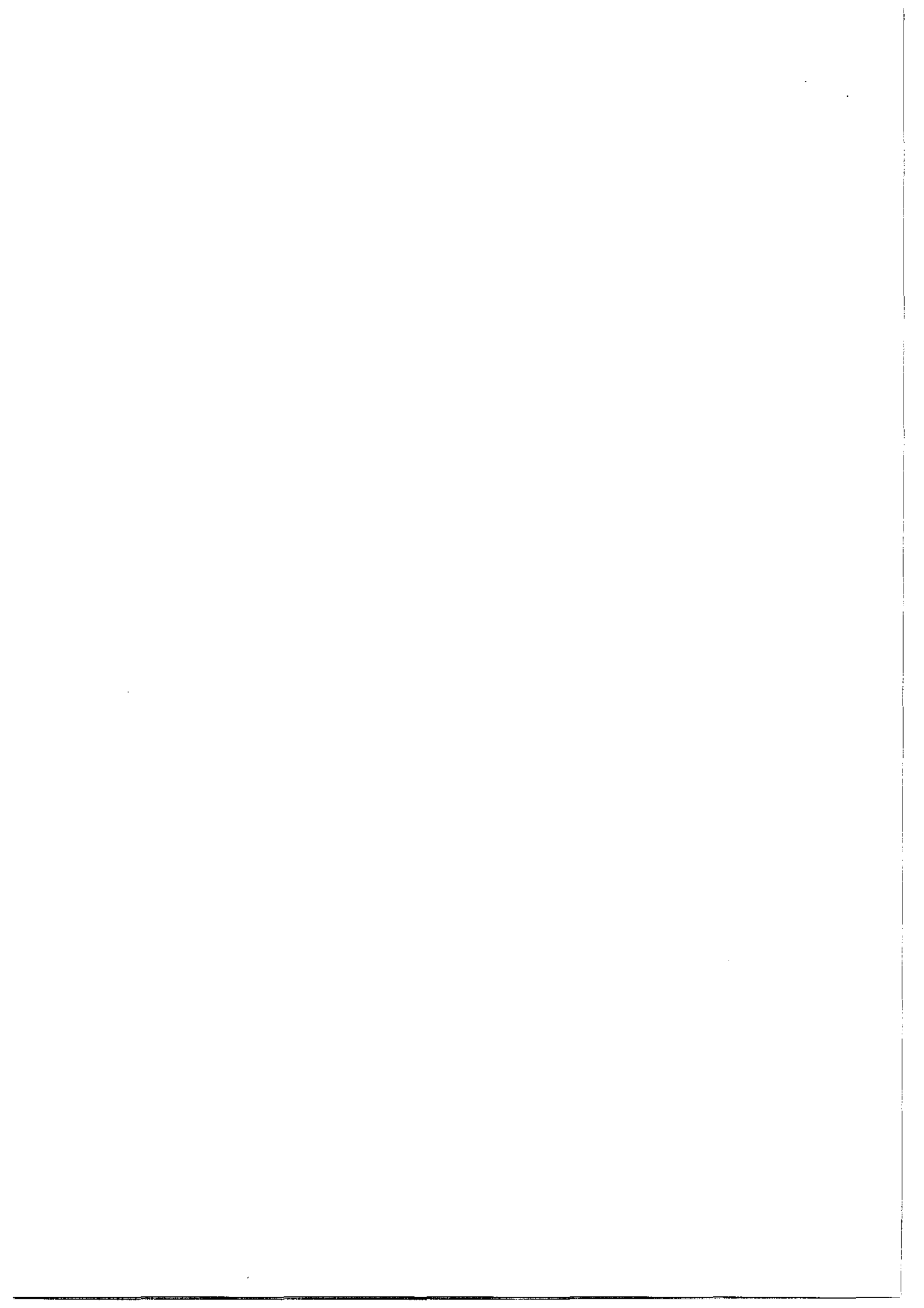
**DRAFT CODE OF CONDUCT FOR ELECTED REPRESENTATIVES**

**CODE OF CONDUCT FOR ELECTED REPRESENTATIVES**

1992

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# COMMONWEALTH PARLIAMENT

- **DRAFT FRAMEWORK OF ETHICAL PRINCIPLES FOR MEMBERS AND SENATORS**
- **DRAFT FRAMEWORK OF ETHICAL PRINCIPLES FOR MINISTERS AND PRESIDING OFFICERS**



## A FRAMEWORK OF ETHICAL PRINCIPLES FOR MEMBERS AND SENATORS

The principles which follow are intended to provide a framework of reference for Members and Senators in the discharge of their responsibilities. They outline the minimum standards of behaviour which the Australian people have a right to expect of their elected representatives. They incorporate some relevant ethical standards which should guide the considerations of Members of Parliament, and which should be a continuing reference point for former Members.

It is by adherence to such principles that Members of Parliament can maintain and strengthen the public's trust and confidence in the integrity of the Parliamentary institution and uphold the dignity of public office.

This framework does not seek to anticipate circumstances or to prescribe behaviour in hypothetical cases. While terms such as "the public interest" or "just cause" are not capable of definition in the abstract, over time, each House will develop a body of interpretation and clarification which has regard to individual cases and contemporary values.

Each House of the Parliament will consider matters which are raised by Members and Senators under the framework and a majority of two thirds of Members of a House will be necessary to resolve a matter.

### THE PRINCIPLES

#### 1. Loyalty to the Nation and Regard for its Laws

Members and Senators must be loyal to Australia and its people. They must uphold the laws of Australia and ensure that their conduct does not, without just cause as an exercise of freedom of conscience, breach or evade those laws.

#### 2. Diligence and Economy

Members and Senators must exercise due diligence, and in performing their official duties to the best of their ability, apply public resources economically and only for the purposes for which they are intended.

#### 3. Respect for the Dignity and Privacy of Others

Members and Senators must have due regard for the rights and obligations of all Australians. They must respect the privacy of others and avoid unjustifiable or illegal discrimination. They must safeguard information

obtained in confidence in the course of their duties and exercise responsibly their rights and privileges as Members and Senators.

**4. Integrity**

Members and Senators must at all times act honestly, strive to maintain the public trust placed in them, and advance the common good of the people of Australia.

**5. Primacy of the Public Interest**

Members and Senators must base their conduct on a consideration of the public interest, avoid conflict between personal interest and the requirements of public duty, and resolve any conflict, real or apparent, quickly and in favour of the public interest.

**6. Proper Exercise of Influence**

Members and Senators must exercise the influence gained from their public office only to advance the public interest. They must not obtain improperly any property or benefit, whether for themselves or another, or affect improperly any process undertaken by officials or members of the public.

**7. Personal Conduct**

Members and Senators must ensure that their personal conduct is consistent with the dignity and integrity of the Parliament.

**8. Additional Responsibilities of Parliamentary Office Holders**

Members and Senators who hold a Parliamentary office have a duty to exercise their additional responsibilities with strict adherence to these principles. They must have particular regard for the proper exercise of influence and the use of information gained from their duties as Parliamentary office holders. They must also be accountable for their administrative actions and for their conduct insofar as it affects their public duties.

**ADDITIONAL GUIDANCE**

In individually considering these principles, Members and Senators should also have regard to:

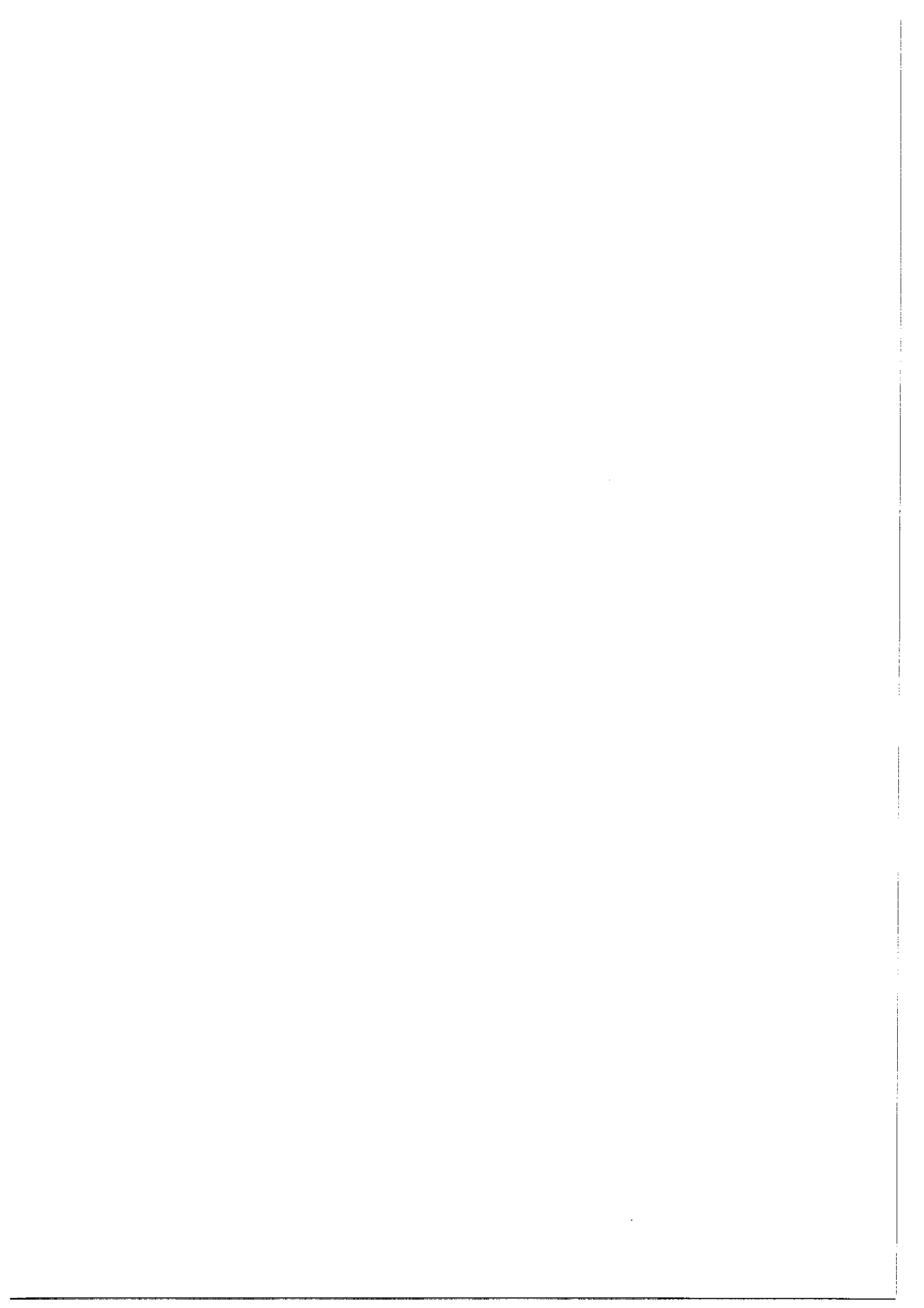
- . sections 44 and 45 of the Constitution;
- . provisions of the *Parliamentary Entitlements Act 1990*;
- . standing and sessional orders of the House of the Parliament of which they are members;



- . resolutions of continuing effect of the House of the Parliament of which they are members;
- . decisions and determinations of the relevant Presiding Officer and the appropriate Minister concerning the obligations and entitlements of Members and Senators;
- . determinations of the Remuneration Tribunal; and
- . section 73A of the *Crimes Act 1914*.

### Interpretation

In this Framework, the term Parliamentary office holder includes Leaders of Parties, Shadow Ministers and Shadow Parliamentary Secretaries, Party Whips, Deputy President of the Senate and Chairman of Committees, Deputy Speaker, Second Deputy Speaker and Chairs of Parliamentary Committees.



## A FRAMEWORK OF ETHICAL PRINCIPLES FOR MINISTERS AND PRESIDING OFFICERS

All Members of the Commonwealth Parliament are obliged to meet a number of ethical and administrative requirements in respect of their behaviour and personal interests. A fundamental obligation in respect of ethical behaviour is to comply with the Framework of Ethical Principles for Members and Senators. In respect of the pecuniary interests of Ministers and public office holders, the Code of Conduct on Public Duty and Private Interest recommended by the Bowen Committee is accepted as the model for general application. Declarations of interest, dealing with lobbyists, hospitality, benefits and gifts are the subject of procedures laid down by successive governments. Guidance to Ministers on administrative procedures and requirements pertaining to Cabinet is provided in the *Cabinet Handbook*.

The Prime Minister enunciates standards and determines the penalty for any failings of Ministers, but it is to Parliament and, through it, the people, that Ministers and the Presiding Officers are accountable. Ministers and the Presiding Officers are responsible for the competence with which they handle their public duties, the relevant actions of their personal staff and their departments, and their personal conduct insofar as it affects their public role.

Because of the greater trust placed in them, and the power and discretion they exercise in the performance of their duties, Ministers and the Presiding Officers must also conform to a set of ethical standards more stringent than those required of Members and Senators. The principles which follow are intended to provide a framework of reference for Ministers and the Presiding Officers. This supplements the Framework of Ethical Principles for Members and Senators and the provisions of the Standing Orders of both Houses. For the purposes of this framework, "Ministers" includes Parliamentary Secretaries, and "Presiding Officers" means the Speaker of the House of Representatives and the President of the Senate.

Subject to action taken by the Prime Minister and Cabinet, each House of the Parliament may consider matters raised by Members and Senators under this Framework and a majority of two thirds of members of a House will be necessary to resolve a matter.

### THE PRINCIPLES

#### 1. Impartiality

In the performance of their public duties Ministers and the Presiding Officers must act impartially, uninfluenced by fear or favour.

2. **Honesty**

Ministers and the Presiding Officers must be frank and honest in their public dealings and in particular must not mislead intentionally the Parliament or the public. Any misconception caused inadvertently by a Minister or Presiding Officer must be corrected at the earliest opportunity.

3. **Use of Influence**

Ministers and the Presiding Officers must not exercise the influence obtained from their public office to further their personal interests, obtain any improper advantage or benefit for themselves or another, or any promise of future advantage.

4. **Gifts, Benefits and Hospitality**

Ministers and the Presiding Officers may accept gifts, benefits or hospitality offered in connection with their public office only if in doing so they conform and report in accordance with applicable procedures enunciated publicly by Parliament, the Prime Minister, or relevant Commonwealth Departments.

5. **Public Property and Services**

Ministers and the Presiding Officers must ensure that their use of public property and services is in accordance with the entitlements of their public office, and that the same standards are maintained by those under their authority who use public property and services.

6. **Official Information**

Ministers and the Presiding Officers must not use official information for personal gain.

7. **Administrative Accountability**

In the performance of their duties, Ministers and the Presiding Officers must:

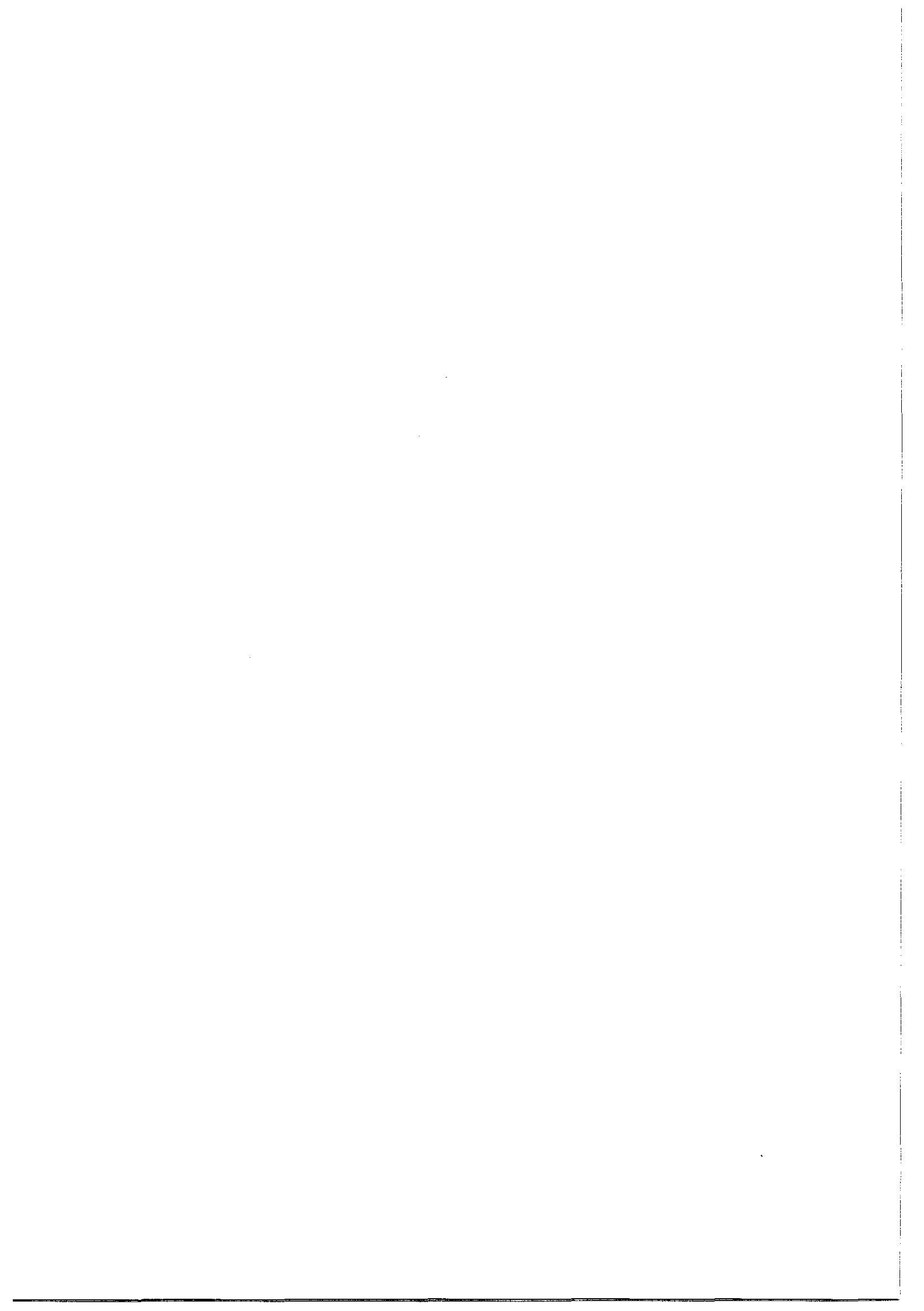
- . be accountable to Parliament and to the public;
- . have proper regard to advice and guidance offered by their departments;
- . apportion discretionary funds on established principles and on the basis of legitimate public purposes; and
- . document and substantiate adequately their decisions.

8. **Compliance by Staff**

Ministers and the Presiding Officers must ensure that the actions of members of their staff are consistent with these principles.

9. **Continuing Obligation**

Ministers and the Presiding Officers must ensure that their actions after leaving public office are consistent with these principles. In particular they must not seek or appear to seek improper advantage from any influence they may retain with their former colleagues or public officials.

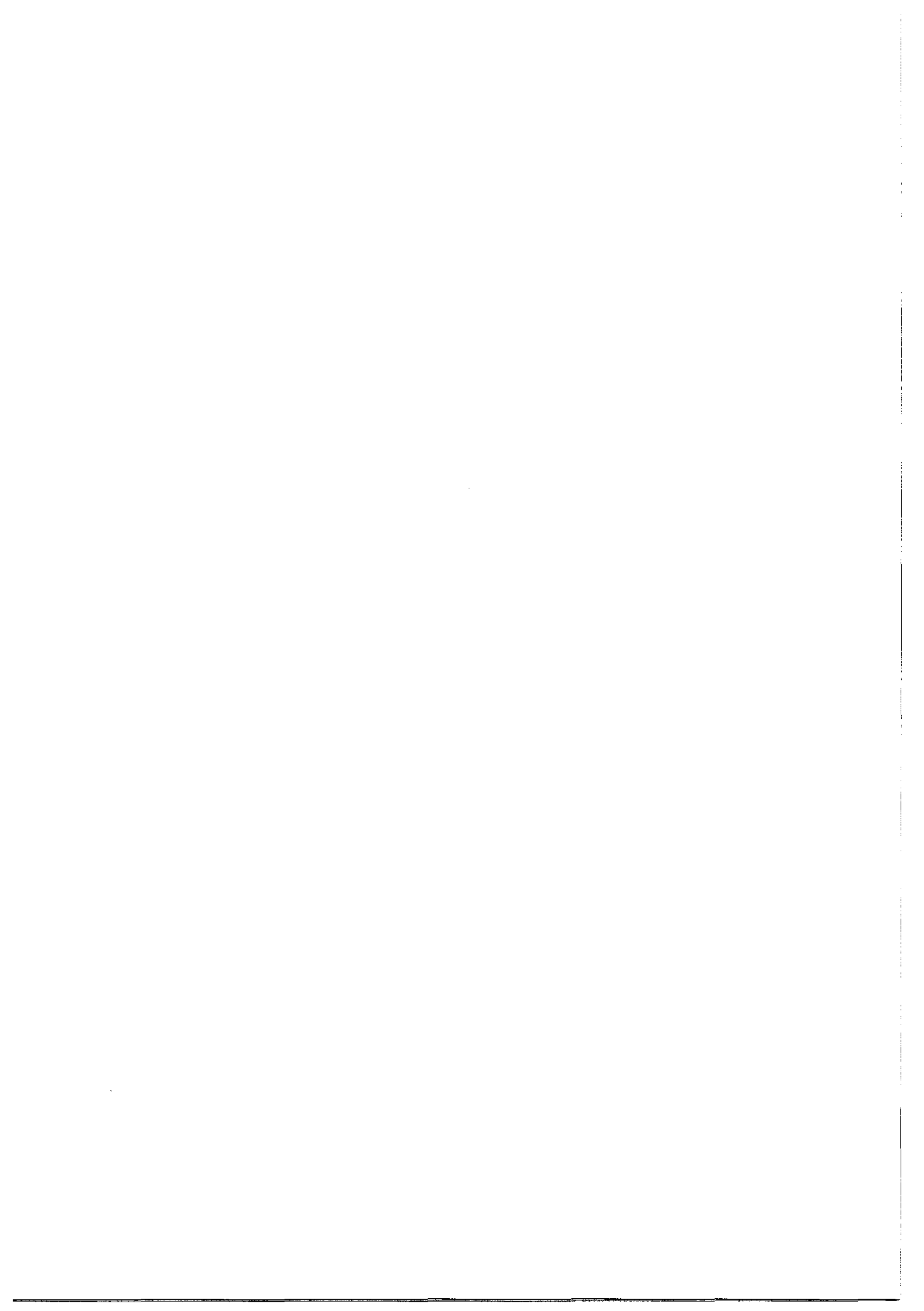


**AUSTRALIAN  
CAPITAL  
TERRITORY**

**CODE OF CONDUCT**

**RECOMMENDED BY LEGISLATIVE ASSEMBLY  
STANDING COMMITTEE ON  
ADMINISTRATION AND PROCEDURES**

**MAY 1991**





**Extract from Report on**  
*Inquiry into the proposed Ethics Committees/Code of Conduct*

**CODE OF CONDUCT**

**Introduction:**

The ACT community is entitled to have confidence in the integrity of its government. Members of the Legislative Assembly, as elected representatives of the Australian Capital Territory, must elevate the practice of representative government by discharging their duties in a sound and honourable manner.

The electors of the ACT have a right to expect that:

- . the business of the Assembly is conducted with efficiency, impartiality and integrity and in accordance with established principles of Parliamentary practice and procedures;
- . Members of the Assembly will obey the spirit and letter of the law and, in particular, the provisions of all relevant legislation, statutes, ordinances, regulations and instruments; and
- . Members should ensure that their private interests do not interfere with the proper discharge of their public duty according to the highest standards of conduct.

Due to the nature of public office Members of the Legislative Assembly must accept restrictions on certain areas of their conduct beyond those imposed on ordinary citizens.

Without overriding or affecting legislation and provisions currently applicable to the ACT Legislative Assembly, the Members of the Assembly are bound by the following principles.

### Conflict and Disclosure of Interest:

1. (i) Members shall complete a statement of their pecuniary and other interests in accordance with the requirements as set out in the Resolution of the Assembly of 24 May, 1989.  
(ii) Members shall be scrupulous in the completion of their statement of interests and ensure that it is updated as required by the Assembly.
2. (i) Members shall ensure that no conflict of interest, whether pecuniary or otherwise, exists between their public duty and their private interests.  
(ii) If a Member, directly or indirectly, holds an interest which conflicts with his or her public duty, or which could improperly influence his or her conduct in the discharge of his or her responsibilities, the Member shall disclose that interest prior to speaking to or voting on that matter within the Assembly or committee or other relevant meeting.  
(iii) If circumstances change after an initial disclosure has been made the Member shall disclose the nature of those changes.  
(iv) When the interest of a Member's immediate family are involved, the Member shall disclose those interests to the extent that they are known to the Member. "Immediate family" is taken to include the Member's spouse and dependant children. It also shall be taken to include other members of his or her household or family when they are closely connected with the Member's interests.

### Personal Benefit:

3. The following principles are to apply to ensure that no personal benefit or reward is taken by a Member and that no person can improperly influence a Member or unduly enjoy that Member's favour.  
(i) Members shall not solicit or accept from any person any remuneration or benefit for the discharge of the duties of his or her office over and above the official remuneration as provided by the *Australian Capital Territory (Self Government) Act 1988*. This is to include a fee payment, retainer or reward, and any other compensation accrued to a Member's beneficial interest for or on account of, or as a result of, his or her position as a Member.

- (ii) Members shall not solicit or accept any benefit, advantage or promise of future advantage whether for themselves or their immediate families or any business concern or trust in which they are associated from persons who are or seek to be in any contractual or special relationship with the Government.
  - (iii) Members shall declare any gifts, sponsored travel or hospitality in accordance with the explanatory notes to the *Statement of Registrable Interests* as tabled in the Assembly on 24 May 1989.
4. (i) Members shall not advance their private interests by use of confidential information gained in the performance of their public duty.
- (ii) Members shall undertake not to improperly use information obtained in the course of official duties to gain, either directly or indirectly, a pecuniary advantage for themselves, their families or for any other person.

#### **Personal Behaviour of Members:**

5. (i) Members shall act in accordance with the requirements of this Code.
- (ii) Members shall be honest in official dealings with colleagues, staff and the general public.
- (iii) Members shall not take advantage of their position to improperly influence other Members or staff in the performance of their duties, in order to gain either directly or indirectly improper advantage for themselves or for any other person or body.
- (iv) Members shall observe the provisions of the *Sex Discrimination Act 1984*, *Racial Discrimination Act 1975* and *Human Rights and Equal Opportunity Act 1986* which prohibit sexism, racism and sexual harassment.
6. Members must be mindful of the need to protect and enhance the reputation of the Assembly by ensuring that their conduct does not bring discredit upon the Legislative Assembly. They shall not:
- (i) knowingly mislead the Assembly by any act or omission;
  - (ii) disobey any lawful instruction of the Speaker, the Assembly or a Committee of the Assembly; or
  - (iii) engage in any activity outside of the Assembly which brings the Assembly into disrepute.

7. When speaking in the Assembly or in a Committee of the Assembly, Members should be mindful of the following matters:
  - (i) the need to exercise their right of freedom of speech in a responsible manner at all times while having regard to the rights of others;
  - (ii) the likely damage that may be done by allegations made in the Assembly to those who are the subject of such allegations;
  - (iii) the limited opportunities for persons other than Members of the Assembly to respond to allegations made in the Assembly; and
  - (iv) the desirability of ensuring that statements reflecting adversely on persons are soundly based.

**Dealing with Assembly Property:**

8. Members shall not misuse or permit the misuse by any other person or body of public property, staff and services.
9. Members shall not misuse monies allocated for official purposes.

**Corporate Obligations:**

10. Members must recognise that the main function of the Legislative Assembly is to serve and represent the ACT community.

**SOUTH  
AUSTRALIA**

**DRAFT CODE OF CONDUCT**

**LEGISLATIVE REVIEW COMMITTEE  
DISCUSSION PAPER**

**APRIL 1996**



South Australia Legislative Review Committee Draft Code of Conduct,  
*Discussion Paper concerning a Draft Code of Conduct for  
Members of Parliament, April 1996*

*DRAFT*

STATEMENT OF ETHICAL PRINCIPLES

INTRODUCTION

It is the personal responsibility of every Member of Parliament to maintain high standards of ethical behaviour, to protect the good name of the Parliament and to advance the public interest. Members enjoy certain privileges in law. These privileges exist not for the individual benefit of Members but for the good of the community. Each Member has a personal responsibility to comply fully with all resolutions and conventions of a Member's House relating to matters of conduct and, when in doubt, to seek advice.

The principles which follow are intended to provide guidance for Members of Parliament in discharge of their duties and responsibilities. They establish minimum standards of behaviour which the people of South Australia have a right to expect of their elected representatives. In addition to complying with these standards Members are bound to obey the ordinary laws of the State.

THE PRINCIPLES

1. Loyalty to the nation and obligations of the laws

Members are reminded of the Oath (or Affirmation) of Allegiance which they made when taking their seats in Parliament. Members must be loyal to Australia and its people. They must uphold the laws of the State and ensure that their conduct does not, without just cause as an exercise the freedom of choice, breach or evade those laws.

2. Primacy of the public interest

Members must carry out their official duties and arrange their private financial affairs in a manner which protects the public interest and enhances public confidence and trust in Parliament and in high standards of ethical conduct in public office.

3. Integrity

Members must at all times act honestly and must strive to maintain the public trust placed in them and advance the common good of the people of South Australia.

4. Respect for the dignity and privacy of others

Members must have due regard for the rights and obligations of all South Australians. They must respect the privacy of others and avoid unjustifiable or illegal discrimination. They must safeguard information obtained in confidence in the course of their duties and exercise responsibly their rights and privileges as members.

**5. Proper exercise of influence**

Members must exercise the influence gained from their public office only to advance the public interest. They must not obtain improperly any property or benefit whether for themselves or another.

**6. Personal Conduct**

Members must ensure that their personal conduct is consistent with the dignity and integrity of the Parliament.

**7. Assistance to constituents and others**

Members should treat all persons seeking assistance without discrimination

**8. Confidential information**

A Member should not advance a private interest by the improper use of confidential information gained in the course of public duty.

**9. Additional responsibilities of parliamentary office holders**

Members who hold a parliamentary office have a duty to exercise their additional responsibilities with strict adherence to these principles. They must have a particular regard for the proper exercise of influence and the use of information gained from their duties as parliamentary office holders. They must also be accountable for their administrative actions and for their conduct insofar as it affects their public duties.



**TASMANIA**

**CODE OF ETHICAL CONDUCT  
FOR MEMBERS OF THE HOUSE OF  
ASSEMBLY**

**ADOPTED 22 MAY 1996**



STANDING RULES AND ORDERS  
OF  
THE HOUSE OF ASSEMBLY

AMENDMENT AGREED TO BY THE HOUSE OF ASSEMBLY  
ON 22 MAY 1996

Amendment of Standing Order No. 2:

(1) after paragraph (c), by inserting a new paragraph—

“(d) Members will then subscribe to the Code of Ethical Conduct contained in Standing Order No. 2A”.

(2) Insertion of new Standing Order No. 2A as follows:

2A

CODE OF ETHICAL CONDUCT  
FOR MEMBERS OF THE HOUSE OF ASSEMBLY

*Preamble*

As Members of the House of Assembly we recognise that our actions have a profound impact on the lives of all Tasmanian people. Fulfilling our obligations and discharging our duties responsibly requires a commitment to the highest ethical standards.

*Statement of Commitment*

To the people of this State, we owe the responsible execution of our official duties, in order to promote human and environmental welfare.

To our constituents, we owe honesty, accessibility, accountability, courtesy and understanding.

To our colleagues in this Assembly, we owe loyalty to shared principles, respect for differences, and fairness in political dealings.

We believe that the fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Tasmanian people.

We reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our State and its institutions.

*Declaration of Principles*

Members of this Assembly must carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.

Members of this Assembly must act not only lawfully but also in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

Every Member is individually responsible for preventing potential and actual conflicts of interest, and must arrange private financial affairs in a manner that prevents such conflicts from arising including declaration of pecuniary interest in any matter being considered as part of their official duties as a Parliamentarian.

Members of the Assembly must carry out their official duties objectively and without consideration of personal or financial interests.

Members of the Assembly must not accept gifts, benefits or favours except for incidental gifts or customary hospitality of nominal value.

Members of the Assembly must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain.

Members of the Assembly must not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.

Members of the Assembly must not use, or allow the use of, public property or services for personal gain.

Members of the Assembly, when leaving public office and when they have left public office, must not take improper advantage of their former office.

, Speaker

, Clerk of the House

Approved,

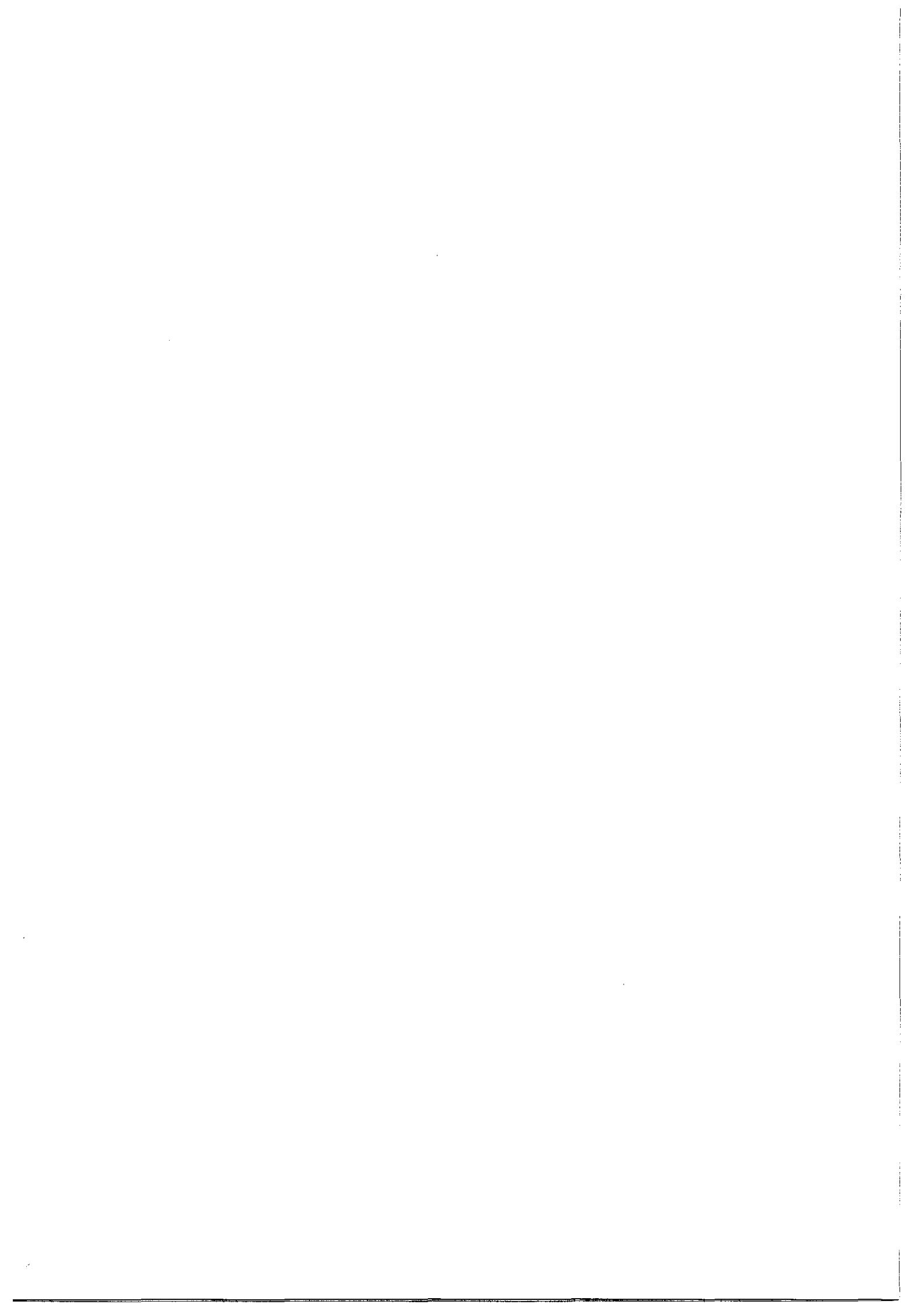
, Governor

, 1996.

**VICTORIA**

**CODE OF CONDUCT FOR MEMBERS**

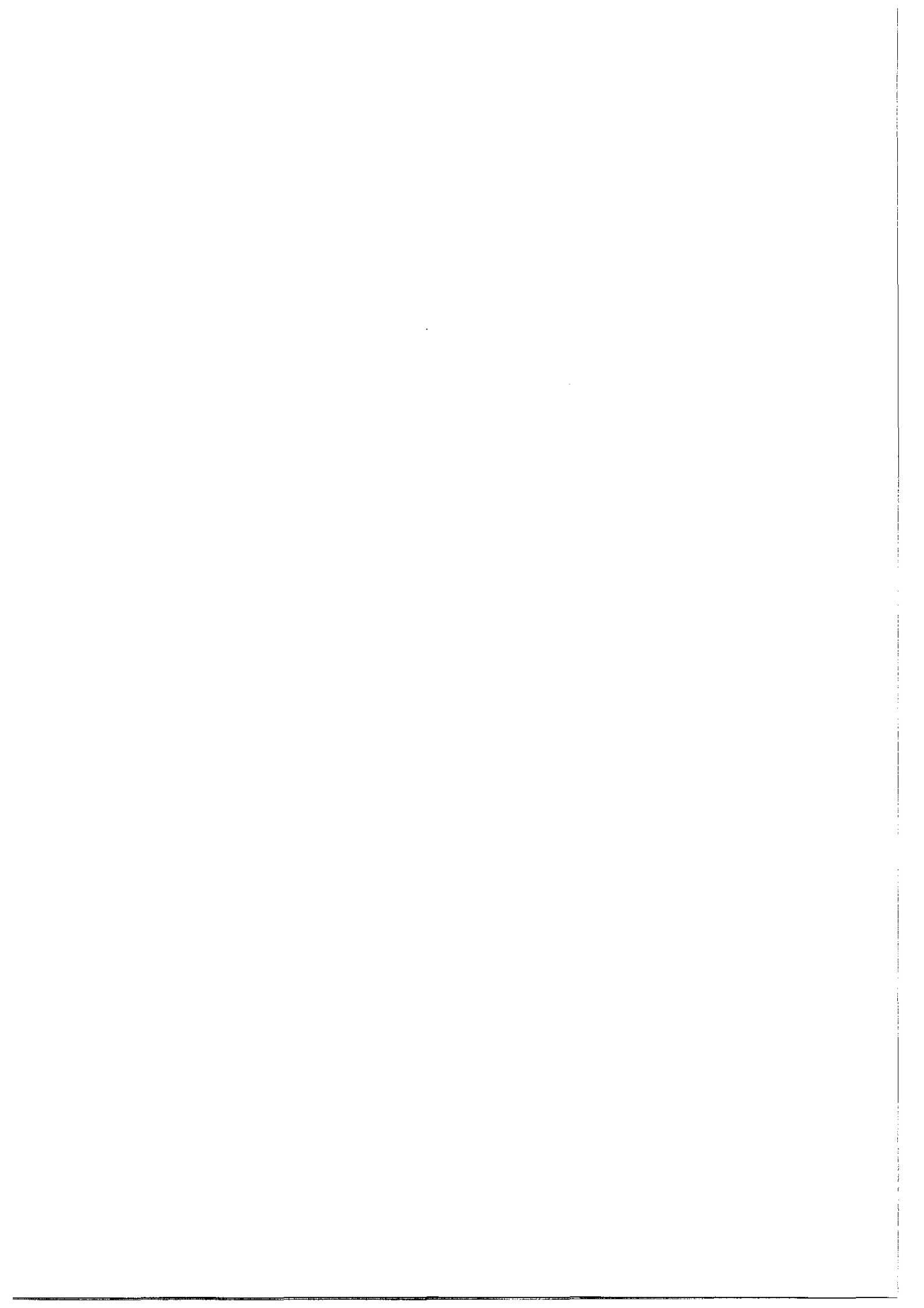
**PART 1, MEMBERS OF PARLIAMENT  
(REGISTER OF INTERESTS) ACT 1978**



PART I—CODE OF CONDUCT

3. *Code of conduct for Members*

- (1) It is hereby declared that a Member of the Parliament is bound by the following code of conduct:
- (a) Members shall—
    - (i) accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests;
    - (ii) ensure that their conduct as Members must not be such as to bring discredit upon the Parliament;
  - (b) Members shall not advance their private interests by use of confidential information gained in the performance of their public duty;
  - (c) A Member shall not receive any fee, payment, retainer or reward, nor shall he permit any compensation to accrue to his beneficial interest for or on account of, or as a result of the use of, his position as a Member;
  - (d) A Member shall make full disclosure to the Parliament of—
    - (i) any direct pecuniary interest that he has;
    - (ii) the name of any trade or professional organization of which he is a member which has an interest;
    - (iii) any other material interest whether of a pecuniary nature or not that he has—  
in or in relation to any matter upon which he speaks in the Parliament;
  - (e) A Member who is a Minister shall ensure that no conflict exists, or appears to exist, between his public duty and his private interests;
  - (f) A Member who is a Minister is expected to devote his time and his talents to the carrying out of his public duties.
- (2) Without limiting the generality of the foregoing in the application and interpretation of the code regard shall be had to the recommendation of the Joint Select Committee of the Victorian Parliament appointed pursuant to The Constitution Act Amendment (Qualifications Joint Select Committee) Act 1973 presented to the Legislative Assembly on the 23rd day of April, 1974 (D.14/1973-74) contained in paragraph 12 of that report.





**QUEENSLAND**

**DRAFT CODE OF CONDUCT FOR  
ELECTED REPRESENTATIVES**

**ELECTORAL AND ADMINISTRATIVE REVIEW  
COMMISSION -  
REPORT ON THE REVIEW OF CODES OF  
CONDUCT FOR PUBLIC OFFICIALS**

**May 1992**



## **1. STANDARDS OF CONDUCT FOR ELECTED REPRESENTATIVES**

Elected representatives participate in various ways in the making of decisions which can have significant effects on the lives of ordinary citizens. The powers exercised by them must be used properly, and in the public interest.

Because of their privileged position, elected representatives have the potential to affect public confidence in the system of government and the integrity of public administration. This is a particular cause for concern where elected representatives become involved in the misuse of official information, or inappropriate involvement in administrative processes, or questionable personal conduct, or conflicts between their personal interests and their public duty. Alternatively, the conduct of elected representatives can serve as a positive model for the public sector, and for the community.

The standards of conduct which may be expected of elected representatives are therefore a matter for legitimate and continuing concern by the public. This Code of Conduct provides guidelines on what those standards are, in general terms.

This Code applies to Members of the Legislative Assembly of Queensland and elected Members of Local Authorities. Other Codes of Conduct promulgated under the *Public Sector Ethics Act 1992* relate to other categories of public official.

### **1.1 The Public Interest**

The idea of "the public interest" lies at the centre of the concept of responsible public service, which has its roots in the conventions of the "Westminster" tradition of democratic government and public administration.

This Code of Conduct explains how concern for the public interest is expected to guide the conduct of elected representatives in Local Authorities and the Legislative Assembly, including Ministers. The Code also explains the related idea of responsibility, in the terms of the duty of trusteeship owed by elected representatives for the way they use the powers and the resources provided to them.

For consistency, the Code refers to all categories of elected representatives as "Members".

### **1.2 The Code of Conduct for Elected Representatives**

This Code is intended to assist Members (i) to identify and apply the ethical standards which are expected in the Queensland public sector generally, and (ii) to recognise and deal with relevant ethics issues in accordance with those standards. The Code is part of a four part ethics strategy.

The parts of the strategy are:

- (a) The *Public Sector Ethics Act 1992*, which identifies fundamental ethical principles for the whole of the Queensland public sector including Members, and identifies general ethical obligations which govern the conduct of public officials at all levels.

- (b) This Code of Conduct and other Codes promulgated under the Act.
- (c) Agency-specific rules developed by individual public sector agencies, identifying how particular matters of concern to that organisation are to be dealt with.
- (d) The Office of Public Sector Ethics, the functions of which include:
  - (i) ensuring as far as possible a reasonable and consistent approach to public sector ethics matters, especially disciplinary action, for the whole public sector;
  - (ii) giving independent advice on specific matters;
  - (iii) contributing to appropriate new training and development activities for staff at all levels and in all public sector agencies; and
  - (iv) consulting with the Advisory Panel on Public Sector Ethics.

The Code of Conduct provides consistent, authoritative and relevant guidance, expressed in terms of general principles, on the standards which are expected to govern the conduct of Members acting in, or in connection with, their official capacity.

It is a responsibility of Members to become familiar with the provisions of the *Public Sector Ethics Act 1992* and this Code of Conduct.

For a comprehensive understanding of the required standards of official conduct in the Queensland public sector it is desirable that Members read the *Public Sector Ethics Act 1992* and this Code as a whole, rather than rely on individual provisions in isolation.

## **2. AUTHORITY FOR THIS CODE OF CONDUCT**

### **2.1 Authority**

This Code of Conduct is formally constituted as a Regulation made under the *Public Sector Ethics Act 1992* (the Act). It is binding on all elected representatives as defined in Part 3 of the Act, including Ministers and other Members of the Legislative Assembly, and Members of Local Authorities.

The obligations of Members in relation to their official conduct generally are set out in the Act (see Sections 3 to 8). The special obligations of Ministers are set out in section 9 of this Code.

### **2.2 Sanctions**

Breaches of the Act and this Code may be dealt with as determined by the Parliament. Breaches by Members of Local Authorities may be dealt with as determined by the Minister for Local Government.

### 3. THE OBLIGATIONS OF A MEMBER

The general obligations are prescribed in the *Public Sector Ethics Act 1992* and the regulations to that Act. They are as follows:

- (a) **Respect for the Law and the System of Government** - Members shall uphold the laws of Queensland and Australia, and shall not, without just cause, be a party to their breach, evasion, or subversion. Members shall act with respect towards the institutions of both Parliament and local government, and shall ensure that their conduct, whether in a personal or official capacity, does not bring the Parliament or local government into disrepute, or damage public confidence in the system of government.
- (b) **Respect for Persons** - Members shall treat other Members, members of the public and other officials honestly and fairly, and with proper regard for their rights, entitlements, duties and obligations, and shall at all times act responsively in the performance of their public duties.
- (c) **Integrity** - Members shall at all times seek to advance the common good of the community which they serve, in recognition that public office involves a public trust. In particular Members shall ensure that their official powers or position are not used improperly for personal advantage, and that any conflict between personal interests and public duty which may arise is resolved in favour of the public interest.
- (d) **Diligence** - Members shall exercise due diligence, care and attention, and shall at all times seek to achieve the highest standards practicable in relation to their duties and responsibilities in their official capacity as a Member of the Parliament or Member of a Local Authority.
- (e) **Economy and Efficiency** - Members shall avoid waste, abuse and extravagance in the provision or use of public resources, and shall expose fraud and corruption of which the Member is aware.

### 4. GENERAL OBLIGATION 1: RESPECT FOR THE LAW AND THE SYSTEM OF GOVERNMENT

Members shall uphold the laws of Queensland and Australia, and shall not, without just cause, be a party to their breach, evasion, or subversion. Members shall act with respect towards the institutions of both Parliament and local government, and shall ensure that their conduct, whether in a personal or official capacity, does not bring the Parliament or local government into disrepute or damage public confidence in the system of government.

This general obligation governs the conduct of Members in relation to -

- (a) the primary duty of all public officials to act in accordance with the principle of the rule of law, and to observe the requirements of relevant laws to the best of their knowledge and ability, when acting in an official capacity; and

- (b) the expectation that public officials in their capacity as private citizens will observe the laws of Queensland and Australia to the best of their knowledge and ability, and will avoid any improper involvement with others who fail to observe either the letter or the spirit of those laws.

The obligation is qualified by the condition - "without just cause". This exception is provided in order to recognise that on exceptional occasions the public interest would be better served by not complying with the requirements of a law or policy which can be demonstrated to be in conflict with another law or policy, or which would result in substantial and unintended effects which would be contrary to the public interest.

## 5. GENERAL OBLIGATION 2: RESPECT FOR PERSONS

**Members shall treat other Members, members of the public, and other officials honestly and fairly, and with proper regard for their rights, entitlements, duties and obligations, and shall at all times act responsibly in the performance of their public duties.**

The obligation covers the conduct of Members in their dealings with others, whether members of the public, other Members, or other public officials in the Queensland public sector.

The obligation requires Members to recognise, that the Parliament and local government are both means to meeting the needs of the community which maintain them, rather than an end in itself. Members of Parliament and of Local Authorities are therefore properly regarded as servants of the community.

In practice, the obligation implies that Members will be expected, as far as they are able, to -

- (a) provide responsive, effective and courteous service to all those with whom they have official dealings;
- (b) act honestly and fairly at all times;
- (c) respect the rights to confidentiality in relation to personal information of members of the public and other officials;
- (d) avoid all forms of unjustified discrimination; and
- (e) avoid any conduct or action which prevents or distracts other Members or officials from performing their proper functions.

## 6. GENERAL OBLIGATION 3: INTEGRITY

**Members shall at all times seek to advance the common good of the community which they serve, in recognition that public office involves a public trust. In particular Members shall ensure that their official powers or position are not used improperly for personal advantage, and that any conflict between personal interests and public duty which may arise is resolved in favour of the public interest.**

This general obligation requires individual Members to recognise that integrity in government encompasses a wide range of matters which have in common the idea that public office involves a position of trust which Members must honour.

The obligation governs Members in relation to their actions, conduct and relationships, if they are such as to give rise to reasonable-doubt that a Member has used or is using the powers or influence of public office, official resources, or official information in accordance with the public interest.

Public confidence in the integrity of the system of government is put at risk when the conduct of a public official involves or appears to involve a conflict of loyalties - usually stated as "a conflict between private interests and public duty".

In this context, the public interest is served when Members recognise that the trust placed in them by the community requires that they -

- (a) base their decisions and conduct on a proper consideration of the general good of the community, (subject to the requirements of the law), and exclude improper advantage to any person or sectional interest group (including any religious, ideological, professional, commercial, sporting or other interest);
- (b) ensure that the potential for conflict between personal interests, whether pecuniary or otherwise, and the requirements of public duty, is minimised; and
- (c) ensure that any conflict, including apparent conflict, between public duty and private interests which does arise is resolved as quickly as possible, and in favour of the public interest.

#### 6.1 Improper Use of Political and Other Influence.

A Member shall not use improperly their influence in order to obtain appointment, promotion, advancement, transfer or any other advantage within the public sector on behalf of another, or to affect the proper outcome of any procedure established under legislation for the management of a unit of the public sector.

Members should recognise that a non-elected public official responsible for the making of a decision under legislation governing any aspect of the management of a unit of the public sector, or for a recommendation for the purpose of making such a decision, is required to refuse to take account of any attempt by any person whatsoever to influence the making of such a decision unless the involvement of that person is required by or consistent with the provisions of the relevant legislation.

#### 6.2 Personal Conduct In and Outside the Parliament

Members shall ensure that their personal conduct does not adversely affect -

- (a) their ability to perform their official duties;
- (b) the ability of other Members or other public officials to perform their official duties; and
- (c) public confidence in the integrity of the system of government and public sector management.

### 6.3 Conflicts of Interest

"Interests" take two forms, usually referred to as "pecuniary interests" (involving financial advantage) and "non-pecuniary interests" (involving other forms of advantage, for example, giving advantage to a particular religious or ideological position).

Pursuant to a Resolution of the Parliament agreed to on 27 November 1990 significant "pecuniary interests" of Members of the Legislative Assembly are subject to annual registration. Under Standing Order 158, a conflict of pecuniary interest disqualifies a Member of the Legislative Assembly from voting on any question in which they have a direct pecuniary interest. Any such conflict of interests is required to be the subject of an appropriate declaration as and when it occurs, directly to the Parliament.

Conflicts of interests disqualify a Member of a Local Authority from voting on any matter in which the Member has a pecuniary interest. Any such conflict of interests is required to be declared by the Member, as and when it occurs.

Registration of non-pecuniary interests is not required, because of the potentially endless range of matters which could give rise to a conflict between private interests and public duty. A conflict of interests involving a non-registrable interest is also required to be the subject of an appropriate public declaration as and when it occurs (see previous paragraph).

Members shall declare any personal interest, pecuniary or otherwise, which conflicts or appears to conflict with their duty to act in the public interest whenever such a conflict arises and in relation to a context in which the Member is, or may be seen to be, acting in an official capacity. Such a declaration shall be made irrespective of whether the interest at issue is already the subject of formal registration or has already been declared on another occasion.

Examples. Activities and relationships requiring specific attention by Members under this obligation include -

- (a) Being a member of or significant shareholder in, a company, association, or body which is involved with Government in any capacity.
- (b) Being significantly involved in the making of a recommendation or decision affecting the rights, entitlements, activities or prospects of a company, association, community group, political organisation or other body with which the Member is associated in a private capacity or in which the Member has a significant interest.



- (c) Being significantly involved in the making of a recommendation or decision affecting the rights, entitlements, livelihood, prospects or employment of a relative, family member, or close personal friend.
- (d) Accepting or retaining any form of benefit, including a gift, offer of appointment, position, discount or consideration which could appear to be likely to influence a Member in the performance of their official duty, whether it was intended to or not.

#### 6.4 Declaration or Registration of Interests

**Declaration.** A Member shall immediately declare publicly any actual or apparent conflict between the requirements of official duty and any personal interest (whether a pecuniary interest or other form of interest), whenever such a conflict becomes known to the Member and irrespective of whether the interest involved is the subject of separate registration.

**Registration.** A Member shall provide a summary of their significant business, financial and other material interests, and those of their spouse, dependent children and any other dependants, and this summary will be entered in a register of pecuniary interests.

Such registrations of interests shall be made as often in the form and to the extent required by the relevant authority. It shall be the Member's responsibility to maintain their entry in the Register in an up to date form.

#### 6.5 Acceptance of Gifts or Benefits

A Member shall not solicit or accept for personal benefit, any form of benefit whatsoever (eg. gifts, loans, discounts, considerations, etc.) in connection with the performance of official duties, except as may be provided:

- (a) as part of their determined entitlements in accordance with their terms and conditions of remuneration as Members;
- (b) by other public officials on the Member's resignation, retirement, or on similar occasions.

A Member may accept, in an official capacity, any gift or benefit provided that the Member is satisfied in each instance that -

- (a) acceptance of the benefit will not bring their integrity into question; and
- (b) acceptance of the gift or benefit is in the public interest.

Use or disposal of such gifts shall be in accordance with the procedures determined by Parliament.

## 7. GENERAL OBLIGATION 4: DILIGENCE

Members shall exercise due diligence, care and attention, and shall at all times seek to achieve the highest standards practicable in relation to their duties and responsibilities in their official capacity as a Member of the Parliament or a Member of a Local Authority.

### 7.1 Diligence, Care and Attention

The obligation requires Members to recognise that they have a duty to return "a fair day's work for a fair day's pay", and that they are expected to perform their public duties to the best of their ability.

## 8. GENERAL OBLIGATION 5: ECONOMY AND EFFICIENCY

Members shall avoid waste, abuse and extravagance in the provision or use of public resources, and shall expose fraud and corruption of which the Member is aware.

This obligation requires Members to recognise that they have a duty to ensure that taxpayer-provided resources of all kinds should be used economically for the purposes for which they were provided and intended, treated with appropriate care and maintenance, and should be properly secured against theft or misuse.

In addition, this obligation requires Members to be economical, and to avoid waste and extravagance in the use of the resources provided to them in their official capacity.

## 9. SPECIAL REQUIREMENTS IN RELATION TO MINISTERS

Of all the positions of trust the people of Queensland are capable of bestowing on individuals, none carries so much discretionary power as that of a Minister of the Crown. For this reason, Ministers accept that the standards required of them are higher than those which apply to other office bearers.

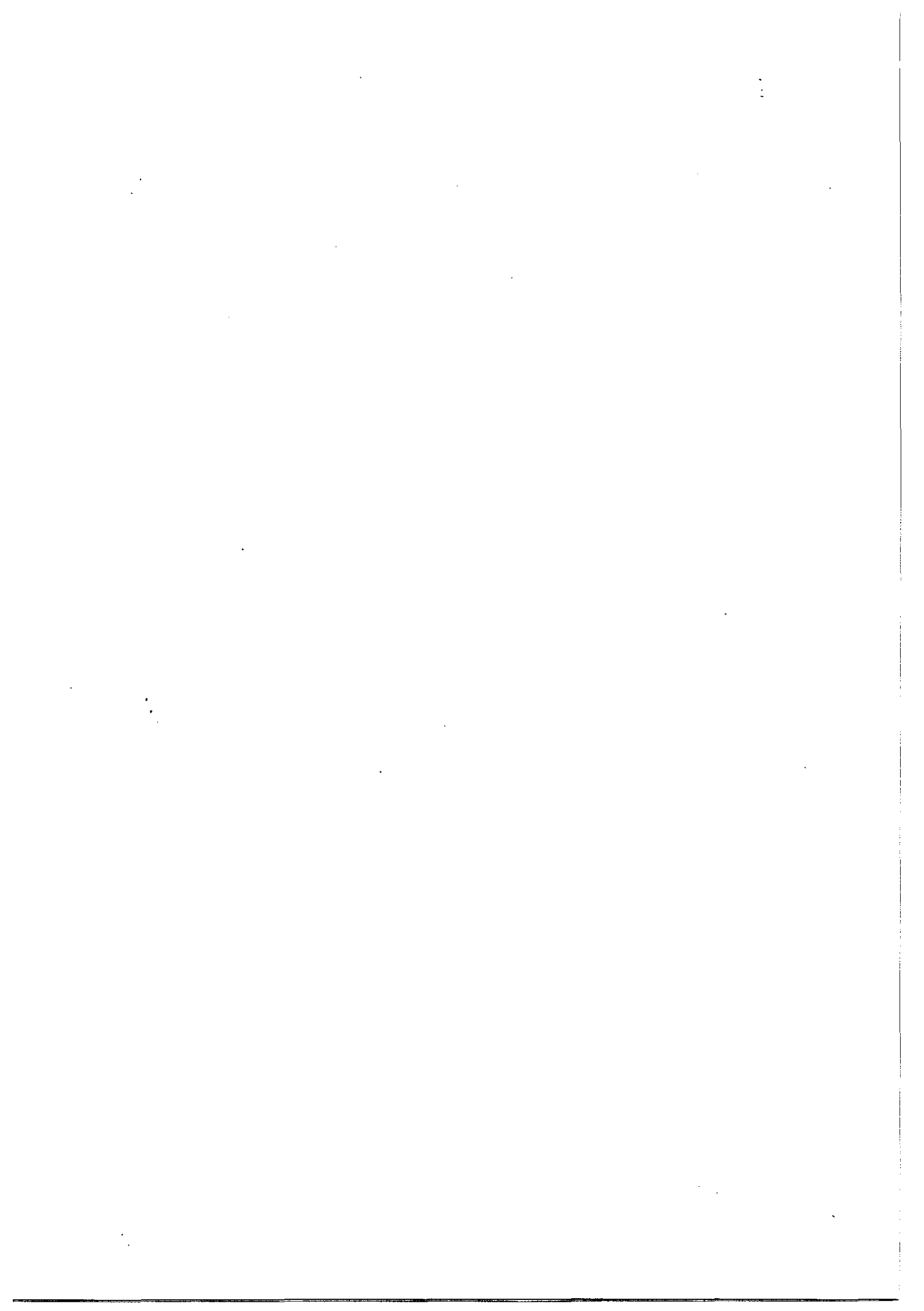
In addition to the obligations detailed in sections 4 to 8 above, Ministers are therefore required to:

Resign or decline membership of boards of public companies and declare membership of, and the nature and business of, any private companies.

Divest themselves of shareholdings in any company in respect of which a conflict between public duty and private interests exists, or could be reasonably suspected to exist. Ministers will advise the Premier should they find themselves in a situation of conflict of interests and shall take no part in any Cabinet deliberation in relation to a matter involving such a conflict of interests.

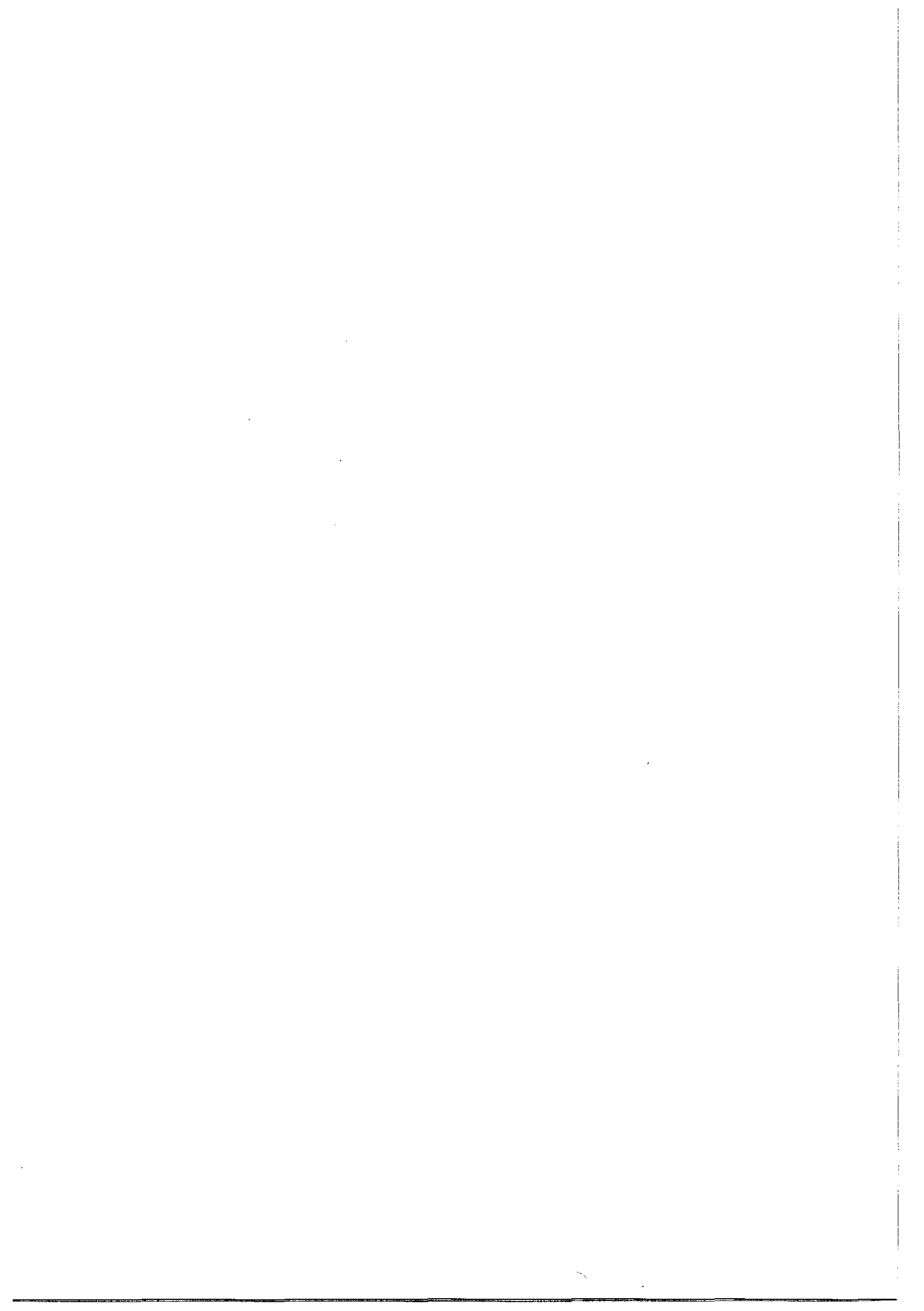
Undertake not to use information obtained in the course of official duties to gain for themselves or any other person a direct or indirect financial advantage. Refuse, and not solicit, any consideration or benefit in respect of their exercise of their discretion, either for themselves or any other person.

- . Refuse any gift offered in a personal capacity in connection with the discharge of their office. Gifts in an official capacity may be accepted in an official capacity by a Minister in accordance with procedures established by the Premier from time to time.
- . Avoid falling under an obligation to those in business or industry; a Minister will not knowingly accept travel or hospitality sponsored wholly or partly by any person, organisation, business or interest group unless the travel or hospitality is provided at rates which are openly available to the public or is of nominal value, such that it could not be construed as creating an obligation.
- . Accept that they must resign or stand down from their positions if they are themselves under formal investigation by any government instrumentality in respect of serious impropriety or alleged illegal behaviour of a serious nature.
- . Accept that they and the Departmental officials responsible to them are bound by the caretaker convention. In particular, during the period after the issue of the writs for an election, the Ministers should not, except in cases of urgency, make any new significant appointments, enter into new contracts or undertakings or embark on any policy initiatives that would bind an incoming government.
- . Accept that the talents and abilities of all public officials should be maximally available to the people of Queensland. Ministers should employ the talents of public officials to their fullest, whatever the politics of those public officials may be, provided that those public officials observe the provisions of the relevant Code of Conduct, in particular in relation to the Westminster convention of politically non-partisan public service. Where a Minister has concerns about any aspect of an individual appointed public official's performance, the Minister should raise the matter with the relevant Chief Executive and/or the Chair of the Public Sector Management Commission, as appropriate.



## UK HOUSE OF COMMONS

- **NOLAN COMMITTEE  
DRAFT CODE OF CONDUCT**  
  
COMMITTEE ON STANDARDS IN PUBLIC LIFE,  
FIRST REPORT, MAY 1995
- **CODE OF CONDUCT ADOPTED BY THE  
HOUSE ON 24 JULY 1996**



## *A Draft Code of Conduct for Members of Parliament*

### *General Principles*

It is the personal responsibility of every Member of Parliament to maintain those standards of conduct which the House and the electorate are entitled to expect, to protect the good name of Parliament and to advance the public interest.

Members should observe those general principles of conduct which apply to all people in public life. [These are set out on page 14 of this report, and should be incorporated into the final code]

The primary duty of Members is to their country and their constituents. They should undertake no actions in Parliament which conflict with that duty.

Because Members of Parliament enjoy certain privileges in law, which exist to enable them to fulfil their responsibilities to the citizens they represent, each Member has a particular personal responsibility to comply fully with all resolutions and conventions of the House relating to matters of conduct, and when in doubt to seek advice.

### *Financial Interests*

A Member must not promote any matter in Parliament in return for payment.

A Member who has a financial interest, direct or indirect, must declare that interest in the currently approved manner when speaking in the House or in Committee, or otherwise taking part in Parliamentary proceedings, or approaching Ministers, civil servants or public bodies on a matter connected with that interest.

Where, in the pursuit of a Member's Parliamentary duties, the existence of a personal financial interest is likely to give rise to a conflict with the public interest, the Member has a personal responsibility to resolve that conflict either by disposing of the interest or by standing aside from the public business in question.

In any dealings with or on behalf of an organisation with whom a financial relationship exists, a Member must always bear in mind the overriding responsibility which exists to constituents and to the national interest. This is particularly important in respect of activities which may not be a matter of public record, such as informal meetings and functions.

In fulfilling the requirements on declaration and registration of interests and remuneration, and depositing of contracts, a Member must have regard to the purpose of those requirements and must comply fully with them, both in letter and spirit.

## *The Seven Principles of Public Life*

### *Selflessness*

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### *Integrity*

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### *Objectivity*

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### *Accountability*

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### *Openness*

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### *Honesty*

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### *Leadership*

Holders of public office should promote and support these principles by leadership and example.

.....

*These principles apply to all aspects of public life.  
The Committee has set them out here for the benefit of  
all who serve the public in any way.*



# UK House of Commons

## The Code of Conduct for Members of Parliament Prepared pursuant to the Resolution of the House of 19th July 1995

### I. Purpose of the Code

The purpose of the Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large.

### II. Public duty

By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

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Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

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Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

### III. Personal conduct

Members shall observe the general principles of conduct identified by the Committee on Standards in Public Life<sup>1</sup> as applying to holders of public office:—

#### *“Selflessness*

*Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.*

#### *Integrity*

*Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.*

#### *Objectivity*

*In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.*

#### *Accountability*

*Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.*

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<sup>1</sup>Cm 2850, p.14.

*Openness*

*Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.*

*Honesty*

*Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*

*Leadership*

*Holders of public office should promote and support these principles by leadership and example."*

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Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

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Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.

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The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

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Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.

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In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

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No Member shall act as a paid advocate in any proceeding of the House.

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THE CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

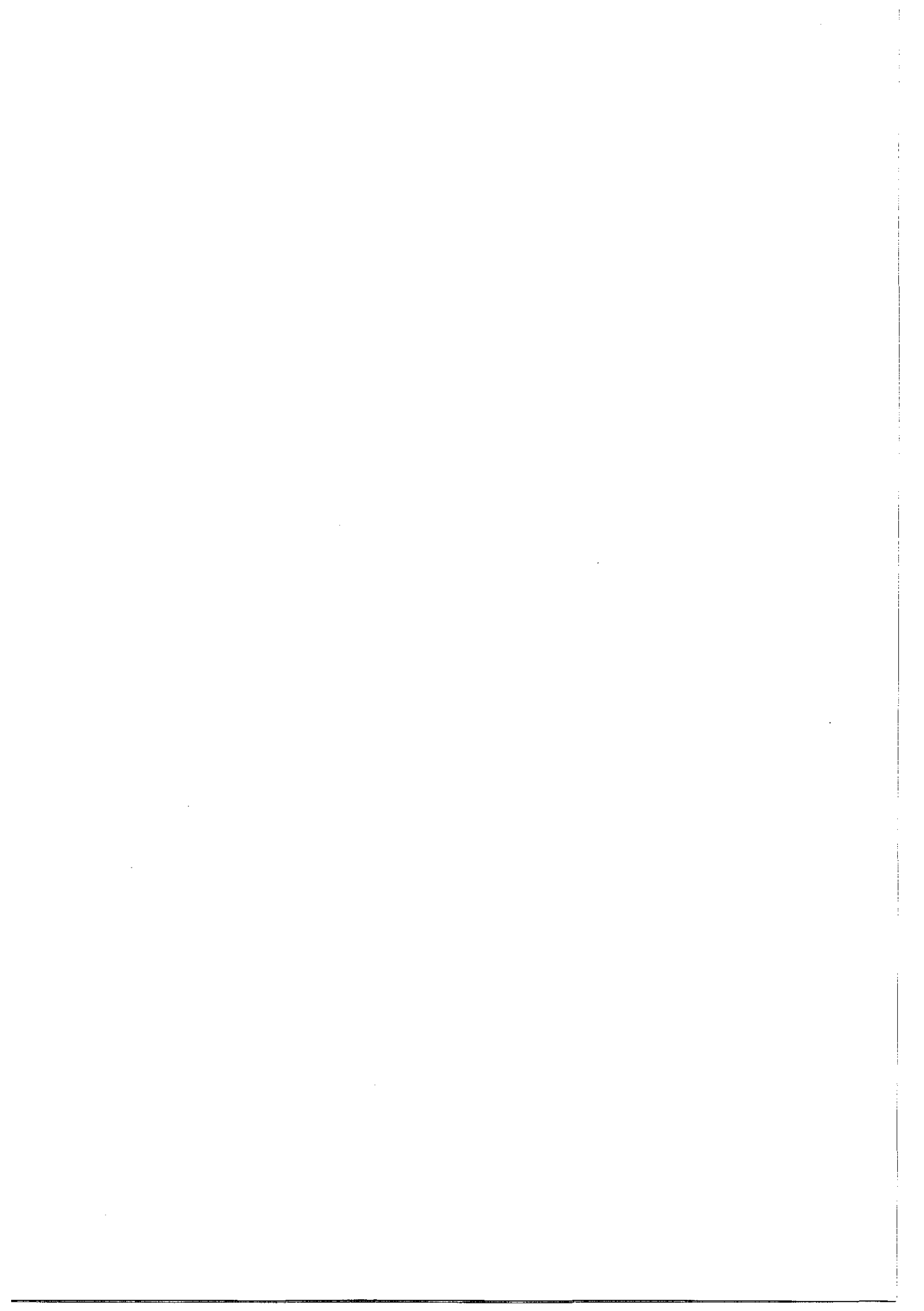
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No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

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Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.

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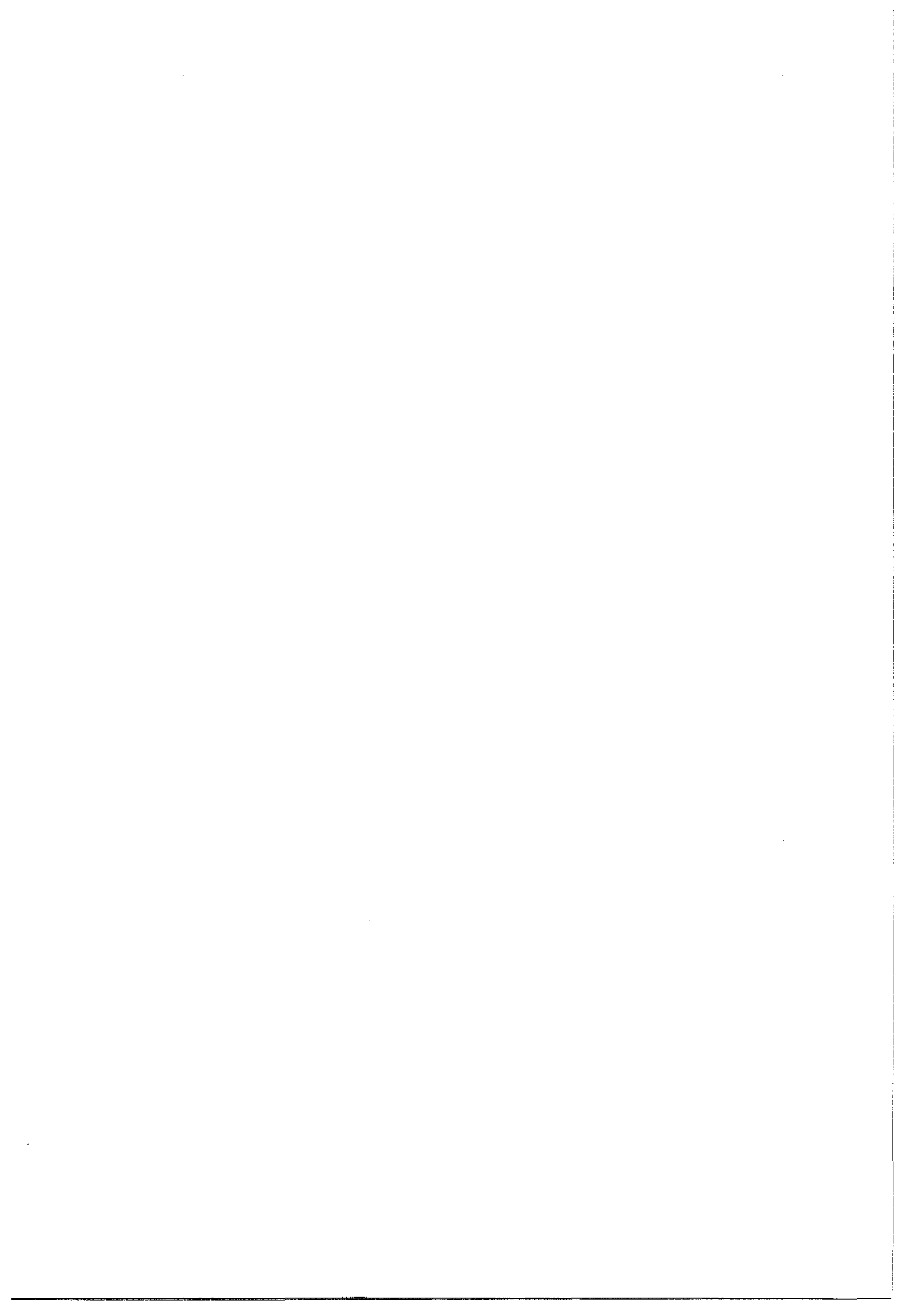
# Appendix 12

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## **SASKATCHEWAN**

**CODE OF ETHICAL CONDUCT  
ADOPTED BY THE LEGISLATIVE ASSEMBLY**

**JUNE 1993**



# Saskatchewan

## CODE OF ETHICAL CONDUCT

### For Members of the Legislative Assembly

#### Preamble

As Members of the Legislative Assembly we recognize that our actions have a profound impact on the lives of all Saskatchewan people. Fulfilling our obligations and discharging our duties responsibly requires a commitment to the highest ethical standards.

#### Statement of Commitment

To the people of this province, we owe the responsible execution of our official duties, in order to promote human and environmental welfare.

To our constituents, we owe honesty, accessibility, accountability, courtesy and understanding.

To our colleagues in this Assembly, we owe loyalty to shared principles, respect for differences, and fairness in political dealings.

We believe that the fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Saskatchewan people.

We reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.

#### Declaration of Principles

Members of this Assembly must carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.

Members of this Assembly must act not only lawfully but also in a manner that will withstand the closest public scrutiny; neither the law nor this code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

Every Member is individually responsible for preventing potential and actual conflicts of interest, and must arrange private financial affairs in a manner that prevents such conflicts from arising.

Members of the Assembly must carry out their official duties objectively and without consideration of personal or financial interests.

Members of the Assembly must not accept gifts, benefits or favours except for incidental gifts or customary hospitality of nominal value as provided for in legislation.

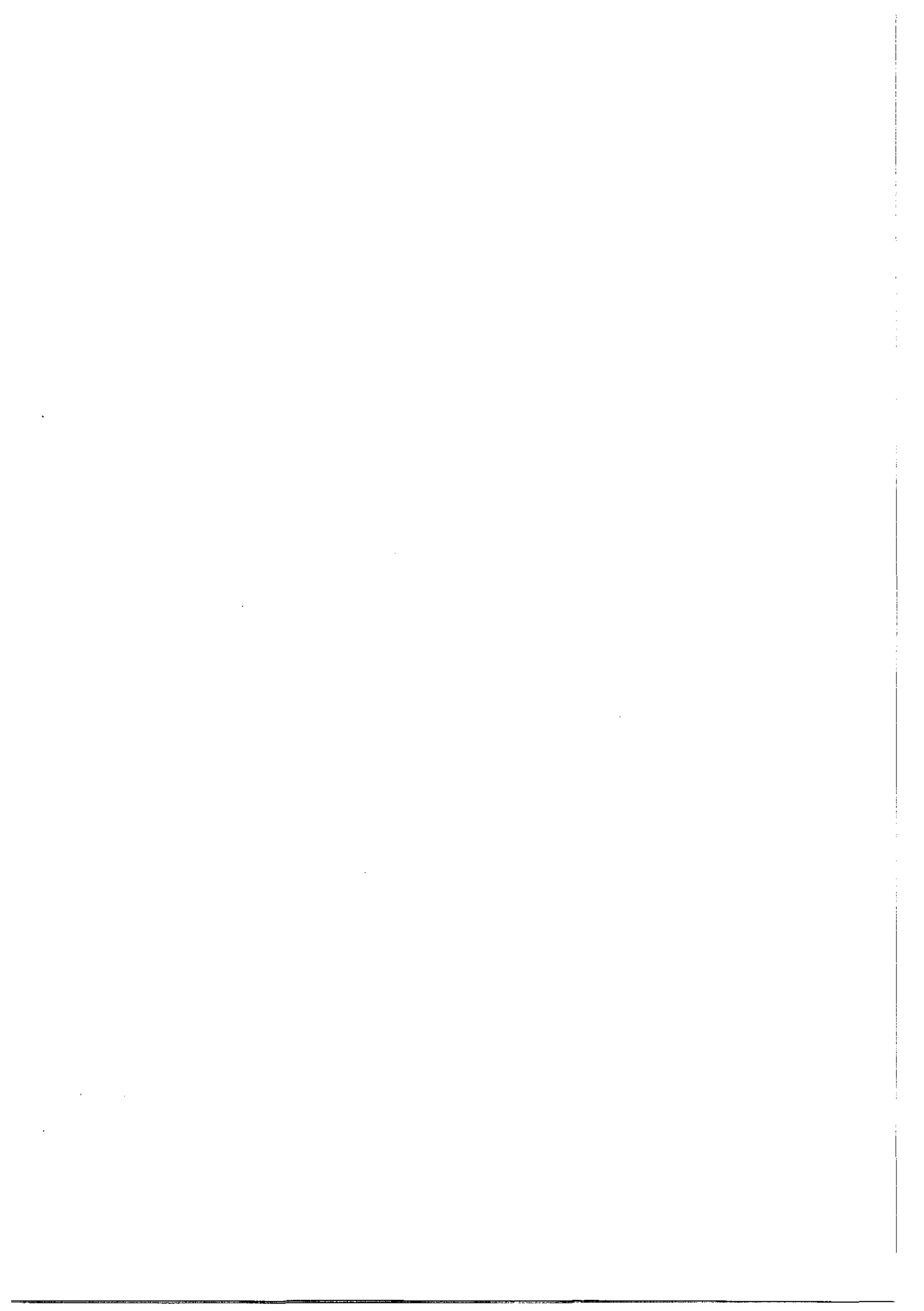
Members of the Assembly must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain.

Members of the Assembly must not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.

Members of the Assembly must not use, or allow the use of, public property or services for personal gain.

Members of the Assembly, when leaving public office and when they have left public office, must not take improper advantage of their former office.

And that, following the adoption of this motion, the Code of Ethical Conduct be included in the *Appendices to The Rules and Procedures of the Legislative Assembly* and in *The Legislative Assembly of Saskatchewan Members' Handbook*.

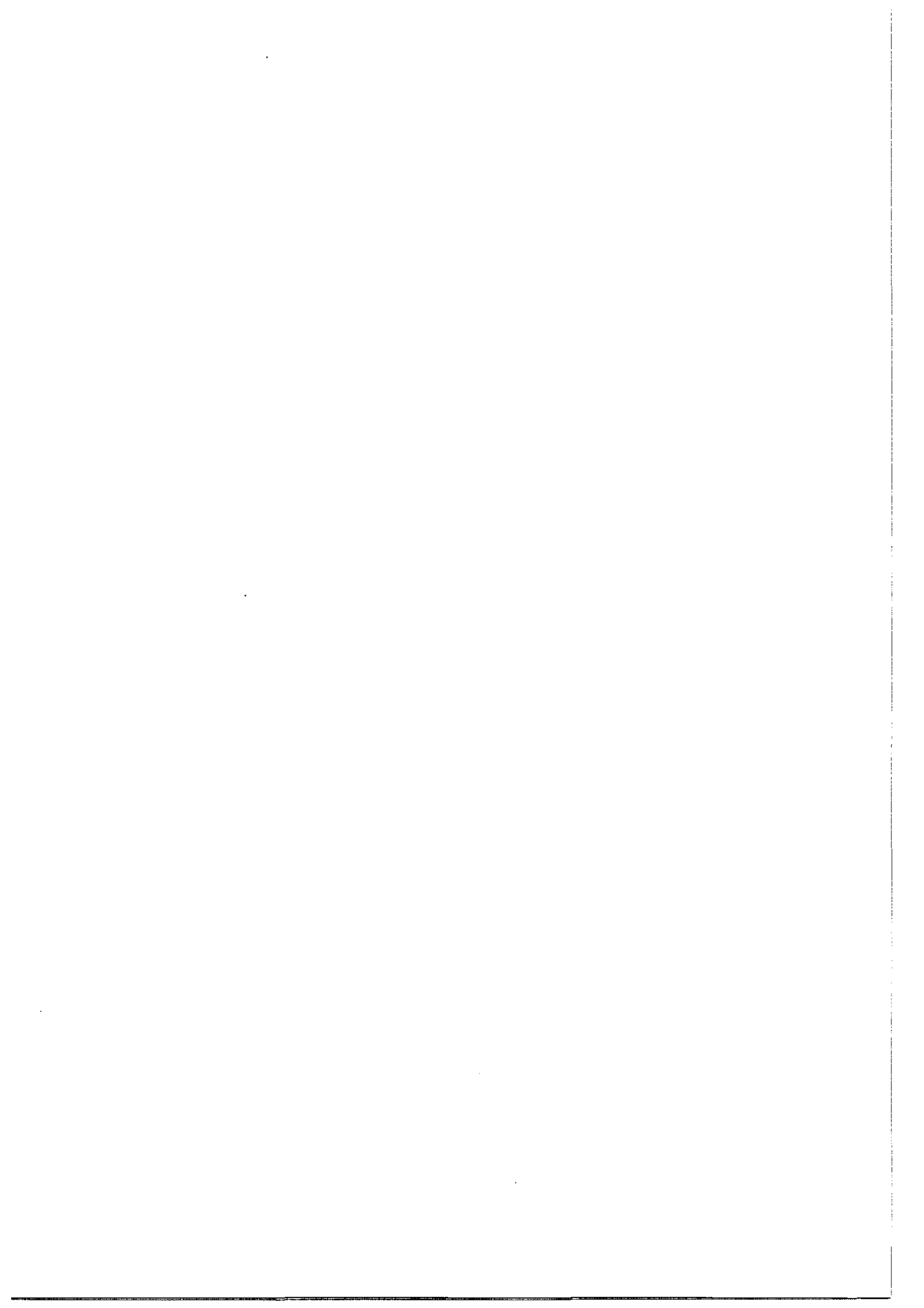




# Appendix 13

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## **MINUTES OF THE PROCEEDINGS**



# Proceedings of the Committee

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Note:

At the time the Committee was conducting this inquiry, it was also inquiring into other unrelated matters. Those parts of the Minutes of the Meetings of the Committee which concern the other two matters have been deleted from the Minutes appearing below.

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Meeting No. 1

Friday 9 June 1995

at Parliament House, Sydney, at 1.00 p.m.

## MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner

Mr Manson

Mr Johnson

Mrs Sham-Ho

Mr Jones

Mr Vaughan

The Clerk declared the meeting open and called for nominations for the Chair.

Mr Manson moved: That Dr Burgmann be elected Chair of the Committee.

Debate ensued.

Question put and passed.

Dr Burgmann took the Chair and made a statement to the Committee concerning the current enquiry into Codes of Conduct for Members of Parliament.

The Committee deliberated.

Mr Vaughan moved, in globo:

- (1) That arrangements for the calling of witnesses be left in the hands of the Chair and the Clerk.
- (2) That, unless otherwise ordered, parties appearing before the committee shall not be represented by members of the legal profession.
- (3) That, unless otherwise ordered, the press and public (including witnesses after examination) be admitted to the hearings of the committee.
- (4) That, unless otherwise ordered, transcripts of evidence taken by the committee be not made available to any person, party or organisation provided that each witness previously examined shall be given a proof copy of their evidence for correction and return to the Clerk.

Debate ensued.

Question put and passed.

Mrs Sham-Ho moved: That press statements concerning the deliberation of the Committee be made only by the Chair on behalf of the Committee.

Debate ensued.

Question put and passed.

Resolved, on motion of Mr Johnson: That the Chair write to both Presiding Officers requesting both Houses to give leave for Members and Officers of the House to appear before this Committee.

Mr Johnson moved: That the Chair write to the Chair of the Committee on the Independent Commission Against Corruption requesting access to papers and transcripts from the Committee's inquiry into Pecuniary Interest Provisions for Members of Parliament and Senior Executives and a Code of Ethics for Members of Parliament, a discussion paper of which was published in April 1994.

Debate ensued.

Question put and passed.

Resolved, on motion of Mrs Sham-Ho: That the Clerk prepare and place advertisements calling for submissions in relation to the Ethics inquiry, to be published in the Sydney Morning Herald and Australian Newspapers and selected

regional and other language newspapers and publications.

Question put and passed.

Mrs Sham-Ho moved: That the Chair write to Clerks in all Australian Parliaments, and to overseas Parliaments at the discretion of the Chair and Clerk, informing them of the Committee's inquiry and requesting details of any similar inquiries or Codes of Conduct in operation in those Parliaments.

Debate ensued.

Question put and passed.

Resolved, on motion of Mrs Sham-Ho: That the Chair write to the Premier and Leader of the Opposition informing them of the Committee's inquiry and requesting details of any Ministerial Codes of Conduct.

Miss Gardiner moved: That the Clerk prepare a list of prospective witnesses to appear before the committee in relation to its inquiry.

Debate ensued.

Question put and passed.

Mr Manson moved: That the Clerk prepare a discussion paper on the purpose, nature and expected outcomes of the inquiry.

Debate ensued.

Question put and passed.

Resolved, on motion of Mr Johnson: That the Chair write to the Treasurer Mr Egan and request urgent and favourable consideration of the Committee's budget submission.

The Committee adjourned at 2.11 p.m. until Wednesday 28 June 1995, at 11.00 a.m.

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MEETING NO. 2

Tuesday, 27 June 1995

at Parliament House, Sydney at 10.30 a.m.

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner	Mr Manson
Mr Johnson	Mrs Sham-Ho
Mr Jones	Mr Vaughan

Minutes of previous meeting held 9 June 1995 were confirmed on motion of Mrs Sham-Ho.

The Chair tabled the following correspondence:

- (i) Letters from the Chair to the following office holders requesting information and copies of any relevant papers or materials concerning codes of conduct for Members of Parliament:
  - (a) The Hon. Max Willis, MLC, President of the Legislative Council
  - (b) The Hon. John Murray, MP, Speaker of the Legislative Assembly
  - (c) The Hon. R. J. Carr, MP, Premier, Minister for the Arts, and Minister for Ethnic Affairs
  - (d) The Hon. P. Collins, MP, Leader of the Opposition
- (ii) Letter from the Chair to the Hon. M. Egan, MLC, Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice President of the Executive Council, requesting urgent and favourable consideration of the Committee's proposed budget.
- (iii) Letter from the Chair to Mr Peter Nagle, MP, Chairman, Committee on the ICAC requesting access to material held by the Committee, and information regarding proposed study tours which may assist the present inquiry.
- (iv) Letters from the Clerk to the following Australian Parliaments requesting information and copies of any relevant papers or materials concerning codes of conduct for Members of Parliament:
  - (a) Senate

- (b) House of Representatives
  - (c) Queensland Legislative Assembly
  - (d) Victorian Legislative Council
  - (e) Victorian Legislative Assembly
  - (f) Tasmanian Legislative Council
  - (g) Tasmanian Legislative Assembly
  - (h) South Australian Legislative Council
  - (i) South Australian Legislative Assembly
  - (j) Western Australian Legislative Council
  - (k) Western Australian Legislative Assembly
  - (l) Northern Territory Legislative Assembly
  - (m) Australian Capital Territory Legislative Assembly
- (v) Letters from the Clerk to the following overseas Parliaments requesting information and copies of any relevant papers or materials concerning codes of conduct for Members of Parliament:
- (a) English House of Commons
  - (b) English House of Lords
  - (c) Canadian Senate
  - (d) Canadian House of Commons
  - (e) British Columbia Legislative Assembly
  - (f) Saskatchewan Legislative Assembly
  - (g) Ontario Legislative Assembly
  - (h) New Zealand House of Representatives
  - (i) U.S. Senate

The Chair tabled a Background Paper entitled "Inquiry into a Draft Code of Conduct for Members of the Legislative Council: Briefing Paper - Preliminary Issues".

The Committee deliberated.

Mr Johnson moved: That the Chair write to the Crown Solicitor requesting advice as to whether the proposed code of conduct, as required under s.72c of the Independent Commission Against Corruption Act 1988, is constitutional.

Debate ensued.

Question put and passed.

Deliberations continued.

The Chair tabled a summary paper on the Committee on the ICAC Discussion Paper, April 1994, entitled "Pecuniary Interest Provisions for Members of Parliament and Senior Executives and a Code of Ethics for Members of Parliament".

Resolved, on motion of Mr Jones: That the Chair write to all Members of the Legislative Council, providing a copy of the Committee's Background Paper on Preliminary Issues, and requesting written submissions on the Committee's Inquiry.

Resolved, on motion of Mr Johnson:

(1) That a sub-committee consisting of the Chair and one other member, together with the Clerk:

(a) undertake visits of inspection to the United States of America, Canada and England later this year; and

(b) report to the Committee on their findings.

(2) That arrangements regarding the visits be left in the hands of the Chair and the Clerk.

The Chair made a statement regarding the placement of advertisements calling for submissions in relation to the Ethics inquiry and informed the Committee that a closing date of 17 August had been determined.

The Committee adjourned at 12.06 p.m. until Tuesday 25 July 1995 at 11.00 a.m.



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**MEETING No. 3**

**Tuesday 25 July 1995**

**at Parliament House, Sydney at 11.00 a.m.**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Johnson  
Mr Jones**

**Mrs Sham-Ho  
Mr Vaughan**

Apologies were received from Mr Manson.

Minutes of previous meeting held 27 June 1995 were confirmed on motion of Mrs Sham-Ho.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Memorandum from the Chair to all Members of the Legislative Council regarding the inquiry.
- (ii) Letter from the Research Officer to the Clerk of the Saskatchewan Legislative Assembly regarding their Anti-Corruption Bill, and the Committee's proposed visit of inspection.
- (iii) Letter from the Clerk of the Parliaments to the Crown Solicitor requesting advice as to the status of the Committee's current inquiry.
- (iv) Letters to the Clerks of the House of Commons and House of Lords concerning the Committee's proposed visit of inspection.
- (v) Letters from the Clerk to the Clerks of the Victorian Legislative Council and Legislative Assembly requesting further information.

- (vi) Letter to Dr Alan Rosenthal, Director, Eagleton Institute of Politics, Rutgers University, New Jersey requesting advice concerning studies of ethics legislation and systems in the United States.

Correspondence received:

- (i) Reply from Premier Carr, dated 30 June 1995, forwarding the NSW Labor Government's Ministerial Code of Conduct.
- (ii) Reply from the Clerk of the Parliaments on behalf of the President regarding the appearance of Members before the Committee.
- (iii) Two replies from Mr P Nagle, MP, Chairman of the Joint Committee on the ICAC, dated 6 July 1995 and 10 July 1995, regarding the exchange of information between the two committees.
- (iv) Reply from Mr D Gay, MLC, dated 14 July 1995, indicating his desire to appear before the Committee.
- (v) Two replies from Mr R Jones, MLC, dated 28 June 1995 and 7 July 1995, regarding possible witnesses before the Committee and the conduct of the inquiry.
- (vi) Replies from the following Clerks:
  - (a) Mr M McRae, Clerk, ACT Legislative Assembly.
  - (b) Mr G Mitchell, Clerk, South Australian Legislative Assembly.
  - (c) Ms J Davis, Clerk, South Australian Legislative Council.
  - (d) Ms L Graham, Research Officer, South Australian Legislative Review Committee.
  - (e) Mr R Doyle, Clerk, Queensland Legislative Assembly.
  - (f) Mr W Tunnecliffe, Deputy Clerk, Victorian Legislative Council.
  - (g) Mr R Purdy, Acting Clerk, Victorian Legislative Assembly.
  - (h) Mr P McHugh, Clerk, Western Australian Legislative Assembly.
  - (i) Mr H Evans, Clerk, Australian Senate.
  - (j) Mr L Barlin, Clerk, Australian House of Representatives.
  - (k) Ms D Deller, Clerk Assistant and Clerk of Committees, Ontario Legislative Assembly, Canada.
  - (l) Mr G MacMinn, Clerk, British Columbia Legislative Assembly, Canada.
  - (m) Mr D Doig, Clerk to the Committee on Standards in Public Life, House of Commons, United Kingdom.
  - (n) Mr G Cubie, Clerk of the Overseas Office, House of Commons, United Kingdom.

The Chair tabled the following Papers:

- (i) Extract from Constitution Act, 1902 relating the Legislative Council and Legislative Assembly.
- (ii) Briefing Paper entitled "Expulsion of Members".
- (iii) Background paper entitled "Citizens' Right of Reply - Senate Procedure".
- (iv) Extract re. Petitions from May's Parliamentary Practice (21st Ed.).
- (v) Membership of the Federal Parliament Working Group on standards of conduct of Members and Senators.
- (vi) Definitions of the terms: Felony; Infamous Crime; and Public Defaulter.
- (vii) Summary of Chapter 33 entitled "Final Observations" from "Report of the ICAC on the Investigation into North Coast Land Deals" dated July 1990.

The Committee deliberated.

The Committee adjourned at 12.15 p.m. *sine die*.

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**MEETING No. 4**

**Monday 28 August 1995**

**at Parliament House, Sydney at 11.00 a.m.**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Johnson  
Mr Jones**

**Mr Manson  
Mrs Sham-Ho**

Apologies were received from Mr Vaughan.

Minutes of previous meeting held 25 July 1995 were confirmed on motion of Mrs Sham-Ho.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter from the Clerk to Mr Erik Klipp, Consul-General of the Netherlands regarding the Committee's proposed study tour.
- (ii) Letter from the Clerk to Mr Ben Fayot, President, Committee on the Rules of Procedure, the Verification of Credentials and Immunities, European Parliament, regarding the Committee's proposed study tour.
- (iii) Letter from the Clerk to Mr Stephen Bingle, in response to his submissions and request to appear before the Committee;

Correspondence received:

- (i) Submissions:
  - (a) Ms Judith Hopwood, Student of Ethics (8 August 1995)
  - (b) The Hon Elisabeth Kirkby, MLC (8 August 1995)
  - (c) Mr Stephen Bingle (10 August 1995 and 15 August 1995)

(ii) Replies from the following:

- (a) Mr P Belisle, Clerk, Canadian Senate (13 July 1995)
- (b) Mr R Willoughby, Registrar, Registry of Members' Interests, House of Commons, United Kingdom (20 July 1995)
- (c) Mr G Putz, Deputy Clerk, Saskatchewan Legislative Assembly, Canada (21 July 1995)
- (d) Mrs M Bloor, Clerk in Attendance, House of Lords, United Kingdom (24 July 1995)
- (e) Mr J Little, Clerk, Victorian Legislative Assembly (25 July 1995)
- (f) Mr R Marleau, Clerk, Canadian House of Commons (25 July 1995)
- (g) Mr W Tunnecliffe, Acting Clerk, Victorian Legislative Council (27 July 1995)
- (h) Mr A Rosenthal, Rutgers University, USA (4 August 1995)
- (i) Ms S Walsh, Deputy Director, Interparliamentary Services, US Senate (9 August 1995)
- (j) Mr M Wheeler, Booth, Clerk, House of Lords, United Kingdom (10 August 1995)

(iii) Correspondence from the following prospective witnesses, regarding availability for hearings:

- (a) The Hon B S J O'Keefe, AM, QC, Commissioner, ICAC (18 August 1995)
- (b) Mr D Landa, Former Ombudsman (23 August 1995)
- (c) Mr K Mason, QC, Solicitor General for NSW (23 August 1995)
- (d) Mr M Hogan, Director, Public Interest Advocacy Centre (23 August 1995)
- (e) Mr J R Marsden, President NSW Council for Civil Liberties (29 August 1995)
- (f) Professor M Jackson, Department of Government, University of Sydney (30 August 1995)

Mrs Sham-Ho requested that an incremental list of correspondence, and submissions received, be provided for Members. The Chair concurred.

The Chair reported on a meeting held with the Chair of the Legislative Assembly Standing Committee on Ethics, Mr P Nagle, MP and informed the Committee that an extension of time for reporting was being sought until the budget session next year. She also indicated that Mr Nagle wishes to attend and participate in the Committee's hearings scheduled for Wednesday 13 September and Monday 18 September 1995.

The Chair tabled the following papers:

- (i) Edmund Burke's Speech to the Electors of Bristol
- (ii) Briefing papers on the expulsion of Mr Richard Price, MP, in 1918
- (iii) Draft Issues Paper

The Committee deliberated.

The Clerk reported that Mr D. Doig, one of the Clerks to the House of Commons Select Committee on Standards in Public Life which is examining the recommendations of the Nolan Committee, would be visiting the NSW Parliament on Monday 25 September 1995 and wishes to meet with the Members of the Committee to discuss the issue of Ethics.

Resolved, on motion of Miss Gardiner: That if no reply was received from the Crown Solicitor within the next few days, a follow up letter be sent regarding the Committee's current inquiry.

The Committee continued to deliberate.

Resolved, on motion of Mrs Sham-Ho: That a list of the available resources of the Committee in relation to its inquiry into a Code of Conduct for Members be forwarded to the Chair of the Legislative Assembly Standing Committee on Ethics.

The Committee adjourned at 12.26 p.m. until Wednesday 13 September 1995 at 9.30 a.m.

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**MEETING No. 5**

**Wednesday 13 September 1995**

**at Parliament House, Sydney at 9.30 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Johnson  
Mr Jones**

**Mr Manson  
Mrs Sham-Ho  
Mr Vaughan**

Minutes of previous meeting held 28 August 1995 were confirmed on motion of Mrs Sham-Ho.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Further letter from the Clerk to Mr I V Knight, Crown Solicitor seeking information with regard to the Code of Conduct within the Constitution Act.
- (ii) Correspondence sent to the following witnesses containing information for the hearings:
  - (a) Mr Steve O'Connor, Solicitor for Public Prosecutions (11 September 1995)
  - (b) Mr Anthony Harris, Auditor-General of NSW (11 September 1995)
  - (c) Mr David Landa, Former NSW Ombudsman (11 September 1995)
  - (d) Mr Chris Wheeler, Deputy Ombudsman (11 September 1995)
  - (e) Mr Chris Warren, Joint Federal Secretary, Media, Entertainment and Arts Alliance (11 September 1995)
  - (f) Mr Michael Hogan, Director, Public Interest Advocacy Centre (11 September 1995)

Correspondence received:

- (i) Submission from Independent Commission Against Corruption (August 1995)

(ii) Further submission from Mr Steve Bingle (29 August 1995)

Responses from:

(iii) Mr Ben Fayot, President, Communities on the Rules of Procedure, the Verification of Credential and Immunities, European Parliament. (8 August 1995)

(iv) Letter from Mr Philippe Ventujol, Committee on the Rules of Procedure, the Verification of Credential and Immunities, regarding the Committee's proposed study tour (11 August 1995)

(v) Response from Mr Erik Klipp, Consul General of the Netherlands, regarding the Committee's proposed study tour (8 September 1995)

(vi) Letter to Chair from Mr Peter Nagle, MP, Chairman of the Legislative Assembly Ethics Committee proposing a Joint Hearing for the two Committees on Friday 22 September 1995 (23 August 1995)

The Chair tabled a paper entitled "Ronald William "Bunna" Walsh, MLC (Victoria) Declared Ineligible to be a Member, 1970".

The Committee deliberated.

Resolved, on motion of Mr Jones: That the Committee agrees to the request of the Chairman of the Legislative Assembly Standing Ethics Committee, Mr P.R. Nagle, MP, to confer with this Committee on Wednesday 13 September 1995 and Monday 18 September 1995 while public hearings are conducted.

Resolved, on motion of Miss Gardiner: That the Committee agrees to allow the Chairman of the Legislative Assembly Standing Ethics Committee to question witnesses on Wednesday 13 September 1995 and Monday 18 September 1995 according to usual Committee procedure.

Resolved, on motion of Mr Johnson: That in accordance with the Resolution of the Legislative Council of 11 October 1995, the Committee authorises the sound broadcasting and television broadcasting of its public proceedings, unless otherwise ordered.

The media and public were admitted.

Mr Steve O'Connor, Solicitor for Public Prosecutions, was sworn and examined.

Evidence concluded, the witness withdrew.



Mr Anthony Harris, NSW Auditor-General, was sworn and examined.

Evidence concluded, the witness withdrew.

Mr David Landa, Former NSW Ombudsman, was sworn and examined.

Evidence concluded, the witness withdrew.

Mr Chris Wheeler, Deputy Ombudsman, was sworn and examined.

Evidence concluded, the witness withdrew.

Mr Chris Warren, Joint Federal Secretary, Media Entertainment and Arts Alliance, was sworn and examined.

Evidence concluded, the witness withdrew.

Mr Michael Hogan, Director, Public Interest Advocacy Centre, was sworn and examined.

Evidence concluded, the witness withdrew.

The media and public withdrew.

The Committee deliberated.

Resolved, on motion of Mrs Sham-Ho: That, pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the submissions of the Solicitor for Public Prosecutions; the Auditor-General of NSW; the former NSW Ombudsman; the Deputy Ombudsman; the Joint Federal Secretary of the Media, Entertainment and Arts Alliance; and the Director of the Public Interest Advocacy Centre.

The Committee adjourned at 3.50 pm until Monday 18 September 1995 at 10.15 am.

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**MEETING No. 6**

**Monday 18 September 1995**

**at Parliament House, Sydney at 10.15 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Johnson  
Mr Jones**

**Mr Manson  
Mrs Sham-Ho  
Mr Vaughan**

Minutes of previous meeting held 13 September 1995 were confirmed on motion of Mrs Sham-Ho.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter from Chair to Mr Peter Nagle, MP regarding Joint Hearing for 22 September 1995; (14 September 1995)
- (ii) Further letter from Chair to Mr Peter Nagle, MP (15 September 1995)
- (iii) Correspondence sent to the following witnesses containing information for the hearings:
  - (a) Ms Angela Chan, Chairperson, Ethnic Communities Council of NSW; (14 September 1995)
  - (b) Mr John Cauchi, Member, Ethnic Communities Council of NSW; (14 September 1995)
  - (c) Mr John Marsden, President, Council for Civil Liberties; (14 September 1995)
  - (d) Mr Keith Mason, QC, NSW Solicitor-General; (14 September 1995)
  - (e) Dr Damian Grace, School of Social Work, University of NSW; (14 September 1995)

Correspondence received:

- (i) Letter from Mr Michael A J Wheeler-Booth, Clerk of the Parliaments, House of Lords;(14 September 1995)

The Committee deliberated.

The Chair tabled a letter and paper from Mr Steve O'Connor, Solicitor for Public Prosecutions, dated 14 September 1995.

Deliberations continued.

Resolved, on motion of Mrs Sham-Ho: That the Chair write to the Aboriginal Reconciliation Council and Aboriginal Legal Service inviting them to appear and give evidence before the Committee in relation to its inquiry.

Resolved, on motion of Mr Johnson: That the Chair write to Mr Richard Humphrey, Chairman of the NSW Stock Exchange, and Mr Gary Sturgess, Consultant, inviting them to appear and give evidence before the Committee in relation to its inquiry.

The media and public were admitted.

Ms Angela Chan, Chairperson, Ethnic Communities Council of NSW and Mr John Cauchi, Member of the Ethnic Communities Council of NSW, were sworn and examined.

Evidence concluded, the witnesses withdrew.

Mr John Marsden, President, Council for Civil Liberties, was sworn and examined.

Evidence concluded, the witness withdrew.

Mr Keith Mason, QC, NSW Solicitor General, was sworn and examined.

Evidence concluded, the witness withdrew.

Dr Damian Grace, Senior Lecturer, School of Social Work, University of NSW, was sworn and examined.

Evidence concluded, the witness withdrew.

The media and public withdrew.

Resolved, on motion of Mrs Sham-Ho: That, pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under authority of Standing Order No. 252, the Committee authorises the Clerk of the Committee to publish the submissions of the Chairperson and Deputy Chairperson of the Ethnic Communities Council of NSW; President of the Council for Civil Liberties; NSW Solicitor-General; Senior Lecturer, School of Social Work, University of NSW.

Resolved, on motion of Mr Manson: That the Committee, having considered the request of the Hon P Nagle, MP agrees to meet and confer with the Legislative Assembly Standing Ethics Committee on Friday 22 September 1995, during the hearings scheduled for that day.

Resolved, on motion of Miss Gardiner: That the Committee continue with its arrangements and proceed on an overseas visit of inspection in relation to its inquiry into a draft Code of Conduct for Members of the Legislative Council.

Resolved, on motion of Miss Gardiner: That the Committee proceed on visits of inspection to the National Parliament of New Zealand and the Queensland Criminal Justice Commission.

The Committee adjourned at 4.05 pm until Friday 22 September 1995 at 3.45 pm.

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**MEETING No. 7**

**Friday 22 September 1995**

**at Parliament House, Sydney at 3.45 pm**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Jones**

**Mrs Sham-Ho**

Apologies were received from Mr Johnson, Mr Manson and Mr Vaughan.

Minutes of previous meeting held 18 September 1995 were confirmed on motion of Mrs Sham-Ho.

The Chair tabled the following correspondence:

**Correspondence sent:**

- (i) Further letter from Chair to Mr Peter Nagle, MP (18 September 1995)
- (ii) Letter from Clerk to Commissioner Barry O'Keefe containing details of hearing for 22 September 1995 (20 September 1995)
- (iii) Letters from the Clerk to the following witnesses containing transcripts of evidence:
  - (a) Mr Steve O'Connor, Solicitor for Public Prosecutions (18 September 1995)
  - (b) Mr Anthony Harris, Auditor-General of NSW (18 September 1995)
  - (c) Mr David Landa, Former NSW Ombudsman (18 September 1995)
  - (d) Mr Chris Wheeler, Deputy Ombudsman (18 September 1995)
  - (e) Mr Chris Warren, Joint Federal Secretary, Media, Entertainment and Arts Alliance (18 September 1995)
  - (f) Mr Michael Hogan, Director, Public Interest Advocacy Centre (18 September 1995)

- (g) Ms Angela Chan, Chairperson, Ethnic Communities Council of NSW; (18 September 1995)
- (h) Mr John Cauchi, Member, Ethnic Communities Council of NSW; (18 September 1995)
- (i) Mr John Marsden, President, Council for Civil Liberties; (18 September 1995)
- (j) Mr Keith Mason, QC, NSW Solicitor-General; (18 September 1995)
- (k) Dr Damian Grace, School of Social Work, University of NSW; (18 September 1995)

Correspondence received:

- (i) References on Ethics by Dr Damian Grace (19 September 1995)

The Committee deliberated.

Resolved, on motion of Mrs Sham-Ho: That, pursuant to the provisions of Section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under authority of Standing Order No. 252, the Committee authorises the Clerk of the Committee to publish the submission of the Commissioner, Independent Commission Against Corruption.

The media and public were admitted.

The Hon. Barry O'Keefe, Commissioner, Independent Commission Against Corruption was sworn and examined.

Evidence concluded, the witnesses withdrew.

The media and public withdrew.

The Committee deliberated.

The Committee adjourned at 5.15 pm until Tuesday 3 October 1995 at 9.30 am.

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**MEETING No. 8**

**Tuesday 3 October 1995**

**at Parliament House, Sydney at 9.30 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Jones  
Mr Johnson**

**Mr Manson  
Mrs Sham-Ho**

Apologies were received from Mr Vaughan.

Minutes of previous meeting held 22 September 1995 were confirmed on motion of Mr Johnson.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letters from the Clerk to the following witnesses containing transcripts of evidence:
  - (a) Ms Angela Chan, Chairperson, Ethnic Communities Council of NSW;
  - (b) Mr John Cauchi, Vice-Chairperson of the Ethnic Communities Council of NSW;
  - (c) Mr John Marsden, President, Council for Civil Liberties;
  - (d) Mr Keith Mason, QC, Solicitor General of NSW;
  - (e) Dr Damian Grace, School of Social Work;
  - (f) Hon. Barry O'Keefe, Commissioner, Independent Commission Against corruption.
  
- (ii) Letter from the Clerk to the following inviting them to appear before the Committee during hearings:
  - (a) Mr Gary Sturgess, Director, Sturgess Australia (25 September 1995)
  - (b) Mr Richard Humphry, Managing Director, Australian Stock Exchange (25 September 1995)

- (iii) Letter from the Clerk to the following containing information regarding the hearings:
  - (a) Dr Simon Longstaff, The St James Ethics Centre (26 September 1995)
  - (b) The Hon John Jobling, MLC (27 September 1995)
  - (c) Gary Sturgess (28 September 1995)
  - (d) Richard Humphry (28 September 1995)
- (iv) Letters from the Chair to the following:
  - (a) Commissioner Barry O'Keefe, QC (28 September 1995)
  - (b) Mr Daniel Wright, Project Officer, Legislative Assembly Standing Ethics Committee (28 September 1995)

Correspondence received:

- (i) Responses to written questions and list of issues asked by the Hon. Barry O'Keefe, Commissioner, Independent Commission Against Corruption (25 September 1995)
- (ii) Letter from Project Officer of the Legislative Assembly Standing Ethics Committee, inviting the Committee to their public hearing on 13 October 1995(26 September 1995)

The Committee deliberated.

Resolved, on motion of Mr Johnson: That the Chair write to the Premier and request that the Independent Commission Against Corruption Act be amended to extend the time that is available for the Committee to report to the Legislative Council with a draft code of conduct, so that the Committee can report prior to, but no later than 31 July 1996.

The media and public were admitted.

Dr Simon Longstaff, Executive Director of the St James Ethics Centre was sworn and examined.

Evidence concluded, the witness withdrew.

The Hon. John Jobling, MLC, Opposition Whip was sworn and examined.

Evidence concluded, the witness withdrew.

Mr Richard Humphry, Former Director General, Premier's Department was sworn and examined.



Evidence concluded, the witness withdrew.

Mr Gary Sturgess, Former Director General, Cabinet Office was sworn and examined.

Evidence concluded, the witness withdrew.

The media and public withdrew.

The Committee deliberated.

Resolved, on motion of Mr Manson: That, pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under authority of SO 252, the Committee authorises the Clerk of the Committee to publish the submissions of the Executive Director of the St James Ethics Centre; Opposition Whip in the Legislative Council; Former Director General of the Premier's Department and the Former Director General of the Cabinet Office.

The Committee adjourned at 3.39 pm until Wednesday 11 October 1995 at 9.30 am.

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**MEETING No. 9**

**Wednesday 11 October 1995**

**at Parliament House, Sydney at 9.30 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Jones  
Mr Johnson**

**Mrs Sham-Ho  
Mr Vaughan**

Apologies were received from Mr Manson.

Minutes of previous meeting held Tuesday 3 October 1995 were confirmed on motion of Mr Johnson.

The Chair tabled the following correspondence:

Correspondence sent:

- (ii) Letter from the Chair to Mr Peter Nagle, MP, Chairman of the Legislative Assembly Standing Ethics Committee accepting their invitation for 13 October 1995. (4 October 1995)
- (ii) Letter from the Chair to Ms Ronda Miller, Clerk to the Legislative Assembly Standing Ethics Committee. (4 October 1995)
- (iii) Letter from the Chair to the Hon R J Carr, MP, Premier, Minister for Ethnic Affairs and Minister for the Arts. (4 October 1995)
- (iv) Letters from the Clerk to the following witnesses containing transcripts of evidence:
  - (a) Dr Simon Longstaff, The St James Ethics Centre (4 October 1995)
  - (b) The Hon J Jobling, MLC, Opposition Whip (4 October 1995)
  - (c) Mr Richard Humphry, Former Director General of the Premiers Department (4 October 1995)
  - (d) Mr Gary Sturgess, Former Director General of the Cabinet Office (4 October 1995)

The Committee deliberated.

Mr Johnson moved:

(1) That a sub-committee consisting of the Chair and Miss Gardiner, together with the Clerk:

- (a) undertake visits of inspection to India, Europe and North America in 1996; and
- (b) report to the Committee on their findings.

(2) That arrangements regarding the visit be left in the hands of the Chair and the Clerk.

Debate ensued.

Mrs Sham-Ho moved: That the question be amended by omitting "Miss Gardiner" and inserting instead "the senior member of the Opposition, Mrs Sham-Ho".

Debate continued.

Question: That the amendment be agreed to - put and negatived.

Original question:

(1) That a sub-committee consisting of the Chair and Miss Gardiner, together with the Clerk:

- (a) undertake visits of inspection to India, Europe and North America in 1996; and
- (b) report to the Committee on their findings.

(2) That arrangements regarding the visit be left in the hands of the Chair and the Clerk—put and passed.

The Committee adjourned at 10.00 am *sine die*.

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MEETING No. 10

Friday 13 October 1995

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner  
Mr Johnson  
Mr Jones

Mrs Sham-Ho  
Mr Vaughan

Apologies were received from Mr Manson.

The Committee met with the Legislative Assembly Standing Ethics Committee for the purpose of holding a joint hearing.

Legislative Assembly Members present: Mr Nagle, Ms Andrews, Mr Lynch, Mr Turner and Community Members Mr Kim Wilson, Mrs Leonie Tye and Cr Stan Hedges.

The media and public were admitted.

Mr Michael Costigan, Australian Catholic Social Justice Council, was admitted and examined.

Evidence concluded, the witness withdrew.

Dr Michael Jackson, Department of Government, University of Sydney, was admitted and examined.

Evidence concluded, the witness withdrew.

Mr Chris Wheeler, Deputy Ombudsman, was admitted and examined.

Evidence concluded, the witness withdrew.

Mr Anthony Harris, Auditor-General of NSW, was admitted and examined.

Evidence concluded, the witness withdrew.

The media and public withdrew.

The Committee adjourned at 4.28 pm *sine die*.

---

MEETING No. 11

Thursday 9 November 1995

at Parliament House, Sydney at 9.00 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Mr Johnson

Mrs Sham-Ho

Apologies were received from Miss Gardiner, Mr Jones, Mr Manson and Mr Vaughan.

The Committee met with the Legislative Assembly Standing Committee on Ethics for the purpose of holding a joint hearing.

Legislative Assembly Members present: Mr Nagle, Ms Andrews, Ms Chikarovski, Mr Lynch, Ms Meagher, Mr Watkins and Community Members Mrs Leonie Tye and Cr Stan Hedges.

The media and public were admitted.

Dr Simon Longstaff, Executive Director of the St James Ethics Centre, was admitted and examined.

Evidence concluded, the witness withdrew.

Mr Nicholas Meagher, Ms Virginia Shirrington and Mr Gary Still, Law Society of NSW were admitted and examined.

Evidence concluded, the witnesses withdrew.

The media and public withdrew.

Mr John Dela Bosca, Secretary, Australian Labor Party NSW was admitted and examined.

The Committee continued in camera.

Evidence concluded, the witness withdrew.

The media and public were admitted.

Mr David Mendelssohn, President, Australian Democrats NSW, was admitted and examined.

Evidence concluded, the witness withdrew.

The media and public withdrew.

Mr Tony Nutt, State Director, The Liberal Party of Australia NSW, was admitted and examined.

The Committee continued in camera.

Evidence concluded, the witness withdrew.

The media and public were admitted.

Mr Robert McDougall, NSW Bar Association, was admitted and examined.

Evidence concluded, the witness withdrew.

The media and public withdrew.

The Committee adjourned at 4.55 pm sine die.

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BRIEFING No. 1

Thursday 16 November 1995

at Parliament House, Sydney at 8.00 pm

MEMBERS PRESENT

Miss Gardiner

Mr Lynn

Apologies were received from Dr Burgmann, Mr Johnson, Mr Jones, Mr Manson and Mr Vaughan.

As no quorum was present, the Committee met on an informal basis with the Legislative Assembly Standing Committee on Ethics for the purpose of holding a joint briefing with the Hon K Rozzoli, MP, former Speaker of the Legislative Assembly.

Legislative Assembly Members present: Mr Nagle (in the Chair), Ms Andrews, Ms Chikarovski, Ms Meagher, Mr Watkins and Community Members Mrs Leonie Tye and Cr Stan Hedges.

The Committee adjourned at 9.17 pm *sine die*.



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**BRIEFING No. 2**

**Friday 24 November 1995**

**at Parliament House, Sydney at 9.30 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner**

**Mr Lynn**

Apologies were received from Mr Johnson, Mr Jones, Mr Manson and Mr Vaughan.

The Committee met with the Legislative Assembly Standing Committee on Ethics for the purpose of holding a joint briefing with Dr Noel Preston, Senior Lecturer in Applied Ethics within the School of Humanities, Queensland University of Technology.

Legislative Assembly Members present: Ms Chikarovski, Ms Meagher, Mr Turner and Community Member Cr Stan Hedges.

The Committee adjourned at 10.40 am until Monday 27 November 1995.

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**MEETING No. 12**

**Monday 27 November 1995**

**at Parliament House, Sydney at 9.30 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Johnson**

**Mr Lynn  
Mr Manson**

Apologies were received from Mr Jones, Mr Vaughan.

Minutes of the previous meetings held on 13 October and 9 November and previous briefings on 16 November and 24 November confirmed on motion of Ms Gardiner.

The Chair tabled the following correspondence:

Correspondence sent:

\* \* \*

(iii) Letters to the following in regard to the upcoming trip in 1996:

- (a) Mr Philippe Ventujol, Committee on the Rules of Procedure, the Verification of Credentials and Immunities, European Parliament, Schuman (25 October 95)
- (b) Ms Helen Reidy, US Information Service, Sydney(25 October 1995)
- (c) Mr Erik Klipp, Consul General of the Netherlands, Bondi Junction (25 October 1995)
- (d) Honourable Dr Najima Heptulla, Deputy Chairman, Rajya Sabha, Parliament House, New Delhi, INDIA (25 October 1995)
- (e) Pras. Dr Hanna-Renate Laurien, Abgeordnetenhaus von Berlin,

- (e) Pras. Dr Hanna-Renate Laurien, Abgeordnetenhaus von Berlin, Germany (25 October 1995)
  - (f) Mr Ben Fayot, President, Committee on the Rules of Procedure, the Verification of Credentials and Immunities (25 October 1995)
  - (g) Honourable Mr Shiraj V. Patil, Speaker, Lok Sabha, Parliament House, Dew Delhi, INDIA (25 October 1995)
- (ii) Letter from the Clerk to Mr Gregory Putz, Deputy Clerk, Saskatchewan Legislative Assembly regarding trip in 1996 (2 November 1995)
  - (iii) Letter to Mr Bret Walker, SC, inviting him to appear before the Committee (15 November)
  - (iv) Letter to Dr Noel Preston, Senior Lecturer in Applied Ethics, School of Humanities, Queensland University of Technology (17 November 1995)
  - (v) Letter to Ms Susan Holgate, Consulate-General of Netherlands, Re: the trip in January 1996 (17 November 1995)
  - (vi) Letter to Mr Jeff Fanning, Department of Foreign Affairs, Re: the trip in January 1996 (17 November 1995)
  - (vii) Letter from the Clerk to the Hon Duncan Gay, MLC re: the hearings for 27 November 1995 (22 November 1995)
  - (viii) Letter from the Clerk to the Hon Duncan Gay, MLC re: postponing of hearing dated 27 November 1995 (23 November 1995)
  - (viii) Letter from the Clerk to the Hon P Nagle, MP, Chairman of the Legislative Assembly Standing Ethics Committee, re: hearings cancelled for 27 November 1995 (23 November 1995)
  - (vii) Letter from the Clerk to Mr Cecil Patten, Executive Officer, Aboriginal Legal Service, re: hearings on 27 November 1995 (23 November 1995)

\* \* \*

Correspondence received:

- (i) Facsimile sent from Mr John Schmidt containing letter from the Hon R J Carr, MP re: reporting date of the Legislative Assembly Standing Ethics

Committee (13 September 1995)

- (ii) Letter from Mr Damian Grace, The University of New South Wales, containing references to books containing ethics relating subject matter (19 September 1995)
- (iii) Letter from Mr Philippe Ventujol, Committee on the Rules and Procedure, the Verification of Credentials and Immunities re: the Committee trip planned for January 1996 (2 October 1995)
- (iv) Letter from Mit Freundichen Gruben, Berlin Parliament, explaining that Allkamper has referred the material faxed to them relating to the trip in January 1996 to Wolfgang Zeh (8 November 1995)
- (v) Letter from the Australiarama Asia Pacific Adventure re: trip in January 1996 (14 November 1995)
- (vi) Letter from the Dutch Consulate re: trip in January 1996 (8 September 1995)
- (vii) Letter to the Hon Peter Nagle, MP, Chairman, Legislative Assembly Standing Ethics Committee from M J Cornwell, Deputy Clerk of the Parliament, Research Director to the Committee to the Members Ethics and Parliamentary Privileges Committee re: meeting with the Legislative Assembly Standing Ethics Committee (16 October 1995)

The Committee deliberated.

\* \* \*

The Committee adjourned at 11.26 am *sine die*.

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**MEETING No. 13**

**Friday 8 December 1995**

**at Parliament House, Sydney at 9.30 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Mr Lynn**

**Mr Vaughan**

Apologies were received from Miss Gardiner, Mr Johnson, Mr Jones and Mr Manson.

The Committee met with the Legislative Assembly Standing Ethics Committee for the purpose of holding a joint hearing.

Legislative Assembly Members present: Mr Nagle (in the Chair), Ms Andrews, Ms Chikarovski, Mr Turner, Mr Watkins and Community Member Cr Stan Hedges.

The media and public were admitted.

Mr Ken Cripps, Commissioner, Public Employment Office and Mr Barry Moynahan, Manager, Ministerial Liaison Unit, Public Employment Office were admitted and examined.

Evidence concluded, the witnesses withdrew.

Professor David Flint, Chairman, Australian Press Council was admitted and examined.

Evidence concluded, the witness withdrew.

Mr Steve Chase, President of the NSW Press Gallery, was admitted and examined.

Evidence concluded, the witness withdrew.

The media and public withdrew.

The Committee adjourned at 12.37 pm *sine die*.

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MEETING No. 15

Monday 22 April 1996

at Parliament House, Sydney at 2.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Mr Jones  
Mr Lynn

Mr Manson  
Mr Vaughan

Apologies were received from Miss Gardiner and Mr Johnson.

Minutes of previous meeting held 19 December 1995 were confirmed on motion of Mr Manson.

The Chair tabled the following correspondence:

Correspondence sent:

\* \* \*

- (ii) Letter from the Clerk to Mr A N Chopra, Lok Sabha Parliament House, New Delhi, confirming appointments for study tour (2 January 1996)

\* \* \*

- (vi) Letter from Project Officer to Ms Susan Richards, Congressional Liaison Office, Australian Embassy, Washington confirming appointments for the study tour;  
(19 January 1996)
- (vii) Letter from the Chair to Mr P Nagle, MP, Chairman of the Legislative Assembly Standing Ethics Committee regarding the InterState Study Tour by the Legislative Assembly Committee (6 February 1996)
- (viii) Memorandum from the Clerk to the Committee to the Clerk of the Parliaments regarding the Approval for Project Officer to accompany study

tour of the Legislative Assembly Ethics Committee (15 March 1996)

Correspondence received:

- (i) Letters and faxes from Mr Anthony Knox, Alsace Development Agency, concerning study tour arrangements in Strasbourg (15, 20 December 1995 and 3 January 1996)
- (ii) Letters from Dr Michael Fernau, Consulate General of Federal Republic of Germany, to the Clerk to the Committee, regarding the program for the study tour (22 and 29 December 1995)
- (iii) Faxes from Mr Jeff Fanning, Department of Foreign Affairs and Trade regarding the study tour, following dates: (24 November, 4,7,8,13,20,22,29,29 December 1995 and 4,5 January 1996)
- (iv) Letter to the Clerk from Mr Hendrik Kubler, Berlin Parliament concerning the proposed study tour, and forwarding copies of the rules of procedure; (28 November 1995)

\* \* \*

- (viii) Letter to the Clerk from Mr Bent Adamsen, European Parliament re draft program for the study tour (7 December 1995)

\* \* \*

- (x) Letter from the Chair of the Legislative Assembly Standing Ethics Committee, Mr Peter Nagle, MP, concerning the proposed InterState Study tour (24 January 1996)
- (xi) Letter to the Clerk from Mr Anthony Knox, Regional Director, Alsace Development Agency to the Clerk thanking the study tour for visiting their office in Strasbourg (31 January 1995)
- (xii) Memorandum from Mr Daniel Wright, Project Officer, Legislative Assembly Standing Ethics Committee to Ms Velia Mignacca, Project Officer re the Legislative Assembly Committee study tour (14 March 1996)

\* \* \*

The Chair tabled a copy of the *Discussion Paper concerning a Code of Conduct for Members of Parliament*, April 1996, issued by the Legislative Review Committee



of the Parliament of South Australia.

\* \* \*

The Committee determined that deliberative meetings would be held at the following times:

Friday 3 May 1996	10.00 am - 1.00 pm
Monday 6 May 1996	10.00 am - 12.30 pm
Tuesday 7 May 1996	10.00 am - 12.30 pm
Friday 17 May 1996	2.00 pm

The Committee adjourned at 3.35 pm until Friday 3 May 1996 at 10.00 am.

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MEETING No. 17

Monday 6 May 1996

at Parliament House, Sydney at 10.00 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner  
Mr Johnson  
Mr Jones

Mr Lynn  
Mr Manson  
Mr Vaughan

Minutes of previous meeting held 3 May 1996 were confirmed on motion of Mr Jones.

The Committee deliberated.

\* \* \*

Resolved on motion of Mr Jones: That the Committee meet at a mutually convenient time with the Legislative Assembly Standing Ethics Committee to consider the Draft Code of Conduct.

The Committee continued deliberations.

The Committee adjourned at 12.00 pm until Tuesday 7 May 1996 at 10.00 am.

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**MEETING No. 18**

**Tuesday 7 May 1996**

**at Parliament House, Sydney at 10.00 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Johnson  
Mr Jones**

**Mr Lynn  
Mr Manson  
Mr Vaughan**

Minutes of previous meeting held 6 May were confirmed on motion of Mr Jones.

The Committee deliberated.

The Committee considered the Selected Provisions from Codes of Conduct from Other Parliaments.

The Committee adjourned at 12.25 pm until Friday 17 May 1996 at 2.00 pm.

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**MEETING No. 19**

**Wednesday 15 May 1996**

**at Parliament House, Sydney at 10.00 am.**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner**

**Mr Johnson**

**Mr Jones**

**Mr Lynn**

**Mr Manson**

**Mr Vaughan**

Minutes of previous meeting held 7 May 1996 were confirmed on motion of Mr Johnson.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter from the Chair to the Chair of the Legislative Assembly Standing Ethics Committee, Mr P Nagle, MP, in response to his letter of 8 May, requesting a joint meeting of all Members of both Committees to discuss and consider the draft code of conduct for Members (10 May 1996)

Correspondence received:

- (i) Letter to the Chair from the Chairman of the Legislative Assembly Standing Ethics Committee attaching that Committee's Draft Code of Conduct and inviting the Chair to comment on it (8 May 1996)

The Committee deliberated.

The Committee considered the Draft Code of Conduct.

\* \* \*

The Committee adjourned at 10.45 am until Friday 17 May 1996 at 2.00 pm.

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MEETING No. 20

Friday 17 May 1996

at Parliament House, Sydney at 2.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner  
Mr Johnson

Mr Jones  
Mr Vaughan

Apologies were received from Mr Lynn and Mr Manson.

Minutes of previous meeting held 15 May 1996 were confirmed on motion of Mr Johnson.

The Chair tabled the following correspondence:

Correspondence received:

- (i) Letter to the Chair from the Chair of the Legislative Assembly Standing Ethics Committee suggesting a time for the two Committees to meet to consider the Draft Code of Conduct (14 May 1996)
- (ii) Letter to the Chair from the Chair of the Legislative Assembly Standing Ethics Committee requesting a copy of the Legislative Council's Committee Draft Code of Conduct (16 May 1996)

The Committee deliberated.

The Committee considered the Draft Code of Conduct.

Resolved on motion of Mr Johnson: That a copy of the Draft Code of Conduct be sent to the Chairman of the Legislative Assembly Standing Ethics Committee, Party Leaders in the Legislative Council, the Cross Bench Members of the Legislative Council, the President of the Legislative Council, and the Hon Barry O'Keefe, Commissioner, Independent Commission Against Corruption.

Resolved, on motion of Mr Johnson: That the Chair hold such discussions concerning the Draft Code of Conduct as she thinks fit.

The Committee determined that it would meet on Wednesday 22 May 1996 at 12 noon, and on Thursday 23 May 1996 at 1.00 pm.

The Committee adjourned at 3.35 pm until Wednesday 22 May 1996 at 12 noon.

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MEETING No. 21

Wednesday 22 May 1996

at Parliament House, Sydney at 12.00 noon

MEMBERS PRESENT

Miss Gardiner  
Mr Johnson  
Mr Jones

Mr Lynn  
Mr Manson  
Mr Vaughan

Minutes of previous meeting held 17 May 1996 were confirmed on motion of Mr Vaughan.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letters from the Clerk were sent to the following enclosing the Draft Code of Conduct in accordance with the Resolution of the meeting on Friday 17 May 1996 (20 May 1996)
- Party Leaders in the Legislative Council
    - The Hon M Egan, MLC
    - The Hon J Hannaford, MLC
    - The Hon R Bull, MLC
    - The Revd the Hon F Nile, MLC
  - Cross Bench Members of the Legislative Council
    - The Hon I Cohen, MLC
    - The Hon A Corbett, MLC
    - The Hon E Kirkby, MLC
    - The Hon E Nile, MLC
    - The Hon J Tingle, MLC
  - The Hon Max Willis, MLC, President of the Legislative Council

- the Hon Barry O'Keefe AM, QC, Commissioner, Independent Commission Against Corruption.

The Committee deliberated.

The Committee considered the Draft Code of Conduct.

Resolved, on motion of Miss Gardiner: That the Report on the Committee delegation's Study Tour to India, Europe and North America be signed by the Chair and tabled, and that 200 copies of the Report be printed, on recycled paper if possible, after tabling.

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The Committee adjourned at 12.28 pm until Thursday 23 May 1996 at 1.00 pm.



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**MEETING No. 22**

**Thursday 23 May 1996**

**at Parliament House, Sydney at 1.00 pm**

**MEMBERS PRESENT**

**Dr Burgmann  
Miss Gardiner  
Mr Johnson**

**Mr Jones  
Mr Lynn  
Mr Vaughan**

Apologies were received from Mr Manson.

The Committee met with the Legislative Assembly Standing Committee on Ethics for the purpose of conferring in relation to the Draft Codes of Conduct of the two Committees.

Legislative Assembly Members present: Mr Nagle (in the Chair), Ms Andrews, Mr Lynch, Mr Macdonald, Ms Meagher, Mr Watkins, and Community Members Cr Stan Hedges, Mrs Leonie Tye, and Mr Kim Wilson.

The Committee deliberated.

The Committee adjourned at 2.04 pm until Tuesday 28 May 1996 at 1.45 pm.

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MEETING No. 24

Tuesday 25 June 1996

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner  
Mr Johnson  
Mr Jones

Mr Lynn  
Mr Manson  
Mr Vaughan

The Chair made a statement concerning the joint meeting with the Legislative Assembly Standing Ethics Committee which had been scheduled for Friday 21 June 1996.

Minutes of previous meeting held 23 May 1996 were confirmed on motion of Mr Johnson.

The Chair tabled the following Papers:

- (i) Extract from the Minutes of Proceedings of the Legislative Council, Wednesday 19 June 1996, referring the Special Report of Estimates Committee No. 1 to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report;
- (ii) The *Special Report on a Possible Contempt of the Committee* of Legislative Council Estimates Committee No. 1, June 1996;
- (iii) Minutes of Proceedings, Estimates Committee No. 1, Meeting No. 1 on the Legislature, Thursday 30 May 1996; and
- (iv) Minutes of Proceedings, Estimates Committee No. 1, Meeting No. 8, Supplementary meeting on the Legislature, Thursday 6 June 1996

The Committee considered the Draft Code of Conduct.

The Committee deliberated.

The Committee adjourned at 2.00 pm until Wednesday 26 June 1996 at 3.00 pm in the Legislative Council Annexe.

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MEETING No. 25

Wednesday 26 June 1996

at Parliament House, Sydney at 3.30 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner  
Mr Johnson  
Mr Jones

Mr Lynn  
Mr Manson

Apologies were received by Mr Vaughan.

Minutes of previous meeting held 25 June 1996 were confirmed on motion of Mr Johnson.

The Committee considered the Draft Code of Conduct.

The Committee deliberated.

Resolved, on Motion of Mr Johnson: That the Committee adopt the proposed Draft Code of Conduct, as amended.

Resolved, on Motion of Mr Jones: That the proposed Draft Code of Conduct be advertised in the principal metropolitan daily newspapers.

The Committee adjourned at 4.08 pm *sine die*.

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MEETING No. 26

Wednesday 24 July 1996

at Parliament House, Sydney at 3.30 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner  
Mr Johnson

Mr Jones  
Mr Lynn

Apologies were received by Mr Manson and Mr Vaughan.

Minutes of previous meeting held 26 June 1996 were confirmed on motion of Mr Jones.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letters attaching a copy of the proposed Code of Conduct, in response to requests, to the following:

Mr Mark Robinson	(23 July)
Mr Graeme Castlehow	(23 July)
Mr Peter Rooke	(22 July)
Mr Raymond Brazil	(19 July)
Mr Mark Cotter	(19 July)
Mr Isaiah Komaravalli	(15 July)
Father Joseph Lee	(15 July)
Mr Ken Coghill	(15 July)
Mr McKendry	(15 July)
Mr John Schmidt	(12 July)
Mr G Poulton	(12 July)
Dr Stewart Sharlow	(11 July)
Mr A C Harris, NSW Auditor-General	(11 July)
Ms Caroline Cattanach	(11 July)
Mr Steve Wilson	(11 July)

Mr John Owens	(10 July)
Mr N Lemon	(10 July)
Mr Robert Follet	(10 July)
Mr K Griffin	(10 July)
Project Officer, PO Box 114, BAY VILLAGE NSW 2261 (no name given)	(10 July)
Mr Philip Achurch	(10 July)
Dr William De Maria	(10 July)
Mrs W M Azardegan	(10 July)
Mr Adam Bogazki	(10 July)
Mr Barry Sawtell	(10 July)
Mr Damien Blanch	(10 July)
Mr Silvio Angelucci	(10 July)
Mr Anthony O'Connell	(8 July)
Mr Bob Allen	(8 July)

- (ii) Letters dated 12 July 1996 attaching a copy of the proposed Code of Conduct to the following witnesses who appeared before the Committee:

Professor Michael Jackson, Department of Government, University of Sydney  
 Mr John Cauchi, Deputy Chairperson, Ethnic Communities Council of NSW  
 Ms Angela Chan, Chairperson, Ethnic Communities Council of NSW  
 Mr Gary Sturgess, Director, Sturgess Australia  
 Mr Richard Humphry, Managing Director, Australian Stock Exchange  
 Dr Simon Longstaff, Executive Director, The St James Ethics Centre  
 Commissioner Barry O'Keefe, Independent Commission Against Corruption  
 Mr Keith Mason, QC, Solicitor General for NSW  
 Mr John Marsden, President, Council for Civil Liberties  
 Mr Michael Hogan, Director, Public Interest Advocacy Centre  
 Mr Chris Warren, Joint Federal Secretary, Media, Entertainment and Arts Alliance  
 Mr Chris Wheeler, Deputy Ombudsman  
 Mr Steve O'Connor, Solicitor for Public Prosecutions  
 Mr David Landa  
 Dr Noel Preston (10 July)  
 Dr Damien Grace (10 July)

**Correspondence received:**

- (i) Letters requesting a copy of the proposed Code of Conduct:

Mr Damien Blanch (10 July)  
 Mr Silvio Angelucci, Office of the Queensland

Parliamentary Counsel (10 July)  
Mr Anthony O'Connell (6 July)

- (ii) Letters enclosing submissions regarding the proposed Code of Conduct from the following:

Mr Peter Rooke, Transparency International (24 July)  
Mr J Owens (19 July)  
Mr N R Cowdery QC, Director of Public Prosecutions (17 July)  
Mr R J Thornton (16 July)  
Mr A C Harris, NSW Auditor-General (15 July)

- (iii) Letter from Ms Karen Byrne, General Counsel, Australian Stock Exchange on behalf of Mr Richard Humphry, Managing Director, Australian Stock Exchange, in response to the Committee's letter forwarding a copy of the proposed Code of Conduct (17 July)

- (iv) Letter to the Chair from the Hon Elisabeth Kirkby, MLC concerning correspondence from Dr Simon Holliday and the Hon Richard Jones, MLC (12 July 1996)

The Committee deliberated.

The Chair reported on a meeting which she attended with the Chairman and certain other officers of the Western Australian Commission on Government in Perth on 18 July 1996.

Resolved, on motion of Mr Lynn: That the Chair prepare and submit a draft report on the inquiry into the development of a Draft Code of Conduct for Members of the Legislative Council, for consideration by the Committee.

The Committee deliberated.

The Committee determined that the following meetings would be held:

**Tuesday 20 August 1996**

**10.00 am to 1.00 pm**

Consideration of submissions received on proposed code of conduct.

**Thursday 22 August 1996**

**10.00 am to 1.00 pm**

Consideration of draft report.

**Thursday 29 August 1996**  
**10.00 am to 1.00 pm**  
Consideration of draft report.

The Committee adjourned at 4.30 pm until Tuesday 20 August 1996.



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**MEETING No. 27**

**Tuesday 20 August 1996**

**at Parliament House, Sydney at 10.00 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner  
Mr Johnson  
Mr Jones**

**Mr Lynn  
Mr Vaughan**

Apologies were received from Mr Manson.

Minutes of previous meeting held 24 July 1996 were confirmed on motion of Mr Lynn.

The Chair tabled the following correspondence:

Correspondence sent:

(i) Letter from the Chair to the Hon Elisabeth Kirkby, MLC in response to letter of 12 July 1996 concerning correspondence from Dr Simon Holliday and the Hon Richard Jones, MLC (2 August)

(ii) Letters to the following attaching a copy of the proposed Code of Conduct in response to requests (where not included in (ii) below):

**Mr Eric Jones  
Dr Kunwar Rajsingh  
Mr Ross Wilson, Attorney-General's Department**

(iii) Letters from the Project Officer to the following thanking them for their submissions in response to the Committee's proposed Draft Code of Conduct:

**Mr A C Harris  
NSW Auditor-General (26 July)**

Mr N R Cowdery, QC  
Director of Public Prosecutions (26 July)

Mr R J Thornton (26 July)  
Mr J Owens (26 July)

Mr Peter Rooke  
Chief Executive  
Transparency International Australia (26 July)

The Hon J Saffin, MLC (26 July)

Mrs Wendy Marie Azadegan (26 July)

The Hon Richard Bull, MLC (1 August)

Dr Simon Longstaff, St James Ethics Centre (2 August)

Call to Australia Group (2 August)

Mr Isaiah Komaravalli (13 August)

Correspondence received:

(i) Letters enclosing submissions from the following regarding the proposed Code of Conduct:

- Mr Isaiah Komaravalli (12 August)
- Call to Australia Group (2 August)
- Dr Simon Longstaff (2 August)
- The Hon Richard Bull, MLC (1 August)
- Mrs Wendy Marie Azadegan (25 July)
- The Hon Janelle Saffin, MLC (24 July)

The Committee deliberated.

The Committee considered the Draft Code of Conduct in light of submissions received and feedback from Members of the House.

The Committee determined that the Chair would hold further discussions concerning the Draft Code of Conduct with the Chair of the Legislative Assembly Standing Ethics Committee Mr P Nagle, and with the Leader of the Government in the Legislative Assembly the Hon P Whelan MP.

The Committee adjourned at 11.00 am until Thursday 29 August 1996 at 10.00 am.

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MEETING No. 28

Thursday 22 August 1996

at Parliament House, Sydney at 10.00 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner  
Mr Johnson  
Mr Jones

Mr Lynn  
Mr Vaughan

Apologies were received from Mr Manson.

Minutes of previous meeting held 20 August 1996 were confirmed on motion of Mr Johnson.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter from the Clerk to the Committee to the Hon Ian Cohen MLC, thanking him for his submission in response to the Committee's proposed Draft Code of Conduct (21 August)

Correspondence received:

- (i) Letter from the Hon I Cohen, MLC to the Clerk to the Committee enclosing a submission regarding the proposed Code of Conduct (21 August)

The Committee deliberated.

Mr Jones moved: That draft replies to each submission received in response to the Draft Code of Conduct be prepared for consideration by the Committee.

Debate ensued.

Question put and passed.

The Committee considered the submissions on the proposed Code of Conduct received from:

- The Hon Ian Cohen, MLC (21 August)
- Mr Isaiah Komaravalli (12 August)
- Call to Australia Group (2 August)
- Mrs Wendy Marie Azadegan (25 July)
- The Hon Janelle Saffin, MLC (24 July)
- Mr J Owens (19 July)
- Mr N R Cowdery QC, Director of Public Prosecutions (17 July)
- Mr R J Thornton (16 July)
- Mr A C Harris, NSW Auditor-General (15 July)

The Chair reported that the Chair of the Legislative Assembly Standing Ethics Committee Mr P Nagle MP, and the Leader of the Government in the Legislative Assembly the Hon P Whelan MP, had agreed to hold discussions concerning the proposed Code of Conduct.

The Committee determined that the meeting scheduled for Thursday 29 August 1996 at 10.00 am be cancelled due to the unavailability of certain Members of the Committee on that day.

The Committee adjourned at 11.50 am until Tuesday 10 September 1996 at 9.30 am.

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**MEETING No. 29**

**Tuesday 10 September 1996**

**at Parliament House, Sydney at 9.30 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Miss Gardiner**

**Mr Johnson**

**Mr Jones**

**Mr Lynn**

**Mr Manson**

**Mr Vaughan**

Minutes of previous meeting held 22 August 1996 were confirmed on motion of Mr Manson.

The Chair tabled the following correspondence:

**Correspondence sent:**

- (i) Letter from the Clerk to the Committee to Mr Phillip Neuss, thanking him for his submission in response to the Committee's proposed Draft Code of Conduct (22 August)
- (ii) Letter from the Chair to the Committee to Mr I V Knight, Crown Solicitor, inviting him to comment on the draft proposed Code of Conduct and its legal ramifications (2 September)

**Correspondence received:**

- (i) Letter to the Chair from the Hon Peter Primrose MLC, concerning the conduct of business activities by the Hon Charlie Lynn, MLC
- (ii) Letter to the Chair from the Chairman of the Queensland Legislative Assembly Members' Ethics and Parliamentary Privileges Committee regarding proposed visit of that Committee on Monday 14 October 1996 (2 September)

The Committee deliberated.

The Chairman of the Legislative Assembly Standing Ethics Committee, Mr P Nagle MP, met with the Committee to discuss the possibility of a joint code of conduct for the two Houses.

The Committee determined that:

(1) The Chair, accompanied by the Clerk to the Committee, would meet with the Legislative Assembly Standing Ethics Committee on Friday 13 September 1996 to discuss a possible joint code of conduct and implementation of the code.

(2) The Chair, together with the Chairman of the Legislative Assembly Standing Ethics Committee Mr P Nagle MP, would meet with party leaders in each House to discuss a possible joint code, and implementation of the code.

Mr Nagle withdrew.

The Committee considered the submission received from Dr Simon Longstaff, Executive Director, St James Ethics Centre, in relation to the proposed code of conduct.

The Committee adjourned at 11.40 am until Monday 16 September 1996 at 2.00 pm.

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**MEETING No. 30**

**Monday 16 September 1996**

**at Parliament House, Sydney at 2.00 pm**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Mr Johnson  
Mr Jones**

**Mr Lynn  
Mr Manson**

Apologies were received from Ms Gardiner and Mr Vaughan.

Minutes of previous meeting held 10 September 1996 were confirmed on motion of Mr Jones.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letters to the following in response to their submissions on the proposed code of conduct:
- Mr Isaiah Komaravalli
  - The Hon I Cohen, MLC
  - The Revd the Hon F Nile, MLC
  - The Hon J Saffin, MLC
  - Mr R Thornton
  - Mr N R Cowdery QC
  - Mr A C Harris
  - Mrs Wendy Marie Azadegan
  - Mr John Owens
- (ii) Letter to the Premier seeking extension of the reporting date for the Code of Conduct Inquiry (2 September 96)



The Committee deliberated.

The Committee considered the submission received from Mr Peter Rooke, Chief Executive, Transparency International Australia, dated 26 July 1996, in relation to the proposed code of conduct.

The Committee considered the proposed code of conduct in light of Mr Rooke's submission.

Dr Burgmann moved: Page 2, clause 4. After "spouse" wherever occurring insert "/partner".

Debate ensued.

Question put.

The Committee divided.

Ayes 3

Dr Burgmann  
Mr Jones  
Mr Manson

Noes 2

Mr Johnson  
Mr Lynn

Question resolved in the affirmative.

The Committee continued to deliberate.

The Committee deferred consideration of the submission from the Hon R Bull MLC concerning the proposed code of conduct, pending the outcome of the Chair's discussions with party leaders.

The Committee adjourned at 3.15 pm until Wednesday 25 September 1996 at 9.30 am.

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**MEETING No. 31**

**Friday 18 October 1996**

**at Parliament House, Sydney at 10.00 am**

**MEMBERS PRESENT**

**Dr Burgmann (in the Chair)**

**Ms Gardiner**

**Mr Lynn**

**Mr Jones**

**Mr Vaughan**

Apologies were received from Mr Johnson and Mr Manson.

Minutes of previous meeting held 16 September 1996 were confirmed on motion of Mr Lynn.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letters to the following in response to submissions on the proposed code of conduct:
  - Dr Simon Longstaff (17 September 1996)
  - Mr Peter Rooke (24 September 1996)

Correspondence received:

- (i) Letter from Mr N Cowdery, Director of Public Prosecutions in response to the Committee's letter dated 10 September 1996 concerning the Proposed Draft Code of Conduct (16 September 1996)
- (ii) Letter from Mr I V Knight, Crown Solicitor containing advice on the Proposed Draft Code of Conduct for Members (19 September 1996)

(i) Letters enclosing submission from the following regarding the proposed Code of Conduct:

- The Hon Elisabeth Kirkby, MLC on behalf of the Australian Democrats (11 October 1996)
- Dr R L Cope  
Visiting Associate, School of information, Library and Archive Studies  
University of New South Wales (9 October 1996)

The Committee deliberated.

The Committee discussed the following submissions on the proposed code of conduct:

- (a) The Hon R Bull, MLC on behalf of the Liberal National Party Coalition (1 August 1996)
- (b) Hon Elisabeth Kirkby, MLC on behalf of Australian Democrats (11 October 1996)
- (c) Dr R L Cope (9 October 1996)

The Committee considered the proposed code of conduct in light of the submission from the Director of Public Prosecutions, Mr N Cowdery QC dated 16 September 1996.

The Committee adjourned at 11.15 am until Monday 21 October 1996 at 2.00 pm.

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MEETING No. 32

Monday 21 October 1996

at Parliament House, Sydney at 2.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Mr Jones  
Mr Lynn

Mr Manson  
Mr Vaughan

Apologies were received from Ms Gardiner and Mr Johnson.

Minutes of previous meeting held 18 October 1996 were confirmed on motion of Mr Jones.

The Committee deliberated.

The Committee considered the proposed draft code of conduct in light of the advice provided by the Crown Solicitor, Mr I V Knight, dated 19 September 1996.

The Committee adjourned at 3.35 pm until Wednesday 23 October 1996 at 10.00 am.

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MEETING No. 33

Wednesday 23 October 1996

at Parliament House, Sydney at 10.00 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner  
Mr Jones  
Mr Johnson

Mr Lynn  
Mr Vaughan

Apologies were received from Mr Manson.

Minutes of previous meeting held 21 October were confirmed on motion of Mr Johnson.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter from the Chair to the Committee to the following thanking them for their submission in response to the Committee's proposed Draft Code of Conduct:
- The Hon R Bull, MLC  
Legislative Council (22 October 1996)
  - The Hon E Kirkby, MLC  
Legislative Council (22 October 1996)
  - Dr R L Cope  
School of Information, Library and Archive Studies  
University of New South Wales (22 October 1996)

The Committee deliberated.

The Committee considered the Draft Report on the Inquiry into the Establishment of a Draft Code of Conduct for Members.

Chapter 1 read.

Resolved, on motion of Ms Gardiner: That paragraph 1.3.7 be amended by inserting at the end: "Also, since non-parliamentary members are not elected, and are not bound by the Standing Orders of the House, they are not accountable in the way that elected Members of Parliament are accountable."

Resolved, on motion of Mr Jones: That paragraph 1.4.6 be amended by inserting at the end: "This final extension was a last minute unsuccessful attempt to resolve the differences between the Legislative Assembly and Legislative Council Codes of Conduct."

Chapter 1, as amended, agreed to.

Chapter 2 read, amended and agreed to.

Chapter 3 read and agreed to.

Chapter 4 read.

Resolved, on motion of Mr Jones: That paragraph 4.1.16 be amended by inserting at the end: "The Hon Barry O'Keefe also took the view that compromise and the giving of concessions is part of the political process and not necessarily 'corrupt conduct'."

Resolved, on motion of Mr Jones: That paragraph 4.2.3 be amended by inserting at the end: The Crown Solicitor, Mr Ian Knight highlighted the need for the Code to be drafted with clarity and precision so that there can be little room for doubt as to whether or not a breach of the Code had occurred. This was particularly important in view of the consequences in terms of possible corrupt conduct which could flow from a substantial breach of the Code.

Resolved, on motion of Mr Jones: That paragraph 4.3.2 be amended by inserting after "An aspirational code may have greater flexibility, but its lack of detail may cause ambiguity and uncertainty" the words "and may, when combined with a sanctions provision, create real problems in implementation".

Resolved, on motion of Mr Lynn: That the following paragraph be inserted after paragraph 4.3.9:

4.3.10 One area which was not addressed when taking evidence in relation to the Code, was whether having the Code linked to sanctions in a "legal" sense by virtue of s. 9 of the ICAC Act impacted on the type of Code which the witnesses believed should be adopted. It is

intended that this issue will be addressed during the first review of the Code which must take place within 2 years of the adoption of the initial Code.

Resolved, on motion of Ms Gardiner: That paragraph 4.5.8 be amended by inserting at the end:

“In fact, in the United States a person currently serving a prison term may stand for and be elected to Congress.”

Resolved, on motion of Mr Jones: That paragraph 4.6.20 be amended by inserting after “As a result, Members and staff with young children are disadvantaged in their ability to perform their parliamentary duties.” the sentence “Modifying sitting hours would also address the issue of sobriety in the House which was raised in the submission of the Hon. Ian Cohen on the proposed draft Code of Conduct.”

Chapter 4, as amended, agreed to.

The Committee adjourned at 12.20 pm until Thursday 22 October 1996 at 3.00 pm.

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MEETING No. 34

Thursday 24 October 1996

at Parliament House, Sydney at 3.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Miss Gardiner

Mr Jones

Mr Johnson

Mr Manson

Mr Lynn

Mr Vaughan

Minutes of previous meeting held 23 October were confirmed on motion of Mr Johnson.

The Committee deliberated.

The Committee considered the proposed draft Code of Conduct.

Mr Johnson moved: That the proposed draft Code of Conduct be amended by omitting the word "partner" wherever occurring.

Debate ensued.

Question put.

The Committee divided.

Ayes

Ms Gardiner

Mr Lynn

Mr Johnson

Mr Vaughan

Noes

Dr Burgmann

Mr Jones

Mr Manson

Question resolved in the affirmative.



Amendment agreed to.

The Committee continued to deliberate.

Mr Manson moved: That the amended draft Code of Conduct be adopted.

Debate ensued.

Ms Gardiner moved: That the question be amended by inserting at the end "as one of the alternative types of codes for consideration by the House."

Debate continued.

Question put: That the amendment be agreed to.

The Committee divided.

Ayes

Ms Gardiner  
Mr Vaughan

Noes

Dr Burgmann  
Mr Johnson  
Mr Manson

Question resolved in the negative.

Amendment negatived.

Original question put and passed.

The Committee further considered the Draft Report on the Inquiry into the Establishment of a Draft Code of Conduct for Members.

Chapter 5 read.

Resolved, on motion of Ms Gardiner: That paragraph 1.3.7 be amended by omitting the words "possible legal ramifications flowing from the provisions contained within the Code" and inserting instead "consequences in terms of possible corrupt conduct which could flow from a substantial breach of the Code.

Resolved, on motion of Ms Gardiner: That the word "draft" be inserted before the word "Code" where appropriate in Chapter 5, section 5.3.

Resolved, on motion of Ms Gardiner: That paragraph 5.3.4 be amended by omitting the words "incorporates amendments" and inserting instead

"incorporating amendments, is published as the second version" and omitting the words "and recommends that it be adopted by the House as the Code of Conduct to apply for Members of the Legislative Council."

Resolved, on motion of Ms Gardiner: That paragraph 5.3.5 be amended by omitting the words "does not in this Committee's view, go far enough in detailing the standard of behaviour required of Members of Parliament. The aspirational basis of the Code does not provide sufficient clarity, certainty and consistency in the regulation of ethical standards and responsibilities to provide an appropriate mechanism for judging Members' behaviour" and inserting instead "may not take sufficient account of the Crown Solicitor's advice to this Committee with respect to the possible implications of any decision by the House to adopt an aspirational Code as distinct from a prescriptive Code for the purposes of the ICAC Act"

Chapter 5, as amended, agreed to.

The Committee determined that Chapter 6 as read would form part of the Report, on the proviso that any Member could veto any part of the Chapter before 10.00 am, Monday 28 October 1996.

Resolved, on motion of Mr Johnson: That the Report on the Inquiry into the establishment of a draft Code of Conduct for Members, as amended, be adopted.

Resolved, on motion of Mr Johnson: That the Report be signed by the Chair and presented to the House in accordance with the provisions of the ICAC Act 1988.

The Committee adjourned at 4.57 pm, *sine die*.