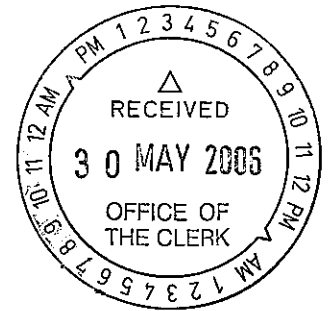


**Hon Dr Bob Such MP**  
**Member for Fisher**



26 May 2006

Hon Peter Primrose MLC  
Chair  
Legislative Council Privileges Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Peter

Thank you for your letter of 19 April 2006 regarding the review of the NSW Legislative Council Members' Code of Conduct. As you would be aware, I am no longer the Speaker of the South Australian House of Assembly.

However, I was a member of the Joint Committee on a Code of Conduct for Members of Parliament, and have enclosed a copy of its final Report which may be of interest to you. The Code of Conduct has not yet been adopted by the SA Parliament – it is still being debated.

I appreciate you taking the time to seek my views on this matter.

Yours sincerely

A handwritten signature in black ink that reads "R B Such".

Bob Such MP JP  
**Member for Fisher**

30006JB LC Code of Conduct 24May.doc



**REPORT**  
**OF THE**  
**JOINT COMMITTEE**  
**ON A**  
**CODE OF CONDUCT FOR**  
**MEMBERS OF PARLIAMENT**

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**1. INTRODUCTION**

**1.1 APPOINTMENT OF COMMITTEE**

On Thursday, 17 July 2003, the Legislative Council concurred with the Resolution of the House of Assembly contained in Message No. 124 for the appointment of a Joint Committee to consider a Code of Conduct for Members of Parliament.

**1.2 MEMBERSHIP**

The Membership of the Committee prescribed by the Resolution of the House of Assembly and Legislative Council was as follows:

The Hon J M Gazzola MLC  
The Hon R D Lawson MLC  
The Hon N Xenophon MLC  
Ms V Chapman MP  
Mr J D Rau MP  
The Hon R B Such MP.

Mrs Jan Davis, Clerk of the Legislative Council and Mr Malcolm Lehman, Deputy Clerk of

the House of Assembly, were appointed Secretaries to the Committee.

At its first meeting held on 31 July 2003, The Hon J M Gazzola MLC was appointed Chairperson.

On 30 September 2003, the Committee appointed Ms Jeanette Barnes as Research Officer.

### 1.3 TERMS OF REFERENCE

The Committee's terms of reference, as agreed to by the House of Assembly and Legislative Council, were -

"to inquire into the adoption of a Code of Conduct for all Members of Parliament, and in doing so consider -

- (a) a Code of Conduct for all Members of Parliament, addressing -
  - (i) the integrity of Parliament;
  - (ii) the primacy of the public interest over the furthering of private interests;
  - (iii) disclosure of interest;
  - (iv) conflict of interest;
  - (v) independence of action (including bribery, gifts and personal benefits, sponsored travel/accommodation, paid advocacy)
  - (vi) use of entitlements and public resources;
  - (vii) honesty to Parliament and the public;
  - (viii) proper relations with Ministers and the public service;
  - (ix) confidentiality of information;
  - (x) appropriate use of information and inside information;
  - (xi) Government contracts; and
  - (xii) duties as a Member of Parliament;
- (b) a procedure for enforcement of the Code by Parliament that ensures recognition of the responsibility of each House of Parliament for its own affairs and the supremacy of the institution of Parliament in the Westminster system, effective investigation and adjudication of complaints which is impartially administered and protects members who are the subject of an allegation (including trivial and vexatious complaints) in a similar way to a court or professional disciplinary body;
- (c) an appropriate method by which Parliament should adopt a Code (eg by legislation, Resolution, Standing Order or any other method), taking into consideration how best to engender knowledge and understanding of it by the public as well as by Members;
- (d) the relationship between the Code and statutory requirements for disclosure of Members' financial interests;
- (e) whether a code of conduct should be adopted for Officers of the Parliament; and
- (f) an introductory and continuing ethical and constitutional education program for Members, having regard to -
  - (i) the Discussion Paper and draft Code of Conduct for Members of Parliament prepared by the Legislative Review Committee in 1996;
  - (ii) standards of conduct required of public servants by the Public Sector Management Act 1995;
  - (iii) the way other jurisdictions (including the UK and Canada) have developed - codes of conduct and draft codes of conduct for Members of Parliament, enforcement procedures, advisory services for Members, introductory and continuing legal education programs and informing the public about the code and its enforcement; and
  - (iv) written submissions from members of the public and from persons with

expertise in the areas under report.”.

#### 1.4 COMMITTEE POWERS

Joint Standing Order No. 5 empowered the Committee “to send for persons, papers and records”. Upon Resolution of the House of Assembly and Legislative Council, the appointed Members had power to act on the Committee during the recess.

#### 1.5 CONDUCT OF INQUIRY

The Committee placed an advertisement in the *Adelaide Advertiser* inviting written submissions no later than 5 September 2003. A total of four written submissions were received.

A list of the written submissions provided to the Committee is attached as *Appendix A*.

The Committee met on a total of 15 occasions for the consideration of written submissions and research material and deliberation on the Committee’s recommendations and Report.

This Report was adopted by the Committee at its meeting on 14 October 2004.

#### 1.6 ACKNOWLEDGEMENTS

The Committee would like to acknowledge and thank the following organisations for providing information to the Committee -

- Australian Journalists’ Association
- Australian Medical Association (SA) Inc
- Certified Practising Accountants Australia
- Institute of Chartered Accountants in Australia
- Law Society of South Australia

### 2. EXECUTIVE SUMMARY

There are many statutory and Parliamentary rules which govern the conduct of Members of the South Australian Parliament. Members and the public may not be fully aware of the extent of this regulatory regime or the penalties which may be imposed on a Member for a breach of these rules.

This Committee is of the opinion that Members should be fully informed of their obligations as Members of Parliament and that clear guidance be provided on the ethical discharge of their duties to the Parliament and their constituents. This guidance should be provided in the form of a “Statement of Principles”.

Although the terms of reference referred to a Code of Conduct, the Committee considered that the principles applying to Members of Parliament should be embodied in a concise Statement of Principles. Accordingly, the Committee recommends that a Statement of Principles be adopted for Members of Parliament. The Committee believes that a Statement of Principles will provide -

- a valuable statement of the principles applying to public life;
- a reference point to assist Members in the discharge of their duties in complying with the obligations of public life; and
- an educational tool to better inform the public of the duties and obligations of Members of Parliament.

### 3. BACKGROUND TO THE REPORT

Six Australian Legislatures presently have a “Code of Conduct”.

- Victoria was the first to implement a code. A statutory prescribed code is contained in the

*Members of Parliament (Register of Interests) Act 1978.*

- The Tasmanian House of Assembly amended its Standing Orders in 1996 to include a *Code of Ethical Conduct*. The Code contains a Statement of Commitment and Declaration of Principles. The Standing Orders also contain a *Code of Race Ethics*.
- In 1998 both Houses of the New South Wales Parliament adopted a Code of Conduct in the form of a Sessional Order.
- The Legislative Assembly of the Western Australian Parliament resolved to adopt a Code of Conduct in 2003.
- Queensland implemented a Code of Ethical Standards in 2001 which is a consolidation of relevant legislation, Standings Orders and Resolutions of the Legislative Assembly.
- The Standing Orders Committee of the Northern Territory Legislative Assembly reported on a Draft Code of Conduct and Ethical Standards, the Report of which was adopted in March 2004.

Ministers of the Crown, as Members of the Executive, have additional requirements imposed upon them. A Ministerial Code of Conduct has been established in South Australia for many years. A new Ministerial Code was introduced on 1 July 2002. Among other things, the Code places restrictions on the business activities and financial dealings of Ministers, particularly where they may be in a position of conflict of interest. The Code also places a two year restriction on the type of employment activities, consultancies and directorships that Ministers can take up after they have ceased to be a Minister.

The ethical framework for the South Australian Public Sector is provided by Part 2 of the *Public Sector Management Act 1995*. There are three broad elements which underpin the ethics and standards of conduct of Public Sector employees and they are integrity, respect and accountability, and based on these elements a Code of Conduct was developed in 2001.

The Legislative Review Committee of the South Australian Parliament tabled a Discussion Paper concerning a Code of Conduct for Members of Parliament in April 1996.

#### 4. COMMITTEE'S DELIBERATIONS

##### 4.1 THE ROLE OF A MEMBER OF PARLIAMENT

The Committee examined the role and duties of a Member of the South Australian Parliament.

The *Constitution Act 1934* provides that there shall be a Legislative Council and a House of Assembly which shall be called the Parliament of South Australia. General Elections for the House of Assembly and Legislative Council are held in South Australia every four years. On the calling of a General Election, the House of Assembly is dissolved with all of the seats of the House of Assembly and half of the seats of the Legislative Council being declared vacant.

After an election, no Member of Parliament is permitted to sit or vote therein unless the Member has taken the Oath or made an Affirmation of Allegiance to the Sovereign.

Whilst the *Constitution Act 1934* establishes, in large part, the structure, function and powers of the South Australian Parliament and sets out some of the qualifications for election to Parliament, it does not purport to detail the duties of a Member once elected.

Professor CES Franks has summarised the duties of a Member of Parliament as follows -

*"The Member of Parliament represents his constituency through service in the House*

*of Commons. This does not mean, however, that he spends most of his time in the House, or even that attendance there is the most important part of his work. A Member of Parliament spends far more of his working life outside the House than in it ... The job is people-oriented, involving talking about and listening to ideas, proposals and complaints, reconciling opposing viewpoints, explaining party or government policy to citizens and citizen's to party and government, getting action out of the government on problems of constituents, and examining how the government uses or abuses the power it exercises on behalf of the people... "*

CES Franks, *The Parliament of Canada*, Toronto: University of Toronto Press, 1987, p.87

To carry out all of the duties required of them, Members of Parliament are required to work long hours, both in the Parliament and outside, and are never free from intense public scrutiny.

Members of the Parliament of South Australia are involved in the following activities -

#### 4.1.1 **Parliamentary Responsibilities and Duties**

Members of Parliament attend sittings of Parliament during the day and evening, participating in Parliamentary business in order to hold the Government of the day accountable, to advocate on behalf of constituents and the State as a whole by -

- debating and voting on legislation;
- proposing, debating and voting on motions *"that the House do something, order something to be done or express an opinion with regard to some matter"*;  
(*House of Representatives Practice*, 4th ed., Dept of the House of Representatives, Canberra, 2001, p.281)
- questioning Ministers of the Crown on any aspect of State affairs and matters related to the work of a local Member of Parliament;
- addressing issues through motions of grievance/matters of interest and adjournment;
- participating in Parliamentary Committees of Inquiry; and
- preparation and tabling of petitions on behalf of constituents.

Members of Parliament are expected to be well informed about current public issues. Members undertake research and consultation, both in relation to their constituencies and matters affecting the State and the wider Australian community.

Members of Parliament are expected to communicate with their constituents and the wider public either directly or through the media.

#### 4.1.2 **Electorate Responsibilities**

During the day, in the evening and at weekends, Members of Parliament -

- on behalf of their constituents, deal with Ministers of the Crown, Government Departments and other agencies in relation to enquiries and problems;
- participate in community, schools and business organisations, charitable and social or sporting clubs, by attending functions, meetings and seminars, which they sometimes chair and sometimes act as patron;
- receive delegations, submissions and petitions from the public, business, cultural, religious and sporting groups on matters of policy and the implementation of legislation; and
- communicate with constituents through the media.

#### 4.1.3 **Party Responsibilities and Duties**

Members of Parliament who are formally aligned with a Party may attend Party meetings and maintain contact with local Party members.

Members of Parliament who are not formally aligned with a Party, still have obligations to consult with and maintain contact with their supporters.

#### 4.1.4 **Specific Responsibilities and Duties associated with Office**

A Member of Parliament has extra duties if the Member holds a specific office or position in the Parliament -

##### ***Speaker (and Deputy Speaker) of the House of Assembly***

The Speaker's powers and functions are derived from the *Constitution Act 1934* and the Standing Orders and precedent of the House of Assembly and include -

- Chairing the House, maintaining order and determining procedural matters;
- presentation of Bills to the Governor for Royal Assent;
- representation of House of Assembly in its relations with the Governor, the Executive and the wider community;
- responsibility for the administration of the House of Assembly and the control and management of the precincts of the House; and
- joint responsibility with the President of the Legislative Council for the overall administration of the Parliament and the precincts of Parliament House.

##### ***President of the Legislative Council***

The President's powers and functions are derived from the *Constitution Act 1934* and the Standing Orders and precedent of the Legislative Council and include -

- Chairing the Council and the Committee of the Whole on Bills, maintaining order and determining procedural matters;
- presentation of Bills to the Governor for Royal Assent;
- representation of Legislative Council in its relations with the Governor, the Executive and the wider community;
- responsibility for the administration of the Legislative Council and the control and management of the precincts of the Council; and
- joint responsibility with the Speaker of the House of Assembly for the overall administration of the Parliament and the precincts of Parliament House.

##### ***Minister of the Crown***

A Minister's duties and responsibilities include -

- collective responsibility to the people through the Parliament and individual responsibility in determining and implementing policies;
- individual responsibility for particular areas of Government administration;
- participation in Cabinet meetings and the formulation and implementation of Government policy;
- attendance at meetings of Executive Council;
- Government representation at Councils of Government, conferences, meetings, functions and seminars;
- consultation with fellow Members of Parliament, individuals, business, community and representative groups; and
- liaison with media organisations.

##### ***Leader of Party***

A Leader of a Party's duties and responsibilities include -

- representation of the Party at a state, national and international level;
- maintenance of the support of elected and Party members; and
- leadership in the development of Party policy and its furtherance in the Parliament.

##### ***Shadow Ministers or Opposition spokespersons***

The duties and responsibilities of a Shadow Minister or Opposition spokesperson include -

- monitoring, reviewing and critiquing of Government policy;
- formulation of Opposition policy;
- consultation with fellow Members of Parliament, individuals, business, community and representative groups; and
- liaison with media organisations.

#### ***Party Whips***

The duties and responsibilities of Government and Opposition Whips include -

- acting as administrative officers to their Parliamentary Parties;
- arranging the number and order of Members who wish to speak in debate;
- ensuring the attendance of Party Members for divisions and quorum calls; and
- the arrangement of "pairs" for Members who are or who may desire to be absent from the Houses.

#### ***Chair or Member of Parliamentary Committee***

Parliament has established standing, procedural and administrative committees, and *ad hoc* Select Committees of Members of Parliament to consider and investigate issues.

Standing Committees are appointed under the *Parliamentary Committees Act 1991* and between them scrutinise all areas of Government activity, community and policy issues and other matters of importance to the people of South Australia. These Committees have specific statutory responsibilities and meet regularly throughout the life of a Parliament.

Select Committees are established by either House and are *ad hoc* in nature. Such Committees may be established to inquire into a Bill, or other specific matter encompassing the full range of Government, social, economic and environmental matters.

The duties and responsibilities of Members of Committees include -

- attendance at Committee meetings, inspections and site visits;
- hearing and consideration of evidence presented to the Committee; and
- deliberation and reporting to the Houses on findings.

## **4.2 IS IT APPROPRIATE TO ADOPT A CODE OF CONDUCT?**

The Committee has considered whether it is appropriate to adopt a code of conduct for Members of Parliament. The Committee considered the following factors -

- Other Australian States have already adopted a code of conduct;
- Most professions and many public and private organisations have codes of conduct. South Australian Public Sector employees are also subject to a code of conduct contained in the *Public Sector Management Act 1995*;
- The Committee reviewed the relevant codes of conduct for the accounting, medical and legal professions and journalists during its deliberations;
- The Committee considered whether a code of conduct had been adopted in international jurisdictions such as the United Kingdom, Canada, New Zealand, France and Italy;
- It was noted that New Zealand does not have a code of conduct for Members of Parliament;
- The Committee noted that in some European jurisdictions, Members of Parliament are granted immunity from prosecution until they retire, or, in certain cases, Parliament may withdraw this immunity. The Committee unanimously rejects the proposition that a Member of Parliament be accorded protection from the law over and above that of any other citizen. In South Australia, Members of Parliament should be afforded no less or greater protection under the law than every other citizen; and
- There are a significant number of statutory and Parliamentary rules regulating the conduct of Members of the South Australian Parliament. Members and the public may not be fully aware of the extent of this regulatory regime or the penalties which may be imposed on a Member for a breach of these rules. (*See section 4.4*)



The Committee recommends that a code of conduct in the form of a Statement of Principles be adopted for Members of Parliament. The Committee believes that the Statement of Principles will provide -

- A valuable statement of the principles applying to public life for the benefit of Members;
- A reference point for both Members and the public of South Australia to assist them to understand a Member's duties in complying with the obligations of public life; and
- An educational tool to better inform the public of the duties and obligations of Members of Parliament.

#### 4.3 CONTENTS OF A STATEMENT OF PRINCIPLES

The Committee is of the opinion that a code should serve a wider purpose than that traditionally regarded as a Code of Conduct and therefore would be more accurately described as a "Statement of Principles".

The Committee has considered the Codes adopted by other States in order to assist in the preparation of the Statement of Principles. These Codes provide an example of some of the issues that may be addressed in the Statement of Principles.

The Committee considers it is important for Members of Parliament to recognise that they are in a unique position of being accountable to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.

Members of Parliament must acknowledge their responsibility to maintain the public trust placed in them by performing their duties with fairness, honesty and integrity, subject to the laws of the State and rules of the Parliament, and using their influence to advance the common good of the people of South Australia.

The Committee acknowledges that political parties and political activities are a part of the democratic process and participation in political parties and activities is within the legitimate activities of Members of Parliament.

Consequently, the Committee considers these acknowledgements are important and should be included in the Statement of Principles.

The Committee also acknowledges that whilst Members of Parliament are subject to the requirements of the *Members of Parliament (Register of Interests) Act 1983* there is a necessity for these requirements to be further addressed in the Statement of Principles.

The Committee therefore considers that the following fundamental principles related to honesty, integrity, fairness and accountability must be included in a Statement of Principles -

- **Disclosure of any conflict of interest**  
Members of Parliament should declare any conflict of interest between their private financial interest and decisions in which they participate in the execution of their duties. This is done through Members declaring their interests as required by the *Members of Parliament (Register of Interests) Act 1983* or through declaring their interests when speaking on a matter in either House or a Committee in accordance with the Standing Orders, or in any other public and appropriate manner.  
A conflict of interest does not exist where the Member is only affected as a member of the public or a member of a broad class.
- **Prohibition of the acceptance of bribes by a Member of Parliament**  
Members of Parliament should not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for any financial or

pecuniary benefit.

- **The regulation of the acceptance of gifts and benefits by a Member of Parliament**  
In accordance with the requirements of the *Members of Parliament (Register of Interests) Act 1983*, Members of Parliament should declare all gifts and benefits received in connection with their official duties, including contributions made to any fund for a Member's benefit.  
Members of Parliament should not accept gifts or other considerations that create a conflict of interest.
- **Improper use of public resources**  
Members of Parliament should apply the public resources with which they are provided for the purpose of carrying out their duties.
- **Misuse of confidential information**  
Members of Parliament should not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their Parliamentary duties, for private benefit.
- **Dealings with Ministers and Public Servants**  
Members of Parliament should act with civility in their dealings with the public, Ministers and other Member of Parliament and the Public Service.
- **Right of freedom of speech**  
Members of Parliament should always be mindful of their responsibility to accord due respect to their right of freedom of speech within Parliament and not to misuse this right, consciously avoiding undeserved harm to any individual.

#### 4.4 REGULATION OF CONDUCT OF MEMBERS OF PARLIAMENT

The conduct of a Member of the South Australian Parliament is highly regulated and, in the Committee's view, the following provisions provide effective methods of investigation and adjudication of complaints. A Member is subject to -

##### 4.4.1 The Laws applicable to any member of the public

A Member of Parliament is subject to the laws of the State of South Australia. If a Member breaches the criminal law they may be prosecuted and penalised like any other member of the public. Similarly, an action may be brought against a Member for a breach of the civil law.

##### 4.4.2 The Laws and Rules applicable to a Member of Parliament

A Member of Parliament is subject to additional specific laws and rules regulating the Member's conduct. These are -

###### *The Standing and Sessional Orders of each House*

The Standing and Sessional Orders are the rules regulating the proceedings, debates and conduct of Members in the Parliament. A breach of the Standing or Sessional Orders is a serious matter that may be investigated and a sanction imposed by the Parliament. The sanctions which may be imposed by Parliament include suspension and/or expulsion from the Parliament.

###### *Members of Parliament (Register of Members Interests) Act 1983*

The *Members of Parliament (Register of Interests) Act 1983* requires a Member to disclose sources of income in addition to a Member's Parliamentary salary. A Member must also disclose, among other things -

- the name or description of any company, partnership, association or other body in which the Member has an investment;
- details of any office held by the Member, or a member of his or her family,

in a company or other body;

- the name of any political party, any body or association formed for political purposes or any trade or professional organisation of which the Member is a member;
- the address of any land owned by a Member;
- the name of creditors and debtors of the Member (subject to a minimum amount);
- particulars of any gift of or above \$750 received by the Member from a person not related to the Member; and
- any other pecuniary interests which may be seen to affect the way in which a Member performs his or her duties.

Any person who breaches the provisions of this Act is guilty of an offence and liable to a penalty not exceeding \$5,000.

#### **Constitution Act 1934**

The *Constitution Act 1934* establishes in large part the structure, functions and powers of the South Australian Parliament. The Act provides for the vacation of a Member's seat in particular circumstances. The relevant sections of the Act follow -

##### **"Vacation of seat in Council**

17. (1) If any member of the Legislative Council -
- (a) without permission of the Council fails for twelve sitting days consecutively of any session of the Council to attend therein; or
  - (ab) is not or ceases to be an Australian citizen; or
  - (b) takes any oath or makes any declaration or act of acknowledgement or allegiance to any foreign prince or power; or
  - (c) does, concurs in, or adopts any act whereby the member may become a subject or citizen of any foreign state or power; or
  - (d) becomes bankrupt; or
  - (e) takes the benefit of any law relating to insolvent debtors; or
  - (f) becomes a public defaulter; or
  - (g) is attainted of treason; or
  - (h) is convicted of an indictable offence; or
  - (i) becomes of insane mind,

the Member's seat in the Council shall thereby become vacant.

(2) The seat of a member of the Legislative Council is not vacated because the member acquires or uses a foreign passport or travel document."

##### **"Vacation of seat in Assembly**

31. (1) If any member of the House of Assembly -
- (a) for twelve sitting days consecutively of any session of the House of Assembly without the permission of the House entered upon its journals fails to attend in the House; or
  - (ab) is not or ceases to be an Australian citizen; or
  - (b) takes any oath or makes any declaration or acknowledgement of allegiance, obedience or adherence to any foreign prince or power; or
  - (c) does, concurs in, or adopts any act whereby the member may become a subject or citizen of any foreign state or power; or

- .....
- (e) becomes bankrupt or an insolvent debtor within the meaning of the laws in force in the State relating to bankrupts or insolvent debtors; or
- (f) becomes a public defaulter; or
- (g) is attainted of treason; or
- (h) is convicted of an indictable offence; or
- (i) becomes of unsound mind,

the Member's seat in the House of Assembly shall thereby become vacant.

(2) The seat of a member of the House of Assembly is not vacated because the member acquires or uses a foreign passport or travel document."

##### **"Oath of allegiance**

42. (1) No member of Parliament, elected a member of Parliament on or after the commencement of the *Constitution Act Amendment Act 1972*, shall be permitted to sit or vote therein until the member has taken and subscribed the

following oath before the Governor, or before some person or persons authorised by the Governor to administer such oath.

"I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to [insert title of the Sovereign, His/Her] Heirs and Successors, according to law. SO HELP ME GOD!"

(2) It shall not be necessary for any member of Parliament who has taken the oath prescribed herein to take the said oath again in the event of the demise of the Crown; such oath shall be deemed to relate to the Sovereign and the Sovereign's heirs and successors according to law.

(3) Nothing in this section shall be deemed to affect the operation of the *Oaths Act 1936*, as amended, which entitles any person to make an affirmation in lieu of taking any oath required by this Act.

(4) ....."

**"Disqualification of members occupying seats in both Houses**

43A. (1) No member of the Legislative Council shall be capable of being nominated as a candidate for election as a member of the House of Assembly.

(2) No member of the House of Assembly shall be capable of being chosen by an assembly of the members of both Houses of Parliament to supply a casual vacancy in the membership of the Legislative Council."

**"Disqualification of members holding offices of profit**

45. (1) If any member of the Parliament accepts any office of profit or pension from the Crown, during pleasure, excepting those offices which are required by or under this Act or any other Act to be held by members of Parliament, the member's seat shall be thereupon and is hereby declared to be vacant.

(1a) Subsection (1) does not prevent a member of Parliament from accepting office as a Minister of the Crown or as a Parliamentary Secretary to a Minister, or a Minister of the Crown from accepting an appointment to act in the office of another Minister.

(2) If a candidate for election as a member of Parliament holds an office of profit from the Crown the candidate shall, unless he or she resigns that office before the date of the declaration of poll, be incapable of being elected."

In relation to Government contracts, the Committee noted that sections 49, 50 and 51 of the *Constitution Act 1934* previously dealt with Members of Parliament entering into contracts with the Crown and rendered void the seat of any Member of Parliament who entered into, accepted, undertook or executed a contract, agreement or commission with the Crown. This prevented Members from undertaking business with Government agencies or instrumentalities, such as the State Government Insurance Commission, the Totalizator Agency Board, the Lotteries Commission, the State Bank and the Housing Trust, as well as receiving mining royalties, for which legislative exemptions were required.

Sections 49, 50 and 51 of the *Constitution Act 1934* were subsequently deleted in 1994 and a disclosure requirement for details of Government contracts incorporated in the *Members of Parliament (Register of Interests) Act 1983* -

**"Contents of returns**

4. (1) For the purposes of this Act, a primary return shall be in the prescribed form and contain the following information.

(2) ....

(ea) particulars of any contact made during the return period between the Member or a person related to the Member and the Crown in right of the State where any monetary consideration payable by a party to the contract equals or exceeds \$7,500;"

***Electoral Act 1985***

The *Electoral Act 1985* sets out the required qualifications and specific rules for the conduct of election campaigns. If a candidate for election, including a sitting Member of Parliament, breaches these rules, a significant penalty may be imposed. Some of the relevant sections of the Act follow -

**“Qualifications of candidate**

52. (1) A person is not qualified to be a candidate for election as a member of the House of Assembly or the Legislative Council unless the person is an elector.”

**“Bribery**

4. 109. (1) A person must not offer or solicit an electoral bribe.  
Maximum penalty: Imprisonment for 7 years.”

**“Undue influence**

110. A person must not, by violence or intimidation, influence or attempt to influence -

- (a) the vote of an elector;
- (b) the candidature of any person in an election; or
- (c) the course or result of an election.

Maximum penalty: Imprisonment for 7 years.”

**“Disqualification for bribery and undue influence**

133. Any person who is convicted of bribery or undue influence or an attempt to commit bribery or undue influence is, during a period of 2 years from the date of the conviction, disqualified from sitting or being elected as a Member of either House of the Parliament.”

***Criminal Law Consolidation Act 1935***

There are specific criminal laws relating to the conduct of Members of Parliament as public officers. Some of the relevant sections follow -

**“Acting improperly**

238. (1) For the purposes of this Part, a public officer acts improperly, or a person acts improperly in relation to a public officer or public office, if the officer or person knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers of the relevant kind, or by others in relation to public officers or public offices of the relevant kind.

(2) A person will not be taken to have acted improperly for the purposes of this Part unless the person’s act was such that in the circumstances of the case the imposition of a criminal sanction is warranted.

(3) Without limiting the effect of subsection (2), a person will not be taken to have acted improperly for the purposes of this Part if -

- (a) the person acted in the honest and reasonable belief that he or she was lawfully entitled to act in the relevant manner; or
- (b) there was lawful authority or a reasonable excuse for the act; or
- (c) the act was of a trivial character and caused no significant detriment to the public interest.

(4) In this section -

“act” includes omission or refusal or failure to act;

“public officer” includes a former public officer.”

**“Demanding or requiring benefit on basis of public office**

252. (1) A person who -

- (a) demands or requires from another person a benefit (whether for himself or herself or for a third person);
- (b) in making the demand or requirement -
  - (i) suggests or implies that it should be complied with because the person holds a public office (whether or not the person in fact holds that office); and
  - (ii) knows that there is no legal entitlement to the benefit,

is guilty of an offence.

Penalty: Imprisonment for 7 years.”

**“Offences relating to appointment to public office**

253. (1) A person who improperly -

- (a) gives, offers, or agrees to give a benefit to another in connection with the appointment or possible appointment of a person to a public office; or

- (b) seeks, accepts or agrees to accept a benefit (whether for himself or herself or for a third person) on account of an act done or to be done with regard to the appointment or possible appointment of a person to a public office,  
is guilty of an offence.  
Penalty: Imprisonment for 4 years.”

#### ***Equal Opportunity Act 1984***

Section 87(6)(c) of the *Equal Opportunity Act 1984* deals with acts of sexual harassment by Members of Parliament, Members of the Judiciary and Members of local councils. It is unlawful for a Member of Parliament to subject to sexual harassment -

- a member of his or her staff;
- a member of the staff of another Member of Parliament;
- an officer or member of the staff of the Parliament; or
- any other person who in the course of employment performs duties at Parliament House.

#### ***Auditor-General***

The Office of the Auditor-General was established under the *Public Finance and Audit Act 1987*. The Auditor-General has the authority to audit the accounts of public sector agencies, identifying matters such as unlawful expenditure, inefficiency and inept administration. The Auditor-General also has the authority to review the use of public resources by a Member of Parliament. The Auditor-General may conduct a financial and compliance audit of a Member of Parliament. This audit is directed towards the matter of accountability for use of funds and resources provided and administered by agencies. The Auditor-General may review Member's expenses, such as travel allowances.

The Auditor-General is independent of the Government and cannot be directed by any person as to the manner in which he or she carries out functions of the office under the legislation.

#### ***Public and media scrutiny***

Members are subject to intense scrutiny by the media and the public in both their professional and personal life. Public and media scrutiny plays a very important role in regulating a Member's conduct. Whilst it is not a formal regulation, it is still a very powerful tool for ensuring Members are held accountable for their actions.

#### ***The Electorate***

Ultimately, it is the electorate which is the final arbiter of the conduct of Members of Parliament.

## **4.5 OPTIONS FOR ADOPTING THE STATEMENT OF PRINCIPLES**

The terms of reference require the Committee to consider an appropriate method by which Parliament should adopt a code, taking into consideration how best to engender knowledge and understanding of it by the public, as well as by Members.

The Committee considered the following options for adopting the Statement of Principles -

### **4.5.1 Standing Orders**

The Committee has considered the option of amending the Standing Orders to include a Statement of Principles.

The Standing Orders are the rules regulating the proceedings, debates and conduct of Members in Parliament. Some of the issues referred to in the proposed Statement of Principles are addressed in the Standing Orders.

As the Statement of Principles is intended as a reference point to assist Members, not only in respect of their Parliamentary behaviour, but to assist Members in the discharge of their duties in compliance with the obligations of public life, it is therefore inappropriate to incorporate the Statement of Principles in the Standing Orders of each House.

#### 4.5.2 Statute

The Committee has considered whether the Statement of Principles should be incorporated in legislation. The Victorian Parliament has incorporated a Code of Conduct in the *Members of Parliament (Register of Interests Act) 1978*.

However, one of the aims of the Statement of Principles is to better inform the public of the duties and obligations of Members of Parliament. Accordingly, it is not appropriate for it to be contained in a Statute.

#### 4.5.3 Resolution of Parliament

The Committee has considered adopting the Statement of Principles by way of a Resolution of each House of Parliament. This would ensure that it is publicly debated and subject to change only by a further Resolution of each House.

### 4.6 RECOMMENDATION FOR ADOPTING THE STATEMENT OF PRINCIPLES

After due consideration, the Committee recommends that the most appropriate method for the adoption of the Statement of Principles is by way of a Resolution of each House of Parliament.

### 4.7 ENFORCEMENT OF THE STATEMENT OF PRINCIPLES

As the Committee has stated, the Statement of Principles is not a definitive set of rules regulating Members' behaviour. Members are subject to comprehensive laws and rules as outlined in section 4.4 which have their own enforcement mechanisms and sanctions. Accordingly, the Committee considers that additional means of enforcing the Statement of Principles is not required.

Further, the Committee noted that in 1995 the United Kingdom House of Commons adopted a Code of Conduct for Members of Parliament which requires complaints to be directed to the Office of Parliamentary Commissioner for Standards. The House of Commons, consisting of 657 Members, is part of the national Parliament of the United Kingdom. No such process exists in the Australian Federal Parliament and the Committee considers that the establishment of an Office of this nature cannot be justified.

There may be occasions when members of the public wish to raise issues contained within the Statement of Principles. The Committee considers that all enquiries regarding the Statement of Principles.

Since March 1999, the Legislative Council has adopted a Sessional Order which allows a Citizen's Right of Reply to persons who consider they have been adversely affected in reputation or in respect of dealings or associations with others, or injured in profession, occupation or trade or in the holding of an office, or in respect of any financial credit or other status or that his or her privacy has been unreasonably invaded. This Sessional Order is administered by the President of the Legislative Council and provides for a process for the reply to be published in *Hansard*.

The Committee recommends that the House of Assembly considers the adoption of a similar procedure to enable a Right of Reply.

### 4.8 PROMOTION OF THE STATEMENT OF PRINCIPLES

Members should familiarise themselves with the Statement of Principles upon their election to Parliament. Accordingly, the Committee recommends that upon election and re-election, each Member should sign a Declaration, within 14 days of taking and subscribing the Oath or making and subscribing an Affirmation as a Member of Parliament, acknowledging the Member has read and accepts the Statement of Principles.

The Committee also recommends that the Statement of Principles be incorporated in the education program for newly elected Members and be widely publicised and distributed to the public.

#### **4.9 PARLIAMENTARY OFFICERS**

Members and Officers have quite a different status in the Parliament. Officers of Parliament are independent, impartial administrators employed to carry out the administration of the Parliament. They do not represent constituents or have any role in the development or passage of legislation.

The terms of reference required the Committee to consider whether a Code of Conduct should be adopted for Officers of the Parliament. Given the difference in status and role, the Committee considers it would be inappropriate for Officers of the Parliament to be subject to a Code of Conduct primarily for Members of Parliament.

The conduct of Officers of the Parliament is subject to the provisions of their terms of employment, relevant Enterprise Agreements covering most employees of the Parliament and/or the provisions of the *Parliament (Joint Services) Act 1985*. The principles contained in the 2001 Public Sector Code of Conduct, whilst not binding on employees of the Parliament, are acknowledged as for the most part applicable.

### **5. RECOMMENDATIONS**

Following consideration of the codes adopted in other Australian and international jurisdictions and for the reasons outlined above, the Committee recommends -

#### **5.1 RECOMMENDATION 1**

That the Statement of Principles contained in *Appendix B* of this Report be adopted.

#### **5.2 RECOMMENDATION 2**

That the Statement of Principles be adopted by way of a Resolution of each House of Parliament. The Statement of Principles should only be changed by a Resolution of both Houses.

#### **5.3 RECOMMENDATION 3**

That upon election and re-election to Parliament, within 14 days of taking and subscribing the Oath or making and subscribing an Affirmation as a Member of Parliament, each Member must sign an acknowledgement, in the form of *Appendix C* of the Report, to confirm they have read and accept the Statement of Principles.

#### **5.4 RECOMMENDATION 4**

That Committee recommends that the House of Assembly considers the adoption of a similar procedure to that of the Legislative Council to enable a Citizen's Right of Reply.

#### **5.5 RECOMMENDATION 5**

That the Statement of Principles be incorporated into the education program for newly elected Members of Parliament.



**5.6 RECOMMENDATION 6**

That the Statement of Principles be widely publicised and distributed to the public.

**JOHN M GAZZOLA MLC**  
**Chairperson**

Parliament House  
ADELAIDE SA 5000

14 October 2004

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**APPENDIX A**  
**LIST OF WRITTEN SUBMISSIONS**

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Mr W J Phillips, 96 Railway Terrace, Ascot Park, SA, 5043.

Mr Jim McPherson, Deputy Chief Executive Officer, District Council of Grant, PO Box 724,  
Mount Gambier, SA, 5290.

Ms Pamela Ayling, State Coordinator, Advocates for Survivors of Child Abuse SA, PO Box 352,  
Goodwood, SA, 5034.

Mr J M Weeks, C/- Unit 3, 371 Morphett Road, Oaklands Park, SA, 5046.

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**APPENDIX B**  
**STATEMENT OF PRINCIPLES**

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Members of Parliament are in a unique position of being accountable to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at elections.

Members of Parliament have a responsibility to maintain the public trust placed in them by performing their duties with fairness, honesty and integrity, subject to the laws of the State and rules of the Parliament, and using their influence to advance the common good of the people of South Australia.

Political parties and political activities are a part of the democratic process. Participation in political parties and political activities is within the legitimate activities of Members of Parliament.

Members of Parliament should declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their duties. Members must declare their interests as required by the *Members of Parliament (Register of Interests) Act 1983* and declare their interests when

speaking on a matter in the House or a Committee in accordance with the Standing Orders.

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

Members of Parliament should not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for any financial or pecuniary benefit.

In accordance with the requirements of the *Members of Parliament (Register of Interests) Act 1983*, Members of Parliament should declare all gifts and benefits received in connection with their official duties, including contributions made to any fund for a Member's benefit.

Members of Parliament should not accept gifts or other considerations that create a conflict of interest.

Members of Parliament should apply the public resources with which they are provided for the purpose of carrying out their duties.

Members of Parliament should not knowingly and improperly use official information, which is not in the public domain, or information obtained in confidence in the course of their Parliamentary duties, for private benefit.

Members of Parliament should act with civility in their dealings with the public, Ministers and other Members of Parliament and the Public Service.

Members of Parliament should always be mindful of their responsibility to accord due respect to their right of freedom of speech within Parliament and not to misuse this right, consciously avoiding undeserved harm to any individual.



**APPENDIX C**



**STATEMENT OF PRINCIPLES**

**MEMBER'S DECLARATION**



I.....

of.....

being a Member of the Legislative Council/House of Assembly hereby acknowledge that I have read and accept the Statement of Principles as adopted by the Legislative Council/House of Assembly on .....

Dated this ..... day of ..... 200..

DECLARED by the said

..... )

at ..... )

in the State of South Australia )

in the presence of )

..... JP

Received:

.....  
CLERK OF THE LEGISLATIVE COUNCIL/  
CLERK OF THE HOUSE OF ASSEMBLY