

**REVIEW OF THE CODE OF CONDUCT
FOR MEMBERS OF THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**Stephen Skehill
Ethics and Integrity Adviser**

31 July 2012

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Introduction

With the agreement of the Standing Committee on Administration and Procedure, the Speaker of the Legislative Assembly for the Australian Capital Territory requested that I undertake a review of the Code of Conduct applicable to Members of the Assembly, consult with Assembly Members in that regard, and report to him no later than 1 August 2012. This is the report of that review.

Background

The current Code of Conduct is set out in Continuing Resolution 5 of the Assembly. This Resolution was first agreed by the Assembly on 25 August 2005 and subsequently amended on 16 August 2006. Its text is at [Attachment A](#).

In a recent report to the Assembly Mr Ron McLeod AM recommended that the Assembly undertake a review of the Code to express more clearly the intent to which the personal staff of Members, while on paid duty, may or may not be permitted to undertake certain defined activities that could be seen to be of a party political matter. The Speaker's letter to me commissioning this review advised that he had requested the Assembly Secretariat to develop a draft Code of Conduct for the personal staff of Members, upon which he would consult with the Standing Committee on Administration and Procedure. Accordingly, this review is confined to the conduct of Members rather than their staff (although it does recommend continuation of the present requirement of a Member that they ensure compliance by their personal staff with any code of conduct applicable to such staff).

After that report was tabled, the Chief Minister wrote to the Speaker advising that the Code of Conduct for Ministers had recently been reviewed by the ACT Executive, noting that it had been some time since the Members' Code of Conduct had been reviewed, and suggesting that it was timely to re-examine the adequacy of that code's framework.

A copy of the new Code of Conduct for Ministers is at [Attachment B](#).

Summary of Recommendations

For the reasons set out below, I recommend that:

1. The ACT Legislative Assembly should continue to have a Code of Conduct for its Members.

2. That Code of Conduct should be made by resolution of the Assembly and not be included in, or made under, an Act of the Assembly.
3. The Code should set out general principles to guide Members in all of their activities as Members.
4. The Code should also include a (relatively small) number of more specific rules on major conduct issues, and cross-reference key other instruments of relevance.
5. The Code should not however contain or cross-reference the myriad of other more detailed subsidiary rules that apply to the day-to-day administrative matters that are an important but far less fundamental part of conducting oneself as a Member.
6. In addition to the print and electronic copies of the Code itself that are made generally available to Members and the public, the Code should be made available (at least to Members and their staff) in an electronic form that includes active and up-to-date links to all other instruments that govern or affect the conduct of Members in relation to those more detailed subsidiary matters. In this way, at any point in time, Members and their advisers can readily ascertain all materials that set out expectations in relation to their day-to-day conduct.
7. The Code should be drafted in terms that are confined to the Conduct of members “as Members”, and thereby should not seek to impinge upon their activities in their private life or as members of a political party.
8. The Code should be expressed in terms of a commitment by the Members of the Assembly to one another and to the community, rather than in terms of obligations imposed upon them.
9. While the Code as current from time to time should continue to be embodied in a Continuing Resolution of the Assembly so that there is at all times an operative Code, it should be an early matter of business for each new Assembly to consider the content of the Code and to vote to either confirm or vary that content. In this way, all current Members of each Assembly will have the opportunity to express their personal commitment to comply with the Code, or to argue for any change to it that they may consider appropriate. This process will also provide an opportunity for periodic review of the Code so as to better ensure that, over time, it remains appropriate to contemporaneous circumstances.
10. There should continue to be an Ethics and Integrity Adviser appointed as a resource for Members who may seek advice, opinion or guidance in relation to matters relevant to their own compliance with the Code of Conduct. Familiarisation with the Code of Conduct and the availability of the Adviser should continue to be an important part of the induction process for newly elected Members. The Adviser should continue to report annually to the Standing Committee on Administration

and Procedure which should consider each year whether or not those reports indicate any further educative or similar activity is necessary or desirable to alert Members to emerging Code compliance issues.

11. Members and the public should be made aware, however, that they are entitled to address any concern or allegation about a Member's compliance with the Code to the Speaker.
12. In the interests of timely resolution of such matters, the Speaker (or the Deputy Speaker if the Speaker would have an actual or reasonably perceived conflict of interest in dealing with the issue) should thereupon decide whether or not the matter requires further consideration.
13. Where the Speaker concludes that the complaint in question is unfounded, frivolous or vexatious, he or she should be able to dismiss the matter (and, where appropriate, provide a suitable explanation to the complainant).
14. Where the Speaker considers that the complaint is not unfounded, frivolous or vexatious, he or she should refer the matter to a Legislative Assembly Commissioner for Standards for investigation and report to the Assembly through the Speaker and the Standing Committee on Administration and Procedure.
15. With the aim of ensuring the effectiveness and timeliness of this procedure for resolution of Code of Conduct complaints, the Code should include a commitment by Members to cooperate with such investigations.
16. With the aim of preventing the procedure for Code of Conduct complaints being abused for political advantage unrelated to the merits, the Code should contain a commitment by Members to only make a complaint about the compliance of another Member where they believe there are reasonable grounds to suspect non-compliance.
17. To ensure that there is no inhibition on Members approaching the Ethics and Integrity Adviser with a view to avoiding potential compliance issues before they arise, the positions of Ethics and Integrity Adviser and Legislative Assembly Commissioner for Standards should be completely separate and never concurrently held by the same person.
18. The Assembly should consider adopting the revised draft Code of Conduct set out at Attachment E to this report.

A Threshold Issue

Any review of the Assembly's current Code of Conduct necessarily calls into question the issue of whether or not the Assembly should continue to have a Code of Conduct at all.

The House of Representatives Standing Committee of Privileges and Members' Interests released a Discussion Paper in November 2011 in connection with a reference to it by the House of Representatives requiring it to develop a draft Code of Conduct for Members of the federal Parliament. Chapter 3 of that paper sets out arguments in favour of a Code and arguments against a Code. In my view, that Chapter cogently sets out the opposing arguments and, in the interests of avoiding traversing the same ground, I simply attach a copy of that Chapter at [Attachment C](#).

In my view, the arguments in favour of having a Code of Conduct far outweigh the arguments against. Further, I note that no Member of the Assembly suggested to me that the Assembly should no longer have a Code of Conduct. Additionally, Continuing Resolution 8A of the Assembly expresses the Assembly's endorsement of the Commonwealth (Latimer) House Principles on the Three Branches of Government which include the following:

Ethical Governance

Ministers, members of parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.

Accordingly, I recommend that the Assembly should continue to have a Code of Conduct for Members and, in the balance of this report, I focus on those issues that I consider pertinent to the terms and operation of that Code for the future.

The Constitutional Environment

In doing so it is necessary to recognise that the Assembly does not have unfettered power in setting and administering a Code of Conduct to govern the conduct of its Members.

The ACT Legislative Assembly is established by, and has only the powers conferred by, an Act of the Commonwealth Parliament. It is thus essential that any consideration of such a Code of Conduct is undertaken against legislative/constitutional framework established by the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (the Self-Government Act). The Assembly can only establish a Code of Conduct, determine its content and deal with non-compliance with it in a manner consistent with this Act.

The Self-Government Act contains a number of relevant provisions. The most pertinent of these is section 24:

24 Powers, privileges and immunities of Assembly

(1) *In this section:*

powers includes privileges and immunities, but does not include legislative powers.

- (2) *Without limiting the generality of section 22, the Assembly may also make laws:
 - (a) *declaring the powers of the Assembly and of its members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives or of its members or committees; and*
 - (b) *providing for the manner in which powers so declared may be exercised or upheld.**
- (3) *Until the Assembly makes a law with respect to its powers, the Assembly and its members and committees have the same powers as the powers for the time being of the House of Representatives and its members and committees.*
- (4) *Nothing in this section empowers the Assembly to imprison or fine a person.*

The Assembly has not passed a law with respect to its privileges and immunities and thus section 24(3) is operative.

The House of Representatives' powers in this regard derive from section 49 of the *Constitution* which is in the following terms:

49 Privileges etc. of Houses

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

The powers, privileges and immunities of the House as they stood at federation are further affected by the *Parliamentary Privileges Act 1987* by which the Commonwealth Parliament, as permitted by section 49, further declared the powers, privileges and immunities of the House of Representatives and the Senate.

The *Parliamentary Privileges Act 1987* relevantly provides:

5 Powers, privileges and immunities

Except to the extent that this Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the members and the committees of each House, as in force under section 49 of the Constitution immediately before the commencement of this Act, continue in force.

and also includes the following pertinent provisions:

4 Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

8 Houses not to expel members

A House does not have power to expel a member from membership of a House.

This means that the Assembly has the power to establish a Code of Conduct and deal with breaches of it as a contempt of the Assembly within certain constraints. However, that power does not extend to depriving a non-compliant Member of their elected position as a Member.

On this matter the Self-Government Act relevantly provides as follows:

10 Term of office of member

The term of office of a member duly elected begins at the end of the day on which the election of the member is declared and, unless sooner ended by resignation or disqualification, or by dissolution of the Assembly, ends on the polling day for the next general election.

13 Resignation of members

- (1) *A member may resign office as a member by written notice delivered to a person authorised by the Assembly to receive it.*

14 Disqualification of member

- (1) *A member vacates office if the member:*
- (a) *at any time after the beginning of the first meeting of the Assembly after a general election, is not qualified to take a seat as a member;*
 - (b) *is absent without permission of the Assembly from:*
 - (i) *such number of consecutive meetings as is specified by enactment for the purposes of this subparagraph; or*
 - (ii) *if no such enactment is in force—4 consecutive meetings of the Assembly; or*
 - (c) *takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under section 73.*

The Self-Government Act would allow the Assembly to establish its Code of Conduct under an Act if it so wished. Section 22 provides as follows:

22 Power of Assembly to make laws

- (1) *Subject to this Part and Part VA, the Assembly has power to make laws for the peace, order and good government of the Territory.*
- (2) *The power to make laws extends to the power to make laws with respect to the exercise of powers by the Executive.*

However, the Act does not require that a Code of Conduct be established in this way. Section 21 provides as follows:

21 Standing rules and orders

- (1) *Subject to this Act, the Assembly may make standing rules and orders with respect to the conduct of business.*

The Self-Government Act does not seek to deal generally with the conduct of Assembly Members. It does however contain one very important provision that would limit the ways in which an Assembly-made Code of Conduct could seek to deal with the particular issue of conflict of interest. Such a Code could not be inconsistent with section 15 of the Act which provides as follows:

15 Conflict of interest

- (1) *A member of the Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.*
- (2) *A question concerning the application of subsection (1) shall be decided by the Assembly, and a contravention of that subsection does not invalidate anything done by the Assembly.*

Finally, to the extent that the Self-Government Act would allow non-compliance with a Code of Conduct to be dealt with in a manner short of disqualification of a Member and the cessation of their term as a Member, the relevant power to impose a sanction vests in the Assembly itself and could not be delegated to a Committee or an officer of the Assembly such as the Speaker. If such a matter were to come before the Assembly, it would need to be dealt with in accordance with section 18 of the Act which provides as follows:

18 Procedure at meetings

- (1) *At a meeting of the Assembly, a quorum is formed by an absolute majority of the members.*
- (2) *Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting, unless a special majority is required by the standing rules and orders.*
- (3) *The member presiding at a meeting has a deliberative vote only, and, if the votes on a question are equal, the question shall pass in the negative.*
- (4) *Subject to subsection 15(1) and to the standing rules and orders, the Presiding Officer shall preside at all meetings of the Assembly at which he or she is present.*

Essentials for an Effective Code of Conduct

In my view there are three things that are essential for a Code of Conduct to be effective in enhancing the conduct of the Members who are subject to it and the esteem in which they are held by those who elect them to office and the community more generally. These are:

- **Commitment** –if those whose conduct is intended to be governed by the Code are not committed to complying with it, the prospects of their conduct reflecting the requirements of the Code are greatly reduced.
- **Content** – if the content of the Code is not appropriate, it will not attract the commitment of those to whom it applies and will not be regarded by the community as providing appropriate yardsticks by which to assess the conduct of Assembly Members.
- **Compliance** –if there is no effective process for dealing with complaints that a Member’s conduct has fallen short of the requirements of the Code, it will soon come to be regarded by both Members and the community as nothing other than “window-dressing”.

Commitment

As noted above, the current Assembly Code of Conduct is embodied in a Continuing Resolution of the Assembly, passed in 2005 and amended in 2006. No doubt those Members who voted for it on those occasions were committed to its purpose and content. However, there are currently a number of new Members who had no role in establishing or confirming the present Code. As time goes on, this situation is likely to become far more prevalent.

Upon their election to the Assembly, Members are required make an oath or affirmation of office. Originally, this had to be in accordance with Schedule 1 to the Self-Government Act which provided the following forms:

OATH

I, A.B., swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law: So help me God!

AFFIRMATION

I, A.B., solemnly affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

However, the Self-Government Act also allowed the Assembly to legislate for different forms of words because section 9 provided:

9 Oath or Affirmation of Allegiance

- (1) *A member shall, before taking his or her seat, make and subscribe an oath or affirmation in accordance with the form in Schedule 1.*

- (2) *The oath or affirmation shall be made before the Chief Justice of the Supreme Court of the Australian Capital Territory or some person authorised by the Chief Justice.*
- (3) *This section has effect subject to any enactment*

In exercise of the power conferred by section 9(3), the Assembly provided in the *Oaths and Affirmations Act 1984* for the following additional and alternative forms:

Oath

I, A.B., swear that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law. So help me God!

Affirmation

I, A.B., solemnly affirm that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law.

However, whichever form a Member may choose to adopt, the terms of their oath or affirmation do not entail any commitment to comply with the Code of Conduct.

While new Members are of course provided with a copy of the Continuing Resolution in the course of their induction as Members, there is nothing that formally suggests that they should take any “ownership” of the Code or publicly commit to comply with it.

In my view, this means that the present processes do not go far enough in fostering the commitment of each Member to comply with the Code of Conduct for Members.

It would of course be possible for the Assembly to legislate for an alternative form of oath of affirmation that did include an obligation to comply with the Code of Conduct.

However, I do not favour that course of action for two reasons. First, while it would result in the imposition of an obligation to comply with the Code, it is in my view preferable that Members have an opportunity to voluntarily commit to such compliance –if they are to assume their office as members, successfully elected candidates have no option but to make an oath or affirmation of office. Second, proceeding in this way would not involve any process for the periodic review of the Code of Conduct to ensure that it was still appropriate to deal with contemporary issues.

Alternatively, as noted above, it would be possible for the Assembly to incorporate its Code of Conduct in an Act that required compliance with it by Members. However, I do not favour that course of action for the same reasons as mentioned above and also, and very importantly, because it would render the interpretation of the Code and judgments about the compliance of Members with it as justiciable by the Courts. If the Code comprised simply a collection of mechanical rules about technical matters of entitlement and obligation, a role for the Courts might be appropriate. But if, as discussed further below, the Code is more principle-based, I believe it is appropriate that the Assembly itself, rather than the Courts, should assume responsibility for interpreting, and dealing with compliance with, the Code.

Accordingly, I recommend that:

- The Assembly's Code of Conduct, as it stands from time to time, should continue to be in a Continuing Resolution of the Assembly, with the effect that there is a Code that is applicable to all Members of each new Assembly from the time of their assumption of office;
- BUT that Continuing Resolution should be put by the Speaker to each new Assembly as an early item of business so that its content can be either confirmed or reviewed and amended by the Assembly Members to whom it will apply.

In this way, two beneficial purposes would be achieved:

- Each Member would have a clear opportunity, by their individual vote, to either publicly express their commitment to comply with the Code or to make known an alternate standard by which they would prefer their conduct be judged by their colleagues and the community; and
- The content of the Code would necessarily be subjected to review by the Assembly every 4 years and should thereby have enhanced prospects of remaining appropriate to prevailing circumstances.

Content

Consistent with the view expressed above that the Code of Conduct should be a statement by Members of the way in which they commit to conduct themselves as Members, I recommend that the language of the Code should be expressed in terms of what members will do rather than what they should or must do.

The more difficult question, however, is what the substantive text of the Code should be.

There are many legitimate expectations about the conduct of Assembly Members. These range from matters of high principle to matters of trivial procedure. At one end of the spectrum, the community expects Members to perform their functions ethically and with propriety; at the other end of the spectrum, sound administrative processes properly rely upon Members to complete required forms for dealing with day-to-day matters such approval for overtime payments to their staff.

In my view, a Code of Conduct should not descend into administrative minutiae. To do otherwise would have to significantly adverse impacts:

- First, the underlying messages of the Code would risk being lost in a sea of detail, with a risk that the guiding value of the Code may be negated; and
- Second, there would be a need for the Assembly to amend the Code every time administrative necessity or efficiency dictated a change to detailed procedures.

Rather, I recommend that the primary purpose of the Code should be to set out:

- Statements of principles that guide Members in honouring the commitments they give and thereby allow their colleagues and the community to form value-based judgements about the propriety of their conduct; and
- More detailed provisions only in relation to major conduct issues where the need for an enduring rule can be established.

Further, I recommend that the Code should relate only to conduct of Members as Members and not intrude unnecessarily into their quite separate and distinct roles as private citizens and (in most cases) as members of political parties.

I do not consider that it is possible to formulate hard and fast rules that allow these demarcations to be mechanically assessed. For example:

- Comments made about other Members of the Assembly at a family gathering may be uttered in the course of activity in the Member's personal life, but may nevertheless have the effect of inappropriately demeaning the Assembly itself; and
- A Member's communications with constituents about their achievements as a Member can clearly be an important part of their functions as a Member and, even without any exhortation to the reader about re-election, may nevertheless affect the fortunes of the Member and their political party at the next Assembly elections.

Accordingly, I consider that the best that can be done is to ensure that the drafting of the Code makes clear that it applies to the actions of a Member "as a Member".

Without seeking to be inappropriately and overly critical of it, the current Code (either by its content or lack of content) does not, in my view, rate particularly well against any of the preceding three recommendations. For example:

- The opening passage of its Preamble is, by comparison to Codes of Conduct in other jurisdictions, a relatively shallow statement of principle;
- The second paragraph of the Preamble and the following statement of Duties as Members of the Assembly express important principles, but are not stated to be part of the Code itself;
- The sections of the Resolution expressly stated to be the Code generally deal only with "rules" rather than principles;
- The language of the Code is internally inconsistent but generally that of imposition rather than voluntary commitment;
- The passage on conflict of interest is expressed in terms of "personal conflicts of interest" rather than conflicts between public duty and private life;

- The obligation on non-employment of family members is stated in terms that would extend to a Member's private business ventures;
- While the Code requires professional courtesy and respect to be shown to Assembly staff, it is silent on Members' treatment of others such as constituents or public servants and others appearing as witnesses before Assembly Committees; and
- While the section on Use of Entitlements requires that "appropriate" use be made of entitlements and resources, it does not extend to complying with the conditions on which such are made available, such as periodic reporting and acquittal.

Attachment D contains extracts from adopted or proposed Codes of Conduct for members of parliaments in a sample of other jurisdictions that seek to establish underlying principles on which those Codes are based. The new ACT Ministerial Code of Conduct at Attachment B and other Ministerial Code in other jurisdictions also seek to enumerate important principles of general application.

Many of these statements of principle either mirror or bear similarity to the Seven Principles of Public Life established in the United Kingdom by the Committee on Standards in Public Life (often referred to as the Nolan Committee) which are as follows:

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.

I set out at Attachment E a draft Code of Conduct for consideration by the Assembly that endeavours to reflect what I consider to be a pertinent and appropriate statement of principles for adoption in the ACT, drawing on these various precedents.

Codes of Conduct in other jurisdictions then commonly include a series of more detailed provisions in relation to major conduct issues that are probably best viewed as practical applications of the underlying principles they espouse. The current Assembly Code shares this practice (although I consider that its drafting can be improved).

These provisions tend to cover a relatively common set of matters, including:

- Registration of members' interests;
- Paid advocacy;
- Acceptance of gifts and benefits; and
- Use of public resources;

And some make provision for other issues that are less commonly dealt with, such as:

- Additional employment while a Member; and
- Employment and other activity after ceasing to be a Member.

I recommend that the Assembly's Code should continue to follow this practice.

In dealing with such matters, Codes often cross-reference other instruments that impose relevant obligations, such as legislation or Standing Orders. I recommend that the Assembly's Code should generally follow this practice, but not to the extent of citing or referencing every law or other document that seeks to control, influence or apply to the conduct of Members. At the same time, I recommend that at least Members and their personal staff be provided with access to an electronic version of the Code that includes active links to all such instruments as they exist from time to time, thereby enabling Members and their advisers to readily access all such relevant instruments.

In addition to a suggested statement of principles, the draft Code at Attachment E proposes a revised set of provisions in relation to what I consider to be the more detailed and significant conduct issues.

In a letter to me, the Chief Minister suggested that, in the course of this review, I should give consideration to two particular issues. She said:

I have found that the current Code's silence on the issue of lobbying has proved problematic and out of step with developments in other jurisdictions. Similarly, I think there is room for improvement in how the Code deals with emerging technologies such as the use of social media for political purposes.

As the Chief Minister notes, a number of other jurisdictions have introduced regimes for the regulation of "lobbyists". By way of broad overview, these generally apply to Ministers and the personal staff and public servants who advise them and provide that such persons will not engage in dealings with those who lobby, usually for reward, on behalf of third parties unless they have first

been registered on a public register, or otherwise limit such dealings. These regimes do not generally purport to apply to members of parliament other than Ministers. In a small parliament, and especially one in which the Executive does not hold the balance of power by its own majority, there may however well be an argument that lobbying of Members other than Ministers has more significance than it might otherwise assume.

The purpose of these regimes appears to be predominantly one of transparency – so that those who are lobbied and the public more generally can be aware of both the lobbyist’s client-base and the potentially diverse interests on whose direct and indirect behalf they may be making an argument, and of the relationships that may exist between those lobbying and those being lobbied (such as through political party membership or previous public office).

These are indeed important issues and I agree with the Chief Minister that the ACT should consider whether or not it should follow the trends in other jurisdictions in these regards. However, because the creation of a public register and the imposition of an obligation or incentive on non-parliamentarians to gain registration are core features, I am not sure that such a regime would be appropriately or best embodied in a Code of Conduct for Members.

Of course, if such a regime were separately otherwise established by the Executive or through an enactment of the Assembly, then a provision in the Members’ Code dealing with compliance with that regime may be considered appropriate.

And I note that, even without a specific reference to lobbyists, the draft Code at [Attachment E](#) (and to some extent the current Code) does contain provisions of relevance, especially those related to conflict of interest and inappropriate securing of benefit for third parties.

So far as “social” (and other electronic) media are concerned, it is of course the case that such technologies allow almost instantaneous dissemination of potentially large volumes of data to potentially wide audiences. They thus have a high potential to be used for good purpose. However, there have been some celebrated cases in which the ease of dissemination has induced some to issue ill-considered material in haste, to their lasting regret. Notwithstanding this, it seems to me that there is nothing in principle that is unique to these technologies. As with any other form of communication (whether it be one-to-one, addressing a public meeting, issuing a newsletter or appearing on television or radio), there are some key principles and practices that should be observed – such as maintaining the confidentiality of information and using it only for the purpose for which it has been provided. I have endeavoured to deal with these in the draft at [Attachment E](#).

I note that that draft does not seek to regulate the “post-separation” employment or conduct of former Members, other than by expressing the principle that former Members should promote and support the principles underpinning the Code by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business. It seems to me that a Code of Conduct for Members is an inherently inappropriate way in which to seek to regulate the activities of persons who are not Members. The most contentious post-separation employment of former Members would seem to be as lobbyists, and any future regime in that regard would seem to me to be a preferable avenue for such regulation.

Accordingly, I recommend that the Assembly should consider adopting the revised draft Code of Conduct set out at Attachment E to this report.

Compliance

Since self-government, the Territory has thankfully been relatively free of serious allegations of misconduct by its elected Members. Nevertheless there can be no room for complacency and there should be a clear understanding amongst all concerned about what processes will be followed if and when an apparently credible allegation of breach of the Members' Code of Conduct is made.

As with ill health, prevention is better than cure. The Territory's governance will be best enhanced if Members avoid breaches of the Code of Conduct (whatever its content), and avoid the need for compliance action to be taken. To this end, I recommend that:

- familiarisation with the Code of Conduct should remain an important part of the induction program for newly elected Members of the Assembly;
- the Assembly should continue to have an Ethics and Integrity Adviser as a resource for Members who may from time to time seek advice or guidance on their compliance with the Code;
- the Ethics and Integrity Adviser should continue to report annually, through the Speaker, to the Standing Committee on Administration and Procedure; and
- that Committee should consider each year whether or not those reports indicate any further educative or similar activity is necessary or desirable to alert Members to emerging compliance issues.

Having regard to past experience in the Territory and to the nature of the current Code and of the proposed new draft Code at Attachment E, I do not consider that it would be appropriate to recommend any process of periodic audit of members' conduct by reference to the Code.

However, where an apparently credible allegation of breach of the Code of Conduct is made, the Assembly does need to be able to react in a timely and effective manner. Timeliness is important to ensure that any cloud thereby hanging over a member is resolved quickly so that their ability to actively contribute in a small parliament is not impeded. And effectiveness is vital to ensure the ongoing integrity of the Assembly and its public standing.

The Commonwealth (Latimer) House Principles on the Three Branches of Government, endorsed by the Assembly in Standing Resolution 8A, relevantly provide as follows:

Oversight of Government

The promotion of zero-tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process. Steps which may be taken to encourage public sector accountability include:

- (i) The establishment of scrutiny bodies and mechanisms to oversee government, enhances public confidence in the integrity and acceptability of government's activities. Independent bodies such as public accounts committees, ombudsmen, human rights commissions, auditors-general, anti-corruption commissions, information commissioners and similar oversight institutions can play a key role in enhancing public awareness of good governance and rule of law issues. Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances.*

On 5 June 2012 the Speaker placed the following notice before the Assembly:

That this Assembly requests the Speaker to appoint a Legislative Assembly Commissioner for Standards with the following functions:

- (1) To investigate, if the Commissioner thinks fit, specific matters which have come to his or her attention relating to the conduct of Members and to report to the Standing Committee on Administration and Procedure.*
- (2) In determining whether to investigate a specific matter relating to the conduct of a Member the Commissioner shall have regard to whether in his or her view there is sufficient evidence that the Code of Conduct or the rules relating to registration or declaration of interests may have been breached to justify taking the matter further.*
- (3) No report shall be made by the Commissioner to the Committee in any case where the Member concerned has agreed that he or she has failed to register or declare an interest, if it is the Commissioner's opinion that the interest involved is minor, or the failure was inadvertent, and the Member concerned has taken such action by way of rectification as the Commissioner may have required within any procedure approved by the Committee for this purpose.*
- (4) Any Member who is the subject of the complaint under investigation shall, if he or she so requests, be heard by the Commissioner.*
- (5) The Commissioner shall report each year to the Speaker on the exercise by him or her of the functions of the Commissioner.*
- (6) The Commissioner may be dismissed only following a resolution of the Legislative Assembly after the Standing Committee on Administration and Procedure has reported to the Assembly that it is satisfied that the Commissioner is unfit to hold his or her office or unable to carry out his or her functions; any such report shall include a statement of the Committee's reasons for its conclusion.*

I support the general concept behind this motion. There is however one particular aspect that is of concern to me.

The motion proposes a standing appointment of a Legislative Assembly Commissioner for Standards who can investigate of his or her own motion any matter they wish relating to the conduct of a Member. I am concerned that this would mean that there was no filtering process between the making of a complaint and the potential for a full and potentially time-consuming investigation by the Commissioner, with its attendant costs and disadvantages.

To deal with this matter, I recommend instead that the motion be amended so that:

- all complaints or concerns about the compliance of a Member with the Code of Conduct should be directed in the first instance to the Speaker;
- the Speaker (or the Deputy Speaker if the Speaker would encounter an actual or reasonably perceived conflict of interest in dealing with the matter) should make an initial assessment as to whether the complaint or concern is unfounded, frivolous or vexatious;
- where the Speaker concluded that the complaint or concern was unfounded, frivolous or vexatious, he or she could dismiss it without reference to the Commissioner (and, where appropriate, provide an explanation of the reasons for dismissal to the party raising the matter);
- only where the Speaker was unable to conclude that the complaint or concern was unfounded, frivolous or vexatious would it be referred to the Commissioner for investigation and report to the Assembly through the Speaker and the Standing Committee on Administration and Procedure.

In my view, interposing the Speaker in the process in this way would not be at all inappropriate. It would allow that office holder to perform a similar role to that performed when points of order are taken on the floor of the Assembly or when a question of privilege is raised under Standing Order 276. It would also offer the potential to dispose of matters not warranting investigation in a speedy manner, in the interests of all concerned, and would be almost certainly be less expensive than the “own motion” process envisaged in the draft motion as presently proposed. If this recommendation was adopted, a Commissioner could be “pre-qualified”, appointed and paid a modest retainer to ensure their availability when required, and then engaged on a matter-specific only upon a reference from the Speaker.

To ensure that there is no inhibition on Members approaching the Ethics and Integrity Adviser with a view to avoiding potential compliance issues before they arise, I recommend that the positions of Ethics and Integrity Adviser and the Legislative Assembly Commissioner for Standards should be completely separate and never concurrently held by the same person.

It should be recognised however that proceeding with the appointment of a Commissioner by resolution (whether as proposed in the motion quoted above or as that motion is proposed to be amended by me) has a potential weakness. This is because the Commissioner would have no coercive powers to ensure that they were in fact able to access all relevant factual material. That

could only be overcome by formalising the Commissioner's powers in legislation (as has been one, for example, in Queensland and Tasmania).

However, I am not convinced that it is necessary to introduce such formality at this stage in circumstances where the incidence of complaints has been low and there has not been a record of non-compliance with ad hoc investigation. Instead, I recommend that it would be sufficient at this stage to simply include in the Code of Conduct a commitment by Members to cooperate with investigations by the Commissioner. Failure to cooperate could then itself be dealt with as a potential breach of the Code. Only if this proved to be an inadequate incentive should consideration be given to the need for legislation to cloak the Commissioner with coercive powers.

Whatever the process for dealing with complaints or concerns about Code compliance, a live question is who should be entitled to raise such issues. In my view, it would be an inappropriate limitation on the accountability of the Assembly to the community if it were only Members who were so entitled. I recommend that both members of the public and Members of the Assembly should be entitled to raise complaints or concerns about Code compliance by a Member. If the Speaker is interposed as a "filter" as recommended above, those complaints from the public that may be unfounded through lack of awareness of such matters as the terms and conditions of Members' entitlements could be readily disposed of.

Of course there is always the potential that the Members may be motivated to lodge complaints against other Members solely for what they perceive to be strategic political advantage and without any rational basis or evidence for doing so. To counteract that possibility, I recommend that the Code of Conduct should include a commitment by Members that they would only make a complaint about the compliance of another Member with the Code of Conduct where they believed there were reasonable grounds to suspect non-compliance and that they would not make any such complaint that is frivolous or vexatious or only for political advantage.

Conclusion

In my view the Assembly's Code of Conduct has served it well to date but there is definite scope to improve its form and content, and the environment in which it is made, reviewed and implemented. I hope the recommendations in this report will assist towards that purpose.

Stephen Skehill

**Ethics and Integrity Adviser to the Members of the Legislative Assembly
for the Australian Capital Territory**

31 July 2012

Continuing resolution 5

**CODE OF CONDUCT
FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

This resolution provides for a code of conduct for Members of the Legislative Assembly.

Resolution agreed by the Assembly

25 August 2005 (amended 16 August 2006)

That—

(1) Preamble

Members of the Legislative Assembly acknowledge their diversity of background and personal beliefs and that of Australian society, and maintain their loyalty to the Commonwealth of Australia and to the people of the Australian Capital Territory.

In so doing, Members agree to respect and uphold the law, not to discredit the institution of Parliament, and to maintain their commitment to the public good through personal honesty and integrity in all their dealings.

(2) Duties as Members of the Assembly

Members should avoid any decision or action which may depreciate the reputation of the Assembly and endeavour to reasonably adhere to the Assembly's code of conduct to ensure that their personal conduct meets generally accepted standards and does not discredit or call into question their office or the Assembly.

Members acknowledge that they have an obligation to electors to make decisions on their behalf and as such place emphasis on their dedication to this obligation. As elected representatives, Members will act honestly in all their dealings to maintain the public trust placed in them.

Code of Conduct

(3) Conflict of interest

Members have an obligation to use the influence conferred upon them in the public's interest and not for personal gain.

Notwithstanding the provisions set out in section 15 of the *Australian Capital Territory (Self-Government) Act 1988* and standing order 156 of the Legislative Assembly, Members are individually responsible for preventing personal conflicts of

interest or the perception of a conflict of interest, and must endeavour to arrange their private affairs to prevent such conflicts arising or take all reasonable steps to resolve any conflict that does arise.

- (a) 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 interest or will improperly and dishonestly further the private interest of another person.
- (b) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or as a broad class of persons.

(4) Disclosure of pecuniary interests

The actions and decisions taken by Members are accountable through the Assembly to the people of the Australian Capital Territory. Members' actions and decisions should be transparent and bolster public confidence in the Assembly and the legislative process. In accordance with this transparency, Members are required to disclose their pecuniary interests pursuant to the resolution of the Assembly "Declaration of Private Interests of Members" agreed to on 7 April 1992 (as amended 27 August 1998 and 17 March 2005).

(5) Receipt of any gifts, payments, fees or rewards

Members must register all gifts, payments, fees or rewards valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources. This does not include gifts, payments, fees or rewards received by Members, the Member's spouse, immediate family or personal friends in a purely personal capacity, unless it may pose a conflict of interest. Registration should be made in accordance with the Member's Statement of Registrable Interests.

(6) Advocacy/bribery

In accordance with the provisions of section 14 of the *Australian Capital Territory (Self-Government) Act 1988*, Members must not solicit, accept or receive any remuneration, benefit or profit in exchange for services rendered in the Assembly or one of its committees other than the remuneration and allowances provided for pursuant to section 73 of the Act.

(7) Use of confidential information

Members are reminded of their obligations pursuant to the standing orders concerning the publication of confidential information.

Members in the course of their duties often are also the recipients of information which is either confidential or unavailable to the general public. Members are privileged to receive this information. It is provided to assist them in their decision making for the benefit of the Territory. The status of this information should not be compromised.

Members are not to misuse any confidential information received, particularly for personal gain or the personal gain of others.

(8) Conduct as employers

Members will observe the obligations placed on them as employers with respect to the terms and conditions of those who work for them. Members should extend these obligations to contractors and consultants (however employed or recruited). Members need to be aware of the requirements of the following policies: occupational health

and safety; discrimination, harassment and bullying; equal employment opportunity; acceptable use of information technology and any other relevant policies and legislation.

Members should not appoint close relatives to positions in their own offices or any other place of employment where the Member's approval is required.

Members must ensure that their staff are aware of and abide by the relevant codes of conduct applicable to Members' staff.

Members must ensure that, where relevant, their staff also comply with the Members' Code of Conduct and that they are aware that they are obliged to support the Member's compliance with the code.

(9) Conduct toward Assembly staff

It is expected that Members and their staff will extend professional courtesy and respect to all staff of the Assembly. Members should ensure that through their own conduct and that of their staff, reasonable employment conditions for all building occupants are maintained.

If problems or concerns with the performance or conduct of an Assembly staff member arise, these should be dealt with through appropriate policies and procedures.

(10) Use of entitlements

Members have a personal duty to ensure that entitlements and allowances of office pursuant to Remuneration Tribunal Determinations and as summarised in the Members' Guide are used appropriately in the service of the people of the Australian Capital Territory and not for personal gain.

Members should familiarise themselves with the entitlements available and must ensure the accuracy of all claims made in accordance with the guidelines outlined in the Members' Guide. Members should be aware that items purchased using a Member's allowance remain the property of the Assembly.

(11) Use of public resources/property or services

Members must ensure that the resources provided to them at public expense as Members of the Legislative Assembly for the Australian Capital Territory, are only used for legitimate parliamentary and electorate purposes. Members must not misuse or permit the misuse by any other person or body of these resources.

Members shall not misuse funds allocated for official purposes.

(12) Continuing support

This code of conduct has been established to assist Members as they serve and represent the people of the Australian Capital Territory. The Legislative Assembly respectfully requests that former Members support the spirit of this code as private citizens.

This resolution has effect from the date of its passage in the Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.



***Ministerial
Code of Conduct***

2012

Précis

Ministers in the ACT Government are rightly expected to uphold and demonstrate the highest standards of personal and professional conduct.

Ministers must apply the powers and privileges of their office solely in pursuit of the best interests of the people of the ACT.

Ministers must act lawfully and with integrity, probity and respect for others.

1. Responsibilities under legislation

Ministers must be familiar with key Commonwealth and ACT Legislation including the:

Australian Capital Territory (Self-Government) Act 1988 (Cwlth)

Human Rights Act 2004

They must familiarise themselves with powers and obligations given to them under Territory laws for which they are responsible under the Administrative Arrangements.

Ministers also need to be familiar with the Standing Orders and Continuing Resolutions of the Legislative Assembly for the ACT. *Continuing Resolution No.5* embodies the Code of Conduct for Members of the Legislative Assembly, which applies to ministers in addition to the obligations set out in this code.

Continuing Resolution 8A (the *Latimer House Principles*) articulates generally accepted standards of conduct in Westminster Parliaments. Part 2(f) of the *Latimer House Principles* explicitly obliges ministers to develop and review their own specific guidelines on ethical conduct to address conflicts of interest and enhance transparency, accountability and public confidence in their role.

Ministers should familiarise themselves, and adhere to, the relevant determination of the Remuneration Tribunal establishing their entitlements (including in relation to official travel).

2. Westminster Conventions

Ministers are answerable to the Assembly (and through the parliament to the people of the ACT) for the administration of their portfolio (including in relation to the expenditure of public money) in keeping with accepted conventions of Westminster system parliaments.

Ministers have individual and collective responsibilities. Individual responsibilities relate to their personal decisions and conduct and the management of their portfolio. Collective responsibilities relate to the decisions of the Cabinet.

3. Ethical Principles for Ministers

a. integrity

Ministers must act according to the highest standards of personal integrity and probity, and uphold the ACT's system of responsible government.

Ministers must not use their position or information gained in the performance of their duties to gain a direct or indirect advantage for themselves or their families or acquaintances that that would not be available to the general public.

b. honesty

Ministers must act honestly at all times and be truthful in their statements.

c. diligence

Ministers must be diligent in the performance of their duties and fulfil their obligations to the highest standards.

d. transparency

Ministers must make their decisions and actions as open to scrutiny as is possible consistent with the conventions of responsible government.

e. accountability

Ministers are accountable for their own behaviour and the decisions and actions of their staff. They are accountable, within accepted Westminster conventions) for their portfolio and agencies.

f. fairness

Ministers must act fairly and apply the principles of natural justice in their decision making.

g. respect

Ministers must display respect for all people in their conduct. Ministers must treat others fairly, with sensitivity to their rights, entitlements, duties and obligations.

Minister must not dishonestly or recklessly attack the reputation of any other person, including under parliamentary privilege.

h. responsibility

Ministers must use the powers of office responsibly and in the interests of the people of the ACT.

i. respect for the law and the administration of justice

Ministers must respect and uphold the laws of the Territory and the Commonwealth as they relate to the ACT.

4. Prior to accepting a Ministry

a. personal and pecuniary interests

Ministers must disclose all interests (including memberships and directorships held) to the Chief Minister before accepting appointment as a minister. This includes the interests of their immediate family, both personal and financial.

Where a minister's interest does or is likely to give rise to a conflict between personal and public duties, appropriate action should be taken to resolve that conflict transparently and in favour of the public interest.

In addition to disposing of interests, ministers may avoid conflicts of interest through divestment of investments to a trust which is conducted at arm's length from the Minister and their immediate family. The existence of any such trust is to be disclosed to the Chief Minister.

Decisions about investment by ministers in publicly listed companies must be considered on a case by case basis, in light of an assessment of the potential for conflict given the legislative and regulatory responsibilities of the ACT Government and the minister. The nature of any investment (e.g. directly or indirectly held) will be a relevant consideration in any assessment of the potential for conflict.

b. other positions

Under section 103A of the Electoral Act, a person is not eligible to be an MLA where the person holds a public office or other statutory appointment, or is otherwise employed by the Commonwealth, the Territory, or another State or Territory. Ministers may retain memberships of organisations only where it is not an official or paid position.

Ministers must not solicit nor accept payments or gifts for services as a minister except as lawfully provided for (see sections 14 and 73 of the Self Government Act). The *Code of Practice for Official Hospitality, Gifts and Protocol* establishes procedures for the acceptance, surrender or retention of official gifts.

5. During Term

a. change in circumstances

Ministers must inform the Chief Minister of any changes in their personal circumstances as they arise, in particular, the loss or gain of any interests relevant to issues before Cabinet, or being a party to legal proceedings or other investigations.

b. Cabinet conventions

To permit the free exchange of ideas and frank discussion to occur, the deliberations of Cabinet must remain confidential (subject to agreed processes for publication of Cabinet outcomes). The *Cabinet Handbook* establishes procedures for managing real or potential conflicts of interests by ministers in relation to matters being considered by the Cabinet.

c. respect for parliament

Ministers must not wilfully mislead parliament. If an error is identified, a minister must correct the public record at the earliest opportunity.

Ministers must ensure that their personal conduct does not bring the Legislative Assembly, the Government, or their position into disrepute, or adversely affect public confidence in the integrity of the ACT's system of government.

d. administrative resources

Ministers must use administrative resources appropriately. Ministers must not permit public resources to be wasted or used in an improper manner.

e. ACT Public Service

Ministers must respect the impartiality of the public service and recognise and respect the role and functions of the ACT Public Service set out in the *Public Sector Management Act 1994*.

f. staff

Ministers must abide by their moral and legal obligations as an employer in dealing with their staff. Ministers must make their staff aware of their ethical and administrative obligations, including providing them with a copy of the *Ministerial Staff Code of Conduct*.

g. lobbying

Ministers must handle lobbying by business and other parties carefully and ensure their personal interests do not clash with or override their public duties.

6. Post-ministerial employment

a. return of public property/papers

On leaving office, ministers must return all government documents and resources that were provided to assist in fulfilling their duties as a minister.

b. information obtained in the course of official duties

Ministers must not disclose information obtained in the course of their official duties on leaving office. Any information that is not in the public domain must not be used to their own or another's advantage. Ministers must also be mindful of obligations created under privacy legislation in relation to personal information.

c. future employment and conflicts

Ministers in the ACT Government hold multiple portfolios covering a very broad range of what would, elsewhere in Australia, be state and municipal responsibilities.

Over the life of a government, they may hold a number of different portfolios covering a number of sectors of the Canberra economy.

On leaving office, Ministers should be conscious of the potential for allegations of conflict of interest or controversy to arise in the event that they take up other employment in an area over which they have held ministerial responsibility. In particular, ministers should consider the likelihood of there being an appearance of their gaining personal financial or other benefit from knowledge gained while they were a minister, or opportunities for criticism of their misusing contacts made in that role for their personal gain. The extent to which the proposed employer has a contractual or other financial relationship with the ACT Government will be a relevant consideration in former ministers reaching a decision on an appropriate course of action.

In deciding to accept a particular offer of post ministerial employment, former ministers should be mindful of their standing in the community, and continuing responsibility to uphold public confidence in the ACT's system of government.

7. Further information

Ministers requiring more information about their obligations under this Code should in the first instance seek the counsel of the Chief Minister.

3

Should there be a code of conduct?

Introduction

3.1 Although the terms of reference presume, and the various reform agreements commit most political parties and individual members to, the implementation of a code of conduct, introducing a code would be a very significant development for all members. The Committee considered that it should assess the reasons for and against adopting a code of conduct for members.

3.2 There are already a number of 'rules' in place which govern various aspects of the conduct of Members of the House of Representatives. These rules can be found in the Constitution, civil and criminal law, *Commonwealth Electoral Act 1918*, *Parliamentary Privileges Act 1987*, standing and sessional orders of the House, resolutions of the House, Register of Members' Interests and various guidelines and conventions associated with them. ¹ In addition, there is the complex meld of rules which comprise the parliamentary entitlements regime. ² However, there is no framework which collates these rules as a structured set of obligations on members, and it is uncertain whether the area of members' conduct is sufficiently covered.

3.3 In some jurisdictions, the introduction of codes of conduct for parliamentarians has been precipitated by events of misconduct. The genesis of the current review in an environment of reform rather than one of crisis, provides the House with an opportunity to take the initiative, and members, a valuable time for measured self reflection. This is a far more favourable situation in which to devise a code of conduct than responding during the heightened sensitivity of a misconduct scandal, when there could be significant pressure on political leaders to impose a code of conduct and enforcement regime with little or no involvement of the members themselves.

3.4 Codes of conduct are increasingly common in professions and fields of endeavour throughout Australian society. The federal and state parliaments have given force of law to a number of professional or industry codes, by including or referring to them in legislation. In addition, many professions have responded to stakeholder expectations of high standards of professional conduct by devising and adopting through self regulation, voluntary codes of conduct.

3.5 On a daily basis, there are stories in the media critical of the conduct of persons in one field or another. Parliamentarians are not exempt from this media scrutiny, although the publication of reports on such matters are rightly characterised as of a

recurring nature rather than sustained. Nevertheless, there seems to be a trend of increasing public scrutiny of parliamentarians. Community expectations, as reflected in the media, indicate that behaviour of a very high standard, higher than for others in the community is expected of members of parliament. When members merely access approved allowances and entitlements in proper ways, this can generate media stories about whether those expenditures are somehow inappropriate, even though there is no evidence that the individual members acted outside the relevant rules or guidelines.

3.6 It is against this background that the Committee assessed arguments in favour of and against a code of conduct.

Arguments in favour of a code

3.7 Arguments in favour of implementing a code of conduct could be categorised broadly as strengthening the overall ethical framework to guide members in their behaviour and improving public perceptions of Parliament and parliamentarians.

Guidance on ethical issues and an improved framework

3.8 Members are elected to office with little formal guidance about what might be expected of them as members. A code of conduct provides a consistent frame of reference for all members about their conduct while in office. In circumstances where rules related to individual measures affecting members do not provide sufficient guidance, or for those aspects of their duties that are not otherwise covered by formal rules, a code would provide specific guidance on ethical issues.

3.9 This aspect of a code was commented on by Mr Neil Laurie, Clerk of the Queensland Parliament, in his submission: 'To a large extent the great value of the Code is that it sets a standard that a Member's conduct might be viewed against. The mere fact that a Code is in place means that members may be challenged by their peers, the media, or members of the public; as to whether their conduct complies with the standards as set out in the code'.³

3.10 As referred above, there are already many rules which apply to the various aspects of a Member's life as a parliamentarian, which could at best be described as a collection. An express code of conduct could overcome any gaps there may be in the existing ethical requirements, put principles in place and consolidate the rules, thereby providing a useful, structured statement in relation to members' conduct.

3.11 Two recent incidents provide support for the view that ethical guidance is required. The first illustration was the reference by the Speaker in the 42nd Parliament about the conduct of the Member for Dawson in the parliamentary precincts. The Speaker considered that incident might fall for consideration under a code of conduct, although it did not seem to fit within the existing formal rules applying to parliamentarians.⁴ The second illustration, also in the 42nd Parliament, was the exchange between the Member for Robertson and the Member for Indi in the Main Committee, which this Committee received as a reference. The Committee concluded that the incident had more to do with

appropriate standards of behaviour and conduct of members rather than with any matter of privilege.

Satisfying community expectations and building political trust

3.12 The community rightly has expectations of a high standard of conduct of their elected representatives. There is no formal recorded basis on which members of the community can express any concerns or complaints they have about the conduct of members. They have no frame of reference to which they can refer to judge whether the conduct of members is within accepted standards, other than indistinct 'community expectations'. The adoption of a code would provide reassurance to the community about standards of behaviour they should be able to expect of members and provide also a distinct reference for them for any issues they might have with members' conduct. This aspect is recognised in jurisdictions where parliamentary codes of conduct are already in place. Mr Russell Grove, Clerk of the Legislative Assembly, Parliament of New South Wales, expressed this view: 'I think the code is a way of parliament saying to the public at large: "We are like everybody else in public office in the community. We are accountable and we are prepared to live by a code"'.⁶

3.13 There are numerous, often contradictory perceptions about parliament and its members.⁷ However, unfortunately it seems that the Australian community has deep concerns about standards in public life and the media give prominence to ethical issues in their commentary in this regard.⁸ A code of conduct could assist in building a stronger relationship of trust between elected members and their individual constituents and the community at large. A code would serve as a reminder to members of the political trust they owe to their constituents.

3.14 In some jurisdictions parliamentarians make an oath to uphold a code of conduct, thereby reinforcing appropriate standards through a specific formal and public commitment to good conduct.

Confidence in the institution of Parliament

3.15 At the federal level in Australia, staff supporting the institution of Parliament have long been subject to rules in relation to appropriate standards of behaviour in performing their duties. Currently, the Australian parliamentary service is established pursuant to the *Parliamentary Service Act 1999*, and all staff employed under the Act, from the most senior leaders to the most junior ranks of staff, are obliged to meet the standards set by the values and code of conduct provided for in the Act. This code provides a transparent standard against which the behaviour of staff who support the institution of Parliament can be judged.

3.16 If the House of Representatives adopted a code of conduct for its members, this would serve as further reassurance for the community, in relation to its elected representatives, that the institution of Parliament is responsive to its concerns. Mr Bernard Wright, Clerk of the House of Representatives, said to the Committee: '... I do think that it [adopting a code] is probably a helpful thing to do in terms of showing a bit of self-awareness on the part of a house of parliament. A house of parliament that

adopts a code is perhaps showing awareness of a perception problem which can become a reality'.⁹

Codes of conduct are widespread for public officials

3.17 In democratic societies, codes of conduct are widely considered to be the norm for public officials in all aspects of governance, and in Australia, most public officials are subject to a code of conduct. Most state and territory legislatures have adopted codes of conduct and other prescribed measures to establish standards of conduct for members of their houses. In addition, most local councils have standards imposed, and many of these codes are prescribed by law.

3.18 At the federal level, the conduct of public servants and parliamentary service staff is already subject to codes of conduct and related service values, prescribed by the Parliament.¹⁰ In addition, since 1996 successive Prime Ministers have established rules to guide the conduct of those parliamentarians who are ministers in the *Guide to Key Elements of Ministerial Responsibility*.¹¹ In addition, over the same period Prime Ministers have established a register of lobbyists, thereby providing a level of transparency in negotiations in relation to government policies, programs and activities.

3.19 The authoritative standards worldwide, on parliamentary best practice, state that parliamentary accountability is enhanced through measures to promote good governance, including the establishment of codes of conduct for all parliamentary staff and for all parliamentarians.¹² Not to have a code of conduct is counter to the standards of what is considered to be parliamentary best practice both within Commonwealth legislatures and within national parliaments worldwide. As referred above in chapter 2, the Commonwealth Parliamentary Association (CPA) has determined in the Latimer House Principles that it is a fundamental value of the Commonwealth to establish ethical governance, with attendant appropriate guidelines for parliamentarians on ethical conduct.¹³ In addition, the Inter Parliamentary Union (IPU), the foremost association of national parliaments, has reported that it is a key characteristic of a democratic parliament that members of parliament are accountable for their performance in office and integrity of conduct. The institutional means by which this objective is realised is through the development of standards and an enforceable code of conduct.¹⁴

3.20 Of additional relevance in the parliamentary context, comparable national legislatures with systems of parliamentary government similar to Australia's have codes of conduct, for example, the Houses of Commons in both the United Kingdom and Canada.

Arguments against a code

3.21 The Committee has also explored the arguments against the implementation of a code of conduct for members.

Interference with Members' duties

3.22 A code of conduct might impose restrictions on members that would prevent them from freely and fully performing their duties. Therefore, the ideal of imposing a standard of behaviour for members might compete with another ideal of ensuring that members are able to pursue their duties without any impediment or restriction. This concern is perhaps more a theoretical one than a practical one. If a code is expressed in more general terms and refers to broader values and principles, then it is less likely that a code might unnecessarily impede the actions of members.

Further, if the effect of a code is to restrain conduct that is not appropriate for members and this expresses community expectations, then any 'restraint' might support rather than impede members in performing their duties in a proper manner.

Members are subject to many rules

3.23 It could be argued that the conduct of members is already subject to a range of guidelines and rules, therefore a separate code of conduct is not necessary. The range of rules applying to members is outlined above and is similar to the provisions applying to Senators, as referenced in one of the Senate's guides to procedure.¹⁵ While extensive rules and guidelines apply to the actions and behaviour of members, they currently do not cover broader ethical values and principles, nor are they drawn together in any structured manner.

3.24 Professor Carney noted that part of the value of a 'code', was in bringing those obligations together, and 'It brings a philosophical basis to these obligations that have developed through the common law, through statutory provisions and through resolutions of the houses from the United Kingdom through to Australia ...'.¹⁶ He also thought such a consolidation would be of practical benefit and educational value to members. The comments of Mr Kerry Shine, Chair of the Integrity, Ethics and Parliamentary Privileges Committee, Queensland Parliament, appear to support this view: 'The fact that all these obligations are in one document, one code, is of help as a practising member of parliament.'¹⁷

Code of conduct would not improve behaviour

3.25 It has been argued that it is not possible to improve the behaviour of individuals simply by implementing a code of conduct. It is perhaps difficult to assess the impact that the introduction of a code of conduct would have on the standards of conduct of members. The mere existence of a code does not guarantee that individuals might not behave in ways they should not. Nevertheless, the logic of this argument suggests that codes of conduct would not be implemented for any public officials at all, but codes do exist for most such officials because they are seen to have value.

3.26 Codes have in fact been accepted widely as a guide to ethical behaviour and as communicating with the community about its expectations of the standards to be expected of public officials.

Complaints would be pursued for political purposes

3.27 Another argument raised in the debate is that complaints under a code of conduct would be pursued against members purely for political reasons. There could be a variety of motivations for complaints, including for political purposes. A rigorous and independent process for dealing with complaints would be required to enable those matters that are raised purely for political purposes to be dismissed as such.

3.28 In the political contest between government and opposition, many opportunities can be taken to seek political advantage. It is possible that an allegation of misconduct could be raised in a frivolous way to make a political point. There are examples where matters of privilege can be raised, more for political reasons than because there is a serious matter of privilege involved. While there is the potential for misuse of any formal mechanism for regulating the conduct of individuals, there would need to be built into any review or investigation of complaints raised as code of conduct matters the opportunity to filter and exclude those that are merely frivolous or vexatious. While a fair and proper investigation process might not prevent matters from being raised for purely political purposes, it should limit the opportunity for such matters to be pursued. It should also be noted, that raising such serious matters in a frivolous manner can often reflect adversely on the person who raises them.

Parliamentarians are different from other officeholders

3.29 A further argument that is made is that members of Parliament are unlike other officeholders in that they are subject to elections, and judgements are made about the conduct of members at elections by their individual parties and by the general body of electors. However, there can be a considerable period of time between any conduct of a member that raises concerns and the next election. Furthermore, elections are typically about a variety of issues, with the conduct of a member during a parliamentary term being only one issue to be taken into account. Conduct of a relatively minor nature may be of little significance in the broader election context. A code of conduct could enable an appropriate and more timely response to any incidents.

Observations

3.30 The competing arguments identified in relation to implementing a code of conduct raise serious issues which are deserving of careful consideration. The overall standing of the Parliament and parliamentarians in the community is not as strong as would be desirable, and there is a range of factors involved in those perceptions. A code of conduct for members is not a panacea for a dramatic change in the overall perceptions about parliamentarians. However, it could make a modest contribution to an improvement in perceptions.

3.31 Were the House to implement a code, this would be a further demonstration of its rights, in accordance with the powers granted by section 50 of the Constitution to each House, to make rules and orders with respect to the mode in which its powers, privileges and immunities might be exercised and upheld, and the order and conduct of its business and proceedings.

3.32 The Committee is mindful that the introduction of a code will not be a guarantee against the behaviour of members being found to fall short of the standards set by the code. The recent scandals at Westminster stand as a reminder that mistakes can be made and misconduct can occur even when a code of conduct for members is in place. The Committee notes also that the number of cases of proven misconduct was relatively small although the media reports might lead to a different impression. When these events were revealed the individual Members could be and were measured against the code and this provided certainty

- 1 Most of these are well canvassed in *House of Representatives Practice*, ed. I C Harris, Fifth Edition, Canberra, 2005.
- 2 The major components of this regime have been drawn together in Committee for the Review of Parliamentary Entitlements, *Review of Parliamentary Entitlements*, Australian Government, Committee Report, April 2010, see Figure 3-1 at p. 41.
- 3 Submission from Mr Neil Laurie, Clerk of the Queensland Parliament, p. 3.
- 4 See, House of Representatives Debates (4.12.2008) p. 12725.
- 5 See, *Report on the issue of the exchange between the Member for Roberson and the Member for Indi on 28 May 2008 and the subsequent withdrawal and apology by the Member for Robertson on 29 May 2008*, House Standing Committee of Privileges and Members' Interests, 23 October 2008.
- 6 Transcript of roundtable discussion, 21 March 2011, p. 6.
- 7 J Warhurst, 'Fifteen (contradictory) perceptions of parliament: five good, five bad and five ugly', *Australasian Parliamentary Review*, Autumn 2011, Vol. 26(1), pp. 83-87.
- 8 Bob Bennett, 'Candidates, Members and the Constitution', *Research Paper No. 18 2001-02*, Department of Parliamentary Library, 2002.
- 9 Transcript of roundtable discussion, 21 March 2011, at p. 8.
- 10 See, *Public Service Act 1999* and *Parliamentary Service Act 1999*.
- 11 See, http://www.pmc.gov.au/guidelines/docs/ministerial_responsibility.rtf
- 12 See, R Staphenurst and R Pelizzo, 'Legislative Ethics and Codes of Conduct', *World Bank Institute Working Papers*, Series on contemporary Issues in Parliamentary Development, 2004.
- 13 See, *Commonwealth (Latimer House) Principles on the Three Branches of Government*, CPA adopted July 2009.
- 14 See, *Parliament and Democracy in the Twenty-First Century: a guide to good practice*, ed David Beetham, Inter-Parliamentary Union, Switzerland, 2006.
- 15 Transcript of roundtable, 21 March 2011, p. 6, and see, 'No. 23-Provisions governing the conduct of Senators' *Brief guides to Senate procedure*, July 2008.
- 16 Transcript of roundtable, 21 March 2011, p. 7.
- 17 Transcript of roundtable, 21 March 2011, p. 5.

Code of Conduct for Members of the Scottish Parliament

3.1 Introduction: Key principles

3.1.1 This Section consists of general key principles. The key principles, as compared to the ethical standards set out in the Code itself, are aspirational in nature. Their intent is to guide and inspire members toward the very highest ethical ideals. The key principles, in contrast to ethical standards, do not represent obligations and do not form the basis for imposing sanctions.

Key principles underpinning the Code of Conduct

3.1.2 These principles set the tone for the relationship between members and those they represent and between the Parliament and the people of Scotland.

Public duty

3.1.3 Members are expected to act in the interests of the Scottish people and the Scottish Parliament. Members should uphold the law and act in conformity with the rules of the Parliament.

3.1.4 In order to exercise their public duty, members must take the oath of allegiance or make a solemn affirmation as explained in Rule 1.2 of the *Standing Orders*.

Duty as a representative

3.1.5 Members should be accessible to the people of the areas for which they have been elected to serve and represent their interests conscientiously.

Selflessness

3.1.6 Members should take decisions solely in terms of the public interest. They should not act in order to gain financial or other material benefit for themselves, their family or friends.

Integrity

3.1.7 Members have a duty not to place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

Honesty

3.1.8 Members should act honestly. They must declare any private interests (as required by the Interests of Members of the Scottish Parliament Act 2006) relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest. The categories of registrable interest are outlined in the schedule to the Act, as amended on resolution of Parliament on 20 January 2011. The schedule, as amended, is contained in Volume 4 of the Code.

Accountability and openness

3.1.9 Members are accountable for their decisions and actions to the Scottish people. They should consider issues on their merits, taking account of the views of others.

3.1.10 Members should be as open as possible about their decisions and actions.

Leadership

3.1.11 members should promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its members in conducting public business.

National Assembly for Wales: Code of Conduct for Assembly Members

Members of the Assembly should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. The seven principles are:

(a) **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.

Assembly Members should avoid conflict between personal and public interests and resolve any conflict between the two at once and in favour of the public interest.

(b) **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.

Assembly Members should 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 the Assembly and refrain from any action which would bring the Assembly, or its Members generally, into disrepute. Members should not ask civil servants to act in any way which would compromise the political impartiality of the Civil Service or conflict with the Civil Service Code.

(c) **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.

(d) **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.

No improper use shall be made of any payment or allowance made to Assembly Members

for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

(e) **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.

Assembly Members must not prevent any person from gaining access to information which that person is entitled to by law, but must not disclose confidential information, including confidential information from Assembly Committees, without consent unless required to do so by law. Any such confidential material received by Members in the course of their Assembly duties should only be used in connection with those duties and must never be used for the purpose of financial gain. In any activities in relation to, 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, Members must always bear in mind the need to be open and frank with other Assembly Members, and with officials.

(f) **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.

(g) **Leadership:** Holders of public office should promote and support these principles by leadership and example.

New South Wales

PREAMBLE

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

Members of Parliament recognise, that they are in a unique position of being responsible to the electorate. The electorate has the right to dismiss them from office at regular elections.

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

Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.

Queensland – 2010 Revised Draft Code of Ethical Conduct for members

The purpose of this Code serves to remind members of obligations they have and to guide members' decision making in relation to ethical issues.

The supremacy of the institution of Parliament in a representative democracy is acknowledged. The underlying basis of this Code is that the mandate of a member of the Legislative Assembly ("member") is granted by the free choice of the people, and members are primarily responsible to the people.

STATEMENT OF FUNDAMENTAL PRINCIPLES

The following six fundamental principles draw together the various concepts underpinning the duties of, and obligations on, a member of Parliament, to assist members to better understand their representative role and responsibilities.

1. Integrity of the Parliament

2. Primacy of the Public Interest

3. Independence of Action

4. Appropriate use of information

5. Respect for Persons

6. Appropriate use of entitlements

1. INTEGRITY OF THE PARLIAMENT

The public's confidence in the institution of Parliament is essential. Members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and avoid any action which may diminish its standing, authority or dignity.

...

2. PRIMACY OF THE PUBLIC INTEREST

Members are elected to act in the public interest and make decisions solely in terms of the public interest. Members also have a continuing duty to declare any private interests relating to their public duties as they arise, and to take steps to avoid, resolve or disclose any conflicts arising in a way that protects the public interest.

It is vital to parliamentary democracy that the public has confidence in the integrity of the decision-making process of Parliament. To ensure transparency, public scrutiny and public confidence, it is necessary that each member disclose their pecuniary interests on a continuing and ad hoc basis when need arises.

...

3. INDEPENDENCE OF ACTION

Parliamentary democracy requires that members make decisions, and be seen to make decisions, in accordance with the public interest and not because they are under any financial obligation or influence. Therefore, members are not to place themselves under any financial obligation to outside individuals or organisations, including executive government, that might influence them in the discharge of their duties and responsibilities, and must act at all times in accordance with rules set down by the Parliament for outside appointments.

...

4. APPROPRIATE USE OF INFORMATION

In the course of their duties members often receive information which is either confidential or prized (that is, not available to the general public). Members are not to misuse any confidential or prized information, particularly for personal gain.

...

5. RESPECT FOR PERSONS

Members should treat members of the public, officers and employees of the Parliamentary Service and other public officials with courtesy, honesty and fairness, and with proper regard for their rights, obligations cultural differences, safety, health and welfare.

Members should not use abusive, obscene or threatening language (either oral or written) or behaviour towards any officer, employee or member of the public.

6. APPROPRIATE USE OF ENTITLEMENTS

Members are provided certain entitlements to assist them to discharge their duties and responsibilities.

Members are to ensure they comply with any guidelines for the use of these entitlements.

Members must ensure the administrative rules or requirements which apply, from time to time, to any entitlement or allowance they receive via the Parliamentary Service or by virtue of the Speaker's discretion are observed.

The *Members' Entitlements Handbook* and *Members' Office Support Handbook* outlines the allowances and entitlements of members and provide for the manner in which such allowances and entitlements may be claimed. The Speaker, or the Clerk of the Parliament (as the Accountable Officer for the Legislative Assembly) may from time to time issue guidelines and determinations to clarify or assist members in interpreting their allowances and entitlements.

Members are encouraged to seek advice from the Clerk of the Parliament in relation to appropriate use of entitlements.

Parliament of Victoria Law Reform Committee – 2009 Review of the *Members of Parliament (Register of Interests) Act 1978*

The Committee recommends that the Act include a statement of values for members of parliament. Subject to further consultation through the exposure draft recommended in recommendation 35, the statement of values should include the following:

- Serving the public interest
- Upholding democracy
- Integrity
- Accountability
- Respect for the diversity of views and backgrounds within the Victorian community
- Diligence
- Leadership.

Tasmania – 2011 Integrity Commission Draft Code of Conduct for Members of Parliament

Preamble

Members of Parliament should recognise that their actions have a profound impact on the lives of all Tasmanian people. Fulfilling their obligations and discharging their duties responsibly requires a commitment to the highest ethical standards to maintain and strengthen the democratic traditions of the State and its Institutions.

Merely avoiding breaking the law will not always be enough to guarantee an acceptable standard of conduct. Members of Parliament 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. In making choices about conduct Members should have regard to prevailing community values and standards. They should also, where possible, avoid giving unnecessary offence to groups in the community whose beliefs and views differ from the mainstream.

As Members of Parliament should promote and support this Code by leadership and example.

Members may seek confidential advice from the Parliamentary Standards Commissioner as to any matter arising under this Code.

A breach of this Code will also constitute a breach of Standing Orders able to be dealt with by the Chamber concerned.

Statement of Commitment

To the people of this State, we owe the responsible execution of our official duties, in order to promote human, social and environmental welfare. To the people of this State, we owe honesty, accessibility, accountability, fairness, transparency, courtesy, respect and understanding.

To our fellow Members of Parliament, 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 act solely in terms of the public interest: 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.

This Code has been developed for the guidance of all Members of Parliament. It sets out principles to assist Members in observing the expected standards of conduct in public office and to act as a benchmark against which that conduct can be measured.

Commonwealth of Australia – 1995 Presiding Officers Working Group draft

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.

House of Representatives Standing Committee on Privileges and Members' Interests - 2011 Draft Code of Conduct for Members of the House of Representatives

Key Principles

1. Loyalty to the Nation and Regard for its Laws

Members must be loyal to Australia and its people. They must uphold the laws of Australia and ensure that their conduct does not breach or evade those laws.

2. Diligence and Economy

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

3. Respect for the Dignity and Privacy of Others

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

4. Integrity

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 Australia.

5. Primacy of the Public Interest

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

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. They also must not seek to affect improperly any process undertaken by officials or members of the public.

6. Personal Conduct

Members must ensure that their personal conduct is consistent with the dignity of the Parliament. They should act at all times in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its Members.

DRAFT

**CODE OF CONDUCT FOR MEMBERS OF THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy, they cannot command but must constantly strive to earn and maintain the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members ascribe to the following principles which they undertake, to the community and to one another, shall guide their conduct as Members in all matters:

- Members should at all times act with integrity, honesty and diligence.
- Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- Members should act independently and never place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their duties in a manner inconsistent with these principles.
- Members should be accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- Members should be transparent in, and accountable for, their decisions and actions, should avoid or appropriately resolve any actual or reasonably perceived conflicts of interest and should submit themselves to appropriate scrutiny.
- Members should make only proper use of those public resources to which they have access.
- Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
- Members should observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- Members and former Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they will, in particular:

- Treat all citizens of the Australian Capital Territory with courtesy, and respect the diversity of their backgrounds, experiences and views.
- Actively seek to prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, and take all reasonable steps to resolve any such conflict or perception that that does arise. In particular, Members will:
 - Comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).
 - Make and maintain disclosure of their pecuniary interests in accordance with disclose their pecuniary interests pursuant to the resolution of the Assembly “Declaration of Private Interests of Members” agreed to on 7 April 1992 (as amended or replaced from time to time).
 - Include in the Member’s Statement of Registrable Interests all gifts, payments, fees, rewards or benefits received in connection with the Member’s functions as a Member where such are valued at more than \$100.
 - Disclose in a manner appropriate to the circumstances any other financial or non-financial interest that they may hold or in which they may be reasonably perceived to have a material interest (other than as a member of the public or of a broad class of persons) which they consider (or ought to consider) a reasonable observer, informed of that interest, might perceive as giving rise to a conflict of interest with the performance of the Member’s duty as a Member.
- Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any remuneration, fee, payment, reward or benefit in kind other than that provided by the Territory to the Member as a Member.
- Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to another person.
- Not engage in any outside employment that involves a significant commitment of time and effort or that otherwise materially impedes their capacity to perform their duties as a Member.
- Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege.
- Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information, or improperly for the private benefit of themselves or another person.
- Use the public resources (whether staff, financial or material) to which they are provided access as a Member:
 - Only for the purposes for which they are provided;

- In accordance with the terms and conditions on which they are provided; and
 - In a manner designed to make effective, efficient and economic use of those resources.
- In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members of Staff) Act 1989*:
 - Familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology).
 - Not employ a family member as defined in that Act.
 - Direct their personal staff to be mindful of the commitment of the Member, and to assist the Member, to comply with this Code of Conduct.
 - Direct their personal staff to comply with any code of conduct applicable to those staff from time to time.
- Extend professional courtesy and respect to all staff of the Assembly.
- As a member of a Committee of the Assembly and otherwise as a Member, respect the unique position of impartiality and the obligations to the Executive of officers of the ACT Public Service with whom they deal.
- Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
- Cooperate fully with any official inquiry that may be commenced in connection with their own compliance with this Code of Conduct, or that of another Member.