

STANDING COMMITTEE

ON ADMINISTRATION AND PROCEDURE

The Appropriateness of a Code of Conduct for Members and Their Staff

AUGUST 2004

REPORT 6

A. Committee membership

Mr Wayne Berry MLA (Presiding Member)

Ms Roslyn Dundas MLA

Mrs Vicki Dunne MLA

Mr John Hargreaves MLA

Secretary: Mark McRae (until 6 June 2003)

Tom Duncan (from 6 June 2003)

Assistant Secretary: Janice Rafferty

B. Resolution of appointment

In 1995, the Legislative Assembly for the Australian Capital Territory ('the Assembly') adopted Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

C. Terms of Reference for Inquiry

On 12 December 2002 the Legislative Assembly resolved that, notwithstanding Standing Order 16, the Standing Committee on Administration and Procedure inquire and report on the appropriateness of a code of conduct for members and their staff.¹

For further information on this and other inquiries by the Committee contact the Committee Secretary on (02) 6205 50191 or by email at committees@act.gov.au. Alternatively view the Committee's website at www.legassembly.act.gov.au.

¹ ACT Legislative Assembly, *Minutes of Proceedings* No. 43, 12 December 2002 para 13

D. Preface

In compiling this report the Committee considered Report No. 8 of the Standing Committee on Administration and Procedure (4th Assembly) entitled *Inquiry into a Code of Conduct for Members of the Legislative Assembly and a Parliamentary Ethics Advisor for the ACT* dated August 2001. The Committee at that time was mindful that the question of whether there should be a code of conduct for all members had been before the Committee since 1995. Report No. 8 was presented to the Legislative Assembly on 22 August 2001. The Assembly at that time resolved that the report be noted. The final sitting of the Fourth Assembly was held on 30 August 2001 and an election was conducted on 20 October 2001. At the time of writing this report, there has been no Government Response to the recommendations of the Report nor have any recommendations of the report been adopted.

It is not intended that this report revisit the issues relating to a Code of Conduct for Members as significant debate on this topic has already occurred. Reference will be made to Report No. 8 (4th Assembly) and a copy of the report is available at www.legassembly.act.gov.au. Consideration will be given, however, to reviewing the draft in response to the Ministerial Code of Conduct tabled by the Chief Minister in on 12 February 2004.

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SUMMARY OF RECOMMENDATIONS

Recommendation 1

- 2.9 *The Committee recommends that the Presiding Member of the Standing Committee on Administration and Procedure (6th Assembly) place Report 6 of this Committee on the Agenda of the Committee for early consideration and report to the Assembly.*

Recommendation 2

- 2.12 *The Committee recommends that any Code of Conduct for Members as adopted by the 6th Assembly, be reviewed after three years of operation and prior to the end of that Assembly.*

Recommendation 3

- 11.4 *The Committee recommends that the Code of Conduct for Members, as proposed by the Standing Committee on Administration and Procedure (4th Assembly) Report No. 8, as amended by the inclusion of the following matters,*
- *“conduct as an employer” be added to the proposed code*
 - *Members to ensure that their staff are aware of and abide by “relevant” codes of conduct.*

as at Appendix D, be adopted.

Recommendation 4

- 11.6 *The Committee recommends that the code of conduct for Members be adopted as a resolution of continuing effect of the Assembly.*

Recommendation 5

- 12.2 *The Committee recommends that it is appropriate for Members’ staff to be to be subject to a code of conduct.*

Recommendation 6

- 12.7 *The Committee recommends that the completion of the proposed Induction Information Checklist for Non-Executive Members’ Staff (as at Appendix B), be acknowledged as an indication that the staff member is aware of their obligations for conduct specified in their employment contract and the disciplinary procedures specified in the ACT Legislative Assembly Members’ Staff Certified Agreement 2003-2004.*

1. Introduction

1.1 On 6 June 2002, the Legislative Assembly for the Australian Capital Territory resolved that:

“... a Select Committee on Privileges be appointed to examine whether the unauthorised receipt of e-mails from Mr Wood’s office was a breach of privilege and whether a contempt was committed.”²

1.2 The Select Committee on Privileges held four public hearings and heard witnesses in-camera. It also considered correspondence from the Office of the Director of Public Prosecutions to the Commissioner for the Australian Federal Police. In that correspondence the Director of Public Prosecutions noted that the recipient of the emails “may have acted in an inappropriate or perhaps dishonest way”.³

1.3 The Select Committee, when investigating the unauthorised receipt and use of emails, believed that the receipt of another person’s e-mail implied responsibilities on the recipient and in the instances being investigated these responsibilities were being flaunted.

1.4 The Select Committee also found that the continued receipt of the emails constituted a contempt.⁴ The individual member of staff identified by the Committee as the recipient of the unauthorised emails had been a member of staff in the office of the Leader of the Opposition and at the time of the incidents, was acting in a voluntary capacity.

1.5 The report of the Select Committee on Privileges identified the status of volunteers, the conduct of members’ staff and the role of the IT service provider as matters requiring investigation by the Standing Committee on Administration and Procedure. This report is one of a suite of three that address these issues.

2. A Code of Conduct for Members

2.1 Members of the Legislative Assembly for the Australian Capital Territory are already bound by a number of obligations and legal requirements once elected. Sections 14, 15, and 67 of the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* provide for the disqualification of Members in the event of a conflict of interest.

² ACT Legislative Assembly, *Minutes of Proceedings* No. 22, 6 June 2002 para 20.

³ Office of the Director of Public Prosecutions, ACT, letter to the Commissioner of the AFP, 6 June 2002

⁴ Select Committee on Privileges, *Unauthorised diversion and receipt of a Member’s e-mails*, para 5.1, p 23

- 2.2 The Assembly itself has passed two resolutions which provides for Members to be accountable for what they say in the Chamber or in committee, namely citizen's right of reply and freedom of speech. Standing orders dictate the rules of debate and the procedures for the Legislative Assembly also provide rules relating to privilege, conflict of interest and disorderly behaviour. Members are also required, by resolution of the Assembly, to make a declaration of the private interests of themselves and their immediate families.
- 2.3 The Standing Committee on Administration and Procedure, in the 4th Assembly, prepared a report on a code of conduct for members. That report was noted by the Assembly but due the imminent election, the report and its recommendations were not progressed.
- 2.4 While considering the matter the then Standing Committee on Administration and Procedure reviewed codes of conduct from other parliaments in Australia.
- 2.5 The recommendations of the Committee in the 4th Assembly that relate to the code of conduct are:

Recommendation 1

The Committee recommends that the Legislative Assembly for the Australian Capital Territory adopt a code of conduct for Members.

Recommendation 2

The Committee recommends that the code of conduct adopted by the Legislative Assembly for the Australian Capital Territory be predominantly aspirational, setting out general principles that should be met by the Members.

Recommendation 3

The Committee recommends that the code of conduct attached at Appendix A be adopted as the Code of Conduct for the Legislative Assembly.

Recommendation 4

The Committee recommends that if the Legislative Assembly adopts a code of conduct for Members, it should be institutionalised in standing orders or as a resolution of continuing effect.

Recommendation 5

The Committee recommends that if the Assembly adopts a code of conduct for Members, it should be administered and enforced by the Assembly itself and that the Assembly should consider how it would deal (if required) with any allegations raised.

- 2.6 The Committee has reviewed Report No. 8 of the 4th Assembly and recommends that the draft code of conduct as proposed in that report be adopted as the basis for further discussion.
- 2.7 In view of the timing of the presentation of this report to the Assembly, the Committee was reluctant to potentially commit the incoming 6th Assembly

Members to a Code of Conduct that it had not had the opportunity to consider in any detail.

- 2.8 As a result, the Committee proposed that the Speaker table this report and recommendations to the Assembly in the August 2004 sittings of the Assembly for its consideration.

Recommendation 1

- 2.9 *The Committee recommends that the Presiding Member of the Standing Committee on Administration and Procedure (6th Assembly) place Report 6 of this Committee on the Agenda of the Committee for early consideration and report to the Assembly.*
- 2.10 The Committee agreed that this report be included in the Induction Package for new and continuing Members for the 6th Assembly.
- 2.11 Subject to the proposed Code of Conduct for Members being adopted, the Committee discussed the need to review the operation of the Code at the end of the 6th Assembly.

Recommendation 2

- 2.12 *The Committee recommends that any Code of Conduct for Members adopted by the 6th Assembly, be reviewed after three years of operation and prior to the end of that Assembly.*

3. A Code of Conduct for Members' Staff

- 3.1 The desirability of a code of conduct for members' staff arose from the report of the Select Committee on Privileges that was established to investigate the unauthorised diversion and receipt of a Member's e-mails.
- 3.2 The Select Committee found that an individual staff member had knowingly received, and without reasonable excuse, retained and used emails destined for a member of the Legislative Assembly. The Committee believed that these actions met the criteria of impropriety, seriousness and intent and constituted a contempt of the Assembly⁵.
- 3.3 Staff in Members' offices are employed under the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act). There are staff within Ministers offices that act as departmental liaison officers who are employed through the portfolio departments of the relevant Minister. Some non-executive members also use volunteers and work experience/ trainees but the majority fall within the employment conditions of the LAMS Act.

⁵ Select Committee on Privileges, *Unauthorised diversion and receipt of a Member's e-mails*, para 5.35; p 28

Legislative Assembly (Members' Staff) Act 1989

- 3.4 The LAMS Act provides for the employment of staff and the engagement of consultants and contractors by office-holders and members of the Legislative Assembly.
- 3.5 Part 3 of the Act states that Members may employ staff in accordance with conditions as determined in writing by the Chief Minister. If there are any matters relating to employment not covered by the Act or the agreements of employment, then the relevant section of the *Public Sector Management Act 1994* (PSM Act) applies. (see paragraph 3.8).
- 3.6 The conditions of the agreement of employment are determined through a disallowable instrument by the Chief Minister. The conditions for staff of office-holders (ministers or the Speaker) may vary to those of non-executive members as they are made under different sections of the LAMS Act and the determinations are made in separate disallowable instruments.
- 3.7 Staff of MLAs are required to sign a contract of employment which is also signed by the MLA and the Clerk of the Legislative Assembly. The current employment contract is detailed in Disallowable Instrument 2003–317 (attached). Of particular importance is the following clause:
- 7.1 In performing the duties set out in clause 5.1, you will:
- (a) be punctual;
 - (b) act with propriety, honesty and integrity;
 - (c) act with fidelity and good faith to me;
 - (d) perform diligently and to the best of your skill and ability;
 - (e) obey all lawful commands reasonably incidental to the position or the performance of the duties;
 - (f) comply with the terms and conditions of your employment;
 - (g) notify me of any illness or medical condition affecting you which reduces your ability to carry out your duties or obligations under this Agreement;
 - (h) notify me of any restrictions by statute, court order, contract, or deed on your legal capacity to perform the full range of duties set out in clause 5.1;
 - (i) not misuse or misappropriate Territory property;
 - (j) not to harass a member of the public or another public employee, whether sexually or otherwise.
- 3.8 The agreement for staff employment (Schedule 1 of DI 2003–317) sets out the legislation and agreements that determine the terms and conditions:
- (a) the Certified Agreement;
 - (b) the Award;
 - (c) the Act;

- (d) any Determinations or Directions;
- (e) this agreement; and
- (f) other applicable laws.

Public Sector Management Act 1994

3.9 It is important to note that the “relevant” section (see para 3.5) of the PSM Act to which the LAMS Act refers is div 5.7 of the PSM Act that deals with temporary employment. All members’ staff, excluding those in Minister’s offices on loan from Departments, are employed for the term of office of the Member. If a Members if not re-elected or does not stand for re-election the staff member’s term of employment will cease.

3.10 Section 67 of the PSM Act however states:

67 Employment in the service

A person may be employed in the service in accordance with this Act—

- (a) by engagement under section 28 or 30 to perform the duties of an office of chief executive; or
- (b) by engagement under section 72 or 76 to perform the duties of an executive office; or
- (c) by appointment to be an officer; or
- (d) by engagement for temporary employment in accordance with division 5.7.

Under division 5.7 s 106 a person shall not be engaged for temporary employment under this division except in accordance with, and subject to, the management standards.

3.11 Section 251 of the PSM Act which deals with management standards states that the standards may make provision for (among others)

- ethics and conduct of officers and employees; and
- discipline of officers and employees; and
- procedures for hearing grievances and appeals; and
- the redeployment, retirement, resignation and redundancy of officers and employees;

3.12 A management standard under the PSM Act is a disallowable instrument.

3.13 Section 9 of the PSM Act specifies the following obligations of employees (includes temporary employees). The PSM Act is referred to if employment

matters are not covered by the LAMS Act or the agreement of employment which the employee, the MLA and the Clerk sign.

General obligations of public employees

A public employee shall, in performing his or her duties:

- (a) exercise reasonable care and skill;
- (b) act impartially;
- (c) act with probity;
- (d) treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;
- (e) in dealing with members of the public, make all reasonable efforts to assist them to understand their entitlements under the laws of the Territory and to understand any requirements which they are obliged to satisfy under those laws;
- (f) not harass a member of the public or another public employee, whether sexually or otherwise;
- (g) not unlawfully coerce a member of the public or another public employee;
- (h) comply with this Act, the management standards and all other Territory laws;
- (i) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (j) if the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties—
 - (i) disclose the interest to his or her supervisor; and
 - (ii) take reasonable action to avoid the conflict; as soon as possible after the relevant facts come to the employee's notice;
- (k) not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person;
- (l) not take, or seek to take, improper advantage, for the benefit of the employee or any other person, of any information acquired, or any document to which the employee has access, as a consequence of his or her employment;
- (m) not disclose, without lawful authority—
 - (i) any information acquired by him or her as a consequence of his or her employment; or
 - (ii) any information acquired by him or her from any document to which he or she has access as a consequence of his or her employment;
- (n) not make a comment that he or she is not authorised to make where the comment may be expected to be taken to be an official comment;
- (o) not make improper use of the property of the Territory;
- (p) avoid waste and extravagance in the use of the property of the Territory;
- (q) report to an appropriate authority—
 - (i) any corrupt or fraudulent conduct in the public sector that comes to his or her attention; or

- (ii) any possible maladministration in the public sector that he or she has reason to suspect.

***ACT Legislative Assembly Members Staff Certified Agreement 2003–2004
(5 December 2003)***

- 3.14 The development and implementation of the first certified agreement for Members' Staff formalised a number of matters that were proving problematic in the management of their employment.
- 3.15 The Certified Agreement gives formality to the issues of dispute resolution procedures, performance feedback, managing underperformance and more importantly discipline. It strengthens the employee/employer relationship for this unique group.
- 3.16 The Certified Agreement in isolation does not provide any assistance in determining issues that might be included in a code of conduct. Read in conjunction with the LAMS Act, the Workplace Relations Act, the PSM Act and the Chief Minister's direction, it rounds out the "legislation" to cover misconduct and non-compliance.

4. Submission No. 1– Clerk, Legislative Council, Parliament of NSW

- 4.1 Mr John Evans, Clerk of the Legislative Council, Parliament of New South Wales, provided the Committee with the copy of the Legislative Council's code of conduct for Members together with a review of the operation of the code, conducted two years after implementation. That review was conducted pursuant to section 72 (C) of the *Independent Commission Against Corruption Act 1988 (NSW)*.
- 4.2 The Legislative Council is currently preparing a code of conduct for all parliamentary staff of the Legislative Council (including Members' staff). However it is not yet available. The Council has a code of conduct for staff of the parliament ("the Secretariat") with the primary focus being issues relating to fairness and impartiality in dealings with all Members.
- 4.3 The Code for staff of the parliament is based on the following broad ethical principles. These are applicable for parliamentary staff as well as members' staff and it is recognised that the conditions of impartiality and political participation, among others, are not relevant to Members personal staff. The principles are:
- Performance of duties and responsibilities to the highest of professionalism, impartiality and integrity, and in the best interest of the Parliament, its Members and the people of New South Wales
 - Maintenance of confidentiality of information received in the course of duties

- Fairness and equity in official dealings with Members, the public and with other parliament staff and public sector employees
- Avoidance of real or apparent conflicts of interest
- Performance of duties efficiently and effectively
- Improvement of personal competence and quality of work
- Promotion of co-operation and good relations among colleagues
- Promotion of more efficient, economical and effective work practices
- Enhancement of the stature of the Legislative Council and the Parliament
- Maintenance of a working knowledge of relevant policies and practices⁶.

4.4 The Code also addresses values, personal and professional behaviour, confidentiality, use of official information, use of official resources, conflict of interest, political participation, outside employment, gifts and fairness and equity.

5. Submission No. 2– Clerk of the Senate, Parliament of Australia

5.1 Mr Harry Evans, Clerk of the Australian Senate, strongly recommends that a code of conduct for Members’ staff be developed. He based this suggestion on the number of “incidents” that have occurred in almost every jurisdiction. He refers in particular to the “children overboard” inquiry.

5.2 The Senate Finance and Public Administration References Committee recently completed its inquiry into the roles and accountabilities of staff employed to serve members. In his submission to the Senate inquiry Mr Evans made some interesting points which can be related to the Legislative Assembly.

5.3 To quote Mr Evans from his submission:

“The roles actually performed by personal staff vary greatly. Some are virtually indistinguishable from traditional public servants: they provide advice and assistance to their employing members and act as their faithful agents, leaving political judgment and political action to their members. Some are highly politically partisan and active players in the political process. Some are models of rectitude and reticence. Some meet the description of the felicitous American phrase “junk-yard attack dog”.⁷ The problems which have arisen are associated with those who are towards the latter end of the spectrum. They are problems arising from the culture of those personal staff.

⁶ Code of Conduct for Staff. NSW Legislative Council. November 2002. Attachment to submission from Mr John Evans, Clerk of the Parliaments.

⁷ This expression is reported by Professor Patrick Weller, *Don’t Tell the Prime Minister*, 2002, p. 72.

The major determining factor in this variation of culture is the culture of the employing member. Some members expect their personal staff to fit into the traditional public service model; others want to make use of partisan and active staff who provide not only a sword but a shield in the political battles. Non-ministerial personal staff are quite likely to fit the traditional public service model. Ministerial staff are now much less likely to fall into that category.”⁸

- 5.4 Other submissions to the Senate Inquiry will be dealt with later in this report.
- 5.5 The submission also refers the Committee to the United Kingdom’s House of Commons Committee on Standards and Privileges Eighth Report of the Committee on Standards in Public Life: *Standards of Conduct in the House of Commons*. This report, and accompanying documents provided by Mr Evans deal with the concept that members’ staff should not be defined as temporary public servants as they do not share the defining characteristics – they are personal appointees, with no requirement to be objective and impartial and are able to represent the Member’s views with “a degree of political commitment”.⁹

6. Submission No. 3– Clerk of the House of Representatives, Parliament of Australia

- 6.1 Mr Ian Harris, Clerk of the House of Representatives, Parliament of Australia, provided the Committee with information relating to a proposed code of conduct for members of both Houses. The proposal was put forward in 1995 by the Hon Stephen Martin MP in 1995. The Committee was advised that there had been no developments since the proposal had been put. The proposed code did not address Members’ staff although Mr Harris reminded the committee that Members are responsible for the conduct of their staff.

7. Submission No. 4– ACT Government

- 7.1 The submission from the ACT Government supported a code of conduct for members along the lines proposed by the previous Standing Committee on Administration and Procedure (4th Assembly).
- 7.2. The Government, in line with an election commitment, developed a code of conduct for Ministers, which was tabled in the Legislative Assembly on 12 February 2004. This code requires Ministers to ensure that, where relevant,

⁸ Mr Harry Evans, Clerk of the Senate, Submission to the inquiry into the Accountability of staff employed under *Members of Parliament (Staff) Act 1984*

⁹ notes for the Chair, Committee on Standards in Public Life on Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service. P2

their staff also comply with the code and that they are aware that they are obliged to support the Minister's compliance with the code¹⁰.

- 7.3 The Government submission also raised the issue of enforcement of the code. The Government supports the recommendations of the 4th Assembly Standing Committee on Administration and Procedure that should a code of conduct for Members be adopted, it should be "enshrined" as a resolution of continuing effect. The Government submission noted that because of the size of the Assembly there already exists fairly close scrutiny of the actions of MLAs.
- 7.4 In relation to enforcement issues, the Government agreed with the former Standing Committee that it was inappropriate for formal sanctions to apply to ethical and moral behaviour¹¹.
- 7.5 The Government Submission proposed that a number of matters be added to the 4th Assembly report namely:
- Respect for the law and systems of Government
 - Accountability
 - Official and Personal Conduct
 - Conduct as employers
 - Respect for persons
 - Relations with the Public Service
 - Caretaker period
 - Integrity
 - Members' private interests
 - Professions or business
 - Personal interests of staff and volunteers
 - Use of information acquired because of duties
 - Gifts
 - Employment when no longer a member
 - Diligence
- 7.6 In relation to Members' Staff, the Government submission emphasised that there already exists a framework of legislation, contracts etc that in essence, amount to a code of conduct.

¹⁰ Government Submission to the Standing Committee on Administration and Procedure – Appropriateness of a Code of Conduct for Members and their Staff , p3

¹¹ *ibid*, p3

8. Submission No. 5– ACT Legislative Assembly Secretariat

- 8.1 The submission from the ACT Legislative Assembly Secretariat provided useful information relating to recent developments and the current obligations of MLAs¹². The submission also provided information relating to how other parliaments within Australia have developed or are developing codes practices for Members.
- 8.2 In relation to the appropriateness of a code of conduct for Members staff, the Secretariat offered no opinion but observed that there existed several legislative and contractual requirements which are already placed on Members staff.
- 8.3 In particular, the Secretariat proposed that, should the Committee determine that a code of conduct which went beyond those obligations in the certified agreement, the LAMS Act and the employment contract, these obligations could/should be enshrined in the LAMS Act along similar lines to the obligations of public servants as detailed in the *Public Sector Management Act 1994*.¹³

9. Inquiry into Members of Parliament Staff - Senate Finance and Public Administration References Committee

- 9.1 The Senate Finance and Public Administration References Committee has recently finished examining the adequacy and appropriateness of the framework for employment, management and accountability of staff under the *Members of Parliament (Staff) Act 1984* (the MOPS Act). That inquiry examined, inter alia, the role of ministerial advisers, their accountability to the government, Parliament and public, and the interface between ministerial offices and government departments. It also examined the role of departmental liaison officers (ie, public servants working for ministers) and their interaction with MOPS staff and departments. The Committee reported on 16 October 2003.
- 9.2 Submissions made to the inquiry primarily address the role of Ministerial staff but much can be extrapolated to cover the issues for all Members' personal staff.

¹² ACT Legislative Assembly Secretariat Submission, p 2

¹³ *ibid* – p14

10. Other Parliaments

- 10.1 All Clerks of Australian Parliaments were invited to provide submissions to the Committee on the appropriateness of a code of conduct for Members and Members Staff. Three submissions were received from other parliaments however only one of these was able to provide information relating to members staff. It is recognised that most parliaments have a code of conduct for members.
- 10.2 Most parliaments rely to varying degrees on special provisions within the framework of the public service to cover the issues relevant to a code of conduct. Tasmania, the Northern Territory and the ACT use other forms such as under crown prerogative (Tas) individual contract (NT), and legislation (ACT)¹⁴.
- 10.3 In the United Kingdom “special advisers” to members are temporary civil servants. They are exempt from the requirement of appointment on merit and political impartiality and objectivity but otherwise must abide by the Civil Service Code.

11. Code of Conduct for Members

- 11.1 Having considered the submissions and the 4th Assembly report, the committee reiterated the view that it is indeed appropriate to have a code of conduct for Members.
- 11.2 In its discussions, the Committee reconsidered the code of conduct as proposed by the Standing Committee on Administration and Procedure (4th Assembly) in conjunction with the Code of Conduct for Ministers. Of particular interest to the Committee was the concept of conduct as employers which is a feature of the Ministerial Code of Conduct¹⁵. In view of the findings of the Select Committee on Privileges and the proposed codification of conduct for members’ staff the Committee agreed that this matter should be added to the code proposed in 2001.
- 11.3 In addition, the Ministerial Code of Conduct specifies that Ministers should ensure that members of their personal staff are aware of and abide by relevant codes of conduct¹⁶. The Government submission proposed that this be extended for all members to include consultants and volunteers working in Members offices. The concept of responsible conduct as an employer would strengthen the proposed code for Members.

¹⁴ APS Commissioner, A S Podger, submission to the Senate inquiry into Members of Parliament Staff, June 2003

¹⁵ Government Submission to the Standing Committee on Administration and Procedure – Appropriateness of a Code of Conduct for Members and their Staff – p4

¹⁶ *ibid* – p4

Recommendation 3

11.4 *The Committee recommends that the Code of Conduct for Members, as proposed by the Standing Committee on Administration and Procedure (4th Assembly) Report No. 8, as amended by the inclusion of the following matters,*

- *“conduct as an employer” be added to the proposed code*
- *Members to ensure that their staff are aware of and abide by “relevant” codes of conduct.*

as at Appendix D, be adopted.

The revised version of the proposed Code of Conduct for Members is attached at Appendix D

11.5 Another recommendation of the 4th Assembly Committee report was that the code be institutionalised in standing orders of as a resolution of continuing effect. It was felt that to embed the code in legislation was unnecessary and that as a resolution of the Assembly, the Assembly itself could administer and enforce the code.

Recommendation 4

11.6 *The Committee recommends that the code of conduct for Members be adopted as a resolution of continuing effect of the Assembly.*

11.7 The Committee considered in some detail what procedures should exist for dealing with a breach of the code of conduct by Members. In reviewing the existing provisions of the Standing Orders the Committee also noted the expectation that Members comply with requirements of Section 14 of the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* and the *Electoral Act 1992*.

11.8 It was agreed within the Committee that any breaches of the code by Members would be adequately dealt with through existing mechanisms.

12. Code of Conduct for Members’ staff

12.1 The committee found sufficient support in the submissions for the development of a code of conduct for members’ staff.

Recommendation 5

12.2 *The Committee recommends that it is appropriate for Members’ staff to be to be subject to a code of conduct.*

- 12.3 However, in considering what issues would need to be included in any such code, if one were to be developed, the Committee was aware of significant areas of duplication.
- 12.4 Components of the Certified Agreement, the LAMS Act and the contract of employment all include references to codes of conduct for Members staff. As a result, any code of conduct that may be developed would simply be a restatement of a combination of these three documents.
- 12.5 Similar to the other policies such as the Acceptable Use of IT Services, it was suggested that a code of conduct for staff to sign and agree to could be included in the induction kit with the understanding that a breach of the code would/could constitute a breach of employment conditions or be considered misbehaviour or misconduct.
- 12.6 The Committee considered the advice of the Secretariat that, as a consequence of the initial incident that prompted the Select Committee on Privileges inquiry, and the establishment of the ACT Legislative Assembly Members' Staff Certified Agreement 2003-2004, procedures are being developed to ensure Members' staff are aware of their employment obligations.

Recommendation 6

- 12.7 *The Committee recommends that the completion of the proposed Induction Information Checklist for Non-Executive Members' Staff (as at Appendix B), be acknowledged as an indication that the staff member is aware of their obligations for conduct specified in their employment contract and the disciplinary procedures specified in the ACT Legislative Assembly Members' Staff Certified Agreement 2003-2004.*

Wayne Berry MLA
Presiding Member
August 2004

**Proposed Code of Conduct for all Members of the
Legislative Assembly for the Australian Capital
Territory**

**Prepared by the Standing Committee on Administration and Procedure
4th Assembly**

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 the people of the Australian Capital Territory.

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

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

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 1989* 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.

- (i) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private interest or will improperly and dishonestly further the private interest of another person.
- (ii) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or a broad class of persons.

Disclosure of pecuniary interests

The actions and decisions taken by Members are accountable through the Assembly to the people of the Australian Capital Territory. Member's 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).

Receipt of any gifts, payments, fee or reward

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.

Advocacy/Bribery

In accordance with the provisions of section 14 of the *Australian Capital Territory (Self-Government) Act 1989*, 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.

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.

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 Member's 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.

Use of public resources/property or services

Members must ensure that the resources provided to them at a public expense as Members of the Legislative Assembly for the ACT, 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 monies allocated for official purposes.

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.

APPENDIX B

INDUCTION INFORMATION CHECKLIST

NON-EXECUTIVE MEMBERS' STAFF

The following information is provided on your commencement of employment with a non-Executive Member of ACT Legislative Assembly to give you details of your working conditions and of some key workplace policies and procedures.

Signing this form acknowledges that the undersigned has received the documentation checked off in the following table:

Information/Document	Received Y/N
<i>ACT Legislative Assembly Members' Staff certified Agreement 2003-2004 (electronically available at P/common/lams/certified agreement 2003-2004).</i>	
Policy on the Acceptable Use of Information Technology (to be signed and returned to Corporate Services)	
Discrimination, Harassment and Bullying policy summary	
Equal Employment Opportunity: Principles and Goals	
Employee Assistance Programs – advice brochure	
Emergency Plan – Emergency Procedures for Wardens and Staff	
Advice to ACT Government Employees on Chemical, Biological and Radiological (CBR) Incidents	
Flexible Remuneration Packaging – information sheet	

I, _____, acknowledge receipt of the above documentation and acknowledge that, if at any time I do not comprehend any part of these documents, I should seek clarification from my employing Member or from the Corporate Services Office.

I also acknowledge the obligations placed on me as employee of a Member, as detailed under clause 7 of my contract of employment. I acknowledge that a breach of any of these obligations may be considered misconduct and that disciplinary procedures may result.

Employee's signature

_____/_____/_____

Date

Once completed, this form should be forwarded to Corporate Services

APPENDIX C

Submissions were received from:

1. Mr John Evans, Clerk of the Parliaments, NSW Legislative Council
2. Mr Harry Evans, Clerk of the Senate, Parliament of Australia
3. Mr Ian Harris, Clerk of the House of Representatives, Parliament of Australia
4. ACT Government
5. ACT Legislative Assembly Secretariat

APPENDIX D

Proposed Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory

Prepared by the Standing Committee on Administration and Procedure
5th Assembly

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 the people of the Australian Capital Territory.

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

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

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 1989* 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.

- (iii) 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.
- (iv) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or a broad class of persons.

Disclosure of pecuniary interests

The actions and decisions taken by Members are accountable through the Assembly to the people of the Australian Capital Territory. Member's 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).

Receipt of any gifts, payments, fee or reward

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.

Advocacy/Bribery

In accordance with the provisions of section 14 of the *Australian Capital Territory (Self-Government) Act 1989*, 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.

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.

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 consultants (however employed or recruited). Members need to be aware of the requirements of 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 make employment decisions that are in the best interests of the Member and the Assembly. Members are advised to carefully consider the implications of employing persons in close relationships where there may be perceived conflicts of interest

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.

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 Member's 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 Members' allowance remain the property of the Assembly.

Use of public resources/property or services

Members must ensure that the resources provided to them at a public expense as Members of the Legislative Assembly for the ACT, 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 monies allocated for official purposes.

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.