

**LATVIA REPORT 1:
OVERVIEW OF ROLE OF CODE AND ITS RELATIONSHIP WITH THE LAW and
OVERVIEW OF IMPLEMENTATION OF CODE**

**PROJECT:
INTRODUCTION OF CODE OF ETHICS FOR MEMBERS OF PARLIAMENT
[SAEIMA]**

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1. SUMMARY OF THEMES

Codes of Conduct are essentially the terms and conditions of parliamentary service and must state both how individuals must behave and how the institution wishes those individuals collectively to reflect its purpose and the expectations of those the institution serves.

The Code is intended to improve public confidence in the quality and transparency of decision-making or the level of service, and also help ensure ethical and fair treatment of colleagues, officials and the public. It gives guidance to legislators on their conduct and how to avoid any conflict of interest; it also explains to the citizen what are the professional standards of the institution. This should in turn, improve the reputation of the Legislature.

A Code, unlike the criminal law, sets standards of conduct of how people *ought to behave* and it *may* set standards that are higher than those expected of members of the public.

Overall, a Code of Conduct should cover positive statements of professional standards, as well as guidance and requirements on compliance with those standards and on avoiding situations that may involve the criminal law, and how any allegation will be dealt with. The Code will bridge the gap between the law and convention.

The Code is about standards and many of the offences that a Code would address may involve criminal offences. The Code is intended to promote the reputation of the Legislature, the proper conduct of parliamentary business and the avoidance of conflict of interest. It must be mandatory and a compliance part of the oath of office.

The Code cannot be used to shield legislators from the criminal law, but nor should the Code be a substitute for the criminal law, and nor should any of its contents, processes and sanctions be less than that to which members of the public are subject.

It is the responsibility of the appropriate legislative body, commission or committee, with or without outside help, to draft a Code that covers this and links compliance requirements to offences. It will link this to the criminal law and thus to which agency on the outside will investigate the offences. It will detail the internal requirements and who will investigate this. It will undertake three processes whereby:

- All allegations will be considered the appropriate legislative body, commission or committee, preferably with an independent element;
- The appropriate legislative body, commission or committee will then decide who or which agency investigates the allegations;
- Whatever the outcome of such investigations, the appropriate legislative body, commission or committee will consider what offences have been committed against the Code and thus what sanctions are appropriate.

The Code thus has two roles; translating into clear language what conduct is outlawed from the legislature because it offends the criminal law and what conduct which, if undertaken, is not considered acceptable because it might lead to situations that could offend the criminal law. It makes plain that the Code is not a substitute for the criminal law, and vice versa, but that the Code recognizes and addresses potential overlaps and conflicts so that all aspects of the professional standards of the Legislature are delivered. It is this duality that makes a Code attractive and useful as the bridge between discretionary personal conduct and the criminal law.

Codes should be designed for a particular Legislature but may draw on the lessons from other countries. While often using common themes or general standards, there should be a tailored approach – realistic, simple, relevant and affordable - based around the Legislature's unique circumstances, resources, responsibilities and size. As far as possible, adherence to the Code should be part of the conditions of taking up office or standing for election (usually included in the requirements for all candidates to agree to when submitting election papers), involve regular training and, especially, the means to enforce its provisions.

2. ETHICS CODE: RELATIONSHIP WITH LAW

2.1 INTERACTIONS: A THEORETICAL FRAMEWORK

2.1.1 Introduction

Codes are usually intended to lie somewhere between the criminal law and unwritten conventions of behaviour. Codes deal with both the conduct of individual legislators and the conduct of legislators in relation to the reputation and working of the Legislature. They are thus an explanation of both professional standards and unacceptable conduct. **In summary Codes of Conduct are essentially the terms and conditions of parliamentary service and must state both how individuals must behave and how the institution wishes those individuals collectively to reflect its purpose and the expectations of those the institution serves.**

A report on the need for a Code for the Australian Federal Parliament summarized the issues as follows:

It is important to say at this point that the focus of this paper is not illegal actions, such as fraud, bribery and corruption, or actions that may involve a breach of parliamentary privilege, such as interfering with a member in the execution of his or her duties. Both these sorts of actions are prohibited at law. The focus of this paper is those actions that constitute misconduct, in the public mind, and which are often described as unethical. These include, for example, not only conflicts of interest and failure to declare interests in accordance with the directives of the two Houses, which have been the primary focus of most of the codes adopted or proposed around the world and within the Commonwealth, but also:

- failing to table documents, or failing to answer questions directly in the House or in committee, thus thwarting accountability
- misusing parliamentary privilege
- misusing parliamentary entitlements or resources
- using a position for personal or party advantage; for example, influence peddling, soliciting donations to political parties
- post-parliamentary employment
- acting in a way that prevents the parliament functioning as it is supposed to
- acting in a way that may reflect adversely upon the institution.

This focus seeks to place the concerns of the community and the response of the legislature in the broader context in which the conduct of parliamentarians is viewed by the community. To be sure, it is a criticism of many of the codes that have been proposed and implemented that they have been narrowly focused on financial conflicts of interest, gifts, and similar such matters, when major areas of misconduct encompass broader activities and legislative functions. The proposed New South Wales code is a case in point. It fails to mention respect for the democratic process or democratic institutions or acting in a way that would be thought to bring the parliament into ill repute. It is, however, in those areas that the misconduct that is so corrosive of public trust is prevalent.

The reason that narrowly focused codes are misconceived while broadly cast codes are appropriate, is that one point of any code of conduct is to fortify the democratic process. It will do so by fostering accountability and transparency and by doing that, promote a higher standard of behaviour amongst parliamentarians while also fostering trust in the system of government. Merely tackling conflicts of interest, bribery, or external influence, which is the focus of the proposed New South Wales code, leaves relatively untouched broader issues of accountability and transparency-elements that any system must possess if democracy is to be practiced and the community is to have confidence in the system of government. These are also the areas in which contemporary failures in the system of government occurred in two of the Australian states. Accountability and

transparency are also continuing issues, as indicated by the misuse of travel entitlements and failure to observe express standards of ministerial conduct. (Brien 1998)

This does pose problems for those considering Codes because those who draft them try to cover every aspect of the conduct of politicians, from criminal behaviour to not using discourteous language. This means efforts to codify or publish for such conduct often find difficulties over:

- where does the criminal law stop and where does some form of internal regulation begin; who owns or is responsible for both or either;
- what sanctions are appropriate for what types of breach.

The situation is further complicated by:

- parliamentary privileges and immunities, primarily intended to ensure the independence of legislators and to protect them from undue influence by governments;
- actions or decisions that do not benefit the individual but benefit the party or section interests;
- 'part-time' legislators (ie, allowing legislators to hold financial and other interests while serving as legislators).

This report looks at these issues, using examples from a number of countries. In particular it uses examples from Ireland, Scotland and South Australia, all of whose Legislatures in the past five years have addressed the question of drafting a Code.

2.1.2 Why Ethical Conduct?

Public service means serving constituents and the country. Of course this is the aspiration; in practice many other issues intrude. One issue is that of politics, where elected representatives often feel their duty lies with supporting their party, or even supporting those who elected them, rather than all the electorate. Another concerns the question of lobbying to press for legislative amendments and a third relates directly to interests held by legislators, whether farmers, business people, shop owners, and so on, who seek to impose their views or favour their particular needs or activities.

How does addressing ethics help this? For developing and transitional countries, democratisation is not simply 'electoral democracy' where the visible and formal trappings of political participation mask sectional interests or party dominance. The *purpose* of democratisation is about engaging the participation of the public in the activities of the state, or, at the least, trust their governments and see the state's ability to deliver. Engaging the people into the democratisation process might only go as far as the exercise of the vote but, in so doing, they need to be convinced that participation is meaningful, and that those they elect are working for them and the public interest.

Holding public office, whether elected or appointed, is holding a post paid for from public funds. The post is intended to work to the benefit of the public, rather than the public being available for the benefit of the public officeholders. Serving the public, either individually or collectively, requires an approach that does acknowledge the concept of

public service. Here the issue of ethics is important and should relate to everything a Legislature does. Most people, in whatever country, have a suspicious view of why people enter public life and often find it difficult to link that with public service. A means to describe and implement ethical conduct is intended to show the citizen that elected representatives have nothing to hide and that there are no hidden influences.

More specifically, the values and intentions of public service are invariably reflected in a need to ensure that those in public office should keep their private interests separate from their public duty. A conflict of interest is any activity, business or relationship (an interest) that influences or affects, or appear to influence or affect, any decision or action of an elected official. In many cases the issue is the presence of the interest. It is immaterial whether or not that interest influences or affects any decision or action. What is important is that a member of the public or an opposition legislator *reasonably believes* that such an interest *might* influence or affect any decision or action of an elected or appointed official. If Parliament and its actions or decisions are to be transparent and accountable, then such interests should be identified and recorded so that the citizen consider whether or not such an interest may influence an elected representative's actions or decisions.

Most common means to address these issues is a Code of Conduct which will explain what are the values and intentions of public service, what is expected of those holding public office, what is or is not acceptable conduct, how those in public office should keep their private interests separate from their public duty (dealing with conflict of interest, registering interests, and so on), and how complaints are dealt with. **The Code is intended to improve public confidence in the quality and transparency of decision-making or the level of service, and also help ensure ethical and fair treatment of colleagues, officials and the public. It gives guidance to legislators on their conduct and how to avoid any conflict of interest; it also explains to the citizen what are the professional standards of the institution. This should in turn, improve the reputation of the Legislature.**

2.1.3 Codes and Criminal Law: Differences and Purposes

Codes of Conduct should come between values and the criminal law. They may include aspirational statements and describe what is acceptable professional conduct but they must also draw the line between acceptable and unacceptable conduct, as well as addressing conduct that may or may not involve potential breaches of the criminal law. Here the conflict of interest requirements are crucial, not only in dissuading legislators from becoming involved in activities which may or may not offend the criminal law but also in ensuring transparency of actions and decisions. Codes, therefore, are very much a set of professional standards for Legislators intended to guide them on their duties and responsibilities, warn them about conduct that might adversely affect those duties and responsibilities and damage the reputation of the institution, and bar them from activities that may or may not suggest breaches of the law. Codes must be part of an ethical environment, supported by public documentation, registers and means of disclosure, as well as means of implementation.

The main difference is that criminal law is about wrongdoing and sanction. Codes are about setting standards and dealing with compliance with those standards. As the report from the Committee on Members Interests of the Ireland Parliament states:

the recommended Code recognises that Members occupy a unique position as elected public representatives and legislators and that they need to foster and sustain public confidence and trust in their integrity as individuals and in Dáil Éireann as an institution. Given this special position, the Code of Conduct must take account of the fact that while an alleged failure by a Member to fulfil his/her obligations as a citizen may have been dealt with by a court or a tribunal, there may be a consequential and additional failure to fulfil one's special obligations as a Member. Such special obligations are recognised by the very existence of a Code of Conduct (see Appendix 5.1)

Thus a Code, unlike the criminal law, sets standards of conduct of how people ought to behave and it may set standards that are higher than those expected of members of the public. The Canadian government has devoted a significant amount of time in developing this understanding of the purpose of a Code and what it should cover. It focuses on two areas – values which indicate which qualities should govern the opinions, actions and the choices and decisions of those in public life – and ethics - the standards and principles that guide the right conduct. They define four sets of values:

- *Democratic Values:* to serve the public interest.
- *Professional Values:* Serving with competence, excellence, efficiency, respect for the law, objectivity, transparency, confidentiality and impartiality.
- *Ethical Values:* Acting at all times in such a way as to uphold the public trust.
- *People Values:* Demonstrating respect, fairness and courtesy in their dealings with both citizens and fellow public officials.

Values are aspirational – how people ought to behave. Codes often include values but they are very difficult to enforce. In relation to issues of the quality of performance of MPs, the Ethics Commissioner for the Scottish Parliament states:

Arguably the system in which I play a part was set up primarily to prevent and detect corruption and to encourage openness in making known interests, currently mainly financial ones, which might influence political actions, rather than to police the quality and quantity of Members' services to constituents. Furthermore, it is hard for me to judge what is reasonable accessibility and what is conscientious representation of interests. It may be contended that the quality of Members' service is a matter for the democratic electoral process. (Scottish Parliamentary Standards Commissioner 2005)

What the Code may then do, however, is define the standards to be followed and then address compliance with those standards, which may range from deviations from values to activities that fall within the criminal law. In Latvia these are contained in the law on the Prevention of Conflict of Interest in Activities of Public Officials which stipulates a number of restrictions and prohibitions: restrictions on combining offices, restrictions on the obtaining of income, restrictions on commercial activities, restrictions on issuing and influencing issuing of administrative acts, performance of supervision, control, inquiry or punitive functions and entering into contracts, restrictions on accepting gifts and donations, prohibition to be a representative, prohibition to receive supplementary payments and restrictions on advertising. The law also stipulates that public officials shall act in conformity with the behavioural (ethical) codes approved in the relevant profession, field or sector.

From this three questions arise; is it worth having a Code, how to develop a Code that covers such a range, and how can the Code be enforced?

2.2 ADVANTAGES AND DISADVANTAGES OF CODES

2.2.1 General Advantages

Codes are flexible. They belong to the institution can amend them directly. They can be drafted to reflect the requirements of the specific institution. The institution can include the code as a requirement of membership or appointment. It can incorporate the code into induction training. It can, following the rules of natural justice, can enforce the code internally with its own investigative process and sanctions.

2.2.2 General Disadvantages

Codes are seen as an easy option controlled by the institution and for the benefit of the members. The requirements of the code appear less than the criminal law and are often thought to be enforced lightly. Inquiries by colleagues are not seen as impartial, and there is the possibility of pressure from governments and parties. The sanctions often seem light.

2.2.3 A Distinct Status?

There are essentially two general approaches to setting up a Code: law-based and one specific to the Legislature. In relation to the former, many countries with written constitutions and penal codes prefer to include rules for legislatures within that legal framework because some countries, such as France and a number of former Soviet-bloc countries 'assess and monitor the performance of the Members of their national Parliaments mainly on the basis of constitutional rules, general employment legislation or provisions of an administrative, civil and criminal nature. The latter group of countries put forward the argument that it is better to keep the legislative system simple and unburdened with new codes and acts'. (European Centre for Parliamentary Research and Documentation 2001, p7)

Some other countries, with experience of significant scandals involving the legislature, have taken the steps of making legislators subject to the criminal law, and set up or use appropriate bodies with investigative powers. Thus the USA and Ireland provide an example of a framework where parts of a legislators' conduct is governed by legislation with external agencies having the power to investigate. In the USA, for example, the 1995 Congressional Accountability Act¹ applies 11 existing employment, civil rights, health, and safety-related statutes and regulations to the legislative branch (although the legislation does allow Congress a narrow opportunity to adopt rules, which could potentially limit the applicability of the statutes).

¹ The Office of Compliance advances safety, health, and workplace rights in the U.S. Congress and the Legislative Branch. Established as an independent agency by the Congressional Accountability Act of 1995, the Office educates employees and employing offices about their rights and responsibilities under the Act, provides an impartial dispute resolution process, and investigates and remedies violations of the Act.

In Ireland, the Standards of Office Act provides for the establishment of a new Standards in Public Offices Commission, with wide investigative powers. It also covers tax compliance by politicians, senior public servants and the judiciary, for codes of conduct for the public sector and for the regime which would apply to breaches of the legislation in relation to conduct in public life.

In these cases, however, the legislation and the responsibilities of the agencies often relates only to the laws that govern the rest of the country and thus often will only deal with specific offences (such as conflict of interest and bribery). Ensuring that legislators also conduct themselves in a way that does not make them subject to the criminal law, and dealing with lesser offences, are still the responsibility of the Legislature itself – an important reason why such legislatures also have Codes. Thus the Ireland Parliament is also considering a Code of Conduct because, as it states:

The primary structural issue for the Committee is whether the Code of Conduct should enunciate broad principles or prescribe a set of particular rules to be observed by Members. The view of the Committee is that the Code should be a statement of general principles which may be used by Members to guide them in particular situations. This approach ensures that the Code has the kind of flexibility which will (i) allow its application to as wide a range of situations as possible, (ii) ensure that the Committee or the Public Offices Commission, as the case may be, has the flexibility to take into consideration the unique and challenging characteristics of parliamentary life, and (iii) ensure that it continues to be relevant and applicable through periods of change. Prescriptive rules are more appropriate to legislation or, perhaps, to the Standing Orders of the House and necessarily deal only with the specific situations which they were drafted to govern. (see Appendix 5.1)

Overall, there are a variety of permutations of approaches. In Canada, until 2004 when Standards Commissioners were appointed for the Parliament – House and Senate - the Office of the Ethics Counsellor only dealt with potential conflicts of interest for the Prime Minister and other members of Cabinet. It also covers their spouses and dependent children, as well as members of their political staff. Senior public servants - about 1200 to 1300 of them - are also covered. The office also administers the Lobbyists Registration Act and the Lobbyists' Code of Conduct. Occasionally there are hybrid codes – codes where failure to obey some of the provisions may be a criminal offence. The UK Parliament is at the opposite end. The UK legislator is exempt from all aspects of the criminal law but the Parliament has a Standards Commissioner whose responsibility is to deal with allegations against a Code of Conduct and rules of conduct, against a range of parliamentary resolutions intended to outlaw bribery, require declarations of interests if speaking and against a failure to complete satisfactorily the register of interests. Because there is no legal framework the rules the code and registration requirements are more detailed. There is also a code for ministers which may also be supervised in part by the Commissioner (Appendix 5.3 provides the example of a similar, detailed, Code). Table 1 provides an overview of variations.

Overall, a Code of Conduct should cover positive statements of professional standards, as well as guidance and requirements on compliance with those standards and on avoiding situations that may involve the criminal law, and how any allegation will be dealt with. The Code will bridge the gap between the law and convention.

Table 1: Codes – Source and Contents

	Austria	Belgium	Denmark	Finland	France	Germany	Italy
Act/Admin Procedure Or Code	Act	Act	Act	Act	Act	Code	Act
Main Themes	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Incompatibility with commercial activities • Obligation to declare financial interests and private employment • Anti-corruption principles • Transparency of activities 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Incompatibility with some political mandates and public offices (e.g. within the executive) • Concurrent holding of offices limited • Concurrent sources of incomes limited • Budgetary responsibility • Registration of property • Obligation to declare previous appointments 	<ul style="list-style-type: none"> • Transparency vis-à-vis the public • Freedom of conscience and of speech (with some restrictions regarding the party's function) • Obligation to publish MPs' and party accounts • Obligation to declare income and financial interests 	<ul style="list-style-type: none"> • Incompatibility with other public offices (e.g. Ombudsman, Prosecutor-General, Judge of the Supreme Court) • No dual MP-MEP mandate • Independence • Freedom of speech guaranteed • Obligation to declare nonparliamentary activities, paid or unpaid, and financial interests • Transparency with regard to parliamentary work • Dignity and non-offensive behaviour 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Incompatibilities (government membership and certain professional activities) • Limitation to only 2 mandates for elected functions • Obligation to declare gifts, irrespective of their value 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Obligation to declare gifts of a value greater than DM 10,000 • Obligation to declare previous professional activities and other financial and professional interests 	<ul style="list-style-type: none"> • Obligation to declare gifts of a value greater than 10 mil lira. • Freedom of speech guaranteed • Obligation to declare property and expenses and contractual obligations for election campaigns

	Netherlands	Spain	Sweden	Bulgaria	Czech republic	Estonia	Hungary
Act/Admin Procedure Or Code	Code	Code	Act	Code/ Internal Rules	Act	Act	Act
Main Themes	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Integrity • Obligation to declare public or private work whether paid or unpaid • Obligation to declare nonparliamentary income over a certain level 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Incompatibility with other functions • Abusing MP status for private activities prohibited • Declaration of financial and non-financial interests and of property • Respect for the rule of law 	<ul style="list-style-type: none"> • Promotion of democratic values, fundamental freedoms and the rule of law • Non-discrimination • Freedom of speech guaranteed • Obligation to declare contractual and financial interest • Participation by MPs in debates in which they have a personal interest is prohibited 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Office of MP incompatible with other elective office or position in civil service • Obligation to declare financial interests 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Obligation to declare financial interests • Obligation to declare all gifts received, board membership of companies • Incompatibility with other public offices (e.g. President, judge) • An MP cannot be a Member of both chambers of Parliament 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Obligation to declare economic interests • Other public office or board membership of commercial companies prohibited • Loyalty towards the State • Act in accordance with the rule of law and the public interest 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Honour the general well-being and interest of the public • Incompatibility with all other functions in the public administration, army or police • Obligation for MPs to declare their economic interests, income and property

Source: European Centre on Parliamentary Research and Documentation 2000.

3. IMPLEMENTATION

The use of a Code of Conduct, and the requirements to demonstrate compliance, must follow a simple framework – see Table 2: Principles to Sanctions, the Links - that links:

- the standard or value [the principle];
- to the means of demonstrating compliance with that standard [the requirement];
- to where the source of the requirements is located [the source]
- to who is responsible for enforcing the standards [monitoring/enforcement];
- to determining the seriousness of the offence [offence];
- to determining the sanction [sanction].

Table 2: Principles to Sanctions, the Links					
EXAMPLE OF PRINCIPLE	REQUIREMENT	SOURCE	MONITORING/ ENFORCEMENT	LEVEL OF OFFENCE	LEVEL OF SANCTION
HONESTY/ SERVING THE PUBLIC INTEREST (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).	Register of declarations of interests for elected representatives Asset/Hospitality registers.	Code	Commissioner/ Committee/ Law Agency	1. Inappropriate 2. Breach of procedure of Admin. Law. 3. Breach of Criminal Law?	1. Verbal Warning. 2. Written Warning 3. Formal entry on record. 4. Suspension 5. Fine. 6. Criminal Sanctions?

From this a number of issues arise in relation to the implementation of a Code.

3.1 Compulsory or Discretionary?

The Code is about standards and many of the offences that a Code would address may involve criminal offences. The Code is intended to promote the reputation of the Legislature, the proper conduct of parliamentary business and the avoidance of conflict of interest. It must be mandatory and a compliance part of the oath of office.

The moment any framework for conduct is discretionary, then those who are honest will obey but those who are not will seek loopholes and, if caught, deny the need to comply. As Fatmir Mediu, of the Albanian Parliamentary Commission of Foreign Relations noted:

unless a code has sanctions and it is implemented, it would be seen as a ploy to conceal unacceptable behavior; or it would be seen by the public only as window-dressing, and reduce further the already low esteem in which parliamentarians as a class, and the institution itself, are held.

The use of the mandatory Code, reports the European Centre on Parliamentary research and Documentation (2000):

'seems to be gaining ground, mainly because it is seen as increasing the **integrity** of the public sector and hence as boosting the **public's confidence** in the legislature. In general terms, the effect of codification is felt in four different areas:

- a. in a benefit to society in general, by enhancing the rule of law
- b. in the relationship between Members and their electorate
- c. in the relationship of Members with their peers
- d. as a yardstick for Members themselves.

The codification of ethical principles into legally binding rules facilitates **acceptance to 'play by the rules'** with due respect for the law and the public weal, whereas non-codification may well leave dangerously wide scope for personal choice as to whether or not to respect a rule and for subjective interpretation of the content of a particular norm'.

The question that is one of the most difficult to decide upon is whether the Code has the force of law or whether it is an internal 'employment' condition of election to a legislature. Put another way, should it be an criminal offence not to abide by the Code? Much depends on what is in the Code. If it contains statements of values, such as leadership or respect for the rule of law, these become difficult offences against which to formulate charges and on which to prosecute. Nevertheless, the general move is to a Code that is either legally-binding or part of the conditions of taking up office. Either way, the Code will be mandatory.

The next issue is relation to this relates to which then takes precedence – the criminal law or the Code. The Ireland Parliament has already decided that their legislators will be subject to *both*, given the special place of legislators in the political process. Even is a Legislature does not want to do this, the linking model above provides the means to grade requirements, the offences and who deals with them. Thus, if legislators are subject to the criminal law in relation to their legislative duties but immune from investigation, and evidence of a potential offence is provided, then immunity from investigation and prosecution under the criminal law in relation to their legislative duties would be automatically be lifted. **In other words, the Code cannot be used to shield legislators from the criminal law, but nor should the Code be a substitute for the criminal law, and nor should any of its contents, processes and sanctions be less than that to which members of the public are subject.**

3.2 Ownership

The tradition has been for Codes to be administered internally, usually by a parliamentary committee (often comprising senior MPs). Concerns over independence, investigating their parliamentary colleagues, party members and friends, and sanctions imposed has meant that such an approach has not been seen as rigorous or equivalent to those imposed elsewhere in the public sector or in society in general. The Australian report noted the three approaches to this issue:

Three diverging approaches to institutionalising codes of conduct are apparent in comparable democracies. One approach involves enshrining the code in some sort of legislative framework through, for example, establishing by legislation a body that is external to, and independent from, the legislature. Such a body administers the code, oversees the conduct of the members of the legislature and makes reports either to the legislature or a committee. This is the model that has been adopted in Alberta, and Ontario. It is likely to be adopted in a much more stringent form in New South Wales, where breach of the code would constitute a breach of law. Actual enforcement may well be a duty of the Independent Commission Against Corruption, rather than the Parliament or a Committee of it, as is the case in the Canadian parliaments.

The second approach is to establish within the legislature a body that oversees the conduct of members. This may take the form of a parliamentary committee or it may take the form of an independent parliamentary commissioner, established under standing orders or a resolution of the House (rather than independent, judicable legislation). Such a body would report to a committee of the legislature or the legislature itself. This is the approach that has been adopted in the United Kingdom. It also has been proposed for the federal legislature in Canada.

The third option is that followed in the United States Congress. In this approach, discipline is internal to the legislature and is based upon a detailed set of rules and guidelines. Each House has its own Code of Official Conduct for Members and staff. Each House has an ethics committee, which operates independently of the other. Each committee provides interpretative and advisory rulings, has jurisdiction over the members and officers of each House, and can investigate allegations of improper conduct and can impose sanctions. There is considerable detail in the codes and rules. For example the Gift Rule, adopted on 7 December 1995, was accompanied by a ten page explanatory memorandum, which set out numerous, finely-distinguished situations in which gifts were or were not permitted. The House Ethics Manual, which is a compendium of rules and interpretative guidelines for members and officers of the House of Representatives, runs to some 500 pages. (Brien 1998)

A more trend concerns the second of the approaches mentioned in the South Australian Parliament report. This involves the introduction of an independent element through a Standards Commissioner, a senior independent and respected person to undertake a fact-finding inquiry to ascertain whether or not rules have been breached and report to a parliamentary committee who will judge on the evidence and agree the sanctions, if any, or pass the evidence to another agency, such as an anti-corruption commission..

Some Legislatures now delegate all responsibility to an outside body but this raises questions of regulation outside the control of the Legislature over matters that concern the conduct of its members. On the other hand it ensures that the public can be reassured about the independence of the membership of the body, the professionalism of its work and the transparency of its investigative process.

Codes are about professional standards and have positive as well as negative contents. Much of the purpose of the Code is about compliance as well as investigation and sanction. The Code should also be part of a wider ethical environment that should include registers, disclosure requirements and training. For these reasons the Code should be the responsibility of the Legislature but this should also include:

- An independent element;
- Nothing in the enforcement of the Code is less than that to which ordinary members of the public are subject;
- Links to external agencies with protocols on who is responsible for the enforcement of different parts of the Code.

3.3 Sanctions: Types and Enforcement

The Code will cover everything that the legislature considers necessary to the professional performance of its functions. It will cover everything from criminal offences, through employee law and anti-discrimination requirements to those internal compliance issues for the proper conduct of legislative business. There will be overlap (particularly in relation to the registration and disclosure of financial interests).

It is the responsibility of the appropriate legislative body, commission or committee, with or without outside help, to draft a Code that covers this and links compliance requirements to offences. It will link this to the criminal law and thus to which agency on the outside will investigate the offences. It will detail the internal requirements and who will investigate this. It will undertake three processes whereby:

- **All allegations will be considered the appropriate legislative body, commission or committee, preferably with an independent element;**
- **The appropriate legislative body, commission or committee will then decide who or which agency investigates the allegations;**
- **Whatever the outcome of such investigations, the appropriate legislative body, commission or committee will consider what offences have been committed against the Code and thus what sanctions are appropriate.**

At an early stage of any inquiry, it must be established if there appears to be a likely criminal offence. If there is, then there should be an automatic lifting of immunity, suspension of the legislator and a request for a criminal investigation. Any attempt by a parliamentary commission or an independent commission to undertake the equivalent of a criminal investigation, without police powers and expertise, will not work. Indeed, any offence whose investigation might involve a court case through which a defendant may be imprisoned must be left to the appropriate law enforcement and judicial authorities. In any case, Codes should primarily deal with offences may not in themselves be criminal in nature but which work against the effective working of the legislature or which concern situations where criminal offences may occur if not addressed.

The sanctions should be reasonable and proportionate and will range from:

- If not deliberate, agreement to be trained in ethical conduct;
- Formal warning;
- Formal reprimand;
- Suspension for varying periods;
- Fine;
- Expulsion.

It will be the responsibility of the appropriate legislative body, commission or committee to enforce the sanctions after a report to the Legislature.

3.4 What Should be Regulated?

As the work of the European Centre for Parliamentary Research and Documentation notes, there are certain common themes in Codes, including:

1. Independence
2. Non-discrimination
3. Transparency
4. Rules against corruption
5. Conflict of interest and declaration of financial interests

Of more interest are the main national differences on what is or is not included – see Table 4 below.

The recent examples of Ireland and South Australia suggest that there is a degree of convergence about the contents of the Code - see Table 3:

Ireland	South Australia
Members must, in good faith, strive to maintain the public trust placed in them, and exercise the influence gained from their membership of Dáil Éireann to advance the public interest.	Members of Parliament should declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their duties. Members must declare their interests as required by the <i>Members of Parliament (Register of Interests) Act 1983</i> and declare their interests when speaking on a matter in the House or a Committee in accordance with the Standing Orders.
Members must conduct themselves in accordance with the provisions and spirit of the Code of Conduct and ensure that their conduct does not bring the integrity of their office or the Dáil into serious disrepute.	A conflict of interest does not exist where the Member is only affected as a member of the public or a member of a broad class.
Members have a particular obligation to behave in a manner which is consistent with their roles as public representatives and legislators, save where there is a legitimate and sustainable conscientious objection.	Members of Parliament should not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for any financial or pecuniary benefit.
Members must interact with authorities involved with public administration and the enforcement of the law in a manner which is consistent with their roles as public representatives and legislators.	In accordance with the requirements of the <i>Members of Parliament (Register of Interests) Act 1983</i> , Members of Parliament should declare all gifts and benefits received in connection with their official duties, including contributions made to any fund for a Member's benefit.
Members must base their conduct on a consideration of the public interest and are individually responsible for preventing conflicts of interest.	Members of Parliament should not accept gifts or other considerations that create a conflict of interest.
Members must endeavour to arrange their private financial affairs to prevent such conflicts of interest arising and must take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.	Members of Parliament should apply the public resources with which they are provided for the purpose of carrying out their duties.
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	

<p>further his or her private financial interest or another person's private financial interest directly or indirectly.</p> <p>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.</p> <p>Members may not solicit, accept or receive any financial benefit or profit in exchange for promoting, or voting on, a Bill, a motion for a resolution or order or any question put to the Dáil or to any of its committees.</p> <p>Members must fulfil conscientiously the requirements of the Dáil and of the law in respect of the registration and declaration of interests and, to assist them in so doing, should familiarise themselves with the relevant legislation and guidelines published from time to time by the Committee on Members' Interests and the Standards in Public Office Commission as appropriate.</p> <p>Members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their official duties.</p> <p>Members may accept incidental gifts and customary hospitality.</p> <p>In performing their official duties, Members must apply public resources prudently and only for the purposes for which they are intended.</p> <p>Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.</p> <p>Members must co-operate with all Tribunals of Inquiry and other bodies inquiring into matters of public importance established by the Houses of the Oireachtas.</p>	<p>Members of Parliament should not knowingly and improperly use official information, which is not in the public domain, or information obtained in confidence in the course of their Parliamentary duties, for private benefit.</p> <p>Members of Parliament should act with civility in their dealings with the public, Ministers and other Members of Parliament and the Public Service.</p> <p>Members of Parliament should always be mindful of their responsibility to accord due respect to their right of freedom of speech within Parliament and not to misuse this right, consciously avoiding undeserved harm to any individual.</p>
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3.5 Overlap or Conflict Between Latvian Law and Code

As noted above in the Ireland and South Australia examples, Codes may overlap with the criminal law. As suggested by the European Centre for Parliamentary Research and Documentation:

after the election, the Member has to accept a package of ethical and professional obligations which can be classified as either negative or positive. Negative obligations refer to the obligation on a Member to abstain from committing an action that may have a negative outcome, such as not to act contrary to the law, not to act in a discriminatory or improper manner, not to obtain and use information in a fraudulent manner, etc., not to seek or accept any pecuniary or non-pecuniary inducements (e.g. bribes, gifts, etc.).

Table 4: Variations in Code Contents

Obligation to declare MPs' pecuniary or non-pecuniary interests	Types of interest to be declared	Persons whose interest should be declared	Form of declaration	Timing of declaration (e.g. at the beginning and at the end of a term of office or each time a significant change in an MP's situation takes place)	Registration	Access to registered information	Sanctions
This is compulsory in some Member States (United Kingdom, France), optional in others (e.g. Denmark, the Netherlands, Finland, Belgium, etc) or is non-existent (Luxembourg)	The obligation to declare all additional income and activities, as well as property and shares in companies, is applied in some countries (e.g. United Kingdom), while others require no information on property, or only information relating to specific employment (e.g. directorships, administrative positions, contracts with commercial companies, etc). Due to the incompatibility of the office of MP and certain other elective or professional positions, in France MPs are required to submit a 'declaration of activity' within two months of election.	In some Member States, property belonging to the family of the Member (spouse and children) also has to be declared (e.g. Greece), while in other countries there is an extended obligation to declare other benefits and presents given to family members	This may vary from more formal structures (e.g. detailed accounts and reports) to simple declarations of pecuniary advantages or non-pecuniary links (e.g. disclosure of personal interests in advance of deliberations on a particular matter in a Bundestag committee)	In the United Kingdom, an oral declaration of a particular interest ought to be made on the occasion of every parliamentary debate	Usually MPs' declarations are entered in a register kept by either a parliamentary committee (United Kingdom) or an outside body (Belgium)	Some countries favour restricted access to the register containing MPs' personal data with the aim of preserving a certain degree of privacy (e.g. France, Spain). Others believe that the public interest cannot and should not be made secondary to private interests (United Kingdom, Italy, the Netherlands), while a third category opts for a mixed solution (e.g. Germany)	Again sanctions vary among the 15 Member States, with systems that do not provide for specific sanctions in the case of the non-disclosure of an MPs' personal interests (e.g. Spain), systems laying down moral or political sanctions (e.g. Germany, Italy), and systems applying more severe legal sanctions, including ineligibility for a certain period (e.g. France, Portugal, Italy). The aim of this transparency is not to impose disproportionate restrictions and surveillance on Members, but to improve moral standards in public life. Countries that do not yet have regulated systems of disclosure of financial interests are currently working on the introduction of such systems, while the countries which already enjoy such systems, are trying to improve them.

Source: European Centre for Parliamentary Research and Documentation 2000.

More generally, and focusing on the positive obligations, the Code

'creates an expectation for action on the part of the elected Member. Examples include: the duty to act reasonably and justly, to take the necessary steps to ensure that the information provided and on which decisions are taken is correct, to encourage the community by leadership and example, to give priority to the common good and welfare before any other personal or party consideration, to make decent and reasonable use of the resources allocated for carrying out the requisite duties, etc'.

The Code thus has two roles; translating into clear language what conduct is outlawed from the legislature because it offends the criminal law and what conduct which, if undertaken, is not considered acceptable because it might lead to situations that could offence the criminal law. It makes plain that the Code is not a substitute for the criminal law, and vice versa, but that the Code recognizes and addresses potential overlaps and conflicts so that all aspects of the professional standards of the Legislature are delivered. It is this duality that makes a Code attractive and useful as the bridge between discretionary personal conduct and the criminal law.

3.6 What Areas Should Therefore be Covered By a Code but Which are not Covered by Law?

The experience of the South Australia Parliament is useful in that it went through a process of determining the parameters of the contents of a Code, including:

- (a) addressing:
 - (i) the integrity of Parliament;
 - (ii) the primacy of the public interest over the furthering of private interests;
 - (iii) disclosure of interest;
 - (iv) conflict of interest;
 - (v) independence of action (including bribery, gifts and personal benefits, sponsored travel/accommodation, paid advocacy);
 - (vi) use of entitlements and public resources;
 - (vii) honesty to Parliament and the public;
 - (viii) proper relations with Ministers and the public service;
 - (ix) confidentiality of information;
 - (x) appropriate use of information and inside information;
 - (xi) Government contracts; and
 - (xii) duties as a Member of Parliament;
- (b) a procedure for enforcement of the Code by Parliament that ensures recognition of the responsibility of each House of Parliament for its own affairs and the supremacy of the institution of Parliament in the Westminster system, effective investigation and adjudication of complaints, is impartially administered and protects members who are the subject of an allegation (including trivial and vexatious complaints) in a similar way to a court or professional disciplinary body;
- (c) an appropriate method by which Parliament should adopt a Code (e.g. by legislation, resolution, Standing Order or any other method), taking into consideration how best to engender knowledge and understanding of it by the public as well as by Members;
- (d) the relationship between the Code and statutory requirements for disclosure of Members' financial interests;
- (e) whether a code of conduct should be adopted for officers of the Parliament; and

- (f) an introductory and continuing ethical and constitutional education program for Members, having regard to :
 - (i) the discussion paper and draft Code of Conduct for Members of Parliament prepared by the Legislative Review Committee in 1996;
 - (ii) standards of conduct required of public servants by the Public Sector Management Act 1995;
 - (iii) the way other jurisdictions (including the UK and Canada) have developed - codes of conduct and draft codes of conduct for Members of Parliament, enforcement procedures, advisory services for Members, introductory and continuing legal education programs and informing the public about the code and its enforcement; and
 - (iv) written submissions from members.

Codes should be designed for a particular Legislature but may draw on the lessons from other countries. While often using common themes or general standards, there should be a tailored approach – realistic, simple, relevant and affordable - based around the Legislature’s unique circumstances, resources, responsibilities and size. As far as possible, adherence to the Code should be part of the conditions of taking up office or standing for election (usually included in the requirements for all candidates to agree to when submitting election papers), involve regular training and, especially, the means to enforce its provisions.

4. PLAN OF ACTION

The work plan will prepare this report as follows:

1. Receive any reports and previous codes in English.
2. Collect and collate up to 3 codes from jurisdictions of similar size but from different types of countries to contrast with previous Latvian proposals and identify issues (including ethics, legal code and enforcement mechanisms). Prepare report (**LATVIA REPORT 1: OVERVIEW OF ROLE OF CODE AND ITS RELATIONSHIP WITH THE LAW and OVERVIEW OF IMPLEMENTATION OF CODE**)
3. Send first report for translation and circulation. Hold workshop on report, followed by a series of stakeholder meetings on Code, relations with the law, parliamentary oversight and disciplinary work to confirm what the problems are over (i) the Code and (ii) its implementation. This will result in a draft report to provide framework for Code and delivery framework.
4. Preparation and delivery of draft final report on Code and mechanisms for implementation and then hold final workshop to discuss, review and approve draft final report on Code and mechanisms for implementation.

5. SOURCES

Brien, A. (1998) *A Code of Conduct for Parliamentarians?* Politics and Public Administration Group. Parliament of Australia: Parliamentary Library.

Scottish Parliamentary Standards Commissioner. *Annual Report 2004 – 2005*. Scottish Parliament.

European Centre on Parliamentary Research and Documentation (2000). *Parliamentary Conducts of Conduct in Europe: An Overview*. ECPRD/European Parliament

6. APPENDICES

6.1 The Ireland Example

**An COISTE um LEASANNA
CHOMHALTAÍ DHÁIL ÉIREANN**

**COMMITTEE on MEMBER'S
INTERESTS of DÁIL ÉIREANN**

Report on a Draft Code of Conduct for Members of Dáil Éireann

The Committee on Members' Interests of Dáil Éireann, having acted pursuant to the order of the Dáil of 7th February, 2001 concerning a Code of Conduct for Members of Dáil Éireann, hereby reports to Dáil Éireann its recommendations in the matter.

INTRODUCTION

On 7th February, 2001, Dáil Éireann made an order which approved, in principle, the adoption of a Code of Conduct for its Members. The order -

(i) referred the draft Code (*Annex A*) laid before the Dáil on 1st February, 2001, to the Committee on Members' Interests of Dáil Éireann ("the Committee") for its consideration, both as regards the content of the Code and in relation to its implementation and enforcement (including in particular any amendment which may be required to the Standards in Public Office Bill, 2000 in relation to the proposed function of the Committee under the Code);

(ii) instructed the Committee that it had the power to consider the draft Code and to report its recommendations in the matter to the Dáil not later than 1st May, 2001; and

(iii) in supporting the principles included in the draft Code and its referral to the Committee, instructed the Committee that it had the power to draft a Code of Conduct consistent with that envisaged in the Standards in Public Office Bill, 2000 and to consider submissions from Oireachtas Members and political parties.

This Report records the considered and unanimous views of the Committee on the matter and has been compiled following comprehensive consultation with individual Members of the Dáil and with political parties. The Members of the Committee are -

Deputy Tony Killeen (Chairman)
Deputy John Browne (*Carlow-Kilkenny*)
Deputy Brendan Howlin
Deputy Jim O'Keeffe
Deputy Brendan Smith.

SUBMISSIONS

Before considering the issues involved, the Committee invited each Member of the Dáil, including office holders, to make a written submission to it in relation to the matters which the Committee was empowered to consider. Submissions were received from the following Members:

Deputy John Bruton
Deputy Noel Dempsey, Minister for the Environment and Local Government
Deputy Charlie McCreevy, Minister for Finance

Political parties recognised as such for the purposes of the Standing Orders of the Dáil were invited to make both oral and written submissions to the Committee. Written submissions were made on behalf of the following parties:

The Green Party - Comhaontas Glas
The Progressive Democrats
The Labour Party
Fine Gael
Fianna Fáil

Oral submissions were also made by representatives of the five parties to the Committee at a public meeting held on 12th April, 2001. The issues involved were explored through discussion between the members of the Committee and the party representatives. The transcript of the meeting is at *Appendix K*.

CODE OF CONDUCT

Context

The broad political context in which the preparation of a Code of Conduct is taking place is, firstly, marked by a cathartic process in which, through tribunals, courts and the House itself, aspects of the political system and alleged abuses by a number of people within that system over two decades are, quite properly, being held up to public scrutiny in an unprecedented way. In preparing a Code, the Committee must be conscious that the examination in a relatively short period of time of wrongdoing which took place over a very long period of time may give rise to an artificial perception of widespread wrongdoing by Members of the House. The Committee recommends to the Dáil a clear and easily understood Code of Conduct by which public confidence in Members of the Dáil will be maintained.

A second and more forward looking feature of the present political context, which has developed in recent years, is a strong desire on the part of the Oireachtas and the Government to ensure that the system is open to scrutiny and that Members are seen to be accountable where this is necessary. The Code of Conduct is the latest in a series of positive developments. The Committee intends that the Code will be both helpful to Members and reassuring to the public.

Guiding Principles

The general principles which guided the approach of the Committee are set out beneath.

(i) Purpose of Code

The Committee is of the view that the purpose of a Code of Conduct is to assist Members in the discharge of their obligations to the Dáil, their constituents and the public at large without, however, trespassing into areas where Members more properly submit themselves to the judgment of their electors rather than the jurisdiction of the House.

(ii) Principles -v- rules

The primary structural issue for the Committee is whether the Code of Conduct should enunciate broad principles or prescribe a set of particular rules to be observed by Members. The view of the Committee is that the Code should be a statement of general principles which may be used by Members to guide them in particular situations. This approach ensures that the Code has the kind of flexibility which will (i) allow its application to as wide a range of situations as possible, (ii) ensure that the Committee or the Public Offices Commission, as the case may be, has the flexibility to take into consideration the unique and challenging characteristics of parliamentary life, and (iii) ensure that it continues to be relevant and applicable through periods of change. Prescriptive rules are more appropriate to legislation or, perhaps, to the Standing Orders of the House and necessarily deal only with the specific situations which they were drafted to govern. Being designed for specific circumstances, by definition they are exclusive and cannot govern the range of matters which are contemplated by a set of broad principles.

The Committee is conscious, however, of the danger of overgeneralising and producing a Code of Conduct which is so broadly drawn that it becomes capable of such a wide range of interpretation that it loses the degree of certainty and clarity which is necessary if it is to meet its intended purpose. The Code

recommended by the Committee therefore seeks to strike an appropriate balance between the general and the particular.

(iii) Regulatory matters

It is not the function of the Code to deal with matters concerning its own regulation and governance such as amendment of the Code, sanctions for contravention, powers of the Committee etc. Matters of this kind are proper to legislation and are, in fact, contemplated by the Standards in Public Office Bill, 2000 or provided for by existing legislation. Nor is it the function of the Code to repeat specific provisions concerning standards which have already been codified in legislation, for example, the specific requirements of the Ethics in Public Office Act, 1995 concerning the registration and declaration of interests. However, the Committee believes that it is helpful to restate in a general way the obligation on Members to comply fully with such legislation.

Content of the Code

A number of the issues concerning the content of the draft Code of Conduct which arose in the context of submissions made to the Committee and in the course of the Committee's own deliberations were considered to warrant particular attention. Each of these is dealt with beneath. The sequence in which these matters are dealt with does not reflect an order of priority.

(i) Apparent conflicts of interest

It has been submitted to the Committee that the requirement in paragraph 3 of the draft Code to avoid "apparent" conflicts of interest introduces an element of subjectivity and uncertainty into the concept of a conflict of interest.

The Committee agrees that it is unjust to require Members to be held accountable and subject to a penalty for a perception by others that their affairs create a conflict of interest where no such conflict of interest actually exists. Accordingly, any reference to apparent conflicts of interest have been excluded from the recommended Code. However, the Committee notes that where an unfounded perception arises, it is always open to the Member to take appropriate steps to deal with that perception.

It should also be noted that the order of the Dáil referring the draft Code for the Committee's consideration stipulated that the Code ultimately recommended by the Committee be "consistent with that envisaged in the Standards in Public Office Bill, 2000". Section 7(5) of the Bill envisages that the recommended Code should contemplate matters "appearing" to affect the performance by a Member of his/her functions. In order to ensure consistency, the Committee makes a recommendation later in the Report to amend the Bill in this regard.

(ii) Legitimate public scrutiny of private affairs

It has been suggested to the Committee that the requirement in paragraph 9 of the draft Code for Members, *inter alia*, to "arrange their private affairs in a manner that withstands legitimate public scrutiny" requires Members to take responsibility for the actions and perceptions of others and subjects Members to an elastic concept over which the Member has no control.

The Committee believes that paragraph 9 may be too broadly drafted but fully accepts that the intent behind the paragraph is primarily to ensure that the arrangement by Members of their private affairs does not give rise to a conflict with the public interest. The Committee is anxious to retain this principle but has carried out redrafting to require that Members' endeavour to arrange their private *financial* affairs to prevent conflicts of interest. The redrafting, together with the inclusion of a general obligation on Members to conduct themselves in accordance with the provisions of the Code and in the public interest, ensures that Members remain fully entitled to have the privacy of their private affairs respected except where they conflict with their public duty.

The reference to "legitimate public scrutiny" is unnecessary as the power of scrutiny in relation to the Code will, in any event, be confined to those bodies so empowered by the Standards in Public Office Bill, 2000.

(iii) Past activities

The question was raised with the Committee as to whether or not the activities of a Member before he/she

was elected to the Dáil should be governed by the Code of Conduct. Examples cited were where a Member had belonged to a terrorist organisation or had engaged in other forms of illegal activity. The Committee is of the view that it would be unjust to apply the Code of Conduct retrospectively to the activities of people who were not governed by the Code at the relevant time. It is noted, of course, that Members may be accountable in other ways for activities engaged in before their election, for example, through the courts or non-statutory political processes.

(iv) Application of public resources

It has been submitted that the requirement in paragraph 2 of the draft Code to "avoid waste, abuse and extravagance" in the provision or use of public resources brings into play potentially subjective terms upon which different interpretations could be placed by different people. It was further suggested that the words be defined within the recommended Code for the guidance of Members.

The Committee agrees that these words might be open to a wide range of interpretations notwithstanding the fact that the Committee or the Public Offices Commission will ultimately decide what they mean in individual cases and, accordingly, the words have been deleted. However, paragraph 2 of the draft Code enshrines an important principle which the Committee believes must be retained. Consequently, a requirement of Members to apply public resources prudently and only for the purposes for which they were intended has been included in the recommended Code.

(v) Upholding the law and co-operating with public bodies

There was some discussion with the Committee concerning the possibility that a blanket requirement in the draft Code always to uphold the law and co-operate fully with authorities involved in public administration and the enforcement of law could, on occasion, give rise to a conflict for Members of the Dáil and deprive them of the right or moral obligation to engage in protest in accordance with their consciences and the legitimate interests of their constituents or the public at large. There was concern that a requirement to co-operate without exception with public bodies could conflict with the duty to hold such bodies accountable.

At the outset, the Committee wishes to make clear its strong belief that, as lawmakers themselves, Members of Dáil Éireann have a special responsibility to uphold the law and abide by other decisions of the House and to co-operate generally with the proper application of such laws and decisions. The Committee believes that the recommended Code should stress this responsibility but should not overlook the possibility that special exceptional circumstances may give rise to situations where the Member has a legitimate and sustainable conscientious objection which leads him or her to oppose in a non-violent way, or not to co-operate with, an authority. Members are, however, first and foremost obliged to use the mechanisms provided by a democratic and open society to pursue their legitimate aims as legislators and public representatives.

The Committee also believes that the recommended Code should recognise that the full co-operation of Members with authorities involved in public administration or the enforcement of the law is not always appropriate, especially where such authorities are not acting legitimately or where a Member's duty is to hold such authorities to account. The recommended Code should, however, generally require Members to interact with authorities in a manner which is consistent with their roles as public representatives and legislators.

It was submitted to the Committee that the words "In common with all citizens...." at paragraph 1 of the draft Code were superfluous. The Committee would go further and believes that, while Members share with all citizens a duty to uphold the law, they have, as has been explained, special obligations as legislators and public representatives. Accordingly, the words have been deleted as suggested.

(vi) Double jeopardy

The Committee endorses the fundamental principle that Members of the Dáil, like other citizens, are entitled not to be tried twice for the same offence. However, the recommended Code recognises that Members occupy a unique position as elected public representatives and legislators and that they need to foster and sustain public confidence and trust in their integrity as individuals and in Dáil Éireann as an institution. Given this special position, the Code of Conduct must take account of the fact that while an alleged failure by a Member to fulfil his/her obligations as a citizen may have been dealt with by a court or a tribunal, there may

be a consequential and additional failure to fulfil one's special obligations as a Member. Such special obligations are recognised by the very existence of a Code of Conduct.

The Committee therefore seeks to ensure in its recommended Code that Members are answerable only in respect of their special responsibilities as Members and not in respect of those civic responsibilities which they share with other citizens and for which they are answerable in other fora. However, the recommended Code recognises that a single action or failure can give rise to separate civic and political responsibilities.

Recommended Code of Conduct

(i) Draft Code

The Committee has been instructed by the Dáil to consider the Draft Code of Conduct laid before the House on 1st February, 2001. This Draft is, in the opinion of the Committee, close in its general approach to what the Committee would wish to recommend but would require amendment (i) to make it somewhat less prescriptive, (ii) to remove those matters relating to enforcement which the Committee feels can more appropriately be dealt with in the Standards in Public Office Bill, 2000 and (iii) to incorporate any matters dealt with above which are not in the Draft or which are present but not fine-tuned in accordance with the views of the Committee.

The Committee, therefore, does not recommend the adoption of the Draft Code laid before Dáil Éireann on 1st February, 2001.

(ii) Recommended Code

The Committee has drafted a Code which (i) takes account of the issues dealt with earlier, (ii) draws on the best elements of alternative sample codes which were considered by the Committee, and (iii) in the opinion of the Committee, benefits from clarity and operability.

The Committee recommends the Code of Conduct of this Report to the Dáil for its consideration and adoption.

Enforcement of the Code of Conduct

In addition to the content of the Code of Conduct, the Committee was instructed by the Dáil to consider its "implementation and enforcement (including in particular any amendment which may be required to the Standards in Public Office Bill, 2000 in relation to the proposed function of the Committee under the Code)".

The Committee, in consultation with Members of the House and political parties, has identified a number of issues which need to be considered in the context of the amendment of the Bill and these are dealt with beneath. The sequence in which these matters are dealt with does not reflect an order of priority.

(i) Scope of application

It has been submitted to the Committee that there is a much higher level of duty on Ministers and Ministers of State than on non-officeholding Members in view of the fact that the former exercise executive power and that, therefore, Members should not be subject to the same level of responsibility as officeholders: this principle is reflected in the submission made by the Minister for Finance. The Committee agrees but recognises that, aside from their additional duties, officeholders share responsibilities with ordinary Members as legislators and public representatives. In this regard, it is considered that officeholders should, as Members, be subject to the same Code of Conduct as other Members and that their additional responsibilities as Ministers should be dealt with separately.

Recommendations:

(a) The Code of Conduct adopted by the Dáil for non-officeholding Members should apply equally to Ministers and Ministers of State and the additional responsibilities of such officeholders should be enshrined in a separate Code prepared by the Government.

(b) The Committee recommends that complaints that a Minister or Minister of State has contravened a Code of Conduct should not be considered by the Committee.

(ii) Composition of the Committee

It was emphasised to the Committee that, as a body charged with carrying out investigations into complaints concerning Members, its composition should be such as to minimise any danger that the carrying out of an investigation is done for party political reasons by a majority. The questions were also raised as to whether (i) the Committee is fully representative of the party political spectrum in the Dáil, and (ii) the system whereby members of the Committee are effectively selected by party leaders should be changed in favour of a system in which Members of the House had a greater say in the appointment of the Committee.

It should be noted that the Committee on Members' Interests is unique in the House as the only Committee with an Opposition majority. Its party political composition is Fianna Fáil - 2, Fine Gael - 2, Labour - 1. The Committee's experience since it was appointed over three years ago has been that it has operated on a cross party consensual basis and that party politics has not influenced the manner in which it has carried out its functions under the Ethics in Public Office Act, 1995. This is not to suggest that party politics is not an important and dynamic feature of our parliamentary system; it reflects the fact that the Committee on Members' Interests is functionally very different to other committees of the House. Accordingly, the Committee has no difficulty in agreeing with the principle that party political considerations should not influence its execution of its statutory duties.

Nor would it agree fully with the principle that its membership should strictly reflect the party political composition of the House. It is accepted that the membership should be broadly representative of the composition of the House but not at the expense of the efficiency and effectiveness with which a small membership has allowed it to operate. The nature of the Committee's work requires a very significant commitment from its members in terms of time, assimilation of complex legal and procedural issues and detailed examination of substantial quantities of written material; any increase in the number of members on the Committee must ensure that that commitment is not diluted. Provided these issues are taken into account, the Committee is not opposed to changes in its structure or small increases in its size.

The Committee believes that as it carries out important statutory functions which have the potential to impact in a significant way on the lives of Members, and on their ability to fully represent their constituents, it is important that it should enjoy the confidence and trust of Members. This is particularly important in a situation where the scope and powers of the Committee are to be increased. The Committee is therefore open to any changes which the House feels would enhance the standing of the Committee. Accordingly, the Committee has no difficulty with the principle that consultation should take place with Members on which of their colleagues have the experience and expertise necessary to be effective members of the Committee.

Recommendation:

Consideration might be given to reviewing the composition and/or size of the Committee on Members' Interests in a way which makes it more representative of the composition of the House. However, any such change should not diminish its present efficiency and effectiveness.

(iii) Title of the Committee

The Committee believes that its title should be changed (i) to take account of the broadening of its role under the Standards in Public Office Bill, 2000, (ii) to reflect more accurately the nature of its functions, and (iii) to distinguish it clearly from the sub-Committee on Members' Services with which it is often confused but from which it differs completely in constitution and function.

Recommendation:

The title of the Committee on Members' Interests of Dáil Éireann should be changed by the Standards in Public Office Bill, 2000 to "the Committee on Standards and Ethics of Dáil Éireann".

(iv) Penalties

The view has been expressed to the Committee that the penalties permissible in respect of contravention of the Code and the existing requirements in the Ethics in Public Office Act, 1995 should be more severe than at present. The maximum penalty applicable to Members for contravention of the Ethics Act is suspension from the House for 30 sitting days, although where a contravention is continuing suspension for an indefinite period may be imposed until such time as a Member has taken such appropriate steps as may be recommended to bring him/her into compliance with the Act. No financial penalties are imposed.

In examining this issue, the Committee must have regard to the need to balance competing considerations. On the one hand, it is desirable to ensure that the House can signal its disapproval of the actions or failures of a Member in a way that is commensurate with the contravention and has a deterrent effect. On the other hand, penalties should not be such that they have a disproportionate effect on the right of a Member's constituents to be represented by him/her. The point was also made to the Committee that unduly lenient penalties for contravention of the standards and ethics legislation would appear anomalous alongside the severity of the penalty - forfeiture of one's seat - for bankruptcy, a status which could be arrived at without wrongdoing by a Member. In the course of discussion, the view was expressed to the Committee that, in the context of electoral legislation, debarment from the Dáil on the basis of bankruptcy is a nineteenth century concept which has little relevance in a twenty-first century parliament. The Committee concurred with this view.

While the Committee would point out that the effect of the current penalties on a Member should not be underestimated, it agrees that stronger penalties would be of assistance in dealing with serious contraventions of the Code of Conduct and the existing Ethics Act. It was suggested to the Committee that, in the most serious cases, the maximum suspension should be as high as three months and should include suspension from all Committees and from the use of the facilities of the House. Salary and expenses should be withdrawn for the period of the suspension. It was suggested that a more severe penalty would constitute an interference in the democratic process. Other Members felt that this proposal was unduly severe.

In making its recommendations the Committee cautions that, in considering any legislative change, the Minister should be careful to avoid giving rise to anomalies and inequalities:

(i) For instance, a Dáil based Member may be deprived of access to his/her main office while another member would continue to be able to access a constituency based main office: for this reason, the Committee does not recommend the withdrawal of the right of access to facilities of the House.

(ii) Exclusion from service on committees in a situation where the period of suspension from the House begins before, and finishes after, a summer recess, for example, could give rise to a situation where a penalty could have practical effect for longer than was intended. This can be dealt with by expressing the period of suspension in terms of the calendar rather than sitting days. If the recommendation regarding exclusion from service on Committees is accepted, a suspension expressed in terms of the calendar would have practical effect during periods when the House is not sitting and would not have effect for longer than intended by the House.

(iii) Legislative provisions regarding suspension from service on committees should deal clearly with the three tiered system of rights to attend committee meetings which is provided for in Standing Orders: the present system allows members to attend as appointed members, as substitutes, and to participate without the right to vote or move motions.

Recommendations:

(a) The maximum period for which Members may be suspended from the House for contravention of the Code of Conduct and relevant provisions of the Ethics in Public Office Act, 1995 should be increased to three calendar months, subject to the retention of the existing provision that a longer period of suspension may be imposed where a contravention is continuing.

(b) A Member who has been suspended from the House should also be suspended from service on any Committee to which he/she has been appointed or from participation in any other Committee meeting.

(c) A Member who has been suspended from the House should not be paid any salary or expenses for the period of the suspension where the contravention involved has been deemed to be both intentional and serious.

(v) Advice

Under the Ethics in Public Office Act, 1995, Members may seek advice from the Committee in relation to any provision of the Act and, in particular, the provisions relating to the registration and declaration of interests. The Committee believes that it would be of considerable assistance to Members to ensure that this provision is repeated in the Standards in Public Office Bill, 2000 in respect of the Code of Conduct.

Recommendation:

The Standards in Public Office Bill, 2000 should be amended as necessary to allow Members to seek advice from the Committee or the Commission, as appropriate, in relation to the Code of Conduct.

(vi) Apparent conflicts of interest

As already discussed, the Committee believes that Members should not be accountable for perceptions by others of the existence of conflicts of interest which do not, in fact, exist. However, section 7(5) of the Standards in Public Office Bill, 2000 envisages that the recommended Code should contemplate matters "appearing" to affect the performance by a Member of his/her functions. It is necessary to amend the Bill to ensure that the Code is consistent with it.

Recommendation:

The Standards in Public Office Bill, 2000 should be amended to remove any provision that the Code of Conduct require Members to be accountable in respect of perceptions of conflicts of interest where such conflicts do not, in fact, exist.

ANNEX A

CODE OF CONDUCT FOR MEMBERS OF DÁIL ÉIREANN OTHER THAN OFFICE HOLDERS

PREAMBLE

Members of Dáil Éireann other than office holders (referred to hereafter as "Members") recognise that it is in their individual and collective interest to foster and sustain public confidence and trust in their integrity as individuals and in Dáil Éireann as an institution. To this end, Members should at all times be guided by the public good and ensure that their actions and decisions are taken in the best interests of the public.

Members are in the unique position of being responsible to the electorate which is the final arbiter of their conduct and has the right to dismiss them from office at regular elections. Accordingly, and as a matter of principle, individual Members are not answerable to their colleagues for their behaviour, except where it is alleged to breach the obligations to answer to them which have been placed on Members by law, by Standing Orders or by Codes of Conduct established by the House.

To this end and in exercise of the powers conferred by Article 15.10 of the Constitution, the Members have adopted this Code of Conduct, the purpose of which is to assist Members in the discharge of their obligations to the House, their constituents and the public at large, without, however, trespassing into areas where Members more properly submit themselves to the judgement of their electors rather than the jurisdiction of this House.

CODE

1. Members must, in good faith, strive to maintain the public trust placed in them, and exercise the influence gained from their membership of Dáil Éireann to advance the public interest.

2. Members must conduct themselves in accordance with the provisions and spirit of the Code of Conduct and ensure that their conduct does not bring the integrity of their office or the Dáil into serious disrepute.

3. (i) Members have a particular obligation to behave in a manner which is consistent with their roles as public representatives and legislators, save where there is a legitimate and sustainable conscientious objection.

(ii) Members must interact with authorities involved with public administration and the enforcement of the law in a manner which is consistent with their roles as public representatives and legislators.

4. (i) Members must base their conduct on a consideration of the public interest and are individually responsible for preventing conflicts of interest.

(ii) Members must endeavour to arrange their private financial affairs to prevent such conflicts of interest arising and must take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.

5. (i) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private financial interest or another person's private financial interest directly or indirectly.

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

6. Members may not solicit, accept or receive any financial benefit or profit in exchange for promoting, or voting on, a Bill, a motion for a resolution or order or any question put to the Dáil or to any of its committees.

7. Members must fulfil conscientiously the requirements of the Dáil and of the law in respect of the registration and declaration of interests and, to assist them in so doing, should familiarise themselves with the relevant legislation and guidelines published from time to time by the Committee on Members' Interests and the Standards in Public Office Commission as appropriate.

8. (i) Members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their official duties.

(ii) Members may accept incidental gifts and customary hospitality.

9. In performing their official duties, Members must apply public resources prudently and only for the purposes for which they are intended.

10. Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.

11. Members must co-operate with all Tribunals of Inquiry and other bodies inquiring into matters of public importance established by the Houses of the Oireachtas.

Adopted by Dail Eireann on 28 February, 2002

6.2 The South Australia Example



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

1. INTRODUCTION

1.1 APPOINTMENT OF COMMITTEE

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

1.2 MEMBERSHIP

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

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

Mrs Jan Davis, Clerk of the Legislative Council and Mr Malcolm Lehman, Deputy Clerk of the House of Assembly, were appointed Secretaries to the Committee.

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

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

1.3 TERMS OF REFERENCE

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

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

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

1.4 COMMITTEE POWERS

Joint Standing Order No. 5 empowered the Committee "to send for persons, papers and records". Upon

Resolution of the House of Assembly and Legislative Council, the appointed Members had power to act on the Committee during the recess.

1.5 CONDUCT OF INQUIRY

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

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

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

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

1.6 ACKNOWLEDGEMENTS

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

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

2. EXECUTIVE SUMMARY

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

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

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

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

3. BACKGROUND TO THE REPORT

Six Australian Legislatures presently have a "Code of Conduct".

- Victoria was the first to implement a code. A statutory prescribed code is contained in the *Members of Parliament (Register of Interests) Act 1978*.
- The Tasmanian House of Assembly amended its Standing Orders in 1996 to include a *Code of Ethical Conduct*. The Code contains a Statement of Commitment and Declaration of Principles. The Standing Orders also contain a *Code of Race Ethics*.
- In 1998 both Houses of the New South Wales Parliament adopted a Code of Conduct in the form of a Sessional Order.

- The Legislative Assembly of the Western Australian Parliament resolved to adopt a Code of Conduct in 2003.
- Queensland implemented a Code of Ethical Standards in 2001 which is a consolidation of relevant legislation, Standing Orders and Resolutions of the Legislative Assembly.
- The Standing Orders Committee of the Northern Territory Legislative Assembly reported on a Draft Code of Conduct and Ethical Standards, the Report of which was adopted in March 2004.

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

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

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

4. COMMITTEE'S DELIBERATIONS

4.1 THE ROLE OF A MEMBER OF PARLIAMENT

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

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

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

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

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

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

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

To carry out all of the duties required of them, Members of Parliament are required to work long hours,

Alan Doig: p35

both in the Parliament and outside, and are never free from intense public scrutiny.

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

4.1.1 **Parliamentary Responsibilities and Duties**

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

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

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

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

4.1.2 **Electorate Responsibilities**

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

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

4.1.3 **Party Responsibilities and Duties**

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

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

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

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

Speaker (and Deputy Speaker) of the House of Assembly

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

- Chairing the House, maintaining order and determining procedural matters;
- presentation of Bills to the Governor for Royal Assent;
- representation of House of Assembly in its relations with the Governor, the Executive and the wider community;
- responsibility for the administration of the House of Assembly and the control and

- management of the precincts of the House; and
- joint responsibility with the President of the Legislative Council for the overall administration of the Parliament and the precincts of Parliament House.

President of the Legislative Council

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

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

Minister of the Crown

A Minister's duties and responsibilities include -

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

Leader of Party

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

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

Shadow Ministers or Opposition spokespersons

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

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

Party Whips

The duties and responsibilities of Government and Opposition Whips include -

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

Chair or Member of Parliamentary Committee

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

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

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

The duties and responsibilities of Members of Committees include -

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

4.2 IS IT APPROPRIATE TO ADOPT A CODE OF CONDUCT?

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

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

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

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

4.3 CONTENTS OF A STATEMENT OF PRINCIPLES

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

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

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

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

The Committee acknowledges that political parties and political activities are a part of the democratic

process and participation in political parties and activities is within the legitimate activities of Members of Parliament.

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

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

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

- **Disclosure of any conflict of interest**
Members of Parliament should declare any conflict of interest between their private financial interest and decisions in which they participate in the execution of their duties. This is done through Members declaring their interests as required by the *Members of Parliament (Register of Interests) Act 1983* or through declaring their interests when speaking on a matter in either House or a Committee in accordance with the Standing Orders, or in any other public and appropriate manner. A conflict of interest does not exist where the Member is only affected as a member of the public or a member of a broad class.
- **Prohibition of the acceptance of bribes by a Member of Parliament**
Members of Parliament should not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for any financial or pecuniary benefit.
- **The regulation of the acceptance of gifts and benefits by a Member of Parliament**
In accordance with the requirements of the *Members of Parliament (Register of Interests) Act 1983*, Members of Parliament should declare all gifts and benefits received in connection with their official duties, including contributions made to any fund for a Member's benefit. Members of Parliament should not accept gifts or other considerations that create a conflict of interest.
- **Improper use of public resources**
Members of Parliament should apply the public resources with which they are provided for the purpose of carrying out their duties.
- **Misuse of confidential information**
Members of Parliament should not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their Parliamentary duties, for private benefit.
- **Dealings with Ministers and Public Servants**
Members of Parliament should act with civility in their dealings with the public, Ministers and other Member of Parliament and the Public Service.
- **Right of freedom of speech**
Members of Parliament should always be mindful of their responsibility to accord due respect to their right of freedom of speech within Parliament and not to misuse this right, consciously avoiding undeserved harm to any individual.

4.4 REGULATION OF CONDUCT OF MEMBERS OF PARLIAMENT

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

4.4.1 The Laws applicable to any member of the public

A Member of Parliament is subject to the laws of the State of South Australia. If a Member

breaches the criminal law they may be prosecuted and penalised like any other member of the public. Similarly, an action may be brought against a Member for a breach of the civil law.

4.4.2 The Laws and Rules applicable to a Member of Parliament

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

The Standing and Sessional Orders of each House

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

Members of Parliament (Register of Members Interests) Act 1983

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

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

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

Constitution Act 1934

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

"Vacation of seat in Council

17. (1) If any member of the Legislative Council -

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

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

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

"Vacation of seat in Assembly

- 31.** (1) If any member of the House of Assembly -
- (a) for twelve sitting days consecutively of any session of the House of Assembly without the permission of the House entered upon its journals fails to attend in the House; or
 - (ab) is not or ceases to be an Australian citizen; or
 - (b) takes any oath or makes any declaration or acknowledgement of allegiance, obedience or adherence to any foreign prince or power; or
 - (c) does, concurs in, or adopts any act whereby the member may become a subject or citizen of any foreign state or power; or
 -
 - (e) becomes bankrupt or an insolvent debtor within the meaning of the laws in force in the State relating to bankrupts or insolvent debtors; or
 - (f) becomes a public defaulter; or
 - (g) is attainted of treason; or
 - (h) is convicted of an indictable offence; or
 - (i) becomes of unsound mind,
- the Member's seat in the House of Assembly shall thereby become vacant.

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

"Oath of allegiance

42. (1) No member of Parliament, elected a member of Parliament on or after the commencement of the *Constitution Act Amendment Act 1972*, shall be permitted to sit or vote therein until the member has taken and subscribed the following oath before the Governor, or before some person or persons authorised by the Governor to administer such oath.

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

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

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

(4)"

"Disqualification of members occupying seats in both Houses

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

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

"Disqualification of members holding offices of profit

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

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

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

In relation to Government contracts, the Committee noted that sections 49, 50 and 51 of the *Constitution Act 1934* previously dealt with Members of Parliament entering into contracts with

the Crown and rendered void the seat of any Member of Parliament who entered into, accepted, undertook or executed a contract, agreement or commission with the Crown. This prevented Members from undertaking business with Government agencies or instrumentalities, such as the State Government Insurance Commission, the Totalizator Agency Board, the Lotteries Commission, the State Bank and the Housing Trust, as well as receiving mining royalties, for which legislative exemptions were required.

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

“Contents of returns

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

(2)

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

Electoral Act 1985

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

“Qualifications of candidate

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

“Bribery

4. 109. (1) A person must not offer or solicit an electoral bribe.

Maximum penalty: Imprisonment for 7 years.”

“Undue influence

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

(a) the vote of an elector;

(b) the candidature of any person in an election; or

(c) the course or result of an election.

Maximum penalty: Imprisonment for 7 years.”

“Disqualification for bribery and undue influence

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

Criminal Law Consolidation Act 1935

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

“Acting improperly

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

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

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

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

(4) In this section -

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

“public officer” includes a former public officer.”

“Demanding or requiring benefit on basis of public office

252. (1) A person who -

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

is guilty of an offence.

Penalty: Imprisonment for 7 years.”

“Offences relating to appointment to public office

253. (1) A person who improperly -

- (a) gives, offers, or agrees to give a benefit to another in connection with the appointment or possible appointment of a person to a public office; or
- (b) seeks, accepts or agrees to accept a benefit (whether for himself or herself or for a third person) on account of an act done or to be done with regard to the appointment or possible appointment of a person to a public office,

is guilty of an offence.

Penalty: Imprisonment for 4 years.”

Equal Opportunity Act 1984

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

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

Auditor-General

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

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

Public and media scrutiny

Members are subject to intense scrutiny by the media and the public in both their professional

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

The Electorate

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

4.5 OPTIONS FOR ADOPTING THE STATEMENT OF PRINCIPLES

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

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

4.5.1 Standing Orders

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

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

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

4.5.2 Statute

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

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

4.5.3 Resolution of Parliament

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

4.6 RECOMMENDATION FOR ADOPTING THE STATEMENT OF PRINCIPLES

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

4.7 ENFORCEMENT OF THE STATEMENT OF PRINCIPLES

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

Further, the Committee noted that in 1995 the United Kingdom House of Commons adopted a Code of Conduct for Members of Parliament which requires complaints to be directed to the Office of Parliamentary Commissioner for Standards. The House of Commons, consisting of 657 Members, is part

of the national Parliament of the United Kingdom. No such process exists in the Australian Federal Parliament and the Committee considers that the establishment of an Office of this nature cannot be justified.

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

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

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

4.8 PROMOTION OF THE STATEMENT OF PRINCIPLES

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

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

4.9 PARLIAMENTARY OFFICERS

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

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

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

5. RECOMMENDATIONS

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

5.1 RECOMMENDATION 1

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

5.2 RECOMMENDATION 2

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

5.3 RECOMMENDATION 3

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

5.4 RECOMMENDATION 4

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

5.5 RECOMMENDATION 5

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

5.6 RECOMMENDATION 6

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

**JOHN M GAZZOLA MLC
Chairperson**

Parliament House
ADELAIDE SA 5000

14 October 2004

**APPENDIX A
LIST OF WRITTEN SUBMISSIONS**

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

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

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

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

**APPENDIX B
STATEMENT OF PRINCIPLES**

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

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

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

Members of Parliament should declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their duties. Members must declare their interests as required by the *Members of Parliament (Register of Interests) Act 1983* and declare their interests when speaking on a matter in the House or a Committee in accordance with the Standing Orders.

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

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

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

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

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

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

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

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

APPENDIX C



STATEMENT OF PRINCIPLES

MEMBER'S DECLARATION

I.....

of.....

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

Dated this day of 200..

DECLARED by the said

.....)

at)

in the State of South Australia)

in the presence of)

..... JP

Received:

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

6.3 The Scotland Example [PDF attached]