

PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE COUNCIL

STANDING COMMITTEE ON
PARLIAMENTARY PRIVILEGE AND ETHICS

SECOND REPORT

ON

CODE OF CONDUCT

Ordered to be printed 4 June 1998

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June 1998
Standing Committee on Parliamentary Privilege and Ethics, Report No.5

ISBN: 0-7313-8821-6

Foreword by the Chair

Under sections 8 and 9 of the Independent Commission Against Corruption Act 1998 (as amended in 1994), both Houses of Parliament are required to adopt codes of conduct for their Members. Relevant ethics Committees in both Houses were required to investigate and present draft codes of conduct for the consideration of Members of Parliament.

The Standing Committee on Parliamentary Privilege and Ethics was charged with this task in the Legislative Council. During 1996, the Committee undertook the inquiry, which involved considerable public consultation and extensive evidence from a range of witnesses including relevant experts. This culminated in the Committee's *Report on Inquiry into Establishment of a Draft Code of Conduct for Members* which was tabled on 29 October 1996.

The Legislative Assembly undertook a separate inquiry through its Standing Ethics Committee. There was no agreement between the two Committees on a preferred code of conduct.

There is considerable urgency for the adoption of a code of conduct, which is highlighted by recent ICAC activity with respect to Members of Parliament.

The Premier released a code of conduct on 31 March 1998 for the consideration of both Committees. Our Committee was required to consider the Government's code, as well as the draft codes of conduct in the Report of the Committee tabled on 29 October 1996, and to report to the Legislative Council within four weeks. The Committee requested a four week extension, due to the pressure of other inquiries.

The Committee met on several occasions to discuss the code released by the Government. The Committee has reservations about some aspects of the Government's code but recognises the urgency for the two Houses to adopt a single code.

Chapter 1 of this report is a background to the inquiry. Chapter 2 looks the Government's code section by section. Chapter 3 analyses the relevant issues pertaining to the Government's code and Chapter 4 includes the Committee's conclusions and recommendations.

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

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

Background to the Committee

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

The Committee has two main roles:

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

Terms of Reference

The terms of reference for this inquiry are contained in the following resolution of the Legislative Council, passed on 8 April 1998:

That this House:

1. Requests the Standing Committee on Parliamentary Privilege and Ethics to consider the Code of Conduct for Members released by the Government and the draft Codes of Conduct for Members in the Report of the Committee to the House on 29 October 1996, and report to the House within 4 weeks.
2. Agrees that on the tabling of the report from the Committee, the House will debate and vote on the adoption of the Code of Conduct for Members.¹

Extension of Reporting Date

On 29 April 1998 the reporting date for the reference relating to the Code of Conduct for Members was extended until 4 June 1998.²

¹ Minutes No. 30, 8 April 1998, p. 374

² Minutes No. 32, 29 April 1998, p. 389

Committee Membership

The Hon Dr Meredith Burgmann, MLC Chair	Australian Labor Party
The Hon Jenny Gardiner, MLC	National Party
The Hon Charlie Lynn, MLC	Liberal Party
The Hon John Johnson, MLC	Australian Labor Party
The Hon Richard Jones, MLC	
The Hon Anthony Kelly, MLC	Australian Labor Party
The Hon Andrew Manson, MLC	Australian Labor Party
Revd the Hon Fred Nile, MLC ³	Christian Democratic Party
The Hon Peter Primrose, MLC ⁴	Australian Labor Party

SECRETARIAT

Ms Lynn Lovelock	Clerk to the Committee
Ms Velia Mignacca	Senior Project Officer
Ms Roza Lozusic	Project Officer
Mr Daniel Noll	Committee Officer

³ From 25 November 1997 (Legislative Council Minutes of Proceedings No. 20, 25 November 1997)

⁴ From 25 November 1997 (Legislative Council Minutes of Proceedings No. 20, 25 November 1997)

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Summary of Recommendations

Recommendation No. 1

That the code of conduct proposed by the Government be adopted for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, with the additional savings and transitional provision recommended by the Committee.

Recommendation No. 2

That the code of conduct proposed by the Committee in its 1996 report be adopted by the Legislative Council as a general guide to Members in carrying out their duties as elected representatives.

Recommendation No. 3

That the Standing Committee on Parliamentary Privilege and Ethics prepare a casebook containing a series of case studies, both actual and hypothetical, to assist Members in determining questions of ethical consideration.

Recommendation No. 4

That the Government's code be amended by inserting at the end a new Section 5:

5. Savings and Transitional Provision

That the Standing Committee on Parliamentary Privilege and Ethics, as a matter of priority, produce and maintain the guidelines and rules applicable to Section 4 of this code.

Recommendation No. 5

That the functions of advising Members in relation to ethical conduct and the investigation of alleged breaches of the code of conduct be separated.

Recommendation No. 6

That an ethics advisor, as suggested by the Government, be appointed as a matter of priority.

Recommendation No. 7

That the method of enforcement of the code be referred to the Committee for further inquiry and report.

Chapter One

1 BACKGROUND

1.1 *Independent Commission Against Corruption Act 1994* (NSW)

1.1.1 The *Independent Commission Against Corruption Act Amendment Act 1994* (NSW) amended the *Independent Commission Against Corruption Act 1988* (NSW) in a manner which expanded the jurisdiction of the Independent Commission Against Corruption (ICAC) with respect to Members of Parliament.¹ This was achieved by extending the definition of “corrupt conduct” contained in the Act. Under the Act, “corrupt conduct” is defined as conduct which falls within the general definition contained in section 8 *and* satisfies any of the particular criteria set out in section 9.² Before the 1994 amendments, the relevant part of s. 9 provided:

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

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

1.1.2 The 1994 Act added a further ground, namely:

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

1.1.3 The words “applicable code of conduct” in the case of Members of Parliament were defined as:

a code of conduct adopted for the purposes of this section by resolution of the House concerned. (s. 9(3)(b))

1.1.4 The other important feature of the 1994 amendments was the establishment of an ethics committee in each House of Parliament with responsibility for preparing draft codes of conduct for the Members of the House and undertaking educative and advisory functions

¹ For more detailed background on the 1994 amendments, see *Report on the Inquiry into the Establishment of a Draft Code of Conduct for Members*, Legislative Council Standing Committee on Parliamentary Privilege and Ethics, NSW Parliament, October 1996, pp. 2-5.

² This is the effect of s. 7.

with respect to Members' ethical standards.³ Each ethics committee was required to present a draft code of conduct for consideration by the relevant House by a date specified in the Act.⁴ Various procedures were prescribed to ensure that there was public consultation in relation to the development of the draft codes, such as requirements for each committee's proposed code to be publicly exhibited and for any public submissions received to be taken into account.⁵

1.2 Draft code of conduct developed by this Committee

1.2.1 By resolution of the Legislative Council on 24 May 1995, the Standing Committee on Parliamentary Privilege and Ethics was designated as the Legislative Council ethics committee for the purposes of the *ICAC Act*. From June 1995 to October 1996 the Committee undertook a detailed and comprehensive inquiry into the development of a draft code of conduct for Members of the Legislative Council. During the inquiry the Committee took evidence from a wide range of witnesses, assessed submissions received from the public in response to exhibited draft codes, and examined codes of conduct operating in various other Parliaments. As a result of this process the Committee formulated a reasonably detailed and prescriptive draft code which it considered would respond to community concerns and provide useful guidance for Members. The Committee also took account of the need for the code to be workable in the context of the *ICAC Act*, having received advice from the Crown Solicitor that the code should be drafted with clarity and precision to minimise the possibilities for doubt as to whether or not a breach of the code has occurred.

1.2.2 Parallel with the inquiry of this Committee, the Legislative Assembly Standing Ethics Committee was conducting its own inquiry into the development of a draft code of conduct for the Members of the Legislative Assembly. Although the two Committees met on a number of occasions, they were unable to achieve consensus on a uniform code for all Members of Parliament. Accordingly, when this Committee reported to the Legislative Council in October 1996 it presented *three* different draft codes of conduct for consideration by the House:

- (1) the draft code originally proposed by this Committee;
- (2) the draft code as finally adopted by the Committee incorporating changes arising from public submissions and advice from the Crown Solicitor;
- (3) the draft code of conduct proposed by the Legislative Assembly Committee.⁶

³ See Part 7A.

⁴ Sections 72C(5), 72E(5).

⁵ Section 72C(3).

⁶ *Report on Inquiry into the Establishment of a Draft Code of Conduct for Members*, October 1996.

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- 1.2.3 The Committee recommended in its Report that a Free Conference of Managers from both Houses be convened to consider all the codes presented by the two Committees, with a view to resolving the differences between the codes.⁷ The Report also examined various options for methods of implementing the code of conduct, but no recommendations were made in that regard as implementation did not form part of the Committee's terms of reference.
- 1.2.4 The Committee's Report was tabled in the Legislative Council on 29 October 1996.⁸ Later that day the Treasurer and Leader of the Government in the Legislative Council, Mr Egan, moved that the House "take note" of the Report.⁹ Debate on the motion was immediately adjourned until the next sitting day. The Order of the Day for resumption of the debate remained on the Notice Paper until the end of the Session, without being further debated.
- 1.2.5 The Legislative Assembly Committee's draft code of conduct was presented to the Legislative Assembly on 29 October 1996. The Committee's report was tabled on 23 October 1997. At various stages since that time there have been further negotiations between the two Committees in an attempt to reach agreement on a single code.

1.3 Government's draft code of conduct

- 1.3.1 On 31 March 1998 the Government publicly released a draft code of conduct for Members of the NSW Parliament. On 2 April 1998 the Member for Manly, Dr Macdonald, moved a motion in the Legislative Assembly which proposed, in summary, that the House fully debate the Legislative Assembly Standing Ethics Committee's draft code of conduct for Members of that House. The Government moved an amendment to that motion in the following terms:

That the motion be amended by leaving out all words after the words "That this House" with a view to inserting instead—

- (1) requires that the Standing Ethics Committee constituted under the Independent Commission Against Corruption Act consider the Code of Conduct for Members released by the Government and the Code of Conduct for Members released by the Committee itself and report to the House within four weeks;
- (2) agrees that on the tabling of this report from the Committee, the House will debate and vote on the adoption of a Code of Conduct for Members; and

⁷ *ibid.*, p. 60.

⁸ *Minutes of the Proceedings of the Legislative Council*, No. 41, Tuesday 29 October 1996, p. 400.

⁹ *ibid.*, p. 401.

- (3) send a message to the Legislative Council requesting that the Council institute action within a comparable time frame.¹⁰

1.3.2 During debate on the motion the Premier discussed the new draft code of conduct, arguing that a specific and precise code was required in light of the ICAC's role in determining breaches of the code. He claimed that the code will function as a legal document, effectively enlarging the jurisdiction of ICAC to make findings of corrupt conduct by members of Parliament. He also claimed that the draft codes of each House are too wide and too uncertain in scope to base the grounds for making a finding of corrupt conduct.¹¹

1.3.3 The motion as amended by the Premier was passed in the Legislative Assembly on 2 April 1998. On 8 April 1998 a similar motion was agreed to by the Legislative Council in the following terms:

That this House:

1. Requests the Standing Committee on Parliamentary Privilege and Ethics to consider the Code of Conduct for Members released by the Government and the draft Codes of Conduct for Members in the Report of the Committee to the House on 29 October 1996, and report to the House within 4 weeks.
2. Agrees that on the tabling of the report from the Committee, the House will debate and vote on the adoption of a Code of Conduct for Members.¹²

1.3.4 The reporting date was subsequently extended to 4 June 1998, in consideration of the Committee's workload with other inquiries.¹³

1.3.5 On 30 April 1998 the Legislative Assembly Standing Ethics Committee reported to the Legislative Assembly concerning the code of conduct released by the Government. The principal conclusion reached in the Committee's Report was that the Committee had no objection to the contents of the Government's code being proposed as an amendment to the Committee's recommended code. This procedure in fact took place in the Legislative Assembly on 5 May 1998. The Chairman of the Standing Ethics Committee moved that the House adopt the draft code of conduct tabled on 27 October 1996 (i.e. the code recommended by the Standing Ethics Committee) for the purposes of s. 9 of the ICAC

¹⁰ *Votes and Proceedings*, Legislative Assembly, No. 23, Thursday 2 April 1998, p. 462.

¹¹ *Parliamentary Debates*, Legislative Assembly, 2 April 1998, p. 3649.

¹² *Minutes of the Proceedings of the Legislative Council*, No. 30, Wednesday 8 April 1998, p. 374.

¹³ *ibid.*, No. 32, Wednesday 29 April 1998, p. 389.

Act.¹⁴ An amendment to the motion was moved by the Hon. Paul Whelan, substituting the text of the code released by the Government for the Legislative Assembly Committee's code.¹⁵ The motion as amended by the Hon. Paul Whelan was passed, with the result that the Government's code of conduct was adopted by the Legislative Assembly for the purposes of s. 9 of the Act.

¹⁴ *Votes and Proceedings*, Legislative Assembly, No. 27, Tuesday 5 May 1998, pp. 544-5.

¹⁵ *ibid.*, pp. 545-7.

Chapter Two

2 GOVERNMENT'S CODE

2.1 The Premier released a Code of Conduct on 31 March 1998. On 8 April 1998, the Legislative Council agreed to the Assembly's request that the Standing Committee on Parliamentary Privilege and Ethics consider the Government's code and report to the House within 4 weeks.¹⁶ The reporting date was later extended until 4 June 1998.¹⁷ The Government's Code of Conduct and the Committee's draft Code of Conduct are included at Appendix 1 and Appendix 2 respectively. The Committee considered the Government's code section by section as follows.

2.1 Preamble

Part 1

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

Part 2

- Members of Parliament recognise that they are in the unique position of being responsible 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.

Part 3

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

¹⁶ *Minutes of the Proceedings of the Legislative Council*, 8 April 1998, p. 374.

¹⁷ *ibid.*, 29 April 1998, p. 389.

2.1.1 Parts 1, 2 and 3 of the preamble to the Government's code are aspirational provisions. These are similar to the preamble in the Committee's code. Part 3 is virtually identical to the Committee's original code,¹⁸ parts (a) & (b):

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

The Committee also restated aspects of (a) in section 1 of the body of its original code:

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

Part 4

- Members of Parliament also recognise that some Members are non-aligned and others belong to political parties. Organised parties are now a fundamental part of the democratic process and participation in their activities is recognised by the Parliament as within the legitimate activities of Members of Parliament.

2.1.2 The Committee considered this issue in its initial report on a draft code of conduct for Members. In its report, the Committee noted that a distinction is often drawn between 'parliamentary business' and 'party business' when determining whether there has been a legitimate use of entitlements.¹⁹ Due to the lack of clarity the Committee decided that the distinction between Parliamentary business and party political business was inappropriate. The Committee instead used the terminology that official resources should not be used for personal gain.

¹⁸ A reference to the Committee's code is to the code which followed public consultation, as amended by reference to Crown Solicitor's advice. It is included in full at Appendix 2.

¹⁹ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the Establishment of a Draft Code of Conduct for Members*, Report No. 3, October 1996, pp. 30-31.

2.2 Section 1 - Disclosure of conflict of interest

1. Disclosure of conflict of interest

- (a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.
- (b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or Committee, or in any other public and appropriate manner.
- (c) 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.

2.2.1 Section 1(b) of the Government's code restates the existing requirement of Members to declare pecuniary interests through a Register.²⁰ It further states that Members may also declare their interests in another appropriate manner. In short, the Government's code does not compel Members to take any other action than taking reasonable steps to declare interests.

2.2.2 There is a substantial difference between the Committee's proposed code and the Government's code with respect to conflict of interest. The Committee, in section 4 of its code, sets out in detail the definition of conflict of interest and the subsequent obligations of Members. It then outlines the procedure for Members to follow if a conflict of interest arises. The Committee believes that this enables Members to have a clearer picture of what constitutes a conflict of interest and what Members must do if it arises.

2.3 Section 2 - Bribery

2. Bribery

Members must not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for payment or any other personal financial benefit.

2.3.1 Although the Committee does not expressly refer to Bribery in its code, it does refer to its substance in section 6 (which relates to gifts). In its report the Committee noted that bribery constitutes a common law criminal offence.²¹

²⁰ As required under the *Constitution (Disclosures by Members) Regulation 1983*.

²¹ *Report on Inquiry into the Establishment of a Draft Code of Conduct for Members*, October 1996, p. 14.

2.4 Section 3 - Gifts

3. Gifts

- (a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.
- (b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the Member in the exercise of his or her duties.
- (c) Members may accept political contributions in accordance with Part 6 of the *Election Funding Act 1981*

- 2.4.1 Section 3(a) of the Government's code restates the existing provisions relating to gifts and political contributions. Under s. 10 of the *Constitution (Disclosure by Members) Regulation 1983*²² Members must currently declare gifts over \$500 (except as provided for in the Regulation). If a Member contravenes this section the House may declare their seat vacant according to s. 14A(2) of the *Constitution Act 1902*.²³ To date there have been no instances where a Member's seat has been vacated under s. 14A(2).
- 2.4.2 Under the *Election Funding Act 1981*, political contributions can be accepted subject to certain requirements. A central requirement is disclosure to the Election Funding Authority of New South Wales.²⁴ Failure to lodge a declaration to the Authority is an offence and carries a maximum penalty of 100 penalty units for an individual or agent of a group or candidate (currently \$11,000) and 200 penalty units for a party (currently \$22,000).²⁵
- 2.4.3 By incorporating these provisions within a code of conduct, they then fall within the scope of ICAC scrutiny in so far as substantial breaches of the provisions are reported. Under s 9(1)(d) of the ICAC Act 1988 the Independent Commission Against Corruption can

²² Made under s. 14A of the *Constitution Act 1902*.

²³ Under s. 14A(2) of the *Constitution Act 1902*.

²⁴ S. 83 of the *Election Funding Act 1981*

Members are obligated to make a disclosure:

Within 120 days after the day for the return of the writs for a general election (the current election), the registered party agent of each party must lodge with the Authority a declaration of political contributions received and electoral expenditure incurred during the period:

- (a) commencing on the 31st day after the polling day for the previous general election, and
- (b) ending on the 30th day after the polling day for the current election.

²⁵ S. 96 of the *Election Funding Act 1981*.

only make a determination of corrupt conduct if the conduct falls within certain categories, one being a substantial breach of an applicable code of conduct.

- 2.4.4 The Committee's code includes a provision concerning gifts at section 6. Similar to section 3(b) above and the section on bribery in the Government's code, the Committee's code proscribes the acceptance of gifts that are directly or indirectly related to the fulfilment or performance of their duties as Members. The nominal value indicated in the Committee's provision is \$100 which is less than the value prescribed under the pecuniary interest regulation (\$500).

2.5 Section 4 - Use of public resources

4. Use of public resources

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

- 2.5.1 Section 4 deals with the use of public resources. It does not stipulate how or in what circumstances members should apply public resources. The section simply refers Members to guidelines or rules. The Committee has concerns with this provision.

- 2.5.2 The Committee has concerns with the reference to 'any guidelines or rules'. The inclusion of this provision in the Government's code would mean that a substantial breach of any guideline could be used by ICAC when determining whether there has been corrupt conduct on the part of a Member. This is problematic in many respects:

- That guidelines have not been drafted with this end result in mind.
- The code does not specify which guidelines. Currently there are many different guidelines and rules governing Members behaviour (inside and outside the Chamber). These were detailed in the Committee's original report,²⁶ and included:
 - **Standing Orders.** These govern the conduct of Members in the House. There are no Standing Orders which govern the use of public resources.
 - **Statutory provisions:** *Constitution Act 1902, Constitution (Disclosures by Members) Regulation 1983, Election Funding Act 1981 and ICAC Act 1988.* These relate to disqualifications for elections to the House, Disclosure of pecuniary interests, receipt of donations for political parties and corrupt conduct respectively.

²⁶

Chapter 2 "Existing Measures Regulating Members' Conduct" in *Report on Inquiry into the Establishment of a Draft Code of Conduct for Members*, October 1996.

-
- **Criminal offences:** under the *Crimes Act 1900* and at common law (eg Bribery and “official misconduct”)

[N.B.: None of the above categories relate to the use of public resources by Members.]

- **Allowances and entitlements:** which cover items such as photocopying, postage, stationery, printing and travel. The amount of these items are determined by the Parliamentary Remuneration Tribunal. The Tribunal (as mentioned earlier) has drawn a distinction between parliamentary business and party business. The use of these allowances and entitlements are outlined in the Legislative Council *Members’ Guide*. The *Members’ Guide* is currently the only documentation in the Legislative Council that relates to the use of public resources.

2.5.3 The *Members’ Guide* is a compilation of various pieces of information including guidelines, taxation rulings and general information about staff. It is divided into 9 sections: 1. Salaries and Allowances, 2. Travel Entitlements, 3. Home Office, 4. Parliament House, 5. Publications, 6. Miscellaneous, 7. Parliamentary Staff, 8. Relevant Taxation Rulings and 9. Claim forms. It contains the Clerk’s interpretation of Parliamentary Remuneration Tribunal’s decisions with respect to guidelines concerning entitlements. There is, however, a large degree of discretion left to individual Members. The *Members’ Guide* also contains the proviso that the *Guide* is “...for information only and must not considered to be an authoritative source. The relevant statutes and administrative policies must be consulted as the final authority.”²⁷

2.5.4 As the Guidelines are not considered to be an authoritative source, the Committee believes that there should be some clarification of the guidelines which would come under the scope of the code of conduct.

2.5.5 Recently the Legislative Assembly, on a motion of the Leader of the Government in the that House, resolved that the Government would address the issue of guidelines. The Motion was in response to the tabling of the ICAC report on *Investigation into Parliamentary and Electorate Travel*. The Resolution states, among other things:

- (8)...the Government intends to address the matters raised in the report by:
- (a) introducing legislation to expand the role of the Parliamentary Remuneration Tribunal by giving it jurisdiction to make determinations on the full range of members’ entitlements (subject to budgetary constraints), and the role of setting down clear rules as to the use of these entitlements;
 - (b) requiring the Government’s Department and The Cabinet Office to review the present system for the administration of

²⁷

Legislative Council, *Members’ Guide*, September 1997.

parliamentary entitlements and provide advice and assistance to the Parliamentary Departments on making their procedures for administering members' entitlements more transparent and accountable; and

- 2.5.6 Due to the unclear nature of the guidelines currently in use, the Committee has serious concerns/reservations in adopting section 4 before the guidelines are clarified.

2.6 Use of confidential information

5. Use of confidential information

Members must 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 the private benefit of themselves or others.

- 2.6.1 Section 5 of the Government's code is similar to the Committee's code (section 8) "Inside Information": *Members must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain.*

2.7 Areas not addressed in the Government's Code

- 2.7.1 In its original code the Committee addressed many areas that are not included in the Government's code. These include:
- "Use of Public Office for Private Gain" which states that Members should not take improper advantage of their status/position as Members of Parliament;
 - "Travel" which clarifies when travel expenses from private resources can be accepted by Members;
 - "Use of Official Resources for personal Gain";
 - "Post Employment Restrictions";
 - "No Unjustified Discrimination";
 - "Freedom of Speech";
 - "Spirit and Letter Provisions"; and
 - "Additional Responsibilities of Parliamentary Office Holders".

Chapter Three

3 ISSUES

3.1 Single Code of Conduct

- 3.1.1 In its original inquiry into the establishment of a draft code of conduct for Members of Parliament, the Committee formed the view that it was highly desirable for both Houses to adopt the same code. It was for this reason that, having been unable to reach an agreement with the Legislative Assembly Standing Ethics Committee on a single code, the Committee recommended that a Free Conference of Managers of the Legislative Council and Legislative Assembly be convened to consider the draft codes from both Houses with a view to recommending a single Code of Conduct based on the respective codes.
- 3.1.2 The Committee remains committed to the idea of a single Code of Conduct for both Houses, recognising that a single code would allow for greater clarity, easier implementation and more straightforward monitoring. A situation where a Member could be found in breach of one code, but not of the other, would not only be confusing to the public, but would be untenable in terms of s. 9 of the ICAC Act. Given that the Legislative Assembly has already adopted the Government's code for the purposes of s. 9, the Committee is of the view that it is incumbent on the Legislative Council to give serious consideration to adopting the same code for the purposes of the ICAC Act.

3.2 Guidelines and Rules

- 3.2.1 The Government's code is limited to disclosure of conflicts of interest, bribery, gifts, use of public resources, and use of confidential information. While in the main the provisions of the Government's code are clear and precise, the Committee is concerned with the reference to "any guidelines or rules" in section 4:

Use of public resources

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

- 3.2.2 During the Committee's original inquiry, it was noted that Members of the Legislative Council receive a range of allowances and entitlements to assist them with the performance of their parliamentary duties. These allowances and entitlements cover matters such as photocopying, stationery, postage, printing and travel. The Parliamentary Remuneration Tribunal recommends the amounts of such allowances, but only in some cases does it specify how the allowance is to be used.
- 3.2.3 As indicated in chapter 2, the Legislative Council issues general guidelines on the use of parliamentary allowances and entitlements in the form of an internal document known as the *Members' Guide*. However, in most cases the guidelines are confined to broad principles such as "parliamentary business" or parliamentary duties", and the specific use

of the entitlement is left to the discretion of individual Members. No definition or indication of what constitutes “parliamentary business” is provided. This also applies to other resources available to Members, such as research and secretarial staff, and office equipment for use both in their Parliament House offices and in their home offices. Further, the *Members’ Guide* in its introduction specifies:

It is important to understand that this summary is for information only and must not be considered to be an authoritative source. The relevant statutes and administrative policies must be consulted as the final authority.

3.2.4 The Committee considers that appropriate guidelines and rules should be developed and made readily available to Members in conjunction with the adoption of the Government’s code. The desirability of having clearly established rules on the use of public resources was highlighted in the Legislative Assembly by the Hon. Paul Whelan, MP, on 30 April 1998 during the debate on the ICAC report on the investigation into Parliamentary and Electorate Travel. As part of the motion that the House take note of the report, the Minister noted that the Government was intending to address the matters raised in the report by:

- (a) introducing legislation to expand the role of the Parliamentary Remuneration Tribunal by giving it jurisdiction to make determinations on the full range of members’ entitlements (subject to budgetary constraints), and the role of setting down clear rules as to the use of these entitlements;
- (b) requiring the Government’s Department and the Cabinet Office to review the present system for the administration of parliamentary entitlements and to provide advice and assistance to the parliamentary departments on making their procedures for administering members’ entitlements more transparent and accountable; and
- (c) giving further consideration to the establishment of the position of a part-time parliamentary ethics adviser, who would give advice on ethical standards when asked by members of Parliament; . . .²⁸

3.2.5 Given the serious implications for Members in breaching the code of conduct the Committee considers that the development of clear and authoritative guidelines and rules concerning the use of public resources should proceed as a matter of urgency. To this end the Committee considers that the Government’s code should be amended by the inclusion of a savings and transitional provision, requiring this Committee to produce and maintain the guidelines and rules applicable in section 4 of the code relating to the use of public resources. Such a provision would go some way to addressing the Committee’s concerns over the lack of current guidelines and rules available to Members.

²⁸

Parliamentary Debates, 30 April 1998, p. 4233.

3.3 Statutory Implications - Section 9 of the ICAC Act 1988

- 3.3.1 As indicated in the Committee's first report on a draft code of conduct for Members, the statutory purpose of the code is to provide a mechanism for bringing the conduct of Members within the jurisdiction of the ICAC. Under the ICAC Act a "substantial breach" of an applicable code of conduct by a Member of Parliament is one element of the definition of "corrupt conduct" which determines the extent of the ICAC's investigatory powers.²⁹
- 3.3.2 In his speech on the motion to refer his code to the Legislative Assembly's Ethics Committee for consideration, the Premier was even more categorical about the purpose of a code of conduct adopted for the purposes of s. 9 of the ICAC Act:

. . . The code has to function as a legal document, and that will effectively enlarge the jurisdiction of ICAC to make findings of corrupt conduct by members of Parliament. It is therefore essential that the code of conduct relates only to matters of corruption and that it defines those matters with precision and clarity.

The draft codes of each House are wide and uncertain in scope - too wide and too uncertain to base the grounds for making a finding of corrupt conduct. This is understandable because the codes are drafted as general codes of ethics to guide members of Parliament. But the Independent Commission Against Corruption Act is not directed at guiding members in their behaviour; it is directed at making findings of corrupt conduct - that is its purpose. Therefore the code should not be a general guide but, rather, a strict set of rules that define the type of behaviour by members that is prohibited because it is corrupt. . .³⁰

- 3.3.3 The Committee agrees that the statutory implications of the code require that it is drafted with precision and clarity, and that the use of vague, aspirational terms which are open to multiple interpretations should be kept to a minimum. The code put forward by the Government falls clearly within these strictures. However, the 1994 amendments to the ICAC legislation also require the Committee to carry out educative work relating to ethical standards applying to Members of the Legislative Council and to give advice in relation to such ethical standards in response to requests for advice by the Legislative Council.³¹ As such, the Committee considers that the code should serve as a common reference point concerning the standards of conduct which should be observed, and should assist Members in clarifying ethical standards and values. The code put forward by the Committee therefore does include general provisions which concern the concept of public trust which the Committee believes is at the heart of Members' ethical obligations.

²⁹ *Report on Inquiry into the Establishment of a Draft Code of Conduct for Members*, October 1996, pp. 35-36.

³⁰ *Legislative Assembly Debates*, 2 April 1998, p. 3649.

³¹ S. 72C(1).

3.3.4 The heart of the difference between the Government's code and the Committee's code lies in the purpose for which the code is adopted. Since the Committee tabled its first report, it has had opportunity to reconsider the import of section 9 of the ICAC Act, particularly in the light of recent views put forward by the Commissioner in his report to Parliament concerning parliamentary and electorate travel. Relying on advice from the Crown Solicitor provided to the Joint Committee on the ICAC in March 1993, this Committee made the following observations in its 1996 report on the establishment of a code of conduct:

1.2.14 Section 9(1)(b) could have no operation to Ministers and Members, as there are no disciplinary proceedings to which such officers are subject.³² Section 9(1)(c) could have only limited application to Ministers, as the Court of Appeal decision demonstrated that the power of dismissal is exercised by the Governor only in exceptional circumstances. Section 9(1)(c) could have no application at all to Members, as Members do not hold offices from which they can be "dismissed", though the Parliament may expel them for its own protection, and they may lose office in certain circumstances specified in the *Constitution Act 1902*.³³

1.2.15 The object of the *ICAC Amendment Act 1994* was to overcome the limitations on the ICAC's jurisdiction in relation to Ministers and Members which the Court of Appeal decision had brought to light.³⁴

3.3.5 It was because of the limitations of ss. 9(1)(b) and 9(1)(c) that the 1994 amending legislation expanded the definition of corrupt conduct in relation to Ministers and Members by the inclusion of a new s. 9(1)(d) relating to a substantial breach of an applicable code of conduct. However, in his April 1998 report the ICAC Commissioner stated that he is of the opinion "that s. 9(1)(c) does apply to Members"³⁵ and "that s. 9(1)(c) of the Act can have application to a Member, at least if the nature of the conduct established in respect of the Member is dishonest and serious, that is of 'sufficient gravity'".³⁶

3.3.6 Such an interpretation widens significantly the role of the Commissioner in overseeing Members' conduct and lends support to the Government's view that a code adopted for the purposes of s. 9 should relate only to matters of corruption. It also can and has led to

³² Joint Committee on the ICAC, *Review of the ICAC Act*, May 1993, Appendix 2, Crown Solicitor's advice 17 March 1993, p. 7.

³³ *ibid.*

³⁴ *Legislative Council Debates*, Minister's Second Reading Speech, 27 October 1994, p. 4772.

³⁵ Independent Commission Against Corruption, *Investigation into Parliamentary and Electorate Travel: First Report*, April 1998, p. 10.

³⁶ *ibid.*, p. 11

the situation where the Commissioner is at odds with the Parliament in relation to whether and what sanctions should be imposed on Members for conduct deemed to be in breach of the code. Advice from the Crown Solicitor obtained by this Committee in 1995 supports this view, suggesting that:

To the extent that the ICAC Act could have application to the conduct of a Member of the Council which relates to the performance of Parliamentary functions (because a code of conduct adopted purports to set standards for such performance) it would, presumably, be taken to have amended the prohibition in Article 9 of the Bill of Rights.

- 3.3.7 Apart from the qualifications of membership imposed under section 13 of the Constitution Act, Parliament has always maintained its sovereignty in determining what constitutes appropriate conduct by one of its Members. Now it would seem that by virtue of s. 9 of the ICAC Act, the Parliament is extending this to include judgment by an outside body. Such a change strikes at the heart of parliamentary privilege, and may have unintended consequences.
- 3.3.8 In light of this, the Committee considers that it would be preferable in the first instance to adopt the Government's code for the purposes of s. 9 of the ICAC Act, since it is limited in its provisions to matters of corruption. Section 72C(6) of the Act provides that the code be monitored and reviewed at least once every two years, and modifications could be recommended at those times should the Committee consider it necessary.
- 3.3.9 However, the Committee also considers that the adoption of its originally proposed code as a general code of conduct for Members of Parliament, apart from the purposes of s. 9 of the ICAC Act, would assist Members in determining questions of ethics, and meet with the spirit of the provisions of s. 72C of the Act. Such a code, accompanied by a series of case studies, both actual and hypothetical, would provide a solid framework for the guidance of Members in carrying out their duties as elected representatives.
- 3.3.10 In its earlier inquiry the Committee noted the difficulty of interpreting the effect of s. 9(5). In evidence before the Committee Commissioner O'Keefe stated:

Mr O'Keefe: Can I say straight away that I have a very great difficulty in understanding the application of section 9 (5).

Chair: That is the new section.

Mr O'Keefe: Yes. It is one of the new sections. . . section 8 tells you a series of factual situations that can amount to corrupt conduct if another requirement is fulfilled; that is, the requirement of section 9. Section 9 says, "Despite section 8, conduct does not amount to corrupt conduct unless it . . ." If you have something that is apparently corrupt conduct but, unless it fulfills another requirement, you lift it out of the basket. Then subsection (4) says, "Subject to subsection (5) conduct is not excluded by this section if it would cause a reasonable person to

believe that it would bring the integrity of the office or the Parliament into series [sic] disrepute". So you have a qualification on a qualification. Then subsection (5) says that it is not corrupt conduct, but that you cannot make a finding to that effect. It could also constitute a breach of the law. If it constituted a breach of the law, you did not ever need this amendment because already you fell within section 9 (1) (a) because presumably the law is a criminal law. So I have a great difficulty with subsection (5), but making the assumption for the moment that you have to have a breach of a law, I have expressed the view in the first Smiles report at page 19 that the law that the statute here is talking about is a written law, one that you can point to and say "that regulation" or "that Act of Parliament", not the common law or the law of equity, which is a judge-made law. The question is: what is the relationship between that and the ICAC? The answer is that it is our entree to look at a matter should no-one else look at it. I have already dealt with the interplay between the ICAC and the House. If the House itself deals with it, I think the House's determination as a result of precedent is the end of it.³⁷

3.4 Enforcement Mechanisms

- 3.4.1 During its original inquiry, the Committee considered three separate models for investigating breaches of the code of conduct, derived from practice in other Parliaments where codes of conduct are currently in force. These included: (1) appointing an independent Parliamentary Commissioner/s for Standards, responsible for giving advice and investigating alleged breaches, who would report directly to the House; (2) establishing a Standing Committee responsible for giving advice and investigating alleged breaches; and (3) a combination of both where the Commissioner would give advice and investigate, while the Committee would consider the findings and make recommendations regarding possible sanctions.
- 3.4.2 The Committee rejected the idea of having a single body responsible for both giving advice and investigating alleged breaches of the code, on the ground that it would lead to a fundamental conflict by placing Members in a situation of seeking advice from the person or body which would ultimately be responsible for passing judgment on their conduct. The Committee stands by this view and continues to recommend that the functions of advising and investigating be separated.
- 3.4.3 A further concern raised by the Committee in its earlier report is the definition of "substantial breach", and who will be responsible for determining that a substantial breach has occurred. In evidence before the Committee, the ICAC Commissioner, the Hon. Barry O'Keefe expressed the view that it was not appropriate to attempt to define substantial breach as it appears in the Statute, since he believes it will depend on the circumstances of each particular case and the prevailing mores of the time:

³⁷

Report on Inquiry into the Establishment of a Draft Code of Conduct for Members, October 1996, *Transcripts of Evidence* 22 September 1995, pp.133-134.

This is a matter of judgement in each case. In some cases the answer will be clear one way or the other, in others not. It is not desirable to seek to define “substantial” as it appears in the statute, especially as the statute is to apply over time to varying situations and against the background of differing community attitudes and perceptions. This is the type of approach which the Courts have adopted to the word “reasonable” and “reasonable doubt”.³⁸

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

The Parliament, governing its own procedure and having acted, should not have an outside body reviewing its action, because the jurisdiction of such a body does not extend to the Parliament; it extends to members of the Parliament only acting in their capacity as members but not to the corporate body.³⁹

- 3.4.5 In his speech in the Legislative Assembly on 30 April 1998, the Hon. Paul Whelan, MP, indicated that the Government was giving further consideration to the establishment of the position of a part-time parliamentary ethics advisor to give advice on ethical standards as required to Members of Parliament. The Committee welcomes this response and considers that such an appointment would go some way to meeting our concerns regarding the implementation of the code.
- 3.4.6 However, given the time constraints imposed in relation to the Committee’s first report on its inquiry into the establishment of a code of conduct, the Committee was unable to give full and appropriate consideration to the issue of implementation. For this reason the Committee suggested that it provide a more detailed report on enforcement mechanisms at a later time, following adoption of a code by the House. The Committee continues to support this view.

³⁸ *Submission*, 22 September 1995, p. 3.

³⁹ *Evidence*, 22 September 1995, p. 126.

Chapter Four

4 CONCLUSIONS AND RECOMMENDATIONS

4.1 Adoption of a Code

- 4.1.1 Given the ramifications of adopting a code for the purposes of section 9 of the ICAC Act, the Committee considers that it is advisable in the first instance to adopt a simple, concisely worded code which is limited in intent to issues of corruption. The Committee therefore recommends:

Recommendation No. 1

That the code of conduct proposed by the Government be adopted for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, with the additional savings and transitional provision recommended by the Committee.

- 4.1.2 In view of the desirability of providing Members with a clearly established framework for determining ethical questions and assisting Members in carrying out their duties as elected representatives, the Committee considers that the amended code adopted by the Committee during its original inquiry into the establishment of a code of conduct should be adopted by the House as a general guide for Members. This code would be supplemented by the development of a casebook containing a series of case studies, both hypothetical and actual, to illustrate the types of issues which confront Members in their daily activities. The Committee therefore recommends:

Recommendation No. 2

That the code of conduct proposed by the Committee in its 1996 report be adopted by the Legislative Council as a general guide to Members in carrying out their duties as elected representatives.

Recommendation No. 3

That the Standing Committee on Parliamentary Privilege and Ethics prepare a casebook containing a series of case studies, both actual and hypothetical, to assist Members in determining questions of ethical consideration.

4.2 Development of Guidelines and Rules

- 4.2.1 The Committee considers that the lack of appropriate guidelines and rules for the use of public resources is a serious concern, and potentially exposes Members to unintended breaches of the code. For this reason the Committee considers that the development of clear and authoritative guidelines should proceed as a matter of priority. The Committee therefore recommends:

Recommendation No. 4

That the Government's code be amended by inserting at the end a new Section 5:

5. Savings and Transitional Provision

That the Standing Committee on Parliamentary Privilege and Ethics, as a matter of priority, produce and maintain the guidelines and rules applicable to Section 4 of this code.

4.3 Enforcement Mechanisms

- 4.3.1 The Committee formed the view during its original inquiry that the roles of advising and investigating breaches of the code should be separated, in line with various models in other parliaments where a code of conduct has been adopted. The Committee also found that the time available to it was insufficient to adequately investigate and report on the type of enforcement mechanism most appropriate to the NSW Parliament. For this reason the Committee considers that the method of enforcement of the code should be the subject of a further inquiry. The Committee therefore recommends:

Recommendation No. 5

That the functions of advising Members in relation to ethical conduct and the investigation of alleged breaches of the code of conduct be separated.

Recommendation No. 6

That an ethics advisor, as suggested by the Government, be appointed as a matter of priority.

Recommendation No. 7

That the method of enforcement of the code be referred to the Committee for further inquiry and report.

APPENDIX 1

Government's Code

PREAMBLE

- ◆ The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of the Parliament.
- ◆ Members of Parliament recognise that they are in the unique position of being responsible 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 accordingly acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.
- ◆ Members of Parliament also recognise that some Members are non-aligned and others belong to political parties. Organised parties are now a fundamental part of the democratic process and participation in their activities is recognised by the Parliament as within the legitimate activities of Members of Parliament.

THE CODE

1. Disclosure of conflict of interest
 - (a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.
 - (b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.
 - (c) 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.
2. Bribery
Members must not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for payment or any other personal financial benefit.
3. Gifts
 - (a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.

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(b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the Member in the exercise of his or her duties.

(c) Members may accept political contributions in accordance with Part 6 of the *Election Funding Act 1981*.

4. Use of public resources
Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.
5. Use of confidential information
Members must 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 the private benefit of themselves or others.

APPENDIX 2

Draft Code of Conduct Adopted by the Committee

LEGISLATIVE COUNCIL

DRAFT CODE OF CONDUCT FOR MEMBERS OF THE LEGISLATIVE COUNCIL

PREAMBLE

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

1 CONDUCT - GENERAL

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

2 PERSONAL CONDUCT

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

3 UPHOLD THE LAW

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

4 CONFLICT OF INTEREST

(a) Definition

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

(b) Obligations of Members

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

(c) Procedure on conflict of interest

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

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

5 USE OF PUBLIC OFFICE FOR PRIVATE GAIN

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

6 GIFTS

- 6.1 Members of this Legislative Council must not solicit or accept gifts, benefits or favours that are connected directly or indirectly with fulfilling the duties of the office of the Member. However, a Member may accept incidental gifts or customary hospitality of nominal value (to the value of \$100 or less).
- 6.2 Members shall not solicit or accept for personal benefit, any form of benefit whatsoever (eg. gifts, loans, discounts, considerations) in connection with the performance of official duties, except as may be provided as part of their determined entitlements in accordance with their terms and conditions of remuneration as Members and in accordance with the electoral laws of NSW.
- 6.3 For the purpose of this section, the term “gift” means any gratuity, favour, discount, payment for Member’s staff, entertainment, hospitality, loan, forbearance, or other item

having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

7 TRAVEL

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

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

8 INSIDE INFORMATION

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

9 USE OF OFFICIAL RESOURCES FOR PERSONAL GAIN

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

10 POST EMPLOYMENT RESTRICTIONS

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

11 NO UNJUSTIFIED DISCRIMINATION

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

12 FREEDOM OF SPEECH

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

13 “SPIRIT AND LETTER” PROVISIONS

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

14 ADDITIONAL RESPONSIBILITIES OF PARLIAMENTARY OFFICE HOLDERS

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

APPENDIX 3

Independent Commission Against Corruption Act 1988 -

Sections 7, 8 and 9

PART 3 - CORRUPT CONDUCT

Section 7 Corrupt conduct

- (1) For the purposes of this Act, corrupt conduct is any conduct which falls within the description of corrupt conduct in either or both of subsections (1) and (2) of section 8, but which is not excluded by section 9.
- (2) Conduct comprising a conspiracy or attempt to commit or engage in conduct that would be corrupt conduct under section 8 (1) or (2) shall itself be regarded as corrupt conduct under section 8 (1) or (2).
- (3) Conduct comprising such a conspiracy or attempt is not excluded by section 9 if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in that section.

Section 8 General nature of corrupt conduct

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

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- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
- (b) bribery,
- (c) blackmail,
- (d) obtaining or offering secret commissions,
- (e) fraud,
- (f) theft,
- (g) perverting the course of justice,
- (h) embezzlement,
- (i) election bribery,
- (j) election funding offences,
- (k) election fraud,
- (l) treating,
- (m) tax evasion,
- (n) revenue evasion,
- (o) currency violations,
- (p) illegal drug dealings,
- (q) illegal gambling,
- (r) obtaining financial benefit by vice engaged in by others,
- (s) bankruptcy and company violations,
- (t) harbouring criminals,
- (u) forgery,

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- (v) treason or other offences against the Sovereign,
- (w) homicide or violence,
- (x) matters of the same or a similar nature to any listed above,
- (y) any conspiracy or attempt in relation to any of the above.

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

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

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

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

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

Section 9 Limitation on nature of corrupt conduct

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

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

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

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

(3) For the purposes of this section:
applicable code of conduct means, in relation to:

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

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

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

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

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

(5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct could also constitute a breach of a law (apart from this Act) and the Commission identifies that law in the report.

APPENDIX 4

Minutes of the Proceedings

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Note:

At the time the Committee was conducting this inquiry, it was also inquiring into other unrelated matters. Those parts of the Minutes of the Meetings of the Committee which concern the other matters have been deleted from the Minutes appearing below.

Meeting No. 67

Monday 18 May 1998

at Parliament House, Sydney at 2.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Mr Johnson

Mr Manson

Mr Jones

Revd Mr Nile

Mr Kelly

Mr Primrose

Mr Lynn

Apologies were received from Ms Gardiner.

Minutes of Meeting No. 66 were confirmed on motion of Mr Kelly.

The Chair tabled the following correspondence:

Correspondence received:

- (i) Letter dated 11 May 1998 from Ms Mary Spratt to the Chair regarding the model code of conduct for all Government Agencies and the Code of Conduct for Members.

* * *

Code of Conduct

The Committee deliberated.

The Committee considered the Code of Conduct referred by the House on 8 April 1998.

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Resolved, on the motion of Mr Primrose: That the Chair prepare and submit a draft Report on the Inquiry into a proposed code of conduct for Members.

* * *

The Committee adjourned at 4.54 pm until Monday 25 May 1995 at 10.00 am.

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SECOND REPORT ON CODE OF CONDUCT

Meeting No. 69

Friday 29 May 1998

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Ms Gardiner	Mr Lynn
Mr Johnson	Mr Manson
Mr Jones	Revd Mr Nile
Mr Kelly	Mr Primrose

Minutes of Meeting No. 68 were confirmed on motion of Mr Manson.

The Chair tabled the following correspondence:

* * *

The Committee deliberated.

The Committee considered the draft report on the inquiry into the Code of Conduct.

The Committee adjourned at 3.00 pm until Monday 1 June 1995 at 10.00 am.

STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS
SECOND REPORT ON CODE OF CONDUCT

Meeting No. 70

Tuesday 2 June 1998

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Ms Gardiner

Mr Kelly

Mr Johnson

Mr Lynn

Mr Jones

Apologies were received from Mr Manson, Revd Mr Nile and Mr Primrose

Minutes of Meeting No. 70 were confirmed on motion of Mr Kelly.

The Committee deliberated.

The Committee considered the amended draft chapter 2 of the report on the inquiry into the Code of Conduct for Members of Parliament.

Chapter 1 read, amended and agreed to.

Chapter 2 read.

Resolved, on motion of Ms Gardiner: That paragraphs 2.1.2 to 2.1.5 be amended by omitting all words from “The Committee took evidence from witnesses” in paragraph 2.1.2 to the end of the quote in paragraph 2.1.5.

Resolved, on motion of Mr Johnson: That paragraph 2.4.1 be amended by omitting “received in connection with their official duties” and inserting instead “over \$500.00 (except as provided for in the Regulation”.

Mr Johnson moved: That Chapter 2, as amended, be agreed to.

Question put.

The Committee divided.

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Ayes

Mr Johnson
Mr Kelly
Ms Gardiner
Mr Lynn

Noes

Mr Jones

Question resolved in the affirmative.

Chapter 3 read.

Mr Kelly moved: That Chapter 3, as read, be agreed to.

Question put.

The Committee divided.

Ayes

Mr Johnson
Mr Kelly
Ms Gardiner
Mr Lynn

Noes

Mr Jones

Question resolved in the affirmative.

Chapter 4 read.

Mr Kelly moved: That Chapter 4, as read, be agreed to.

Question put.

The Committee divided.

Ayes

Mr Johnson
Mr Kelly
Ms Gardiner
Mr Lynn

Noes

Mr Jones

Question resolved in the affirmative.

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Mr Kelly moved: That the Second Report on the Inquiry into the Code of Conduct, as amended, be adopted.

Question put.

The Committee divided.

Ayes

Mr Johnson
Mr Kelly
Ms Gardiner
Mr Lynn

Noes

Mr Jones

Question resolved in the affirmative.

Resolved, on motion of Mr Kelly: That the Report be signed by the Chair and presented to the House.

Resolved, on motion of Mr Jones: That 350 copies of the Report be printed, on recycled paper if possible.

The Committee adjourned at 2.20 p.m. until Wednesday 3 June 1998 at 10.00 am.