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A survey of codes of conduct in Australian and selected overseas parliaments

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Introduction

In 2009, for various reasons, the conduct of ministers and members of parliament has been the subject of much media attention. The Australian and United Kingdom governments have conducted major reviews of entitlements paid to members of parliament. A number of Australian governments introduced codes of conduct for the lobbying industry to deal with the relationship between current and former members of parliament and the lobbying industry.

This background note details the approach taken in Australian and some overseas parliaments to codes of conduct for ministers and members of parliament, registers of interests, the post-separation employment of ministers and the use of ethics commissioners in providing advice on and/or conducting investigations into breaches of codes. It also includes sections on codes covering lobbyists. Where possible it provides links to relevant documents. It does not compare codes of conduct or include codes covering the public service or ministerial staff. The publication includes historical information to show the development of accountability and ethics regimens in each parliament.¹

The development of parliamentary codes of conduct has varied in Australian parliaments. In some states, codes have been developed as the result of inquiries, for example in New South Wales (the Independent Commission Against Corruption and the Greiner/Metherell affair) and in Queensland (the Electoral and Administrative Review Commission, formed as a result of the Fitzgerald inquiry).²

Four Australian parliaments (New South Wales, Queensland, Western Australia, and the Australian Capital Territory) have separate codes for ministers and members of parliament. All Australian parliaments have adopted registers of pecuniary interests and four (New South

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1. For background information on the feasibility, options and importance of a code of conduct for parliamentarians see Dr A Brien, 'A Code of Conduct for Parliamentarians?', Department of the Parliamentary Library, *Research Paper* No. 2, 1998–99, viewed 13 November 2009, <http://www.aph.gov.au/library/pubs/rp/1998-99/99rp02.htm>
 2. For information on the Greiner/Metherell affair see Independent Commission Against Corruption, *Report on the investigation into the Metherell resignation and appointment*, ICAC, Sydney, June 1992 and Independent Commission Against Corruption, *Second report on the investigation into the Metherell resignation and appointment*, ICAC, Sydney, September 1992. For information on the Fitzgerald inquiry see Queensland, Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Chairman G E Fitzgerald), *Report of a Commission of Inquiry pursuant to orders in Council, dated 26 May 1987, 24 June 1987, 25 August 1988, 29 June 1989* (Fitzgerald report), Brisbane, 1989, viewed 18 November 2009, <http://www.cmc.qld.gov.au/data/portal/00000005/content/81350001131406907822.pdf>

Wales, Queensland, Tasmania and Australian Capital Territory) have ethics or standards mechanisms.³

Most Australian governments have introduced lobbyist registers and codes of conduct governing the conduct of lobbyists and have codes governing the post-separation employment of ministers.⁴

This publication also examines the ministerial, parliamentary and lobbying codes of conduct in the United Kingdom, Canada, New Zealand and the United States.

Commonwealth parliament

Ministerial code of conduct

The Commonwealth has a guide to ministerial conduct but no code of conduct covering senators and members. The former Prime Minister, John Howard, was the first Australian Prime Minister to establish a public ministerial code of conduct titled *A Guide on Key Elements of Ministerial Responsibility*.

Dr John Uhr noted in reference to the Howard code:

... given that the document is not a law or regulation and that it does not even have any formal parliamentary authorisation, there is nothing to stop the Prime Minister as author of the document from using his authority to alter or amend it or to interpret it as he sees fit.⁵

This highlights how ministerial codes in Westminster-type systems are generally controlled by the executive (usually the prime minister or premier) rather than the parliament.

On 6 December 2007 the Prime Minister, Kevin Rudd, released [Standards of Ministerial Ethics](#) which replaced chapter 5 of the Howard Guide. The new Standards included:

- the requirement that lobbyists register their details on a register of lobbyists before seeking access to ministers or their offices
- rules on the post-separation employment of ministers

3. The Integrity Commission Bill 2009 passed through the Tasmanian Parliament on 12 November 2009. The Integrity Commission will commence full operations by mid-2010.

4. Information on the regulation of lobbying is available in G. Griffith, 'The Regulation of Lobbying', *Briefing Paper*, No 5/08, New South Wales Parliamentary Library, June 2008, viewed 11 November 2009, [http://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/0/4A76A0D437ED9926CA2574A500839C69/\\$File/The%20regulation%20of%20lobbying%20No%205-2008%20and%20index.pdf](http://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/0/4A76A0D437ED9926CA2574A500839C69/$File/The%20regulation%20of%20lobbying%20No%205-2008%20and%20index.pdf)

5. J Uhr, 'Howard's ministerial code', *Res Publica*, Vol. 7, No. 1, 1998, p. 9.

- a ban on electoral fundraising at the Prime Minister's official residences and
- requirements that ministers divest themselves of all shareholdings or place their shares in broad superannuation or trust funds.

The new Standards of Ministerial Ethics were generally well received by commentators. The changes were described as imposing 'greater transparency on his ministers and Canberra's invisible army of lobbyists'⁶, as Cabinet signing off 'on a tough new ministerial code of conduct that places ministers under unprecedented scrutiny'⁷ and the rules, in principle, as 'an admirable improvement, in key areas, on those introduced with similar fanfare by John Howard in 1996'.⁸ There was a suggestion, though, that the Prime Minister should have gone further to:

... entrench these new rules by setting up a standards mechanism such as an independent ethics adviser charged with providing advice to ministers – and armed with powers to investigate public complaints, and then to sanction or enforce discipline against ethical breaches.⁹

Where a breach of the standards has been alleged it has, in the past, been the Prime Minister rather than an independent authority who has decided whether or not a minister should resign. The Rudd Government has included the following paragraphs on the resolution of breaches in its Standards of Ministerial Ethics:

7.1 Ministers must accept that it is for the Prime Minister to decide whether and when a Minister should stand aside if that Minister becomes the subject of an official investigation of alleged illegal or improper conduct.

7.3 Where an allegation involving improper conduct of a significant kind, including a breach of these Standards, is made against a Minister (including the Prime Minister) the Prime Minister may refer the matter to an appropriate independent authority for investigation and/or advice.

7.4 Advice received by the Prime Minister from the Secretary of the Department of the Prime Minister and Cabinet may be made public by the Prime Minister subject to proper considerations of privacy.

At the time of writing the Prime Minister has accepted one ministerial resignation—that of Defence Minister, Joel Fitzgibbon, on 4 June 2009. The Prime Minister said at a [press conference](#) on the same day:

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6. K Murphy and A. Stafford, 'Code sets rules for Rudd team', *The Age*, 7 December 2007.
 7. P Karvelas, 'Rudd lifts the bar on ministerial propriety', *The Australian*, 7 December 2007.
 8. Editorial, 'Rudd's code is a promising start', *The Sydney Morning Herald*, 10 December 2007.
 9. Editorial, 'Ethics: good policy should go further', *The Canberra Times*, 7 December 2007.

... as I've made clear to Ministers over a long period of time, the Government expects high standards of accountability on the part of its Ministers. All my Ministers are familiar with that. And it is on that basis that the Minister has extended his resignation today and I've accepted it.¹⁰

Post-separation employment

The Standards of Ministerial Ethics states:

2.19. Ministers are required to undertake that, for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office. Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public.

2.20. Ministers shall ensure that their personal conduct is consistent with the dignity, reputation and integrity of the Parliament.

The standards include a specific reference to restrictions on the post-separation employment of ministers who intend to engage in lobbying activities:

8.6. In addition, as outlined earlier, Ministers will undertake that for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months of office.

These restrictions are repeated in the Lobbying Code of Conduct (see below for more information on this Code).

Senators' and members' code of conduct

Discussion on the introduction of a code of conduct covering senators and members has continued for three decades.

The issue of a code of conduct for parliamentarians was raised in the Joint Committee on Pecuniary Interests of Members of Parliament *Report on Declaration of Interests* tabled in both houses on 30 September 1975. The committee noted that the drafting of a code of conduct was beyond its terms of reference but 'felt that a precise and meaningful code of

10. K Rudd (Prime Minister), 'Press conference–Parliament House', media release, 4 June 2009, viewed 12 November 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FUGAU6%22> The text of Mr Fitzgibbon's resignation letter is included in the press conference transcript.

conduct should exist'. The Committee recommended that a proposed Joint Standing Committee:

... be entrusted with the task of drafting a code of conduct based on Standing Orders, conventions, practices and rulings of the Presiding Officers of the Australian and United Kingdom Parliaments and such other guidelines as may be considered appropriate.¹¹

A committee of inquiry chaired by the Chief Justice of the Federal Court, Sir Nigel Bowen, was established by the Prime Minister, Malcolm Fraser, on 15 February 1978 to report on public duty and private interest. The committee, known as the Bowen Committee, reported in July 1979 and recommended that a code of conduct be adopted for general application to all officeholders who were defined as Ministers, members of parliament, public servants and statutory officeholders. A draft code was included in the report. The committee recommended in relation to members of parliament that:

The Senate and House of Representatives be invited to consider:

- (a) amending their Standing Orders to include new Standing Orders requiring, respectively, Senators and Members of the House of Representatives to conform to the Code of Conduct; or
- (b) passing a resolution adopting the Code of Conduct; and
- (c) providing that a subsequent breach of the Code of Conduct should constitute misconduct and a breach of the privileges of Parliament.¹²

An all-party working group of parliamentarians was established in 1992 to consider a code of conduct but the group's deliberations were interrupted by the 1993 election. The group was reconvened in March 1994 and produced a draft code of conduct for senators and members. The group was not a formally constituted committee of the parliament.

On 21 June 1995 the President of the [Senate](#) and the Speaker of the [House of Representatives](#) tabled '[A Framework of ethical principles for members and senators](#)'. They also tabled an additional framework covering ministers and presiding officers titled '[A Framework of ethical principles for ministers and presiding officers](#)'.

In his [tabling speech](#), the then Speaker, Stephen Martin, noted that the draft code for senators and members reflected the majority view of the working group that the code should be 'an aspirational set of principles or values, within which each member must make appropriate decisions concerning his or her own behaviour'. This approach was considered preferable to

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11. Joint Committee on Pecuniary Interests of Members of Parliament, *Report on declaration of interests*, Commonwealth of Australia, Canberra, 30 September 1975, p. 12.
 12. Committee of Inquiry Concerning Public Duty and Private Interest (Chairman N H Bowen), *Public duty and private interest: report of the Committee of Inquiry established by the Prime Minister on 15 February 1978*, Commonwealth of Australia, Canberra, July 1979, p. 133.

‘a very detailed set of rules and procedures governing all aspects of the behaviour of a member of parliament’. The working group did not recommend that the code be supported by an ethics committee or ethics commissioner.

In 2008 two incidents involving members of the House of Representatives led to calls for a members’ code of conduct. The first incident resulted in an inquiry by the House of Representatives Standing Committee of Privileges and Members’ Interests. On 23 October 2008 the Committee tabled a report titled ‘[Report on the issue of the exchange between the Member for Robertson and the Member for Indi on 28 May 2008 and the subsequent withdrawal and apology by the Member for Robertson on 29 May 2008](#)’. The Committee raised the issue of a code of conduct and stated in paragraph 1.36:

The Committee considers the issue of a code of conduct for members should be revisited. There are strong reasons for a code being established, not least of which are community expectations about appropriate standards of behaviour for members of Parliament. The Committee proposes to review the question of a code of conduct for members and report back to the House.

The second incident involved the Member for Dawson, who had allegedly attempted to sell photographs he had taken of a man threatening to set himself alight outside Parliament House. The member claimed that he had given the photographs to a news organisation in return for a donation to a charity. On 4 December 2008, the Speaker of the House of Representatives responded to calls for an investigation and concluded that his powers in relation to certain aspects of the incident were limited. He also [said](#):

... the incident was another reminder of the desirability of consideration of a code of conduct for members. I note that the Committee of Privileges and Members’ Interests has informed the House that it proposes to review the question of a members code of conduct and to report back to the House. In the context of this review, I will refer this incident to the committee as an example of an incident of concern.

To date the Committee has not reported back to the House of Representatives on a code of conduct.

Although there is no formal code of conduct, the conduct of members within parliament is guided by the Standing Orders of the [Senate](#) and the [House of Representatives](#), while corruption and bribery of members of parliament is prohibited under the Commonwealth [Criminal Code](#). The [Parliamentary Privileges Act 1987](#) prohibits other forms of interference with members of parliament.

Register of Interests

Members of the Senate and the House of Representatives are required to report on their interests within 28 days of making the oath or affirmation as a member or senator. Registers of Interests were adopted by resolution of the [House of Representatives](#) on 8 October 1984 and the [Senate](#) on 17 March 1994. The Senate resolution also applies to senior officers of the

Department of the Senate. Failure to comply with the requirements of the registers results in a contempt of the Parliament. Notification of alterations to members' interests is tabled from 'time to time as required'. Notification of changes to senators' interests is tabled every six months.

On 15 September 2003 the Senate agreed to [amendments](#) to the resolutions relating to senators' interests and declaration of gifts to the Senate and the Parliament. The amendments increased the value of gifts and assets that must be declared and removed the requirement that senators declare orally a conflict of interest or financial interest in an issue before voting in the Senate. Moving the motion to adopt the amendments Senator Kay Denman said '[t]he committee recommended that the requirements to declare interests orally be omitted on the basis that each senator's statement of registerable interests is already published'.¹³

The House of Representatives agreed to similar [amendments](#) relating to gifts and assets on 6 November 2003. The Senate passed additional [amendments](#) on 10 August 2006. The main [amendment](#) extended the time frame for notifying all amendments from 28 to 35 days.

Lobbying code of conduct and register of lobbyists

A lobbyist registration scheme was first introduced by the Hawke Government in 1983 in an attempt to make lobbyists more accountable. This move followed the 1983 Combe–Ivanov affair where allegations about lobbyist, and former Australian Labor Party national secretary, David Combe, and his association with a Soviet agent led to the establishment of the Hope Royal Commission. Hope examined this association and the activities of lobbyists in general.¹⁴

In response to the findings of the royal commission and reactions to a Government discussion paper, the Hawke Government established a general register of lobbyists which contained details of the lobbyist and his/her clients. Two registers were maintained: one for domestic lobbyists and one for lobbyists representing foreign governments or their agencies. Ministers were asked to avoid granting special privileges, advantages or access to any lobbyist by virtue of that lobbyist's particular background. The registration scheme was voluntary but ministers and officials would not accept representations from lobbyists if they were not registered. The registers were confidential but made available as required to ministers, heads of departments and heads of statutory authorities.

The Howard Government argued that the register was not being used and abolished the scheme in 1996. It was replaced by a section in the *Guide on Key Elements of Ministerial Responsibility* which stated in part:

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13. K Denman, 'Senators' Interests Committee proposed variation', Senate, *Debates*, 11 September 2003, p. 15021.
 14. See Australia, 'Report on the Australian Security Intelligence Organization, December 1984', Royal Commission on Australia's security and intelligence agencies, AGPS, Canberra, 1984.

Ministers and parliamentary secretaries should ensure that dealings with lobbyists are conducted so that they do not give rise to a conflict between public duty and private interest.

In dealing with a lobbyist who is acting on behalf of a third party, it is important to establish who or what company or what interests that lobbyist represents so that informed judgements can be made about the outcome they are seeking to achieve.¹⁵

These arrangements did not attempt to regulate lobbyists.

The Hawke, Keating and Howard Governments did not introduce a lobbying code of conduct.

The Australian Labor Party included the registration of lobbyists in its 2004 policy document titled [Machinery of Government: the Labor approach](#). Then Leader of the Opposition, Kevin Rudd, was reported to have raised the issue on 6 March 2007 when he said a register was needed:

Not just for public confidence about the way in which the business of politics is conducted in this country, but also to provide proper rules ... for individuals involved as well.¹⁶

The introduction of a Register of Lobbyists was also foreshadowed in the Rudd Government's Standards of Ministerial Ethics, released on 6 December 2007 (see the section above titled 'ministerial code of conduct').

On 2 April 2008, the then Cabinet Secretary, Senator John Faulkner, released an exposure draft of the Lobbying Code of Conduct. In his accompanying [press release](#) Senator Faulkner stated that the 'draft Code follows closely the model adopted by the Western Australian Government'.

On 13 May 2008 Senator Faulkner tabled the Lobbying Code of Conduct and noted that submissions 'have been taken into account and a number of changes have been made to the exposure draft of the Code as a result'.

In his tabling [speech](#) the Minister stated:

The revised code represents an appropriate balance, I believe, between the right of ministers, officials and the public to know who stands to benefit from the efforts of lobbyists, and the ability of business to be able to make views known to government. It will not impose unreasonable demands on the lobbying industry, business or ministers and officials.

15. J Howard, *A Guide on Key Elements of Ministerial Responsibility*, Canberra, 1998, revised ed., p. 12.

16. B Doherty and P Ker, 'To enter parliament, please sign the register', *The Age*, 7 March 2007, p. 9.

On 14 May 2008 the Senate referred the Code to the Senate Finance and Public Administration Committee. The Committee's report titled, [*Knock, knock ... who's there? The Lobbying Code of Conduct*](#), was tabled in September 2008 and acknowledged:

... some aspects of the Code are not wholly supported by some stakeholders. However, the committee notes the widespread underlying support expressed for a code of conduct, that implementation of the Code is in a relatively early stage, and that it may be some time before it becomes clear if its objectives are realised. This being the case, the committee proposes to review the operation of the Code toward the end of 2009, having specific regard to all matters considered in this report and any others that arise in the interim period.

The Committee made one recommendation:

That the Senate Standing Committee on Finance and Public Administration conduct an inquiry into the operation of the *Lobbying Code of Conduct* in the second half of 2009.

The Report included a Coalition Senators' Minority Report which made six recommendations. These included:

That a decision to exclude an individual or entity from the register be subject to appeal to the Administrative Appeals Tribunal, to ensure that legal recourse is not cost prohibitive.

That coverage of the Code be expanded to embrace unions, industry associations and other businesses conducting their own lobbying activities.

That post-employment restrictions on MOPS staff be removed from the Code

That the Code should not be expanded to apply to non-executive members of either House of Parliament nor to non-ministerial MOPS staff.

The Government's [*response*](#) to the Report, presented on 15 January 2009, noted the Committee's recommendation. The Government response noted:

The Lobbying Code of Conduct has been established by Executive decision and any decisions made under the Code are not subject to appeal to the Administrative Appeals Tribunal (AAT).

The Government notes that the AAT does not have any power to review decisions of Ministers or officials unless they are made under an Act, Regulation or other legislative instrument that provides specifically that the decision is subject to review by the AAT.

The [*Lobbying Code of Conduct*](#) is available on the Department of Prime Minister and Cabinet (PM&C) website.

The preamble to the Code states that it:

... is intended to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with

public expectations of transparency, integrity and honesty. Lobbyists and Government representatives are expected to comply with the requirements of the *Lobbying Code of Conduct* in accordance with their spirit, intention and purpose.

In addition, the Code established a [Register of Lobbyists](#) which is also available on the PM&C website. The Register, which has been in operation since 1 July 2008, is a public document administered by PM&C. The Secretary of the Department has the power to include or remove lobbyists from the Register.

The Secretary is responsible for handling breaches of the Code although the penalty for a breach is not specified:

9.1 A Government representative who becomes aware of a breach of this Code by a lobbyist shall report details of the breach to the Secretary.

The Code defines a lobbyist as:

... any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.

The Code does not apply to:

... any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client, and does not require any such person, company or organisation to be recorded in the Register of Lobbyists unless that person, company or organisation or its employees also engage in lobbying activities on behalf of a client or clients.

The Code excludes:

- charitable, religious and other organisations or funds that are endorsed as deductible gift recipients
- non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients, and
- members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services.

The Code defines 'government representative' as including ministers, parliamentary secretaries, ministerial staff, agency heads, public servants and members of the Australian Defence Force. The Code does not cover non-executive members of parliament or non-ministerial staff. The Government's response to the minority report noted that:

The Executive cannot regulate the activities of Members of Parliament and any attempt to do so might amount to an improper interference with the free performance by a member of his or her duties ...

The Government notes that individual senators and members and non-ministerial staff can adopt the Code to limit their contacts with third-party lobbyists to those on the Register if they wish.

The Code imposes restrictions on the lobbying activities of those covered by the definition of 'government representative' when they cease to hold office (ministers and parliamentary secretaries) or cease employment (ministerial staff, agency heads, other public servants and members of the Australian Defence Force):

7.1 Persons who, after 6 December 2007, retire from office as a Minister or a Parliamentary Secretary, shall not, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office.

7.2 Persons who were, after 1 July 2008, employed in the Offices of Ministers or Parliamentary Secretaries under the *Members of Parliament (Staff) Act 1984* at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed under the *Public Service Act 1999* in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.

In his [submission](#) to the Senate inquiry, Professor John Warhurst discussed the Code's effectiveness:

Evaluated on its own terms the potential problem of lack of teeth and lack of real sanctions remains. It is an open question whether it will be taken seriously by those involved. The problem in the past has been that, in the face of mixed feelings about lobbying within government and parliament, the need for regulation of lobbyists has not been taken seriously. ...

Evaluated more broadly, however, the code is timid and narrow. The exclusions ... are very serious. Third party lobbyists are only one element of the whole lobbying industry. They are technicians like lawyers and accountants who perform a fee for service. So a code of conduct that excludes many of the bigger players in the industry who lobby on their own behalf, like corporations, churches, unions and big national pressure groups like the Business Council of Australia, the Australian Medical Association, the Australian Conservation Foundation and so on, offers only very partial coverage.

The current Cabinet Secretary, Senator Joe Ludwig has indicated that rules covering lobbyists could be reviewed following 'cash-for-access' and political fund-raising scandals in state governments and oppositions. Senator Ludwig has suggested:

... the national register of lobbyists ... was under review, and he was open to changes that would approve accountability.¹⁷

New South Wales

Ministerial code of conduct

In 1988 the Greiner Government introduced the 'Code of Conduct for Ministers of the Crown' which included a section on the post-separation employment of ministers.

Ten years later, in 1998, an [Independent Commission Against Corruption](#) report titled [Investigation into Parliamentary and Electorate travel : Second Report Analysis of administrative systems and recommendations for reform](#), stated:

Prior to adoption of the Members' Code of Conduct by both Houses of Parliament, a separate Code of Conduct applied to Ministers. The ICAC is advised that, in accordance with a previous determination of the Premier, the Ministerial Code of Conduct has been subsumed by the Members' Code of Conduct for the time being. A new Ministerial Code of Conduct is being developed by the Premiers' Department. ...

The Members' Code of Conduct is not an adequate replacement for the Ministerial Code of Conduct, as it permits a lower level of disclosure of conflicts of interests and a lower threshold of responsibility.

The Report recommended that '... as a priority a new Ministerial Code of Conduct should be implemented'.

On 10 October 2000, in answer to a question without notice dated 31 August 2000 on the development of a new code of conduct, the then Treasurer, Michael Egan, [stated](#):

The Government has an existing Ministerial Code of Conduct. The Government will keep this code under review, including examination of developments in other jurisdictions.

The Code was amended in 2006 to reflect changes to ministerial post-separation employment (see below). The Code of Conduct for Ministers of the Crown is included in the Department of Premier and Cabinet's Ministerial Handbook.

Members of parliament code of conduct

The 'Code of Conduct, Members of Parliament, New South Wales' was proposed by the then NSW Premier, Bob Carr, on 31 March 1998 as a way of solving the disagreement between the Legislative Assembly and the Legislative Council over the code. The 'Premier's Code' as it was known was adopted by resolution of the [Legislative Assembly](#) on 5 May 1998 and by resolution of the [Legislative Council](#) on 26 May 1999. The Code covers six areas: conflict of

17. K Murphy, 'Lobbyists face stricter controls on MP access', *The Age*, 21 August 2009, p. 4.

interest, bribery, gifts, use of public resources, use of confidential information, and duties as a member of parliament.

The members' code of conduct was adopted in response to section 9(1) of the [Independent Commission Against Corruption Act 1988](#) which states that:

... conduct does not amount to corrupt conduct unless it could constitute or involve ... 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.

Should the ICAC find that a member of parliament has substantially breached the code of conduct, the finding is reported to the relevant House which decides on the disciplinary action that should be taken.

The Legislative Assembly fact sheet on [Accountability mechanisms for members of parliament](#) claims that the link between the breach of a code of conduct and corrupt behaviour is unique among legislatures and the legislation linking the code to ICAC gives the code 'teeth' that many other codes lack.

The ICAC Act also established standing ethics committees for each House of the NSW Parliament. The committees are required to review the code of conduct at least once every four years.

Secondary employment and post-separation employment

The ICAC reviewed the members' code of conduct in relation to secondary employment for members of the Legislative Assembly. The ICAC's report, titled [Regulation of Secondary Employment for Members of the NSW Legislative Assembly](#), was released in September 2003. It recommended amendments to the code of conduct including a prohibition on paid advocacy and a much stricter regime of disclosure for members engaged in secondary employment. The report also recommended that the register of pecuniary interests should be publicly available on the internet. On 18 February 2004 the [Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics](#) resolved to examine the ICAC's recommendations and report to the House. The Committee's report was tabled in September 2004.

On 28 March 2006 the then Premier, Morris Iemma, [announced](#) changes covering the secondary employment of ministers and members:

... members of Parliament will be required to update the register of members' interests every six months instead of every year. The Government will also introduce motions in each House to amend the members' code of conduct, requiring members to disclose at the start of a parliamentary debate the identity of any person by whom they are employed or engaged. It will also require the disclosure of the identity of any client of any such person or any former client who benefited from a member's services within the previous two years ... The Government will also propose amendments to the members' codes of conduct to strengthen

the prohibition on bribery in response to recommendations made by the former Legislative Assembly Standing Ethics Committee.

The revised code of conduct was adopted by the Legislative Assembly on [8 May 2007](#) and amended on [20 June 2007](#) and the Legislative Council on [21 June 2007](#). The Legislative Assembly amendments included new obligations on members to disclose secondary employment at the start of a parliamentary debate. The disclosure obligation does not apply if members of parliament intend only to vote on an issue; it only applies when they participate in a debate. The other main change amended the prohibition against bribery. It clarified the circumstances in which action taken by a member, in return for private benefits being conferred on a person who has a close association with the member, is prohibited.

The ICAC also reviewed the post-separation employment of ministers in a report released in June 2004 titled [Report on the Investigation into the Conduct of the Hon. J. Richard Face](#). One of the report's recommendations was that 'the Government introduce rules to restrict the range of employment that Ministers can take up immediately after leaving office'.

On 28 March 2006, in [answer](#) to a question without notice, the then Premier, Morris Iemma, announced amendments to the ministerial code of conduct relating to the post-separation employment of ministers. He stated that these amendments:

... provide that former Ministers must, during the first 12 months of leaving office, obtain written advice from the Parliamentary Ethics Adviser before accepting any employment or engagement, or providing services to third parties. This obligation will apply where the proposed employment relates to portfolio responsibilities held during the last two years of ministerial office. A similar obligation will apply to current Ministers who, while still in office, are planning post-separation employment or businesses.

Resolutions were passed by the Legislative Assembly on 25 May 2006 and the [Legislative Council](#) on 27 September 2006 extending the functions of the Parliamentary Ethics Adviser to giving advice on ministers' post-separation employment. (See below for more information on the Parliamentary Ethics Adviser.)

In November 2006 the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics [reported](#) on a meeting with the Parliamentary Ethics Adviser on the post-separation employment guidelines. The Committee's report of the meeting contains the schedule of the Adviser's function to provide advice to ministers and former ministers on offers of post-separation employment (see appendix 1) and the relevant section of the Code of Conduct of Ministers of the Crown (see appendix 2).

The Ministerial Code has been amended to reflect the involvement of the Parliamentary Ethics Adviser. The relevant paragraphs of the Code of Conduct for Ministers of the Crown are included in the report on the Committee's meeting with the Parliamentary Ethics Adviser. (The report notes that these paragraphs were tabled by the Premier on 17 October 2006 and are an excerpt from the Ministerial Handbook):

7.4 Ministers who, while in office, are considering an offer of post-separation employment or an engagement or who are proposing to provide services after they leave office to third parties (including establishing a business to provide such services) must obtain advice from the Parliamentary Ethics Adviser before accepting any employment or engagement or providing services to third parties which relates or relate to their portfolio responsibilities (including portfolio responsibilities held during the previous two years of Ministerial office).

7.5 Former Ministers must also obtain advice from the Parliamentary Ethics Adviser before accepting any employment or engagement or providing services to third parties (including establishing a business to provide such services) within the first 12 months of leaving Ministerial office, which relates or relate to their former portfolio responsibilities during the last two years in which they held Ministerial office. This requirement does not apply to any employment or engagement by the Government.

Disclosure of pecuniary interests

The requirement that members disclose their pecuniary interests was introduced in the *Constitution (Disclosures by Members) Amendment Act 1981*. This was achieved through the introduction of Section [14A](#) into the [Constitution Act 1902](#).

The current disclosure obligations are set out in the [Constitution \(Disclosure by Members\) Amendment Regulation 1983](#). The current version is dated 10 December 2008. Legislative Assembly pamphlet No. 18, titled '[The Code of Conduct for members of Parliament and the Pecuniary Interest Register](#)', states that:

Amendments to the regulation, which came into force on 24 March 2007, require Members to lodge a supplementary ordinary return by 31 March each year in relation to the period 1 July to 31 December of the previous year or, in the case of new Members, who have previously lodged only a primary return, the period from the date of the primary return to 31 December of the previous year. The first supplementary ordinary return is due to be lodged by Members in 2008.

The amendments introduced in 2007 also provide for Members to make discretionary returns, when and if they consider it appropriate to do so.

The Parliamentary ethics adviser

In September 1998 the [Legislative Assembly](#) and [Legislative Council](#) passed resolutions to appoint a parliamentary ethics adviser. The then Premier, Bob Carr, described the role of the ethics adviser as providing independent assistance and advice 'to members of Parliament in resolving ethical issues and problems'. The ethics adviser does not give legal advice and does not investigate breaches of the code of conduct. As noted above, in 2006 the role of the ethics adviser was extended to include advice on post-separation employment.

The adviser is required to report to Parliament at the end of his/her annual term on the number of ethical matters raised, the number of members who sought advice, the amount of time spent on these matters and the number of times advice was given. On 3 March 2009 the

Acting Speaker of the Legislative Assembly [tabled](#) the reports of the parliamentary ethics adviser for the years 2004, 2006, 2007 and 2008. The [report](#) for the year ended 30 June 2009 was tabled on 1 September 2009.

The then President of the Legislative Council, Dr Meredith Burgmann, outlined the models considered for the parliamentary ethics adviser in her paper [Constructing Legislative Codes of Conduct](#) delivered in June 2000.

Lobbyist code of conduct and register of lobbyists

In January 2006 The Cabinet Office issued '[Guidelines for managing lobbyists and corruption allegations made during lobbying](#)'. The Guidelines apply:

to all Ministers, ministerial staff and public officials who are lobbied in relation to the making of a statutory decision. They apply where the person who is lobbied is the actual decision-maker as well as in those cases where the person who is lobbied is not the decision-maker and another Minister or public official is responsible for making the decision.

The Guidelines list nine principles to be observed by Ministers, ministerial staff and public officials who are lobbied but there is no compulsion to disclose the names of lobbyists. The Guidelines state that Ministers and others should:

(viii) consider keeping records of meetings with lobbyists, and if necessary having another person attend the meeting as a witness or to take notes.

On 29 October 2008 then Premier Nathan Rees [announced](#) the introduction of the [Lobbyist Code of Conduct](#) and [Register](#) of professional lobbyists. Both the Code and the Register have been in operation since 1 February 2009 and are available on the Department of Premier and Cabinet website. The Director-General of the Department of Premier and Cabinet administers the Register. Breaches of the Code are to be reported to the Director-General.

The Code defines a lobbyist as:

... a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative.

'Government Representative' is defined as:

... a Minister, Parliamentary Secretary, Ministerial Staff Member or person employed, contracted or engaged in a public sector agency (which means a Division of the Government Service as defined in section 4A of the *Public Sector Employment and Management Act 2002*) other than staff employed under section 33 of this *Public Sector Employment and Management Act 2002*.

On 14 November 2009 then Premier Rees [announced](#) a ban on the appointment of lobbyists to all public boards and committees.

A 2009 [memorandum](#) issued by the Department of Premier and Cabinet on the Code and Register states that the 2006 Guidelines are still current and should be read in conjunction with the new arrangements. It also notes that the 'Ministerial Code of Conduct has been amended to expressly require Ministers to comply with the Lobbyist Code'. The Code should also be read in conjunction with amendments to the *Independent Commission Against Corruption Act 1988* which impose 'a duty on each Minister ... to report any matter that the Minister suspects, on reasonable grounds, concerns or may concern corrupt conduct'.

Victoria

Ministerial code of conduct

In December 2007 the Victorian Premier, John Brumby, was reported to be 'considering introducing a Kevin Rudd-style code of conduct for his ministers'.¹⁸ At the time of writing a ministerial code has not been introduced.

Members' code of conduct and register of interests

Victoria's Code of Conduct covering members of parliament is included in the [Members of Parliament \(Register of Interests\) Act 1978](#) (Victoria). This legislation also contains clauses referring to a Register of Interests. The code states that members of the Victorian Parliament are bound to observe a range of standards (listed in paragraphs (a) to (f)) which cover confidential information, receipt of financial benefits, avoidance of conflict of interest, ad hoc disclosure and paragraphs (e) and (f) refer to the conduct of ministers.

Under the Register of Interests provisions, members are required to provide information on: income source, company positions and financial interests, political party membership, trusts, land, travel contributions, gifts, and other substantial interests. Infringement of the code constitutes contempt for which the member may be fined up to \$2000 by his or her House. The non-payment of this fine renders the member's seat vacant.

On 4 December 2008 the Legislative Assembly agreed to a Government motion that the Law Reform Committee (a joint investigatory committee):

- (1) be required to undertake a review of the Members of Parliament (Register of Interests) Act 1978 to consider and make recommendations on amending the act; and
- (2) present the report on its review six months from the date of this resolution

18. See, for example, 'Brumby eyes off code', *The Age*, 8 December 2007 and 'Brumby looks at Rudd code', *Herald Sun*, 8 December 2007.

The Law Reform Committee tabled its [final report](#) on 9 December 2009. The Committee made 35 recommendations which included¹⁹:

- renaming the Act as the Members of Parliament (Standards) Act
- including a statement of values for members of parliament in the Act
- replacing the existing code of conduct with a broader code
- clarifying, extending or excluding certain registrable interests
- renaming the privileges committee in each house as the privileges and standards committee and expanding the functions of the committees to include investigating and reporting on alleged breaches of the Act and
- appointing an ethics advisor to provide confidential advice to members of parliament.

The Victorian Government is required to respond to the recommendations of a joint investigatory committee within six months of the final report being tabled.

Lobbyist code of conduct and register of lobbyists

On 29 August 2009 Premier Brumby, [announced](#) the introduction of the Victorian Government Professional Lobbyist [Code of Conduct](#) and [Register of Lobbyists](#). Mr Brumby said:

While we would have preferred a single national register of lobbyists, we are establishing a Victorian Lobbyists' Register and Code of Conduct consistent with those operating interstate and at the Commonwealth level.

The Code requires professional lobbyists to register with the Public Sector Standards Commissioner who has the power to refuse applications. The Register of Lobbyists commenced on 1 December 2009 and is published on the State Services Authority website.

The Code includes references to the post-separation employment of ministers and parliamentary secretaries. Ministers and cabinet secretaries are barred for 18 months from engaging in lobbying activities relating to any matter with which they had official dealings in their last 18 months in office. Parliamentary secretaries, public service executives and ministerial advisors employed under the *Public Administration Act 2004* (Vic) are barred for

19. Victorian Parliament Law Reform Committee, 'Review of the Members of Parliament (Register of Interests) Act 1978', December 2009, viewed 15 December 2009, <http://www.parliament.vic.gov.au/lawreform/inquiries/Members%20Register%20of%20Interests/final%20report.pdf>

12 months from engaging in lobbying activities relating to any matter with which they had official dealings in their last 12 months.

Queensland

Ministers' code of ethics

The [Ministers' Code of Ethics](#) is contained in Appendix 19 of the Ministerial Handbook. The Code includes a section on post-ministerial employment which states:

Ministers are required to undertake that, for a two year period (or for Parliamentary Secretaries, for an eighteen month period) after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament or public service on any matters on which they have had official dealings as a Minister in their last two years in office. Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public or accessible in the public domain.

The Code also states:

Ministers must, within one month after taking office, divest themselves and otherwise relinquish control of all shares and similar interests in any for-profit company regardless of whether the shares or interests are within the Ministers' area of portfolio responsibility or not.

Ministers must not divest their holdings to their partners. The transfer of interests to a partner is not an acceptable form of divestment.

The code is not established under legislation and '[d]iscipline under the code is at the discretion of the Premier unless the breach is a criminal offence'.²⁰

Members' code of ethical standards

On 5 September 2000 the Queensland Parliament [Members' Ethics and Parliamentary Privileges Committee](#) tabled the [Report on a Code of Ethical Standards for Members of the Queensland Legislative Assembly and proposed Code of Ethical Standards](#). The [Government's response](#) was provided to the Clerk of the Parliament on 5 December 2000.

Queensland's current [Code of Ethical Standards Legislative Assembly of Queensland](#), dated September 2004 (last amended on 11 May 2009), consists of the following sections:

20. Queensland Government, *Integrity and accountability in Queensland*, 5 August 2009, p. 10, viewed 9 November 2009, <http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/assets/integrity-and-accountability-paper.pdf>

- the Statement of fundamental principles (first adopted by the Assembly on 17 May 2001)
- Overview of obligations
- Complaints procedure including *Procedures for raising and considering complaints* (first adopted by the Assembly on 8 August 2001) and
- Resolving conflict of interest.

The Code includes other requirements derived from legislation, Standing Orders, resolutions of the House, and practice and procedure. The disclosure of interests was adopted by resolution by the Legislative Assembly on 25 May 1999, effective from 1 July 1999. The Members' Interests Resolution is included in the Code of Ethical Standards (Appendix 1). The Code also includes a code of conduct for election candidates (Appendix 5).

On 28 February 2006, in response to complaints about the prolonged absences in Thailand of MLA Robert Poole, the then Premier, Peter Beattie, requested that the Members' Ethics and Parliamentary Privileges Committee review the provisions covering the absence and leave of members of parliament. The committee's [report](#) was tabled on 14 June 2006. The Committee's [2006–07 Annual Report](#) noted that, as a result of the Government's response, the House adopted two new Standing Orders:

- 263A: Notification of absence of a member for more than 12 consecutive sitting days, and
- 263B: Leave of absence of a member for more than 21 consecutive sitting days.

The role of the Ethics and Parliamentary Privileges Committee is outlined in sections 90–93 of the [Parliament of Queensland Act 2001](#).

Register of members' interests

The [Standing Rules and Orders of the Legislative Assembly of Queensland](#) state that Members of the Legislative Assembly are required to make a declaration of their pecuniary interests within one month of making and subscribing an oath or affirmation as a Member. These statements form the Public Register of Members' Interests maintained by the Clerk of the Parliament. Members are also required to make statements of the interests of related persons. These statements are maintained in a private register by the Clerk.

Lobbyist code of conduct and register of lobbyists

On 12 February 2009 the Queensland Premier, Anna Bligh, [announced](#) in Parliament the Queensland Government's intention to establish a Register of Lobbyists and introduce the [Queensland Contact with Lobbyists Code](#). The Code provides that professional lobbyists who act on behalf of third party clients and who wish to lobby Government representatives (Ministers, Parliamentary Secretaries, ministerial staff and senior staff working in public

sector agencies) must be listed on the Register. The [Register](#) is currently maintained by the Department of the Premier and Cabinet and was first published on 30 March 2009.

Under the provisions of the *Integrity Act 2009* (Qld) the Lobbyists Code of Conduct and its requirements are enshrined in legislation and the Integrity Commissioner is responsible for administering the Lobbyist Register. Queensland is the first Australian state to introduce a legislative code covering lobbyists.

The Government has also made a commitment to ban individuals on the Register of Lobbyists from being appointed to government boards.²¹

Queensland integrity commissioner

The office of [Queensland Integrity Commissioner](#) was created by the 1999 amendment to the *Public Sector Ethics Act 1994* (Qld). The Integrity Commissioner is an independent officer who 'advises Queensland Government public officials on conflicts of interest'. Those able to request advice include the Premier, ministers and parliamentary secretaries and chief executive officers of government agencies. The role of the Integrity Commissioner has been strengthened and expanded with the passing of the Integrity Bill 2009 (see below). The Commissioner will be accountable to Parliament through the Members Ethics and Parliamentary Privileges Committee which will be renamed the Integrity, Ethics and Parliamentary Privileges Committee.

Integrity Act 2009

On 6 August 2009 the Premier [launched](#) a discussion paper titled [Integrity and accountability in Queensland](#). The paper asked how Queensland's integrity and accountability framework could be improved and strengthened and invited public submissions. It raised questions in a number of areas including: members of parliament code of conduct; pecuniary interests registers and conflict of interest; political donations; lobbying and procurement processes.²²

As a result of public feedback in response to the discussion paper the Premier introduced the Integrity Bill 2009 on 10 November 2009 and [announced](#) a 'two-tiered approach to integrity reform' that 'would see the new laws in place by the end of the year with a further significant and expansive raft of reform due for completion by mid-2010'. Some of the reforms announced include:

Banning the payment of success fees to lobbyists for achieving favourable outcomes from government.

21. Queensland Government, *Integrity and Accountability*, p. 6.

22. Ibid.

An expansion and enhancement of the role of Queensland's Integrity Commissioner including oversight of the Queensland Register of Lobbyists and making the Commissioner of Parliament with the ability to provide advice to all MPs.

Enshrining the lobbyists code and its requirements in legislation.²³

In her second reading speech on the Integrity Bill the Premier talked about the enhanced role of the Integrity Commissioner:

This bill implements wide-ranging enhancements to the functions and independence of the Integrity Commissioner, in recognition of the importance of this unique role to the effective functioning of our integrity framework.

The Integrity Commissioner will become an independent officer of the parliament reporting through a parliamentary committee. To facilitate this, the Parliament of Queensland Act 2001 will be amended to rename the current Members' Ethics and Parliamentary Privileges Committee as the Integrity, Ethics and Parliamentary Privileges Committee. This committee will take on the additional function of oversight of the Integrity Commissioner's performance and functions.²⁴

On 25 November 2009 the Bill passed through the Queensland Parliament. The Act commences on a date fixed by proclamation.²⁵

Western Australia

Ministerial code of conduct

The then WA Premier, Geoff Gallop, tabled a Ministerial Code of Conduct three months after becoming Premier in February 2001. A revised Code, which included a section on the post-separation employment of ministers, was tabled in March 2005. Following a review of the ministerial code, in December 2005, by Professor Greg Craven, Director of the John Curtin Institute of Public Policy at the Curtin University of Technology, the then Premier, Alan Carpenter, [announced](#) a revised Ministerial Code of Conduct on 24 August 2006. He tabled the code and told parliament:

The code is intended as a guide to assist ministers to avoid conflicts of interest. It has been revised to take into account and resolve apparent deficiencies in the first edition. We have -

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23. A Bligh (Premier), 'Sweeping reforms deliver Queensland strong integrity and accountability', media release, 10 November 2009, viewed 23 November 2009, <http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=67319>
 24. A Bligh, 'Second reading speech', Integrity Bill 2009, Queensland, Legislative Assembly, *Debates*, 10 November 2009, pp 3164-3165
 25. See A Bligh (Premier), 'Sweeping integrity and accountability reforms pass through parliament', media release, 25 November 2009, viewed 26 November 2009, <http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=67582>

- made it clear that the onus of disclosure of the interests of a minister and those of the minister's family members lies with that minister;
- extended the relevant provisions in the code to include de facto partners;
- provided a disclosure form to assist ministers to make their disclosure statements;
- included a requirement that significant changes in the declared interests of ministers and their family members shall be disclosed within four weeks of the minister becoming aware of the changes;
- included a requirement that a minister disclose any conflicts of interest, or potential conflicts of interest, of family members to the Premier in cabinet;
- allowed for the cabinet secretary to raise independently any conflict of interest, or potential conflict of interest, of a minister or his or her family, noting that this does not derogate from the minister's responsibility; and
- allowed for categories of indirect pecuniary interests, only when ministers have pecuniary interests that are sufficiently remote, or sufficiently indirect, from their influence and control that they do not pose a realistic risk of conflict.²⁶

A [Ministerial Code of Conduct](#) dated September 2008 is available on the [Integrity Coordinating Group](#) website.²⁷

Members of parliament code of conduct

On 14 March 2002 the then Premier, Geoff Gallup, tabled a Draft Code of Conduct for Members of the Western Australian Legislative Assembly. The code was considered by the Procedure and Privileges Committee which presented its [report](#) on 27 February 2003. The majority report contains background information on the development of a members' code of conduct. Following an often bitter debate an amended [code](#) was adopted by the Legislative Assembly on 28 August 2003. The code referred to the following issues: disclosure of conflict of interests; bribery; gifts; use of public resources; use of confidential information; proper relations with ministers and public service; freedom of speech; misleading the Parliament or the public; participation in political parties; parliamentary behaviour and tolerance. The Code did not include specific penalties for breaches of the code. These are dealt with under [Standing Orders](#) (see SO 109).

26. A Carpenter, 'Statement by Premier', Ministerial Code of Conduct, Western Australia, Legislative Assembly, *Debates*, 24 August 2006, p. 5200.

27. The Integrity Coordinating Group was formed to promote and strengthen integrity in Western Australian public bodies. Member bodies are: Auditor-General, Commissioner for Public Standards, Corruption and Crime Commissioner and Ombudsman Western Australia.

A draft code of conduct for members of the Western Australian Legislative Council was tabled on 20 March 2002. The draft code was referred to the Standing Committee on Procedure and Privileges for consideration and report. To date there is no code of conduct for members of the Legislative Council.

Register of interests

Under the provisions of the [*Members of Parliament \(Financial Interests\) Act 1992*](#) (WA) all members are required to declare their pecuniary interests. Section 4 states that 'a Member of either House who wilfully contravenes or fails to comply with section 4(1) is guilty of a contempt of the House of which he is a Member, and that House may deal with him accordingly'. Section 4(1) details when members are to lodge returns with the Clerk:

A Member shall —

- (a) within 30 days after the day on which he is sworn in lodge a primary return with the Clerk;
- (b) not later than 30 September in each year lodge an annual return with the Clerk.

Lobbyist code of conduct and register of lobbyists

On 20 March 2007 the then Premier, Alan Carpenter, tabled the [*Contact with lobbyists Code*](#) in the Legislative Assembly. In his tabling speech he noted that the Code:

... creates a Register of Lobbyists; establishes rules for contact between lobbyists and Ministers, Parliamentary Secretaries, Ministerial staff and public sector employees; and establishes standards of conduct for lobbyists who wish to be included on the Register of Lobbyists. The Contact with Lobbyists Code has application through the ministerial code of conduct and the codes of conduct that apply to public sector bodies.

... will operate in such a way that no minister, ministerial staff member or employee of a public sector body will be permitted to have professional contact with a lobbyist unless the lobbyist is included on the Register of Lobbyists.

... is deliberately minimalist in its approach. It applies only to lobbyists who represent third parties. It does not apply to business lobby groups, trade unions, or religious or charitable bodies. Nor does it apply to recognised professional and technical occupations. The information requirements of the Register of Lobbyists are also minimalist. The register will contain a lobbyist's business registration details, details of employees who are engaged in lobbying, and names of clients who are currently being represented by the lobbyist. These details will need to be updated every three months.

Mr Carpenter also referred to the actions of lobbyists Brian Burke, Julian Grill and Noel Crichton-Browne and the reasons they would be barred from the Register:

Unfortunately, the reputation of lobbying and lobbyists has been damaged through the actions of Brian Burke, Julian Grill and Noel Crichton-Browne. Evidence submitted to the

recent hearings of the Corruption and Crime Commission has shown that Burke, Grill and Crichton-Browne have, at the very least, shown an absolute contempt for standards of political probity and a total disregard of the ethics expected of individuals operating in the sphere of public life. For this reason, the government will not allow Burke, Grill and Crichton-Browne to be on the Register of Lobbyists.

[Information](#) accompanying the *Contact with Lobbyists Code* states that it ‘is applied through the Codes of Conduct of public sector agencies ...[which] carry the authority of the *Public Sector Management Act 1994*’ (WA).

During the 2008 Western Australian state election campaign it was reported that the Liberal Opposition proposed:

... a public register for lobbyists ... enshrined in legislation and penalties, including fines and deregistration, would apply for breaches.

Lobbyists would also be able to appeal to an independent body, such as the State Administrative Tribunal, against a decision to exclude them from the register.²⁸

The [current version](#) of the Code is dated November 2008. The Code and the [Register](#) are available on the Public Sector Commission website. The Public Sector Commissioner administers the Register.

To date the Liberal Western Australian Government has not enshrined the register in legislation.

South Australia

Ministerial code of conduct

On 16 May 2002 the SA Premier, Mike Rann, announced the introduction of a [Ministerial Code of Conduct](#). The code came into effect on 1 July 2002 and contains a statement on post-separation employment of ministers. Ministers are prevented:

... for a two year period after ceasing to be a Minister, [to] take employment with, accept a directorship of or act as a consultant to any company, business or organization:

- a) with which they had official dealings as Minister in their last 12 months in office; and
- b) which:
 - is in or in the process of negotiating a contractual relationship with the Government; or

28. Y Phillips, ‘Ban on three lobbyists to stay, says Barnett’, *West Australian*, 1 September 2008, p. 9.

- is in receipt of subsidies or benefits from the Government not received by a section of the community or the public; or
- has a government entity as a shareholder; or is in receipt of government loans, guarantees or other forms of capital assistance; or
- engages in conduct directly inconsistent with the policies and activities of the Minister,

without the prior written consent of the Commissioner for Public Employment in consultation with the Premier of the day.

Members' code of conduct

On 20 February 2003 the Premier moved that a joint committee of the Parliament be established to introduce a code of conduct for all members of Parliament.

The Joint Committee on a Code of Conduct for Members of Parliament committee [report](#), dated 14 October 2004, recommended that a code of conduct in the form of a Statement of Principles be adopted for Members of Parliament. The Committee believed that the Statement of Principles would 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.

The committee also recommended that the Statement of Principles be adopted by way of a resolution of each House of Parliament.

On 25 November 2004, Australian Labor Party member of the House of Assembly and member of the code of conduct committee, John Rau, moved that the house adopt the Statement of Principles as set out in the report of the Joint Committee. Debate on the motion was adjourned. To date the Statement of Principles has not been adopted by either House.

Register of interests

Members are required to declare their interests under the provisions of the [Members of Parliament \(Register of Interests\) Act 1983](#) (SA). Section 7 states that failure to comply with the Act will result in 'a penalty not exceeding five thousand dollars'.

Lobbyist code of conduct and register of lobbyists

The Premier [announced](#) the Lobbyist Code of Conduct and public Register of Lobbyists on 29 August 2009. South Australia's code was prepared in consultation with the Victorian Government and is consistent with codes adopted by the Commonwealth Government and other state governments. The code, which came into force on 1 December 2009, requires lobbyists to register and to update their details annually on the [Register of Lobbyists](#).

The [Lobbyist Code of Conduct](#) includes post-separation employment rules covering ministers, ministerial staff and departmental executives. Ministers who leave office can not, for a period of two years after they retire, engage in professional lobbying activities relating to any matter with which they had official dealings in their last 18 months in office.

Parliamentary secretaries, ministerial staff and departmental executives are restricted for 12 months after retirement from engaging in professional lobbying activities relating to any matter with which they had official dealings in their last 12 months in office.

Tasmania

Ministerial code of conduct

Since 2006 ministers and government members of Parliament have been covered by the same code of conduct (see below for details of the code).

In an Estimates Committee A [hearing](#) on 23 June 2008 the Premier, David Bartlett, was asked about the status of the Ministerial Code of Conduct. He responded:

The Ministerial Code of Conduct has been in place. It was brought in by then Premier Jim Bacon. As the leader of a government that believes deeply in transparency and accountability, I have not flagged publicly in any way, shape or form that I intend to adjust, amend, improve or look at that Ministerial Code of Conduct. I have flagged that I am open to discussion and debate about the various mechanisms and machinery around the Parliament and the Government that we can improve, both in terms of parliamentary standards or the perception of parliament standards and perception of behaviour by all members, government and non-government members included.

Subsequently the Premier's submission to the Joint Select Committee on Ethical Conduct on 19 August 2008 included a proposal for a strengthened Ministerial Code of Conduct (see below).

Members' code of conduct

The 'Code of ethical conduct for Members of the House of Assembly' and 'A Code of race ethics for Members of the House of Assembly' are located in the [House of Assembly Standing Orders and Rules](#) (Standing Orders 2A and 2B). These codes were adopted in 1996. The code of ethical conduct has a brief preamble, a statement of commitment and a list of

nine general declarations covering a range of issues. There is also a statement on post-separation employment which states that members ‘when leaving public office and when they have left public office, must not take improper advantage of their former office’. The Legislative Council has not adopted similar codes.

Government members’ code and guidelines

In 2006 the Department of Premier and Cabinet issued the [Code of conduct – government members of parliament](#) and [Receipt and giving of gifts and benefits – guidelines for government members of parliament](#). The Code covers all parliamentary members of the Government, including ministers, and includes a section on cabinet government.

On 3 November 2009, in her [second reading speech](#) on the Integrity Commission Bill, Attorney-General, Lara Giddings said:

The codes of conduct for members and ministers, as well as ministerial and parliamentary member staff, while already in place, will be, following its establishment, referred to the Integrity Commission for review and to allow it to make recommendations for improvement.

Review of ethical conduct by the Joint Select Committee on Ethical Conduct

On 28 May 2008 the Premier, David Bartlett, moved that a [Joint Select Committee on Ethical Conduct](#) be established. The motion was amended by the Legislative Council on 10 June 2008 and the amended resolution was agreed to by the House of Assembly on 11 June 2008. The Resolution agreed to by both Houses provided:

That a Joint Select Committee be appointed, with power to send for persons and papers, with leave to sit during any adjournment of either House exceeding 14 days, and with leave to adjourn from place to place to inquire into and report upon the issue of ethical conduct, standards and integrity of elected Parliamentary representatives and servants of the State in performing their duties with particular reference to—

- (a) a review of existing mechanisms currently available to support ethical and open Government in Tasmania and the capacity to conduct independent investigations;
- (b) an assessment of whether those mechanisms need to be augmented by the establishment of an Ethics Commission or by other means and if so by what means; and
- (c) any matters incidental hereto.

On 19 August 2008 the Premier announced a ten point plan to strengthen trust in democracy in Tasmania. This plan formed the Government’s [submission](#) to the Joint Select Committee on Ethical Conduct. The proposals included:

- a register of Lobbyists – those seeking to register will be required to adhere to a lobbyists code of conduct.

- Codes of conduct for members and ministers – a new code of conduct for all members of the Parliament and a strengthened code of conduct for ministers.
- A code of conduct for ministerial and parliamentary staff.
- Training, advice and induction for all members, ministers and staff to ensure a very high ethical standard is maintained

The submission also recommended the development of an Ethics Commission with investigative powers to be enshrined in legislation.

The Committee's final report, '[Public Office is Public Trust](#)', was published on 24 July 2009. The Committee made 33 recommendations which included the creation of a Tasmanian Integrity Commission and a lobbyist register. It also recommended that the Legislative Council adopt a Code of Ethical Conduct and a Code of Race Ethics.

On 4 November 2009 the Attorney-General [released](#) the Government's response to the Committee's report and noted:

Of the Committee's 33 recommendations all but two have been accepted or already implemented by the Government, the exceptions being a review of the size of Parliament and the call for expenditure submissions to be tabled in Parliament by 30 April each year before the State budget has even been released.

On 17 November Ms Giddings [announced](#) that the Integrity Commission Bill 2009 had passed the Tasmanian Parliament. The Attorney-General anticipated that, following the Governor's assent to the Bill, the Integrity Commission should commence full operations by mid-2010. On the role of the Commission she said:

The Integrity Commission will have investigative powers but its primary emphasis will be on education and advisory services so Tasmanians can be confident that our public sector institutions are performing according to the highest ethical standards.

The Commission's investigative work will focus on senior and high profile public officers such as MPs, heads of agency and senior bureaucrats, chief executive officers, aldermen and councillors and statutory office holders, and any allegations of serious misconduct by senior police officers.

Register of interests

Members are required to report on their interests under the provisions of the [Parliamentary \(Disclosure of Interests\) Act 1996](#) (Tas). Failure to comply with the provisions of the Act may result in a member being in contempt of Parliament.

Lobbyist register

The Deputy Premier and Attorney-General, Lara Giddings, introduced a [Lobbying Code of Conduct](#) on 15 August 2009. The Code provided for a [Register of Lobbyists](#) which has been in operation since 1 September 2009. Post-separation employment restrictions apply to ministers, parliamentary secretaries and heads of agencies preventing them from acting as lobbyists for a period of 12 months. The Register is located on the Department of Premier and Cabinet website with the Secretary of the Department responsible for handling breaches of the Code.

Australian Capital Territory

Ministerial code of conduct

On 2 May 1995 a [Code of conduct governing ministers](#) was tabled by the then ACT Chief Minister, Kate Carnell. In her tabling speech Ms Carnell noted that the code 'is applicable to the immediate families or close relatives of Ministers and ministerial staff employed under the [Legislative Assembly \(Members' Staff\) Act](#) of 1989'. A [revised ministerial code](#) was tabled on 26 August 1998. This code was reviewed and a revised [Code of conduct for ministers](#) was released in February 2004. The code includes a section on post-separation employment of ministers.

Members' code of conduct

The ACT Legislative Assembly Standing Committee on Administration and Procedure has tabled a number of reports on a code of conduct for members and recommended that a code be adopted. On 25 August 2005 the Legislative Assembly voted to adopt the [Code of conduct for all Members of the Legislative Assembly of the Australian Capital Territory](#). The code covers subjects such as conflict of interest, receipt of gifts, advocacy/bribery, use of confidential information, conduct as employers, use of entitlements and use of public resources. On 16 August 2006 the [Code](#) was amended to include the requirement that Members 'should not appoint close relatives to positions in their own offices or any other place of employment where the Member's approval is required'.

On 5 August 2008 the then Speaker, Mr Wayne Berry, tabled the report of the Standing Committee on Administration and Procedure titled '[Review of the code of conduct for members](#)'. The Committee recommended that the restriction on members employing family members be removed from the Code of Conduct. Mr Berry issued a dissenting report.

On [7 August 2008](#) Mr Berry introduced the Legislative Assembly (Members' Staff) Amendment Bill 2008. This Bill which amended the *Legislative Assembly (Members' Staff) Act 1989* (ACT) sought to ban Members of the Legislative Assembly from employing family members. In introducing the Bill Mr Berry referred to the Members' Code of Conduct saying:

In this place, ..., our code of practice is an aspirational one. It places an ethical obligation on members to adhere to it but it does not complete the job. ...

Is our code good enough? I do not think it is. The history of the code has been incremental. I have had a great deal of pride in being able to improve the code over time and in some way influence things that have occurred here, but I think it has demonstrably failed in its aspirations because there is no requirement for members to observe it. ... It is clear that having advisory codes is not strong enough. The only way to deal with the issue is to pass laws which make the practice unlawful.

The Legislative Assembly passed the Bill on 21 August 2008.

The Code of Conduct for all members of the Legislative Assembly is located in the Legislative Assembly's [Standing and Temporary Orders](#).

Ethics and integrity adviser

On 10 April 2008 the Legislative Assembly resolved that the Speaker appoint an [Ethics and Integrity Adviser for Members of the Legislative Assembly](#). The resolution stated that the ethics adviser would 'advise members on ethical issues concerning the exercise of his or her role as a Member including the use of entitlements and potential conflicts of interest'. The ethics adviser is required to report annually to the Legislative Assembly and is appointed by the Speaker after consultation with the Chief Minister, the Leader of the Opposition and crossbench members. On 26 June 2008 the Speaker [announced](#) that Mr Stephen Skehill had been selected as the Ethics and Integrity Adviser for the remainder of the sixth Assembly. The period of appointment was extended on 21 August 2008 when the Assembly agreed to a [motion](#) that set the term of the Ethics and Integrity Adviser as being 'for the life of the Assembly and the period of three months after each election'.

On 10 February 2009 the Speaker [tabled](#) the appointment of an ethics and integrity adviser for the seventh Assembly. Mr Skehill was reappointed to the position.²⁹

On 17 September 2009 the Speaker [tabled](#) the Integrity and Ethics Adviser's report for the period 25 June 2008 to 30 June 2009.

Register of interests

Members are required to report on their interests in accordance with a [Resolution](#) dated 7 April 1992 titled 'Declaration of Private Interests of Members' ([amended 27 August 1998](#) and [17 March 2005](#)).

29. Australian Capital Territory, Legislative Assembly Secretariat, *Annual report 2008–2009*, ACT Legislative Assembly Secretariat, September 2009, p. 9, viewed 17 November 2009, <http://www.parliament.act.gov.au/downloads/annual08-09.pdf>

Northern Territory

Members' code of conduct

On 20 June 2002 the then NT Chief Minister, Clare Martin, moved that the draft [Code of conduct and ethical standards](#) and [draft amendments](#) to the *Legislative Assembly (Register of Members' Interests) Act 1982* (NT) be referred to the Standing Orders Committee for inquiry and report during the October sittings 2002. In June 2003 the Committee's reporting date was extended to February 2004. The Committee's report was tabled on [26 February 2004](#) and recommended that:

Code of Conduct and Ethical Standards: [the] committee recommends that the following Code be adopted by the Legislative Assembly subject to the enactment of a Legislative Assembly (Members Code of Conduct and Ethical Standards) Act; and

Legislative Assembly (Registration of Members' Interests) Bill: [the] committee recommends that the following Draft Bill be agreed to by the Legislative Assembly in conjunction with the Draft Code of Conduct and Ethical Standards for Members.

The report, including the [Code of conduct](#), was adopted on [31 March 2004](#).

In keeping with the Committee's recommendation the [Legislative Assembly \(Members' Code of Conduct and Ethical Standards\) Act 2008](#) (NT) was assented to on 8 December 2008.

Register of interests

Members are required to report on their interests under the provisions of the [Legislative Assembly \(Members' Code of Conduct and Ethical Standards\) Act 2008](#) (NT).

Summary of codes of conduct in Australian parliaments

| Codes | Federal | NSW | Vic | Qld | WA | SA | TAS | ACT | NT |
|---|---------|------|-----|------|------|----|------|-----|----|
| Ministerial code stand alone | √ | | | | √ | √ | | √ | |
| Ministerial code in ministerial or cabinet handbook | | √ | | √ | | | | | |
| Members' code | | √ | | √ | √## | | √*** | √ | |
| Members' code in legislation | | | √# | | | | | | √ |
| Post-separation employment restrictions | √ | √* | | √ | √ | √ | √*** | √ | |
| Lobbyist code and register | √ | √ | √ | √** | √ | √ | √ | | |
| Register of Interests | √ | √ | √# | √ | √ | √ | √ | √ | √ |
| Integrity Commission(er) | | | | √** | | | √*** | | |
| Parliamentary ethics/integrity adviser | | √ | | | | | | √ | |
| External bodies investigating MPs' conduct | | √### | | √### | √### | | | | |

* On advice from the Parliamentary Ethics Adviser

Members of Parliament (Register of Interests) Act 1978 (Vic) is under review. The final report is to be tabled by 31 December 2009.

** Under the provisions of the *Integrity Act 2009* (Qld) the Integrity Commissioner's role is expanded and the Lobbyist code and register are enshrined in legislation.

Covers members of the WA Legislative Assembly only

*** Covers ministers as well as government members of the House of Assembly. Two additional codes contained in the House of Assembly Standing Orders. There is no code covering members of the Legislative Council. The Integrity Commission, which should be operating by mid-2010, will review the codes. A statement on post-separation guidelines is included in the government members' code.

Independent Commission Against Corruption (NSW), Crime and Misconduct Commission (Qld), Corruption and Crime Commission (WA).

Selected Overseas Parliaments

United Kingdom

Ministerial code of conduct

Ministerial conduct is governed by a Ministerial Code which was first published as *Questions of Procedure for Ministers* in 1992. These guidelines had existed before 1992:

...as a confidential internal circular since at least the second world war and was well known unofficially in the media, academic texts and in Parliament.³⁰

The current [Ministerial Code](#) was issued on 3 July 2007 by the new Prime Minister, Gordon Brown, 'as it has become convention for the Code to be released at the beginning of a new administration and at a new parliament'. The previous Code issued by then Prime Minister, Tony Blair, in July 2005 consisted of a ministerial code of ethics and procedural guidance for ministers. The current Code has been described as having been:

... slimmed, by removing some of the 'housekeeping' aspects and by refocusing the Code on the principles of being a Minister.³¹

Since its 9th report in 2003 the [Committee on Standards in Public Life](#) has pushed for changes to the system for inquiries into allegations of breaches of the Ministerial Code.³²

On 16 March 2006 the then Prime Minister, Tony Blair, used his monthly press conference to announce the appointment of an [Independent Adviser on Ministers' Interests](#):

... we will look at establishing a new independent adviser on Ministers' interests that won't simply advise on the fact of individual cases, though the judgement in the end has to be for the Prime Minister, but also advise Ministers specifically on how to handle their interests in any potential conflict of interest.

The appointment of the first Independent Adviser on Ministers' Interests, Sir John Bourn, was announced on 23 March 2006. In January 2008 the current Prime Minister, Gordon

30. O Gay, 'The Ministerial Code', Standard Note, SN/PC/03750, House of Commons Library, December 2007, viewed 11 November 2009, <http://www.parliament.uk/commons/lib/research/briefings/snpc-03750.pdf> This publication also has information on the development of the ministerial code and aspects of the current code

31. *ibid.*

32. Note that the Committee on Standards in Public Life is an independent, non-departmental body of the Cabinet Office which reports to the Prime Minister with policy recommendations to ensure the highest standards of propriety in public life.

Brown, appointed Sir Philip Mawer, former Parliamentary Commissioner for Standards, as his Independent Adviser on Ministers' Interests.

On 28 February 2008 Sir Philip Mawer appeared before the House of Commons [Public Administration Select Committee](#) (PASC). In his [evidence](#) Sir Philip stated that he is employed as a consultant and described his role as having two aspects:

... one is to be available to ministers and to permanent secretaries to advise on avoiding conflicts between ministers' private interests on the one hand and their public responsibilities on the other, and the other aspect of the role is to investigate, when the Prime Minister, advised by the Cabinet Secretary, so decides, allegations against government ministers.

Mawer discussed the problems that can arise when alleged ministerial impropriety is revealed:

There is an important issue ... which I do think it is important for the Committee to reflect upon, and, indeed, I think it is one that has concerned you in the past, which is whether there can be for ministers something of the equivalent of the yellow card, as opposed to the red card. I think a particular problem in terms of penalties for ministers for alleged wrongdoing is that, whenever an allegation is made, the immediate cry from the press and, inevitably, from their political opponents is that ministers resign. If your question is implying that it would be in the real interests of politicians of all parties to find something short of the red card, short of resignation as a penalty in appropriate cases, then I support that notion. I think it is a matter which will have to be addressed as my role unfolds.

On breaches of the Code the current Code states:

1.3 It is not the role of the Cabinet secretary or other officials to enforce the Code. If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary feels that it warrants further investigation, he will refer the matter to the independent adviser on Ministers' interests.

1.5 Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct to parliament and the public. However, Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of standards of behaviour expected of a Minister and the consequences of a breach of those standards.

The Code also states (paragraph 7.5) that the Independent Adviser on Members' Interests (see below) will publish 'an annual statement covering relevant ministers' interests'.

On the issue of Ministers' private interests the Code states:

7.2 It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the independent adviser on Ministers' interests.

The Code outlines arrangements governing post-separation employment:

7.25 On leaving office, Ministers should seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office, apart from unpaid appointments in non-commercial organisations. Ministers will be expected to abide by the advice of the Committee.

The Code states (paragraph 1.6) that ‘Ministers must also comply at all times with the requirements which Parliament itself has laid down, including in particular the Codes of Conduct for their respective Houses’. For Ministers in the House of Commons these are outlined in the [Resolution](#) carried on 19 March 1997 and for Ministers in the House of Lords in the [Resolution](#) carried on 20 March 1997.

Ministers are required to report overseas visits costing in excess of £500 and gifts received over the value of £140. This information is publicly available on the Cabinet Office [website](#).³³

Report on the Independent Adviser on Ministers’ Interests

On 12 May 2008 the PASC tabled a report on the role of the Independent Adviser on Ministerial Interests titled ‘[Investigating the conduct of ministers](#)’. The report considered the suitability of the new mechanism for investigating alleged breaches of the Ministerial Code.

The PASC welcomed the creation of the post as a ‘significant step towards fair, defined accountability for ministerial conduct’ but was concerned that the adviser lacked the independence to perform the job effectively. In particular the Committee noted that the Adviser is not able to/does not have the power to initiate investigations into allegations of ministerial misconduct. At present the Adviser can only act if he is asked to investigate an issue by the Prime Minister.

The PASC identified the following areas of concern:

- the position is not secure as the adviser is appointed by the Prime Minister and can be dismissed by the PM at any time.
- the position is not financially or administratively independent as the adviser relies on the Cabinet Office for staff and funding.
- the position is not visible and does not have a dedicated website. The Committee noted that the position ‘will not increase public confidence if the public does not know that the post exists’.

The Committee acknowledged that not ‘every ministerial misdemeanour should be a sackable offence’ and backed calls for the introduction of a ‘yellow card’ equivalent.

33. See O. Gay, ‘The Ministerial Code’, op. cit.

Members' and Lords' code of conduct

In 1995 the [first report](#) of the Committee on Standards in Public Life (the Nolan Committee) recommended that the House of Commons introduce a new code of conduct for members; an improved Register of Members' Interests; an independent [Parliamentary Commissioner for Standards](#); and a strengthened Committee on Standards and Privileges.³⁴

The [Code of Conduct together with the Guide to the Rules Relating to the Conduct of Members](#) was adopted by the House of Commons on 24 July 1996. It included the seven general principles of conduct underpinning public life which were advocated by the Nolan Committee: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The Parliamentary Commissioner for Standards 2004–05 [Annual Report](#) reported on the review of the code of conduct. The Commissioner stated that the recommended changes:

... give the Code greater prominence and clarity as well as strengthening it along lines previously recommended by the Committee on Standards in Public Life

The Committee on Standards and Privileges advised the House of Commons to accept all the recommended changes to the Code. The House approved the most recent version of the [Code of Conduct together with the Guide to the Rules Relating to the Conduct of Members](#) on 9 February 2009. It was reissued on 22 June 2009.

The [seventh report](#) (November 2000) of the Committee on Standards in Public Life (the Neill Committee) recommended that the House of Lords adopt a code of conduct. The [House of Lords Code of Conduct](#) came into effect on 31 March 2002.

Register of interests

Under a Resolution agreed by the House of Commons on 22nd May 1974, and under the Members' Code of Conduct, Members are required to register their pecuniary interests in a Register of Members' Interests. The duty of compiling the Register rests with the [Parliamentary Commissioner for Standards](#) whose functions are set out in a Standing Order of the House of Commons and include those formerly exercised by the Registrar of Members' Interests. The first [annual report](#) (2002–03) of the Parliamentary Commissioner for Standards outlines the history of the position and its role.³⁵

34. The Office of the Parliamentary Commissioner for Standards was set up by the House of Commons. The Commissioner is appointed by Resolution of the House of Commons and is an officer of the House. The Office of the Parliamentary Commissioner for Standards is wholly funded by the House of Commons.

35. Note that the administration of the registration of members' interests will change when the *Parliamentary Standards Act 2009* comes into operation.

The Commissioner is also responsible for maintaining and monitoring the [Register of Interests of Members' Secretaries and Research Assistants](#) and the [Register of Journalists' Interests](#).

The [Register of Lords' Interests](#) is compiled by the Lords Registrar under the authority of the Clerk of the Parliaments.

Entries on the [Registers of Members' Interests](#) and Lords' Interests are both available in electronic format.

Lobbying industry inquiry

In June 2007 the PASC [announced](#) the first inquiry into the lobbying industry since 1991. The PASC's [Issues and Questions Paper](#) stated that the inquiry was concerned with 'the transparency of the lobbying industry, the effectiveness of recent attempts at self regulation, and whether the rules for those in Parliament and Government should be changed'.

The Committee's report, '[Lobbying: Access and influence in Whitehall](#),' was published on 5 January 2009. The Committee identified five key principles for a register of lobbying activity:

- a) it should be mandatory, in order to ensure as complete as possible an overview of activity.
- b) it should cover all those outside the public sector involved in accessing and influencing public-sector decision makers, with exceptions in only a very limited set of circumstances.
- c) it should be managed and enforced by a body independent of both Government and lobbyists.
- d) it should include only information of genuine potential value to the general public, to others who might wish to lobby government, and to decision makers themselves.
- e) it should include so far as possible information which is relatively straightforward to provide—ideally, information which would be collected for other purposes in any case.

The Committee also proposed that:

- ... the ethics of the activities of lobbyists should be overseen and regulated by a rigorous and effective single body with robust input from outside the industry.
- ... there should be a register of lobbying activity provided for in statute, independently managed and enforced, to include information which should largely be in their hands already.

The Committee also called for the [Advisory Committee on Business Appointments](#) (ACoBA)³⁶:

... to be strengthened and its membership refreshed, bringing in people who are more representative of society at large and better able to commit time to this work, and we call for consistent rules to be strictly applied so that former Ministers and other public servants are prevented for an extended period from using contacts built up in public office to further their own and others' private interests.³⁷

The [Government's response](#) to the report was tabled on 22 October 2009. The Committee noted:

It is an established convention that the Government should normally respond to select committee reports within two months. The Government response was received ... more than ten months after publication of our Report The Government has apologised to the Committee for its delay in responding to the report.

The Government did not accept the need for a statutory register but agreed:

... that the industry should be allowed the opportunity to develop a system of voluntary self-regulation which commands the confidence of those in and outside the industry. In doing so, the Government will keep the issue under review to ensure that progress is made in developing an effective system of voluntary self-regulation.

The Government did support the Committee's recommendations for a register of lobbyists and agreed that, in future, departments 'would publish on-line on a quarterly basis information about ministerial meetings with interest groups. This will be effective from 1 October 2009.'³⁸

Parliamentary Standards Act 2009

In response to the 2009 revelations about MPs' use of the expenses and allowances scheme, the Government introduced the Parliamentary Standards Bill 2009. The Bill sought to establish an [Independent Parliamentary Standards Authority](#) (IPSA) and a Commissioner for Parliamentary Investigations. The [Parliamentary Standards Act 2009](#) received assent on 21 July 2009. The Act states '[n]othing in this Act shall affect the House of Lords'. Section 8 of

36. The Advisory Committee on Business Appointments is an independent body which provides advice to the Prime Minister, the Foreign Secretary, or other Ministers if requested, on applications from the most senior Crown servants who wish to take up outside appointments within 2 years of leaving Crown service.

37. More detail on the Committee's proposals is available in L. Maer, 'Lobbying', *Standard Note*, SN/PC/04633, House of Commons Library, London, 12 January 2009, viewed 20 March 2009, <http://www.parliament.uk/commons/lib/research/briefings/snpc-04633.pdf>

38. Details of the Government's response are available in L. Maer, 'Lobbying'[updated 29 October 2009].

the Act states that the IPSA must prepare a code of conduct relating to financial interests of members of the House of Commons. IPSA will also assume responsibility for publishing the Register of Members' Interests. The Commissioner for Parliamentary Investigations will investigate failure to register financial interests.

A House of Commons Library [Standard Note](#) described the roles of the non statutory Parliamentary Commissioner for Standards and the statutory Commissioner for Parliamentary Investigations and the new system of regulation following the *Parliamentary Standards Act 2009*.³⁹ The publication notes that:

Apart from transitional arrangements, the provisions [of the Act] are not yet in force, and are commenced by order. ... It is fair to say that the rapid policy development which happened through parliamentary scrutiny of the legislation has led to a number of loose ends ...

... IPSA was not given a statutory function of advising Members on registration of individual financial matters, a role currently carried out by the Registrar. This may be undertaken by the statutory Commissioner, but there is no specific legislative provision for this. Nor is it entirely clear at which point the statutory Commissioner would publish his investigation findings. Currently, the findings of the non statutory Commissioner are published in an annex to the report from the Committee on Standards and Privileges. Finally on implementation of the legislation, there will initially be two codes of conduct for Members; one on non financial interests and one on financial interests, although some method of common working between the two Commissioners is likely to be devised.

It should be noted that the [Committee on Standards in Public Life](#), which reported on 4 November 2009 on MPs' expenses and allowances, recommended:

Recommendation 42

Responsibility for maintaining the register of financial interests and the associated code of conduct should be removed from the independent regular and returned to the House of Commons.

Recommendation 50

The Parliamentary Commissioner for Standards should be able to conduct investigations without waiting for a formal complaint and should include in any report to the Standards and Privileges Committee an indication of the seriousness of any breaches in the rules or code of conduct which have occurred. The Commissioner's reports should continue to be published.

39. O Gay, 'In Brief—Oversight of members of parliament and the *Parliamentary Standards Act 2009*', *Standard Note*, SN/PC/05139, House of Commons Library, London, 29 July 2009, viewed 11 November 2009, <http://www.parliament.uk/commons/lib/research/briefings/snpc-05139.pdf>

Canada

Ministerial code of conduct

The Canadian Privy Council Office publishes [Accountable government: a guide for ministers and ministers of state - 2008](#) which 'sets out core principles regarding the role and responsibilities of Ministers in Canada's responsible parliamentary government'. The Guide operates in conjunction with the codes of conduct contained in the [Federal Accountability Act 2006](#). These codes, now enshrined in legislation, are the Conflict of Interest Code for Public Office Holders and the Post-Employment Code for Public Office Holders. They cover ministers' behaviour in the areas of conflict of interest, post-separation employment and lobbying.⁴⁰

Members code of conduct

Members are subject to the [Conflict of Interest Code for Members of the House of Commons](#) (MP Code).

The MP Code is administered by the Conflict of Interest and Ethics Commissioner under the direction of the Standing Committee on Procedure and House Affairs. The code has been in operation since 2004 and was most recently amended in June 2007. It is an appendix to the Standing Orders of the House of Commons.

Conflict of Interest and Ethics Commissioner

The *Federal Accountability Act 2006* created the [Office of the Conflict of Interest and Ethics Commissioner](#) (formerly the Office of the Ethics Commissioner) and, in section 2, contains the text of the [Conflict of Interest Act 2006](#).

The [Conflict of Interest and Ethics Commissioner](#) is an Officer of Parliament whose mandate is set out in the *Parliament of Canada Act*. The commissioner's role includes administering the MP Code and the *Conflict of Interest Act 2006* for public office holders and providing confidential advice to public office holders and members of parliament about how to comply with the Act and the MP Code respectively. The commissioner has a mandate to provide confidential advice to the Prime Minister about conflict of interest and ethics issues and may conduct an inquiry into breaches of the MP Code. The commissioner may also examine whether a present or former public office holder has breached the *Conflict of Interest Act 2006*.

40. The amendments made by the Federal Accountability Act 2006 are explained in more detail in Parliamentary Information and Research Service, 'Bill C2: the Federal Accountability Act', *Legislative summary*, Library of Parliament, Canada, viewed 23 November 2009, <http://www2.parl.gc.ca/Content/LOP/LegislativeSummaries/39/1/c2-e.pdf>

The commissioner's website defines public office holders as ministers, parliamentary secretaries, and full and part-time ministerial staff and advisors, Governor in Council and ministerial appointees (deputy ministers, heads of agencies and Crown corporations, members of federal boards and tribunals).

The Ethics Commissioner is required to submit three [reports](#) each year to Parliament on the administration of the MP Code and the *Conflict of Interest Act* and sponsored travel by Members of the House of Commons.

Post-separation employment

The [Federal Accountability Act 2006](#) makes provision for strict post-separation employment rules for public office holders and for those public office holders wanting to work as lobbyists (for information on the latter see the section below on the *Lobbying Act 1985*).

Public office holders are prohibited from the following:

35. (1) No former reporting public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

(2) No former reporting public office holder shall make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

For former public office holders except ministers of the Crown and ministers of state the prohibitions set out in subsections 35(1) and (2) apply for the period of one year following the public office holder's last day in office. The period for ministers is two years from the last day in office.⁴¹

41. The title Minister of State was created under the *Ministries and Ministers of State Act*, (assented to 10 June 1971). While no specific duties are given to a Minister of State, he/she can be assigned by the Governor in Council to assist any minister or ministers having responsibilities for any department or other portion of the public service. See Parliament of Canada website, viewed 23 November, <http://www2.parl.gc.ca/Parlinfo/Compilations/FederalGovernment/StateMinister.aspx?Language=E>

Senate ethics officer

The [Office of the Senate Ethics Officer](#) was created in 2004 by an amendment to the *Parliament of Canada Act*.⁴²

The Senate's first Ethics Officer was appointed in February 2005 and assumed responsibilities in April 2005. The Senate approved the [Conflict of Interest Code](#) on 18 May 2005.

The Senate Ethics Officer is an officer of the Senate and operates independently of government. Under the *Parliament of Canada Act* the Ethics Officer carries out his/her duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.

The role of the Ethics Officer includes providing advice and recommendations to senators on the standards and obligations set under the Conflict of Interest Code, preparing annual public disclosure statements and undertaking inquiries and investigations.

Lobbying Act 1985

Canada has had a lobbyist registration system since the commencement of the *Lobbyists Registration Act* in 1989. Amendments to this Act were contained in the *Federal Accountability Act 2006* which changed the name of the act to the [Lobbying Act 1985](#). The amendments, which became law on 2 July 2008, aim to ensure that Canadians know who is communicating with the government and on what subject.

The introduction to the Lobbyists Code of Conduct, which is required to be developed by the Act, indicates that the Act is based on four key principles:

Free and open access to government is an important matter of public interest

Lobbying public office holders is a legitimate activity

It is desirable that public office holders and the general public be able to know who is attempting to influence government; and

The system of registration of paid lobbyists should not impede free and open access to government.

The *Lobbying Act 1985* broadly defines lobbying as any communication (written or oral) by an individual who is paid to communicate with the federal government about federal laws, policies, programs and possibly obtaining government contracts. Even public policy

42. See *An Act to amend the Parliament of Canada Act (Senate Ethics Officer and Ethics Commissioner) and other Acts in consequence*, viewed 23 November 2009, <http://sen.parl.gc.ca/seo-cse/eng/Legis-e.html>

advocacy and government consultations may be considered as lobbying activities. The [Lobbyists' Code of Conduct](#) is published in the Canada Gazette but is not a statutory instrument.

The Act increases the transparency of lobbying activities involving federal officials and strengthens the oversight and enforcement of lobbying rules. It establishes a new registration process for lobbyists and a new category of senior public officials called Designated Public Office Holders (DPOH).⁴³

The position of Registrar of Lobbyists has been replaced by the new position of [Commissioner of Lobbying](#) which was established by an amendment to the Lobbying Act in 2006.⁴⁴

The Commissioner is an independent officer of the Parliament with investigative powers and a mandate to enforce the Lobbying Act and the Lobbyists' Code of conduct.

Under the *Lobbying Act 1985* DPOHs are prohibited from lobbying the federal government for five years after leaving their positions but the Commissioner has the authority to exempt certain individuals from this ban, for example students employed in a minister's office.

The five-year post-employment prohibition does not stop former DPOHs from working for non-profit organizations as long as their duties don't require them to lobby the federal government. Former DPOHs may also work for corporations, if lobbying the federal government is not one of their main duties.

Lobbyists are required to review their activities at the end of each month and, if certain defined conditions exist, file a return. Although there may be months when lobbyists do not file a return six months is the longest interval that can pass without a return being filed. Lobbyists are not permitted to receive any payment that is in whole or in part contingent on the outcome of their lobbying.

There are strong penalties for non-compliance with the *Lobbying Act* with monetary penalties double those in the *Lobbyists Registration Act*. Section 14(1) states that every individual who fails to file a return as required under certain subsections of the Act or makes a false or misleading statement in those returns, or in any document submitted to the Commissioner, is guilty of an offence and liable:

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43. Designated Public Office Holders include ministers, ministerial staff, deputy ministers and chief executives of departments, officials in departments at the rank of associate deputy minister or assistant deputy minister, as well as those occupying positions of comparable rank, and other positions designated by regulation such as the Chief of the Defence Staff.
 44. The *Lobbyist Registration Act 1985* was amended by the *Federal Accountability Act 2006* and came into force in 2008.

(a) on summary conviction, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both; and

(b) on proceedings by way of indictment, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding two years, or to both.

Section 14(2) states that:

Every individual who contravenes any provision of this Act — [other than subsections referred to in section 14(1)] — or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.

The Act extends from two to 10 years the period during which possible violations of the Act and the Code can be investigated and prosecution initiated.

The [operation](#) of the *Lobbying Act* and Lobbyists' Code of Conduct is outlined on the website of the Commissioner of Lobbying.

United States

Members' code of conduct

Under the [US Constitution](#), (Article 1, Section 5) the Senate and the House of Representatives are responsible for establishing rules to govern the conduct of their members, as well as judging members alleged to have violated those rules. The [Senate Select Committee on Ethics](#) publishes an [Overview of the Senate Code of Conduct and Related Laws](#) (Senate Rules 34–43) and the [Senate Ethics Manual](#).

The House of Representatives [Committee on Standards of Official Conduct](#) has jurisdiction over the rules and statutes governing the conduct of Members while performing their official duties. The Committee publishes [Highlights of House Ethics Rules](#) and the [House Ethics Manual](#). The [Code of Official Conduct](#) (Rule XX111) is found in the House of Representative Rules.

Office of Congressional Ethics

On 11 March 2008 the House of Representatives voted to establish an independent [Office of Congressional Ethics](#). The Board established to govern the Office consists of three members appointed by the Speaker and three appointed by the minority leader. Current members of Congress, federal employees and lobbyists are not eligible for appointment. The Office has the authority to investigate 'any alleged violation by a member, officer or employee of the House [of Representatives] of any law, rule, regulation or other standard of conduct'. The Office does not have the power to investigate the conduct of senators.

The [Ethics in Government Act 1978](#) requires members, officers, and certain employees of the US Congress and related offices to file annual Financial Disclosure Statements. The statements include information on: income from sources other than current US Government employment; gifts; property and liabilities.

The post-separation employment of heads of executive agencies (appointed by the President) and other government employees is governed by [Title 18 Section 207](#) of the US Code. The [Office of Government Ethics](#), created by the *Ethics in Government Act 1978*, provides advice on compliance with this code. This Office is the supervising ethics office for the executive branch of government.

Lobbyist legislation and post-separation employment

Lobbyist legislation in the USA has existed in some form since the 1930s. The *Lobbying Act 1946* sought to ‘disclose to the legislators and the public the identity of the principals, representatives and the means involved, to make the free play of legislative intent transparent’.⁴⁵ As a result of mounting public concern over the influence of lobbyists, including the conviction for fraud in March 2006 of former prominent lobbyist Jack Abramoff, the Congress introduced bills aimed at making the relationship between lobbyists and Members of Congress more transparent.

On 14 September 2007 the [Honest Leadership and Open Government Act 2007](#) became law. This Act amended a number of previous statutes including the *Lobbying and Disclosure Act 1995* and the *Ethics in Government Act 1978*. The Act also amended House and Senate ethics rules on gifts, travel and contacts with lobbyists. The [main provisions](#) of the legislation include:

- an increase from one year to two years before senators can lobby Congress including an officer or employee of either chamber or employee of any other legislative office.
- senior executive personnel (including Cabinet secretaries) are prohibited from lobbying the department or agency in which they worked for two years after leaving their positions
- the ban on Members of the House of Representatives, elected officers of the House, senior Senate staff and Senate officers from lobbying after leaving their positions is still one year
- lobbyists are prevented from providing gifts or travel to members of Congress
- mandatory lobbyists’ disclosures must be filed electronically each quarter. The disclosures will be available on a publicly searchable internet database

45. Quoted in G Griffith, op. cit., p. 10.

- the civil penalty for failure to comply with requirements of the Lobby Disclosure Act has increased from \$50,000 to \$200,000 and a criminal penalty of up to five years is imposed for knowing and corrupt failure to comply with the Act and
- members of Congress and their staff are prohibited from influencing hiring decisions of any private organisation solely on the basis of partisan political affiliation. The penalty for violating this provision is a fine and/or imprisonment of up to 15 years.⁴⁶

On 21 January 2009 President Obama signed an Executive Order titled [Ethics Commitments by Executive Branch Personnel](#). This Order requires all full-time, political staff appointed on or after 20 January 2009 to sign an ethics pledge. One of the main features of the Order is the ban that prevents Executive Branch employees who leave government to engage in lobbying from doing so for the remainder of the Obama Administration.

On 22 January 2009 the Office of Government Ethics published a [memorandum](#) summarising the main requirements of the Executive Order. Section 1 of the Order takes the form of an Ethics Pledge to be signed by ‘every appointee in every executive agency appointed on or after January 20, 2009’. On signing, appointees are contractually committed to the obligations listed in the Pledge. The following revolving door bans are of particular interest:

2. Revolving Door Ban. All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. Revolving Door Ban. Lobbyists Entering Government. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

- (a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment;
- (b) participate in the specific issue area in which that particular matter falls; or
- (c) seek or accept employment with any executive agency that I lobbied within the 2 years before the date of my appointment.

4. Revolving Door Ban. Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United

46. Further information on this legislation is available in J Maskell, ‘Lobbying law and ethics rules changes in the 110th Congress’, Congressional Research Service, 7 September 2007, viewed 11 November, http://assets.opencrs.com/rpts/RL34166_20070918.pdf, and G Griffith, op. cit.

States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.

5. Revolving Door Ban. Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non career Senior Executive Service appointee for the remainder of the Administration.

New Zealand

Ministerial code of conduct

Information on the conduct of ministers is contained in the New Zealand Government's Cabinet Manual in the section titled [Conduct, public duty and private interests of ministers and parliamentary under-secretaries](#) (paragraphs 2.52-2.96). On the question of determining acceptable conduct paragraph 2.53 states that '[u]ltimately, Ministers are accountable to the Prime Minister for their behaviour'. The manual includes guidance on conflict of interest and at paragraph 2.57 notes that '[m]inisters are responsible for ensuring that no conflict exists or appears to exist between their personal interests and their public duty'.

Members' code of conduct

There is currently no code of conduct covering members of parliament. On 12 July 2007 the Speaker of the House of Representatives [addressed](#) the 38th Presiding Officers and Clerks Conference and referred to an announcement in June 2007 by four minor parties—the Green Party, Maori Party, United Future and ACT New Zealand. The representatives of these parties had announced their intention to sign a Code of Conduct. The code was 'voluntary but the intention was that if enough Members signed, then the Code of Conduct could be adopted by the Parliament and included in the Standing Orders.' The Speaker noted 'I have agreed to be the repository of the minor parties' Code but I have no authority to enforce it' and that it was unlikely that the Code would attract the support of the major parties.

In August 2008 the Speaker noted that the minor parties' proposed code of conduct was being considered by the Standing Orders Committee. The Committee reported on 27 August 2008. The Committee received a number of submissions on the need for a code of conduct covering members of parliament. On this issue the [report](#) stated:

We have asked members whether they would support a voluntary code in the form of guidelines set out in the report of the Standing Orders Committee, but there is insufficient support for the development of such a code. Members' behaviour in the Chamber is covered by Standing Orders and Speakers' rulings and is a matter for the authority and judgment of the Speaker and other presiding officers. If members choose to make further public statements or commitments as to their behaviour, that is their right.

We note that a number of Parliaments in other countries have adopted codes or guidelines to help members make judgments about conflicts of interest, and we have considered such examples. Not all of the matters covered in overseas codes would be necessary or

appropriate in the New Zealand environment. The registration of members' pecuniary interests is the backbone of almost all parliamentary codes of conduct. The New Zealand Parliament already has an effective regime for the disclosure of members' interests.

Register of interests

All members of parliament are required to disclose certain assets and interests in an annual *Register of Pecuniary Interests of Members of Parliament*. This register is administered by the Registrar of Pecuniary Interests of Members of Parliament who publishes an [annual summary of registered interests](#). The pecuniary interests requirements are set out in appendix B of the *Standing Orders of the House of Representatives*. This appendix describes the Registrar as 'the Deputy Clerk or a person appointed by the Clerk, with the agreement of the Speaker, to act as registrar'.

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