



Codes of conduct in Australian and selected overseas parliaments

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Introduction

In 2009 the Canadian Senate Ethics Officer, Jean T. Fournier, spoke about parliamentary ethics at an Australian conference. Although much has been achieved in the first decade of the 21st century, he believes members of parliament still need to do more to regulate their behaviour:

Much work deserving of credit has been done by parliamentarians around the world in establishing ethics regimes in recent years. Much more is required, however, to raise standards of behaviour to acceptable levels. We run the risk of self-satisfaction and complacency. Strong and timely ethical leadership is required from parliamentarians in all countries.

The responsibility to act is not with the executive, the judiciary or some other body. It clearly lies with parliamentarians. As parliamentarians “own” their ethics rules, so to speak, it is for them to demonstrate leadership and to strengthen existing legislative ethics regimes.¹

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.²

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).³

Six Australian parliaments (New South Wales, Victoria, Queensland, Tasmania, 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 Wales,

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1. J Fournier, ‘Strengthening parliamentary ethics: a Canadian perspective’, presentation to *Australian public sector anti-corruption conference*, Brisbane, 29 July 2009, p. 4, viewed 17 May 2012, <http://sen.parl.gc.ca/seocse/PDF/BrisbaneSpeech-e.pdf>
 2. 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 15 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2FXHB05%22>
 3. 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.

Queensland, Tasmania and Australian Capital Territory) have ethics or standards mechanisms in place. 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, the United States and New Zealand.

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 15 May 2012, [http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/4A76A0D437ED9926CA2574A500839C69/\\$File/The%20regulation%20of%20lobbying%20No%205-2008%20and%20index.pdf](http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/4A76A0D437ED9926CA2574A500839C69/$File/The%20regulation%20of%20lobbying%20No%205-2008%20and%20index.pdf). See also P Purser, *Lobbying regimes, an outline*, Research paper 12/04, New Zealand parliamentary Library, April 2012, viewed 21 May 2012, <http://www.parliament.nz/NR/rdonlyres/643E3E97-8E81-4B08-9840-D3E880EE1555/217385/RP1204Lobbyingregimes1.pdf> For a comparison of Australian and overseas lobbying codes of conduct see J Hogan, G Murphy and R Chari, 'Regulating the influence game in Australia', *Australian Journal of Politics and History*, Vol. 57, No. 1, 2011, pp. 102–113.

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		√##	√##	√##	√##		√##		

+ House of Representatives Privileges and Members' Interests Committee reported on a draft Code of Conduct in November 2011. The Senate Standing Committee of Senators' Interests is due to report by 27 November 2012. The National Integrity Commissioner Bill 2010 makes provision for a Parliamentary Integrity Commissioner.

++Ministers and government members are also subject to a Fundraising Code of Conduct.

* On advice from the Parliamentary Ethics Adviser.

** 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. Integrity (Lobbyists) Bill (WA) introduced Nov 2011

*** There is no code covering members of the Legislative Council

Covers members of the WA Legislative Assembly only.

Independent Commission Against Corruption (NSW), Crime and Misconduct Commission (Qld), Corruption and Crime Commission (WA), Integrity Commission (Tas), Independent Broad-based Anti-corruption Commission (Vic), Independent Commissioner Against Corruption Bill (SA) introduced May 2012 does not cover members of parliament.

Australian parliaments

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*.⁵

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.⁶

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 then Prime Minister, Kevin Rudd, released [Standards of Ministerial Ethics](#) which replaced chapter 5 of the Howard Code. 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
- 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'⁷, as Cabinet signing off 'on a tough new ministerial code of conduct that places ministers under unprecedented scrutiny'⁸ and the rules, in principle, as 'an admirable improvement, in key areas, on those introduced with similar fanfare by John Howard in 1996'.⁹ There was a suggestion, though, that the former 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.¹⁰

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

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5. This Code was first issued in 1996. During the early years of the Howard government a number of ministers did not meet these standards and five resigned from their ministerial positions. In 1998 John Howard issued a revised Code which saw fewer ministers forced to resign.
 6. J Uhr, 'Howard's ministerial code', *Res Publica*, Vol. 7, No. 1, 1998, p. 9.
 7. K Murphy and A Stafford, 'Code sets rules for Rudd team', *The Age*, 7 December 2007.
 8. P Karvelas, 'Rudd lifts the bar on ministerial propriety', *The Australian*, 7 December 2007.
 9. Editorial, 'Rudd's code is a promising start', *The Sydney Morning Herald*, 10 December 2007.
 10. Editorial, 'Ethics: good policy should go further', *The Canberra Times*, 7 December 2007.

Government 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.

During his period as Prime Minister, Kevin Rudd accepted one ministerial resignation—that of Defence Minister, Joel Fitzgibbon, on 4 June 2009. Mr Rudd said at a press conference on the same day:

... 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.¹¹

The current Standards of Ministerial Ethics is dated September 2010 and, to date, Prime Minister, Julia Gillard, has not had any ministerial resignations.

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.

11. K Rudd (Prime Minister), *Press conference—Parliament House*, media release, 4 June 2009, viewed 20 February 2012, <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.

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).

Members of parliament code of conduct

Discussion on the introduction of a code of conduct covering senators and members has continued for over 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 conduct should exist'.¹² 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.¹³

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.¹⁴

12. Joint Committee on Pecuniary Interests of Members of Parliament, *Report on declaration of interests*, Commonwealth of Australia, Canberra, 30 September 1975, p. 12

13. Ibid.

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 '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

14. 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.

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.

By the time the House of Representatives was dissolved on 19 July 2010 in preparation for the federal election on 21 August 2010, the Committee had not reported back to the House on a code of conduct.

In September 2010 three independent members of parliament and the Australian Greens agreed to support a minority Labor Government. The introduction of a code of conduct covering senators and members was part of [agreements](#) between the Australian Labor Party (ALP) and the Independents Tony Windsor, (New England, NSW) and Rob Oakeshott, (Lyne, NSW) and Andrew Wilkie (Denison, Tas). The agreement between the ALP and the Australian Greens also referred to a 'parliamentary code of conduct'.

On 23 November 2010 the Leader of the House, Anthony Albanese [moved](#) that:

- (1) the Privileges and Members' Interests Committee (the Committee):
 - (a) develop a draft Code of Conduct for Members of Parliament; and
 - (b) report back to the House by the end of the Autumn 2011 sittings [extended to end of the Budget sittings, 7 July 2011];
- (2) in considering the matters in paragraph 1 above, the Committee give consideration to:
 - (a) the operation of codes of conduct in other parliaments;
 - (b) who could make a complaint in relation to breaches of a code and how those complaints might be considered;
 - (c) the role of the proposed Parliamentary Integrity Commissioner in upholding a code; and
 - (d) how a code might be enforced and what sanctions could be available to the Parliament; and
- (3) the Committee consult with the equivalent committee in the Senate on the text of a Code of Conduct with the aim of developing a uniform code, together with uniform processes for its implementation for Members and Senators.

Mr Albanese said:

I am pleased to be able to move this motion today. It seeks to initiate a process which will lead to the implementation of one of the commitments contained in the government's agreements with the Independents and reflected in the agreements with the Greens. All these agreements make reference to the establishment of a parliamentary code of conduct. We have consulted with the parties to those agreements and with the Presiding Officers on the most appropriate way to move this initiative forward. This motion reflects the outcome of those consultations.

It is proposed that the Privileges and Members' Interests Committee develop a draft code of conduct in consultation with the equivalent committee in the Senate with the aim of developing a uniform code of conduct for members and senators. It is the government's hope and expectation that the work of these committees and the eventual adoption by parliament of a code of conduct for members and senators will make a positive contribution to parliamentary standards and the standing of parliament in the general community. I commend the resolution to the House and thank the Manager of Opposition Business for his cooperation.¹⁵

The Committee's discussion paper was tabled on 27 November 2011.¹⁶ The Committee considered a range of issues including arguments for and against a code, the nature of a code of conduct, the complaints procedure and the role of the House of Representatives in relation to a code. The Committee made observations rather than recommendations and included a draft code for discussion.¹⁷ In her tabling speech the Committee chair, Ms Anna Burke, said:

The only two matters I would refer to relate to the preferred view of the committee if a code of conduct is to proceed. First, the committee considers that it would be preferable for any code of conduct to be broad in nature and to reflect key principles and values as a guide to conduct, rather than being a detailed, prescriptive code ... Second, the committee considers that it would be preferable for any code of conduct to be adopted by resolution of the House rather than by statute. We do strongly recommend this if it were to come to pass ... A statutory code would open up the interpretation of members' conduct to be subject to scrutiny in the courts. The committee considers it essential that the House itself retains control over its own affairs, including the conduct of its members.¹⁸

A parallel inquiry is being conducted by the [Senate Standing Committee of Senators' Interests](#). This Committee is due to report by 27 November 2012.

Although there is, as yet, no formal code of conduct, the conduct of senators and 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.

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15. A Albanese, House of Representatives, *Debates*, 23 November 2010, p. 13, viewed 6 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-11-23%2F0045%22>
 16. House of Representatives Standing Committee of Privileges and Members' Interests, *Draft code of conduct for members of parliament*, November 2011, viewed 1 May 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pmi/cocreport.htm
 17. *Ibid.*, see Appendix 5.
 18. A Burke, Privileges and Members' Interests Committee report, House of Representatives, debates, 23 November 2011, p. 13639, viewed 1 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F14965034-cdb8-4a26-98aa-26c862a1cd0e%2F0214%22>

Parliamentary Integrity Commissioner

The agreements between the ALP and the three Independents and the ALP and the Australian Greens included the commitment to establish a Parliamentary Integrity Commissioner. The agreements generally stated that the Parliamentary Integrity Commissioner would be established within 12 months and supervised by the Privileges Committees from both houses and that the role of the Commissioner was to:

- (a) provide advice, administration and reporting on parliamentary entitlements to report to the Parliament;
- (b) investigate and make recommendations to the privileges Committees on individual investigations, to provide advice to parliamentarians on ethical issues; and
- (c) uphold the Parliamentary code of Conduct and to control and maintain the Government's lobbyists register.¹⁹

On 30 September 2010 the then Leader of the Australian Greens, Senator Bob Brown, introduced the National Integrity Commissioner Bill 2010. In his second reading speech on the same day, Senator Brown said that the Bill:

creates a national integrity and anti-corruption commission through the establishment of the National Office of Integrity Commissioner, comprising three elements – the national Integrity Commission, the existing Australian Commission for Law Enforcement Integrity (ACLEI) and a new Office of the Independent Parliamentary Advisor. The National Integrity Commission is established as an independent statutory agency.

establishes the role of the Independent Parliamentary Advisor with the purpose of preventing the inadvertent misconduct and impropriety by parliamentarians, thereby promoting informed and ethical conduct.²⁰

Debate on the Bill was adjourned on 30 September 2010.

On 17 May 2012, the new Leader of the Australian Greens, Senator Christine Milne, stated that the party would:

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19. See Australian Labor Party and the Independent Members Rob Oakeshott and Tony Windsor, Agreement, 7 September 2010, Annex A p. 8, viewed 20 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F218795%22> Australian Labor Party and the Australian Greens, Agreement, 1 September 2010, p. 3, viewed 20 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F218794%22> Australian Labor Party and the Independent Member Andrew Wilkie, Agreement, 2 September 2010, p. 3, viewed 20 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F176826%22>
 20. B Brown, 'Second reading speech: National Integrity Commissioner Bill 2010', Senate, *Debates*, 30 September 2010, p. 380, viewed 6 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2010-09-30%2F0048%22>

Move to refer their bill to establish a National Integrity Commissioner to the Senate Legal and Constitutional Affairs Legislation Committee and simultaneously introduce it into the House of Representatives ...

The bill as drafted needs work to appropriately balance effectiveness with the proper protections from coercive powers and other matters of procedural fairness. That's why we are seeking to refer this to a Senate Inquiry so we can get expert advice on how best to find that balance.²¹

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'²². 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 registrable interests is already published'.²³

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.

In November 2009 the House of Representatives Standing Committee of Privileges and Members' Interests presented the report *Publication of details of Members' interests on the Australian Parliament House website* which recommended:

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21. C Milne, *Time is ripe for a National Integrity Commissioner*, media release, 17 May 2012, viewed 23 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1640805%22>
 22. L Bowen, 'Motion: Declaration and registration of members' interests', House of Representatives, *Debates*, 8 October 1984, p. 1876, viewed 20 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F1984-10-08%2F0185%22>
 23. K Denman, 'Senators' Interests Committee proposed variation', Senate, *Debates*, 11 September 2003, p. 15021, viewed 6 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2003-09-11%2F0139%22>

At the commencement of each Parliament, each Member's initial interest return would be scanned, any protective security features would be added ... and, immediately after the returns had been tabled in the House, the full set would be posted to the APH website. The initial comprehensive statements by Members would thus be available on the same day as they were presented to the House.²⁴

On 24 June 2010 the Committee's report *Publication of the Register of Members' Interests on the Australian Parliament website* proposed the following changes to enable on-line access to the Register:

- at the commencement of each Parliament (commencing with the 43rd Parliament), each Member's initial interest return will be scanned and immediately after the returns have been tabled in the House, the full set will be posted to the AP website in a pdf version. The initial comprehensive statements by Members will thus be available on the same day as they were presented to the House;
- notices of alterations will be copied and scanned and then be posted;
- the updates of alterations will occur at least weekly and the details of alterations will be posted with the initial declarations for each Member enabling easier checking of individual Member's declarations; and
- the main point of access on the AP website will be a new item – Statements of Members' interests.²⁵

The Committee of Senators' Interests adopted a similar approach in publishing the details of Senators' interests in the 43rd Parliament.

Members' interest statements for the 43rd Parliament are available on the House of Representatives Standing Committee of Privileges and Members' Interests [website](#) and the Senate Standing Committee of senators' Interests [website](#).

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

24. House of Representatives Standing Committee of Privileges and Members' Interests, *Publication of details of members' interests on the Australian Parliament House website*, November 2009, p. 3, viewed 15 May 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pmi/reports.htm

25. House of Representatives Standing Committee of Privileges and Members' Interests, *Publication of the register of members' interests on the Australian parliament website*, June 2010, p. 2, viewed 15 May 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pmi/reports.htm

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.²⁶

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:

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.²⁷

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.²⁸

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'.²⁹

26. See Australia, 'Report on the Australian Security Intelligence Organization, December 1984', Royal Commission on Australia's security and intelligence agencies, AGPS, Canberra, 1984.

27. J Howard, *A guide on key elements of ministerial responsibility*, Canberra, 1998, revised ed., p. 12.

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

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'.³⁰

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.

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.³¹

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 2009.³²

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.

29. J Faulkner (Special Minister of State), *Register of lobbyists*, media release, 2 April 2008, viewed 20 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FG1ZQ6%22>

30. J Faulkner, 'Ministerial statement: Lobbying code of conduct and register of lobbyists', Senate, *Debates*, 13 May 2008, p. 1510, viewed 19 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2008-05-13%2F0056%22>

31. Senate Standing Committee on Finance and Public Administration, *Knock, Knock ... who's there? The lobbying code of conduct*, The Senate, Canberra, September 2008, p. 17, viewed 15 May 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/lobbying_code/index.htm

32. *Ibid.*, pp. 27–28.

- 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 stated:

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.³³

The Code does not apply to:

33. Department of the Prime Minister and Cabinet, *Lobbying code of conduct*, PM&C, Canberra, 2008, p. 1, viewed 15 May 2012, http://lobbyists.pmc.gov.au/docs/code_conduct.pdf

... 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.³⁴

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.³⁵

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.³⁶

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.

34. Ibid., p. 2.

35. Ibid.

36. Government response to Senate Standing Committee on Finance and Public Administration, *Knock, Knock ... who's there? The lobbying code of conduct*, January 2009, p. 5, viewed 15 May 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/lobbying_code/index.htm

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.³⁷

In August 2009 the then Special Minister of State, Senator Joe Ludwig, indicated that rules covering lobbyists could be reviewed following 'cash-for-access' and political fund-raising scandals in state governments and oppositions. Senator Ludwig suggested:

... the national register of lobbyists ... was under review, and he was open to changes that would approve accountability.³⁸

On 15 July 2010 Senator Ludwig released a discussion paper titled [Possible reforms to the Lobbying Code of Conduct and Register of Lobbyists](#). The paper raised the following issues for discussion:

1. The creation of an industry association with:
 - a. membership of the association contingent on ongoing professional education
 - b. membership of the association being a pre-requisite to registration, or indicated on the Register of Lobbyists.

37. J Warhurst, Submission to the Senate Standing Committee on Finance and Public Administration Inquiry into the Lobbying code of conduct, p. 4, viewed 15 May 2012, http://www.apf.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/lobbying_code/submissions/sublist.htm

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

2. A requirement that lobbyists disclose on the Register of Lobbyists the details of any lobbyists who were Ministers, former ministerial staff or senior APS and ADF personnel.
3. Increasing the period of the ban on former Ministers and Parliamentary Secretaries undertaking lobbying activities from eighteen months to two years, and on matters that they had official dealings in their last two years in office.
4. Extending the ban on former Cabinet Ministers to all matters, not just those matters where they had official dealings.

The paper also included issues raised at a roundtable discussion:

- Given that is clear whose interests they represent, would an extension of the Code to in-house lobbyists provide any additional transparency?
- Could the ethical standards underpinning the Code apply more widely in the sector?
- Are there concerns about managing the requirements of different [state] jurisdictions?
- Would more clearly defined sanctions increase confidence in the operations of the Code and Register? ³⁹

In the introduction to the paper the Government stated that it would consider amendments to the Code and the Register in the light of feedback received on the discussion paper. In August 2011 the Special Minister of State announced two changes to the Register of Lobbyists: the requirement that lobbyists disclose details of any former government representatives employed by their firm as lobbyists and measures to streamline the regulatory and administrative arrangements for registration.⁴⁰

On 24 November 2011 the Senate referred an inquiry into the operation of the Lobbying Code of Conduct and the Lobbyist Register to the Senate Finance and Public Administration References Committee. The Committee's report, tabled in March 2012, did not recommend any changes to the Code or the Register.⁴¹

The report included a dissenting report by Senator Lee Rhiannon (Australian Greens). Senator Rhiannon made eight recommendations for reform of the lobbying regime. These included the establishment of an Office of the Commissioner of Lobbying, support for a legislative framework for

39. J Ludwig, Lobbying code of conduct and register of lobbyists possible reforms, *Discussion paper*, July 2010, p. 9, viewed 23 May 2011, http://lobbyists.pmc.gov.au/docs/discussion_paper.pdf

40. G Gray, *Changes to the lobbyists register*, media release, 1 August 2011, viewed 21 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F972552%22>

41. Senate Finance and Public Administration References Committee, *The Operation of the lobbying code of conduct and the lobbyist register*, 1 March 2012, viewed 18 May 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/lobbying_code_2011/index.htm

the regulation of lobbying, inclusion of members of parliament as subjects of lobbying, expansion of who is defined as a lobbyist and strengthening post-separation employment provisions.⁴²

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.⁴³

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.⁴⁴

The Report recommended that '... as a priority a new Ministerial Code of Conduct should be implemented'.⁴⁵

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.⁴⁶

The Code was amended by the Lemmon Government in 2006 to reflect changes to ministerial post-separation employment (see below). Before 2006 the Code had only minor amendments by the

42. Ibid., pp 24-25.

43. A description of the Code is available in M Hatton, 'Matter of public importance: Ministerial code of conduct', New South Wales, Legislative Assembly, *Debates*, 18 November 1992, pp. 9184-5, viewed 24 May 2011, <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA19921118018>

44. Independent Commission Against Corruption, *Investigation into parliamentary and electorate travel: second report analysis of administrative systems and recommendations for reform*, ICAC, December 1998, pp. 47-48, viewed 15 May 2012, http://www.icac.nsw.gov.au/dmdocuments/pub2_57i1.pdf

45. Ibid., p. 48.

46. M Egan, 'Answer to question without notice: ministerial code of conduct', New South Wales, Legislative Council, *Debates*, 10 October 2000, p. 8811, viewed 11 May 2012, <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20001010035>

Greiner, Fahey and Carr Governments. The Code of Conduct for Ministers of the Crown is included in the Department of Premier and Cabinet's [Ministerial Handbook](#), June 2011.

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 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:

9 (1)... 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. The Legislative Council Privileges Committee tabled its most recent [Review of the members' Code of Conduct](#) on 2 December 2010. The Committee made a number of recommendations relating to members' disclosure of interests, including the publication of the Register online and the development of resources and seminars on ethical behaviour. Recommendation 1 stated:

That the merits of a Parliamentary Integrity Commissioner be considered by the Privileges Committee in the new Parliament, in consultation with the Legislative Assembly's Privileges and Ethics Committee.

At the time of writing the Government had not responded to the report.

The Legislative Assembly Parliamentary Privilege and Ethics Committee commenced a review of the Code of Conduct on 20 May 2010. The report has not yet been tabled.

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 be publicly available on the internet.⁴⁷ 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.⁴⁸

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

47. Independent Commission Against Corruption, *Regulation of secondary employment for members of the NSW Legislative Assembly*, ICAC, Sydney, September 2003.

48. M Iemma, 'Ministers and members post-separation employment guidelines', New South Wales, Legislative Assembly, *Debates*, 28 March 2006, p. 21542, viewed 11 May 2012, <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA20060328011>

report's recommendations was that 'the Government introduce rules to restrict the range of employment that Ministers can take up immediately after leaving office'.⁴⁹

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 of the report) and the relevant section of the Code of Conduct of Ministers of the Crown (see appendix 2 of the report).

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

49. Independent Commission Against Corruption, *Report on the investigation into the conduct of the Hon. J. Richard Face*, ICAC, Sydney, June 2004, p. 7.

last two years in which they held Ministerial office. This requirement does not apply to any employment or engagement by the Government.⁵⁰

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 17 December 2010. 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.⁵¹

As noted above, the Legislative Council Privileges Committee report [Review of the members' Code of Conduct](#) tabled on 2 December 2010, stated that:

The Committee believes that following the implementation of Recommendations 3 – 6 incorporating changes to the timing and types of pecuniary interest returns submitted by members, protection of the privacy of members and others, and the authority to publish the Register on the Council's website, that the 'Register of Disclosures by Members of the Legislative Council' should be placed on the Council's website.⁵²

50. New South Wales Parliament, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Post-separation guidelines: meeting with the Parliamentary Ethics Adviser*, November 2006, Appendix 2, p. 18.

51. New South Wales Parliament, Legislative Assembly, *The code of conduct for members of parliament and the pecuniary interest register*, No. 18, March 2012, p. 1, viewed 15 May 2012, [http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/CodeofConduct/\\$File/18+Code+of+Conduct.pdf](http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/CodeofConduct/$File/18+Code+of+Conduct.pdf)

52. New South Wales Parliament, Legislative Council Privileges Committee, *Review of the members' code of conduct*, 2 December 2010, p. 69, viewed 9 May 2012, <http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/3716987304BB2E54CA2577ED00027C76>

Parliamentary ethics adviser

In September 1998 the [Legislative Assembly](#) and [Legislative Council](#) passed resolutions to appoint a parliamentary ethics adviser.⁵³ 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’.⁵⁴ 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. The most recent [annual report](#), for the year ended 30 June 2011, was tabled on 2 August 2011.

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 applied:

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 listed 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:

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53. 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*, presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House, Canberra, 23 July 1999, viewed 15 May 2012, http://www.apf.gov.au/About_Parliament/Senate/Research_and_Education/pops/pop35/c05
54. B Carr, ‘Parliamentary Ethics Adviser’, New South Wales, Legislative Assembly, *Debates*, 23 September 1998, pp. 7890–1, viewed 24 May 2011, <http://www.parliament.nsw.gov.au/prod/parliament/hansart.nsf/V3Key/LA19980923030>

3 ... 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:

3 ... 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 stated that the 2006 Guidelines should be read in conjunction with the new arrangements. It also noted 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 a 2008 [memorandum](#) which outlined 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’. At the time of writing the 2006, 2008 and 2009 memoranda are still current.

In May 2010 the Independent Commission Against Corruption released a discussion paper *Lobbying in NSW: An issues paper on the nature and management of lobbying in NSW*. The publication identified 26 principal issues related to lobbying and lobbyists and was intended to generate discussion:

... on the nature and management of lobbying in NSW and whether changes need to be made to the current regulatory system to promote transparency, accountability and fairness in order to reduce the likelihood of the occurrence of corrupt conduct.⁵⁵

On 10 November 2010 ICAC published its report *Investigation into corruption risks involved in lobbying*. ICAC stated that its investigation:

... examined the corruption risks involved in the lobbying of public authorities and officials. Its aim was to examine whether any laws governing any NSW public authority or public official should be changed. The Commission also examined whether any work methods, practices or

55. Independent Commission Against Corruption, *Lobbying in NSW: An issues paper on the nature and management of lobbying in NSW*, ICAC, Sydney, May 2010, p. 5, viewed 8 May 2012 <http://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/169>

procedures of any NSW public authority or public official could allow, encourage or cause the occurrence of corrupt conduct, and, if so, what changes should be made.⁵⁶

ICAC recommended a minimum procedure for agencies and ministerial offices concerning the conduct of meetings with lobbyists, the making of records of these meetings, and the making of records of telephone conversation.⁵⁷

The report also made a number of recommendations relating to increased regulation of lobbyists, in particular that:

- ... the NSW Government enacts legislation to provide for the regulation of lobbyists, including the establishment and management of a new Lobbyists Register (Recommendation 1)
- ... all Third Party Lobbyists and Lobbying Entities be required to register before they can lobby any Government Representative. (Recommendation 8)
- ... an independent government entity, maintains and monitors the Lobbyists Register, and that sanctions be imposed on Third Party Lobbyists and Lobbying Entities for failure to comply with registration requirements. (Recommendation 9)
- ... consistent with restrictions currently contained in the Australian Government Lobbying Code of Conduct, the proposed lobbying regulatory scheme includes provisions that former ministers and parliamentary secretaries shall not, for a period of 18 months after leaving office, engage in any Lobbying Activity relating to any matter that they had official dealings with in their last 18 months in office. (Recommendation 11)⁵⁸

On 4 May 2011 Premier Barry O'Farrell introduced the [Lobbying of Government Officials Bill 2011](#) into the Legislative Assembly. The Bill, which was supported by the Labor Opposition, received Royal Assent on 16 May 2011. The [Lobbying of Government Officials Act 2011](#) introduced a number of [changes](#) to the regulation of lobbying in NSW, including the prohibition of success fees for lobbyists who lobby Ministers, Parliamentary Secretaries and other Government officials and the prohibition of former ministers and parliamentary secretaries from engaging in lobbying activities in the 18 months after they cease to hold office.

Victoria

Ministerial code of conduct

The coalition's 2010 election policy for an Independent Broad-based Anti-Corruption Commission included details on a ministerial code of conduct:

56. Independent Commission Against Corruption, *Investigation into corruption risks involved in lobbying*, November 2010, p. 7, viewed 11 May 2012 <http://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/169>

57. *Ibid.*, pp. 10–11.

58. *Ibid.*, pp. 10–11.

The Privileges Committee of each House will be required to draft codes of conduct for ministers as well as members of the Legislative Assembly and the Legislative Council and publicly funded staff (these codes of conduct must be formally adopted by the Legislative Assembly and Legislative Council.)⁵⁹

In February 2012 Premier Ted Baillieu released the *Code of conduct for ministers and parliamentary secretaries*, which is available on the Premier's website.⁶⁰ The Code includes rules on the Executive's relationships with lobbyists and the use of resources and on the declaration of interests. On the latter, section 8.2 states:

A probity auditor will examine each Minister's or Parliamentary secretary's Declaration and supporting information and report to the Cabinet secretary.⁶¹

The Premier decides 'whether and when a Minister or parliamentary Secretary should stand aside' and the Code states that:

Ministers and Parliamentary Secretaries will be required to stand aside if charged with any criminal offence, or if the Premier regards their conduct as constituting a *prima facie* breach of this Code. Ministers and Parliamentary Secretaries will be required to resign if convicted of a criminal offence, and may be required to resign if the Premier is satisfied that they have breached or failed to comply with this Code in a substantive and material manner.⁶²

The ministerial code states that ministers and parliamentary secretaries must also comply with the requirements of the *Fundraising code of conduct for ministers, parliamentary secretaries and coalition government members of parliament*.⁶³

Members of parliament 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.

59. T Baillieu and A McIntosh, *Victorian Liberal Nationals Coalition plan for integrity of government*, State election November 2010, p. 7.

60. T Baillieu, Code of conduct for ministers and parliamentary secretaries, February 2012, viewed 16 May 2012, http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2012/Code_of_Conduct_for_Ministers_and_Parliamentary_Secretaries.pdf

61. Ibid., p. 8.

62. Ibid., see sections 9.1 and 9.2, p. 9.

63. See T Baillieu, *Fundraising code of conduct for ministers, parliamentary secretaries and coalition government members of parliament*, media release, 30 October 2011, viewed 16 May 2012, <http://www.premier.vic.gov.au/media-centre/media-releases/2367-premier-delivers-tough-new-code-of-conduct-to-reform-political-fundraising-and-lobbying-in-victoria.html>

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.⁶⁴

A summary of members' returns is available on the Victorian Parliament [website](#).

Law Reform Committee review of the *Members of Parliament (Register of Interests) Act 1978*

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

The Law Reform Committee tabled its [final report](#) on 9 December 2009. The Committee made 35 recommendations which included⁶⁵:

- 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 final report included a minority report by the three Coalition members on the Committee, who called for:⁶⁶

... the establishment of an independent anti-corruption commission in Victoria, with broad powers of investigation that extend to Ministers and other members of Parliament, This commission should be a standing commission with functions including

64. See also Parliament of Victoria, Legislative Assembly, *Members' code of conduct*, Fact Sheet E2, October 2010.

65. Victorian Parliament, Law Reform Committee, *Review of the Members of Parliament (Register of Interests) Act 1978*, December 2009, pp xi-xxii, viewed 15 May 2012, <http://www.parliament.vic.gov.au/lawreform/inquiries/Members%20Register%20of%20Interests/final%20report.pdf>

66. Ibid., p. 161.

- investigation and exposure of corrupt conduct,
- prevention of corrupt conduct, and
- strengthening of institutional frameworks and practices against corruption

and with appropriate investigative powers and resources. The commission should be accountable to Parliament rather than to the executive, and should have a working relationship with an appropriate Parliamentary committee, in a manner similar to the relationship between the Auditor-General and the Public Accounts and Estimates Committee.

We believe the establishment of an independent anti-corruption commission should have been recommended by the Committee based on both the evidence received and the other compelling considerations we have set out.

On 23 March 2010, the then Labor Government introduced the Members of Parliament (Standards) Bill 2010, which was based on the recommendations of the Law Reform Committee's review.⁶⁷ The Bill passed the Legislative Assembly and was introduced into the Legislative Council but lapsed when the 56th Parliament was prorogued.

Independent Broad-based Anti-corruption Commission

During the 2010 election the Coalition Opposition released its accountability and anti-corruption policy to be implemented through a 'one-stop shop' Independent Broad-based Anti-corruption Commission (IBAC). The policy document noted that IBAC was 'modelled most closely' on NSW's Independent Commission Against Corruption, although unlike the NSW body 'IBAC will also cover the police'. The function of IBAC was described as:

... to investigate any allegation or complaint of corrupt conduct, including any matter referred by either House of Parliament.⁶⁸

Premier Baillieu appointed Andrew McIntosh as Minister responsible for the establishment of an anti-corruption commission. On 18 February 2011 the Premier announced that a package of integrity measures, currently being developed, would be considered by Cabinet. The new measures include:

- a new code of conduct for members of Parliament
- a new code of conduct for staff
- a new code for government members in relation to fundraising arrangements and
- new guidelines on hospitality and travel.⁶⁹

67. For an overview of the Bill see C Ross and A Delacorn, *Members of Parliament (Standards) Bill 2010*, Research brief, No. 5, Parliamentary Library, Victoria, April 2010.

68. *Victorian Liberal Nationals Coalition Plan for Integrity of Government*, op. cit., p. 5.

The Independent Broad-based Anti-corruption Commission Bill 2011 (Vic) received Royal Assent on 29 November 2011. The Bill establishes the IBAC and office of commissioner and provides for a joint parliamentary commission to oversee the Commission. A later Bill, the Independent Broad-based Anti-corruption Amendment (Investigative Functions) Bill 2011 (Vic), defined the investigative functions of the IBAC with the Minister, Andrew McIntosh, stating that IBAC:

... will have special powers to investigate more than 250,000 public sector employees – including all members of parliament, ministers, ministerial and parliamentary staff, all councillors and council staff, judges, public prosecutors, the Auditor-General, the Governor, consultants to government and corporate contractors to government engaging in public functions.

All public servants, employees and office holders of all government departments, agencies and authorities will be subject to IBAC's jurisdiction.

IBAC will also have scope to investigate the conduct of, and misconduct allegations against, police and police personnel, including unsworn police public servants working for Victoria Police⁷⁰

Lobbyist code of conduct and register of lobbyists

On 29 August 2009 then 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 12 months from engaging in lobbying activities relating to any matter with which they had official dealings in their last 12 months.

69. T Baillieu (Premier, Victoria), *New package of integrity measures to secure good governance*, media release, 18 February 2011, viewed 27 February 2012 <http://premier.vic.gov.au/wp-content/uploads/2011/02/110218-Baillieu-New-package-of-integrity-measures-to-secure-good-governance.pdf>

70. A McIntosh (Minister for IBAC), *Tough new powers for anti-corruption body*, media release, 8 December 2011, viewed 16 May 2012, http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/111208_McIntosh_-_Tough_new_powers_for_anti-corruption_body.pdf

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 will undertake that, for a period of two years after leaving office (Parliamentary Secretaries for a period of 18 months), they will exercise care in considering offers of employment or providing services, and will not have business meetings with Government representatives, in relation to their official dealings as a Minister during their last two years in office.

Further to that, Ministers will undertake that, for a period of two years after leaving office, they will not undertake lobbying activities (as set out in the *Integrity Act 2009*) in relation to their official dealings as a Minister in their last two years in office.⁷¹

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.⁷²

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'.⁷³

Members of parliament code of conduct

On 5 September 2000 the Queensland Parliament Members' Ethics and Parliamentary Privileges Committee (now [Integrity, 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.

71. Queensland Department of the Premier and Cabinet, *Queensland Ministerial Handbook*, Ministers' code of ethics, October 2010, Appendix 19, p. 4, viewed 16 May 2012, <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/ministerial-handbook/assets/appendix-19.pdf>

72. Ibid.

73. Queensland Government, *Integrity and accountability in Queensland*, 5 August 2009, p. 10, viewed 8 May 2012, <http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/assets/integrity-and-accountability-paper.pdf>

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:

- 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.

On 28 October 2010 the Integrity, Ethics and Parliamentary Privileges Committee (IEPPC) tabled its report [Review of Code of Ethical Standards](#). The Committee drafted a simplified version of the existing Code 'for the purpose of discussion'. The draft:

... focused on the fundamental principles of ethical behaviour applying to members and the key obligations arising out of these principles. The draft recognised that it is not possible to detail all possible ethical situations or dilemmas that a member may face. Rather the draft code serves to remind members of their obligations and to guide member's decision making in relation to ethical issues.

The simplified code includes all substantive matters covered by the current code but rather than including extracts from Standing Orders and other source documents includes them in the appendices.

This draft differs from the current Code by merging the principles of Primacy of the Public Interest and Transparency and Scrutiny. The draft also inserts a new principle of Respect for Persons to bring it in line with other code for public sector officers and to cover-off additional

provisions found in other jurisdictions such as provisions relating to conduct towards Assembly staff in the ACT Code and a Code of Race Ethics in the Tasmanian Code.⁷⁴

The Labor Government's [interim response](#) was tabled on 27 January 2011. The Government noted that, as a result of its response to the *Review of the Register of Members' Interests*, the Legislative Assembly would need to consider further amendments to Schedule 2 of the Standing Orders. The Government response also referred to the Review of the Queensland Committee system, tabled on 15 December 2010, which recommended changes to the Integrity, Ethics and Parliamentary Privileges Committee. In her interim response the then Premier, Anna Bligh, stated:

A final response to this report [Review of Code of Ethical Standards] will be provided as soon as possible following the Government's consideration of its response to the Committee System Review Committee's report.⁷⁵

The then Premier noted that the review of the committee system had made recommendations which 'could result in the IEPPC ceasing to exist in its current form'. The Government [response](#) was tabled on 14 April 2011.

On 16 June 2011 the Chair of the Committee of the Legislative Assembly [announced](#) that changes to the legislative committee system had been passed by the Legislative Assembly. The [Committee of the Legislative Assembly](#) now has responsibility for the Code of Ethical Standards.

Register of members' interests

The [Standing Rules and Orders of the Legislative Assembly of Queensland](#) (Schedule 2) 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.

On 26 November 2009, the Legislative Assembly agreed to alter the Standing Orders to direct the Registrar to publish the [Register of Members' Interests](#) on the internet.

On 2 September 2010 the Integrity, Ethics and Parliamentary Privileges Committee tabled its mid-term [review](#) of the Register of Members' Interests and the Register of Related Persons' Interests. The Committee:

74. Queensland Parliament, Integrity, Ethics and Parliamentary Privileges Committee, *Review of Code of Ethical Standards*, 28 October 2010, p. 2.

75. Queensland government, Interim response to Report No. 112 of the Integrity, Ethics and Parliamentary Privileges Committee, *Review of Code of Ethical Standards*, 27 January 2011, viewed 11 May 2012, http://www.parliament.qld.gov.au/documents/committees/ETHICS/2010/Code_of_Ethical_Standards_Review/GRInterim112.pdf

... took the view that major review of the registers was not warranted but instead resolved to follow the precedent of previous ethics committees to conduct a mid-term review of the arrangements for compiling, keeping and allowing inspection of the registers.⁷⁶

The Government's response, supporting a majority of the recommendations, was tabled on 29 November 2010.

On 28 November 2010 the Speaker made a statement to the Legislative Assembly and noted:

... part 9 of the Integrity Reform (Miscellaneous Amendments) Act 2010 amends the Parliament of Queensland Act by, amongst other things, setting up a statutory basis for the Register of Members' Interests and the Register of Related Persons' Interests. The part commences on proclamation. Recently Standing Orders Committee members agreed by correspondence to a replacement schedule 2, which is necessary to harmonise the new statutory regime and schedule 2. The changes do not affect the current registration requirements upon members.⁷⁷

Lobbyist code of conduct and register of lobbyists

On 12 February 2009 the then 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 required professional lobbyists who acted on behalf of third party clients and who wished to lobby Government representatives (Ministers, Parliamentary Secretaries, ministerial staff and senior staff working in public sector agencies) to be listed on the Register. The [Register of Lobbyists](#) was first published on 30 March 2009.

On 5 August 2009 the Premier announced in Parliament:

... a ban on individuals who are listed on the Queensland lobbyists register from serving on government appointment boards or in other significant appointments paid by the Queensland government.⁷⁸

In March 2010 the Queensland Integrity Commissioner (established 1999; see further below) approved a new [Lobbyists Code of Conduct](#). Under the provisions of the *Integrity Act 2009* (Qld) the Lobbyists Code of Conduct and its requirements are now 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 Integrity Commissioner's [website](#) lists some of the main legislative requirements of the Act relating to Lobbyists:

76. Queensland Parliament, Integrity, Ethics and Parliamentary Privileges Committee, *Mid-term review: Registration of interests*, 2 September 2010, p. 2.

77. 'Speaker's statements', Queensland, Legislative Assembly, *Debates*, 28 November 2010, p. 3973.

78. A Bligh, 'Ministerial statement; Accountability in government; lobbyists', Queensland, Legislative Assembly, *Debates*, 5 August 2009, p. 1405.

... all lobbyists to be registered on the Register of Lobbyists and all government representatives to meet only with registered lobbyists.

... the Code requires lobbyists making an initial contact with a government representative to inform the government representative that they are listed on the register, identify the third party they are representing, outline the nature of the third party's issue and give the reasons for the approach.

... lobbyists who are former senior government representatives and who became a former senior government representative less than two years earlier to indicate their status and that they are complying with the Integrity Act 2009 in relation to 'related lobbying activities'.

In 2011 the Integrity Commissioner reviewed the operation of the Lobbyists Code of Conduct and the lobbying provisions of the *Integrity Act 2009* (Qld). The review took into account the recommendations made by the NSW Independent Commission against Corruption in its report *Investigation into corruption risks involved in lobbying* published in November 2010 (see NSW section above). The Integrity Commissioner reported on 31 May 2011. His recommendations included widening the type of lobbyists covered by the registration scheme and introducing a sanctions regime for some breaches of the Code.⁷⁹

The Integrity Commissioner's recommendations were incorporated in the Government's issue paper on the review of the *Integrity Act 2009* (Qld) tabled in October 2011 (see further below).

Queensland Integrity Commissioner

The office of [Queensland Integrity Commissioner](#) was created by the 1999 amendment to the [Public Sector Ethics Act 1994](#) (Qld). The role of the Integrity Commissioner (currently Dr David Solomon) has been strengthened and expanded with the passing of the [Integrity Act 2009](#) (Qld) (see below). The Commissioner provides advice on integrity and ethics issues and maintains the lobbyists register. Under the *Integrity Act 2009*, the Integrity Commissioner can give written advice to Ministers, MPs, senior public servants and others about ethics or integrity issues, including conflicts of interest.

The Integrity Commissioner is an independent officer of the Queensland Parliament and is accountable to Parliament through the Finance and Administration Committee. The Commissioner is required to report annually to Parliament. The [2010-11 annual report](#) was tabled on 20 September 2011 and was provided to the Speaker and the Finance and Administration Committee.

79. D Solomon, (Queensland Integrity Commissioner), Review of the Integrity Act 2009, Chapter 4 ("Regulation of lobbying activities"), 31 May 2011, pp. 3-4, viewed 18 May 2012, <http://www.integrity.qld.gov.au/library/document/catalogue/integrity-act-review/ics-submission-to-dpc-review-of-integrity-act.pdf> For additional recommendations see D Solomon, 'Further submission to DPC on review of the Integrity Act', not dated, viewed 18 May 2012, <http://www.integrity.qld.gov.au/library/document/catalogue/integrity-act-review/further-sub-to-dpc.pdf>

Integrity Act 2009 (Qld)

On 6 August 2009 the then Premier, Anna Bligh, [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.⁸⁰

As a result of public 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.
- 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.⁸¹

In her second reading speech on the Integrity Bill the Premier discussed 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.⁸²

On 25 November 2009 the Bill passed through the Queensland Parliament. The Act commenced on 1 January 2010.

80. *Integrity and Accountability in Queensland*, op. cit.

81. A Bligh (Premier), *Sweeping reforms deliver Queensland strong integrity and accountability*, media release, 10 November 2009, viewed 2 May 2012, <http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=67319>

82. A Bligh, 'Second reading speech', Integrity Bill 2009, Queensland, Legislative Assembly, *Debates*, 10 November 2009, pp. 3164–3165.

In October 2011 then Premier Bligh tabled an issues paper which identified a number of sections in the *Integrity Act 2009* (Qld) for review. In her statement the Premier noted that:

The main issues identified for review by the Integrity Commissioner include the role of the commissioner, the regulation of lobbying, in-house lobbyists, incidental lobbying activities, sanctions, post-separation employment, national uniformity and record keeping.⁸³

The Integrity Commissioner responded to the review in December 2011, stating that his submission would:

... bring together in the one document material from the three submissions I previously provided to the Department [on the regulation of lobbying] ... [and] refer to several other matters I have raised with the Department in correspondence that I believe should be included in any amendments to the Integrity Act.⁸⁴

The Integrity Commissioner's main recommendations related to lobbying and he stated that 'in my view there are many problems with the lobbying provisions of the Act'.⁸⁵ His recommendations include those referred to in the lobbyist section (above) and expanding the definition of 'lobbying activity' to include all members of parliament. He also discussed the benefits of uniform national lobbying regulations and repeated his assessment of Australian lobbying schemes, delivered at a public sector conference in November 2011:

The schemes are too narrowly focussed on a relatively few professional lobbyists, they don't provide for adequate and timely disclosure of lobbying activity, they ignore the lobbying of non-government legislators and they contain no real mechanisms for supervision or policing and very few sanctions for breaches of the various codes and laws.⁸⁶

The Queensland Parliament Finance and Administration Committee tabled its report, *Oversight of the Queensland Integrity Commissioner 2011*, in February 2012. The report made four recommendations for amendments to the Act to the Premier as the responsible minister. In particular, recommendation 4 stated:

The Committee recommends that the Government consider amending the Act to include a part dealing with post-separation obligations for former senior government representatives, and

83. A Bligh, 'Ministerial statement', Integrity Act review, Queensland, Legislative Assembly, *Debates*, 12 October 2011, see also *Review of the Integrity Act 2009: issues paper*, October 2011, viewed 19 May 2012, <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2011/5311T5614.pdf>

84. D Solomon, 'Response to the issues paper – Review of the Integrity Act 2009', 8 December 2011, p. 1, viewed 14 May 2012, <http://www.integrity.qld.gov.au/library/document/catalogue/integrity-act-review/ics-response-to-review-of-integrity-act-issue-paper.pdf>

85. *Ibid.*, p. 5.

86. *Ibid.*, p. 6. Dr Solomon first made this statement in his address, 'Lobbying: is registration sufficient?', Australian Public Sector Conference, Fremantle, 16 November 2011, viewed 18 May 2012, <http://www.integrity.qld.gov.au/library/document/catalogue/integrity-act-review/ics-response-to-review-of-integrity-act-issue-paper.pdf>

that this part include, if appropriate, sanctions for breaches of the Act as recommended by the Integrity Commissioner.⁸⁷

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 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.⁸⁸

A [Ministerial Code of Conduct](#) dated September 2008 is available on the [Integrity Coordinating Group](#) website.⁸⁹

87. Queensland Parliament, Finance and Administration Committee, oversight of the Queensland Integrity Commissioner 2011, 16 February 2012, p.vi, viewed 18 My 2012, <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2012/5312T6521.pdf>

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

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).

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.

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

... 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.⁹⁰

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.⁹¹

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.

On 9 November 2011 the Premier, Colin Barnett, introduced the Integrity (Lobbyists) Bill 2011. The purpose of the Bill is to:

... promote and enhance public confidence in the transparency, integrity and honesty of dealings between lobbyists and government representatives by providing for the registration of lobbyists; and issuing code of conduct for registered lobbyists in their dealings with the government; and prohibiting registered lobbyists from agreeing to receive payments or other rewards that are dependent on the outcome of lobbying activities, and for related purposes⁹²

The Bill would prohibit lobbying by unregistered persons with the penalty for a breach being \$10 000. A fine of up to \$10 000 could also be imposed for the provision of false or misleading information to the Public Sector Commissioner. Under the Bill members of the WA parliament and

90. A Carpenter, 'Statement by Premier', Contact with lobbyists code—register of lobbyists', Western Australia, Legislative Assembly, *Debates*, 20 March 2007, pp.329–330.

91. *Ibid.*, p. 329.

92. Integrity (Lobbyists) Bill 2011, clause 5, viewed 18 May 2012, <http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=45FAB3AF18255085482579430017B23F>

federal WA members and senators and senior public sector executives would be prevented from registering as lobbyists for one year after leaving these positions.⁹³

The Bill is currently being debated in the Legislative Assembly.

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
- 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.

The Code, which has not been amended since 2002, is available on the Department of the Premier and Cabinet website.

Members of parliament 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:

93. Ibid., clause 14.

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.⁹⁴

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 former code of conduct committee (now Attorney-General), 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.

On 30 June 2010, Independent member of the House of Assembly and member of the former code of conduct committee, Bob Such, moved that the House adopt the same Statement of Principles. Debate on the motion was adjourned.

On 14 February 2012, in his speech opening Parliament, the Governor of South Australia stated:

... the Government will call on all Members to maintain the proper standards during this session. And beyond this, we will enact a Code of Conduct for all Members, to ensure that their public lives are beyond reproach⁹⁵

The Independent Commissioner Against Corruption Bill, introduced by the Government in May 2012, makes the following reference to a code of conduct covering members of parliament:

The Government will be moving for the adoption of a Parliamentary Code of Conduct in each House in due course. It is proposed that the code be based on the 2004 Report of the Joint Committee on a Code of Conduct for Members of Parliament. It is the Government's intention that the code be adopted by a resolution of each House of Parliament.⁹⁶

The Bill would also establish a Parliamentary Conduct Committee:

94. Joint Committee on a Code of Conduct, *Report of the Joint Committee on a Code of Conduct for Members of Parliament*, Parliament of South Australia, October 2004, para 2.

95. 'Governor's speech', Opening of Parliament, South Australia, Legislative Council, *Debates*, 14 February 2012, viewed 18 May 2012, http://hansard.parliament.sa.gov.au/pages/loaddoc.aspx?e=2&eD=2012_02_14&c=1

96. J Rau, 'Independent Commission Against Corruption Bill', Second reading, South Australia, Legislative Assembly, *Debates*, 2 May 2012, p. 1364, viewed 21 May 2012, http://hansard.parliament.sa.gov.au/docloader/House%20of%20Assembly/2012_05_02/Daily/House%20of%20Assembly_C_Daily_DIST_2012_05_02_v9.pdf#xml=http://hansardsearch.parliament.sa.gov.au/isysquery/9dabe3c8-b634-4921-8ec7-d08c10899976/2/hilite/

The legislative scheme of the Bill explicitly establishes the Parliamentary Conduct Committee to oversee and monitor the standards of conduct required of members of Parliament by their respective Houses, as proposed to be set out in the Code of Conduct.⁹⁷

The functions of the Committee would be:

to promote compliance with standards of conduct required of members of Parliament by their respective Houses and investigate, on its own initiative or on receipt of a complaint, alleged contraventions of those standards; and

if it is satisfied that there has been a contravention of the standards by a Member, to report to the Member's House the nature of the contravention; and

to keep the standard of parliamentary conduct generally under review and make such recommendations as it sees fit for modifications of the standards of conduct required of members of Parliament to both Houses; and

to perform other functions assigned to the Committee under this or any other Act or by resolution of both Houses.⁹⁸

The Bill is before the Legislative Assembly.

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 cannot, 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.

97. Ibid.

98. Ibid.

Independent Commissioner Against Corruption Bill

On 25 November 2010 Attorney-General, John Rau, released a White Paper entitled [*A review of the public integrity institutions in South Australia and an integrated model for the future*](#).

The recommendations of the White Paper include a proposal to create a Commissioner for Public Integrity, with the standing powers of a Royal Commission, who would report to Parliament and an Office of Public Integrity to act as a single gateway for receiving complaints. The report made the following recommendations regarding the Legislature:

- Parliament should legislate a Code of Conduct for members of Parliament
- The Code of Conduct for Members of Parliament should include protocols for dealing with lobbyists
- There should be further consideration of the formation of a Standing Committee of the Parliament to monitor and examine integrity and ethics matters for Members of Parliament. This could include building on the work of the 2004 Select Committee in preparing a Code of Conduct.⁹⁹

Submissions closed on 25 March 2011 and, as a result of this consultation process, the Government announced its intention to establish an Independent Commission Against Corruption in October 2011.¹⁰⁰

The Bill, the Independent Commissioner Against Corruption Bill, introduced in the Legislative Assembly on 2 May 2012, seeks to establish the Independent Commissioner Against Corruption (ICAC) and the Office for Public Integrity (OPI). The Attorney-General's second reading speech outlines the main functions of the ICAC and OPI:

The functions of the Independent Commissioner Against Corruption ... are designed to further:

the identification and investigation of corruption in public administration; and

the prevention or minimisation of corruption, misconduct and maladministration in public administration, including through referral of potential issues, education and evaluation of practices, policies and procedures.

The functions of the Office for Public Integrity ... are to manage complaints about public administration with a view to:

the identification of corruption, misconduct and maladministration in public administration; and

99. South Australia, Attorney-General's Department, *A review of the public integrity institutions in South Australia and an integrated model for the future*, November 2010, p. 42.

100. J Weatherill and J Ray, *SA to have fully independent ant-corruption body*, media release, 24 October 2011.

ensuring that complaints about public administration are dealt with by the most appropriate person or body.¹⁰¹

Tasmania

Ministerial code of conduct

A *Code of Conduct for Ministers* was adopted by Cabinet on 20 February 2012. The Code makes the following statement on post-ministerial employment:

Ministers must undertake that upon leaving office and for a period of two years thereafter, they will exercise care in considering offers of employment directorships, or to act as a consultant to any company, business or organisation with which they have had official dealings as a Minister in their last 12 months in office.¹⁰²

Ministers are also subject to the *Code of Conduct for ministers – receipt and giving of gifts policy*, which was introduced in 2012.¹⁰³

Members of parliament 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 3 and 4). 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. The Declaration of Principles also includes 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.

On 3 November 2009, in her [second reading speech](#) on a bill to establish the Tasmanian integrity Commission (see further below), then 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.

The Integrity Commission's special report on these codes, *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff*, was tabled in June 2011.¹⁰⁴

101. Ibid., p. 1357. See also J Wetherill and J Rau, *ICAC bill to establish powerful anti-corruption body*, media release, 1 May 2012, viewed 20 May 2012, <http://www.agd.sa.gov.au/news/pdfs/ICAClegislation%20MediaRelease.pdf>

102. Tasmania, Department of Premier and Cabinet, *Code of conduct for ministers*, 20 February 2012, viewed 20 May 2012, http://www.dpac.tas.gov.au/_data/assets/pdf_file/0016/53503/Code_of_Conduct_for_Ministers_2012.pdf

103. Tasmania, Department of Premier and Cabinet, *Code of conduct for ministers – receipt and giving of gifts policy*, 2012, viewed 20 May 2012, http://www.dpac.tas.gov.au/_data/assets/pdf_file/0018/53505/Receipt_and_Giving_of_Gifts_Policy_2012.pdf

Integrity Commission

On 28 May 2008 the then Premier, David Bartlett, moved that a [Joint Select Committee on Ethical Conduct](#) be established. The final Resolution agreed to by both Houses in June 2008 provided that a Joint Select Committee:

... 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.

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.¹⁰⁵

The [Integrity Commission Act 2009](#) received Royal Assent on 17 December 2009.

The Act established the Integrity Commission which commenced operation on 1 October 2010. The Commission's [website](#) states that its primary focus is on:

... education and prevention as a way to reduce misconduct and to improve the effectiveness of public authorities in dealing with misconduct when it arises

The Commission deals with issues that:

104. Integrity Commission, *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff*, June 2011, viewed 20 May 2012, http://www.integrity.tas.gov.au/resources_and_publications/reports

105. L Giddings (Attorney-General), *Government response to ethics committee*, media release, 4 November 2009, viewed 14 May 2012, <http://www.media.tas.gov.au/print.php?id=28307>

... relate to officers of public authorities, for example State Government departments, Government Business Enterprises, police, custodial officers, Members of Parliament, or elected members and employees of councils.¹⁰⁶

The Act also established the [Joint Standing Committee on Integrity](#) and outlines the Committee's membership and functions including the requirement that the Committee report annually to the Parliament.

Parliamentary Standards Commissioner

The *Integrity Commission Act 2009* established the position of Parliamentary Standards Commissioner and describes the appointment and functions of the Commissioner.

These functions include providing advice to members of parliament and the Integrity Commission on the interpretation of any relevant codes of conduct and the operation of the parliamentary disclosure of interests register, and declarations of conflicts of interest register.

The Act restricts the functions of the Commissioner in section 29 which states that:

The Parliamentary Standards Commissioner is not to be involved in the assessment or investigation of, or any inquiry in relation to, a complaint under this Act, if the Parliamentary Standards Commissioner has provided advice about a matter that relates to that complaint.

The appointment of the first Parliamentary Standards Commissioner, former federal Minister for Justice and now a Catholic priest, Father Professor Michael Tate, was announced by the Attorney-General on 18 November 2010. Ms Giddings said:

The Parliamentary Standards Commissioner will be a confidential advisor to Members of Parliament and to the Integrity Commission on the ethical issues which Members may face.¹⁰⁷

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.

The Government accepted Recommendation 3 of the Joint Select Committee on Ethical Conduct report *Public office is public trust*:

106. Integrity Commission, *A Guide to reporting misconduct and making a complaint*, viewed 20 May 2012, http://www.integrity.tas.gov.au/data/assets/pdf_file/0003/189102/Guide_to_Reporting_Misconduct_for_general_public.PDF

107. L Giddings (Attorney-General, Tasmania), *Parliamentary Standards Commissioner appointed*, media release, 18 November 2010.

That, with the exception of the detail of each Member's residential address, the Register of Interests of Members of the Legislative Council and the Register of Interests of members of the House of Assembly be published on the internet site of the Parliament of Tasmania.

The Government response noted:

Given the changes to responsibility for the Register with the establishment of the Parliamentary Standards Commissioner and the Integrity Commission, the publishing of the Register will be through the Integrity Commission website.¹⁰⁸

Lobbyist register

The then 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. Responsibility for the Code will shift to the Integrity Commission as the Integrity Commission Act, section 8(e) lists one of the functions of the Commission as:

establish and maintain codes of conduct and registration systems to regulate contact between persons conducting lobbying activities and certain public officers.

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.

On 16 April 2012, Chief Minister Katy Gallagher announced details of the ACT Government's Integrity Framework including a revised Ministerial Code of Conduct and a lobbyists register. The Chief Minister also sought the Speaker's agreement to a review of the 'non-executive MLA's Code of Conduct' (see further below).¹⁰⁹

108. Tasmanian government, *Response to recommendations in the final report of the Joint Select Committee on Ethical Conduct, 'Public office is public trust'*, 4 November 2009, p. 4.

109. K Gallagher, *New bar set for ethical government in the ACT*, media release, 16 April 2012, viewed 20 May 2012, http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/gallagher/2012/new_bar_s_et_for_ethical_government_in_the_act

A 'refreshed and modern Ministerial Code of Conduct' was released in 2012 'following recent reforms on this front in other jurisdictions'. The Code includes a statement but no time restriction on the post-separation employment of ministers.¹¹⁰

Members of parliament 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. ...¹¹¹
- 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.¹¹²

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](#).

110. Ibid., Note: the revised Code is available on the Chief Minister and Cabinet Department website.

111. W Berry, 'Legislative Assembly (Members' Staff) Amendment Bill 2008', Australian Capital Territory, Legislative Assembly, *Debates*, 7 August 2008, p. 3018.

112. Ibid., p. 3020.

In his independent workplace audit of staffing arrangements in the office of the Leader of the Opposition, tabled on 1 May 2012, Mr Ron McLeod recommended that:

... the Assembly undertake a review of its Code of Conduct to express more clearly the extent to which the personal staff of members, while on paid duty, may or may not be permitted to undertake certain defined activities that could be seen to be of a party political character; and

... the Assembly consider whether it is also an opportune time to reconsider the appointment of an independent Ethics Commissioner in the light of its experience with the operation of the Code of Conduct since its introduction.¹¹³

In her Ministerial Statement on the Government Integrity framework, the Chief Minister announced that she had:

... raised with the Speaker the need for the MLAs' code of conduct to be refreshed before the 2012 election. Part of that process should, in my view, be the establishment of more formal arrangements for registration of lobbyists.¹¹⁴

In response to Mr McLeod's recommendations both the Chief Minister and the Parliamentary Leader of the ACT Greens, Meredith Hunter, indicated that 'they would be prepared to consider in-principle the idea of an ethics commissioner'.¹¹⁵

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'.¹¹⁶

113. R McLeod, *Report of the independent workplace audit of staffing arrangements in the Leader of the Opposition for the period 2009 to 2012*, April 2012, p. 31, viewed 20 May 2012, <https://docs.google.com/file/d/0BzCxhBE0EgTSWIN6R0xhQjNudWM/edit?pli=1> The report was tabled in the ACT Legislative Assembly on 1 May 2012.

114. K Gallagher, 'Ministerial Statement Government Integrity Framework', Australian Capital Territory, Legislative Assembly, *Debates*, 1 May 2012, p. 1735, viewed 20 May 2012, <http://www.hansard.act.gov.au/hansard/2012/pdfs/20120501.pdf>

115. N Towell, 'Assembly open to "ethics commissioner"', *Canberra Times*, 12 April 2012.

116. W Berry, 'Motion: Legislative Assembly—Ethics and Integrity Adviser', Australian Capital Territory, Legislative Assembly, *Debates*, 21 August 2008, p. 3426, viewed 20 May 2012, <http://www.hansard.act.gov.au/hansard/2008/pdfs/20080821.pdf>

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.¹¹⁷

The Integrity and Ethics Adviser's most recent [annual report](#) is for the period 1 July 2010 to 30 June 2011.

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](#), [17 March 2005](#), [6 March 2008](#) and [10 December 2009](#)). The current Resolution (No. 6) is contained in the Assembly's [Standing and Temporary Orders](#).

On 10 December 2009, the Speaker of the Legislative Assembly, Shane Rattenbury, moved that declarations be 'placed on the Legislative Assembly website on the internet'. And that any alterations should be placed on the [website](#) every six months.¹¹⁸ The question was resolved in the affirmative.

Lobbying code of conduct and lobbyist register

The Chief Minister has stated that there should be 'more formal arrangements for registration of lobbyists' (see above).

Northern Territory

Ministerial code of conduct

There is no specific code of conduct covering ministers.

Members of parliament code of conduct

On 20 June 2002 the then Northern Territory 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:

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

117. Australian Capital Territory, Legislative Assembly Secretariat, *Annual report 2008–2009*, ACT Legislative Assembly Secretariat, September 2009, p. 9, viewed 15 May 2012, <http://www.parliament.act.gov.au/downloads/annual08-09.pdf>

118. S Rattenbury, 'Declaration of members' interests', Legislative Assembly, *Debates*, 10 December 2009, p. 5658.

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

The report 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. On handling alleged breaches of the Code, the Code states:

The Assembly may refer an alleged breach of the Code to the Privileges Committee, and if the Committee finds a breach established, may punish it as a contempt of the Assembly¹¹⁹

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).

Lobbying code of conduct and lobbyist register

The Northern Territory Government has not introduced a lobbying code of conduct or a lobbyist register.

119. *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* (NT), section 4.

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.¹²⁰

In 2000 the Public Administration Select Committee recommended that Parliament formally approve the Ministerial Code. The Government response rejected this recommendation.¹²¹

The current [Ministerial Code](#) was issued on 21 May 2010 by the Prime Minister, David Cameron, 'as it has become convention for the Code to be released at the beginning of a new administration and at a new parliament'.¹²²

The last code issued by then Prime Minister, Tony Blair, in July 2005 consisted of a ministerial code of ethics and procedural guidance for ministers. The Code issued by then Prime Minister, Gordon Brown, in July 2007:

... did not retain this split, instead rearranging the material so that each chapter began with a general principle. This drafting has been retained in the 2010 Code.¹²³

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.¹²⁴

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

120. O Gay, 'The Ministerial Code', *Standard Note*, SN/PC/03750, House of Commons Library, September 2010, p. 3, viewed 9 March 2012, <http://www.parliament.uk/documents/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.

121. Ibid., p. 7.

122. Ibid., p. 1.

123. Ibid., p. 5.

124. See Committee on Standards in Public Life, *Defining the boundaries within the executive: ministers, special advisers and the permanent civil service*, Ninth report, CM 5775, April 2003, Recommendation 3(a), p. 1., viewed 10 March 2012, http://www.public-standards.gov.uk/OurWork/Ninth_report.html 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.

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 then Prime Minister Gordon Brown appointed Sir Philip Mawer, former Parliamentary Commissioner for Standards, as his Independent Adviser on Ministers' Interests. Sir Philip Mawer remained in this position until the end of 2011. The current Adviser is Sir Alex Allen, a former civil servant.¹²⁵

Breaches of the Ministerial Code

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 (Cameron) 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

125. O Gay, 'The Ministerial Code', *Standard Note*, SN/PC/03750, House of Commons Library, 27 March 2012, p. 13, viewed 20 May 2012, <http://www.parliament.uk/briefing-papers/SN03750>

Minister. He is the ultimate judge of standards of behaviour expected of a Minister and the consequences of a breach of those standards.¹²⁶

The Code also states (paragraph 7.5) 'a statement covering relevant Ministers' interests will be published twice yearly' (previously an annual statement).¹²⁷

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.¹²⁸

The Code outlines arrangements governing post-separation employment:

7.25 On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must abide by the advice of the Committee.¹²⁹

The Code states (paragraph 1.6) that:

Ministers must also comply at all times with the requirements which Parliament itself has laid down in relation to the accountability and responsibility of Ministers. For Ministers in the Commons these are set by the Resolution carried on 19 March 1997 ... For Ministers in the Lords in the Resolution ... of 20 March 1997. Ministers must also comply with the Codes of Conduct for their respective Houses and also any requirements placed on them by the Independent Parliamentary Standards Authority.¹³⁰

Ministers are required to report overseas travel, gifts given and received over the value of £140, meetings with external organisations and hospitality accepted in a ministerial capacity above £650 (Commons) and £500 (Lords). This information is publicly available on the Cabinet Office [website](#).

Report on the role of 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.

126. United Kingdom, The Cabinet Office, *Ministerial code*, May 2010, p. 2, viewed 20 May 2012, <http://www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf>

127. Ibid., p. 14.

128. Ibid.

129. Ibid., p. 17.

130. Ibid., p. 2. For ministers in the House of Commons see the Resolution of 19 March 1997, viewed 19 May 2012, <http://www.publications.parliament.uk/pa/cm199697/cmhansrd/vo970319/debtext/70319-67.htm> and for ministers in the House of Lords see the Resolution of 20 March 1997, viewed 15 May 2012, http://www.publications.parliament.uk/pa/ld199697/ldhansrd/vo970320/text/70320-04.htm#70320-04_head1

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. On this issue the Labour Government [response](#), tabled in October 2008, stated:

The Government agrees with the notion that dismissal should not be the only recourse available for a breach of the Code. It is for the Prime Minister, as the ultimate judge of the standards of behaviour expected of a Minister, to determine the appropriate consequence of a breach of those standards. However, the Government notes the Committee's proposals for suitable penalties, which will be given further consideration in the light of any future allegation of a breach of the Ministerial Code.¹³¹

More recently, the PASC published a report in March 2012, which considered the issue of the independence of the Prime Minister's adviser on ministerial interests.¹³² The Committee considered the events before the resignation of the Rt Hon Dr Liam Fox as Secretary of State for Defence in October 2011, 'when the independent adviser on Ministers' interests was not called upon to investigate the breach of the Code' and the appointment of the current Adviser, Sir Alex Allen.¹³³

The report focused on two main issues:

... whether Sir Phillip [Mawer] should have been asked to investigate the allegations against Liam Fox, ... and whether the new Advisor, Sir Alex Allan should have been subject to an open appointment process ... The Committee accepted that there had been a need for speed to

131. United Kingdom government, *Investigating the conduct of ministers: Government response to the committee's seventh report of session 2007-08*, House of Commons Public Administration Select Committee, October 2008, p. 52, viewed 20 May 2012, <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/1056/1056.pdf>

132. United Kingdom government, *The prime minister's adviser on Ministers' interests: independent or not?*, House of Commons Public Administration Select Committee, March 2012, viewed 20 May 2012, <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpubadm/1761/176102.htm>

133. *Ibid.*, p.3.

resolve the position of Dr Fox, but thought that the resignation of a minister should not preclude some type of independent investigation. The resignation of Sir Phillip had not been made public until January 2012, and in the meantime Sir Alex had been appointed without any formal recruitment process. As a former civil servant, Sir Alex lacked a formal track record of independence.¹³⁴

The Government has not yet responded to the report.

Members of parliament 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.¹³⁵

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:

1.1 ... 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 and updated in May 2010. In 2011 the Parliamentary Commissioner for Standards reviewed the Code of Conduct and issued a [consultation paper](#) inviting views on the scope and content of the House of Commons Code. The paper raised twenty-five questions and identified 'some possible changes to the scope of the Code, including some extension into a member's personal and private life, and into their conduct of constituency business'.¹³⁶

134. Summary of PASC report in O Gay, 'The Ministerial Code', 27 March 2012, p.13.

135. The Office of the Parliamentary Commissioner for Standards was set up by the House of Commons in 1995. 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. The Office deals with the application of the Code of Conduct and related Rules that apply to Members of Parliament. This includes the registration of financial interests held by MPs and the investigation of complaints about MPs who have allegedly breached the Code of Conduct or related Rules.

136. Parliamentary Commissioner for Standards, *Review of the code of conduct for members of parliament*: consultation paper, United Kingdom Parliament, March 2011, p. 23, viewed 20 May 2012, <http://www.parliament.uk/documents/pcfs/review-of-code-of-conduct-2011/Review-of-the-code-of-conduct-2011.pdf>

On 1 November 2011 the Standards and Privileges Committee produced a report on the review of the Code of conduct. In particular, the Committee agreed with the Commissioner's proposal that:

... the scope of the Code be amended to reflect that it does not seek to regulate Members' conduct in their purely private and personal lives, or their wider public lives unless that conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its Members generally.¹³⁷

The resolution to approve the new code was debated in the House of Commons on 12 March 2012. Members were concerned about the recommendation above and agreed to an amendment which:

... made it clear that the Commissioner would not be able to investigate a specific matter ... which related only to the conduct of a Member in their private or public life. This amendment was accepted without a vote and the new Code was approved.¹³⁸

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. The most recent version of the Code was adopted by resolution on 30 November 2009 and amended on 30 March 2010.

The House of Lords has its own [Commissioner for Standards](#) who is responsible for the independent and impartial investigation of alleged breaches of the House of Lords Code of Conduct. This includes investigating breaches of the rules on Members' financial support and parliamentary facilities.

Register of interests

Under a Resolution agreed by the House of Commons on 22 May 1974, and under the Members' Code of Conduct, Members are required to register their pecuniary interests in a Register of Members' Financial 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.

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 operation of the [Register of Lords' Interests](#) is overseen by the Sub-Committee on Lords' Conduct, assisted by the Registrar of Lords' Interests.

137. House of Commons Committee on Standards and Privileges, *Review of the code of conduct*, 1 November 2011, viewed 20 May 2012, <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmstnprv/1579/1579.pdf>

138. O Gay, The Code of conduct for members- recent changes, *Standard Note*, SN/PC/05127, House of Commons Library, 14 March 2012, p. 13, viewed 20 May 2012, <http://www.parliament.uk/briefing-papers/SN05127> . See also Code of conduct, United Kingdom, House of Commons, *Debates*, 12 March 2012, col 85-102, viewed 20 May 2012, <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/chan277.pdf>

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

Lobbying industry inquiry

In June 2007 the Public Administration Select Committee 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'.¹³⁹

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.¹⁴⁰

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.¹⁴¹

The Committee also called for the [Advisory Committee on Business Appointments](#) (ACoBA)¹⁴²:

139. Public Administration Select Committee, *Issues and questions paper: lobbyists, access and influence*, 21 June 2007.

140. Public Administration Select Committee, *Lobbying: access and influence in Whitehall*, First report of session 2008-09, December 2008 Vol. 1, pp. 51-52., viewed 10 May 2012, <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/36/36i.pdf>

141. *Ibid.*, p. 3

142. 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 two years of leaving Crown service.

... 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.¹⁴³

The [Labour Government's response](#) to the report was tabled on 22 October 2009. 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.¹⁴⁴

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.'¹⁴⁵

In December 2009 the PASC published a follow-up report which outlined developments since the first report and noted 'progress is slow and we remain sceptical that effective regulation will be achieved without legislation'.¹⁴⁶

Following allegations about the lobbying activities of some former ministers in March 2010, the Labour Government announced the introduction of a statutory mandatory register of lobbying activity but did not do so before the May 2010 general election. The Coalition Agreement, published by the Conservative-Liberal Democrat Government in May 2010, said that the Government would introduce a statutory register of lobbyists and ensure greater transparency.¹⁴⁷

In January 2012 the Government tabled a consultation paper on the introduction of a statutory register of lobbyists.¹⁴⁸ The paper identifies questions under eight subject headings, including definitions, scope, frequency of returns, sanctions and operation of the register. The consultation period closed on 13 April 2012.

143. More detail on the Committee's proposals is available in L. Maer, 'Lobbying', *Standard Note*, SN/PC/04633, House of Commons Library, London, 27 January 2011, viewed 11 March 2012, <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-04633.pdf>

144. United Kingdom government, *Lobbying: access and influence in Whitehall: Government response to the committee's first report of session 2009-09*, House of Commons Public Administration Select Committee, October 2009, p. 5, viewed 4 May 2012, <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/1058/1058.pdf>

145. Details of the Government's response are available in L Maer, 'Lobbying', pp. 5-6.

146. Public Administration Select Committee, *Lobby: developments since the Committee's first report of Session 2008-09*, 16 December 2009, p. 6, viewed 11 March 2012 <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpubadm/108/108.pdf>

147. Maer, 'Lobbying', op. cit., p. 1

148. United Kingdom government, *Introducing a statutory register of lobbyist*, Consultation paper, Cm 8233, January 2012, viewed 21 May 2012, <http://www.official-documents.gov.uk/document/cm82/8233/8233.pdf>

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, which gives IPSA control over setting members' pay and pensions, states '[n]othing in this Act shall affect the House of Lords'. Section 8 of the Act also stated that the IPSA must prepare a code of conduct relating to financial interests of members of the House of Commons and would assume responsibility for publishing the Register of Members' Interests. The Commissioner for Parliamentary Investigations would investigate failure to register financial interests.

On 4 November 2009 the Committee on Standards in Public Life published its report on '[MPs' expenses and allowances](#)'. The detailed report made a number of recommendations relating to the new expenses and allowance scheme established by the Parliamentary Standards Act. The recommendations relevant to this publication are that:

Responsibility for maintaining the register of financial interests and the associated code of conduct should be removed from the independent regulator and returned to the House of Commons. (Recommendation 42)

Responsibility for investigating allegations about breaches of the rules on expenses should be vested in the independent regulator, which should be able to appoint its own compliance officer for this purpose. The compliance officer should be able to conduct an investigation on his or her own initiative, at the request of the independent regulator, or in response to a complaint from a member of the public or an MP. (Recommendation 44)

The Labour Government accepted these recommendations and, as a result, amended the [Constitutional Reform and Governance Act 2010](#).¹⁴⁹ These 2010 amendments had the effect of preventing the introduction of the statutory Code covering the registration of Members' interests and the creation of the statutory position of Commissioner for Parliamentary Investigations. As recommended by the Committee on Standards in Public Life the Constitutional Reform and Governance Act established the position of Compliance Officer in IPSA.¹⁵⁰

149. See Part 3 of the Act which contains amendments to the Parliamentary Standards Act 2009.

150. For more information see R Kelly and O Gay, 'The establishment of the Independent Parliamentary Standards Authority', *Standard Note*, SN/PC/05167, House of Commons Library, London, 10 June 2010, p. 1., viewed 17 March 2012, <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-05167.pdf> and O Gay and L Maer, 'Constitutional Reform and Governance Bill: Committee stage report', *Research Paper* 10/18, House of Commons Library, London, 25 February 2010, viewed 12 April 2012, <http://www.parliament.uk/briefing-papers/RP10-18>

Canada

Ministerial code of conduct

The Canadian Privy Council Office publishes [Accountable government: a guide for ministers and ministers of state 2011](#) which 'sets out the duties and responsibilities of the Prime Minister, Ministers and Ministers of State, and outlines key principles of responsible government in Canada'. 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.¹⁵¹

Members of parliament 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 the current version is dated June 2011. 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 Office has been in operation since July 2007.

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 at the request of a Member, on his/her own initiative, or at the direction of the House of Commons. The commissioner may also examine whether a present or former public office holder has breached the *Conflict of Interest Act 2006*.

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

151. 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 16 March 2012, <http://www2.parl.gc.ca/Content/LOP/LegislativeSummaries/39/1/c2-e.pdf>

(deputy ministers, heads of agencies and Crown corporations, members of federal boards and tribunals).

The Ethics Commissioner is required to submit two annual reports to Parliament on the administration of the MP Code and the *Conflict of Interest Act* and a list of sponsored travel by Members of the House of Commons.

Senators' Conflict of Interest Code

The Senate approved the [Conflict of Interest Code for Senators](#) on 18 May 2005. The Code has been amended once since its adoption, following a review of the Code by the Standing Committee on Conflict of Interest for Senators in 2008.

In 2006 and 2009 the Government introduced bills aimed at 'abolishing the position of the Senate Ethics Office and implementing a single conflict of interest regime for members of both houses of Parliament'.¹⁵² The most recent Bill C-30, the Senate Ethics Bill, lapsed with the 30 December 2009 prorogation.

Senate ethics officer

The [Office of the Senate Ethics Officer](#) was created in 2004 by an amendment to the *Parliament of Canada Act*.¹⁵³ The Senate's first Ethics Officer was appointed in February 2005 and assumed responsibilities in April 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.

In July 2009 the Senate Ethics Officer, Jean T. Fournier, spoke about parliamentary ethics at a conference in Australia. Mr Fournier identified the following as the key building blocks of a healthy and effective parliamentary ethics system:

1. A code of conduct for parliamentarians
2. An independent but accountable parliamentary ethics commissioner

152. M Bedard, K Douglas and E Hurtubise-Loranger, 'Conflict of interest at the federal level: legislative framework and oversight', *Background Paper*, Library of Parliament, Ottawa, Canada, November 2010, p.6, viewed 17 March 2012 <http://www2.parl.gc.ca/Content/LOP/ResearchPublications/2010-92-e.pdf>

153. See *An Act to amend the Parliament of Canada Act (Senate Ethics Officer and Ethics Commissioner) and other Acts in consequence*, viewed 23 April 2012, <http://sen.parl.gc.ca/seo-cse/eng/Legis-e.html>

3. A legislative ethics committee
4. A strong emphasis on advice and prevention
5. A robust disclosure and registration process
6. An investigative function with appropriate powers
7. An external review process and
8. Regular exchanges of best practices.¹⁵⁴

Post-separation employment

The [Conflict of Interest 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*).

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.¹⁵⁵

Lobbying Act 1989

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](#). 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.

154. J Fournier, 'Strengthening parliamentary ethics: a Canadian perspective', op. cit., p. 5.

155. 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 15 March 2012 <http://www2.parl.gc.ca/Parlinfo/Compilations/FederalGovernment/StateMinister.aspx?Language=E>

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* 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 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).¹⁵⁶

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 2006.¹⁵⁷

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* 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.

156. 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.

157. The Lobbyist Registration Act was amended by the Federal Accountability Act 2006 and came into force in 2008.

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:

- (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 of parliament 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 the [Senate Code of Official Conduct](#) (Senate Standing Rules 34–43) and the [Senate Ethics Manual](#).

The House of Representatives [Committee on Ethics](#) 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.¹⁵⁸

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'.¹⁵⁹ The Office does not have the power to investigate the conduct of senators.

Office of Government Ethics

The [Office of Government Ethics](#), which was created by the [Ethics in Government Act 1978](#), is the supervising ethics office for the executive branch of government. Its role is advisory; it does not investigate or prosecute complaints.

The *Ethics in Government Act* 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 provides advice on compliance with this code.

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'.¹⁶⁰ 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 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 included:

158. For more information on ethics and the House of Representatives see J Strauss, 'House committee on standards of official conduct: a brief history of its evolution and jurisdiction', Congressional Research Service, Washington, 2 August 2010, viewed 15 March 2012, http://assets.opencrs.com/rpts/98-15_20100802.pdf

159. United States, House of Representatives, *Establishment of the office of congressional ethics*, House Resolution 895, 11 March 2008, p. 4, viewed 20 May 2012, <http://oce.house.gov/pdf/H.Res.895.pdf>

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

- 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
- 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.¹⁶¹

On 21 January 2009 President Obama signed an Executive Order [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:

161. 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 21 March 2012, http://assets.opencrs.com/rpts/RL34166_20070918.pdf, and G Griffith, op. cit. See also J Strauss, *Lobbying the executive branch: current practices and options for change*, Congressional Research Service, 6 December 2010, viewed 15 March 2012, http://assets.opencrs.com/rpts/R40947_20091201.pdf

(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 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.

On 18 June 2010 the White House announced:

... the next step in the President's efforts to reduce the influence of special interests on the federal government. Today, the President signed a memorandum directing agencies in the Executive Branch not to appoint or re-appoint currently-registered federal lobbyists to advisory boards or commissions.¹⁶²

New Zealand

Ministerial code of conduct

Information on the conduct of ministers is contained in the New Zealand Government's Cabinet Manual in the sections [Conduct, public duty and private interests of ministers and parliamentary under-secretaries](#), [Gifts](#) and [Fees, endorsements and outside activities](#) (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'.

The current edition of *New Zealand Parliamentary Practice* states that:

As occasion requires, ministerial guidelines may be issued by the Cabinet or the Prime Minister to deal with particular circumstances that have arisen (such as the conduct to be observed by

162. The White House, 'Ending lobbyist appointments to agency boards and commissions', *White House Blog*, 18 June 2010, viewed 21 March 2012 <http://www.whitehouse.gov/blog/2010/06/18/ending-lobbyist-appointments-agency-boards-and-commissions> See also B Obama (President), *Lobbyists on agency boards and commissions*, Presidential memorandum, 18 June 2010, viewed 21 March 2011 <http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions>

Ministers involved in mayoral election campaigns). However, these ministerial codes of conduct are political guidelines adopted by Governments to guide their own conduct. They have no statutory origin and are not regarded as being legally enforceable. Their significance depends upon the sense of commitment to public office held by Ministers and on their political responsibility to Parliament and public opinion.¹⁶³

Members of parliament 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’.¹⁶⁴ He also said 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

163. Office of the Clerk of the House of Representatives, Chapter 3, ‘Members conditions of service’ in *New Zealand parliamentary practice*, October 2010, viewed 21 March 2012, http://www.parliament.nz/en-NZ/AboutParl/HowPWorks/PPNZ/2/a/c/00HOOOCPNZ_31-Chapter-3-Members-Conditions-of-Service.htm#footnote_28_ref

164. Speaker of the New Zealand House of Representatives, *A Code of conduct for members of parliament—is the time ever right?*, Speech to 38th Presiding Officers and Clerks conference, Rarotonga, Cook Islands, 12 July 2007, viewed 20 May 2012, <http://www.parliament.nz/en-NZ/AboutParl/HowPWorks/Speaker/Speeches/0/4/5/48Speakspeech130720071-A-Code-of-Conduct-for-Members-of-Parliament.htm>

backbone of almost all parliamentary codes of conduct. The New Zealand Parliament already has an effective regime for the disclosure of members' interests.¹⁶⁵

New Zealand Parliamentary Practice notes that:

Except in the case of financial interests, the House has not adopted any detailed ethical guidelines for its members, taking the view that advice about appropriate behaviour is primarily a matter for induction training and internal party discipline. Ethical rules that apply to members tend to be ad hoc or indirect. Thus, a member who accepts or solicits a bribe commits a crime and the House's contempt powers (for example, the rule concerning bribery) do set some rules for members that have an ethical content.¹⁶⁶

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'.

Lobbying code of conduct and lobbyist register

On 5 April 2012 Ms Holly Walker, a member of the Green Party, introduced the Lobbying Disclosure Bill 2012. The purpose of the Bill is to:

increase the transparency of decision making by executive government by:

establishing a Register of Lobbyists, which is administered by the Auditor-General

the development of a Lobbyists' Code of Conduct and providing powers to the Auditor-General to investigate breaches of the Code¹⁶⁷

165. Standing Orders Committee, *Review of standing orders*, New Zealand, August 2008, p. 12, viewed 23 May 2011, http://www.parliament.nz/NR/rdonlyres/6EB35961-63E2-446B-9254-75E798F488BA/94179/DBSCH_SCR_4174_6348.pdf

166. *New Zealand Parliamentary Practice*, op. cit., chapter 3, 'Duties of members'.

167. Lobbying Disclosure Bill 2012, c 3, viewed 21 May 2012, http://www.parliament.nz/en-NZ/PB/Legislation/Bills/f/e/4/00DBHOH_BILL11278_1-Lobbying-Disclosure-Bill.htm

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