



LAW REFORM COMMITTEE

# REVIEW OF THE MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) ACT 1978

DECEMBER 2009



PARLIAMENT



OF VICTORIA





**Review of the**  
***Members of Parliament (Register of Interests) Act 1978***

**Final report of the**  
**Victorian Parliament Law Reform Committee**

**December 2009**

ORDERED TO BE PRINTED

by Authority  
Victorian Government Printer

Parliamentary Paper

No. 251, Session 2006-2009

**Parliament of Victoria, Australia**

*Review of the Members of Parliament  
(Register of Interests) Act 1978*

**Law Reform Committee**

**ISBN – 978-0-9807201-0-5**

**ISBN – 978-0-9807201-1-2 (electronic)**

*Printed on recycled paper*

*This report is also available at [www.parliament.vic.gov.au/lawreform](http://www.parliament.vic.gov.au/lawreform)*

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## Functions of the Law Reform Committee

The functions of the Law Reform Committee are set out in section 12 of the *Parliamentary Committees Act 2003* (Vic). That section states:

- (1) The functions of the Law Reform Committee are, if so required or permitted under this Act, to inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with —
  - (a) legal, constitutional or parliamentary reform
  - (b) the administration of justice
  - (c) law reform.

## Terms of reference

The following reference was made by the Legislative Assembly on 4 December 2008:

That, under section 33 of the *Parliamentary Committees Act 2003*, the Law Reform 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 reporting date for this Inquiry was extended to 31 December 2009 by resolution of the Legislative Assembly on 31 March 2009.

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# List of recommendations

## The code of conduct

### **Recommendation 1: Renaming the Act .....20**

The Committee recommends the *Members of Parliament (Register of Interests) Act 1978* be renamed the *Members of Parliament (Standards) Act*.

### **Recommendation 2: Improving the profile of the code of conduct.....20**

The Committee recommends the Parliament of Victoria publish a copy of the code in the Act on the Parliament of Victoria’s intranet and public website and incorporate information about the code in community education initiatives.

### **Recommendation 3: A statement of values.....25**

The Committee recommends the Act include a statement of values for members of parliament. Subject to further consultation through the exposure draft recommended in recommendation 35, the statement of values should include the following:

- serving the public interest
- upholding democracy
- integrity
- accountability
- respect for the diversity of views and backgrounds within the Victorian community
- diligence
- leadership.

### **Recommendation 4: A broader code of conduct .....42**

The Committee recommends section 3 of the Act be replaced with a new code. Subject to further consultation through the exposure draft recommended in recommendation 35, the new code should include the following rules of conduct:

#### **Upholding democracy and respecting others regardless of background**

Members of parliament should make the performance of their public duties their prime responsibility.

Members of parliament should exercise reasonable care and diligence in performing their public duties.

Members of parliament should submit themselves to the lawful scrutiny appropriate to their office.

Members of parliament should treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

### **Conflicts of interest**

Members of parliament must avoid actual and perceived conflicts of interest.

Members of parliament must declare any actual or perceived conflict of interest when speaking in parliamentary proceedings, including the proceedings of parliamentary committees.

A member of parliament has a conflict of interest if the member participates in or makes a decision in the execution of the member's office which furthers the private interests of the member or the private interests of a 'prescribed person'.

A prescribed person is:

- (i) a member of the member's family
- (ii) a corporation or entity in which the member has an interest as an officer, a person with a controlling beneficial interest or a member
- (iii) a creditor or debtor of the member, except where the debt is owed to or by a family member, an authorised deposit-taking institution or other persons whose ordinary business includes the lending of money or the supply of ordinary household or office-related goods and services
- (iv) a donor of a gift to the member.

A member does not have a conflict of interest where the member or prescribed person is affected as a member of the public or a broad class of persons.

### **Using position for profit**

Members of parliament must not receive a fee, payment, retainer or reward, or permit any compensation to accrue to their beneficial interest or the beneficial interest of a prescribed person for or on account of, or as a result of the use of, their position as a member.

This rule does not apply to members' parliamentary salary or allowances.

### **Outside employment and activities**

Members of parliament may engage in employment, business and community activities outside of the Parliament but must avoid any actual or perceived conflicts of interest that might arise from those activities, including where the activities compromise the member's ability to fulfil his or her public duties.

### **Accepting gifts, hospitality and other benefits**

Members of parliament must not accept gifts, hospitality or other benefits which create an actual or perceived conflict of interest, or which might create an appearance of an attempt to influence the member in the exercise of his or her public duties.

### **Use of influence**

Members of parliament must responsibly exercise their influence as members and must not use their influence to improperly further their own interests or the interests of a prescribed person.

### **Use of public resources**

Members of parliament must comply with any laws or rules regarding use of parliamentary allowances and facilities.

Members of parliament must use all public funds and resources provided to them as members responsibly and only for legitimate purposes in connection with their role as members of parliament.

### **Personal conduct**

Members of parliament must ensure their conduct as members does not bring discredit upon the Parliament.

Members of parliament must act with honesty and integrity in all official dealings and must not deliberately mislead the Parliament or the public about any matter relating to the performance of their public duties.

Members of parliament must be fair, objective and courteous in their dealings with the community and, without detracting from the importance of robust public debate in a democracy, their colleagues.

### **Managing confidential and personal information**

Members of parliament must not use confidential information gained in the performance of their public duty to advance their own interests or the interests of a prescribed person.

Members of parliament must respect the privacy of information they receive in the course of their public duties.

### **Post-retirement activities**

Members of parliament must not take improper advantage of their former office once they leave the Parliament.

**Recommendation 5: Keeping the statement of values and code of conduct relevant into the future..... 46**

The Committee recommends:

- (a) the Legislative Assembly and Legislative Council include monitoring and reviewing the statement of values and the code in the functions of the privileges and standards committees recommended in recommendation 29. The Legislative Assembly and Legislative Council should require their respective committees to confer with each other when carrying out this function
- (b) the Victorian Government, in conjunction with the Parliament of Victoria, commission ongoing research into parliamentary standards.

**The register of interests**

**Recommendation 6: Clarifying the registrable interests ..... 54**

The Committee recommends the Act:

- (a) define ‘income’ in the same way as assessable income under Commonwealth income tax legislation, with the exception of members’ parliamentary salary and allowances and income from savings or investment accounts and public superannuation funds
- (b) define a ‘beneficial interest’ to include an interest in a private superannuation fund
- (c) define ‘gift’ to include a transfer of property or conferral of a financial benefit, including hospitality, made without consideration or without adequate consideration
- (d) replace section 6(2)(d) with a requirement to disclose the name of an organisation where a conflict of interest could arise, or reasonably be seen to arise, from the member’s membership or association with that organisation
- (e) replace section 6(2)(i) with a requirement to disclose ‘other interests of the member where a conflict of interest could arise or reasonably be seen to arise’.

**Recommendation 7: Extending the registrable interests ..... 56**

The Committee recommends the Act:

- (a) require members of parliament to disclose debts in both their primary and ordinary returns. ‘Debt’ should be defined to exclude debts owed to family members, authorised deposit-taking institutions or other persons whose ordinary business includes the lending of money, and debts arising from the supply of ordinary household or office-related goods and services



- 
- (b) clarify that members are not required to disclose political donations in the register of interests as these are disclosable under electoral laws.

**Recommendation 8: Excluding small interests.....58**

The Committee recommends the Act:

- (a) set a \$2000 threshold for the registration of income, investments and debts
- (b) set a \$500 threshold for the registration of gifts and travel contributions
- (c) provide for automatic increases in the thresholds at the end of each financial year in line with the Consumer Price Index
- (d) require members of parliament to disclose interests that fall below the threshold in the register of interests where (i) a member holds or receives two or more interests with or from the same person and (ii) the amount of those interests, valued together, exceeds the threshold.

**Recommendation 9: Excluding benefits from family and friends .....58**

The Committee recommends the Act provide that members of parliament are not required to disclose gifts or travel contributions in the register of interests where the gifts or travel contributions are made by:

- (a) family members or
- (b) friends in a purely personal capacity unless a conflict of interest could arise or be seen to arise.

**Recommendation 10: Excluding estates .....59**

The Committee recommends the Act provide that, if a member becomes the executor of an estate:

- (a) the member must disclose the name of the estate in the register of interests under the 'other substantial interests' category
- (b) the member is not required to disclose an interest held by the estate in the register of interests unless the member is also a beneficiary of that interest.

**Recommendation 11: Protecting residential addresses .....62**

The Committee recommends the Act:

- (a) require members who have a beneficial interest in land used as a primary or secondary place of residence by any person to disclose the suburb or town in which the land is located in the register of interests

- (b) require members who have a beneficial interest in other land to disclose the street address or a description that identifies the land's specific location in the register of interests.

**Recommendation 12: Expanding information about members' interests ..... 64**

The Committee recommends the Act require members of parliament to disclose the following information about their interests in the register of interests:

- (a) income — a description of the source of the income, including the name and address of the payer, and, where the income arises from services provided by the member, a description of the services provided by the member
- (b) offices — the name and address of the corporation or other organisation, a description of the organisation's objects or activities and a description of the office held by the member
- (c) investments — the name of the corporation, partnership or other body in which the member holds the beneficial interest, a description of the nature of the member's interest and, except in the case of listed corporations, the address of the corporation, partnership or other body and a description of its objects or activities
- (d) trusts — a description of the trust and the nature of its activities
- (e) gifts — a description of the gift and the name and address of the donor
- (f) travel — the name and address of the donor and a description of the travel undertaken, including dates, destinations and the purpose of the travel.

**Recommendation 13: Disclosing the value of members' interests..... 66**

The Committee recommends the Act:

- (a) require members of parliament to disclose, by band, the value of any income, investments, land, gifts and travel contributions in the register of interests
- (b) set the bands as follows:
  - (i) for income — \$2000-\$10 000, \$10 000-\$30 000 and over \$30 000
  - (ii) for investments — \$2000-\$50 000, \$50 000-\$200 000 and over \$200 000
  - (iii) for land — \$2000-\$100 000, \$100 000-\$600 000 and over \$600 000
  - (iv) for gifts and travel contributions — \$500-\$1000, \$1000-\$2000 and over \$2000.

- (c) provide for automatic increases in the bands at the end of each financial year in line with the Consumer Price Index, rounded to the nearest \$500.

**Recommendation 14: Defining ‘family’ .....69**

The Committee recommends the Act define ‘family’ to include de facto and same sex partnerships.

**Recommendation 15: Interests held by family companies and trusts ...71**

The Committee recommends the Act:

- (a) require members of parliament who have a beneficial interest or hold office in a family company or trust to disclose ‘prescribed interests’ of the company or trust of which they are aware or reasonably ought to be aware in the register of interests
- (b) define ‘prescribed interests’ as income, investments, land, gifts, travel contributions and other interests as defined by section 6(2)(i) which are held or received by the family company or trust.

**Recommendation 16: An up-to-date register .....72**

The Committee recommends the Act require members to submit an ordinary return within 28 days of 31 January and 30 June each year.

**Recommendation 17: Publishing members’ returns .....74**

The Committee recommends the Act:

- (a) require the tabling of the primary and ordinary returns submitted by members of parliament under the Act
- (b) require members to list all of the interests and information required under the Act in each return they submit
- (c) require the tabling of the returns submitted by members of parliament within 14 days of the deadline for returns.

**Recommendation 18: Further consideration of arrangements for public access .....77**

The Committee recommends:

- (a) the Legislative Assembly and Legislative Council ask the privileges and standards committees recommended in recommendation 29 to consider and report on arrangements for public access to the register of interests. The committees should consider, in particular:
  - (i) whether the Parliament should publish the register of interests online, including any privacy or security risks arising from online publication and measures to manage those risks

- (ii) whether, if the Parliament decides to publish the register in hard copy form only, it should be available as a parliamentary paper or by inspection at the Parliament
- (iii) the appropriateness of placing conditions on access to the register, such as requiring people to provide a name and address when seeking access.

The Legislative Assembly and Legislative Council should require their respective committees to confer with each other and to report in time for their recommendations to be included in the exposure draft of changes to the Act recommended in recommendation 35.

- (b) the Parliament publish information on its website notifying members of the community about the existence of the register of interests and how they can access the information in the register in hard copy.

**Recommendation 19: Reporting failures to submit returns ..... 81**

The Committee recommends the Act give the Clerk of the Parliaments the power to report a member to the Presiding Officer of the member’s house where the member has failed to submit a return in accordance with the deadlines in the Act, or the Clerk has reasonable grounds to believe the member has failed to submit an accurate return.

**Recommendation 20: Further consideration of an electronic register ..... 81**

The Committee recommends the Legislative Assembly and Legislative Council ask the privileges and standards committees recommended in recommendation 29 to consider whether, and how, the register of interests could be compiled in electronic form. The Legislative Assembly and Legislative Council should require their respective committees to confer with each other when carrying out this function.

**Recommendation 21: Keeping the register relevant into the future ..... 83**

The Committee recommends the Legislative Assembly and Legislative Council include monitoring and reviewing the register of interests in the Act in the functions of the privileges and standards committees recommended in recommendation 29. The Legislative Assembly and Legislative Council should require their respective committees to confer with each other when carrying out this function.

## **Building and upholding the standards in the Act**

**Recommendation 22: Induction programs for members of parliament ..... 88**

The Committee recommends the Parliament of Victoria:

- (a) include comprehensive training about the Act in future induction programs for members of parliament

- (b) invite external presenters with a background in ethics and politics to present to members of parliament in future induction programs.

**Recommendation 23: Continuing professional development for members of parliament .....90**

The Committee recommends the Parliament of Victoria consider appropriate platforms for delivering ongoing information and training to members of parliament about the Act.

**Recommendation 24: Written guidelines about the statement of values, code of conduct and register of interests .....93**

The Committee recommends:

- (a) the Legislative Assembly and Legislative Council include the preparation of written guidelines for members of parliament about their obligations under the Act in the functions of the privileges and standards committees recommended in recommendation 29. The Legislative Assembly and Legislative Council should require their respective committees to confer with each other when carrying out this function
- (b) the Parliament publish the written guidelines on the Parliament’s intranet and public website
- (c) the Parliament amend the *Members’ guide* to include information about the statement of values and code of conduct.

**Recommendation 25: Reference to 1974 Qualifications Committee report .....93**

The Committee recommends the Act not include the reference to the 1974 report of the Qualifications Committee in the current section 3(2).

**Recommendation 26: Improved forms for the register of interests .....94**

The Committee recommends the Victorian Government, in consultation with the privileges and standards committees recommended in recommendation 29, amend the *Members of Parliament (Register of Interests) Regulations 2003* to include example entries in the forms for the register of interests.

**Recommendation 27: Ethics adviser .....97**

The Committee recommends the Parliament of Victoria appoint an ethics adviser on retainer to provide confidential advice to members of parliament as required. The privileges and standards committees recommended in recommendation 29 should work together to determine the appointment process, terms of appointment and the functions of the adviser.

**Recommendation 28: Legal advice about the Act ..... 97**

The Committee recommends that, if a member of parliament raises an issue with the Clerks that concerns the legal interpretation of the Act, the Clerks should seek legal advice on behalf of the Parliament and communicate the substance of the advice to all members.

**Recommendation 29: Investigating alleged breaches ..... 108**

The Committee recommends the Parliament of Victoria:

- (a) rename the privileges committee in each house as the privileges and standards committee
- (b) expand the functions of the committees to include investigating and reporting to the houses regarding alleged breaches of the Act in addition to the functions recommended in recommendations 5, 18, 20, 21, 24, 26 and 27
- (c) amend the voting requirements for the privileges and standards committees to require a special majority for any decision relating to an investigation into an allegation against a member of parliament
- (d) give the privileges and standards committees the power to commission a person to inquire into and report on any aspect of the committee's investigation.

**Recommendation 30: Complaints by members of parliament ..... 109**

The Committee recommends the Act:

- (a) provide that members of parliament should refer allegations about breaches of the Act to the Presiding Officer in the accused member's house
- (b) give the Presiding Officer the power to determine whether to refer the allegation to the house's privileges and standards committee for investigation
- (c) require the Presiding Officer to refer allegations which involve possible criminal conduct to the appropriate law enforcement authority.

**Recommendation 31: Complaints by members of the public .....111**

The Committee recommends the Parliament of Victoria:

- (a) establish a complaints process under which members of the public can write to the Presiding Officer in the accused member's house if they believe a member of parliament has breached the Act
- (b) give the Presiding Officers the power to determine whether to refer the allegation to the house's privileges and standards committee for investigation
- (c) publish information about the complaints process in hard copy and on the Parliament's website
- (d) require the Presiding Officer to refer allegations which involve possible criminal conduct to the appropriate law enforcement authority.

**Recommendation 32: Unfounded complaints .....112**

The Committee recommends the Parliament of Victoria:

- (a) require all allegations made to the Presiding Officers to be in writing, signed by the complainant and to set out reasonable grounds and evidence for the allegation
- (b) give the Presiding Officers the power to not refer an allegation to the house's privileges and standards committee for investigation if they determine that the allegation is trivial or vexatious or there are no reasonable grounds for, or evidence to support, the allegation
- (c) give the privileges and standards committees the power not to investigate, or continue an investigation, if the committee determines that the allegation is trivial or vexatious or that there are no reasonable grounds for, or evidence to support, the allegation.

**Recommendation 33: Safeguards for accused members of parliament.....114**

The Committee recommends that the Parliament of Victoria:

- (a) seek expert advice about appropriate safeguards for members of parliament who are the subject of allegations regarding a breach of the Act including procedural fairness, the standard of proof and possible systems of appeal
- (b) incorporate those safeguards in the procedures used by the Presiding Officers and privileges and standards committees for dealing with alleged breaches of the Act.

**Recommendation 34: Sanctions ..... 117**

The Committee recommends the Act:

- (a) give the houses the discretion to impose any one of the following sanctions on a member who wilfully contravenes the Act:
  - (i) a requirement to apologise to the house
  - (ii) a requirement to rectify the member's returns in the register of interests
  - (iii) a maximum fine of 100 penalty units
  - (iv) suspension from the house for a period determined by the member's house
  - (v) declare the member's seat vacant.
- (b) provide that the houses may only suspend a member or declare the member's seat vacant by a motion passed by a special majority of three quarters of the whole number of the members of the house.

**Recommendation 35: Consulting further about changes to the Act ... 118**

The Committee recommends the Victorian Government:

- (a) release an exposure draft of the recommended changes to the Act
- (b) consult further with members of parliament and the community before finalising the amendments to the Act.



# Glossary

<b>The Act</b>	In this report, the Act refers to the <i>Members of Parliament (Register of Interests) Act 1978</i> (Vic).
<b>Blind trusts</b>	Blind trusts are a mechanism used by public officials in some countries to manage conflicts of interest. The official transfers his or her financial interests to a third person to manage. The official has no knowledge of the interests in the trust and no direction or control over the third person.
<b>Clerks</b>	<p>The Clerks are the senior officials of the Parliament. Their responsibilities include managing the parliamentary administration and providing procedural advice to the Presiding Officers and other members of parliament.</p> <p>In Victoria, there is a Clerk of the Legislative Assembly and a Clerk of the Legislative Council. The more senior Clerk is also called the Clerk of the Parliaments.</p>
<b>Code of conduct</b>	A code of conduct is a set of rules or standards adopted by a group of people, such as a profession or an organisation, to guide the conduct of its members. Unlike a code of ethics (see below), a code of conduct usually contains specific rules or standards required of members in order to satisfy their ethical obligations.
<b>Code of ethics</b>	A code of ethics is a set of values or principles adopted by a group of people to guide the conduct of its members. Unlike a code of conduct (see above), a code of ethics usually sets out the general values or principles underlying members' ethical obligations.
<b>Conflict of interest</b>	In the public sector, a conflict of interest is a situation where there is a conflict between an official's public duties and a private interest, such as the official's financial interests. These situations raise ethical concerns where the private interest influences or appears to influence the official's public duties.
<b>Electorate officers</b>	Electorate officers support members of parliament in their parliamentary and electorate responsibilities. They are employed by the Presiding Officers on behalf of the Parliament but are selected by and responsible to their member of parliament.

<b>House</b>	House is the term used to describe a chamber of parliament. The Parliament of Victoria has two houses — the Legislative Assembly and the Legislative Council.
<b>Legislative Assembly</b>	The Legislative Assembly is the lower house of the Parliament of Victoria.
<b>Legislative Council</b>	The Legislative Council is the upper house of the Parliament of Victoria.
<b>Motion</b>	A motion is a parliamentary procedure by which a member of parliament puts a proposal to the house. It is drafted in such a way that, if passed by the house, it will result in an expression of opinion or decision by the house.
<b>MPs</b>	MPs is an acronym for members of parliament.
<b>Notice of motion</b>	A notice of motion is a parliamentary procedure by which a member of parliament gives the house formal notice of his or her intention to put a motion.
<b>Ordinary return</b>	This is a term used by the Act to describe the form that all members of parliament have to submit at the end of each financial year setting out any changes to their interests in the register of interests.
<b>PAEC</b>	The Public Accounts and Estimates Committee of the Parliament of Victoria. PAEC is an all-party committee of members of parliament that investigates and reports to the Parliament on matters associated with the state's financial management, including public administration and public sector finances.
<b>Parliamentary paper</b>	Parliamentary papers are documents and papers that have been tabled in the parliament. Parliaments publish some of these documents and papers in a published series that is available from some libraries. In Victoria, the summaries tabled under the register of interests rules in the Act are published in the series.
<b>Parliamentary privilege</b>	Parliamentary privilege refers to the powers and immunities asserted by parliaments. It developed over centuries of struggle between the Crown, Parliament and courts in Britain and was transported to the colonial parliaments in the 19 <sup>th</sup> century. The powers asserted by parliaments include the power to control their own proceedings, to regulate and

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	<p>discipline members and to punish contempts. The immunities claimed by parliaments include freedom of speech, debates and proceedings in the parliament.</p>
<b>President</b>	<p>In this report, President refers to the President of the Legislative Council. The President is the Presiding Officer (see below) of the Legislative Council and is elected by the members of the Council to preside over its meetings.</p>
<b>Presiding Officers</b>	<p>The Presiding Officers are members of parliament elected by the houses to preside over their meetings and be responsible for parliamentary administration. The Presiding Officer in the Legislative Assembly is called the Speaker and the Presiding Officer in the Legislative Council is called the President.</p>
<b>Primary return</b>	<p>This is a term used by the Act to describe the form that all members of parliament submit at the beginning of each parliament setting out their interests for inclusion in the register of interests.</p>
<b>Speaker</b>	<p>The Speaker is the Presiding Officer (see above) in the Legislative Assembly and is elected by members of the Assembly to preside over its meetings.</p>
<b>Standing orders</b>	<p>The standing orders are the rules adopted by each house to govern the conduct of its business.</p>
<b>Register of interests</b>	<p>In this report, register of interests refers to a public register which lists the private financial and other interests held by members of parliament, such as land or shareholdings, that have the potential to conflict with their public duties.</p>
<b>Westminster</b>	<p>The terms ‘Westminster-style parliament’ or ‘Westminster system’ refer to the government and parliamentary systems that developed in Britain and have been adopted by many Commonwealth countries. The term refers to the Westminster precinct where the United Kingdom’s House of Commons and House of Lords are located.</p>



## Chair's foreword

The review of the *Members of Parliament (Register of Interests) Act 1978 (Vic)* (the Act) is a timely opportunity to reconsider the standards of conduct that the community expects of its parliamentary representatives and the contribution this makes to our democracy.

Our political system works best where citizens have confidence that members of parliament act responsibly and in the best interests of the community.

The evidence gathered by the Law Reform Committee shows that the Parliament of Victoria has a good record and that parliamentarians have in general upheld high standards of conduct and served the community well at a time when parliaments and MPs have been under more scrutiny than ever before.

Mature democracies around the world appear to be facing a weakening of public confidence in politicians, parties and parliaments and opinion polls and research suggest that there is evidence to support this claim.

The dramatic collapse in the number of people who are members of political parties suggests that many are turning their backs on formal party politics and are suspicious of governments and politicians.

Parliaments and parliamentarians now operate in a context of a host of extra-parliamentary institutions and organisations whose job is to watch government and government agencies. As well, contemporary communication technologies mean that many more people can scrutinise and share information and opinion concerning governments, politicians and political parties.

Citizens are more aware of the negative impacts of some forms of lobbying and the influence that cashed up special interests can have on governments and politicians and they also know that large media organisations can be political players as well as commentators and impartial reporters on events.

Even though there is a trend away from some forms of direct political engagement, a good percentage of citizens indicate that they do take an interest in politics and public affairs.

While many citizens are now more likely to focus on single issues, working for reform through membership of non-government and community organisations rather than through joining political parties, it remains the case that in our system, political parties, through parliaments, are solely capable of delivering legislative reform and forming government.

Parliaments are caught in the cross currents of this complex contemporary reality and there are insufficient public voices that defend them as important institutions upon whose vitality our democracy depends.

This report aims to help strengthen parliamentary standards in Victoria by updating, for the first time in 30 years, the code of conduct and the register of interests for members of parliament.

The Committee's recommendations for a new statement of values, a broad code of conduct and a more effective register of interests aim to set clear standards for members of parliament that meet contemporary expectations. They aim to prevent problems arising by providing information and support for members of parliament.

The recommendations also aim to ensure that the Parliament takes action where problems do arise.

On behalf of the members of the Law Reform Committee and of the secretariat, I would like to thank all those individuals and organisations that contributed to the Committee's work during the review, including current and former members of parliament, parliamentary and integrity officials, political scientists, journalists, community organisations and ethicists.

I thank my fellow Committee members for their thoughtful and considered contributions, in particular, the Deputy Chair, Mr Robert Clark MP.

I also acknowledge the hard work of the Committee secretariat, led by Ms Kerry Riseley, for their excellent efforts. Ms Susan Brent, as the principal researcher for the review, deserves special thanks for her terrific work and reliable advice. I also acknowledge the contribution of Victorian Law Foundation intern, Mr Mahmud Begg, for his assistance.

This report is a contribution to the on-going process of review and improvement of parliamentary standards in Victoria. The Committee has identified a number of issues that require further work by the Parliament and has recommended that further consultations take place with members of parliament and the community about the Committee's proposals.

Next year's general election will result in a new parliament and will be an opportunity to make a fresh start in relation to the issues raised in this report. I encourage the Parliament and the Government to work together to complete the work proposed in the recommendations in time for the new parliament.

**Johan Scheffer MLC**  
**Chair**

## Executive summary

This report aims to strengthen the ethical standards for members of parliament in the *Members of Parliament (Register of Interests) Act 1978 (Vic)* (the Act).

The Act establishes:

- a code of conduct which sets out basic standards of conduct for members of parliament
- a register of interests which requires members of parliament to declare on the public record any personal interests such as land and shareholdings that have the potential to conflict with their public duties.

The Act was the first of its kind in Australia when it was passed in 1978. It has helped the Parliament of Victoria avoid the major scandals and corruption that have affected some other parliaments in Australia and overseas.

However, Victorian politics and society have changed since 1978. The community has greater access to information about politics than ever before, through the internet and other media. Expectations of transparency are higher and scrutiny of members of parliament has increased. Yet, at the same time, there is more concern for the personal privacy and security of public figures and their families. The Act is starting to show its age and is now out of step with best practice in some areas.

In December 2008 the Parliament of Victoria asked the Law Reform Committee to review the Act. The recommendations in this report aim to strengthen the Act. They seek to build capacity and skills amongst members of parliament to deal with ethical challenges, and to ensure the Parliament upholds its standards when problems arise.

## The code of conduct

Codes of conduct can clarify the types of conduct that are acceptable and unacceptable for members of parliament. They also provide a standard against which the community can judge members' conduct. In Victoria's case, however, the Committee found that the current code of conduct in the Act is little known and its rules are narrow by modern standards.

To improve awareness of the code in the Parliament and community, the Committee recommends renaming the Act as the *Members of Parliament (Standards) Act*. The Committee also recommends the Parliament promote the code more widely, including on its public website.

The Committee also recommends a more contemporary approach to ethical standards in the Act. The current code focuses largely on preventing members using their public office for private gain. However, the Committee found the community now expects more from its elected representatives than just freedom from conflicts of interest. People value members of parliament who act honestly, with dignity and who are in touch with the community. The Committee has recommended a new statement of values which sets out important democratic values for members of parliament: serving

the public interest, upholding democracy, integrity, accountability, respect for the different views and backgrounds of Victorians, diligence and leadership.

The Committee has also recommended a new code of conduct. It proposes modernising the rules on conflicts of interest and adding new rules on upholding democracy and respecting others regardless of background, handling personal information, using public resources appropriately and acting with honesty and respect.

## **The register of interests**

Registers of interests are a tool for addressing conflicts of interest for members of parliament. They create transparency around possible conflicts of interest by requiring members of parliament to declare personal interests that may conflict with their public duties in a public register for the world to see.

The Committee found Victoria's register of interests has generally worked well since 1978. However, it is no longer promoting transparency as well as it could and its impact on the privacy of members and their families is becoming problematic.

The Committee has recommended a series of changes to the Act focusing on:

- the types of interests in the register — the Committee recommends changes to clarify the types of interests members have to disclose in the register and to add debts to the list. It recommends members declare interests held by family trusts and companies. It also recommends excluding some interests that are unlikely to conflict with members' public duties, including small interests
- the extent of information in the register — the Act requires members to provide limited information about their interests compared with some other parliaments. This makes it difficult to tell when a member does or does not have a conflict. The Committee recommends expanding the information required by the Act. However, it recommends members provide less information about residential properties for privacy and security reasons
- how often members update the register — the Act only requires members to update their interests annually. This means the information in the register can be out of date. The Committee recommends members should have to update their interests twice yearly and that the deadline for updates should be reduced from 60 to 28 days
- public access to the information in the register of interests — the Committee recommends the Parliament publish information for members of the public on its website about how to access the register and review arrangements for future public access.

## **Building and upholding the standards in the Act**

Unless the Parliament takes action to build a culture of ethics amongst its members, and to enforce its standards when required, the proposed changes to the Act risk becoming just empty words.



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The Act currently states that a ‘wilful contravention’ is a contempt of the Parliament and is punishable by, amongst other things, a maximum \$2000 fine. However, there is nothing in the Act that seeks to prevent breaches by members in the first place.

The Committee recommends a number of initiatives to promote awareness about the Act amongst members and help them understand their obligations. They include expanded induction programs for new members of parliament, consideration of continuing professional development for members, written guidelines about the Act and an ethics adviser.

The Committee also recommends changes to bolster the Parliament’s capacity to uphold the standards in the Act. The Parliament’s power to discipline its own members is based on longstanding constitutional principle designed to protect the Parliament’s sovereignty from interference by the executive government or the courts. However, during this review the Committee heard that the current system is too cumbersome and too vulnerable to party political influence.

The Committee considered three options during this review — continued self-regulation by the Parliament, a parliamentary standards commissioner or an external regulator such as an anti-corruption commission. All of these options attracted both support and criticism. The Committee believes, in the first instance, the Parliament should try to make its existing system work better before moving to an option with more radical implications for Victoria’s parliamentary traditions. The Committee recommends:

- improving the way members of parliament raise possible breaches of the Act, and allowing members of the public to bring possible breaches of the Act to the Parliament’s attention as well
- making the Parliament’s privileges committees formally responsible for investigating possible breaches of the Act. The Committee recommends changing the way the committees work so that any investigations require a cross-party approach
- renaming the privileges committees as the privileges and standards committees and giving them greater responsibility for standards under the Act generally. For example, the Committee recommends they work together on future reviews of the statement of values, code of conduct and register of interests.

The Committee also recommends the Parliament consider proper safeguards for people involved in investigations and a wider range of sanctions for proven breaches.

The Committee recommends the Victorian Government release an exposure draft of the changes to the Act and consult further with members of parliament and the community before finalising the amendments.



# Chapter 1: Introduction

Thirty years ago the Parliament of Victoria put itself at the forefront of parliamentary standards in Australia when it passed the *Members of Parliament (Register of Interests) Act 1978* (Vic) (the Act).

The Act created for the first time in Australia:

- a code of conduct which set in law basic standards of conduct for members of parliament
- a register of interests requiring members of parliament to declare on the public record any personal interests such as land and shareholdings that have the potential to conflict with their public duties.

The Act has served Victoria well. The Parliament of Victoria has debated parliamentary standards from time to time, but it has avoided the high profile scandals and corruption that have affected some other parliaments in Australia and overseas.

However, much has changed since 1978. The demands on members of parliament have grown and now, more than ever, being a member of parliament is a full time, professional career. The community has greater access to information about politics through the internet and other media. Expectations of transparency are higher and scrutiny has increased. At the same time, there is more concern for the personal privacy and security of public figures and their families. Other parliaments have introduced more modern initiatives to address these issues.

On 4 December 2008 the Parliament of Victoria gave the Law Reform Committee terms of reference to review the Act and recommend amendments.

The Committee looked at whether the Act is achieving its aims and whether it meets contemporary expectations. The Committee spoke to people both inside and outside the Parliament: current and former members of parliament, parliamentary officials, political scientists, ethicists and community organisations. It also looked at other parliaments in Australia and overseas to learn from their experiences.

The Committee believes the concepts in the Act are still fundamentally sound, but it is showing its age and has fallen behind best practice in some areas. Victoria's good record is becoming dependent more on the efforts of individual members of parliament and officials than on the strength of its laws. The recommendations in this report aim to strengthen the Act so that it promotes high standards well into the future.

## 1.1 The Act and Victoria's parliamentary standards system

The Act has three parts:

- Part I sets out the code of conduct for members of parliament.
- Part II sets out the rules surrounding the members' register of interests.
- Part III addresses arrangements for dealing with breaches of the Act.

The Act reflects its times and is primarily concerned with the potential for conflicts between members' public duties and their personal interests. When he introduced the Act into the Parliament in 1978, then Premier Rupert Hamer said it was based on reports on the topic from the United Kingdom, the Australian Parliament and the Parliament of Victoria's own Qualifications Committee.<sup>1</sup>

The Hamer Government hoped the Act would clarify expected standards of conduct for members of parliament and introduce greater transparency, thereby lifting members' standing in the community. Premier Hamer's speech in the Parliament referred to a 'tide of cynicism which is currently demeaning the holders of public office'.<sup>2</sup> He told the Parliament the proposed code of conduct was no more than an unspoken code which had existed for centuries but:

the clear statement, even though in general terms, of the standards that are expected of members and Ministers will, in the view of the Government, assist members in the maintenance of the highest standards of conduct and make clear what the Parliament as well as the public expects of members.<sup>3</sup>

The Premier also spoke about the register of interests, telling the Parliament '[a] democratic society is by definition an open society'.<sup>4</sup>

Not all members of parliament were as positive about the Act in 1978. The Labor Opposition and National Party criticised what they saw as deficiencies and loopholes in the legislation and questioned the Government's motives for introducing it.<sup>5</sup>

Nevertheless, the Act was passed with the support of the Government and Opposition and commenced on 19 December 1978.

The Act became part of a much broader system for setting and regulating standards of conduct for members of parliament in Victoria. That system also includes:

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<sup>1</sup> Victoria, *Parliamentary debates*, Legislative Assembly, 21 November 1978, 6025-6026 (Mr Hamer, Premier and Treasurer).

<sup>2</sup> Ibid, 6026, quoting Parliament of Australia Joint Committee on Pecuniary Interests of Members of Parliament, *Declaration of interests* (1975).

<sup>3</sup> Ibid, 6027.

<sup>4</sup> Ibid, 6026, quoting Parliament of Australia Joint Committee on Pecuniary Interests of Members of Parliament, above n 2.

<sup>5</sup> See Victoria, *Parliamentary debates*, Legislative Assembly, 8 December 1978, 7512-7531; Victoria, *Parliamentary debates*, Legislative Council, 12 December 1978, 7733-7751.

- the *Constitution Act 1975* — Victoria’s state constitution contains a number of rules about character and conduct for members of parliament. For example, a member’s seat becomes vacant if he or she fails to attend Parliament for an entire session without permission<sup>6</sup>
- the oath of office for members of parliament — all members of parliament have to swear or affirm an oath at the start of a new parliament in which they pledge to be faithful and bear true allegiance to the monarch<sup>7</sup>
- the standing orders of the Legislative Assembly and Legislative Council — the standing orders set out the rules for conducting business in the Parliament. They deal, for example, with offensive and disorderly conduct during parliamentary debate and prohibit members from voting on an issue in which they have a pecuniary interest<sup>8</sup>
- whistleblower protection legislation — these laws allow people to disclose serious improper conduct by public officers and bodies, including members of parliament. Disclosures about members of parliament are made to the Presiding Officers of the Parliament, who can ask the Ombudsman to investigate<sup>9</sup>
- the criminal law — in cases of extreme misconduct, members may be liable to prosecution for offences such as bribery.<sup>10</sup>

## 1.2 The context for the review

This review of the Act was prompted by the report of another parliamentary committee, the Parliament of Victoria’s Public Accounts and Estimates Committee (PAEC).

In 2007-08 PAEC conducted an inquiry into ways to strengthen government and parliamentary accountability in Victoria. That inquiry examined standards of parliamentary behaviour in Victoria, including the Act.

In its report PAEC noted that Australian society and politics had changed since 1978 and recommended the Victorian Government update the code of conduct in the Act. It also recommended the Government update the register of interests. It found the information in the register varied considerably in detail and some entries were too brief for anyone to assess whether a conflict of interest might arise. PAEC said, given it was nearly 30 years since the Act was passed, ‘it is appropriate to now

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<sup>6</sup> *Constitution Act 1975* (Vic) s 46.

<sup>7</sup> *Constitution Act 1975* (Vic) s 23, sch 2.

<sup>8</sup> See Legislative Assembly of Victoria, *Standing orders* (2006), ch 12 and O 170; Legislative Council of Victoria, *Standing orders* (2006), chs 12 and 13 and O 17.07.

<sup>9</sup> *Whistleblower Protection Act 2001* (Vic).

<sup>10</sup> See Gerard Carney, *Members of parliament: Law and ethics*, Prospect Media, 2000, ch 8.

review the register of interest requirements to provide detailed and consistent information for the register under the [A]ct'.<sup>11</sup>

Participants in this review agreed it was time to revisit the Act. Mr Howard Whitton from the ANZSOG Institute for Governance at the University of Canberra told the Committee, 'the law is deficient in a number of respects, but that reflects the fact that it was drafted a long time ago. It was the first Australian effort at this type of regulation.'<sup>12</sup> Professor Brian Costar from the Swinburne University of Technology, who appeared on behalf of the Democratic Audit of Australia, told the Committee:

at the time it was a very progressive piece of legislation, as was a lot of the Hamer government legislation. But I think it has come out today that 30 years have gone by; the internet had not even been thought of in 1978, and a lot of other things as well.<sup>13</sup>

### 1.3 The scope of the review

The terms of reference for this review are brief and require the Committee to 'undertake a review of the *Members of Parliament (Register of Interests) Act 1978* to consider and make recommendations on amending the Act.'

This report focuses on how the Act deals with members of parliament *in their capacity as members*.

Under Victoria's system of government, some members of parliament also hold office in the executive government as ministers or parliamentary secretaries. Others hold special positions within the Parliament, such as the Speaker of the Legislative Assembly and President of the Legislative Council and the chairs of parliamentary committees.

Those positions do pose distinctive issues. Ministers, for example, have greater power and greater access to privileged information and, for these and other reasons, can be more susceptible to corruption than members of parliament.<sup>14</sup>

The Act contains some additional rules for ministers. The code of conduct requires them to ensure no conflict exists, or appears to exist, between their public duty and private interests and states they are expected to devote their time and talents to their public duties.<sup>15</sup>

However, the Committee received limited evidence about these provisions during the review. As a result, the Committee is not in a position to address ministerial standards in any detail and this report concentrates on the standards applicable to all members of parliament in their capacity as members.

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<sup>11</sup> Victorian Parliament Public Accounts and Estimates Committee, *Report on strengthening government and parliamentary accountability in Victoria* (2008), 42. See also ch 4 and recs 9 and 10.

<sup>12</sup> Howard Whitton, Visiting Fellow, ANZSOG Institute for Governance, *Transcript of evidence*, Melbourne, 21 July 2009, 2.

<sup>13</sup> Brian Costar, Coordinator, Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 3. See also Women's Electoral Lobby, *Submission no. 26*, 1.

<sup>14</sup> See Jenny Fleming and Ian Holland, 'The case for ministerial ethics' in Jenny Fleming and Ian Holland (eds), *Motivating ministers to morality*, Ashgate Publishing, 2001, 5-8.

<sup>15</sup> *Members of Parliament (Register of Interests) Act 1978* (Vic) s 3(1)(e) and (f).

## 1.4 The conduct of the review

The Committee was keen to hear from people both inside and outside the Parliament during the review. The literature on codes of conduct and ethical standards stress they are most effective when they are developed by or in consultation with the people responsible for observing them,<sup>16</sup> in this case members of parliament. In a parliamentary democracy, it is just as important that parliamentary standards reflect the expectations of the community.

The Committee undertook the following consultations and research:

- In April 2009 the Committee wrote to key stakeholders inviting comments on the terms of reference for the review. Those stakeholders included current and former members of parliament, other parliaments in Australia and New Zealand, political parties, community groups with an interest in governance and politics, ethics organisations, universities and the media. The Committee invited comments from members of the public in advertisements in *The Age* and *The Herald Sun* on Saturday 18 April 2009. Appendix A lists the 28 written submissions received by the Committee.
- The Committee held four public hearings on 29 June, 21 July, 10 August and 17 August 2009. This included a hearing at the New South Wales (NSW) Parliament where the Committee heard from people involved in NSW's unique parliamentary standards system. Appendix B lists the people and organisations the Committee spoke to at its public hearings.
- The Committee's secretariat conducted a literature review on parliamentary standards in other Australian parliaments and Westminster-style parliaments overseas. It also conducted a comparative study of codes of conduct and registers of interests in those parliaments. The bibliography at the end of this report sets out the results of this work.
- The Committee conducted a survey of current members of parliament in Victoria in August 2009 to seek their views, primarily about possible changes to the code of conduct in the Act. Appendix E contains the survey form used by the Committee.
- The Committee researched the incidence and types of allegations about breaches of parliamentary standards in Victoria from 1992 to June 2009. This project was completed by an intern recruited through the Victoria Law Foundation who examined parliamentary debates and the print media.

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<sup>16</sup> Peter Bowden and Vanya Smythe, 'Making codes of ethics meaningful and effective' (2008) 60(10) *Keeping Good Companies*, 584, 586; Simon Longstaff, 'Why codes fail: And some thoughts about how to make them work!' in Noel Preston (ed), *Ethics for the public sector*, Federation Press, 1994, 242-246; Ian Thompson, 'Inducing change. Can ethics be taught?' (1998) 13(1) *Legislative Studies*, 40, 55. See also Peter Bowden, *Submission no. 10*, 1.

## 1.5 Outline of the report

This report is divided into six chapters:

- This chapter, chapter one, introduces the Act and sets out the background to the review.
- Chapter two looks at the broader context for the review. It describes the role of members of parliament in Victoria, the reasons why parliamentary standards are important and expectations and experiences about parliamentary standards in Victoria. It also outlines the Committee's preferred approach to promoting parliamentary standards.
- Chapter three considers the code of conduct in Part I of the Act. It recommends replacing the current code with a statement of values for members of parliament and a new code containing a broader range of rules.
- Chapter four considers the register of interests rules in Part II of the Act and recommends changes to increase the level of transparency about members' personal interests, while at the same time protecting the privacy and security of members and their families.
- Chapter five looks at ways to make the Act work in practice, including the arrangements for dealing with possible breaches in Part III of the Act.
- Chapter six contains a brief conclusion to the review.



## Chapter 2: Parliamentary standards and democracy

One of Australia's leading writers on public sector ethics, Dr Noel Preston AM, argues that, before we ask what members of parliament ought or ought not to do, we need to ask 'what is their role for', and 'what is parliamentary democracy for'.<sup>17</sup>

This chapter aims to set the Committee's review of the Act in this broader context. It describes the role of members of parliament, the reasons why their conduct is important in our democracy and experiences with parliamentary standards in Victoria. It also sets out the Committee's preferred approach to promoting standards amongst members in Victoria into the future.

### 2.1 The role of members of parliament in Victoria

The Parliament of Victoria operates within a tradition of representative democracy.

There are currently 128 members of parliament in Victoria — 88 members in the Legislative Assembly who are elected by and represent voters in 88 districts, and 40 members of the Legislative Council who are elected by and represent voters in eight regions across Victoria. They serve for four years between each general election.

At its most basic, the role of members of parliament is to represent the public who elected them. In a 1923 decision of the High Court of Australia, Justices Isaacs and Rich stated that:

The fundamental obligation of a member in relation to the Parliament of which he is a constituent unit still subsists as essentially as at any period of our history. That fundamental obligation ... is *the duty to serve*, and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community.<sup>18</sup>

On a day-to-day basis, this involves multiple responsibilities:

- parliamentary — the Parliament of Victoria currently sits for around 17 weeks each year. Members debate and vote on laws and other matters of public importance and review the performance of the executive government. When the Parliament is not sitting, members participate in parliamentary committees, which are small cross-party groups of members that develop public policy or promote government accountability
- electorate — outside of their parliamentary responsibilities, members of parliament work to promote the interests of their constituents. They meet constituents to discuss issues of concern and can help individual constituents with problems they may be experiencing with the state government. The Parliament provides members with staff and allowances

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<sup>17</sup> Noel Preston, 'Politics, prudence and principle: Codifying the conduct of parliamentarians' (1998) 12(2) *Legislative Studies* 1, 4.

<sup>18</sup> *R v Boston* (1923) 33 CLR 386, 400.

to assist them with this work and members have to manage those employees and budgets

- party — most members of parliament in Victoria belong to political parties. Members attend party meetings and functions and contribute to party policy and political strategy. In Australia, members cast their votes in the Parliament in accordance with party policy in all but exceptional cases.

In a democracy as diverse as Victoria's, representing the public in this way is not always straightforward. Dr Preston has also noted that:

Much of the work of public officers — elected or appointed — involves choices amongst values ... Elected and unelected officials have to make choices in an environment where they have limited resources and options, choices that will benefit some and disadvantage others ... Politicians are constantly faced with the demands of interest groups, factions, institutions, powerful individuals as well as ordinary constituents.<sup>19</sup>

These types of competing pressures produce unique ethical challenges for members of parliament when fulfilling their role as public representatives.

## **2.2 Why are standards for members of parliament important?**

Despite the challenges of their role, members of parliament have to uphold high standards in order to fulfil their role as representatives effectively.

Representative democracy depends upon the trust and confidence of the people in their elected representatives to act in the public interest. Dr Andrew Brien has argued in a research paper written for the Parliament of Australia's Library that citizens are unlikely to trust people they believe to be unreliable or otherwise suspect. Dr Brien describes unethical behaviour by members of parliament as 'a form of social rust'. He argues it 'gradually corrodes the fabric of the political community; that is the beliefs and attachments, the engagement and membership that each member of a democratic community must feel if the system is to endure'.<sup>20</sup>

Britain's 2009 parliamentary expenses debate is a stark illustration of this argument. Media exposure of expense claims by some members led to the resignation of the Speaker of the House of Commons and resignations and retirement announcements by a number of other ministers and members. In a statement to the House of Commons in June 2009, British Prime Minister Gordon Brown said:

At precisely the moment when the public need their politicians to be focused on the issues that affect their lives — on fighting back against recession and keeping people in their jobs and homes — the subject of politics itself has become the focus

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<sup>19</sup> Quoted in Gerard Carney, *Members of parliament: Law and ethics*, Prospect Media, 2000, 3. See also Ken Coghill and Colleen Lewis, 'Protecting the reputation and standing of the institution of parliament: A study of perceptions, realities and reforms' (Paper presented at the Australasian Study of Parliament Group (Victorian Chapter), 12 May 2004), 16-17.

<sup>20</sup> Andrew Brien, *A code of conduct for parliamentarians?* (1998), Research Paper 2 of 1998-99, Parliamentary Library, Parliament of Australia.

of our politics ... Each of us has a part to play in the hard task of regaining the country's trust, not for the sake of our different parties but for the sake of our common democracy. Without that trust, there can be no legitimacy; and without legitimacy, none of us can do the job our constituents have sent us here to do.<sup>21</sup>

Commentators have also identified other reasons why standards of conduct by members of parliament are important:

- Members of parliament are public figures and role models for the rest of the community.
- Misconduct distracts the Parliament and the public from important issues.
- Misconduct can deter talented members of the community from running for public office.
- Misconduct can lead people to question and change systems of democracy that have otherwise served the community well.<sup>22</sup>

## 2.3 Victoria's experience of parliamentary standards

### 2.3.1 Parliamentary standards in Victoria

The Parliament of Victoria has enjoyed a relatively good record on parliamentary standards to date. While it would be disingenuous to suggest there have been never been controversies, Victoria has not experienced the major scandals and incidents of corruption reported in some other parliaments in Australia and overseas.

The Clerks of the Legislative Assembly and Legislative Council advised the Committee there are only five known occasions on which alleged breaches of the *Members of Parliament (Register of Interests) Act 1978 (Vic)* (the Act) have been formally raised in the Parliament.<sup>23</sup> None resulted in a finding of misconduct. The Committee's own research into allegations about parliamentary standards in Victoria, based on parliamentary debates and print media reports between 1992 and mid-2009, found that informal allegations are more common. However, they are still limited to a few in any one year and sometimes less, and they tend to concern conflicts of interest and declaration of personal interests rather than criminal misconduct.

Australia also rates highly in terms of integrity against international standards. Transparency International, a global anti-corruption organisation, ranked Australia

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<sup>21</sup> United Kingdom, *Parliamentary debates*, House of Commons, 10 June 1009, 795 (Mr Brown, Prime Minister).

<sup>22</sup> See, for example, Digby Blight, 'The teeth: implementation and enforcement of a code' (1998) 12(2) *Legislative Studies* 21, 24; Andrew Brien, above n 20; Cheryl Kernot, 'Codes and their enforcement: Necessary but not sufficient for ethical conduct' in Noel Preston and Charles Sampford (eds), *Ethics and political practice: Perspectives on legislative ethics*, Federation Press, 1998, 134, 141; H V Ross Robertson, 'A code of ethics: Generating respect for parliament and parliamentarians' (2007) 3 *The Parliamentarian* 197, 198.

<sup>23</sup> Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, and Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria, *Submission no. 18*, 3.

equal ninth with Canada out of 180 countries in its 2008 Corruption Perceptions Index, ahead of the United Kingdom and the United States.<sup>24</sup> Ms Elizabeth O’Keeffe, one of the directors of Transparency International’s Australian arm, told the Committee Australia is traditionally in the top 10 nations and its integrity systems were ‘very well developed’.<sup>25</sup>

Other participants in the review also told the Committee that, in their experience, members of parliament in Victoria strive to uphold high standards. The Speaker of the Legislative Assembly, the Hon. Jenny Lindell MP, told the Committee:

To me as a member of Parliament I find that it is really disappointing that a common view among the public is that members of Parliament are only in it for what they can get out of it, whereas I think we all know most members of Parliament actually work very hard, very honestly and with a lot of integrity. They keep people’s confidentiality, and they are there to serve their electorate.<sup>26</sup>

The Clerk of the Legislative Council, Mr Wayne Tunnecliffe, also told the Committee:

I do not think there is much doubt that members are very assiduous in their actions and certainly do their best to ensure that they always comply with the Act. That has certainly been my experience.<sup>27</sup>

### **2.3.2 Community perceptions of parliamentary standards**

Regardless of the Parliament of Victoria’s record, opinion polls and other surveys suggest that parliamentary standards are a concern for the community.

Although Australians rate some individual ministers and members of parliament highly,<sup>28</sup> they routinely report low levels of trust in members of parliament as a class. One of the most frequently discussed surveys is Roy Morgan Research’s annual *Image of professions* survey. The survey asks people to rate different professions for ethics and honesty. The 2009 poll ranked state members of parliament nineteenth of 30 professions, well behind nurses, judges and bank managers.<sup>29</sup>

Participants in this review also referred to public cynicism about members of parliament.<sup>30</sup> Some, including some sitting members, shared jokes they had heard

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<sup>24</sup> Transparency International, *Transparency International 2008 Corruption Perceptions Index*, <<http://www.transparency.org/content/download/36589/575262>>, viewed 12 May 2009. This index measures perceived levels of public sector corruption based on expert and business surveys.

<sup>25</sup> Elizabeth O’Keeffe, Director, Transparency International Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 6.

<sup>26</sup> Jenny Lindell, Speaker of the Legislative Assembly, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 2.

<sup>27</sup> Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 3.

<sup>28</sup> See Brian Costar, Coordinator, Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 4.

<sup>29</sup> Roy Morgan Research, *Image of 23/29 professions declines in 2009* (Media release, 24 June 2009). For other examples of public opinion research see Ian McAllister and Juliet Clark, *Trends in Australian political opinion: Results from the Australian Election Study, 1987-2007*, Australian Social Science Data Archive, Australian National University, 2008; Ken Coghill and Colleen Lewis, above n 19.

<sup>30</sup> Liberty Victoria – Victorian Council for Civil Liberties Inc, *Submission no. 20*, 3-4; Howard Whitton, Visiting Fellow, ANZSOG Institute for Governance, *Transcript of evidence*, Melbourne, 21 July 2009, 2.

about politicians. The Chair of the New South Wales (NSW) Parliament's Standing Committee on Parliamentary Privilege and Ethics, Mr Paul Pearce MP, told the Committee:

when I told some of my friends I was chairing the Privileges and Ethics Committee there was raised eyebrows all around. The general perception was that we didn't have enough ethics and we had far too many privileges.<sup>31</sup>

There is a large body of literature about why communities in Australia and other Western democracies distrust members of parliament. Suggested causes range from the impact of particular scandals and their reporting by the media to more fundamental issues such as the combative nature of democratic politics, a characteristically Australian distrust of authority, uncertainty created by social and economic change and declining levels of trust in society as a whole.<sup>32</sup> Some commentators argue a certain level of distrust in political institutions is in fact healthy in a democracy.<sup>33</sup>

The poor public perception of members of parliament is nevertheless a reminder of the dangers of complacency and the continued need for laws and systems that encourage high standards. A former member of the Victorian Parliament's Legislative Council, the Hon. Richard de Fegely, argued in his submission to the review:

it is imperative that if the community are to have the confidence in their Members of Parliament, any changes to this Act must reinforce the integrity of the Parliament and provide transparency ...

it is disappointing that it is necessary to tighten the provisions when the people we elect should be very conscious of self regulation, but in the interests of restoring community confidence it seems some changes are required.<sup>34</sup>

## 2.4 The Committee's approach to promoting parliamentary standards

The Committee considered best practice models for strengthening Victoria's laws and systems regarding parliamentary standards in this review.

In its submission, the ANZSOG Institute for Governance at the University of Canberra referred to two alternative models, one it called an 'integrity model' and

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<sup>31</sup> Paul Pearce, Chair, Standing Committee on Parliamentary Privilege and Ethics, Legislative Assembly, Parliament of New South Wales, *Transcript of evidence*, Sydney, 17 August 2009, 5. See also Jenny Lindell, Speaker of the Legislative Assembly, Parliament of Victoria, *Submission no. 19*, 1-2; Brendan Donohoe, State Political Reporter, Seven Network, *Transcript of evidence*, Melbourne, 21 July 2009, 5.

<sup>32</sup> See, for example, the essays in David Burchell and Andrew Leigh (eds), *The prince's new clothes: Why do Australians dislike their politicians?*, UNSW Press, 2002; Graham Maddox, *Australian democracy in theory and practice*, Longman, 2000, 3; Robert Williams, 'The ethics eruption: Sources and catalysts' in Denis Saint-Martin and Fred Thompson (eds), *Public ethics and governance: Standards and practices in comparative perspective*, Research in public policy analysis and management, Volume 14, Elsevier Ltd, 2006, 29; David Zussman, 'Confidence in public institutions: Restoring pride to politics' (Paper presented at the Department of the Senate Occasional Lecture Series, Parliament House, Canberra, 9 February 2001).

<sup>33</sup> See, for example, John Uhr, *Terms of trust: Arguments over ethics in Australian government*, UNSW Press, 2005, 19; Graham Maddox, above n 32, 3.

<sup>34</sup> Richard S de Fegely, *Submission no. 12*, 1.

another it called a ‘policing model’. An integrity model attempts to build an ethical conscience in officials and focuses on preventing ethical risks. A policing model, by contrast, puts greater emphasis on scrutinising activity and investigating suspected failures.<sup>35</sup>

Some participants in the review argued for the former approach. The former Queensland Integrity Commissioner, Mr Gary Crooke QC, told the Committee the ‘big-stick approach is counterproductive. You have got to take measures to get people to embrace ethical behaviour as an incident of their profession or office.’<sup>36</sup> Dr Simon Longstaff, the Executive Director of the St James Ethics Centre in Sydney, noted the current Act:

seems to deal with a negative possibility, rather than having any intention at all to build capacity in members of parliament, not just in relation to dealing with potential conflicts, but with the myriad ethical questions which must come before members of parliament in the course of their duties ...

When it comes to dealing with the ethical dimension of any issue it is not just a matter of common sense, it is a matter of practice and some skill which one is able to bring to bear ... there is an opportunity to consider a broader mix for what might be done within the Victorian Parliament than simply dealing with potential mischief.<sup>37</sup>

Other participants described the benefits of a policing-style model. The Commissioner of NSW’s Independent Commission Against Corruption (ICAC), the Hon. Jerrold Cripps QC, told the Committee:

with people who are dishonest, it doesn't matter what you tell them, it doesn't matter how ethically they have to behave, and the people who are intrinsically honest you don't have to tell them either. They find it insulting to be told this ...

... you have to maintain the proper standards and you have to enforce them ... If people realise both of those things they might be caught and they will be punished. That is probably the best. I appreciate that is not the Archbishops’ view of human nature, but it is mine.<sup>38</sup>

The Committee’s preferred approach combines both of these models. The Committee believes there is a need for clear and enforceable rules so that members and the wider community understand the standards expected of elected representatives, and that those standards represent more than just words. However, experience in other countries suggests that simply creating additional and stricter rules is not always effective in practice. The British House of Commons adopted a comprehensive code of conduct and established a parliamentary standards commissioner to investigate

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<sup>35</sup> ANZSOG Institute for Governance, *Submission no. 21*, 8-9. See also Howard Whitton, *Transcript of evidence*, above n 30, 5 and Professor John Uhr’s discussion of ‘conscience/responsibility/pro-ethics’ and ‘compliance/accountability/anti-corruption’ approaches in John Uhr, above n 33, 196-199.

<sup>36</sup> Gary Crooke, former Queensland Integrity Commissioner, *Transcript of evidence*, Melbourne, 10 August 2009, 5. See also Gary Crooke, former Queensland Integrity Commissioner, *Submission no. 15*, 4.

<sup>37</sup> Simon Longstaff, Executive Director, St James Ethics Centre, *Transcript of evidence*, Sydney, 17 August 2009, 2.

<sup>38</sup> Jerrold Cripps, Commissioner, Independent Commission Against Corruption, *Transcript of evidence*, Sydney, 17 August 2009, 5.

breaches in the 1990s but, as the events of this year have shown, they have not been a guarantee of high standards in practice.<sup>39</sup>

In his 2005 book on government ethics, *Terms of trust*, Australian political scientist Professor John Uhr argues that responsibility and accountability are ‘companion components’ of integrity systems but we should lead with the former, and use the latter in a supporting role as a safeguard against misconduct.<sup>40</sup>

Participants in the review acknowledged the benefits of combining both models. While the former Queensland Integrity Commissioner’s evidence to the Committee supported a regime that focuses on the conscience of members, he also said it had to address the worst case situation and be sufficiently encompassing to ‘catch the astute’.<sup>41</sup> The Commissioner of NSW’s ICAC told the Committee that the investigation of corruption and education were ‘just two sides of the one coin ... the most effective and detailed, immediate way is certainly to expose it, but there are lots of other ways you can do it by education and the like, and I am very supportive of that approach’.<sup>42</sup>

The following chapters set out the Committee’s recommendations for both building integrity and policing compliance with Victoria’s Act.

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<sup>39</sup> Brian Costar, *Transcript of evidence*, above n 28, 3. See generally Alan Rosenthal, ‘The effects of legislative ethics law: An international perspective’ in Denis Saint-Martin and Fred Thompson (eds), *Public ethics and governance: Standards and practices in comparative perspective*, Research in public policy analysis and management, Volume 14, Elsevier Ltd, 2006, 155; BA Rosenson, ‘The costs and benefits of ethics laws’ in Denis Saint-Martin and Fred Thompson (eds), *Public ethics and governance: Standards and practices in comparative perspective*, Research in public policy analysis and management, Volume 14, Elsevier Ltd, 2006, 135; G Calvin Mackenzie with Michael Hafken, *Scandal proof: Do ethics laws make government ethical?*, Brookings Institution Press, 2002, chs 5 and 6.

<sup>40</sup> John Uhr, above n 33, 197.

<sup>41</sup> Gary Crooke, *Submission no. 15*, above n 36, 4.

<sup>42</sup> Jerrold Cripps, *Transcript of evidence*, above n 38, 4-5.





## Chapter 3: The code of conduct

Part I of the *Members of Parliament (Register of Interests) Act 1978 (Vic)* (the Act) contains the code of conduct for members of parliament in Victoria. The code sets out, in law, some basic standards of behaviour expected of members of parliament.

This chapter looks at the aims of codes for members of parliament and considers how well Victoria's code has performed to date. It recommends the Victorian Government work towards a new statement of values and a broader code of conduct that reflect modern community expectations of members of parliament.

### 3.1 The aims of codes of conduct

Codes of conduct are a standard feature of integrity regimes in the public sector. Victoria has codes of conduct for local government councillors, public servants, electorate officers and police officers and was the first parliament in Australia to introduce a code for members of parliament.

In the case of members of parliament, the Committee heard that codes of conduct have a dual role that is part institutional and part public.<sup>43</sup>

#### 3.1.1 Institutional aims

In their institutional role, codes can help to raise standards by clarifying what types of conduct are acceptable and unacceptable for members of parliament. Ethical choices can be difficult for any person. Dr Simon Longstaff, the Executive Director of the St James Ethics Centre in Sydney, has written, 'although most people are attracted to the fields of certainty, it is an unavoidable aspect of the human condition that we inhabit an ethical landscape that is inherently imprecise'.<sup>44</sup>

As the previous chapter noted, members of parliament face multiple and sometimes competing interests. This can make their ethical landscape particularly difficult. The National Democratic Institute for International Affairs noted in its 1999 paper on legislative ethics that an ethics regime with a code and financial disclosure rules 'can serve as a map by which legislators can navigate the sometimes treacherous waters of political life'.<sup>45</sup> Codes can guide members about what they should do in these situations. Just as importantly, they make it clear to members what they should not do.

Codes are not just about prescribing or prohibiting conduct. They also aim to help members to lift their vision by setting aspirational goals and standards. Dr Andrew

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<sup>43</sup> Liberty Victoria – Victorian Council for Civil Liberties Inc, *Submission no. 20*, 4. See also Andrew Brien, *A code of conduct for parliamentarians?* (1998), Research Paper 2 of 1998-99, Parliamentary Library, Parliament of Australia.

<sup>44</sup> Simon Longstaff, 'Why codes fail: And some thoughts about how to make them work!' in Noel Preston (ed), *Ethics for the public sector*, Federation Press, 1994, 237, 246.

<sup>45</sup> National Democratic Institute for International Affairs, *Legislative ethics: A comparative analysis* (1999), Legislative Research Series Paper no 4, 3.

Brien argues in a paper written for the Parliament of Australia's Library that '[c]odes are not merely cudgels. They are lights.'<sup>46</sup> The Speaker of the Legislative Assembly, the Hon. Jenny Lindell MP, told the Committee this had been the Parliament's experience with its code for electorate officers: '[it] has made it much clearer what values and what behaviours are seen as best practice rather than what is acceptable behaviour — what we all should be striving for'.<sup>47</sup>

What codes cannot do is guarantee perfect conduct. A common criticism, both in the 1978 parliamentary debate about the Act and more generally, is that it is not possible to 'legislate for honesty'.<sup>48</sup> However, the Committee heard this is an unreasonable standard.<sup>49</sup> The Committee was told what codes can do is heighten members' sensitivity to ethical issues. Professor Brian Costar from the Swinburne University of Technology, who appeared on behalf of the Democratic Audit of Australia, recalled a statement by a political philosopher that, "Look, you cannot teach people to be ethical, but you can teach people to be aware of ethical issues". That may be what codes of conduct will do.<sup>50</sup>

### 3.1.2 Public aims

A code of conduct is also a public statement by the Parliament to the community about what it can expect of its elected representatives.

Parliaments sometimes adopt codes in the hope this type of a public commitment to standards will improve community perceptions of members of parliament. This was one of the aims discussed in the 1978 parliamentary debate about the Act. The current Speaker also told the Committee:

having a code ... will not change the public's attitude overnight, but it might cause the people who review and set the public debate and the public agenda to think that at least Victorian politicians are attempting to address some of these issues. If you coupled that with greater transparency and with greater access to information around our payment structure and our allowance structure, then I think you would begin to change public perception.<sup>51</sup>

While commentators are sceptical about whether codes can change deep-seated public distrust on their own,<sup>52</sup> the Committee heard that codes can at least provide a standard against which the community can judge members of parliament and, if necessary, hold them to account. Liberty Victoria's submission argued codes

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<sup>46</sup> Andrew Brien, above n 43.

<sup>47</sup> Jenny Lindell, Speaker of the Legislative Assembly, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 3.

<sup>48</sup> See, for example, Victoria, *Parliamentary debates*, Legislative Council, 12 December 1978, 7741 (Mr Hider, Member for Monash Province); Judith Lichtenberg, 'What are codes of ethics for?' in Margaret Coady and Sidney Bloch (eds), *Codes of ethics and the professions*, Melbourne University Press, 1996, 13, 14-17; WG Hayden, 'Politics, public responsibility and the ethical imperative' in Noel Preston and Charles Sampford (eds), *Ethics and political practice: Perspectives on legislative ethics*, Federation Press, 1998, 52, 60.

<sup>49</sup> Simon Longstaff, Executive Director, St James Ethics Centre, *Transcript of evidence*, Sydney, 17 August 2009, 2.

<sup>50</sup> Brian Costar, Coordinator, Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 5.

<sup>51</sup> Jenny Lindell, *Transcript of evidence*, above n 47, 3.

<sup>52</sup> See, for example, Conal Condren, 'To be or not to be ethical? That is the rhetorical question' (1999) 71(5) *Australian Quarterly* 29, 29.

‘provide the public with [criteria] by which they can judge which actions of Parliamentarians are acceptable and those which are unacceptable’.<sup>53</sup>

## 3.2 Victoria’s current code of conduct

By today’s standards, the current code of conduct in the Act is a relatively brief document. It has six paragraphs that focus largely on the potential for conflicts between members’ public duties and their private interests. The only additional standard for members of parliament is that they must ensure their conduct as members is not such as to bring discredit upon the Parliament.

Figure 1 sets out the code of conduct in section 3(1) of the Act in full. Sections 3(1)(e) and (f) apply exclusively to members who hold office as government ministers. For the reasons outlined in chapter one, those paragraphs fall outside the scope of this review.

## 3.3 How is Victoria’s code performing?

As a tool for clarifying and promoting standards amongst members of parliament and the community, the evidence to this review suggests the current code in the Act is not performing as well as it could.

It is difficult to measure the impact of Victoria’s code, or integrity measures generally, in any empirical way. As the Commissioner of the New South Wales (NSW) Independent Commission Against Corruption (ICAC), the Hon. Jerrold Cripps QC, told the Committee when asked about ICAC’s performance:

you never know how much corruption there was to start with, you never know how much there is now and you never really know how much [of] what you did stopped what might otherwise have happened ...<sup>54</sup>

Dr Peter Bowden, the Secretary of the Australian Association for Professional and Applied Ethics, referred in his individual submission to studies suggesting codes have limited effectiveness.<sup>55</sup> However, there is debate about how to measure effectiveness properly in this context. Australian political scientist Professor John Uhr has described the current methods for assessing integrity systems as ‘either clumsy or non-existent’.<sup>56</sup>

<sup>53</sup> Liberty Victoria, *Submission no. 20*, 4.

<sup>54</sup> Jerrold Cripps, Commissioner, Independent Commission Against Corruption, *Transcript of evidence*, Sydney, 17 August 2009, 8.

<sup>55</sup> Peter Bowden, *Submission no. 10*, referring to Peter Bowden and Vanya Smythe, ‘Making codes of ethics meaningful and effective’ (2008) 60(10) *Keeping Good Companies* 584. For discussion about the impact of ethics laws in other parliaments see, for example, Nicholas Allen, ‘Voices from the shop floor: MPs and the domestic effects of ethics reforms’ (2009) 62(1) *Parliamentary Affairs* 88; Rebekah Herrick, *Fashioning the more ethical representative: The impact of ethics reforms in the US House of Representatives*, Praeger, 2003, ch 2; G Calvin Mackenzie with Michael Hafken, *Scandal proof: Do ethics laws make government ethical?*, Brookings Institution Press, 2002, ch 5; Alan Rosenthal, ‘The effects of legislative ethics law: An international perspective’ in Denis Saint-Martin and Fred Thompson (eds), *Public ethics and governance: Standards and practices in comparative perspective*, Research in public policy analysis and management, Volume 14, Elsevier Ltd, 2006, 155.

<sup>56</sup> John Uhr, ‘How do we know if it’s working?’ (2005) 64(2) *Australian Journal of Public Administration*, 69, 69.

**Figure 1: The code of conduct for members of parliament in Victoria**

It is hereby declared that a Member of the Parliament is bound by the following code of conduct —

- (a) Members shall —
  - (i) accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests;
  - (ii) ensure that their conduct as Members must not be such as to bring discredit upon the Parliament;
- (b) Members shall not advance their private interests by use of confidential information gained in the performance of their public duty;
- (c) a Member shall not receive any fee, payment, retainer or reward, nor shall he permit any compensation to accrue to his beneficial interest for or on account of, or as a result of the use of, his position as a Member;
- (d) a Member shall make full disclosure to the Parliament of —
  - (i) any direct pecuniary interest that he has;
  - (ii) the name of any trade or professional organization of which he is a member which has an interest;
  - (iii) any other material interest whether of a pecuniary nature or not that he has —in or in relation to any matter upon which he speaks in the Parliament;
- (e) a Member who is a Minister shall ensure that no conflict exists, or appears to exist, between his public duty and his private interests;
- (f) a Member who is a Minister is expected to devote his time and his talents to the carrying out of his public duties.

The Committee instead relied on evidence from participants in the review about their experiences. They did raise some concerns about Victoria's code.

Firstly, the Committee heard the code is not well known or accessible. The Clerk of the Parliaments and Clerk of the Legislative Assembly, Mr Ray Purdey, told the Committee, 'I think very few people know of or are aware of the code of conduct.'<sup>57</sup> The Parliament briefs new members on the code when they first enter parliament as part of its induction program.<sup>58</sup> However, the guide for members of parliament makes no reference to the code and nor does the Parliament's intranet or its public website.

Secondly, a number of participants told the Committee the code is showing its age. The Accountability Round Table, a group of former politicians, lawyers, academics and others with an interest in parliamentary and government processes, wrote in its submission, 'the world in which members of Parliament make their decisions has changed dramatically since 1978.' They noted the expanded use of privatised services and public-private partnerships, as well as the advent of the '24 hour news cycle', the increase in public scrutiny of politicians and pressure to focus on short-term political issues.<sup>59</sup>

While the code may have been ground-breaking in 1978, in 2009 some participants in the review saw it as narrow. Mr Greg Barber MP sent the Committee a copy of the Green's 2006 election policy which described the current code in the Act as a 'rudimentary outline'.<sup>60</sup> A recent newspaper article pointed out that members of parliament in Victoria are subject to fewer guidelines about their behaviour than their own staff.<sup>61</sup>

Finally, the Committee heard the code's impact has been limited by a lack of enforcement. Several current members of parliament who responded to the Committee's survey of members expressed frustration at what they saw as a failure to uphold or enforce standards in the Parliament.

This evidence suggests Victoria's code could be reformed to meet its aims better. Chapter five addresses arrangements for enforcing the code. The remainder of this chapter considers ways to address the other problems raised during the review.

### 3.4 Improving the code's profile

A code will not meet any of its aims if members of parliament and the public do not know it exists or cannot access it easily. The Committee is concerned by suggestions that Victoria's current code is not well known.

<sup>57</sup> Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 4. See also Jenny Lindell, *Transcript of evidence*, above n 47, 3.

<sup>58</sup> Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, and Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria, *Submission no. 18*, 2.

<sup>59</sup> Accountability Round Table, *Submission no. 28*, 1. See also Brian Costar, *Transcript of evidence*, above n 50, 3.

<sup>60</sup> Greg Barber, The Australian Greens – Victoria, *Submission no. 27*, 1.

<sup>61</sup> Melissa Fyffe, 'Why Brumby should take the Bligh road to integrity', *The Sunday Age*, 2 August 2009, 15. See also Jenny Lindell, *Transcript of evidence*, above n 47, 2.

The title of the current Act may be part of the problem. It refers to the register of interests in Part II of the Act and ignores the code. The Clerks of the Legislative Assembly and Legislative Council suggested moving the code to its own Act to ‘provide greater transparency and less confusion for both the [m]embers and the public’.<sup>62</sup> Another option would be to use a different title for the Act. Liberty Victoria referred in its evidence to the Canadian province of Ontario’s *Members Integrity Act 1994* which, like Victoria’s Act, covers both rules of conduct and the disclosure of private interests.

The Committee is conscious that Acts of Parliament, on their own, are not an ideal vehicle for communication about parliamentary standards. The Parliament should also take additional steps to promote the code to both members of parliament and the public. Options include publishing a copy of the code on the members’ section of Parliament’s intranet site and on the Parliament’s public website. The Parliament could also incorporate information about the code in its community education initiatives such as information and fact sheets. Other options for raising awareness amongst members are discussed in chapter five.

**Recommendation 1: Renaming the Act**

The Committee recommends the *Members of Parliament (Register of Interests) Act 1978* be renamed the *Members of Parliament (Standards) Act*.

**Recommendation 2: Improving the profile of the code of conduct**

The Committee recommends the Parliament of Victoria publish a copy of the code in the Act on the Parliament of Victoria’s intranet and public website and incorporate information about the code in community education initiatives.

## 3.5 Articulating values

### 3.5.1 Codes of ethics and codes of conduct

The modern literature on codes for members of parliament refers to two types of codes. The first concentrates on what Professor Uhr describes as ‘the values and principles at the root of professional obligations’. They are usually called codes of ethics. The second approach aims at ‘lower but firmer ground’ by setting out the specific conduct a person should or should not take to comply with those values and principles.<sup>63</sup> These codes are usually called codes of conduct.

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<sup>62</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 58, 5; Ray Purdey, *Transcript of evidence*, above n 57, 4.

<sup>63</sup> John Uhr, *Terms of trust: Arguments over ethics in Australian government*, UNSW Press, 2005, 140. See also Simon Longstaff, ‘Why codes fail’, above n 44, 241-242; Conal Condren, ‘Code types: Functions and failings and organisational diversity’ (1995) 14(4) *Business & Professional Ethics Journal* 69, 75-76.

A code of ethics, for example, might list ‘serving the public interest’ as a value for members of parliament. A code of conduct would require members to avoid conflicts between their public duties and personal interests.

Ethicists present codes of ethics as a way to build capacity to think in ethical terms. Dr Longstaff has written that despite their ‘fuzzy’ form, codes of ethics are a better vehicle for ensuring long-term commitment to values. They require:

something more than mere compliance. Instead, such a code calls forth an exercise in understanding that is linked to a requirement that people exercise judgment and accept personal responsibility for the decisions that they make.<sup>64</sup>

However, codes of ethics are often criticised as too vague and difficult to enforce.<sup>65</sup>

Codes of conduct, with their clear and specific rules, are easier to interpret and enforce. However, they are criticised for promoting a mentality of minimal compliance. Some American commentators have criticised their tendency to focus on ‘petty ethics’, that is laws that regulate specific issues such as gifts or financial interests but do nothing to encourage aspirations or higher order qualities such as courage and integrity.<sup>66</sup>

### 3.5.2 What approach should Victoria take?

The current code in the Act is more consistent with a code of conduct.

Other parliaments are starting to adopt both approaches. The Queensland Parliament, for example, has a ‘Statement of fundamental principles’ followed by detailed rules about issues such as conduct in the Parliament. The NSW Parliament’s code has a preamble which states, amongst other things, that members acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of NSW.<sup>67</sup> The standards for public servants and electorate officers in Victoria have both general values or principles and rules of conduct.

Most of the participants in this review who addressed this issue argued Victoria should adopt a similar approach for its members of parliament. Mr Howard Whitton from the ANZSOG Institute for Governance at the University of Canberra argued ‘you need both’ values and rules. He told the Committee values provide an overall framework while rules provide precise requirements that can be enforced.<sup>68</sup> The

<sup>64</sup> Simon Longstaff, ‘Why codes fail’, above n 44, 242.

<sup>65</sup> Conal Condren, ‘Code types’, above n 63, 75; Andrew Brien, above n 43; Diana Woodhouse, ‘Delivering public confidence: Codes of conduct, a step in the right direction’ (2003) 3 *Public Law* 511, 516.

<sup>66</sup> See G Calvin Mackenzie with Michael Hafken, above n 55, 87-88; BA Rosenson, ‘The costs and benefits of ethics laws’ in Denis Saint-Martin and Fred Thompson (eds), *Public ethics and governance: Standards and practices in comparative perspective*, Research in public policy analysis and management, Volume 14, Elsevier Ltd, 2006, 135, 150-151; Alan Rosenthal, above n 55, 171.

<sup>67</sup> Legislative Assembly of Queensland, *Code of ethical standards* (2009) 3-4; Parliament of New South Wales, *Code of conduct for members* (2007).

<sup>68</sup> Howard Whitton, Visiting Fellow, ANZSOG Institute for Governance, *Transcript of evidence*, Melbourne, 21 July 2009, 12. See also Peter Bowden and Vanya Smythe, ‘Making codes of ethics meaningful and effective’ (2008) 60(10) *Keeping Good Companies* 584; Liberty Victoria, *Submission no. 20*, 5;

majority of members who responded to this part of the Committee's survey also supported the inclusion of some values.

Support for this approach was not universal. Professor Costar, for example, warned the Committee 'it has got to be done in a way that does not look 'twee' ... [Values] have got to be practical and operational.'<sup>69</sup> One of the members of parliament who responded to the Committee's survey wrote that different members bring different values to the Parliament and this should be a matter between members and their electorates.

The Committee is also concerned by problems with the enforceability of values. One option would be to expressly state that any values are non-enforceable, which is the approach used by Victoria's public service.<sup>70</sup> However, the community could perceive non-enforceable values for members of parliament as just empty aspirations. Such symbolic values may be better expressed through another vehicle, such as the oath of office for members of parliament.

On balance, the Committee's preference is to include both a statement of values, similar to a code of ethics, and detailed rules, like the current code of conduct, in the Act. The Committee believes this will strike the balance the Committee outlined in chapter two between building ethical capacity amongst members and setting clear and enforceable rules. Although Victoria is a robust and diverse democracy, there should be common and enduring democratic values upon which all members can agree. The Committee also believes the community is likely to accept a statement of non-enforceable values provided it is accompanied by a clear and enforceable code of conduct. The Parliament could include the statement of values on its intranet and public website alongside the code of conduct, as recommended in recommendation 2.

### **3.5.3 What values should be in the Act?**

The Committee received only limited evidence in this review about the *types* of values that should be included in the Act.

Some participants referred the Committee to the values adopted by other parliaments. The Accountability Round Table recommended an amended version of Queensland's 'Statement of fundamental principles' in its submission.<sup>71</sup> Liberty Victoria referred to the 'Seven principles of public life' used by the United Kingdom Parliament.<sup>72</sup> Figures 2 and 3 set out those principles.

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Accountability Round Table, *Submission no. 28*, 2; Simon Longstaff, *Transcript of evidence*, above n 49, 3; Jenny Lindell, *Transcript of evidence*, above n 47, 2-3; Jenny Lindell, Speaker of the Legislative Assembly, Parliament of Victoria, *Submission no. 19*, 2; Ray Purdey, *Transcript of evidence*, above n 57, 5.

<sup>69</sup> Brian Costar, *Transcript of evidence*, above n 50, 4. See also Jerrold Cripps, *Transcript of evidence*, above n 54, 5.  
<sup>70</sup> Section 7 of the *Public Administration Act 2004* (Vic) sets out the values for Victoria's public sector but states that they do not give rise to legal rights or affect liabilities. The Act provides for the Public Sector Standards Commissioner to develop a code of conduct based on the values, and breaches of that code can amount to misconduct: see s 63.

<sup>71</sup> Accountability Round Table, *Submission no. 28*, 1, att.

<sup>72</sup> Liberty Victoria, *Submission no. 20*, 2-3, 4-5; Anne O'Rourke, Vice-President, Liberty Victoria – Victorian Council for Civil Liberties Inc, *Transcript of evidence*, Melbourne, 29 June 2009, 2.



**Figure 2: The Parliament of Queensland's 'Statement of fundamental principles'<sup>73</sup>**

**Integrity of the Parliament:** The public's confidence in the institution of Parliament is essential. Members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and avoid any action which may diminish its standing, authority or dignity.

**Primacy of the public interest:** Members are elected to act in the public interest and make decisions solely in terms of the public interest. Members also have a continuing duty to declare any private interests relating to their public duties as they arise, and to take steps to avoid, resolve or disclose any conflicts arising in a way that protects the public interest.

**Independence of action:** Parliamentary democracy requires that members make decisions, and be seen to make decisions, in accordance with the public interest and not because they are under any financial obligation or influence. Therefore, members are not to place themselves under any financial obligation to outside individuals or organisations, including the executive government, that might influence them in the discharge of their duties and responsibilities, and must act at all times in accordance with rules set down by the Parliament for outside appointments.

**Appropriate use of information:** In the course of their duties members often receive information which is either confidential or prized (that is, not available to the general public). Members are not to misuse any confidential or prized information, particularly for personal gain.

**Transparency and scrutiny:** It is vital to parliamentary democracy that the public has confidence in the integrity of the decision-making process of Parliament. To ensure transparency, public scrutiny and public confidence, it is necessary that each member disclose their pecuniary interests on a continuing and ad hoc basis when the need arises.

**Appropriate use of entitlements:** Members are provided certain entitlements to assist them to discharge their duties and responsibilities. Members are to ensure that they comply with any guidelines for the use of these entitlements.

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<sup>73</sup> Legislative Assembly of Queensland, *Code of ethical standards* (2009), 3-4.

**Figure 3: The United Kingdom's 'Seven principles of public life'<sup>74</sup>**

**Selflessness:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership:** Holders of public office should promote and support these principles by leadership and example.

The Committee's survey invited current members of parliament to nominate values they thought were important. Honesty or integrity were the most common suggestions. Others suggestions included accountability, service to the community and respect for diversity.

Other participants recommended the Parliament go back to first principles about democracy to develop a statement of values. Dr Longstaff told the Committee:

One would need to look at the purpose of a democratic legislature and say what are the values and principles that almost naturally spring from a commitment to such an institution existing and how then ought they be expressed within some kind of ethical framework ...<sup>75</sup>

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<sup>74</sup> House of Commons, United Kingdom, *The code of conduct together with the guide to the rules relating to the conduct of members* (2005); House of Lords, United Kingdom, *Code of conduct* (2002).

<sup>75</sup> Simon Longstaff, *Transcript of evidence*, above n 49, 4. See also Ken Coghill, Associate Professor, Monash University, *Transcript of evidence*, Melbourne, 29 June 2009, 4.

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Based on the evidence that was available in this review, the Committee has identified a number of values it believes are important in a parliamentary democracy:

- serving the public interest
- upholding democracy
- integrity
- accountability
- respect for the diversity of views and backgrounds within the Victorian community
- diligence
- leadership.

However, the Committee is conscious that only a handful of participants in this review discussed the types of values that are important for members of parliament. At the end of chapter five of this report, the Committee recommends the Victorian Government release an exposure draft of the proposed changes to Act and consult further with both members of parliament and the public. This will provide an opportunity for the Government to test whether the evidence to this review about values reflects opinion in the Parliament and the broader community.

### **Recommendation 3: A statement of values**

The Committee recommends the Act include a statement of values for members of parliament. Subject to further consultation through the exposure draft recommended in recommendation 35, the statement of values should include the following:

- serving the public interest
- upholding democracy
- integrity
- accountability
- respect for the diversity of views and backgrounds within the Victorian community
- diligence
- leadership.

## 3.6 Updating the code of conduct

As this chapter has already noted, the current code in the Act focuses on conflicts between members' public duties and their personal interests. Former Premier Rupert Hamer, when introducing the Act into the Parliament in 1978, described the private interests of members as the subject of the new law.<sup>76</sup>

This section considers the rules that should be included in the code of conduct. It considers whether the current code's approach to conflicts of interest is appropriate, and whether the code should address broader issues as well.

### 3.6.1 Conflicts of interest

#### Managing conflicts of interest

Previous reports on conflicts of interest identify a range of approaches to the problem. They range from requiring officials to disclose personal interests through to prohibiting officials from having certain interests or disqualifying them from office if they hold certain interests.<sup>77</sup>

The current code uses a combination of avoidance and disclosure. There are some specific prohibitions regarding use of confidential information and profiting from office which are discussed later in this section. More generally, section 3(1)(a)(i) requires members to ensure the performance of their public duty is not 'endangered or subordinated by involvement in conflicting private interests'. Section 3(1)(d) requires members to make 'full disclosure to the Parliament' of certain interests in a matter on which a member speaks in the Parliament.

The Committee received little evidence about the appropriateness of this approach. The ANZSOG Institute for Governance proposed a greater emphasis on avoidance by extending to all members of parliament the obligation on ministers to ensure no conflict of interests exists or appears to exist.<sup>78</sup> Other commentators also argue avoidance is preferable to disclosure. Canadian writers Michael Atkinson and Maureen Mancuso, for example, warn that legislators can assume conflicts of interest 'are in some manner rendered less objectionable by virtue of public knowledge'.<sup>79</sup>

Associate Professor at Monash University and former Speaker of the Legislative Assembly, the Hon. Dr Ken Coghill, suggested 'blind trusts' as an option worthy of consideration.<sup>80</sup> Blind trusts allow a member to transfer his or her financial interests to an independent person to manage. The member has no direction or control over

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<sup>76</sup> Victoria, *Parliamentary debates*, Legislative Assembly, 21 November 1978, 6025 (Mr Hamer, Premier and Treasurer).

<sup>77</sup> See, for example, Parliament of Australia Committee of Inquiry Concerning Public Duty and Private Interest, *Public duty and private interest* (1979) ('The Bowen Report'), 36-43; Paul Finn, *Abuse of official trust: Conflict of interest and related matters* (1993), Integrity in Government Project: Second report, Australian National University, Part V.

<sup>78</sup> ANZSOG Institute for Governance, *Submission no. 21*, 13.

<sup>79</sup> Michael M Atkinson and Maureen Mancuso, 'Edicts and etiquette: Regulating conflict of interest in Congress and the House of Commons' (1992) 7 *Corruption and Reform* 1, 14-16. See also Gerard Carney, *Members of parliament: Law and ethics*, Prospect Media, 2000, 368.

<sup>80</sup> Ken Coghill, *Transcript of evidence*, above n 75, 2-3.

the independent person and no knowledge of the assets in the trust, and his or her capacity to be influenced by them is removed.<sup>81</sup> However, the former Queensland Integrity Commissioner, Mr Gary Crooke QC, told the Committee blind trusts do not always work in practice:

a blind trust is well and good if it is a blind trust. A blind trust just means you do not know what the heck is in it. You see a lot of people go into a blind trust and they put the very shares they are holding into that blind trust. It then becomes a seeing trust, because they know exactly what is in it.<sup>82</sup>

The Committee believes the current code's approach to conflicts of interests remains appropriate. Codes for ministers do sometimes take a stricter approach to conflicts of interest by requiring divestment of personal interests. However, ordinary members of parliament do not exercise executive power or make decisions in an individual capacity and such measures are out of proportion to the risk of corruption involved. A mixture of avoidance and disclosure is still the most common approach to conflicts of interest for members of parliament.

The Committee does recommend one change to the rule requiring members to disclose interests when speaking in the Parliament. Some participants in the review emphasised the importance of this provision.<sup>83</sup> The Committee believes the rule should be clarified so that it extends to all parliamentary proceedings, including proceedings in parliamentary committees.

### **Defining a conflict of interest**

Some participants in the review argued the Parliament should expand its concept of a conflict of interest.

The current code of conduct does not attempt to define a conflict of interest. Rather it simply uses phrases such as 'conflicting private interests', 'any direct pecuniary interest' and 'any other material interest'.

The main concern for participants in the review was whether Victoria should address conflicts, not just between the member's public duties and personal interests, but also the interests of some third persons. Liberty Victoria stated that corporate directors are under a duty not to further the interests of other persons as well as their own interests.<sup>84</sup> Dr Longstaff, for example, noted that members of parliament can also be influenced by the interests of close family members.<sup>85</sup>

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<sup>81</sup> See Bernard Pulle, *Conflicts of interest avoidance: Is there a role for blind trusts?* (1996), Current Issues Brief 14 of 1996-1997, Parliamentary Library, Parliament of Australia. For an example of blind trust arrangements overseas, see Canada's House of Commons: House of Commons, Canada, *Standing orders of the House of Commons* (2009), App: Conflict of interest code for members of the House of Commons ss 17-19.

<sup>82</sup> Gary Crooke, former Queensland Integrity Commissioner, *Transcript of evidence*, Melbourne, 10 August 2009, 4. See also Bernard Pulle, above n 81.

<sup>83</sup> Gary Crooke, former Queensland Integrity Commissioner, *Submission no. 15*, 4; Howard Whitton, *Transcript of evidence*, above n 68, 3. See also Gerard Carney, above n 79, 368.

<sup>84</sup> Liberty Victoria, *Submission no. 20*, 6.

<sup>85</sup> Simon Longstaff, *Transcript of evidence*, above n 49, 2. See also ANZSOG Institute for Governance, *Submission no. 21*, 12, 13.

Some newer codes do deal with conflicts between members' public duties and third party interests. The codes in Western Australia, the Australian Capital Territory (ACT) and Canada's federal parliament refer to the private interests of third parties. The code for Victoria's electorate officers refers to the interests of family members, friends and associates. Victoria's local government legislation refers to what it calls 'indirect interests' of local government councillors. These include where a member of a councillor's family, a company in which a councillor holds an office or shares, a debtor of the councillor or a donor of a gift to the councillor has an interest in a matter.<sup>86</sup>

The Committee believes that, like other Victorian public sector codes, the code of conduct for members of parliament should include conflicts between members' public duties and personal interests, as well as interests of some third parties. Those third parties should be similar to the third parties listed in local government legislation set out above. They should include family members, companies or entities in which the member has an interest and donors of gifts to the member. They should also include both members' creditors and debtors, except for creditors or debtors who are family members, banks or similar institutions, credit or store card providers and suppliers of ordinary household or office-related goods and services. These types of debts are common to many people in the community and are unlikely to influence members in their public duties.

The Committee has also identified two further issues that should be clarified:

- Victoria's code should deal with both actual and perceived conflicts of interest. Given that one of the aims of the code is to deal with public perceptions and expectations of members, any perception that a member has a conflict of interest may be just as damaging as an actual conflict.<sup>87</sup>
- A number of codes in other parliaments exclude interests held by members in common with the general public or a broad class of people.<sup>88</sup> An example is where a member benefits from a change to a taxation law that benefits all members of the public. It is difficult for members to avoid such interests and little is gained by requiring members to declare them. The Committee believes they should be excluded from the definition in Victoria's code.

The Committee recognises that, even with these more specific definitions, different people in the community will have different views about whether a member of parliament has a conflict of interest in a given situation. For example, some members

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<sup>86</sup> Legislative Assembly, Western Australia, *Code of conduct for members of the Legislative Assembly* (2003) cl 3; Legislative Assembly for the Australian Capital Territory, *Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory* (2005) cl 3; House of Commons, Canada, above n 81, App ss 8-10; Senate, Canada, *Conflict of interest code for Senators* (2005) ss 8-11; Parliament of Victoria, *Code of conduct for parliamentary electorate officers (No. 1) 2008* (2008) 10; *Local Government Act 1989* (Vic) ss 77A, 78-78D.

<sup>87</sup> See Gerard Carney, above n 79, 250-251, 335-336. The code already deals with both actual and perceived conflicts of interest for ministers: see s 3(1)(e). The ANZSOG Institute for Governance proposed this paragraph be extended to all members of parliament: ANZSOG Institute for Governance, *Submission no. 21*, 13.

<sup>88</sup> In Australia see, for example, Parliament of New South Wales, above n 67, cl 1(3); Legislative Assembly for the Australian Capital Territory, above n 86, cl 3.

of the community might think a member of parliament has an unacceptable conflict of interest if they accept a cup of coffee from a property developer. Others will accept that such token hospitality is part and parcel of members' contact with a range of interest groups in the community and is unlikely to influence the way they perform their public duties.

It would be difficult for any code of conduct to provide specific guidance about each and every case in which a member faces such issues. The Committee's proposed code is intended to deal with material conflicts that might reasonably be said to influence a member of parliament in his or her public duties. Chapter five proposes a process for determining these issues if there is an allegation that a member of parliament has breached this part of the code.

### **Should the code prohibit some conflicts of interest?**

As noted earlier, the code of conduct does prohibit conflicts of interest regarding the use of confidential information and profiting from office. This section looks at whether these rules should be updated, and at whether there are additional types of conflicts that should also be prohibited.

#### **Using confidential information**

Section 3(1)(b) of the Act states that members shall not advance their private interests by use of confidential information gained in the performance of their public duty. This is the Parliament's equivalent of an 'insider trading' provision and the Committee supports the retention of this rule.

The ANZSOG Institute for Governance's submission did recommend extending the provision so that members cannot use information to advance the interests of third parties.<sup>89</sup> The Committee supports this proposal. The definition of a third party in this rule should be consistent with the definition used for a conflict of interest generally (see earlier section 'Defining a conflict of interest').

#### **Using position for profit**

Section 3(1)(c) of the Act prohibits members from profiting from their positions. It states that a member 'shall not receive any fee, payment, retainer or reward, nor shall he permit any compensation to accrue to his beneficial interest for or on account of, or as a result of the use of, his position as a Member'.

The Committee believes this rule should be retained. The type of behaviour covered by this provision would, at its worst, encompass situations such as bribery as well as 'paid advocacy', where a member promotes the interests of another person in the Parliament for a fee. The provision should, however, make clear that it does not apply to members' parliamentary salary and allowances.

The Committee became aware of the potential application of this rule to two other practices during this review. The first is the involvement of members of parliament

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<sup>89</sup> ANZSOG Institute for Governance, *Submission no. 21*, 12.

in fundraising for their political parties. In its submission, the Accountability Round Table expressed concern about reports of party fund-raising functions where ‘individuals and business interests purchase admission for a substantial sum on the basis that by doing so they will secure an opportunity to speak with ministers or shadow ministers’.<sup>90</sup> The former Queensland Integrity Commissioner also criticised such practices:

If they are using capital — that is, the respect that goes with the office, the power to make decisions that goes with the office — to raise funds for a political party, that is a sectional interest and it is not for the good of the community. I hasten to add that this has gone on for many, many years on both sides of Parliament. I think it is fundamentally wrong ...<sup>91</sup>

The Accountability Round Table recommended extending the existing provision to prevent members using their positions to financially benefit their parties.

The Committee is conscious of ongoing public debate about political fundraising, but it does not believe the code is the appropriate place to address these issues. Given the integral role played by political parties in parliamentary democracy in Victoria, any rule which attempts to prevent members promoting the interests of their parties is likely to be unworkable. Instead, the Committee believes the specific concerns raised by participants in this review would be better addressed in electoral laws.

The second practice concerns members of parliament who engage in ‘public affairs’ consultancies such as government relations, lobbying or public policy advice. The Committee received no evidence about the extent of this practice in Victoria, but public revelations about consultancies held by members of parliament have led to changes to parliamentary standards laws in the United Kingdom and NSW.<sup>92</sup> It is not clear to the Committee whether the provision in the current code would extend to these types of arrangements and the Victorian Government or the Parliament may wish to seek legal advice to clarify the issue as a first step.

### **Accepting gifts, hospitality and other benefits**

Evidence to the review suggests that gifts, hospitality and other benefits can also raise difficult questions for members of parliament. On the one hand, gifts and hospitality are a customary social practice and a sign of respect and gratitude. On the other hand, some gifts and benefits can create an impression that members are capable of being influenced in their public duties.

NSW’s Parliamentary Ethics Adviser, Mr Ian Dickson, told the Committee gifts are one of the issues about which members in NSW seek his advice.<sup>93</sup> Of all the topics

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<sup>90</sup> Accountability Round Table, *Submission no. 28*, 1-3.

<sup>91</sup> Gary Crooke, *Transcript of evidence*, above n 82, 7. See also discussion in Marian Sawer, Norman Abjorsen, and Philip Larkin, *Australia: The state of democracy*, The Federation Press, 2009, 187-190.

<sup>92</sup> See Independent Commission Against Corruption, *Regulation of secondary employment for members of the NSW Legislative Assembly* (2003); Parliament of New South Wales Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, *Regulation of secondary employment for members of the NSW Legislative Assembly* (2004); Committee on Standards in Public Life, United Kingdom, *Standards in public life: First report* (1995), 24-32.

<sup>93</sup> Ian Dickson, New South Wales Parliamentary Ethics Adviser, *Submission no. 23*, 2.



canvassed in the Committee's survey of current members of parliament, 'accepting gifts, sponsored travel or hospitality' was also the topic on which the most members indicated that guidance would be useful.

The current code of conduct in Victoria is silent on gifts or other benefits, although Part II of the Act requires members to register gifts over \$500 and some 'significant' travel contributions in the register of interests (see chapter four).

Newer codes do address the issue. The codes for public servants and electorate officers in Victoria state they should not seek or accept gifts or benefits that could reasonably be perceived as influencing them.<sup>94</sup> The practices in other parliaments vary. The ACT Legislative Assembly, like the Parliament of Victoria, only requires members to disclose gifts.<sup>95</sup> Others are more prescriptive. The Northern Territory Legislative Assembly's code states that members can accept unsolicited gifts or private benefits, but 'must not solicit or encourage a gift or private benefit from a constituent or other person with whom a member deals in an official capacity'.<sup>96</sup> The Parliament of NSW's code states that members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to improperly influence the member in the exercise of his or her duties.<sup>97</sup>

The Committee's view is that Victoria should adopt the NSW approach and caution members to avoid gifts that may create an appearance of improper conduct. These rules should apply in addition to the registration requirements in Part II of the Act.

As this chapter has already noted, different people in the community will have different views about whether accepting a particular gift constitutes improper conduct. It would be difficult for a code of conduct to set specific prohibitions on each and every type of gift a member might receive. Chapter five proposes a process for determining these issues if there is a complaint that a member of parliament has accepted a gift in breach of this part of the code.

### **Engaging in outside employment and activities**

In its submission, the ANZSOG Institute for Governance argued the code of conduct should also address outside employment by members of parliament. It said members could be permitted to undertake paid trades, vocations, services or contracts, provided these do not affect a member's ability to perform his or her public duties or give rise to a conflict of interests.<sup>98</sup>

The Committee saw no evidence that this is a significant issue in the current Victorian parliament. There is a view that outside employment and other activities have become less common over time as the professional demands on members of parliament have

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<sup>94</sup> Public Sector Standards Commissioner, *Code of conduct for Victorian public sector employees (No. 1) 2007* (2007), 15; Parliament of Victoria, above n 86, 12.

<sup>95</sup> Legislative Assembly for the Australian Capital Territory, above n 86, cl 5.

<sup>96</sup> *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* (NT) sch cl 7.

<sup>97</sup> Parliament of New South Wales, above n 67, cl 5(b). See National Democratic Institute for International Affairs, above n 45, 15-16 for discussion of international approaches to gifts and travel.

<sup>98</sup> ANZSOG Institute for Governance, *Submission no. 21*, 14

grown.<sup>99</sup> The Committee's analysis of Victoria's register of interests supports this view. Although the information in the register does not always make it possible to tell whether a member has outside employment, in 1979 over 40% of members registered income that appeared to be from other occupations such as farming, law or corporate involvements. In 2008, only around 12% of members appear to have registered income from such activities, usually from primary production.

The current code does not deal with this issue. Section 3(1)(f) states that a minister 'is expected to devote his time and talents to the carrying out of his public duties'. There is no similar rule for other members of parliament, although they are required to declare memberships of any trade or professional organisations which have an interest in matters on which they speak in the Parliament, and to register income from outside activities under Part II of the Act (see chapter four).

Some public sector codes do address the issue. Public servants and electorate officers in Victoria have to seek approval to engage in other paid employment.<sup>100</sup> However, few parliaments restrict outside employment or activities by members, with most only requiring members to register income, offices and some memberships in their registers of interests. The Northern Territory Legislative Assembly is an exception in Australia. Its code states members 'must not engage in any other employment or business activity that involves a substantial commitment of time and effort'.<sup>101</sup>

The Committee does not favour prohibiting outside employment or activities for members of parliament altogether, although it may assist members if the code reminded them of the need to avoid conflicts of interest. That would include activities which require such a significant amount of time that they compromise the member's ability to fulfil his or her public duties.

### **Post-retirement employment**

Several participants in this review argued the code of conduct should regulate the types of employment or business activities members or ministers can undertake *after* they leave the Parliament.<sup>102</sup>

There have been cases in recent years where retired ministers or members have been criticised for engaging in employment or business activities related to their former office.<sup>103</sup> The National Democratic Institute for International Affairs noted in its 1999 paper on legislative ethics that such activities can be problematic because former members may have had privileged access to information, or may use their government connections to exert undue influence over their former colleagues.<sup>104</sup>

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<sup>99</sup> See Jenny Lindell, *Transcript of evidence*, above n 47, 2; Jan Wade, 'Mistrust, malice and misinformation' in David Burchell and Andrew Leigh (eds), *The prince's new clothes: Why do Australians dislike their politicians?*, UNSW Press, 2002, 81, 84.

<sup>100</sup> *Public Administration Act 2004* (Vic) s 32; Public Sector Standards Commissioner, above n 94, 13; Parliament of Victoria, above n 86, 10.

<sup>101</sup> *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* (NT) sch cl 4. See National Democratic Institute for International Affairs, above n 45, 9-10 for discussion of international approaches.

<sup>102</sup> Greg Barber, The Australian Greens – Victoria, *Submission no. 27*, 1; Ken Coghill, *Transcript of evidence*, above n 75, 5-6; Liberty Victoria, *Submission no. 20*, 6; Women's Electoral Lobby, *Submission no. 26*, 2.

<sup>103</sup> See Marian Sawyer, Norman Abjorsen and Philip Larkin, above n 91, 192-194.

<sup>104</sup> National Democratic Institute for International Affairs, above n 45, 10.

Some participants called for post-retirement restrictions or regulations for Victorian members of parliament. The Women’s Electoral Lobby argued that ex-politicians and members of their staff should be prohibited from working for lobbyists or companies that are seeking to contract with the government for a period of 18 months.<sup>105</sup> Mr Greg Barber MP referred the Committee to the Greens’ 2006 election policy which called for a two year ‘cooling off’ period before ministers or their advisers can work in an industry they previously regulated.<sup>106</sup>

Few parliaments seek to regulate post-retirement employment for their members. One example is Tasmania’s House of Assembly code which states that members, when leaving public office and when they have left public office, must not take improper advantage of their former office.<sup>107</sup>

The Committee believes Victoria’s code should also caution members of parliament against taking improper advantage of their office once they leave the Parliament. However, the Committee does not support more restrictive ‘cooling off’ periods for members. Members have less access to privileged information than ministers and their post-retirement activities are less likely to be a concern.

### Using influence

In its survey of current members of parliament, the Committee asked members whether they would find guidance about appropriate use of influence useful. The Committee was aware that the codes for Canada’s federal parliament state that members and senators must not use their positions to influence the decision of another person to further their private interests or those of a third party.<sup>108</sup> Some Australian commentators also argue codes for members should address this topic.<sup>109</sup>

A majority of members who responded to the Committee’s survey indicated that they would find guidance on the issue useful, although support was not as high as for topics such as handling information, accepting gifts and outside employment.

Although there is limited evidence before the Committee about this issue, the Committee believes the exposure draft of the changes to the Act recommended in chapter five should at least include a rule about appropriate use of influence.

## 3.6.2 Should the code of conduct address broader issues?

The evidence in this review suggests that public trust in members of parliament now depends on more than just members putting their public duties before their private interests.

In his opening address to the 2009 Australian Public Sector Anti-Corruption Conference, the Chief Justice of Queensland’s Supreme Court said ‘the public

<sup>105</sup> Women’s Electoral Lobby, *Submission no. 26*, 2.

<sup>106</sup> Greg Barber, The Australian Greens – Victoria, *Submission no. 27*, 1.

<sup>107</sup> House of Assembly, Tasmania, *Code of ethical conduct for members of the House of Assembly* (1992).

<sup>108</sup> House of Commons, Canada, above n 81, App s 9; Senate, Canada, above n 86, s 9.

<sup>109</sup> Gerard Carney, above n 79, 262; Noel Preston, ‘Politics, prudence and principle: Codifying the conduct of parliamentarians’ (1998) 12(2) *Legislative Studies* 1, 6.

expects much more of its public officers than freedom from corruption: it expects decency, fairness, morality ...'<sup>110</sup>

Public opinion research supports this view. The 1996 *Australian election study* asked voters around Australia to rate the importance of eight behaviours — respecting the dignity and privacy of members of the public, using public resources economically, acting honestly at all times, putting public interest ahead of personal interest, telling the truth to the public, behaving in a dignified manner, not favouring special interests and refusing to accept gifts. Over half of the surveyed voters nominated most as 'extremely important'.<sup>111</sup> A 2001-2003 joint research project conducted by the Parliament of Victoria and Monash University into the Parliament's reputation and standing reported that its community focus groups also had broad expectations. They expected members of parliament to, amongst other things, consult with the community, focus on key areas such as health and education, ensure sound economic management, plan for the future and honour their promises.<sup>112</sup>

Some of the participants in this review argued that the code of conduct needs to be updated to reflect these broader expectations. Liberty Victoria's submission called for 'a wider code of conduct which meets the standards of conduct required for citizens to have trust in the workings of the political system'.<sup>113</sup> Ms Elizabeth O'Keeffe, one of the directors of anti-corruption organisation Transparency International's Australian arm, told the Committee that codes should address a range of other standards including honesty in public statements.<sup>114</sup>

Some of the evidence before the Committee suggests members of parliament would find broader guidance useful as well. The submission from NSW's Parliamentary Ethics Adviser listed the types of issues members generally raise with him. They included not only conflicts of interest, but also use of allowances and dealing with constituents.<sup>115</sup> The Committee's survey of current members of parliament in Victoria asked them to rate how useful they would find guidance from a code on a number of issues apart from conflicts of interest. Responses varied but there was high support for guidance on issues such as use of public resources and handling information.

As figure 4 shows, newer codes in other parliaments do address some issues apart from conflicts of interest.

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<sup>110</sup> Paul de Jersey, 'The scope for corruption in public life in 21st century Australia' (Paper presented at the Australian Public Sector Anti-Corruption Agency Conference, Brisbane, 29 July 2009) 10.

<sup>111</sup> See analysis in Ian McAllister, 'Keeping them honest: Public and elite perceptions of ethical conduct among Australian legislators' (2000) 48 *Political Studies* 22, 28-9.

<sup>112</sup> Ken Coghill and Colleen Lewis, 'Protecting the reputation and standing of the institution of parliament: A study of perceptions, realities and reforms' (Paper presented at the Australasian Study of Parliament Group (Victorian Chapter), 12 May 2004), 6-7.

<sup>113</sup> Liberty Victoria, *Submission no. 20*, 4. See also Anne O'Rourke, *Transcript of evidence*, above n 72, 2.

<sup>114</sup> Elizabeth O'Keeffe, Director, Transparency International Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 3, referring to Griffith University and Transparency International Australia, *Chaos or coherence? Strengths, challenges and opportunities for Australia's national integrity systems: National Integrity Systems Assessment (NISA) final report* (2005) 73. Some commentators have listed issues that should be addressed by codes: Noel Preston, above n 109, 6; Gerard Carney, above n 79, 262.

<sup>115</sup> Ian Dickson, *Submission no. 23*, above n 93, 2.

**Figure 4: Codes of conduct in Australian parliaments — what do they cover?**

	Victoria	ACT	NSW	Northern Territory	Queensland	Tasmania*	Western Australia*
Conflicts of interest	✓	✓	✓	✓	✓	✓	✓
Using confidential information	✓	✓	✓	✓	✓	✓	✓
Using office for profit / bribery	✓	✓	✓	×	✓	×	✓
Outside work	×	×	✓	✓	×	×	×
Accepting gifts / benefits	×	✓	✓	✓	×	✓	✓
Using public resources	×	✓	✓	✓	✓	✓	✓
Personal conduct	✓	✓	✓	✓	✓	✓	✓
Handling personal information	×	×	×	✓	×	×	×
Promoting democracy	×	×	×	✓	×	×	×
Respecting diversity	×	×	×	✓	×	✓	×
Post-parliament activities	×	×	×	×	×	✓	×

\* In Tasmania and Western Australia, only the lower house of parliament has adopted a code of conduct. The Australian Parliament and the Parliament of South Australia did not have a code of conduct for members at the time this report was written.

The Committee's view is that Victoria's code also needs to deal with broader issues if it is going to meet its aims. However, like the types of values that are important for members of parliament, the Committee again received limited evidence about the *types of rules* that should apply to members. The remainder of this chapter describes this evidence and lists the issues the Committee believes should be addressed. As noted earlier, in chapter five the Committee recommends the Victorian Government release an exposure draft of the proposed changes to Act and consult further with both members of parliament and the public. This will provide an opportunity for the Government to seek further views on the types of rules that should be included in the code.

### Using public resources

Parliamentary allowances and facilities are a regular source of criticism of members of parliament. Britain's recent parliamentary expenses scandal, which was discussed in chapter two, illustrates how public trust can be damaged when allowances are misused. Some submissions to the review highlighted the issue as one of concern. Former member of the Legislative Council, the Hon. Richard de Fegely, wrote:

Thinking people realise that in order to carry out their responsibilities most members act responsibly. However we have seen recently some stories of what appear to be outrageously excessive claims for overseas trips ...<sup>116</sup>

A high proportion of the members of parliament who responded to the Committee's survey also indicated guidance would be useful on this issue.

Other Australian parliaments and parts of the Victorian public sector do address use of public resources in their codes. Their approaches vary:

- Some simply require compliance with rules on allowances and facilities. For example, the NSW and Western Australian codes require members to apply public resources according to any guidelines or rules about their use.<sup>117</sup>
- Some seek to set broader ethical standards. For instance, the Northern Territory Legislative Assembly's code requires members to manage, economically and responsibly, the resources and facilities provided to them and their staff at public expense.<sup>118</sup>
- Some set specific rules about particular entitlements. The ACT's code, for example, states members should not appoint close relatives to positions in their own offices or other places of employment where the member's approval is required.<sup>119</sup>

Some codes also attempt to regulate the extent to which members can use parliamentary allowances and facilities for party political purposes. Commentators in Australia argue this is a far greater problem in Australia than conflicts of interest.<sup>120</sup> The ACT's code states that members must ensure resources provided to them at public expense are only used for legitimate parliamentary and electorate purposes.<sup>121</sup> Victoria's local government legislation requires codes for councillors to include a requirement that councillors endeavour to ensure that public resources are used prudently and solely in the public interest.<sup>122</sup>

The Committee believes Victoria's code should address use of public resources. Subject to further consultation, it believes the code should go further than requiring members of parliament to comply with existing rules on allowances and facilities, and should also expect them to manage those resources responsibly. The Committee believes the code should also encourage members to ensure the public resources provided to them as members are used only for legitimate purposes in connection with their role as members of parliament.

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<sup>116</sup> Richard S. de Fegely, *Submission no. 12*. See also Gary Crooke, *Submission no. 15*, above n 83, 4.

<sup>117</sup> Parliament of New South Wales, above n 67, cl 4; Legislative Assembly, Western Australia, above n 86, cl 6.

<sup>118</sup> *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* (NT) sch cl 10. See also Legislative Assembly for the Australian Capital Territory, above n 86, cls 10-11; House of Assembly, Tasmania, above n 107.

<sup>119</sup> Legislative Assembly for the Australian Capital Territory, above n 86, cl 8; Tom Duncan, Clerk of the Legislative Assembly for the Australian Capital Territory, *Submission no. 24*, 2-3.

<sup>120</sup> See, for example, Marian Sawyer, Norman Abjorsen and Philip Larkin, above n 91, 187-188. See also Ian Dickson, *Submission no. 23*, above n 93, 3, who reported that use of parliamentary allowances for purposes other than parliamentary duties is one of the issues generally raised with him by members in NSW.

<sup>121</sup> Legislative Assembly for the Australian Capital Territory, above n 86, cl 11.

<sup>122</sup> *Local Government Act 1989* (Vic) s 76BA(e).

## Personal conduct

The current code of conduct does offer broad guidance for members of parliament about their conduct. Section 3(1)(a)(ii) states that members shall ensure their conduct as members must not be such as to bring discredit upon the Parliament. However, some participants in the review raised the need for more specific rules.

### Honesty

The public opinion research discussed earlier in this chapter routinely records honesty amongst the strongest community expectations of members of parliament.<sup>123</sup>

Some, although not a large number, of participants in this review argued honesty should be included in Victoria's code for members of parliament. Transparency International includes honesty in public statements in its list of minimum subjects for codes.<sup>124</sup> Ms Anne O'Rourke from Liberty Victoria told the Committee the code should prohibit misleading and deceptive conduct by members.<sup>125</sup>

Professor Costar warned the Committee that rules about honesty do not always work in practice. He referred to the Australian Government's experience with truth in political advertising laws in the 1980s:

They had to repeal the legislation because it was unworkable and because who is going to decide what is truth in advertising? I think it has got to be very carefully drafted with the intent of not so much chasing misdemeanours but by again encouraging a change in conduct.<sup>126</sup>

Some newer codes do address the importance of honesty for members of parliament. The Western Australian Legislative Assembly's code, for example, states that members must not mislead the Parliament or the public in statements they make and are obliged to correct the parliamentary record as soon as possible when incorrect statements are made unintentionally.<sup>127</sup> Victoria's local government legislation also requires codes for councillors to include a requirement to act honestly and avoid statements or actions that will or are likely to mislead or deceive a person.<sup>128</sup>

Given the importance of honesty to public trust, the Committee's view is that Victoria's code should address the need for honesty in a similar way to codes for local government councillors. The Committee's recommended exposure draft of the changes to the Act will give members of parliament and the community an opportunity to comment further on this issue.

<sup>123</sup> See Ian McAllister, above n 111, 28-29. For British public opinion research, see Committee on Standards in Public Life, United Kingdom, *Survey of public attitudes towards conduct in public life 2008* (2008), report prepared by Bruce Hayward, Tim Brunwin, Claire Bassett, David Elston and Helen Lambert.

<sup>124</sup> Elizabeth O'Keeffe, *Transcript of evidence*, above n 114, 3, referring to Griffith University and Transparency International Australia, above n 114, 73.

<sup>125</sup> Anne O'Rourke, *Transcript of evidence*, above n 72, 4.

<sup>126</sup> Brian Costar, *Transcript of evidence*, above n 50, 4.

<sup>127</sup> Legislative Assembly, Western Australia, above n 86, cl 10. See also *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* (NT) sch cl 5.

<sup>128</sup> *Local Government Act 1989* (Vic) s 76BA(b).

## Respect

Another issue blamed for poor public perceptions of members of parliament is the adversarial and combative culture of politics in Victoria, particularly conduct during Question Time. The community focus groups conducted by Monash University and the Parliament of Victoria for its joint research project highlighted behaviour in the Parliament as a particular concern. The authors reported:

People value Parliament as an institution but they do not value the behaviour of parliamentarians. The mud slinging and personal attacks that occur create a very poor image of MPs, which as mentioned previously extends to all parliamentarians and overshadows the good deeds of many ... The situation has now been reached where people think that the parliamentary conduct of MPs has gone beyond being entertaining: it is now tiresome.<sup>129</sup>

Participants in the review also highlighted the relationship between respectful conduct and public perceptions of members of parliament. The former Queensland Integrity Commissioner told the Committee:

what happens in the Parliament reflects on the public's respect for the institution, because one of the essences of integrity or ethical behaviour is respect for other persons. If there is a conduct in the Parliament that is disrespectful or worse, it lowers the image of the Parliament in the eyes of the community.<sup>130</sup>

Some participants specifically mentioned abuse of parliamentary privilege, which protects members from legal action when they make statements about people during parliamentary proceedings, as a particular concern.<sup>131</sup>

Some parliaments do address these issues in their codes. The Western Australian Legislative Assembly's code of conduct states that a sense of tolerance and respect of different political positions should direct the working environment of the Parliament. It requires members to apply high standards of behaviour and to consciously avoid personal abuse and denigration of parliamentary colleagues. It also states members must be mindful of privileges conferred when speaking in the Legislative Assembly and should consciously avoid causing undeserved harm to any person who does not enjoy the same privileges.<sup>132</sup>

Some codes also address members' dealings with parliamentary officials and their staff as well as their dealings with each other. The ACT Legislative Assembly's code of conduct, for example, states that it is expected that members will extend professional courtesy and respect to all staff of the Assembly and that members must observe the obligations placed on them as employers.<sup>133</sup>

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<sup>129</sup> Ken Coghill and Colleen Lewis, above n 112, 8.

<sup>130</sup> Gary Crooke, *Transcript of evidence*, above n 82, 5. See also Gary Crooke, *Submission no. 15*, above n 83, 3; Brian Costar, *Transcript of evidence*, above n 50, 5; Anne O'Rourke, *Transcript of evidence*, above n 72, 2, 6.

<sup>131</sup> Elizabeth O'Keefe, *Transcript of evidence*, above n 114, 3; Liberty Victoria, *Submission no. 20*, 8; Anne O'Rourke, *Transcript of evidence*, above n 72, 3.

<sup>132</sup> Legislative Assembly, Western Australia, above n 86, cls 9, 12.

<sup>133</sup> Legislative Assembly for the Australian Capital Territory, above n 86, cls 8, 9.



The codes for Victoria's electorate officers and public servants state they 'are fair, objective and courteous in their dealings' with members of parliament and the government respectively, as well as the community and their colleagues.<sup>134</sup>

The Committee believes it remains important in any democracy that there should be what Dr Coghill called a 'contest of ideas'.<sup>135</sup> However, there is a risk to public trust where that contest involves conduct that is disrespectful to others and the Parliament as an institution. The Committee recommended earlier in this chapter that the statement of values for members should include respect for the diversity of views and backgrounds within the Victorian community. The Parliament's standing orders already deal with specific issues such as disorderly conduct and abuse of parliamentary privilege.<sup>136</sup> The code of conduct should seek to complement these values and specific rules. The Committee believes that, without detracting from the importance of robust public debate in a democracy, members of parliament should be expected to be fair, objective and courteous with their colleagues and the community.

### Private conduct

The ANZSOG Institute for Governance's submission queried whether the current code requirement that members not bring discredit on the Parliament extends to their conduct in a private capacity. It argued the code should be clarified and extended to 'unacceptable private conduct'.<sup>137</sup>

It is unavoidable that some conduct by members in their private lives will affect their standing amongst parts of the community. The code of conduct for electorate officers recognises this by requiring them to avoid conduct in their private lives that may adversely affect their standing as a representative of the community or which may bring their member or Presiding Officers into disrepute.<sup>138</sup>

However, the traditional view in Australian politics is that a member's private life is not a matter of public interest unless it affects the member's public office.<sup>139</sup>

The Committee believes Victoria's code should remain consistent with this tradition and that the current code of conduct, which requires that members ensure their conduct as members does not bring discredit upon the Parliament, is sufficient.

### Handling personal information

Members of parliament have access to a broad range of sensitive and sometimes personal information in their roles. They may receive confidential briefings from the government about legislation and policy, as well as commercial and personal information from constituents who seek their assistance.

<sup>134</sup> Parliament of Victoria, above n 86, 15; Public Sector Standards Commissioner, above n 94, 20.

<sup>135</sup> Ken Coghill, *Transcript of evidence*, above n 75, 3, 4.

<sup>136</sup> Legislative Assembly of Victoria, *Standing orders* (2006) chs 12 and 25; Legislative Council of Victoria, *Standing orders* (2006) chs 12 and 22.

<sup>137</sup> ANZSOG Institute for Governance, *Submission no. 21*, 12.

<sup>138</sup> Parliament of Victoria, above n 86, 10-11. See also Public Sector Standards Commissioner, above n 94, 13-14.

<sup>139</sup> See Gerard Carney, above n 79, 375; Noel Preston, above n 109, 8.

As this chapter has already noted, the current code prohibits members from using confidential information to advance their own interests. However, it offers no guidance to members about how to handle information to protect the privacy of other people.

The recognition of privacy rights has been one of the major changes in the law since the code was enacted in 1978. Victoria's *Charter of Human Rights and Responsibilities Act 2006* recognises the right to privacy and reputation as one of the human rights that the Parliament seeks to protect. Victoria also has specific laws to protect personal information in the hands of government and local councils.<sup>140</sup>

Members of parliament were exempted from Victoria's personal information laws when they were debated in the Parliament. The Government asked the Parliament's Scrutiny of Acts and Regulations Committee (SARC) to develop a privacy code for members instead. The Victorian Privacy Commissioner, Ms Helen Versey, told the Committee SARC developed a voluntary privacy code of conduct for members of parliament in 2002 but it had not been adopted.<sup>141</sup> She told the Committee:

we do get inquiries from the general public who often query when MPs clearly have got information about them, such as when they get a birthday card on a significant birthday. We do get quite a lot of inquiries, and the public are often very surprised that the MPs are not covered ...<sup>142</sup>

The Committee's survey of members of parliament suggests handling confidential and personal information is an area where members would find guidance useful. With the exception of 'accepting gifts, sponsored travel or hospitality', it was the topic in the survey that received the highest level of interest from members.

The Committee believes Victoria's code needs to address this issue if it is to meet contemporary expectations. Subject to further consultation, the Committee believes it should encourage members to respect the privacy and confidentiality of all information they collect or receive as part of their public duties. The Parliament may also wish to reconsider its response to SARC's recommendations for a more extensive voluntary privacy code to ensure members of parliament have access to detailed and specific guidance.

## **Upholding democracy**

Some submissions to the review argued Victoria's code should also address what might be described as broader democratic conduct.

The Women's Electoral Lobby's submission recommended the code require members to report to their electorates about their personal performance and any promises on a six monthly basis. It also recommended the code require members to invite ideas and complaints from their constituents on a yearly basis and to meet community lobby groups as well as lobbyists.<sup>143</sup>

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<sup>140</sup> *Information Privacy Act 2000* (Vic); *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 13.

<sup>141</sup> Helen Versey, Victorian Privacy Commissioner, Office of the Victorian Privacy Commissioner, *Transcript of evidence*, Melbourne, 21 July 2009, 7. See Victorian Parliament Scrutiny of Acts and Regulations Committee, *Privacy code of conduct for members of the Victorian Parliament* (2002).

<sup>142</sup> Helen Versey, *Transcript of evidence*, above n 141, 7.

<sup>143</sup> Women's Electoral Lobby, *Submission no. 26*, 1.

Some submissions argued the code should also prohibit practices seen as undermining democratic process. The submission from the Kew Cottages Coalition, a community organisation which opposes the sale of the government-owned former Kew Cottages site in Melbourne, referred to public concerns about political donations from property developers.<sup>144</sup> The Women's Electoral Lobby's submission also recommended sanctions for members who subvert the democratic process through bribes, branch stacking or such practices.<sup>145</sup>

Some other codes do address what might be called democratic conduct. The Northern Territory's code requires members to foster, by their conduct in office, respect for democratic institutions, rights and freedoms and the principles of good governance. It requires members to uphold a number of principles, including respect for the institution of the Parliament, respect for rule of law, freedom of reporting by the media, freedom of speech and access to justice.<sup>146</sup> Victoria's local government legislation requires councillors to exercise reasonable care and diligence and to submit themselves to the lawful scrutiny appropriate to their office.<sup>147</sup>

The Committee agrees that, in a democracy like Victoria, the code of conduct for members of parliament should emphasise the importance of responsible conduct. Serving the public interest and upholding democracy are two of the values mentioned in recommendation 3 of this report. Section 3(1)(a)(i) of the Act already states that members shall accept that their prime responsibility is to the performance of their public duty, and the Committee believes this rule should be retained. The Committee does not believe a code is the proper vehicle for prescribing how members should carry out this role in detail or for prohibiting every inappropriate practice. However, members of parliament, like local government councillors, should be expected to exercise reasonable care and diligence in performing their public duties and to submit themselves to lawful scrutiny appropriate to their office.

The exposure draft of the Act proposed in chapter five of this report will provide an opportunity for members of parliament and the community to comment on whether they believe these rules are appropriate.

## Respecting diversity

Some newer codes also address the importance of respect for equality and diversity in modern Australian society. Tasmania's House of Assembly has a *Code of race ethics* which, amongst other things, states that members agree to respect the religious and cultural beliefs of all groups in Australia.<sup>148</sup> The Northern Territory's code requires members to foster recognition of the value of social and cultural diversity.<sup>149</sup> The codes for public servants and electorate officers in Victoria refer to respect and equity and diversity.<sup>150</sup> Victoria's local government legislation requires councillors

<sup>144</sup> Kew Cottages Coalition, *Submission no. 22*. See also Accountability Round Table, *Submission no. 28*.

<sup>145</sup> Women's Electoral Lobby, *Submission no. 26*, 2.

<sup>146</sup> *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* (NT) sch cl 10.

<sup>147</sup> *Local Government Act 1989* (Vic) s 76BA(d).

<sup>148</sup> House of Assembly, Tasmania, *Code of race ethics for members of the House of Assembly* (1992).

<sup>149</sup> *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* (NT) sch cl 10. See also Legislative Assembly for the Australian Capital Territory, above n 86, cl 1.

<sup>150</sup> Public Sector Standards Commissioner, above n 94, 21; Parliament of Victoria, above n 86, 15.

to treat all persons with respect and to have due regard to the opinions, beliefs, rights and responsibilities of other councillors, council officers and other persons.<sup>151</sup>

The Committee received some evidence suggesting similar rules might be appropriate for members of parliament in Victoria. The submission from the Women's Electoral Lobby recommended a requirement that after being sworn in, members affirm their commitment to equal opportunity for all Australians.<sup>152</sup>

The Committee agrees that, in a culturally and socially diverse society like Victoria, it is important for members of parliament to respect the diversity of backgrounds, views and opinions in the community. It has already recommended respect for the diversity of views and backgrounds within the Victorian community be included in the statement of values recommended in recommendation 3. The Committee believes that, like local government councillors, members of parliament should be required to treat all persons with respect and to have due regard for their opinions, beliefs, rights and responsibilities.

Once again, the exposure draft proposed in chapter five of this report will provide a further opportunity for members of parliament and the community to comment on whether these rules are appropriate.

#### **Recommendation 4: A broader code of conduct**

The Committee recommends section 3 of the Act be replaced with a new code. Subject to further consultation through the exposure draft recommended in recommendation 35, the new code should include the following rules of conduct:

##### **Upholding democracy and respecting others regardless of background**

Members of parliament should make the performance of their public duties their prime responsibility.

Members of parliament should exercise reasonable care and diligence in performing their public duties.

Members of parliament should submit themselves to the lawful scrutiny appropriate to their office.

Members of parliament should treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

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<sup>151</sup> *Local Government Act 1989* (Vic) s 76BA(c)

<sup>152</sup> Women's Electoral Lobby, *Submission no. 26*, 1-2.

### **Conflicts of interest**

Members of parliament must avoid actual and perceived conflicts of interest.

Members of parliament must declare any actual or perceived conflict of interest when speaking in parliamentary proceedings, including the proceedings of parliamentary committees.

A member of parliament has a conflict of interest if the member participates in or makes a decision in the execution of the member's office which furthers the private interests of the member or the private interests of a 'prescribed person'.

A prescribed person is:

- (i) a member of the member's family
- (ii) a corporation or entity in which the member has an interest as an officer, a person with a controlling beneficial interest or a member
- (iii) a creditor or debtor of the member, except where the debt is owed to or by a family member, an authorised deposit-taking institution or other persons whose ordinary business includes the lending of money or the supply of ordinary household or office-related goods and services
- (iv) a donor of a gift to the member.

A member does not have a conflict of interest where the member or prescribed person is affected as a member of the public or a broad class of persons.

### **Using position for profit**

Members of parliament must not receive a fee, payment, retainer or reward, or permit any compensation to accrue to their beneficial interest or the beneficial interest of a prescribed person for or on account of, or as a result of the use of, their position as a member.

This rule does not apply to members' parliamentary salary or allowances.

### **Outside employment and activities**

Members of parliament may engage in employment, business and community activities outside of the Parliament but must avoid any actual or perceived conflicts of interest that might arise from those activities, including where the activities compromise the member's ability to fulfil his or her public duties.

### **Accepting gifts, hospitality and other benefits**

Members of parliament must not accept gifts, hospitality or other benefits which create an actual or perceived conflict of interest, or which might create an appearance of an attempt to influence the member in the exercise of his or her public duties.

### **Use of influence**

Members of parliament must responsibly exercise their influence as members and must not use their influence to improperly further their own interests or the interests of a prescribed person.

### **Use of public resources**

Members of parliament must comply with any laws or rules regarding use of parliamentary allowances and facilities.

Members of parliament must use all public funds and resources provided to them as members responsibly and only for legitimate purposes in connection with their role as members of parliament.

### **Personal conduct**

Members of parliament must ensure their conduct as members does not bring discredit upon the Parliament.

Members of parliament must act with honesty and integrity in all official dealings and must not deliberately mislead the Parliament or the public about any matter relating to the performance of their public duties.

Members of parliament must be fair, objective and courteous in their dealings with the community and, without detracting from the importance of robust public debate in a democracy, their colleagues.

### **Managing confidential and personal information**

Members of parliament must not use confidential information gained in the performance of their public duty to advance their own interests or the interests of a prescribed person.

Members of parliament must respect the privacy of information they receive in the course of their public duties.

### **Post-retirement activities**

Members of parliament must not take improper advantage of their former office once they leave the Parliament.

### 3.7 Keeping the values and rules relevant

Many of the recommendations in this chapter are intended to bring Victoria's code up to date with changes in the community and improvements in ethics regulation over the past 30 years.

Integrity agencies and ethicists recommend regular reviews of codes of conduct to ensure they remain contemporary and relevant.<sup>153</sup>

Some parliaments promote regular periodic reviews of their codes by making this a function of a parliamentary committee and, in some cases, by making reviews mandatory. In NSW, for example, there is a legal requirement that the privileges and ethics committees in the Parliament review the code for NSW members of parliament at least once every four years.<sup>154</sup> Canada's House of Commons and Senate must review their codes every five years.<sup>155</sup>

The Committee believes the Parliament of Victoria should also conduct regular reviews of the new code in the future. In chapter five of this report, the Committee has recommended a new name and an enhanced role for the Legislative Assembly's and Legislative Council's privileges committees and it believes they would be best placed to fulfil this function. The privileges and standards committees should be given the power to conduct reviews when they consider it appropriate. The Committee suggests the committees be required to work jointly. This would avoid duplication between the houses and the risk of the two committees making inconsistent reports.

The Committee's experience in this review was that it was sometimes difficult to locate clear and reliable data on which to base recommendations about parliamentary standards. Transparency International and Griffith University have recommended governments fund core integrity agencies to collaborate in a joint long term research program into use of evidence-based research for evaluation of integrity system performance.<sup>156</sup> The Inter-Parliamentary Union has suggested parliaments should initiate more systematic polling across time to keep track of their standing and to assess the impact of democratic improvements.<sup>157</sup> In Britain, the Hansard Society and the Committee on Standards in Public Life both undertake regular public opinion surveys.<sup>158</sup> In this review, the Committee found the joint research project conducted by the Parliament of Victoria and Monash University into the reputation and standing of the Parliament particularly helpful.

<sup>153</sup> Griffith University and Transparency International Australia, above n 114, 97, 101; Crime and Misconduct Commission, Queensland, *Keeping your code of conduct relevant: Guidelines for best practice* (2007), Building Capacity Series No.12; Simon Longstaff, 'Why codes fail', above n 44, 244-245.

<sup>154</sup> *Independent Commission Against Corruption Act 1988* (NSW) ss 72C(5), 72E(5).

<sup>155</sup> House of Commons, Canada, above n 81, App s 33; Senate, Canada, above n 86, s 53.

<sup>156</sup> Griffith University and Transparency International Australia, above n 114, 101.

<sup>157</sup> Inter-Parliamentary Union, *Parliament and democracy in the twenty-first century: A guide to good practice* (2006), report prepared by David Beetham, 112.

<sup>158</sup> See the Hansard Society, *Public attitudes and engagement*, <[www.hansardsociety.org.uk](http://www.hansardsociety.org.uk)> viewed 28 October 2009 for its reports on political engagement, and Committee on Standards in Public Life, *Public attitude surveys*, <[www.public-standards.org.uk/OurWork/Public\\_Atitude\\_Surveys.html](http://www.public-standards.org.uk/OurWork/Public_Atitude_Surveys.html)> viewed 28 October 2009 for its report on public attitudes to conduct in public life.

The Committee believes the Victorian Government should support research into parliamentary standards that will support future reviews of the Act.

**Recommendation 5: Keeping the statement of values and code of conduct relevant into the future**

The Committee recommends:

- (a) the Legislative Assembly and Legislative Council include monitoring and reviewing the statement of values and the code in the functions of the privileges and standards committees recommended in recommendation 29. The Legislative Assembly and Legislative Council should require their respective committees to confer with each other when carrying out this function
- (b) the Victorian Government, in conjunction with the Parliament of Victoria, commission ongoing research into parliamentary standards.



## Chapter 4: The register of interests

Part II of the *Members of Parliament (Register of Interests) Act 1978* (Vic) (the Act) establishes a register of interests for members of parliament. It creates transparency around members' private interests by requiring them to declare interests that may conflict with their official duties in a public register for the world to see.

Although the register has operated relatively smoothly since 1978, the Committee heard there are some areas where it is no longer as clear or transparent as it should be, and others where it impinges too much on the privacy of members and their families. This chapter recommends the finetuning of the Act to clarify members' obligations and promote both transparency and privacy better.

### 4.1 The aims of registers of interests

Like codes of conduct, registers of interests have become a standard feature of integrity regimes for members of parliament. Every parliament in Australia and many parliaments overseas now have registers of interests for their members.

Registers of interests can serve different aims. Dr James Swansson from the ANZSOG Institute for Governance at the University of Canberra referred the Committee to research suggesting that some countries use registers to detect corruption amongst officials by tracing their assets over time. Other countries follow a British model and use registers as a tool to prevent and manage conflicts of interests by requiring members of parliament to disclose private interests that might conflict with their public duties.<sup>159</sup>

Victoria's register follows the British conflict of interest model. By requiring members to identify private interests that may conflict with their public duties, the register reminds them of the need to avoid or manage those conflicts. It also creates transparency and accountability around members' private interests by giving the public the information it needs to make informed judgments about members' views.<sup>160</sup> In 1978 Premier Rupert Hamer told the Parliament the register would ensure:

the world will know in advance if [a member] has any interest which might in the eyes of some constitute a possible conflict of interest between his private affairs and his public duty.<sup>161</sup>

The Committee heard this principle is just as important today as it was in 1978. Channel Seven's State Political Reporter, Mr Brendan Donohoe, told the Committee:

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<sup>159</sup> James Swansson, Consultant Researcher, ANZSOG Institute for Governance, *Transcript of evidence*, Melbourne, 21 July 2009, 3, referring to Marc Van der Hulst, *The parliamentary mandate: A global comparative study*, Inter-Parliamentary Union, 2000, 53-56.

<sup>160</sup> See ANZSOG Institute for Governance, *Submission no. 21*, 5; Howard Whitton, Visiting Fellow, ANZSOG Institute for Governance, *Transcript of evidence*, Melbourne, 21 July 2009, 2; Gerard Carney, *Members of parliament: Law and ethics*, Prospect Media, 2000, 358-359.

<sup>161</sup> Victoria, *Parliamentary debates*, Legislative Assembly, 21 November 1978, 6027 (Mr Hamer, Premier and Treasurer).

if you are to be a public figure making public law, you should publicly declare what private interests you have so that people can test whether you have a conflict, whether you are putting the public good before promoting your private interest. That is the bottom line.<sup>162</sup>

This transparency does come at a cost to the privacy of members of parliament and their families. As chapter three noted, the recognition of privacy rights has been one of the major changes in the law since the code was enacted in 1978. Victoria now recognises privacy rights through specific information privacy laws and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).<sup>163</sup> The Act impinges on those rights by requiring members to disclose publicly what most of the community would regard as private and sensitive information.

The Victorian Privacy Commissioner, Ms Helen Versey, told the Committee there needed to be a balance between public interests and private rights in the register of interests. She told the Committee there is ‘a strong and important public interest in having open accountability in elected officials, to ensure a robust and responsible political system’.<sup>164</sup> However, she also noted:

one has to balance the need for accountability, in that MPs have a high responsibility for accountability, but I do not think that means that MPs should not also have privacy rights which are protected, so there needs to be that balance.<sup>165</sup>

The tension between the public interest in transparency and accountability and the privacy rights of members was a theme in much of the evidence to this review. The recommendations in this chapter attempt to ensure the register achieves its public aims, while limiting its impact on individual rights.

## 4.2 Victoria’s register of interests

Registers of interests for members of parliaments follow a basic model. Members register information about certain private interests and the parliament publishes that information to the community at large. However, the mechanics differ slightly from parliament to parliament. Victoria’s register works as follows:

- Members of parliament register certain financial and other interests at the start of each parliament after a general election. The Act requires them to submit this information to the Clerk of the Parliaments in a document called a ‘primary return’ within 30 days of taking their oath or affirmation of office. Section 6 of the Act sets out the interests that members have to include in a primary return (see figure 5). The forms used by members are set out in the *Members of Parliament (Register of Interests) Regulations 2003* (Vic).

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<sup>162</sup> Brendan Donohoe, State Political Reporter, Seven Network, *Transcript of evidence*, Melbourne, 21 July 2009, 6.

<sup>163</sup> *Information Privacy Act 2000* (Vic); *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 13.

<sup>164</sup> Office of the Victorian Privacy Commissioner, *Submission no. 17*, 1. See also Brian Costar, Coordinator, Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 3; Howard Whitton, *Transcript of evidence*, above n 160, 2.

<sup>165</sup> Helen Versey, Victorian Privacy Commissioner, *Transcript of evidence*, Melbourne, 21 July 2009, 2.

**Figure 5: What interests do members of parliament have to register in Victoria?**

This figure shows the interests members of parliament have to register over the life of a parliamentary term.

The rules about which interests members have to declare, and when they have to declare them, are often very technical. Detailed information can be found in section 6 of the Act, which is set out in full in appendix D of this report.

**Income**

Members have to register any ‘income source’ other than their parliamentary salary and allowances.

**Offices**

Members have to register the name of any company or other body in which they hold office as a director or otherwise.

**Investments**

Members have to register the name or description of any company, partnership, association or other body in which they hold a ‘beneficial interest’ over \$500.

**Memberships**

Members have to register the name of any political party, body or association or trade or professional organisation of which they are or have been a member.

**Trusts**

Members have to register a ‘concise description’ of any trust in which they hold a beneficial interest, or of which they are trustee and a member of their family has a beneficial interest.

**Land**

Members must register the address or description of any land in which the member has any beneficial interest.

**Travel contributions**

Members have to register the source of any ‘significant contribution’ to any travel outside Victoria.

**Gifts**

Members have to register the ‘particulars’ of any gift over \$500.

**Other substantial interests**

Members have to register other substantial interests, financial or non-financial, held by themselves or their families which they consider might appear to raise a material conflict between their private interests and public duties.

- Members of parliament notify the Clerk of any changes to their interests annually. The Act requires them to submit a document called an ‘ordinary return’ to the Clerk within 60 days of the end of each financial year. Section 6 of the Act also sets out the interests that members have to include in an ordinary return (see figure 5). The forms used by members are once again set out in the *Members of Parliament (Register of Interests) Regulations*. Members can notify the Clerk of changes at other times, but the Act does not require them to do so.
- The Clerk prepares a ‘summary’ of the information provided by each member and tables it in the Parliament. In October each year the Clerk also prepares and tables a ‘cumulative summary’, which collects all of the information and updates provided by members over time into one document with a complete list of each member’s interests.
- The Parliament publishes the summary as a parliamentary paper which is available from the Parliament and some libraries.

### 4.3 How is Victoria’s register performing?

The evidence to this review suggests Victoria’s register has worked well since 1978, but it is no longer promoting transparency as well as it could, and its impact on members’ privacy is becoming problematic.

As with codes of conduct, there is little empirical research available about the impact of registers of interests. The Committee conducted its own analysis of the summaries tabled under the Act in recent years and heard evidence from people inside and outside the Parliament.

The general view amongst participants was that the register had operated relatively smoothly over its history. Mr Donohoe, although a critic of the register, told the Committee, ‘[t]here have not been enormous crises or enormous stories around the Act because the majority of MPs do the right thing behind the scenes ...’<sup>166</sup> Professor Brian Costar from the Swinburne University of Technology, who appeared on behalf of the Democratic Audit of Australia, also told the Committee the register seemed to have ‘worked quite well — there have not been scandals or anything of that sort ...’<sup>167</sup> He gave the Committee an example of how the Act had changed attitudes in Victoria:

The Box Hill railway station case has gone into the textbooks. All of a sudden the public drinking fountains at the Box Hill railway station disappeared. The next day soft drink dispensing machines arrived. The Minister for Railways owned the company that owned the soft drink dispensing machines. What happened? Nothing. There was a debate in Parliament; the Premier said, ‘I am not fazed by this’, and away it went. Imagine if that happened now! There has been substantial improvement — just the recognition of a thing called ‘conflict of interest’, which was not recognised in this Parliament or in others as well, but it now is.<sup>168</sup>

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<sup>166</sup> Brendan Donohoe, *Transcript of evidence*, above n 162, 2.

<sup>167</sup> Brian Costar, *Transcript of evidence*, above n 164, 6.

<sup>168</sup> *Ibid*, 9.

However, participants were critical of the register's failure to keep up with contemporary standards. The ANZSOG Institute for Governance described it as 'deficient in a number of respects, reflecting in significant part the fact that it was enacted some 30 years ago when the ethics standards expected of public officials were somewhat different ...' It called for measures 'comparable with those of other democratic systems of government'.<sup>169</sup> Mr Donohoe was even more critical, describing the register as 'a misnomer. Put simply, it fails the test of being a "register" with many MPs paying lip service to the letter, spirit and intent of the law.'<sup>170</sup>

Participants' criticisms in this review tended to focus on:

- the types of interests that members have to register in Victoria
- the extent of information members provide about those interests
- the currency of the information in the register
- the accessibility of the register.

The following sections examine these criticisms in turn.

## 4.4 Types of registrable interests

Figure 5 in this chapter lists the types of interests members currently have to register under the Act. They cover income and assets, gifts and travel contributions and some non-financial interests in the form of offices and memberships.

The Committee heard conflicting views about whether this list remains appropriate. The Speaker of the Legislative Assembly, the Hon. Jenny Lindell MP, advised the Committee she thought the current range of interests covered the matters that should be disclosed.<sup>171</sup> Ms Elizabeth O'Keeffe, one of the directors of the Australian arm of global anti-corruption organisation Transparency International, noted that although the Act was very far reaching in 1978, there are now other jurisdictions that have gone further.<sup>172</sup>

The register's aim is to create transparency and accountability around private interests that may conflict with members' public duties. The Committee believes members should have to register all private interests that meet that criterion. The Committee believes members should not have to register any other interests that do not meet that criterion. The former Queensland Integrity Commissioner, Mr Gary Crooke QC, wrote in his submission:

<sup>169</sup> ANZSOG Institute for Governance, *Submission no. 21*, 3.

<sup>170</sup> Brendan Donohoe, State Political Reporter, Seven Network, *Submission no. 1*, 1. See also Brendan Donohoe, *Transcript of evidence*, above n 162, 2, 6.

<sup>171</sup> Jenny Lindell, Speaker of the Legislative Assembly, Parliament of Victoria, *Submission no. 19*, 3.

<sup>172</sup> Elizabeth O'Keeffe, Director, Transparency International Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 6.

the register is not a vehicle the primary purpose of which is to enable any member of the public to access a complete account of the private affairs of a Member of Parliament.<sup>173</sup>

The following sections look at whether and how the Act should be amended to ensure that the register of interests meets its aim.

#### **4.4.1 Clarifying existing categories of registrable interests**

Some of the evidence to this review suggests there is uncertainty and confusion amongst members of parliament about some of the categories of interests already listed in the Act:

- income — the ANZSOG Institute for Governance’s submission noted the definitions of ‘financial benefit’ and ‘income source’ in the Act appear to exclude income from rental properties and other investments.<sup>174</sup> The Committee’s analysis of summaries tabled under the Act in recent years found many members are registering rental income, but there appears to be less certainty about income from other investments such as bank accounts
- investments — the Committee’s analysis of recent summaries under the Act found some members are declaring bank accounts under this category, but the numbers are lower than might be expected. There also appears to be uncertainty about non-parliamentary superannuation funds. Some members declare them as investments, some as trusts and some under the ‘other substantial interests’ category
- gifts and travel — the Speaker drew the Committee’s attention to uncertainty about whether hospitality had to be registered under the Act. She noted the former Minister for Water, Environment and Climate Change was criticised in 2007 for not registering accommodation at ski resorts, even though the Act did not require this, because some other members had done so<sup>175</sup>
- memberships — although the Act only requires members of parliament to register membership of political, trade and professional organisations, the Committee’s analysis of recent summaries found that members are also registering involvement with community groups such as local sporting clubs and alumni associations. In some cases, those memberships form the bulk of the member’s total return.

In the next chapter, the Committee has recommended guidelines to help members of parliament interpret the Act, but it believes the Act also needs to be amended to reduce uncertainty and confusion. The Committee believes members should be

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<sup>173</sup> Gary Crooke, former Queensland Integrity Commissioner, *Submission no. 15*, 4. See also Brian Costar, *Transcript of evidence*, above n 164, 6; Ken Coghill, Associate Professor, Monash University, *Transcript of evidence*, Melbourne, 29 June 2009, 2.

<sup>174</sup> ANZSOG Institute for Governance, *Submission no. 21*, 15.

<sup>175</sup> Jenny Lindell, *Submission no. 19*, above n 171, 3; Jenny Lindell, Speaker of the Legislative Assembly, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 6.

required to register all income as defined by taxation law (with the continued exception of members' parliamentary salary and allowances). The Committee notes this may require members to disclose income earned from income-producing assets, such as investment properties and shares, under this category as well as the assets themselves in other parts of the register. In framing the amending legislation, consideration may need to be given to ways to minimise any duplication in reporting requirements.

The Committee believes members should also be required to register any private superannuation funds, as well as gifts of hospitality and other intangible benefits. Those interests have the potential to create at least the appearance of a conflict with members' public duties. They already have to be registered in some other Australian parliaments.<sup>176</sup>

The Committee also believes members should not have to register savings or investment accounts with banks or similar institutions, interests in public superannuation funds, or income from those sources. Although some other parliaments do include those interests in their registers,<sup>177</sup> members hold those interests in common with large numbers of other people in the community. For the reasons outlined in chapter three, the Committee does not believe those types of interests need to be addressed by the Act.

In the case of memberships, the Committee appreciates it can be difficult to determine where a community group is a 'political' body or association given that most groups have an interest in some local issues or some contact with government agencies. In light of the aim of the register, the Committee believes this section should be clarified to make it clear to members that they only need to register memberships which may give rise, or appear to give rise, to a conflict of interest. An example would be where the community group receives or is seeking government funding.

Finally, some participants also raised concerns about the category of 'other substantial interests' in the Act. Members only have to register an interest under this category if *they* believe it might raise a material conflict with their public duties. The ANZSOG Institute for Governance criticised the Act's reliance on members' own judgement. It argued the term 'substantial' should be clarified and the test of whether there is a conflict should depend on the view of a 'reasonable person' rather than the

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<sup>176</sup> Parliaments that require registration of a broad range of income include New South Wales: *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 7. Parliaments that require registration of private superannuation funds include Queensland: Legislative Assembly of Queensland, *Standing rules and orders of the Legislative Assembly* (2008), sch 2 cl 7(2)(e). Parliaments that require registration of hospitality or intangible benefits include the Northern Territory, Western Australia and New Zealand: *Legislative Assembly (Disclosure of Interests) Act 2008* (NT) Schedule; *Members of Parliament (Financial Interests) Act 1992* (WA) s 9(4); House of Representatives, New Zealand, *Standing orders of the House of Representatives* (2008), App B cl 7(3).

<sup>177</sup> Parliaments that require registration of bank accounts include the Queensland and Australian Parliaments: Legislative Assembly of Queensland, above n 176, sch 2 cl 7(2)(j); Senate, Australia, *The Senate standing orders and other orders of the Senate* (2009), Senators' interests, cl 3(h); House of Representatives, Australia, *House of Representatives standing and sessional orders* (2008), Resolutions of the House, Registration of Members' interests, cl 2(h). The New Zealand Parliament requires registration of registered superannuation schemes: House of Representatives, New Zealand, above n 176, App B cl 4(g).

member.<sup>178</sup> The former Queensland Integrity Commissioner warned the Committee that people are not always good judges in their own cause:

99.9 per cent of people, profess to be ethical. Thus they say, 'Look, I can see something is a bit risky or perhaps questionable about this, but because it is me and because I am so ethical I will go ahead and do it and I will not let extraneous considerations interfere'. Now that is the most basic mistake that can be made, because the test of what conduct is acceptable is the viewpoint of a reasonable member of the public properly informed. It is not how ethical you think you are.<sup>179</sup>

The Committee notes members do attempt to comply with this provision. In the 2008 cumulative summary, almost a third of members registered interests under this category. However, the provision is uncertain in a number of respects. The ACT Legislative Assembly requires its members to register 'other interests where a conflict of interest could foreseeably arise or be seen to arise'.<sup>180</sup> The Committee believes this offers clearer guidance. The guidelines proposed in chapter five could list factors members need to consider when completing this area of their returns.

#### **Recommendation 6: Clarifying the registrable interests**

The Committee recommends the Act:

- (a) define 'income' in the same way as assessable income under Commonwealth income tax legislation, with the exception of members' parliamentary salary and allowances and income from savings or investment accounts and public superannuation funds
- (b) define a 'beneficial interest' to include an interest in a private superannuation fund
- (c) define 'gift' to include a transfer of property or conferral of a financial benefit, including hospitality, made without consideration or without adequate consideration
- (d) replace section 6(2)(d) with a requirement to disclose the name of an organisation where a conflict of interest could arise, or reasonably be seen to arise, from the member's membership or association with that organisation
- (e) replace section 6(2)(i) with a requirement to disclose 'other interests of the member where a conflict of interest could arise or reasonably be seen to arise'.

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<sup>178</sup> ANZSOG Institute for Governance, *Submission no. 21*, 3. See also the criticism of this provision in Victorian Parliament Legislative Assembly Privileges Committee, *Report on complaint made by the Honourable Member for Monbulk* (1986) 15.

<sup>179</sup> Gary Crooke, former Queensland Integrity Commissioner, *Transcript of evidence*, Melbourne, 10 August 2009, 6.

<sup>180</sup> Tom Duncan, Clerk of the Legislative Assembly for the Australian Capital Territory, *Submission no. 24*, at 2.



## 4.4.2 Should members have to register additional types of interests?

### Debts

Some parliaments require their members of parliament to register interests that are not included in Victoria's Act such as debts, general assets, some dispositions of property or financial contributions to organisations.

The only one of these categories to gain attention amongst participants in this review was debts. The submission from the ANZSOG Institute for Governance argued a 'significant conflict of interest may arise from significant indebtedness of an MP to a third party' and described the omission of liabilities from the Act as 'significant for the integrity of the scheme'.<sup>181</sup>

The Committee acknowledges that personal debt can have, and can be seen to have, as much influence on members of parliament as their personal assets. The Committee believes Victoria's Act should require members of parliament to disclose debts in the register. There are some debts that should be excluded because they are unlikely to influence members' public duties or are held in common with many people in the community. Those debts are debts owed to the member's family, debts owed to banks and similar institutions such as residential mortgages, credit and store card debts, and debts arising from ordinary household or office-related goods or services.

The Committee is reluctant to add other categories of interests to Victoria's Act in the absence of evidence about how they have worked in other parliaments. These are issues that could be addressed in future reviews of the Act. In the meantime, members of parliament in Victoria can register other types of interests under the 'other substantial interests' category in the Act if a conflict of interest could arise or be seen to arise.

### Political donations

The Kew Cottages Coalition, a community organisation which opposes the sale of the government-owned former Kew Cottages site in Melbourne, argued there is a perception in the community that members who receive, or whose parties receive, donations from property developers have a conflict of interest when speaking in the Parliament about the privatisation of public land. It argued the solution was '[f]ull disclosure by individual MPs of all political donations, including donations received by their related political parties.'<sup>182</sup>

The Committee does not support this proposal. Australia already has laws requiring disclosure of political donations and the issue was recently reviewed in Victoria by the Parliament of Victoria's Electoral Matters Committee.<sup>183</sup> The Committee

<sup>181</sup> ANZSOG Institute for Governance, *Submission no. 21*, 3. See also National Democratic Institute for International Affairs, *Legislative ethics: A comparative analysis* (1999) Legislative Research Series Paper No. 4, 12.

<sup>182</sup> Kew Cottages Coalition, *Submission no. 22*, 5.

<sup>183</sup> Victorian Parliament Electoral Matters Committee, *Inquiry into political donations and disclosure* (2009).

believes dual reporting of donations in the register and under electoral laws would create confusion and unnecessary administration.

The Committee believes the Act should be amended to make it clearer that political donations do not have to be registered as ‘gifts’ under the Act. The Clerk of the South Australian House of Assembly, Mr Malcolm Lehman, advised the Committee there had been a question about whether members had to declare donations as gifts under its laws.<sup>184</sup> Some parliaments expressly exclude campaign and political donations from their registration requirements,<sup>185</sup> and the Committee believes Victoria should do likewise.

#### **Recommendation 7: Extending the registrable interests**

The Committee recommends the Act:

- (a) require members of parliament to disclose debts in both their primary and ordinary returns. ‘Debt’ should be defined to exclude debts owed to family members, authorised deposit-taking institutions or other persons whose ordinary business includes the lending of money, and debts arising from the supply of ordinary household or office-related goods and services
- (b) clarify that members are not required to disclose political donations in the register of interests as these are disclosable under electoral laws.

#### **4.4.3 Excluding interests outside the aims of the Act**

The evidence before the Committee suggests that members currently have to register some interests under the Act that are unlikely to create a conflict of interest and fall outside the aim of the register. This section looks at whether those interests should be excluded from the scope of the Act.

##### **Small interests**

Some personal assets, liabilities and benefits may be so small they are unlikely to ever improperly influence the way members of parliament fulfil their public duties.

The Act already excludes some small interests from the register by setting monetary thresholds for registration. For example, members do not have to register income, investments or gifts which are under \$500 in value, or travel contributions which are not ‘significant’.

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<sup>184</sup> See, for example, the submission from the Clerk of the Parliament of South Australia which referred to debate about whether independent members have to register donations as gifts under South Australia’s laws: Malcolm Lehman, Clerk of the House of Assembly, Parliament of South Australia, *Submission no. 3, 2*.

<sup>185</sup> See, for example, *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 10(2); House of Representatives, New Zealand, above n 176, App B cl 7(3).

Monetary thresholds like those in the Act are sometimes criticised on the ground they are arbitrary. During the 1978 parliamentary debate about the Act, the then Leader of the Opposition referred to the fact that the \$500 threshold would exclude a financial benefit worth \$499.<sup>186</sup> Thresholds can also create practical problems in the case of interests, such as shares, which fluctuate in value.

The Committee's view is that Victoria should continue to use monetary thresholds and should extend them to the new category of debts. Although different people will have different views about the appropriate monetary level for the thresholds, they are a straightforward way of excluding small interests from the register.

The Committee also considered whether the \$500 thresholds in the Act should be increased. In their submission, the Clerks of the Legislative Assembly and Legislative Council noted that \$500 in 1978 is the equivalent of around \$2000 today.<sup>187</sup> Some parliaments have adopted higher thresholds than Victoria. A recent review of the register of interests in Western Australia, for example, recommended updating its thresholds to \$2000, with automatic reviews every 10 years in line with the Consumer Price Index.<sup>188</sup> However, some other Australian parliaments still use \$500 as a threshold for registration of some interests.<sup>189</sup>

The Committee's view is that the threshold for income, investments and debts should be \$2000. It believes the threshold for gifts and travel contributions should remain at \$500 given their sensitivity in the community. These amounts should be automatically adjusted at the end of each financial year in line with the Consumer Price Index so that they remain at an appropriate value. The Parliament may wish to notify members of the adjusted thresholds each year by either writing to members or including the figures in the written guidelines recommended in chapter five.

The Committee also believes the Act should address situations where members receive multiple interests from a person which, on their own, fall below the threshold but, taken together, exceed the threshold. For example, the Clerks told the Committee that members of parliament may be given gifts of tickets over the course of the year. Each ticket may be below \$500 in value but, over the course of the year, their total value may exceed \$500. The Clerks noted it is unclear whether members should register such gifts.<sup>190</sup> Other Australian parliaments have adopted rules to address this problem<sup>191</sup> and the Committee recommends Victoria follow suit.

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<sup>186</sup> Victoria, *Parliamentary debates*, Legislative Assembly, 8 December 1978, 7518 (Mr Wilkes, Leader of the Opposition).

<sup>187</sup> Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, and Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria, *Submission no. 18*, 6.

<sup>188</sup> Parliament of Western Australia Procedure and Privileges Committee, *Members of Parliament (Financial Interests) Act 1992 Review* (2006), 9, rec 11.

<sup>189</sup> See, for example, New South Wales and Tasmania: *Constitution (Disclosure by Members) Regulation 1983* (NSW) regs 9(3), 19(2); *Parliamentary (Disclosure of Interests) Act 1996* (Tas) ss 7, 14(1).

<sup>190</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 187, 5-6.

<sup>191</sup> See, for example, New South Wales and South Australia: *Constitution (Disclosure by Members) Regulation 1983* (NSW) regs 10(2), 11(2)(d); *Members of Parliament (Register of Interests Act) 1983* (SA) s 2(4).

### **Recommendation 8: Excluding small interests**

The Committee recommends the Act:

- (a) set a \$2000 threshold for the registration of income, investments and debts
- (b) set a \$500 threshold for the registration of gifts and travel contributions
- (c) provide for automatic increases in the thresholds at the end of each financial year in line with the Consumer Price Index
- (d) require members of parliament to disclose interests that fall below the threshold in the register of interests where (i) a member holds or receives two or more interests with or from the same person and (ii) the amount of those interests, valued together, exceeds the threshold.

### **Benefits from family and friends**

Like other members of the community, members of parliament receive gifts and travel contributions from family and friends in a personal capacity. These gifts and contributions are unlikely to create any conflict with their public duties.

The Act already exempts members of parliament from registering gifts from people related to them by 'blood or marriage'. The Committee believes this definition should be updated to reflect the modern concept of family.

The Committee notes that some parliaments, such as the Parliament of Queensland, also exempt members from registering gifts from personal friends made in a purely personal capacity, unless the member judges that an appearance of a conflict of interest may be seen to exist.<sup>192</sup> The Committee believes this exemption should also be adopted in Victoria.

### **Recommendation 9: Excluding benefits from family and friends**

The Committee recommends the Act provide that members of parliament are not required to disclose gifts or travel contributions in the register of interests where the gifts or travel contributions are made by:

- (a) family members or
- (b) friends in a purely personal capacity unless a conflict of interest could arise or be seen to arise.

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<sup>192</sup> Legislative Assembly of Queensland, above n 176, sch 2 cl 7(2)(k). See also Senate, Australia, above n 177, cl 3(k).

## Estates

Some parliaments in Australia do not require members of parliament to register certain interests they hold in a capacity as an executor of an estate, unless the member is also a beneficiary of the estate.<sup>193</sup>

There has been some uncertainty in Victoria in the past about what members should do in these circumstances. The former Speaker of the Legislative Assembly, the Hon. Dr Ken Coghill, told the Committee when he became executor of his father's estate, he registered all of the assets in the estate in his return.<sup>194</sup> However, the Committee's analysis of recent summaries tabled under the Act shows that some members only register the existence of the estate.

The Committee believes the obligations of members of parliament in these circumstances should be clarified. It believes members should have to disclose the fact that they are an executor of an estate but, provided they have no beneficial interest in the estate, they should not be required to list the interests of the estate. Members are unlikely to be influenced by the interests in the estate in these circumstances and no conflict of interest arises.

### Recommendation 10: Excluding estates

The Committee recommends the Act provide that, if a member becomes the executor of an estate:

- (a) the member must disclose the name of the estate in the register of interests under the 'other substantial interests' category
- (b) the member is not required to disclose an interest held by the estate in the register of interests unless the member is also a beneficiary of that interest.

## 4.5 Information about members' interests

The most substantial criticism of the register in this review concerned the lack of information about members' interests in the register.

This was one of the concerns raised by the Parliament's Public Accounts and Estimates Committee (PAEC) in its 2008 report on government and parliamentary accountability. PAEC surveyed the summaries tabled in the Parliament under the Act since 2002 and reported:

a great deal of variety in the level of detail provided, with some members adhering to the spirit, as well as the detail, of the Act, giving extensive information relating to

<sup>193</sup> See, for example, Senate, Australia, above n 177, cl 3(b)(ii); House of Representatives, Australia, above n 177, cl 2(b)(ii); *Parliamentary (Disclosure of Interests) Act 1996* (Tas) s 10; *Members of Parliament (Financial Interests) Act 1992* (WA) s 6(2).

<sup>194</sup> Ken Coghill, *Transcript of evidence*, above n 173, 2.

their interests. Other entries are very brief, which makes it difficult to assess any potential conflicts of interest. This situation undermines the efficacy of the register as an accountability mechanism.<sup>195</sup>

The Committee's own analysis of recent summaries tabled under the Act confirmed PAEC's concern. For example, a member might register the name of a private company which pays income to the member. However, without information about the company's activities and the work performed by the member, it is impossible to tell whether the member has a conflict of interest. This undermines the aim of the register.

Some participants in the review also mentioned the problem in their evidence.<sup>196</sup>

In the Committee's view, the problem rests not with members but with the Act. Members who provide minimal information are generally complying with the Act. The problem is that the Act's obligations are sparse, particularly when compared with those in other Australian parliaments. The following sections look at the extent of information that members should have to register about their interests in Victoria.

#### **4.5.1 Land and residential addresses**

One of the most contested issues in this review concerned the amount of information members should have to provide about interests in land, particularly residential addresses.

The current Act requires members to provide an 'address or description' of any land in which they have a beneficial interest.

The Clerks told the Committee this phrase was unclear. They said that, when the Act came into operation in the late 1970s, members registered full street addresses. In more recent times, some members divulge only the town or suburb in which the land is located.<sup>197</sup>

The Committee's analysis of summaries tabled under the Act confirmed the Clerks' advice. In the 2008 cumulative summary, about half of members who registered an interest in land provided the street address or title details for at least one parcel of land. About a fifth registered the street name and suburb. The remainder registered only the suburb or town. Some members registered less information, such as a state. This variation is evident in the first summaries tabled under the Act in 1979 but there appears to have been a trend away from street addresses, particularly in the current parliament.

The Clerks' submission to the Committee suggested the growing reluctance of members to disclose street addresses was due to 'safety and privacy reasons', a

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<sup>195</sup> Victorian Parliament Public Accounts and Estimates Committee, *Report on strengthening government and parliamentary accountability in Victoria* (2008), 42.

<sup>196</sup> See Ken Coghill, *Transcript of evidence*, above n 173, 2; Elizabeth O'Keeffe, *Transcript of evidence*, above n 172, 6; Brendan Donohoe, *Transcript of evidence*, above n 162, 10; Brendan Donohoe, *Submission no. 1*, above n 170, 1.

<sup>197</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 187, 5.

concern also reported by some other parliaments.<sup>198</sup> The submission from the Victorian Privacy Commissioner suggested these concerns were well-founded:

While certain [m]embers may have little qualms about providing residential addresses, they may be unaware of the security risks and concerns to [m]embers and their families surrounding such a practice.<sup>199</sup>

However, Seven Network reporter, Mr Donohoe, was critical of the situation. He told the Committee the failure to provide basic details such as addresses had ‘devalued the register of member’s interests to the point that, for some, it is not a true register’.<sup>200</sup> He pointed to a return from one former member which listed only the state in which an investment property was located:

I do not know to this day whether he owned half of New South Wales or property along the border that was affected by water rights or anything at all. If it cannot be tested, it leaves doubt in the public’s mind ...<sup>201</sup>

The Committee considered a number of options for addressing these concerns:

- exemption — the Act could exempt members’ homes from registration. Some parliaments already take this approach, although it is not common in Australia<sup>202</sup>
- confidential registration — the Act could require members to register street addresses but limit the information published to the world at the large. PAEC suggested this option in its 2008 report, as did the current Speaker in her evidence to the Committee<sup>203</sup>
- limited information — the Act could require members to register only the suburb or town in which their home is located rather than the street address. Professor Jock Given from the Swinburne University of Technology, who represented the Democratic Audit of Australia in the review, questioned whether full address details were required to satisfy the aim of the register:

This register is about the potential for addressing conflicts. You may be able to satisfy that perfectly well by identifying the property with sufficient specificity without necessarily saying, ‘It is that house.’<sup>204</sup>

The Committee prefers the last option. It believes it strikes the best balance between the need for transparency on the one hand, and members’ right to privacy and security for themselves and their families on the other. The Australian and New

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<sup>198</sup> Ibid. See also Malcolm Lehman, *Submission no. 3*, above n 184, 2; Lynn Lovelock, Clerk of the Legislative Council, Parliament of New South Wales, *Transcript of evidence*, Sydney, 17 August 2009, 6.

<sup>199</sup> Office of the Victorian Privacy Commissioner, *Submission no. 17*, 1.

<sup>200</sup> Brendan Donohoe, *Submission no. 1*, above n 170, 2.

<sup>201</sup> Brendan Donohoe, *Transcript of evidence*, above n 162, 3.

<sup>202</sup> See, for example, Canada’s Senate: Senate, Canada, *Conflict of interest code for Senators*, cl 28(2). The ACT Legislative Assembly appears to be the only parliament in Australia to exempt a member’s principal place of residence from registration: Tom Duncan, *Submission no. 24*, above n 180, att 2.

<sup>203</sup> Victorian Parliament Public Accounts and Estimates Committee, above n 195, 42; Jenny Lindell, *Transcript of evidence*, above n 175, 6.

<sup>204</sup> Jock Given, Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 6-7. See also Brian Costar, *Transcript of evidence*, above n 164, 6.

South Wales (NSW) Parliaments already take this approach,<sup>205</sup> and the Victorian Privacy Commissioner described it as ‘a sensible compromise’.<sup>206</sup>

The Committee believes this rule should apply to members’ own residences and any residential investment properties. The Clerk of the NSW Legislative Council, Ms Lynn Lovelock, told the Committee:

for the same reasons that you say you don’t want your private property being exposed because constituents may choose to take out issues with the government against you or whatever, I think that by having the addresses actually identified, you are actually putting your tenants at risk if you have an investment property.<sup>207</sup>

In the case of other land, there should be no privacy or security considerations and the Committee believes the Act should require members to provide the street address or other specific description of the land.

#### **Recommendation 11: Protecting residential addresses**

The Committee recommends the Act:

- (a) require members who have a beneficial interest in land used as a primary or secondary place of residence by any person to disclose the suburb or town in which the land is located in the register of interests
- (b) require members who have a beneficial interest in other land to disclose the street address or a description that identifies the land’s specific location in the register of interests.

### **4.5.2 Other interests**

Participants in the review did not discuss the level of information that should be provided by members about their other interests, but the Committee’s survey of rules in other parliaments revealed that many require more information than Victoria:

- income — while some Australian parliaments, like Victoria, only require members to register the ‘income source’ of any financial benefit, others now require more extensive information. The NSW Parliament, for example, requires members to register the name and address of their employer and the name of the member’s occupation<sup>208</sup>

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<sup>205</sup> Senate, Australia, above n 177, cl 3(c); House of Representatives, Australia, above n 177, cl 2(c); *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 8(1A).

<sup>206</sup> Helen Versey, *Transcript of evidence*, above n 165, 3.

<sup>207</sup> Lynn Lovelock, *Transcript of evidence*, above n 198, 6; cf Brendan Donohoe, *Transcript of evidence*, above n 162, 5, 9.

<sup>208</sup> *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 9(2). Alternative details are required where the member’s income derives from another office, a partnership or other source. Similar details are required in Tasmania and Western Australia: see *Parliamentary (Disclosure of Interests) Act 1996* (Tas) s 8; *Members of Parliament (Financial Interests) Act 1992* (WA) s 7(2).



- offices — many Australian parliaments now require members to provide more than just the name of the company in which a member holds office. NSW, Queensland, Western Australia and Tasmania require members to register the name and address of the corporation and, unless the corporation is listed, a description of the corporation's business or objects and a description of the member's position or office<sup>209</sup>
- investments — some Australian parliaments, like Victoria, only require members to register a name or description of a company, partnership, association or other body in which they have a beneficial interest.<sup>210</sup> However, NSW, Western Australia and Tasmania now require members to register information about the nature of the members' interest and, except in the case of a listed or public company, the company's business or objects<sup>211</sup>
- trusts — the Australian and Queensland Parliaments require information about the trust's operation or activities.<sup>212</sup> Some parliaments also require members to register the names of the trust's settlor or trustee or its beneficiaries<sup>213</sup>
- gifts — while Victoria requires members to register the 'particulars' of gifts worth over \$500, other parliaments have more specific requirements. Many require members to register a description of the gift and the donor<sup>214</sup>
- travel — some parliaments now require information, not just the source or donor of travel contributions, but also information about the travel itself. The NSW Parliament, for example, also requires members to register the dates on which the travel was undertaken and the names of the states, territories or countries visited by the member.<sup>215</sup>

Although some members of parliament in Victoria already provide extensive information voluntarily, the Committee believes the Act should be amended to impose consistent requirements on all members of parliament. The rules in other parliaments ensure the public has the information they need to determine whether a member has a potential conflict of interest and the Committee believes Victoria should adopt a similar approach.

<sup>209</sup> *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 12(1); Legislative Assembly of Queensland, above n 176, sch 2 cl 7(2)(b); *Members of Parliament (Financial Interests) Act 1992* (WA) ss 11-12; *Parliamentary (Disclosure of Interests) Act 1996* (Tas) s 7(d)-(f).

<sup>210</sup> See, for example, *Members of Parliament (Register of Interests) Act 1983* (SA) s 4(3)(a).

<sup>211</sup> *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 12(1); *Parliamentary (Disclosure of Interests) Act 1996* (Tas) s 7(d), (e); *Members of Parliament (Financial Interests) Act 1992* (WA) s 11(1).

<sup>212</sup> Senate, Australia, above n 177, cl 3(b); House of Representatives, Australia, above n 177, cl 2(b); Legislative Assembly of Queensland, above n 176, sch 2 cl 7(2)(c), (d).

<sup>213</sup> Senate, Australia, above n 177, cl 3(b); House of Representatives, Australia, above n 177, cl 2(b); *Members of Parliament (Financial Interests) Act 1992* (WA) s 8.

<sup>214</sup> See, for example, *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 10(1); Legislative Assembly of Queensland, above n 176, sch 2 cl 7(2)(k); *Parliamentary (Disclosure of Interests) Act 1996* (Tas) s 7(o), (p); *Members of Parliament (Financial Interests) Act 1992* (WA) s 9(1); House of Representatives, New Zealand, above n 176, App B cl 7(1)(b).

<sup>215</sup> *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 11(1). Similar details are required in Tasmania: *Parliamentary (Disclosure of Interests) Act 1996* (Tas) s 7(m), (n).

### **Recommendation 12: Expanding information about members' interests**

The Committee recommends the Act require members of parliament to disclose the following information about their interests in the register of interests:

- (a) income — a description of the source of the income, including the name and address of the payer, and, where the income arises from services provided by the member, a description of the services provided by the member
- (b) offices — the name and address of the corporation or other organisation, a description of the organisation's objects or activities and a description of the office held by the member
- (c) investments — the name of the corporation, partnership or other body in which the member holds the beneficial interest, a description of the nature of the member's interest and, except in the case of listed corporations, the address of the corporation, partnership or other body and a description of its objects or activities
- (d) trusts — a description of the trust and the nature of its activities
- (e) gifts — a description of the gift and the name and address of the donor
- (f) travel — the name and address of the donor and a description of the travel undertaken, including dates, destinations and the purpose of the travel.

#### **4.5.3 Should members have to register the value of their interests?**

Section 6(5) of Victoria's Act states that members of parliament are not required to disclose the amount of any financial benefit entered on the register.

Seven Network reporter, Mr Donohoe, told the Committee that members should have to register the number of shares they hold. He told the Committee it was not possible to tell from the register whether a member holds one share or 5 or 10% of an entire corporation:

you do not know whether it is a minor, token investment or a significant investment that may impact on that MP's behaviour in Parliament in policy and general performance.<sup>216</sup>

He proposed a requirement for members to disclose the value of their shares in bands.<sup>217</sup> The ANZSOG Institute for Governance's submission argued a register

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<sup>216</sup> Brendan Donohoe, *Transcript of evidence*, above n 162, 3. See also Brendan Donohoe, *Submission no. 1*, above n 170, 2.

aimed at corruption prevention would require members to disclose the value of assets when they dispose of them, and identify the person to whom they dispose of them, so the public can identify improper dealings.<sup>218</sup>

Other participants reminded the Committee about the register's real aim. Professor Costar told the Committee:

some people drift across to the notion that this is a register of wealth, or they think it should be. It is not; it is a register of interests ... People say they do not know if an address is a shed or a 10-storey mansion. That may or may not be relevant.<sup>219</sup>

Other parliaments in Australia do not require members of parliament to register the value of their interests, but some overseas parliaments do take this approach. The Scottish Parliament, for example, requires its members to disclose, usually by band, the value of income, gifts, property and shares.<sup>220</sup>

The Committee acknowledges that the value of a member's interests may affect the extent to which he or she is likely to be influenced by them. The value of a member's interests is also likely to affect the community's perception of the member's conduct.

Recommendation 8 in this chapter would mean that members only have to register interests worth more than a nominated monetary threshold. The Committee believes that, in the interests of transparency, members should also provide information about the value of any interests they do register.

The Committee proposes that members list the value of their interests by band. The bands will need to vary depending on the type of interest. For example, \$10 000 is likely to be a significant interest in terms of income or gifts but not for an interest in land. The bands should also be increased every year in line with the Consumer Price Index, rounded to the nearest \$500, to ensure they remain at an appropriate value.

The Committee also recognises that interests like income, land and investments fluctuate in value over time. It is not feasible for members to update the register of interests every time this occurs. The Committee believes it is sufficient for members to register the value of their interests as at the date of their primary or ordinary return. Members should use municipal council valuations when registering the value of any land.

<sup>217</sup> Brendan Donohoe, *Transcript of evidence*, above n 162, 4.

<sup>218</sup> ANZSOG Institute for Governance, *Submission no. 21*, 6.

<sup>219</sup> Brian Costar, *Transcript of evidence*, above n 164, 6. See also Ken Coghill, *Transcript of evidence*, above n 173, 2.

<sup>220</sup> Scottish Parliament, *Interests of Members of the Scottish Parliament Act 2006 (Form and Content of Written Statement) Determination 2007*. Canada's House of Commons requires members to state the value of assets and liabilities and the amount of any income, but this information is not published: see House of Commons, Canada, *Standing orders of the House of Commons* (2009), App: Conflict of interest code for members of the House of Commons, ss 21(1)(a), (b), 24(1).

### **Recommendation 13: Disclosing the value of members' interests**

The Committee recommends the Act:

- (a) require members of parliament to disclose, by band, the value of any income, investments, land, gifts and travel contributions in the register of interests
- (b) set the bands as follows:
  - (i) for income — \$2000-\$10 000, \$10 000-\$30 000 and over \$30 000
  - (ii) for investments — \$2000-\$50 000, \$50 000-\$200 000 and over \$200 000
  - (iii) for land — \$2000-\$100 000, \$100 000-\$600 000 and over \$600 000
  - (iv) for gifts and travel contributions — \$500-\$1000, \$1000-\$2000 and over \$2000
- (c) provide for automatic increases in the bands at the end of each financial year in line with the Consumer Price Index, rounded to the nearest \$500.

## **4.6 Third party interests**

### **4.6.1 Interests of family members**

#### **Should members have to register interests held by family members?**

One of the most contentious issues during the 1978 parliamentary debate was whether members should have to register interests held by members of their families.<sup>221</sup> The Committee found the issue was just as contentious in this review.

Under the current Act, members of parliament have a limited obligation to register interests held by family members. Section 6(2)(i) of the Act requires a member to register 'any other substantial interest' of a member of his or her family, of which the member is aware and which the member considers might appear to raise a material conflict with his or her public duty as a member. Section 4.4.1 of this chapter has

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<sup>221</sup> See, for example, Victoria, *Parliamentary debates*, Legislative Assembly, 8 December 1978, 7513 (Mr Wilkes, Leader of the Opposition, and Mr Ross-Edwards, Leader of the National Party), 7521-7522 (Mr Ross-Edwards, Leader of the National Party), 7528-7531 (Mr Ross-Edwards, Leader of the National Party, Mr Hamer, Premier and Treasurer, and Mr Fordham, Member for Footscray).

already made some recommendations to clarify part of this provision as it applies to members.

There are conflicting arguments about whether the current registration requirements for family interests should be changed. On the one hand, registration of family interests promotes transparency and accountability. Members may be influenced by family interests as much as by their own interests, and ill-intentioned members may try to hide interests from public scrutiny by transferring them to family members.<sup>222</sup>

On the other hand, the Committee heard many spouses and partners are now financially independent. Mr Jamie Gardiner from Liberty Victoria, while in favour of registration of family interests, noted:

we have moved a long way from the 1870s where all the property in a marriage belonged to the husband and where the partner, particularly of course of the opposite sex — the female partner — had no effective rights. Fortunately we are not there any more ...<sup>223</sup>

More significantly, public registration of family interests infringes the right to privacy of members' families. While members' privacy rights may be limited on the grounds of public interest, it is more difficult to justify limiting the rights of their families. Mr David Koch MLC, a current member of the Victorian Parliament, wrote in his submission:

Individual rights to privacy of those not elected to the Parliament and who wish not to disclose personal information, and in my case I certainly speak for my wife, should be given greater consideration. In saying that, I do not believe that family members should shield their relatives' interests. However, the current scrutiny of family members is in my opinion unreasonable and denies them their right to privacy.<sup>224</sup>

Some other current and former members of parliament argued members do have to accept some limits on the privacy of their families. The current Speaker of the Legislative Assembly told the Committee:

I accept that that can be incredibly difficult for some members ... But I would argue that in a system where Parliament allows for a small amount of spouse travel, then spouses and family are recognised on the one hand and thus have to be recognised on the other hand. We cannot just have entitlements for family when it suits us, but not have ... responsibilities for family on the other hand.<sup>225</sup>

Former Speaker of the Legislative Assembly, Dr Ken Coghill, also told the Committee:

Members (and candidates for election) whose family members find the provisions offensive should heed the concerns of those family members when considering

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<sup>222</sup> Gerard Carney, above n 160, 362; National Democratic Institute for International Affairs, above n 181, 13. Some participants in this review argued for registration of family interests: see Gary Crooke, *Submission no. 15*, above n 173, 4; Jamie Gardiner, Vice-President, Liberty Victoria – Victorian Council for Civil Liberties Inc, *Transcript of evidence*, Melbourne, 29 June 2009, 8.

<sup>223</sup> Jamie Gardiner, *Transcript of evidence*, above n 222, 8.

<sup>224</sup> David Koch, *Submission no. 2*, 1.

<sup>225</sup> Jenny Lindell, *Transcript of evidence*, above n 175, 6.

parliamentary careers. If the provisions are unacceptable, then the person should not pursue a parliamentary career.<sup>226</sup>

Based on this evidence, the Committee considered a number of options:

- no registration — this is not unprecedented in Australia. The NSW, Western Australian and Tasmanian Parliaments do not require members to register any interests held by their families
- continued discretionary registration — the Committee’s analysis of summaries tabled under the Act found that members do make an attempt to register relevant interests held by family members. In the 2008 cumulative summary, 18% of members registered interests that were clearly identified as belonging to family members, usually their spouse or partner
- compulsory registration — the Parliaments of South Australia and the Northern Territory, for example, require members to register a broad range of interests held by family members including income and investments<sup>227</sup>
- confidential registration — Ms Anne O’Rourke from Liberty Victoria told the Committee the Canadian province of Ontario requires members to declare family interests confidentially.<sup>228</sup> The Australian Senate and Queensland Parliament also have separate, non-public registers for family interests.<sup>229</sup>

On balance, the Committee favours retention of the existing discretionary approach. It believes the provision strikes a good balance between the public interest in transparency and accountability and the privacy rights of members’ families. It only limits their privacy to the extent that family interests may create a conflict of interest for the member. This is consistent with the aim of the register. It is also consistent with the requirements of Victoria’s *Charter of Human Rights and Responsibilities Act 2006* which allows human rights, including the right to privacy, to be subject to certain reasonable limits.

## Defining ‘family’

Section 2 of the Act currently defines a member of parliament’s family as a spouse or child under the age of 18 who normally resides with the member.

The Parliament of Queensland has adopted a wider definition of family for the purpose of its register. It uses the term ‘related person’ which includes:

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<sup>226</sup> Ken Coghill, Associate Professor, Monash University, *Appearance before Public Hearing, Review of the Members of Parliament (Register of Interests) Act 1978*, supplementary evidence received 29 June 2009, 3.

<sup>227</sup> *Members of Parliament (Register of Interests) Act 1983* (SA) s 4; *Legislative Assembly (Disclosure of Interests) Act 2008* (NT) s 4(1); Legislative Assembly of the Northern Territory, *Submission no. 11*, 1. Similar provisions have been recommended in Tasmania: see Parliament of Tasmania Joint Select Committee on Ethical Conduct, *Public office is public trust* (2009), rec 1.

<sup>228</sup> Anne O’Rourke, Vice-President, Liberty Victoria – Victorian Council for Civil Liberties Inc, *Transcript of evidence*, Melbourne, 29 June 2009, 9.

<sup>229</sup> Senate, Australia, above n 177, cl 1(1), 4(5); Legislative Assembly of Queensland, above n 176, sch 2 cl 13(2).

- the spouse of the member, including a de facto partner
- a child who is wholly or substantially dependent on the member
- any other person who is wholly or substantially dependent on the member and whose affairs are so closely connected with the member that a benefit derived by the person, or a substantial part of it, could pass to the member.<sup>230</sup>

Although different people have different ideas of what amounts to a close family relationship,<sup>231</sup> most participants who commented on this issue supported Victoria's existing approach. Professor Given told the Committee there might be cases where it would be sensible for members to declare interests held by wider networks, but the Act already allowed members to register those interests voluntarily.<sup>232</sup> The Speaker also supported a narrower definition, noting 'the children of politicians suffer enough while they are children. We can leave them be as adults.'<sup>233</sup>

The Committee notes that the current definition in the Act reflects the Act's age by referring only to spouses of members. Victorian law now recognises de facto and same sex relationships and the Act should be amended to reflect these developments.

#### **Recommendation 14: Defining 'family'**

The Committee recommends the Act define 'family' to include de facto and same sex partnerships.

### **4.6.2 Interests of private companies and trusts**

Based on the summaries tabled under the Act, it appears that a number of members in each parliament use family trusts or companies to manage their interests.

Under the current Act, members only have to register the name of a company in which they hold an office, and the name or description of a company in which they have a beneficial interest worth over \$500. In the case of trusts, members only have to provide a 'concise description' of the trust.

Commentators have expressed concern that this creates a loophole in registration schemes because members can transfer their interests to companies and trusts to hide them from public scrutiny.<sup>234</sup> Some participants in this review argued members

<sup>230</sup> Legislative Assembly of Queensland, above n 176, sch 2 cl 1, definition of a related person. A similar provision has been recommended in Tasmania: see Parliament of Tasmania Joint Select Committee on Ethical Conduct, above n 227, rec 1.

<sup>231</sup> Jamie Gardiner, *Transcript of evidence*, above n 222, 8.

<sup>232</sup> Jock Given, *Transcript of evidence*, above n 204, 7.

<sup>233</sup> Jenny Lindell, *Transcript of evidence*, above n 175, 7. See also generally Liberty Victoria – Victorian Council for Civil Liberties Inc, *Submission no. 20*, 5.

<sup>234</sup> See Gerard Carney, above n 160, 364. See also comments made about family trusts during the 1978 parliamentary debate about the Act: Victoria, *Parliamentary debates*, Legislative Assembly, 8 December 1978, 7517-7518 (Mr Wilkes, Leader of the Opposition).

should have to register interests they control through such vehicles. The former Queensland Integrity Commissioner told the Committee:

Provisions should be sufficiently encompassing to catch the astute. For example, it is appropriate that interests declared relate not only to spousal and immediate family members, but to any interest over which the [m]ember has control. For example, the obligation of disclosure should be broad enough to include property or assets held on behalf of a [m]ember by any person subject to his or her direction or control.<sup>235</sup>

Mr Donohoe also argued in his evidence:

we have had some instances where MPs and ministers have said they have a so-and-so trust, a surname trust, and that is it — we do not know what sort of trust it is, whether it is a blind trust, what the trust invests in obviously, and how it relates to them or their spouse or family. I think that really needs to be clarified.<sup>236</sup>

Some parliaments in Australia do require members to provide more information about interests held by trusts and companies. The South Australian Parliament, for example, requires members to register various interests held by family companies or trustees of family trusts including income and gifts.<sup>237</sup> The Queensland Parliament requires, amongst other things, members who have a beneficial interest in a trust to register the investments or beneficial interests held by that trust. It also requires members who have a controlling interest in a company to register that company's shareholdings.<sup>238</sup>

The Committee believes the Act should require members of parliament in Victoria to register information about the interests of their family companies and trusts as well. This would help the register achieve its aim of transparency and accountability.

The Committee recognises that some members of parliament may find themselves beneficiaries of family structures over which they have little knowledge or control. The Act should only require a member to register interests of which the member is aware or reasonably ought to be aware.

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<sup>235</sup> Gary Crooke, *Submission no. 15*, above n 173, 4-5.

<sup>236</sup> Brendan Donohoe, *Transcript of evidence*, above n 162, 4.

<sup>237</sup> *Members of Parliament (Register of Interests) Act 1983* (SA) ss 2 (definition of 'a person related to a Member'), 4(2), (3).

<sup>238</sup> Legislative Assembly of Queensland, above n 176, sch 2 cl 7(2)(a), (c).



**Recommendation 15: Interests held by family companies and trusts**

The Committee recommends the Act:

- (a) require members of parliament who have a beneficial interest or hold office in a family company or trust to disclose ‘prescribed interests’ of the company or trust of which they are aware or reasonably ought to be aware in the register of interests
- (b) define ‘prescribed interests’ as income, investments, land, gifts, travel contributions and other interests as defined by section 6(2)(i) which are held or received by the family company or trust.

## 4.7 An up-to-date register

A number of participants in the review criticised the currency of the information in Victoria’s register of interests.

As section 4.2 of this chapter outlined, members of parliament in Victoria only have to submit returns listing or changing their interests at the start of a new parliament and then at the end of each financial year. Members can update this information throughout the year if their interests change, but they are not obliged to do so. As a result, the information in the register may often be out of date.

Several participants advocated a system of ‘continuous disclosure’ for members of parliament. This would require members to update the register throughout the year as their interests change. The ANZSOG Institute for Governance described timely disclosure as ‘central to the credibility of any scheme of disclosure’ and proposed that members should have to register any changes within 30 days.<sup>239</sup> This approach is used in a number of parliaments. In the Australian Senate, for example, senators have to register any changes to their interests within 35 days. The House of Representatives requires members to register changes within 28 days.<sup>240</sup>

Other parliaments take a different approach. The NSW Parliament, for example, recently chose to adopt a system of twice-yearly returns.<sup>241</sup>

The Committee believes there is a need to improve the timeliness of the information in the register so it can meet its aim. Its preferred option is a requirement for

<sup>239</sup> ANZSOG Institute for Governance, *Submission no. 21*, 3. See also Ken Coghill, *Transcript of evidence*, above n 173, 3; Kew Cottages Coalition, *Submission no. 22*, 3, 5; Jock Given, *Transcript of evidence*, above n 204, 8; Elizabeth O’Keeffe, *Transcript of evidence*, above n 172, 3, referring to Griffith University and Transparency International Australia, *Chaos or coherence? Strengths, challenges and opportunities for Australia’s national integrity systems: National Integrity Systems Assessment (NISA) final report* (2005), 97-98.

<sup>240</sup> Senate, Australia, above n 177, cl 1(1); House of Representatives, Australia, above n 177, cl 1; BC Wright, Acting Clerk of the House of Representatives, Parliament of Australia, *Submission no. 14*, 3.

<sup>241</sup> *Constitution (Disclosure by Members) Regulation 1983* (NSW) regs 6-6B. See also Kayee Griffin, Chair of the Legislative Council Privileges Committee, Parliament of New South Wales, *Transcript of evidence*, Sydney, 17 August 2009, 4.

members to submit ordinary returns twice yearly rather than annually, similar to the system in NSW. The Committee believes the timeframe for members to submit ordinary returns should be reduced from the current 60 days to 28 days to further reduce the current delays in publishing information about members' interests.

**Recommendation 16: An up-to-date register**

The Committee recommends the Act require members to submit an ordinary return within 28 days of 31 January and 30 June each year.

## 4.8 Publication of the register

The way the Parliament publishes the information in the register was also a contentious issue during the review.

Publication of the register to the community is essential to its aim of creating transparency and accountability around members' private interests. As the National Democratic Institute for International Affairs noted in its 1999 survey of legislative ethics rules, the process serves little purpose if financial interests of legislators remain hidden from view.<sup>242</sup>

However, as this chapter has already noted, publication of members' private financial and other affairs to the world at large also affects their right to privacy. The public interests served by the register need to be balanced against that right.

The current Act limits publication of the register in a number of ways:

- The actual returns provided by members are confidential. Section 7(2) of the Act requires the Clerk of the Parliaments to ensure no person has access to or is permitted to inspect the returns, other than people the Clerk has authorised to carry out his or her responsibilities. The only information tabled in Parliament and published to the community is the 'summary' prepared by the Clerk.
- The summary tabled in the Parliament is available to the community as a parliamentary paper, but only in a hard copy format available from the Parliament and some libraries.
- There are restrictions on what people can publish about the summary which are designed to prevent malicious use of the information. Section 8 states a person cannot publish information derived from the summary unless it 'constitutes a fair and accurate summary of the information contained in the Parliamentary Paper as is published in the public interest'. It also states a person cannot publish a comment on the facts in the parliamentary paper unless it is 'fair and published in the public interest and without malice'.

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<sup>242</sup> National Democratic Institute for International Affairs, above n 181, 13.

Participants in the review disagreed about whether the current Act strikes the right balance between transparency, accountability and privacy. The Office of the Victorian Privacy Commissioner's submission said it thought the Act strikes an 'acceptable balance'.<sup>243</sup> The ANZSOG Institute for Governance, on the other hand, noted publication to the world at large is the norm in democratic systems and criticised aspects of the publication scheme in the Act.<sup>244</sup>

The following sections consider the specific issues that arose during the review and the Committee's recommendations for addressing this debate.

#### 4.8.1 Should the Parliament publish members' returns or a summary?

Many parliaments in Australia make the actual returns prepared by members publicly available rather than a summary prepared by the Clerks.<sup>245</sup>

Some participants in the review suggested it was time Victoria adopted this approach. The Clerk of the Legislative Council, Mr Wayne Tunnecliffe, told the Committee, 'my view is that the best system would be that the publicly available material is the actual material that the member has provided'.<sup>246</sup> Professor Costar expressed concern that requiring the Clerks to prepare a summary could involve them in controversy about the register:

I can see why the clerks were given the duty of preparing a summary back in 1978; because of their total impartiality, they were obviously the people to give it to ... Still, I do not think it is a good system asking the clerks to produce a summary, because it does have the potential to corrode their impartiality.<sup>247</sup>

The Committee also heard that the summaries tabled under the Act largely reflect the actual returns provided by members in any event. The Clerk of the Legislative Council told the Committee:

I think it is fair to say probably in excess of 95 per cent of the published summary is the same information that the member provided. But for a range of reasons — maybe the member is not quite sure; occasionally members have misinterpreted questions or misunderstood them — it is not unusual to contact members to try to get some clarification of the information that the member has provided on the return.<sup>248</sup>

The Privacy Commissioner, on the other hand, suggested the summary did have the potential to address some of the privacy concerns about the register. She told the Committee it provided for 'a layered approach' to publication, under which particularly sensitive information could be withheld from publication.<sup>249</sup>

<sup>243</sup> Office of the Victorian Privacy Commissioner, *Submission no. 17*, 1.

<sup>244</sup> ANZSOG Institute for Governance, *Submission no. 21*, 3, 17.

<sup>245</sup> See, for example, Senate, Australia, above n 177, cl 4(4), (5); House of Representatives, Australia, above n 177, cl 3; *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 21.

<sup>246</sup> Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 7.

<sup>247</sup> Brian Costar, *Transcript of evidence*, above n 164, 3.

<sup>248</sup> Wayne Tunnecliffe, *Transcript of evidence*, above n 246, 7.

<sup>249</sup> Helen Versey, *Transcript of evidence*, above n 165, 4.

The Committee's preferred option is publication of members' actual returns. Although the summaries could be a vehicle for addressing privacy concerns, the Committee is concerned that withholding parts of the register is likely to generate public concern rather than promote public transparency. It would be preferable to address privacy concerns by exempting particularly sensitive information from registration. The Committee has already made such recommendations about residential addresses and family interests.

If the Act is amended to allow publication of members' actual returns, there will also need to be some consequential changes to the way members complete their returns. Under the current Act, members have to provide a full list of their interests when they enter parliament, but from that point they only have to register changes to their interests in their returns.<sup>250</sup> This means members of the public would need to read a member's original return and compare that with any changes notified in their later returns to get a full picture of the member's interests. The Committee believes this part of the Act should also be changed to make the returns easier to digest for members of the public. It believes members should provide a complete list of all of their interests in each return they submit.

Finally, the Committee notes that some participants in the review proposed time limits for the publication of the register. The Act currently requires the Clerk to prepare a summary 'as soon as practicable' and to table the summary within 14 days of its preparation, or the next meeting of the Parliament. The Democratic Audit of Australia recommended a requirement to publish members' returns within 14 days of their submission.<sup>251</sup>

The Committee believes its recommendation that the Clerk table members' returns rather than a summary should reduce the time required by the Clerk to prepare material for tabling. The Committee believes tabling within 14 days of the deadline for members to submit their returns would be appropriate.

**Recommendation 17: Publishing members' returns**

The Committee recommends the Act:

- (a) require the tabling of the primary and ordinary returns submitted by members of parliament under the Act
- (b) require members to list all of the interests and information required under the Act in each return they submit
- (c) require the tabling of the returns submitted by members of parliament within 14 days of the deadline for returns.

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<sup>250</sup> See *Members of Parliament (Register of Interests) Act 1978* (Vic) s 6(3).

<sup>251</sup> Democratic Audit of Australia, *Submission no. 16*, 4. See also ANZSOG Institute for Governance, *Submission no. 21*, 3, 17.

## 4.8.2 Public access to the register

The arrangements for public access to the register of interests were one issue where the tensions between transparency and accountability on the one hand, and privacy on the other, were particularly strong.

Many participants in the review argued the Parliament should make the register more freely available by publishing it online and not just as a hard copy parliamentary paper. Professor Given told the Committee, ‘in my experience in teaching, my sense of the way people acquire information now is online, and if there is a register, they expect it to be available online — and if it is not, we need to have a good reason for that.’<sup>252</sup> Mr Donohoe argued:

we have moved to an era now where everything is available online. It seems ridiculous that I can look up the House of Commons and see what ‘Lord Snodgrass’ owns but I cannot look up online what the Minister for Planning, for instance, has by way of investment properties and whether they are affected by certain decisions that are made ...<sup>253</sup>

The Speaker suggested the increased transparency offered by online publication might help to improve perceptions of the Parliament:

I just wonder whether we cannot shift the whole dynamic ... by actually openly disclosing and putting on the internet what we believe we should aim for, all of our business dealings and indeed all of the allowances that we get paid via the regulations. So if anyone comes along and says, ‘Hang on, what’s all this about? I keep reading in the paper about all the abuse of allowances from overseas travel, from here and from there. What’s it all about?’, we can say ‘Here it all is’. We put it all up-front so that we move absolutely away from the closed nature of the way we behave, which does not make any sense to anyone.<sup>254</sup>

The Victorian Privacy Commissioner, however, warned the Committee that online databases can create privacy and security risks for individuals. She told the Committee, ‘it has been our experience in our office that when organisations just put a register online all sorts of things that obviously the legislators had never thought of come up ...’<sup>255</sup> She also told the Committee, ‘you always have to be very considered about what information you are going to put online. It does not just go to members of the public who have a legitimate purpose for looking at it; it goes to everyone who chooses to look.’<sup>256</sup> She noted a case where an online database had to be withdrawn because it included sensitive or incorrect information, and the potential for data mining of the information in the register.<sup>257</sup>

<sup>252</sup> Jock Given, *Transcript of evidence*, above n 204, 2. See also Democratic Audit of Australia, *Submission no. 16*, 3-4.

<sup>253</sup> Brendan Donohoe, *Transcript of evidence*, above n 162, 10. See also Brendan Donohoe, *Submission no. 1*, above n 170, 2; Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 6; Wayne Tunnecliffe, *Transcript of evidence*, above n 246, 7; Kew Cottages Coalition, *Submission no. 22*, 2, 4; Ken Coghill, *Transcript of evidence*, above n 173, 3; Elizabeth O’Keeffe, *Transcript of evidence*, above n 172, 6.

<sup>254</sup> Jenny Lindell, *Transcript of evidence*, above n 175, 2.

<sup>255</sup> Helen Versey, *Transcript of evidence*, above n 165, 3.

<sup>256</sup> *Ibid*, 3, 7-8.

<sup>257</sup> *Ibid*, 3.

Some participants in the review suggested ways to deal with the privacy and security issues raised by access to the register. The Privacy Commissioner, for example, noted the Parliament could not publish sensitive information such as residential addresses, or control use of the information through ‘see-only’ access.<sup>258</sup> Dr James Swansson from the ANZSOG Institute for Governance suggested the Parliament could consider systems which alert the Parliament to who is accessing members’ information and why.<sup>259</sup> The former Queensland Integrity Commissioner, Mr Gary Crooke QC, suggested there should be controls on access to the hard copy of the register as well:

I think there are enough downsides to holding public office that there ought to be some recognition that people do have a private life and private interests. It ought not to be there for the mere stickybeak. I do not think the bar should be set too high, if anybody wants to look at it, but they ought to have some plausible reason for wanting to do so ....<sup>260</sup>

This is unlikely to be practical in Victoria at the moment given that the summaries are published as a parliamentary paper which is freely available from the Parliament and some libraries.

The Committee is aware that practices in other parliaments vary widely. Many overseas parliaments publish their registers on the internet including the New Zealand, United Kingdom and Scottish parliaments, while Canada’s Conflict of Interest and Ethics Commissioner publishes information about interests held by members of the House of Commons. In Australia, the Parliament of South Australia is the only parliament with an online register, although the House of Representatives Standing Committee of Privileges and Members’ Interests released a proposal for online publication of its register towards the end of this review.<sup>261</sup> Many other Australian parliaments have more controlled arrangements. They require members of the public to physically inspect their registers at the parliament.<sup>262</sup> In the ACT Legislative Assembly, the Speaker informs members of the name of a person accessing their returns and the reasons for the access.<sup>263</sup>

The Committee supports broad public access to the register, including online, in principle as a means to promote greater transparency around members’ interests. However, the Committee is concerned by some of the evidence it received about the possible risks involved in online publication. It has not had an opportunity during

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<sup>258</sup> Ibid, 5.

<sup>259</sup> James Swansson, *Transcript of evidence*, above n 159, 5. See also Jock Given, *Transcript of evidence*, above n 204, 9; Ken Coghill, *Transcript of evidence*, above n 173, 3.

<sup>260</sup> Gary Crooke, *Transcript of evidence*, above n 179, 4. See also Gary Crooke, *Submission no. 15*, above n 173, 4; cf Howard Whitton, *Transcript of evidence*, above n 160, 7.

<sup>261</sup> See Parliament of Australia House of Representatives Standing Committee of Privileges and Members’ Interests, *Publication of details of Members’ Interests on the Australian Parliament House website* (2009). The Committee reported that a non-government organisation has been publishing declarations submitted by Parliament of Australia members and senators interests in its website.

<sup>262</sup> See, for example, Senate, Australia, above n 177, cl 4(4); House of Representatives, Australia, above n 177, cl 3(d); BC Wright, *Submission no. 14*, above n 240, 65; *Constitution (Disclosure by Members) Regulation 1983* (NSW) reg 20 and New South Wales Legislative Council, *Submission no. 7*, 5.

<sup>263</sup> Legislative Assembly for the Australian Capital Territory, *Standing and temporary orders and continuing resolutions of the Assembly* (2008), continuing resolution 6.

this review to consult other parliaments about their experiences with online publication or to seek expert advice about ways to manage those risks.

In these circumstances, the Committee believes the Parliament of Victoria should consider these issues further before settling the arrangements for public access to the register. Chapter five proposes an enhanced role for the Parliament's existing privileges committees and they may be best placed to conduct this project. The Legislative Assembly and Legislative Council should require their committees to work jointly on this project to ensure a consistent approach across the houses. The Legislative Assembly and Legislative Council should ask the committees to complete their work in time for their recommendations to be included in the exposure draft of the Act recommended in chapter five of this report.

Public access to the register of interests would be improved in the meantime if the Parliament of Victoria publicised the existing arrangements for access better. The Committee believes the Parliament should publish information on its website informing members of the public about the existence of the register of interests and how they can access it in hard copy form.

**Recommendation 18: Further consideration of arrangements for public access**

The Committee recommends:

- (a) the Legislative Assembly and Legislative Council ask the privileges and standards committees recommended in recommendation 29 to consider and report on arrangements for public access to the register of interests. The committees should consider, in particular:
  - (i) whether the Parliament should publish the register of interests online, including any privacy or security risks arising from online publication and measures to manage those risks
  - (ii) whether, if the Parliament decides to publish the register in hard copy form only, it should be available as a parliamentary paper or by inspection at the Parliament
  - (iii) the appropriateness of placing conditions on access to the register, such as requiring people to provide a name and address when seeking access.

The Legislative Assembly and Legislative Council should require their respective committees to confer with each other and to report in time for their recommendations to be included in the exposure draft of changes to the Act recommended in recommendation 35.

- (b) the Parliament publish information on its website notifying members of the community about the existence of the register of interests and how they can access the information in the register in hard copy.

### 4.8.3 Restrictions on publications about the register

The Committee also sought participants' views during the review about section 8 of the Act, which restricts the ability of people to publish information from and about the register.

When he introduced the Act into the Parliament in 1978, then Premier Rupert Hamer told the Parliament it prohibited 'malicious use' of the information, while not impeding publication of a fair and accurate extracts or any comment that was fair and in the public interest.<sup>264</sup>

The Clerks informed the Committee that, to their knowledge, no action had ever been taken against a person under section 8.<sup>265</sup> Seven Network reporter, Mr Donohoe, told the Committee in response to questioning that the section had not constrained his capacity to report.<sup>266</sup>

The Democratic Audit of Australia was the only participant in the review to comment on this section in detail. Professor Given, who represented the Democratic Audit before the Committee, told the Committee the section appeared to be based on the defamation laws in place in 1978, but those laws have now been replaced by new national defamation laws.<sup>267</sup> The Democratic Audit recommended the abolition of section 8. It noted members of parliament could use the new national defamation laws if they need to take legal action over a publication.<sup>268</sup>

The Committee is conscious that some parliaments have moved to abolish similar restrictions,<sup>269</sup> but it believes the section should be retained in Victoria. The Act places a statutory obligation on members of parliament to disclose sensitive financial and personal information and, in these circumstances, there should be some additional protections against misuse of that information. The Committee is concerned that general defamation laws would not offer the same level of protection to members of parliament as section 8. For example:

- a breach of section 8 would be a contempt of the Parliament, with the Parliament able to deal with the breach. In contrast, under the general defamation law, individual members would need to take private legal action themselves

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<sup>264</sup> Victoria, *Parliamentary debates*, Legislative Assembly, 21 November 1978, 6028 (Mr Hamer, Premier and Treasurer).

<sup>265</sup> Letter from Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, and Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria, to Chair, Victorian Parliament Law Reform Committee, 20 August 2009, 2.

<sup>266</sup> Brendan Donohoe, *Transcript of evidence*, above n 162, 11.

<sup>267</sup> Jock Given, *Transcript of evidence*, above n 204, 2.

<sup>268</sup> Democratic Audit of Australia, *Submission no. 16*, 3-4.

<sup>269</sup> The Northern Territory Legislative Assembly omitted its previous provision from its new *Legislative Assembly (Disclosure of Interests) Act 2008*. In 2006 the Western Australian Legislative Assembly Procedures and Privileges Committee proposed repealing section 19 of its Act, which precluded members of parliament from publishing certain information in parliamentary proceedings: Parliament of Western Australia Procedure and Privileges Committee, above n 188, 12-13.



- section 8 and the general defamation law now use different criteria for determining which publications may be restricted. Section 8, for example, requires any comment on the facts in the parliamentary paper to be fair, published in the public interest and without malice. The Democratic Audit's submission set out the general defamation law's 'honest opinion' defence. It protects a publication that is an expression of an honestly held opinion relating to a matter of public interest that is based on proper material
- there is no time limit on action under section 8. The Democratic Audit's submission advised that, under the general defamation law, legal action must be taken within one year unless extended by a court.<sup>270</sup>

Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) allows the Parliament to place lawful restrictions on the right to freedom of expression that are reasonably necessary to respect the rights and reputation of other persons.<sup>271</sup> The Committee believes section 8 is such a case.

Recommendation 18 recommends that the Legislative Assembly and Legislative Council privileges and standards committees review public access to the register. If that review results in a recommendation that the register should no longer be published as a parliamentary paper, there will need to be some consequential changes to section 8. The section currently refers to the parliamentary paper tabled by the Clerk of the Parliament and that reference will need to be amended.

## 4.9 Maintaining the register

### 4.9.1 Quality control and audit

The effectiveness of the register of interests as a tool for managing conflicts of interests depends on the quality and accuracy of the information it contains.

The Clerks already play a quality control role in relation to the register. The Clerks told the Committee the Clerk of the Parliaments currently reports to the Parliament the names of members who have not submitted their returns by the due dates in the Act.<sup>272</sup> The Clerks also go through members' returns when preparing the summaries for tabling in the Parliament and clarify issues with members if necessary. The Clerk of the Legislative Council, Mr Wayne Tunnecliffe, told the Committee, 'it is not unusual to contact members to try to get some clarification of the information that the member has provided on the return.'<sup>273</sup>

Some participants in the review called for greater, more independent scrutiny of the information in the register. Mr Donohoe noted in his submission that the Clerks can ask members to submit their returns within the timeframes in the Act but, '[t]hey

<sup>270</sup> See *Members of Parliament (Register of Interests) Act 1978* (Vic) s 8 and Democratic Audit of Australia, *Submission no. 16*, 3-4 and att.

<sup>271</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 15(3). See also s 7.

<sup>272</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 187, 4-5.

<sup>273</sup> Wayne Tunnecliffe, *Transcript of evidence*, above n 246, 7.

cannot demand that the declaration be correct or in line with the Act ... Most functions in government are audited, but not the Register.’<sup>274</sup> He told the Committee:

My belief is that it should be overseen by someone else ... you probably need someone like the Auditor-General, even the Ombudsman, or a retired Supreme Court judge — someone who is an independent authority — to come in, check through the Act and perform the role of an ombudsman in terms of complaints.<sup>275</sup>

The Kew Cottages Coalition’s submission also called for ‘[r]eal time scrutiny and analysis of all interests and [political] donations by the [Electoral Commission], and/or an independent ethical advisor’.<sup>276</sup>

Some overseas parliaments do take additional steps to ensure the accuracy of returns. In Canada’s Parliament, the parliamentary ethics commissioners interview members about their returns. In the Canadian House of Commons, for example, the Commissioner reviews members’ statements and can request that members meet with her to ensure they have made adequate disclosure.<sup>277</sup> In New Zealand, the Registrar gives a copy of members’ returns to the Auditor-General for review. The Auditor-General has the capacity to inquire into whether a member is complying or has complied with their obligations, although that power has not been used to date.<sup>278</sup>

In Victoria, members of parliament who fail to comply with their obligations under the Act already face possible investigation and sanctions. The Committee has made recommendations to strengthen those arrangements in the next chapter. The Committee believes this will address any cases in which members misstate their interests better.

The Committee believes the powers of the Clerk of the Parliaments to manage the register should be strengthened. The Clerks told the Committee that, although the Clerk of the Parliaments already reports failures to submit returns to the Parliament, he has no statutory power to do so. They suggested an amendment to the Act to clarify this power.<sup>279</sup> The Committee agrees. It believes the Clerk of the Parliament should be able to report a member to his or her Presiding Officer if the member fails to submit a return in accordance with the deadlines in the Act, or if the Clerk has reasonable grounds to believe the member has failed to submit an accurate return. The Committee would expect that this will continue to be a last resort for the Clerk and that he will continue to attempt to clarify issues with members before taking such action.

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<sup>274</sup> Brendan Donohoe, *Submission no. 1*, above n 170, 2.

<sup>275</sup> Brendan Donohoe, *Transcript of evidence*, above n 162, 4.

<sup>276</sup> Kew Cottages Coalition, *Submission no. 22*, 3, 5.

<sup>277</sup> House of Commons, Canada, above n 220, App s 22. See also Senate, Canada, above n 202, s 29.

<sup>278</sup> Letter from Mary Harris, Clerk of the House of Representatives, New Zealand Parliament, to Chair, Victorian Parliament Law Reform Committee, 19 August 2009, 4.

<sup>279</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 187, 4-5.

**Recommendation 19: Reporting failures to submit returns**

The Committee recommends the Act give the Clerk of the Parliaments the power to report a member to the Presiding Officer of the member's house where the member has failed to submit a return in accordance with the deadlines in the Act, or the Clerk has reasonable grounds to believe the member has failed to submit an accurate return.

**4.9.2 An electronic register**

As this chapter has already noted, the Parliament currently compiles and publishes Victoria's register of interests in hard copy form. In his evidence to the Committee, the Clerk of the Legislative Council raised the possibility of an electronic register, describing it as his 'ideal situation'.<sup>280</sup> Some other participants who gave evidence to the Committee also suggested members could submit their returns electronically.<sup>281</sup>

The Committee agrees that there could be advantages for both members of parliament and the Clerks if members were able to submit their returns electronically, and the Clerks could store that information electronically. However, it received little evidence about the cost and possible security implications of the proposal or how it might affect the tabling requirements under the Act.

The Committee believes the Parliament should explore these issues further. This issue is closely related to whether the register should be published online and the privileges and standards committees may wish to consider the two proposals at the same time. Again, the Legislative Assembly and Legislative Council should require their committees to work jointly on this project to ensure a consistent approach across the houses.

**Recommendation 20: Further consideration of an electronic register**

The Committee recommends the Legislative Assembly and Legislative Council ask the privileges and standards committees recommended in recommendation 29 to consider whether, and how, the register of interests could be compiled in electronic form. The Legislative Assembly and Legislative Council should require their respective committees to confer with each other when carrying out this function.

**4.9.3 Former members of parliament**

The current Act only requires members of parliament to submit returns setting out their interests while they remain in the Parliament.

<sup>280</sup> Wayne Tunnecliffe, *Transcript of evidence*, Melbourne, above n 246, 9.

<sup>281</sup> Jock Given, *Transcript of evidence*, above n 204, 2; Ken Coghill, *Transcript of evidence*, above n 173, 3.

The ANZSOG Institute for Governance proposed that former members of parliament should also have to lodge returns after they leave office to foster transparency and public confidence. It suggested three years as an appropriate period.<sup>282</sup>

As the previous chapter noted, there has been some public concern in recent years about members' post-retirement activities. The Parliament would be better placed to monitor those activities if former members had to continue disclosing information about these interests. However, this would again raise concerns about the privacy rights of former members. The Committee is not aware of any other Australian parliaments that take this approach.

The Committee is aware that some Westminster-style parliaments take steps to archive or destroy information about members' interests after they leave the Parliament.<sup>283</sup> It received no evidence, however, about the current practice in Victoria or whether it is causing any concern.

Given the very limited evidence about these issues in this review, the Committee does not propose to make any recommendations about former members of parliament. The Parliament may wish to give further consideration to the issue.

## **4.10 Keeping the register relevant**

Chapter three of this report recommended the Parliament monitor and review the proposed statement of values and code of conduct in the Act.

As with the code of conduct, many of the problems the Committee identified with the register of interests in this review are a result of its age and the fact that the Act has not been amended to address problems that have developed over time. Other parliaments in Australia and overseas conduct regular periodic reviews to deal with concerns as they arise.

The Committee believes the Parliament of Victoria should also conduct regular reviews of the register of interests to ensure it is still meeting its aims. Chapter five proposes an enhanced role for the Parliament's existing privileges committees. The Committee has already recommended that those committees should be responsible for reviewing the statement of values and code of conduct in the Act. They would be well placed to review the register of interests rules in the Act as well when they consider it appropriate. The two committees should work jointly when conducting these reviews to ensure a consistent approach across the Parliament.

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<sup>282</sup> ANZSOG Institute for Governance, *Submission no. 21*, 4, 16. See also Howard Whitton, *Transcript of evidence*, above n 160, 6, 13.

<sup>283</sup> See, for example, Legislative Assembly of Queensland, above n 176, sch 2 cl 9, 13; Neil Laurie, Clerk of the Parliament, Parliament of Queensland, *Submission no. 25*, 3; House of Representatives, New Zealand, above n 176, App B cl 18. See also the similar requirements for local councils in Victoria: see *Local Government Act 1989* (Vic) s 81(15), (16).

**Recommendation 21: Keeping the register relevant into the future**

The Committee recommends the Legislative Assembly and Legislative Council include monitoring and reviewing the register of interests in the Act in the functions of the privileges and standards committees recommended in recommendation 29. The Legislative Assembly and Legislative Council should require their respective committees to confer with each other when carrying out this function.



## Chapter 5: Building and upholding the standards in the Act

Strong parliamentary standards require more than just laws. People from inside and outside the Parliament told the Committee amendments to the *Members of Parliament (Register of Interests) Act 1978* (Vic) (the Act) would have limited impact without a strong culture of ethics amongst members of parliament, or a will on the part of the Parliament to uphold its standards.

Part III of the Act provides for enforcement of the code of conduct and register of interests. It makes ‘wilful contravention’ a contempt of the Parliament and sets out sanctions. However, it contains no measures to help prevent breaches by members.

This chapter examines what the Parliament should do, in law and in practice, to both build and uphold the standards in the Act.

### 5.1 Why aren’t laws enough?

Chapter two outlined two approaches to parliamentary standards regulation — one that aims to build ethical conscience amongst people and prevent misconduct, and one that focuses on policing compliance with rules and investigating breaches. Both sides of this debate argue their approach requires more than laws.

A number of participants in the review stressed the importance of steps to build ethical capacity amongst members of parliament, both individually and collectively. Dr Simon Longstaff, the Executive Director of the St James Ethics Centre, told the Committee, ‘[w]hen it comes to dealing with the ethical dimension of any issue it is not just a matter of common sense, it is a matter of practice and some skill which one is able to bring to bear.’<sup>284</sup> Professor Brian Costar from the Swinburne University of Technology, who appeared on behalf of the Democratic Audit of Australia, also told the Committee, ‘we can legislate for all sorts of levels of conduct, we can put in values and so on and so forth, but there has to be the culture there to operate it.’<sup>285</sup>

Other participants stressed the need for Parliament to take action to enforce standards when there is a breach. The Speaker of the Legislative Assembly, the Hon. Jenny Lindell MP, said in her evidence:

It is the reaction of the Parliament and our processes that protect the overall Parliament and tend to cover and not deal openly with the individual incident that may cause discredit. Then that just flows into the perception, ‘They are all just there looking after each other. Not only are they there just for their own self-interest, but

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<sup>284</sup> Simon Longstaff, Executive Director, St James Ethics Centre, *Transcript of evidence*, Sydney, 17 August 2009, 2.

<sup>285</sup> Brian Costar, Coordinator, Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 3. See also Ken Coghill, Associate Professor, Monash University, *Transcript of evidence*, Melbourne, 29 June 2009, 5; Gary Crooke, former Queensland Integrity Commissioner, *Transcript of evidence*, Melbourne, 10 August 2009, 3.

they are there in the men's club, the old boys club, just looking after one another'.<sup>286</sup>

Chapter two noted the Committee's preference for a balance between building integrity and policing compliance. The first half of this chapter examines steps the Parliament can take as an institution to build ethical capacity amongst members and help prevent breaches of the Act. The second half of the chapter considers options for improving the arrangements for enforcing the standards in the Act.

## 5.2 Building awareness about the Act

Information and training is one option for promoting ethical awareness amongst members of parliament.

In recent years a range of occupations have taken a growing interest in professional development for their members. Parliaments are starting to consider the benefits of training and information for members of parliament, particularly given the unique demands and expectations of their role. Former Speaker of the Legislative Assembly, the Hon. Dr Ken Coghill, has written, 'those elected to public office are expected to possess indefinable qualities to accomplish an indescribable job.'<sup>287</sup>

Participants in this review and other commentators have identified ethics and standards as a key area for professional development for members of parliament. The New South Wales (NSW) Parliamentary Ethics Adviser, Mr Ian Dickson, described education of members about their responsibilities to their constituents and the public, and about public expectations of their role, as 'essential'.<sup>288</sup>

This section looks at the information and training the Parliament currently provides to members about the Act and how it can be improved.

### 5.2.1 Current information and training about the Act for members of parliament

The Parliament currently brings the standards in the Act to the attention of members in the following ways:

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<sup>286</sup> Jenny Lindell, Speaker of the Legislative Assembly, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 2. See also Anne O'Rourke, Vice-President, Liberty Victoria – Victorian Council for Civil Liberties Inc, *Transcript of evidence*, Melbourne, 29 June 2009, 6-7; Simon Longstaff, *Transcript of evidence*, above n 284, 8.

<sup>287</sup> Ken Coghill et al, 'Professional development programmes for members of Parliament' (2008) 61(1) *Parliamentary Affairs*, 73, 74. See also Kevin Rozzoli, 'Meeting the modern challenge: Do we need to provide better working tools for members?' (2001) 3 *The Parliamentarian*, 45; Victorian Parliament Public Accounts and Estimates Committee, *Report on strengthening government and parliamentary accountability in Victoria* (2008), 41.

<sup>288</sup> Ian Dickson, New South Wales Parliamentary Ethics Adviser, *Submission no. 23*, 3. See also ANZSOG Institute for Governance, *Submission no. 21*, 5; Meredith Burgmann, 'Constructing codes: Pitfalls and challenges' in Noel Preston and Charles Sampford (eds), *Ethics and political practice: Perspectives on legislative ethics*, Federation Press, 1998, 118, 121; World Bank Institute, *Legislative ethics and code of conduct* (2004), report prepared by Rick Stapenhurst and Riccardo Pelizzo, 18.



- The Parliament runs an induction program for new members of parliament which includes information about the Act.
- The Parliament publishes a *Members' guide* which sets out information about parliamentary administration. The current version of the guide contains a brief section on the register of interests, although it does not refer to the code of conduct.
- The Clerk of the Parliaments writes to all members of parliament annually to remind them of their obligations in relation to the register of interests.<sup>289</sup>

## 5.2.2 Is the current information and training effective?

While Victoria's information and training initiatives are similar to those in other Australian parliaments,<sup>290</sup> some of the evidence before the review suggests they are not always effective tools for building ethical awareness and skills.

Previous reports have highlighted the inherent limitations of induction programs for members of parliament. In its 2008 report on government and parliamentary accountability, the Public Accounts and Estimates Committee (PAEC) noted Victoria's program covered a lot of material over a short period and members may benefit from the opportunity to 'refresh their memories'.<sup>291</sup> Other parliaments report similar issues. The Chair of the NSW Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics, Mr Paul Pearce MP, told the Committee the NSW Parliament's induction:

is very compressed, and it tends to be very much focused on how you go about managing your office, what is the nature of the allowances, how do you go about claiming those allowances, what paperwork is required, all those sort of things ...

it is intense, and like anything of that nature, and particularly when you have newly elected members who are sort of wide-eyed anyway walking around the place, it does not always sink in.<sup>292</sup>

The Committee also found the impact of the Parliament's initiatives on members varied from issue to issue. Participants in the review demonstrated considerable knowledge about the register of interests but, as chapter three noted, there was less awareness of the code of conduct in the Act.

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<sup>289</sup> Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, and Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria, *Submission no. 18*, 2; Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 3.

<sup>290</sup> See Harry Evans, Clerk of the Senate, Australian Senate, *Submission no. 6*, 2; BC Wright, Acting Clerk of the House of Representatives, Parliament of Australia, *Submission no. 14*, 4; New South Wales Legislative Council, *Submission no. 7*, 6; Peter Alcock, Clerk of the House of Assembly, Parliament of Tasmania, *Submission no. 8*, 3; Malcolm Lehman, Clerk of the House of Assembly, Parliament of South Australia, *Submission no. 3*, 2; Grant Woodhams, Speaker of the Legislative Assembly, Parliament of Western Australia, *Submission no. 13*, 2; Tom Duncan, Clerk of the Legislative Assembly for the Australian Capital Territory, *Submission no. 24*, 2; Neil Laurie, Clerk of the Parliament, Parliament of Queensland, *Submission no. 25*, 5-6.

<sup>291</sup> Victorian Parliament Public Accounts and Estimates Committee, above n 287, 41.

<sup>292</sup> Paul Pearce, Chair, Standing Committee on Parliamentary Privilege and Ethics, Legislative Assembly, Parliament of New South Wales, *Transcript of evidence*, Sydney, 17 August 2009, 7.

The following sections look at whether, and how, these problems should be addressed.

### 5.2.3 Induction programs

The participants in the review who discussed training for members of parliament supported the continued use of induction programs. Dr Coghill told the Committee he had been conducting an international survey on the issue and there was a ‘very strong case’ for including ethics as a component of induction and training.<sup>293</sup>

The Committee did hear evidence of two options for improving the existing program.

Firstly, some parliaments offer longer induction programs and devote more time to parliamentary standards. The Clerk of the Queensland Parliament, Mr Neil Laurie, informed the Committee their induction program runs for three days and ethical matters are covered ‘in great detail’.<sup>294</sup> The Speaker of the Western Australian Legislative Assembly, the Hon. Grant Woodhams MLA, advised they had expanded their briefings on their code of conduct and ran a half-day seminar on ethics in 2009.<sup>295</sup> Victoria’s Speaker told the Committee the Parliament of Victoria was looking at an ethics component for the induction program for new members after the 2010 state election.<sup>296</sup> The Committee supports that work.

Secondly, the Committee heard that some parliaments use external presenters to speak to members about ethics and standards. The Western Australian Legislative Assembly used academics and former members with expertise in ethics and politics to conduct its recent ethics seminar.<sup>297</sup> The Australian Capital Territory (ACT) Legislative Assembly invited its new Ethics and Integrity Officer to brief new members.<sup>298</sup> In this review, the Committee found its public hearings with ethicists Dr Longstaff and Mr Howard Whitton particularly thought provoking. It believes consideration should be given to engaging similar experts to present to all members of parliament.

#### **Recommendation 22: Induction programs for members of parliament**

The Committee recommends the Parliament of Victoria:

- (a) include comprehensive training about the Act in future induction programs for members of parliament
- (b) invite external presenters with a background in ethics and politics to present to members of parliament in future induction programs.

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<sup>293</sup> Ken Coghill, *Transcript of evidence*, above n 285, 3.

<sup>294</sup> Neil Laurie, *Submission no. 25*, above n 290, 5.

<sup>295</sup> Grant Woodhams, *Submission no. 13*, above n 290, 2.

<sup>296</sup> Jenny Lindell, Speaker of the Legislative Assembly, Parliament of Victoria, *Submission no. 19*, 3.

<sup>297</sup> Grant Woodhams, *Submission no. 13*, above n 290, 2.

<sup>298</sup> Tom Duncan, *Submission no. 24*, above n 290, 2.

## 5.2.4 Continuing professional development

Another option raised in the review was continuing professional development for members of parliament. In its 2008 report, PAEC said it considered it useful for the Clerk of the Parliaments, in conjunction with appropriate professionals, to further develop the training program on ethics and to make it available as a ‘refresher’ course from time to time.<sup>299</sup> Some participants in this review also highlighted the particular benefits of ongoing professional development about parliamentary standards and ethics.<sup>300</sup>

Parliamentary officials told the Committee that professional development programs had been trialled for members of parliament in the past but had not always been successful. The Clerk of the Parliaments and Clerk of the Legislative Assembly, Mr Ray Purdey, told the Committee:

once we get beyond the first 12 months we find we can offer those sorts of things but they are very rarely taken up. Members are usually very busy doing all sorts of other things ...<sup>301</sup>

Other parliaments reported similar experiences. The Clerk of the NSW Legislative Council, Ms Lynn Lovelock, told the Committee they had held a Geoffrey Robertson-style hypothetical and a conference in the past, but members are busy when the Parliament is sitting and busy in their electorates when the Parliament is not.<sup>302</sup>

Some participants in the review discussed whether training could be made mandatory for members of parliament. Liberty Victoria argued members should have mandatory training requirements like those applying to lawyers in Victoria,<sup>303</sup> and Dr Coghill told the Committee about half of the parliaments he had surveyed in his current research did have mandatory training requirements.<sup>304</sup> However, the Clerk of the Parliaments queried how this might be enforced in Victoria.<sup>305</sup>

The Committee supports continuing professional development for members of parliament. In light of the evidence to the review, it believes there needs to be further consideration of the platforms for delivering this type of information and training. Members of parliament are already time-poor and face competing demands on their availability and may require alternatives to face-to-face seminars.

Some parts of the public sector in Victoria are taking alternative approaches to ethics training. The State Services Authority, which is responsible for ethics in the

<sup>299</sup> Victorian Parliament Public Accounts and Estimates Committee, above n 287, 41.

<sup>300</sup> Ian Dickson, *Submission no. 23*, above n 288, 3; Liberty Victoria – Victorian Council for Civil Liberties Inc, *Submission no. 20*, 8.

<sup>301</sup> Ray Purdey, *Transcript of evidence*, above n 289, 3.

<sup>302</sup> Lynn Lovelock, Clerk of the Legislative Council, Parliament of New South Wales, *Transcript of evidence*, Sydney, 17 August 2009, 8. See also Neil Laurie, *Submission no. 25*, above n 290, 6.

<sup>303</sup> Liberty Victoria, *Submission no. 20*, 8.

<sup>304</sup> Ken Coghill, *Transcript of evidence*, above n 285, 4. See BA Rosenson, ‘The costs and benefits of ethics laws’ in Denis Saint-Martin and Fred Thompson (eds), *Public ethics and governance: Standards and practices in comparative perspective*, Research in public policy analysis and management, Volume 14, Elsevier Ltd, 2006, 135, 139 regarding mandatory training for legislators in the United States of America.

<sup>305</sup> Ray Purdey, *Transcript of evidence*, above n 289, 8.

Victorian Public Service, informed the Committee it used a range of resources including an *Ethics resource kit* with an implementation guide and ‘scenario bank’.<sup>306</sup> The Parliament may wish to consider whether similar initiatives would be appropriate for members.

**Recommendation 23: Continuing professional development for members of parliament**

The Committee recommends the Parliament of Victoria consider appropriate platforms for delivering ongoing information and training to members of parliament about the Act.

### 5.3 Providing advice about the Act

The Parliament can also help to build ethical capacity amongst members of parliament, and prevent breaches of the Act, by offering members sources of advice and guidance about their obligations.

There is potential for complex questions to arise about the application of the Act, particularly the more technical rules around the register of interests. The Clerk of the Parliaments told the Committee it is not unusual for members to require or seek advice:

Our experience is that when members are coming to us, they are not trying to get around the Act or anything like that. They are really just looking for plain, simple advice — that is, ‘My situation has changed. What should I do? I want to make sure I comply with the Act’. That is basically why we get queries from members. All members are trying to do is just ensure that they comply with the law.<sup>307</sup>

This section examines existing sources of advice for members in Victoria and how they can be improved.

#### 5.3.1 Current arrangements for advice about the Act

The Clerks are currently the only source of advice offered by the Parliament to members about their obligations under the Act.

The Clerks told the Committee they provide advice about administrative matters, such as when members need to submit their register of interests returns, ‘without too many qualms’.<sup>308</sup> However, they told the Committee they were not able to advise members whether or not they have to register particular interests under the Act. The Clerk of the Parliaments said these questions are:

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<sup>306</sup> Letter from Paul Eate, Executive Director, Standards and Equity, State Services Authority, to Chair, Victorian Parliament Law Reform Committee, 17 August 2009. See also letter from Richard Wynne, Minister for Local Government, to Chair, Victorian Parliament Law Reform Committee, 4 September 2009, regarding information and training initiatives for local government councillors.

<sup>307</sup> Ray Purdey, *Transcript of evidence*, above n 289, 2.

<sup>308</sup> *Ibid.* See also Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 1-2.

much more difficult for us. Neither of us has a law degree so we do not feel that we should be putting ourselves in a situation where we feel like we are giving legal advice to members of Parliament.<sup>309</sup>

The Clerks said they may advise members to consult previous summaries tabled under the Act. They warn members that ‘if they are still unsure about the issue they should seek their own professional legal advice, or take the cautious approach and declare the issue of concern in the register’.<sup>310</sup>

### 5.3.2 Are the current arrangements for advice adequate?

Witnesses from within the Parliament, including the Clerks themselves, were critical of the current arrangements for providing advice to members. They told the Committee the current arrangements may in fact be contributing to some of the problems with the register of interests identified in chapter four.

The Clerks’ submission stated that requiring individual members to seek their own legal advice about their obligations ‘is inefficient and will lead to inconsistencies in the interpretation of provisions.’<sup>311</sup> They wrote that advising members to consult previous summaries also carried risks: ‘[m]embers need to be mindful that they should not blindly follow the declaration practice of other [m]embers as they may end up perpetuating an inappropriate or illegal practice.’<sup>312</sup>

The Speaker referred the Committee to the public debate in 2007 about whether the former Minister for Water, Environment and Climate Change should have registered departmental hospitality in the register of interests. She noted he was not required to do so under the Act but, because other members had registered hospitality, it appeared that he had tried to hide the interest. She said:

I believe the advice — that if you have any doubt about whether something should be declared, then you should declare it — has actually opened the Parliament up and opened members up for unfair criticism in that if they have not declared things that did not need to be declared under the Act and other members have declared it, it is believed that there is some fault in the person who has not declared it.

I think those instances are very unfortunate because they cloud and add weight to that public perception that people are in it for what they can get out of it, and then they try to hide it ...

That was simply because the advice is, ‘If you have got any doubt, declare’. While that may have been given to try to protect members, it has actually led to the opposite happening.<sup>313</sup>

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<sup>309</sup> Ray Purdey, *Transcript of evidence*, above n 289, 2. See also Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 1-2.

<sup>310</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 2; Ray Purdey, *Transcript of evidence*, above n 289, 2.

<sup>311</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 2.

<sup>312</sup> *Ibid.*

<sup>313</sup> Jenny Lindell, *Transcript of evidence*, above n 286, 4. See also Jenny Lindell, *Submission no. 19*, above n 296, 3.

### 5.3.3 Written guidelines

The Clerks and the Speaker of the Legislative Assembly suggested written guidelines about the Act might solve some of the problems with the current arrangements for advice.<sup>314</sup> A number of other parliaments already publish guidelines or explanatory notes about their parliamentary standards.<sup>315</sup>

The Committee agrees this would be a useful initiative. It believes the guidelines should address the statement of values and code of conduct in the Act as well as the register of interests. The Parliament could also consider guidance about other sources of parliamentary standards such as the standing orders, so there is one source of advice and information for members about all of their obligations.

The submission from the Clerks suggested the Presiding Officers or a specialist legal adviser might be the appropriate authority to issue guidelines about the Act.<sup>316</sup> Later in this chapter, the Committee has recommended an enhanced role and new name for the Parliament's privileges committees. The Committee believes that the renamed privileges and standards committees should work together to prepare the guidelines in consultation with the Clerks and external advisers where required.

The privileges and standards committees may wish to consider whether the guidelines should be incorporated in the *Members' guide* or a separate publication. In any event, the Committee believes the *Members' guide* should be amended so that it includes references to the statement of values and the code of conduct as well as the register of interests.

Finally, the Committee notes that section 3(2) of the Act states that, in the application and interpretation of the code, regard shall be had to the recommendation in the 1974 report of the Parliament's Qualifications Committee. The Qualification Committee's report was one of the reports which prompted the Act in 1978. The ANZSOG Institute for Governance suggested that, if its recommendation was still relevant, it should be incorporated in the Act itself.<sup>317</sup> The Qualifications Committee's recommendation simply sets out its proposed code of conduct. The Committee believes this is unlikely to offer additional guidance to members in 2009 and the section should be repealed.

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<sup>314</sup> Ray Purdey, *Transcript of evidence*, above n 289, 2; Jenny Lindell, *Submission no. 19*, above n 296, 3; Jenny Lindell, *Transcript of evidence*, above n 286, 4-5.

<sup>315</sup> See, for example, BC Wright, *Submission no. 14*, above n 290, 3; Harry Evans, *Submission no. 6*, above n 290, 2; Office of the Clerk of the House of Representatives, New Zealand, *Register of pecuniary interests of members of Parliament: Explanatory notes – 2008/09*; Tom Duncan, *Submission no. 24*, above n 290, 2.

<sup>316</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 6.

<sup>317</sup> ANZSOG Institute for Governance, *Submission no. 21*, 14.

**Recommendation 24: Written guidelines about the statement of values, code of conduct and register of interests**

The Committee recommends:

- (a) the Legislative Assembly and Legislative Council include the preparation of written guidelines for members of parliament about their obligations under the Act in the functions of the privileges and standards committees recommended in recommendation 29. The Legislative Assembly and Legislative Council should require their respective committees to confer with each other when carrying out this function
- (b) the Parliament publish the written guidelines on the Parliament's intranet and public website
- (c) the Parliament amend the *Members' guide* to include information about the statement of values and code of conduct.

**Recommendation 25: Reference to 1974 Qualifications Committee report**

The Committee recommends the Act not include the reference to the 1974 report of the Qualifications Committee in the current section 3(2).

### 5.3.4 Improved forms for the register of interests

At its public hearing for the review held in NSW, the Committee heard that the NSW Parliament has amended the forms for its register of interests to include explanatory notes and example entries to guide members of parliament. Some other parliaments also include explanatory notes in their forms.<sup>318</sup>

The Clerk of the NSW Legislative Council told the Committee the forms were still relatively new in NSW. She said the addition of explanatory notes and example forms had made the forms more complicated but they 'do help'.<sup>319</sup>

The Committee believes example entries could also help members of parliament in Victoria determine which interests they should declare and how much information to include in their returns. As chapter four noted, there appears to be uncertainty amongst members about some of their obligations under the Act. While the Committee's recommendations should clarify these obligations, example entries would provide further assistance to members.

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<sup>318</sup> Kayee Griffin, Chair of the Legislative Council Privileges Committee, Parliament of New South Wales, *Transcript of evidence*, Sydney, 17 August 2009, 4. See, for example, *Constitution (Disclosure by Members) Regulation 1983* (NSW) sch 1; Tom Duncan, *Submission no. 24*, above n 290, at 2; Scottish Parliament, *Interests of Members of the Scottish Parliament Act 2006 (Form and Content of Written Statement) Determination 2007*.

<sup>319</sup> Lynn Lovelock, *Transcript of evidence*, above n 302, 6.

In Victoria, the forms used by members are prescribed by the *Members of Parliament (Register of Interests) Regulations 2003* (Vic). The Committee believes the Victorian Government should work with the Parliament's privileges and standards committees to develop the necessary changes to those regulations.

**Recommendation 26: Improved forms for the register of interests**

The Committee recommends the Victorian Government, in consultation with the privileges and standards committees recommended in recommendation 29, amend the *Members of Parliament (Register of Interests) Regulations 2003* to include example entries in the forms for the register of interests.

### 5.3.5 An adviser for members of parliament

Although guidelines and forms can help members of parliament understand and meet their obligations under the Act, there will still be occasions when members need advice about their individual circumstances. The following section describes the types of support offered by other parliaments and considers whether the Parliament of Victoria should appoint an adviser to offer advice and counsel to members.

#### Parliamentary committees

Some parliaments in Australia have established mechanisms which allow members of parliament to seek formal advice from a parliamentary committee about their register of interests obligations. In the Australian House of Representatives, if a member raises an issue for which there is no precedent, the Registrar of Members' Interests may take up the matter with the Committee on Privileges and Members' Interests. The Registrar passes the Committee's view back to the member. If the issue is relevant to other members of parliament, the Registrar informs all members by a circular letter and may include the issue in the explanatory notes for the register.<sup>320</sup>

#### Ethics advisers

Some Australian parliaments have appointed specialist ethics advisers to advise their members about parliamentary standards. The NSW Parliament established a Parliamentary Ethics Adviser in 1998 to advise members about ethical issues. Queensland established the Office of the Integrity Commissioner in 1999. The Commissioner advises officers across the Queensland public sector as well as members of parliament about conflicts of interest.<sup>321</sup> The ACT Legislative Assembly appointed an Ethics and Integrity Adviser in 2008.

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<sup>320</sup> BC Wright, *Submission no. 14*, above n 290, 3. See also Queensland Parliament, *Standing rules and orders of the Legislative Assembly*, sch 2 cl 8; Neil Laurie, above n 290, *Submission no. 25*, 5.

<sup>321</sup> On 10 November 2009 the Queensland Government introduced the Integrity Bill 2009 in the Queensland Parliament. If passed, the Bill will make the Queensland Integrity Commissioner an officer of the parliament and provide for the Commissioner to provide advice to members about 'interests issues'.



The Committee received written submissions from all three advisers and spoke to NSW's Parliamentary Ethics Adviser, Mr Ian Dickson, and former Queensland Integrity Commissioner, Mr Gary Crooke QC, at its public hearings.

In Australia these advisers have tended to work 'behind the scenes' to help members of parliament. They hold office part time, provide advice to members of parliament only when a member seeks their assistance and their advice is confidential. Unlike parliamentary standards or ethics commissioners in Britain and Canada, the Australian advisers have no role in investigating breaches of standards. Mr Crooke described his former office as 'exceedingly low key'.<sup>322</sup>

A number of participants in the review spoke positively about ethics advisers. Dr Longstaff told the Committee their function was 'almost to be a wise and disinterested friend' and to help members make well-informed decisions while also enabling them to demonstrate they took proper steps to resolve ethical issues.<sup>323</sup> The Queensland model attracted particular support during the review.<sup>324</sup>

However, some participants in the review pointed out shortcomings of this option:

- The advisers can only provide advice when requested by members of parliament and have no proactive role in building ethical capacity amongst members. The ACT's Ethics and Integrity Adviser, Mr Stephen Skehill, wrote that the office was 'largely ... dependent on the capacity of the individual [m]ember to recognise potential issues of ethics and integrity affecting themselves before it is too late.'<sup>325</sup>
- Victoria's Speaker pointed out that some members have complex financial circumstances and it should not be Parliament's responsibility to provide specialist advice in such cases.<sup>326</sup>
- The Clerk of the Legislative Council, Mr Wayne Tunnecliffe, noted that members may require legal advice about the Act rather than ethics advice.<sup>327</sup>

<sup>322</sup> Gary Crooke, former Queensland Integrity Commissioner, *Submission no. 15*, 1. For descriptions of the roles of the advisers, see also Ian Dickson, *Submission no. 23*, above n 288; Gary Crooke, *Transcript of evidence*, above n 285, 2-3; Stephen Skehill, Ethics and Integrity Adviser, Legislative Assembly for the Australian Capital Territory, *Submission no. 4*.

<sup>323</sup> Simon Longstaff, *Transcript of evidence*, above n 284, 4-5. See also Ian Dickson, *Submission no. 23*, above n 288, 4; Stephen Skehill, *Submission no. 4*, above n 322, 2; Elizabeth O'Keefe, Director, Transparency International Australia, *Transcript of evidence*, Melbourne, 29 June 2009, 3, referring to Griffith University and Transparency International Australia, *Chaos or coherence? Strengths, challenges and opportunities for Australia's national integrity systems: National Integrity Systems Assessment (NISA) final report* (2005), 95.

<sup>324</sup> Howard Whitton, Visiting Fellow, ANZSOG Institute for Governance, *Transcript of evidence*, Melbourne, 21 July 2009, 8; ANZSOG Institute for Governance, *Submission no. 21*, 4; Ken Coghill, *Transcript of evidence*, above n 285, 4.

<sup>325</sup> Stephen Skehill, *Submission no. 4*, above n 322, 2. See also Gary Crooke, *Transcript of evidence*, above n 285, 2.

<sup>326</sup> Jenny Lindell, *Transcript of evidence*, above n 286, 5-6.

<sup>327</sup> Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria, *Transcript of evidence*, Melbourne, 29 June 2009, 9. See also Lynn Lovelock, *Transcript of evidence*, above n 302, 10.

## Legal advisers

The Clerks recommended the Parliament engage a legal adviser to assist members. They attributed some of the inconsistencies in the information in the register of interests to the fact that individual members have to seek separate legal advice about the Act. They wrote in their submission:

In our view it would be more effective for the Parliament to engage a legal expert to provide this advice to [m]embers. The legal expert could be engaged on a retained basis to provide advice to [m]embers on request. This would provide some comfort to [m]embers in that they would have someone to turn to for advice on the application of the Act and it would also ensure consistency in interpreting the provisions.<sup>328</sup>

Other participants in the review expressed concern that a legal adviser might not be equipped to advise members on the broader ethical issues that arise in their roles. Dr Coghill said ‘this is not simply a matter of what the legal position is in regard to declarations of interest or any other matter; it really goes to what the right thing to do is ...’<sup>329</sup> Dr Longstaff also stressed the need for wider skills and experience in an adviser. He told the Committee:

There should be nothing about them which suggests that they are there because of their capacity to bring about compliance with the law or with rule[s]. The practice of providing retired judges, for example, may give some degree of confidence about their ability to understand the legal issues, but there is nothing about their experience as judges which should lead anybody to infer that they are good as ethics advisers.<sup>330</sup>

## What should Victoria do?

The Committee believes it will be difficult for the Parliament to find any one person who can satisfy all of the qualities required of an adviser about the Act — someone who is independent enough from the Parliament to attract public confidence, someone who can deal with the legal technicalities in the Act and someone who can offer wise counsel about the Act’s broader democratic and philosophical aims.

The Committee believes it would be better for the Parliament to offer members a range of advice depending on the issue and their circumstances.

The Clerks are well placed to provide advice on administrative matters regarding the Act. The Committee does not favour allocating a broader advisory role to them or to the privileges committees given that the Committee is already proposing to expand their existing workload.

The Committee believes there would be benefit in appointing an ethics adviser, similar to those used by some other Australian parliaments, on retainer to provide this broader advice when required. The Committee agrees that the Parliament should look for a person with a broad understanding of ethics and the role of parliament, as

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<sup>328</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 1-2. See also Ray Purdey, *Transcript of evidence*, above n 289, 2.

<sup>329</sup> Ken Coghill, *Transcript of evidence*, above n 285, 4.

<sup>330</sup> Simon Longstaff, *Transcript of evidence*, above n 284, 5.

well as someone with the personal qualities needed to engage members. The ethics advisers from other parliaments raised other implementation issues that should be considered. Mr Ian Dickson, for example, described confidentiality arrangements as ‘essential’ in his submission.<sup>331</sup> The enhanced privileges and standards committees should work jointly to develop the selection process, terms of appointment and functions for the new office.

The Committee acknowledges that in some cases members of parliament will require legal rather than ethics advice. The Committee believes members should continue to be responsible for their own personal circumstances and does not believe the Parliament should retain a legal adviser for members. However, if a member raises an issue concerning the correct legal interpretation of the Act, and not just its application to his or her personal circumstances, the Clerks should consider seeking legal advice on behalf of the Parliament. The Clerks should communicate the substance of the legal advice to all members for their information.

**Recommendation 27: Ethics adviser**

The Committee recommends the Parliament of Victoria appoint an ethics adviser on retainer to provide confidential advice to members of parliament as required. The privileges and standards committees recommended in recommendation 29 should work together to determine the appointment process, terms of appointment and the functions of the adviser.

**Recommendation 28: Legal advice about the Act**

The Committee recommends that, if a member of parliament raises an issue with the Clerks that concerns the legal interpretation of the Act, the Clerks should seek legal advice on behalf of the Parliament and communicate the substance of the advice to all members.

## 5.4 Handling alleged breaches of the Act

The Committee’s proposed approach to parliamentary standards, outlined in chapter two, also requires the Parliament to deal seriously with allegations that members have breached the Act.

This section examines the current arrangements for investigating allegations and enforcing the Act and outlines options for change.

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<sup>331</sup> Ian Dickson, *Submission no. 23*, above n 288, 3. See also Gary Croke, *Transcript of evidence*, above n 285, 3.

### **5.4.1 Current arrangements for handling alleged breaches of the Act**

#### **Self-regulation and parliamentary privilege**

The Parliament of Victoria currently uses a system of self-regulation for breaches of the Act and other parliamentary standards.

This system is based on the long-standing institution of parliamentary privilege. Parliamentary privilege refers to the collection of powers and immunities developed over centuries of struggle between the Crown, Parliament and courts in Britain, and transported to the colonial parliaments in the 19<sup>th</sup> century.<sup>332</sup> The powers asserted by the Parliament include the power to control its own proceedings, to regulate and discipline members and to punish contempts. The immunities claimed by the Parliament include freedom of speech, debates and proceedings in the parliament. This is set out in article 9 of the *Bill of Rights 1689*, which states ‘the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.’

In the 21<sup>st</sup> century, parliamentary privilege allows the Parliament to perform its sovereign role in Victoria’s system of government. It allows the Parliament to determine arrangements for conducting its business and protects the Parliament and its members from outside interference from the executive government or the courts which could impede their functions.

#### **The arrangements for handling allegations in Victoria**

The Act contains only limited information about how the Parliament handles allegations about the Act. Section 9 states that any ‘wilful contravention’ of the requirements of the Act is ‘a contempt of the Parliament and may be dealt with accordingly ...’ In addition to any other punishment that may be awarded by the member’s house, the house may impose a fine not exceeding \$2000. Section 10 states that, if the member does not pay any fine within the time ordered, the seat of the member shall become vacant.

The Clerks explained to the Committee that the Parliament would deal with a ‘contempt of the Parliament’ in the same manner as a breach of privilege.

In the Legislative Assembly, a member would raise the alleged breach with the Speaker. If the Speaker determines there is a *prima facie* breach, the member making the allegation is given precedence over other business before the Assembly to move a motion to refer the matter to the Privileges Committee for investigation. If the House votes in favour of the motion, the Privileges Committee can investigate the allegation. If the Privileges Committee determines there has been a breach, the Assembly determines the punishment for the member.

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<sup>332</sup> See *Constitution Act 1975* (Vic) s 19. The description of parliamentary privilege in this section is drawn from Gerard Carney, *Members of parliament: Law and ethics*, Prospect Media, 2000, 159-170.

In the Legislative Council, the standing orders provide for members to give written notice of allegations to the President. The President determines whether the matter should be given precedence over other business before the Council and informs the Council of his decision. The member making the allegation moves a motion. The Council can deal with the matter directly or refer it to the Council's Privileges Committee for investigation.

The Clerks told the Committee they were aware of only five occasions on which these processes have been used. The first was in 1986 and resulted in the Legislative Assembly Privileges Committee clearing a member over an allegation of failure to register certain interests. The other four involved the Legislative Council. The Council voted against the motions to refer the allegations to a committee for investigation in each case.<sup>333</sup>

#### **5.4.2 Are the current arrangements for handling alleged breaches adequate?**

There are conflicting opinions about the adequacy of the current arrangements for handling breaches of the Act.

The last review of the arrangements, conducted by PAEC in 2007-08, supported their retention. PAEC noted '[t]he Victorian Parliament has worked well, with no major breaches of parliamentary conduct having being reported over the last decade' and 'a government that is seen to have dealt inadequately with allegations of inappropriate behaviour by any of its members is liable to be voted out of office.'<sup>334</sup>

However, there are strong critics of the current arrangements. Many of their criticisms focus on self-regulation as a model for enforcing standards and these are discussed later in this chapter. The Committee also heard some criticism of Victoria's particular arrangements.

The Clerks described the process for raising breaches of the Act in Victoria as 'too onerous' and noted this may be one of the reasons it has been used so rarely.<sup>335</sup> The Committee's own research into allegations in parliamentary debates and the media supports this view. It found there is usually at least one allegation made against a member of parliament in Victoria each year. However, these allegations have been made and resolved through political debate — in Question Time, censure motions against ministers and the media — rather than the formal channels envisaged by the Act.

While debate about standards is healthy in a robust democracy, some participants warned it has costs in terms of public trust in members of parliament. Ms Anne O'Rourke from Liberty Victoria told the Committee:

while politicians may think that this one has hit a home run by diminishing the reputation of another politician and then the other side hits back and someone else stands up and makes another point and some media commentators then respond

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<sup>333</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 3-4; Legislative Council of Victoria, *Standing orders* (2006) O 22.01.

<sup>334</sup> Victorian Parliament Public Accounts and Estimates Committee, above n 287, 40.

<sup>335</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 3.

saying, ‘So-and-so king-hit this one’, you have this small circle who somehow think they are achieving something here, and the media often is part of that, the broader public just finds that behaviour — I do not know if ‘disgrace’ is the right word ...<sup>336</sup>

Professor Costar also told the Committee allegations about misconduct taint the reputation of all members of parliament: ‘the way that is perceived by the public is not ... “A politician of party A is doing something wrong” but it is, “Politicians are doing something wrong again”’.<sup>337</sup>

The Committee also found evidence that, when the formal processes are used, they can be problematic. The only Privileges Committee to investigate an alleged breach of the Act noted some procedural problems in its 1986 report. It wrote:

The Committee regards itself as being fortunate that it was able to conclude its investigation. However, the Committee foresees that in any future referral involving a [m]ember’s pecuniary interests, even greater difficulties may be encountered.

The Committee therefore recommends that the process in respect of alleged contraventions of the Act be examined with a view to determining whether some alternative procedure might be appropriate.<sup>338</sup>

### 5.4.3 Options for investigating alleged breaches

The Committee received conflicting evidence about how the Parliament of Victoria should deal with alleged breaches of the Act in the future.

Parliaments in Australia and around the world use various models for enforcing parliamentary standards, but those in Westminster-style parliaments tend to fall into three broad categories:

- self-regulation by the parliament
- a parliamentary standards or ethics commissioner
- external regulation by an independent authority or the courts.<sup>339</sup>

The following sections outline each of these models before setting out the Committee’s views on how the Parliament of Victoria should deal with future allegations about breaches of the code and register of interests rules.

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<sup>336</sup> Anne O’Rourke, *Transcript of evidence*, above n 286, 6.

<sup>337</sup> Brian Costar, *Transcript of evidence*, above n 285, 5.

<sup>338</sup> Victorian Parliament Legislative Assembly Privileges Committee, *Report on complaint made by the Honourable Member for Monbulk* (1986), 16.

<sup>339</sup> For descriptions of systems in some other parliaments, see Andrew Brien, *A code of conduct for parliamentarians?* (1998), Research Paper 2 of 1998-99, Parliamentary Library, Parliament of Australia; Gerard Carney, above n 332, 393-394; National Democratic Institute for International Affairs, *Legislative ethics: A comparative analysis* (1999), Legislative Research Series Paper No.4, 18-20; European Centre for Parliamentary Research and Documentation, *Parliamentary codes of conduct in Europe: An overview* (2001), report prepared by Veronica Williams, 23-57.

## Self-regulation

Self-regulation remains the most common model used by parliaments to enforce parliamentary standards in Australia.

The arguments in favour of parliamentary self-regulation generally fall into two categories — constitutional and ethical.

The constitutional arguments focus on the importance of parliamentary privilege and the need to protect the sovereignty of the parliament. As this chapter noted earlier, parliamentary privilege protects the parliament from interference by the courts and executive government and remains an important aspect of our system of government. Professor Gerard Carney from Bond University has written:

While the history of parliamentary privilege may portray at times a petulant obsession on the part of parliament with its dignity, this was the lesson of bitter experience at the hands of the Crown. Those lessons ought not to be forgotten or regarded as irrelevant.<sup>340</sup>

In its report, PAEC also argued members of parliament differ from other professions because, if the public is unhappy with their performance or behaviour, it can not vote for them at the next election.<sup>341</sup>

The ethical arguments for self-regulation are that, amongst other things, self-regulation generates workable decisions because the Parliament understands the working environment and issues facing members, and members are more likely to accept the Parliament's regulatory regime as legitimate and give it their cooperation.<sup>342</sup>

Critics of self-regulation raise a number of opposing arguments. They argue:

- Members of parliament have a conflict of interest when they regulate their colleagues. The Seven Network's State Political Reporter, Mr Brendan Donohoe, described members of parliament as 'their own judge and jury'.<sup>343</sup>
- The interests of the Parliament as an institution come second to political interests. The Chair of the NSW Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics told the Committee:

The reality is in the New South Wales Parliament, and I do not suspect it is that much different elsewhere, that there is a tendency to play the man

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<sup>340</sup> Gerard Carney, above n 332, 165.

<sup>341</sup> Victorian Parliament Public Accounts and Estimates Committee, above n 287, 40.

<sup>342</sup> Gavin Drewry and Dawn Oliver, 'Parliament and the law relating to parliamentary standards' in Oonagh Gay and Patricia Leopold (eds), *Conduct unbecoming: The regulation of parliamentary behaviour*, Politicos, 2004, 181, 193-195; Loane Skene, 'A legal perspective on codes of ethics' in Margaret Coady and Sidney Bloch (eds), *Codes of ethics and the professions*, Melbourne University Press, 1996, 111, 118-126.

<sup>343</sup> Brendan Donohoe, State Political Reporter, Seven Network, *Submission no. 1, 2*. See also Noel Preston, 'Legislative Ethics: Challenges and Perspectives' in Noel Preston and Charles Sampford (eds), *Ethics and political practice: Perspectives on legislative ethics*, Federation Press, 1998, 143, 149-150; Gavin Drewry and Dawn Oliver, above n 342, 181, 196.

not the ball at times and if he is the captain of the team it is even better to go after him, and so that is what has happened.<sup>344</sup>

The Clerks noted that all of the motions in the Legislative Council to refer allegations to a committee for investigation were defeated on party lines. They also told the Committee that dealing with allegations reduces the time available to debate other business.<sup>345</sup>

- The public has no confidence in self-regulation. Political scientist Professor Ian McAllister has written that the public does not understand the benefits of parliamentary privilege let alone how it could be used to address misconduct.<sup>346</sup>

Some commentators also reject the argument that the electorate can hold members who fail to uphold standards accountable. They argue this is not supported by the evidence or is not adequate to ensure integrity amongst members.<sup>347</sup>

Amongst participants in this review, there was some support for continued self-regulation. Dr Longstaff from the St James Ethics Centre told the Committee it was ‘the ideal’, provided members of parliament could put aside political interests and act in the interests of the Parliament as an institution.<sup>348</sup>

Other participants also supported self-regulation in principle but saw the need for improvements in practice. The Speaker suggested that the Presiding Officers could deal with minor breaches of the code of conduct and that the processes could be:

strengthened with the incorporation of a mechanism by which there could be external oversight of the decision process. I believe that each House has the right to govern itself but there is also a need for the citizens of Victoria to have confidence that decisions made by Members of Parliament with respect to other Members of Parliament withstand external scrutiny.<sup>349</sup>

The former Queensland Integrity Commissioner told the Committee it is ‘entirely appropriate’ for the Parliament to be the regulator and judge of behaviour within the

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<sup>344</sup> Paul Pearce, *Transcript of evidence*, above n 292, 3. See also ANZSOG Institute for Governance, *Submission no. 21*, 4, 18; Howard Whitton, *Transcript of evidence*, above n 324, 8; Brian Costar, *Transcript of evidence*, above n 285, 3; Brendan Donohoe, State Political Reporter, Seven Network, *Transcript of evidence*, Melbourne, 21 July 2009, 6; Wayne Tunnecliffe, *Transcript of evidence*, above n 327, 6.

<sup>345</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 3-4; Ray Purdey, *Transcript of evidence*, above n 289, 6.

<sup>346</sup> Ian McAllister, ‘Keeping them honest: Public and elite perceptions of ethical conduct among Australian legislators’ (2000) 48 *Political Studies*, 22, 26. See also Howard Whitton, *Transcript of evidence*, above n 324, 8. For general discussion about the disadvantages of self-regulation, see Andrew Brien, above n 339; Gavin Drewry and Dawn Oliver, above n 342, 195-198.

<sup>347</sup> Elizabeth O’Keeffe, *Transcript of evidence*, above n 323, 2-3, referring to Griffith University and Transparency International Australia, above n 323, 73; Andrew Brien, above n 339. For discussion about the impact of ethics questions on elections in Britain and the United States, see Maureen Mancuso, *The ethical world of British MPs*, McGill-Queen’s University Press, 1995, 20-21; John Dumbrell, ‘Corruption and ethics codes in Congress: Ethics issues in the U.S. Congress’ (1991) 6 *Corruption and Reform*, 147, 163-164.

<sup>348</sup> Simon Longstaff, *Transcript of evidence*, above n 284, 8-9.

<sup>349</sup> Jenny Lindell, *Submission no. 19*, above n 296, 3-4. See also Ken Coghill, *Transcript of evidence*, above n 285, 3 for discussion of possible roles for the Presiding Officers.



Parliament, but members need to adopt a ‘professional and courteous approach’ and accord the Parliament the dignity and respect expected by the community.<sup>350</sup>

Some parliaments in Australia have taken measures to try to strengthen their systems of self-regulation by strengthening the role of their investigatory committees, or changing their procedures to promote a less political approach to allegations. The NSW Parliament renamed and expanded the functions of its privileges committees to give them a more active role in monitoring and promoting its code and register.<sup>351</sup> The Australian House of Representatives Committee on Privileges and Members’ Interests has special voting requirements for any investigation into the interests of an individual member that ensure a cross-party approach.<sup>352</sup>

## **A parliamentary standards or ethics commissioner**

Some parliaments use an independent officer to investigate and report on alleged breaches of standards. The officer reports to a parliamentary committee or the parliament, which determines what action should be taken.

The model was developed in Canadian and British parliaments. One example is the Conflicts of Interest and Ethics Commissioner in Canada’s House of Commons. The Commissioner is appointed by the Governor in Council following consultation with the leaders of political parties and a resolution of approval from the House. She can investigate whether a member has failed to comply with the House’s code at the request of another member or if directed by the House. She reports the results of her investigations to the Speaker, who presents the report to the House as a whole.<sup>353</sup>

The perceived advantages of this model include that it keeps investigations inside the parliament by using an officer of the parliament to conduct investigations, but depoliticises the process by taking it out of the hands of members themselves. Supporters argue this has the capacity to attract the confidence of both members and the public.<sup>354</sup>

However, this model has also been subject to criticism, particularly in the United Kingdom where, at the time this report was written, the House of Commons was establishing an Independent Parliamentary Standards Authority and a new Parliamentary Commissioner for Investigations.<sup>355</sup> Many of these criticisms were described in PAEC’s 2008 report:

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<sup>350</sup> Gary Crooke, *Submission no. 15*, above n 322, 3.

<sup>351</sup> See *Independent Commission Against Corruption Act 1988* (NSW) ss 72C, 72E.

<sup>352</sup> House of Representatives, Australia, *House of Representatives standing and sessional orders* (2008), O 216(c).

<sup>353</sup> See *Parliament of Canada Act*, RSC 1985, c P-1, ss 81-90; House of Commons, Canada, *Standing orders of the House of Commons* (2009), app: Conflict of interest code for members of the House of Commons, ss 26-32.

<sup>354</sup> Andrew Brien, above n 339; Meredith Burgmann, above n 288, 123.

<sup>355</sup> See *Parliamentary Standards Act 2009* (UK) c 13.

- The model still restricts parliamentary privilege and sovereignty to some extent by introducing an independent element into the regulation and discipline of members.<sup>356</sup>
- There have been cases where there has been a breakdown of trust between commissioners and members. For example, there have been some cases in Canada's provinces where disagreements have resulted in legal action.<sup>357</sup>
- In the United Kingdom the system has been accused of creating a 'standards industry' which generates higher numbers of complaints, many of which are frivolous or politically motivated, at a cost to public funds and community confidence.<sup>358</sup>
- In the United Kingdom, there have been questions about whether the commissioner's office is independent enough.<sup>359</sup>

During this review both Liberty Victoria and Transparency International expressed support for this model. Ms Anne O'Rourke from Liberty Victoria told the Committee:

what is different about having a person like the integrity commissioner in Ontario ... is that it takes it right out of the political process, because it is an independent person who is connected to neither of the political parties and so it makes it a more objective process that the public can have more faith in and more respect for.<sup>360</sup>

## External regulation

Under the external regulation model, a body outside the parliament investigates alleged breaches of standards by members. That body might be a court, an officer such as an auditor-general or a government anti-corruption agency.

External regulation is less common in Westminster-style parliaments although a number are starting to introduce external elements into their systems. Examples in Australia include NSW, where the Independent Commission Against Corruption

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<sup>356</sup> Victorian Parliament Public Accounts and Estimates Committee, above n 287, 39-40. See also Harry Phillips, 'The Canadian Provincial Integrity Commissioner: An assessment for adoption in Australia's states' (2004) 19(1) *Australasian Parliamentary Review*, 125, 133.

<sup>357</sup> See *Morin v Northwest Territories (Conflict of Interest Commissioner)* (1999) 29 CPC (4<sup>th</sup>) 362 (NWTSC); *Roberts v The Commissioner of the Northwest Territories* [2002] NWTSC 68. For discussion of tensions between commissioners and members in the United Kingdom, see Oonagh Gay, 'The development of standards machinery in the Commons' in Oonagh Gay and Patricia Leopold (eds), *Conduct unbecoming: The regulation of parliamentary behaviour*, Politicos, 2004, 91, 116-122; Rhoda James and Richard Kirkham, 'Slow progress in Parliament: The eighth report of the Committee on Standards in Public Life' (2003) 66(6) *Modern Law Review*, 906, 908.

<sup>358</sup> Patricia Leopold, 'Conclusion' in Oonagh Gay and Patricia Leopold (eds), *Conduct unbecoming: The regulation of parliamentary behaviour*, Politicos, 2004, 331, 332-37; Nicholas Allen, 'Voices from the shop floor: MPs and the domestic effects of ethics reforms' (2009) 62(1) *Parliamentary Affairs*, 88, 97-98; Victorian Parliament Public Accounts and Estimates Committee, above n 287, 39.

<sup>359</sup> See, for example, Oonagh Gay, above n 357, 135-139; Rhoda James and Richard Kirkham, above n 357, 912-914.

<sup>360</sup> Anne O'Rourke, *Transcript of evidence*, above n 286, 3. See also Elizabeth O'Keeffe, *Transcript of evidence*, above n 323, 3, referring to Griffith University and Transparency International Australia, above n 323, 95-96.

(ICAC) can investigate some breaches of the Parliament's code of conduct under a system the President of the NSW Legislative Council, the Hon. Peter Primrose MLC, described as 'unique in Australia'.<sup>361</sup> A number of other states have anti-corruption agencies.<sup>362</sup> In South Australia a breach of the register of interests laws is a summary offence punishable by the courts.<sup>363</sup>

The primary advantage of external regulation is its perceived independence and strength. The submission from the President of the Western Australian Legislative Council, the Hon. Nick Griffiths MLC, said for example that members' awareness of the requirements and expectations of ethical behaviour had 'almost certainly been sharpened by the existence and operation of the Corruption and Crime Commission in Western Australia.'<sup>364</sup> The Chair of the NSW Legislative Council Privileges Committee, Ms Kayee Griffin MP, told the Committee, 'I think ... having ICAC around has made everyone better parliamentarians ...'<sup>365</sup>

However, the Committee also heard criticism of this model during the review, particularly during its public hearing in Sydney where it spoke to a number of people about ICAC's role:

- The model is seen as undermining the privilege and sovereignty of the parliament by allowing the courts or an executive body to regulate and discipline members of parliament. A number of witnesses referred to a case in which ICAC had executed a search warrant on the office of a member of parliament and seized material later found to be protected by parliamentary privilege.<sup>366</sup> There have also been other reports of tension between external regulators and parliaments.<sup>367</sup>
- The powers vested in external regulators can be controversial. The Chair of the NSW Legislative Assembly's Standing Committee on Parliamentary

<sup>361</sup> Peter Primrose, President of the Legislative Council, Parliament of New South Wales, *Transcript of evidence*, Sydney, 17 August 2009, 2.

<sup>362</sup> These agencies investigate criminal offences or misconduct by members of parliament generally, rather than breaches of codes or registers of interests: see letter from Robert Needham, Chairperson of the Crime and Misconduct Commission, Queensland to Chair, Victorian Parliament Law Reform Committee, 22 April 2009; letter from Kevin Tavener, Director of Legal Services, Corruption and Crime Commission of Western Australia to Chair, Victorian Parliament Law Reform Committee, 1 May 2009. The Tasmanian Government has announced plans for an Integrity Commission in that state: Lara Giddings, Attorney-General, Tasmania, *Action pledged on Ethics Committee report* (Media release, 23 July 2009); Parliament of Tasmania Joint Select Committee on Ethical Conduct, *Public office is public trust* (2009) recs 4, 7 and 29.

<sup>363</sup> *Members of Parliament (Register of Interests) Act 1983* (SA) s 7.

<sup>364</sup> Nick Griffiths, President of the Legislative Council, Parliament of Western Australia, *Submission no. 5*, 2.

<sup>365</sup> Kayee Griffin, *Transcript of evidence*, above n 318, 7.

<sup>366</sup> Paul Pearce, *Transcript of evidence*, above n 292, 5; Peter Primrose, *Transcript of evidence*, above n 361, 3; Jerrold Cripps, Commissioner, Independent Commission Against Corruption, *Transcript of evidence*, Sydney, 17 August 2009, 5-6. See also Jenny Lindell, *Transcript of evidence*, above n 286, 5.

<sup>367</sup> Oonagh Gay, 'The Commonwealth, Ireland and the United States' in Oonagh Gay and Patricia Leopold (eds), *Conduct unbecoming: The regulation of parliamentary behaviour*, Politicos, 2004, 265, 280-282; Jenny Fleming, 'Conduct unbecoming: Independent commissions and ministerial adversaries' in Jenny Fleming and Ian Holland (eds), *Motivating ministers to morality*, Ashgate Publishing, 2001, 129; Moshe Maor, 'Feeling the heat?: Anti-corruption mechanisms in comparative perspective' (2004) 17(1) *Governance*, 1.

Privilege and Ethics told the Committee ‘there are elements of the ICAC which have elements of the star chamber about it ...’<sup>368</sup>

- Members may have limited avenues to appeal findings and their reputations can suffer even when they are cleared. The Clerk of the NSW Legislative Council told the Committee, ‘[i]t can be devastating for a member. Members have resigned following that, or their position in the public eye has been affected by what has happened to them.’<sup>369</sup>
- External regulators can also be caught up in party politics. The Chair of the NSW Legislative Assembly’s Standing Committee on Parliamentary Privilege and Ethics also told the Committee that ICAC is:

viewed as part of the tools of the political debate in New South Wales. The grand statement, ‘I will refer the matter to the ICAC’, and the general public immediately assume that something is not right, to the extent that the ICAC, I think, actually issued guidelines at one point prior to a local government election, which put limitations on people referring other people to the ICAC.<sup>370</sup>

Witnesses at the Committee’s hearing in NSW also told the Committee that parliamentary privilege imposes practical limitations on the powers of external regulators. Regulators may have difficulty investigating conduct involving proceedings in parliament, because privilege protects parliamentary proceedings from being impeached or questioned outside the Parliament. The Committee heard that this had limited ICAC’s ability to investigate allegations against members of parliament in some cases.<sup>371</sup>

Amongst participants in this review, there was some support for an external regulator. The former Queensland Integrity Commissioner recommended an independent authority to regulate members’ conduct outside the Parliament, as did the Women’s Electoral Lobby.<sup>372</sup> Dr Longstaff also told the Committee that, if members were not able to put politics aside when judging their peers:

at least in the short-term you may have to deal with an independent body reaching such a view until such time as Parliament does have that regard and capacity.

If you [ask] is that less ideal than the Parliament being able to do it, yes, but it is not as bad as the third possibility, which is that nothing is done ...<sup>373</sup>

Some participants proposed appointing the Ombudsman, Auditor-General or a judge to enforce the Act. The Clerks noted the Ombudsman already has power to investigate complaints of serious misconduct by members of parliament under

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<sup>368</sup> Paul Pearce, *Transcript of evidence*, above n 292, 6.

<sup>369</sup> Lynn Lovelock, *Transcript of evidence*, above n 302, 10. See also Paul Pearce, *Transcript of evidence*, above n 292, 6.

<sup>370</sup> Paul Pearce, *Transcript of evidence*, above n 292, 6.

<sup>371</sup> New South Wales Legislative Council, *Submission no. 7*, 1-2; Peter Primrose, *Transcript of evidence*, above n 361, 2-3. See, for example, Independent Commission Against Corruption, New South Wales, *Regulation of secondary employment for members of the NSW Legislative Assembly* (2003) 17.

<sup>372</sup> Gary Crooke, *Submission no.15*, above n 322, 3; Women’s Electoral Lobby, *Submission no. 26*, 2.

<sup>373</sup> Simon Longstaff, *Transcript of evidence*, above n 284, 9.

Victoria's *Whistleblower Protection Act 2001*. They suggested that one option could be to extend the Ombudsman's powers to complaints about breaches of the Act.<sup>374</sup>

Other participants expressed support for an anti-corruption commission in Victoria.<sup>375</sup> When the Committee asked the Commissioner of NSW's ICAC, the Hon. Jerrold Cripps QC, for his view, he said:

if you do not think public sector corruption is a problem in your State or if you think it is but you would rather keep it hidden, no, you should not have an ICAC, but if you think it is a problem and you do want to deal with it, the best way of dealing with it I think is to expose it.<sup>376</sup>

## What should Victoria do?

The Committee believes the Parliament should attempt to improve the current arrangements for self-regulation before considering a system with more radical implications for Victoria's parliamentary traditions and system of government.

Although the Committee acknowledges the concerns about self-regulation, it is keen to avoid replacing them with a model that causes just as much concern. All of the options discussed during the review attracted criticism. As one commentator has noted, when it comes to ethics in parliament, 'every reform is its own problem'.<sup>377</sup>

Based on reforms in other parliaments and suggestions from participants in this review, the Committee recommends the following changes in Victoria:

- The Parliament should rename its privileges committees and give them a more active role under the Act. Chapters three and four have already recommended the new committees monitor and review the code of conduct and register of interests.
- In the case of investigations into allegations against members of parliament, any exercise of powers by the committee should require the support of a special majority of members. The exact number of votes required to achieve the special majority should be set so that all decisions of the committee require the support of members from more than one party.
- The renamed privileges committees should be given the power, like other parliamentary committees, to commission an external person to inquire into and report on any aspect of its investigation. This should give the committees the capacity to engage legal or other expert assistance to fulfil their functions.

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<sup>374</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 3; Ray Purdey, *Transcript of evidence*, above n 289, 6. See also Brendan Donohoe, *Submission no. 1*, above n 343, 2; Brendan Donohoe, *Transcript of evidence*, above n 344, 12.

<sup>375</sup> Elizabeth O'Keefe, *Transcript of evidence*, above n 323, 7; Ken Coghill, *Transcript of evidence*, above n 285, 7.

<sup>376</sup> Jerrold Cripps, *Transcript of evidence*, above n 366, 2.

<sup>377</sup> Quoted in Ian Holland and Jenny Fleming, 'Advancing ministerial ethics' in Jenny Fleming and Ian Holland (eds), *Motivating ministers to morality*, Ashgate Publishing, 2001, 201, 203.

### **Recommendation 29: Investigating alleged breaches**

The Committee recommends the Parliament of Victoria:

- (a) rename the privileges committee in each house as the privileges and standards committee
- (b) expand the functions of the committees to include investigating and reporting to the houses regarding alleged breaches of the Act in addition to the functions recommended in recommendations 5, 18, 20, 21, 24, 26 and 27
- (c) amend the voting requirements for the privileges and standards committees to require a special majority for any decision relating to an investigation into an allegation against a member of parliament
- (d) give the privileges and standards committees the power to commission a person to inquire into and report on any aspect of the committee's investigation.

#### **5.4.4 Complaints**

The Committee's proposed system for investigating allegations against members of parliament is unlikely to be effective without a credible complaints system to support the process. This section examines whether, and how, the Parliament of Victoria can improve its current complaint arrangements.

#### **Complaints by members of parliament**

As this chapter noted earlier, participants in the review described the formal channels under which members raise allegations in Victoria as too onerous and too vulnerable to politicisation.

Some Australian parliaments have adopted different processes for receiving and referring complaints against their members of parliaments.

Some make the Presiding Officers, rather than the houses, responsible for determining whether a complaint should be referred for investigation. In Queensland, members write to the Registrar of Members' Interests regarding any allegations about the register of interests, and to the Speaker of the Legislative Assembly regarding other complaints. The Registrar or Speaker refers the matter to the relevant committee for investigation.<sup>378</sup>

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<sup>378</sup> Legislative Assembly of Queensland, *Standing rules and orders of the Legislative Assembly* (2008), O 269 and sch 2 cl 14. The Registrar must refer an allegation made by a member of parliament to the relevant committee for investigation. The Speaker has a discretion not to refer a matter to the relevant committee for

Other parliaments allow members of parliament to complain directly to the investigating body or officer, without reference to the parliament. This is more common in parliaments that have a parliamentary standards or ethics commissioner, or an external regulator.<sup>379</sup>

The Committee favours the former approach. It believes members of parliament should be able to make their allegations in writing to the Presiding Officers. The Presiding Officers, not the houses, should decide whether to refer the allegations to the privileges and standards committees for investigation. This is less cumbersome than the current arrangements and, because investigations would not be dependent on a party vote in the houses, less vulnerable to politicisation. The Committee notes Victoria's Whistleblower Protection Act already provides for persons to disclose serious misconduct by members of parliament to the Presiding Officers, who determine whether to refer the disclosure to the Ombudsman for investigation.

The grounds on which the Presiding Officers should be able to refuse to refer complaints to the privileges and standards committees are discussed below.

Where the complaint raises possible criminal conduct, the Presiding Officers should be required to refer the matter to law enforcement authorities.

### **Recommendation 30: Complaints by members of parliament**

The Committee recommends the Act:

- (a) provide that members of parliament should refer allegations about breaches of the Act to the Presiding Officer in the accused member's house
- (b) give the Presiding Officer the power to determine whether to refer the allegation to the house's privileges and standards committee for investigation
- (c) require the Presiding Officer to refer allegations which involve possible criminal conduct to the appropriate law enforcement authority.

### **Should members of the public be able to lodge complaints?**

The Committee also received some evidence suggesting members of the public, not just members of parliament, should be able to lodge complaints about alleged breaches of the Act. Under the current arrangements, members of the public who have a concern have to find a member of parliament to raise it on their behalf. The

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investigation if it is technical, trivial or vexatious. If that occurs, the member who made the complaint may move that the Legislative Assembly refer the matter.

<sup>379</sup> See, for example, House of Commons, Canada, above n 353, app s 27(1); Senate, Canada, *Conflict of interest code for Senators* (2005) s 44(1).

Clerks told the Committee that the fact that only members of parliament can make complaints under the current arrangements may be one of the reasons the formal channels have been used so rarely.<sup>380</sup> Professor Costar noted '[i]t does seem a little anomalous at the moment that really the only people who can make complaints are the people about whom complaints might be made.'<sup>381</sup>

However, Professor Costar also noted that opening the complaints process beyond members of parliament could have costs:

you know what is going to happen: there is going to be an avalanche of vexatious and trivial partisan-motivated allegations flying around left, right and centre ... I do not know whether you can find a middle way between them — other than making life very hard for the clerks, for example, or somebody — where these allegations cannot be made publicly but must be submitted to someone in the Parliament who will investigate them. That again could invite a whole lot of vexatious people to put in these things simply to tie up the business of the Parliament.<sup>382</sup>

There are some parliaments in Australia and overseas that do provide for members of the public to raise allegations about breaches of parliamentary standards.<sup>383</sup> Their experience appears to be variable. The Commissioner of ICAC told the Committee ICAC receives about 2700 complaints a year from government officers and members of the public. He said only around 70 of those are taken further and only around six or seven result in public inquiries.<sup>384</sup> However, one Canadian provincial standards commissioner has reported that its public complaints processes are rarely used.<sup>385</sup>

The Committee believes that in a democracy like Victoria, the Parliament should offer members of the public a facility to bring possible breaches of the Act to its attention directly. There is already a precedent for public complaints in Victoria's Whistleblower Protection Act. It allows members of the public to disclose serious misconduct by members of parliament to the Presiding Officers, who determine whether to refer the disclosure to the Ombudsman for investigation. The Committee believes the Act should follow the same model.

The Committee is conscious of the need for procedures to manage possible trivial and vexatious complaints. The grounds on which the Presiding Officers should be able to refuse to refer complaints to the privileges and standards committees are discussed below.

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<sup>380</sup> Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 3; Wayne Tunnecliffe, *Transcript of evidence*, above n 327, 4.

<sup>381</sup> Brian Costar, *Transcript of evidence*, above n 285, 10.

<sup>382</sup> *Ibid.*, 10.

<sup>383</sup> In Australia, Queensland allows members of the public to complain to the Registrar about non-compliance with register of interests requirements: Legislative Assembly of Queensland, above n 378, sch 2 cl 16. Internationally, the United Kingdom's House of Commons provides for public complaints under its current and proposed new systems: see House of Commons, United Kingdom, *Standing orders – public business* (2009) O 150(2)(e); Office of the Parliamentary Commissioner for Standards, United Kingdom, *Complaints against a member of parliament* leaflet (2008) and *Parliamentary Standards Authority Act 2009* (UK) c 13 s 9(2)(c). See also *Ethics in Public Office Act 1995* (Ireland) s 8.

<sup>384</sup> Jerrold Cripps, *Transcript of evidence*, above n 366, 7.

<sup>385</sup> Harry Phillips, above n 356, 131.



As with complaints made by members of parliament, if a complaint by a member of the public raises possible criminal conduct, the Presiding Officers should be required to refer the matter to law enforcement authorities.

### **Recommendation 31: Complaints by members of the public**

The Committee recommends the Parliament of Victoria:

- (a) establish a complaints process under which members of the public can write to the Presiding Officer in the accused member's house if they believe a member of parliament has breached the Act
- (b) give the Presiding Officer the power to determine whether to refer the allegation to the house's privileges and standards committee for investigation
- (c) publish information about the complaints process in hard copy and on the Parliament's website
- (d) require the Presiding Officer to refer allegations which involve possible criminal conduct to the appropriate law enforcement authority.

## **Unfounded complaints**

Other parliaments use a range of mechanisms to 'screen out' unfounded complaints from members of parliament and members of the public. They include:

- evidentiary standards — Canada's federal parliament requires complaints to be in writing, signed, to identify the alleged non-compliance and to set out the complainant's reasonable grounds for their belief<sup>386</sup>
- filtering mechanisms — the United States House of Representative's Committee on Standards of Official Conduct will only consider complaints from members of the public where, amongst other things, a member of the House certifies in writing that he or she believes the information is submitted in good faith and warrants review and consideration.<sup>387</sup> In Queensland, the Registrar of Members' Interests only has to refer allegations from members of the public for investigation where he or she believes on reasonable grounds there is evidence to support the allegation<sup>388</sup>
- summary handling of allegations — Queensland's Members' Ethics and Parliamentary Privileges Committee can summarily dispose of any matter it

<sup>386</sup> House of Commons, Canada, above n 353, app s 27(2); Senate, Canada, above n 379, s 44(3).

<sup>387</sup> United States House of Representatives Committee on Standards of Official Conduct, *Rules* (2009) r 15; Oonagh Gay, 'The Commonwealth, Ireland and the United States', above n 367, 293.

<sup>388</sup> Legislative Assembly of Queensland, above n 378, sch 2 16.

believes to be trivial, technical or vexatious or which does not warrant further attention<sup>389</sup>

- sanctions — some parliaments may impose sanctions on people who lodge trivial or vexatious complaints. In the United Kingdom's House of Commons, the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges have outlined a range of responses to complaints which are an abuse of process. If the complainant is a member of parliament, they include raising the Committee's concerns privately with the member or their party whip, raising them in a public report or investigating whether the complaint itself breaches the code of conduct. If the complainant is a member of the public, they include writing to the person or naming them in a report to the House.<sup>390</sup>

The Committee has already proposed the Presiding Officers in Victoria should determine whether allegations should be referred for investigation. Many unfounded allegations will be dealt with at that stage. The Committee believes there should also be evidentiary standards for complaints by both members and the public and that the privileges and standards committees should have a discretion not to investigate complaints that are trivial or vexatious, or where there are no reasonable grounds or evidence to support the complaint. The Committee does not believe sanctions for unfounded complaints are necessary at this stage, but the Parliament should monitor complaints and consider the issue in future reviews if required.

### **Recommendation 32: Unfounded complaints**

The Committee recommends the Parliament of Victoria:

- (a) require all allegations made to the Presiding Officers to be in writing, signed by the complainant and to set out reasonable grounds and evidence for the allegation
- (b) give the Presiding Officers the power to not refer an allegation to the house's privileges and standards committee for investigation if they determine that the allegation is trivial or vexatious or there are no reasonable grounds for, or evidence to support, the allegation
- (c) give the privileges and standards committees the power not to investigate, or continue an investigation, if the committee determines that the allegation is trivial or vexatious or that there are no reasonable grounds for, or evidence to support, the allegation.

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<sup>389</sup> Ibid, O 270.

<sup>390</sup> Office of the Parliamentary Commissioner for Standards, United Kingdom, *Parliamentary standards: frivolous or vexatious complaints*, Procedural Note 6 (2003). See also, for example, the Canadian House of Commons where the Conflicts of Interest and Ethics Commissioner may, if he or she believes a request for an inquiry was trivial or vexatious or not made in good faith, state so in his or her report and recommend further action against the member who requested the inquiry: House of Commons, Canada, above n 353, app s 27(6).

### 5.4.5 Safeguards for members

Modern professional standards and disciplinary systems are expected to incorporate safeguards to ensure fair and just processes for accused people and other witnesses. They include the right of the person to be heard, the use of legal representation, a clear standard of proof and rights of appeal and review.

In the case of parliamentary standards, there have been questions in the past about whether the systems used by parliaments or their investigating agencies are consistent with contemporary standards of procedural fairness or human rights.<sup>391</sup> As this chapter has already noted, the only privileges committee report into an alleged breach of the Act in Victoria noted some procedural issues. These included the right of the accused member of parliament to legal representation.<sup>392</sup>

The Committee received little evidence during this review about how the Parliament of Victoria should address these issues. Liberty Victoria told the Committee ‘you would want an appeal process ... just to be fair to any parliamentarian who was likely to be investigated’,<sup>393</sup> but other participants did not address the issue.

The Committee is aware that other parliaments have attempted to create safeguards for accused members and witnesses. The House of Representatives Standing Committee of Privileges and Members’ Interests, for example, has just issued proposed new procedures for protecting witnesses and for dealing with matters of contempt in the House.<sup>394</sup>

Given the likely consequences of an allegation against a member of parliament, the Committee believes the Parliament of Victoria should also address these issues when implementing the recommendations proposed in this report. The Committee is not in a position to make specific recommendations given the lack of evidence to this review and recommends the Parliament seek expert advice on the issue.

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<sup>391</sup> See, for example, Parliament of Australia House of Representatives Standing Committee of Privileges and Members’ Interests, *Review of procedures of the Committee* (2008), app 2; Oonagh Gay, ‘The investigation and appeals process in the Commons since 1995’ in Oonagh Gay and Patricia Leopold (eds), *Conduct unbecoming: The regulation of parliamentary behaviour*, Politics, 2004, 141; Diana Woodhouse, ‘Delivering public confidence: Codes of conduct, a step in the right direction’ (2003) 3 *Public Law*, 511, 527-532; Gavin Drewry and Dawn Oliver, above n 342, 200-210.

<sup>392</sup> Victorian Parliament Legislative Assembly Privileges Committee, above n 338, 16.

<sup>393</sup> Anne O’Rourke, *Transcript of evidence*, above n 286, 10.

<sup>394</sup> Parliament of Australia House of Representatives Standing Committee of Privileges and Members’ Interests, *Procedures of the Committee and the House in relation to consideration of privilege matters and procedural fairness* (2009).

**Recommendation 33: Safeguards for accused members of parliament**

The Committee recommends that the Parliament of Victoria:

- (a) seek expert advice about appropriate safeguards for members of parliament who are the subject of allegations regarding a breach of the Act including procedural fairness, the standard of proof and possible systems of appeal
- (b) incorporate those safeguards in the procedures used by the Presiding Officers and privileges and standards committees for dealing with alleged breaches of the Act.

### 5.4.6 Offences and sanctions

Under the current Act, if a privileges committee reported a ‘wilful contravention’ of the Act by a member, the member’s house would determine whether to take any action and what sanction to impose. The Act sets out a limited range of sanctions for a wilful contravention. Section 9 states that, in addition to any other punishment awarded by the member’s house, the house may impose a maximum fine of \$2000. Section 10 provides that, if the member fails to pay the fine within the time ordered, the member’s seat shall become vacant.

The Committee received no evidence about whether the offence provision in the Act remains appropriate. Other Australian parliaments only have specific offences for breaches of their register of interests rules. Like Victoria, the NSW laws also refer to a wilful contravention of their regulations.<sup>395</sup> Other parliaments have a series of different offences. Australia’s newest register of interests laws in the Northern Territory make it a contempt of parliament to knowingly fail to provide a statement of registrable interests, to knowingly fail to notify changes to those interests, or to give knowingly false or misleading information in relation to registrable interests.<sup>396</sup>

Given the lack of evidence to the Committee about this issue, the Committee is not in a position to do more than note this as an issue future reviews may wish to consider.

Some participants did discuss the sanctions in the Act in their evidence. Some suggested increasing the penalties for breaches. The submission from the Clerks and former member the Hon. Richard de Fegely recommended the fine in section 9 should be updated. Mr de Fegeley’s submission argued the fine should:

be brought in line with today’s values and strengthened to ensure there is no cover up by government where a minister or member may be at fault. Any breach should be dealt with severely and swiftly by either standing down or dismissal when provisions of the Act have been transgressed.<sup>397</sup>

<sup>395</sup> *Constitution Act 1902* (NSW) s 14A(2).

<sup>396</sup> *Legislative Assembly (Disclosure of Interests) Act 2008* (NT) s 6.

<sup>397</sup> Richard S. de Fegely, *Submission no. 12*, 1. See also Ray Purdey and Wayne Tunnecliffe, *Submission no. 18*, above n 289, 6; Liberty Victoria, *Submission no. 20*, 7.

The ANZSOG Institute for Governance's submission also stated that a serious breach could in principle be regarded as a basis for disqualification.<sup>398</sup>

Other participants proposed a broader choice of sanctions. Liberty Victoria suggested a wider range of penalties, including requiring members to disgorge any profits they make in breach of their duties.<sup>399</sup> Dr Coghill suggested the Presiding Officers could name a member who breaches the Act and suspend him or her from the Parliament.<sup>400</sup>

The sanctions in other parliaments vary. In Tasmania, the member's house may impose a maximum fine of \$10 000 for failing to lodge a return, failing to disclose information or providing false and misleading information, and can also admonish or suspend the member.<sup>401</sup> In NSW, the member's house may declare the member's seat vacant if he or she wilfully contravenes the register of interests laws.<sup>402</sup> If ICAC makes an adverse finding against a member, ICAC publicly reports that finding to the Parliament. If ICAC finds the member's conduct could also amount to a criminal offence, it may recommend the Parliament obtain advice from the Director of Public Prosecutions about prosecution of the member.<sup>403</sup>

The Committee believes the houses should impose a punishment that is proportionate to the seriousness of the member's conduct. Sanctions might include a requirement to apologise to the Parliament or to rectify the register or the misconduct, a fine, or, in very serious cases, suspension or expulsion from the Parliament.

The Committee agrees the maximum fine in the Act should be updated and, as the Clerks proposed in their submission, should be expressed in penalty units rather than a dollar figure. The Committee notes that the fines for local government councillors who fail to comply with their laws regarding declaration of conflicts of interest and registers of interests are 100 and 50 penalty units respectively.<sup>404</sup> This amounts to \$11 682 and \$5841 based on the rate for penalty units in Victoria at the time this report was written. Given the responsibilities of members of parliament, the Committee believes a maximum 100 penalty unit fine is appropriate for a wilful contravention of the Act.

The Committee is conscious that suspension or expulsion from the Parliament affects not only the member, but also the constituents who rely on that member for representation in the Parliament. The Committee believes these sanctions should not be imposed unless there is support from at least three quarters of the member's house. The Committee's recommended system for handling alleged breaches, including sanctions, is set out in figure 6.

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<sup>398</sup> ANZSOG Institute for Governance, *Submission no.21*, 9.

<sup>399</sup> Liberty Victoria, *Submission no. 20*, 7. See also Jamie Gardiner, Vice-President, Liberty Victoria – Victorian Council for Civil Liberties, *Transcript of evidence*, Melbourne, 29 June 2009, 8.

<sup>400</sup> Ken Coghill, *Transcript of evidence*, above n 285, 3.

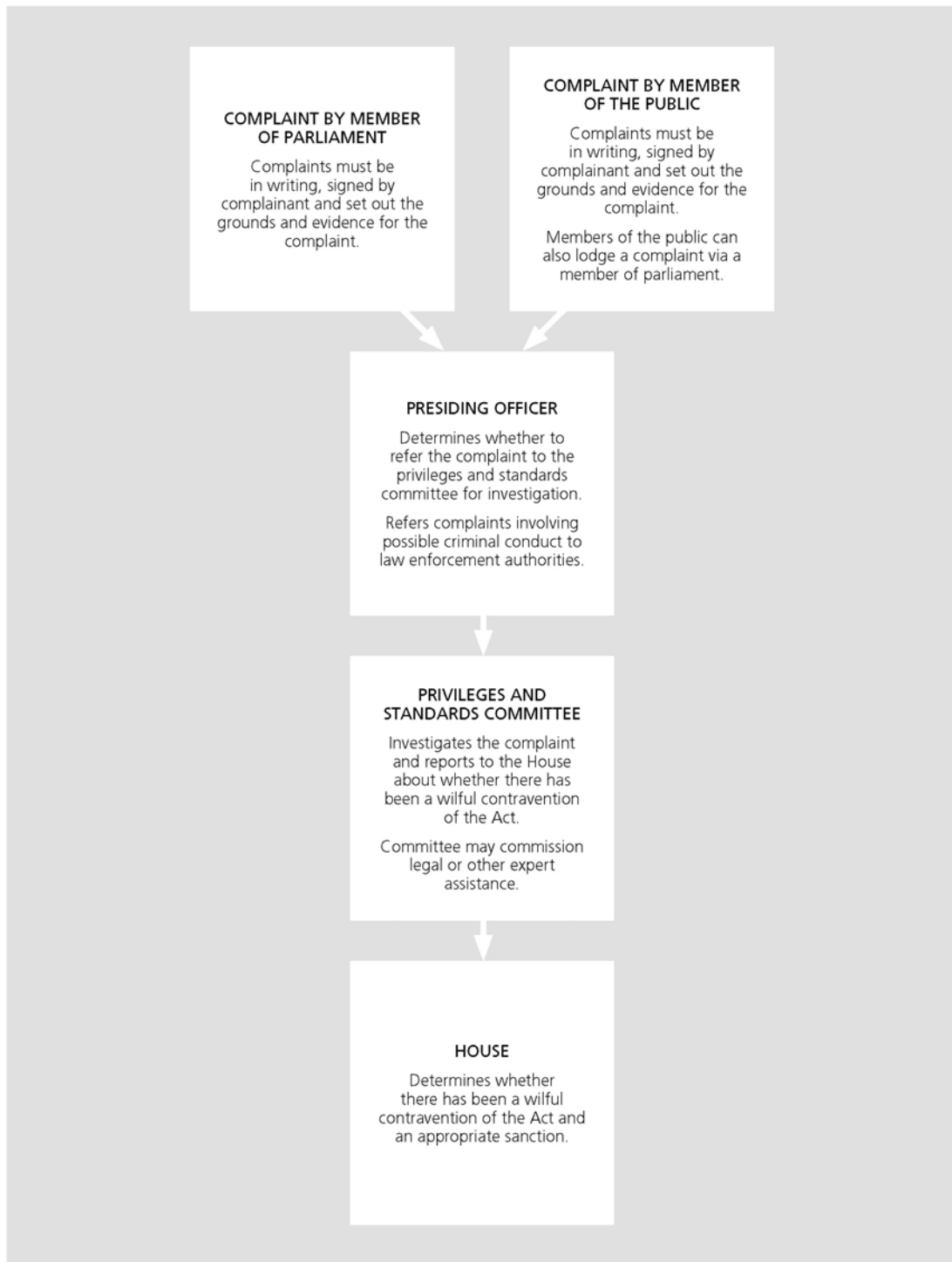
<sup>401</sup> *Parliamentary (Disclosure of Interests) Act 1996* (Tas) s 24.

<sup>402</sup> *Constitution Act 1902* (NSW) s 14A(2).

<sup>403</sup> New South Wales Legislative Council, *Submission no. 7*, 7. For discussion of sanctions in other parliaments see generally World Bank Institute, above n 288, 13-14; National Democratic Institute for International Affairs, above n 339, 21-22; Marc Van der Hulst, *The parliamentary mandate: A global comparative study*, Inter-Parliamentary Union, 2000, 60-63.

<sup>404</sup> *Local Government Act 1989* (Vic) ss 79, 81.

**Figure 6: Proposed arrangements for handling alleged breaches of the Act**



### **Recommendation 34: Sanctions**

The Committee recommends the Act:

- (a) give the houses the discretion to impose any one of the following sanctions on a member who wilfully contravenes the Act:
  - (i) a requirement to apologise to the house
  - (ii) a requirement to rectify the member's returns in the register of interests
  - (iii) a maximum fine of 100 penalty units
  - (iv) suspension from the house for a period determined by the member's house
  - (v) declare the member's seat vacant.
- (b) provide that the houses may only suspend a member or declare the member's seat vacant by a motion passed by a special majority of three quarters of the whole number of the members of the house.

## **5.5 Implementing the recommendations in this report**

This review offers an opportunity to bring the ethical standards in the Act into line with contemporary expectations of members of parliament.

The Committee is grateful for the considered and thoughtful evidence it received from people inside and outside the Parliament about how to achieve this aim. In particular, the Committee received substantial evidence about the register of interests and about how to build and uphold the standards in the Act.

However, there were some areas where the evidence was more limited. In particular, while there was strong support for including values in the Act and broadening the code of conduct, there was limited evidence about *what types of* values and rules

should be included. The Committee sees its recommendations about a statement of values and the code of conduct as a good starting point for further discussion. It believes the Victorian Government should undertake further consultation to test whether these recommendations do indeed reflect contemporary expectations of members of parliament.

For this reason, the Committee believes the Victorian Government should release an exposure draft of changes to the Act recommended in this report. The exposure draft should include the statement of values and code of conduct set out in recommendations 3 and 4, as well as the Committee's other recommended changes to the Act. The Government should use the exposure draft as a basis for further

consultation with members of parliament and the community before finalising the changes to the Act.

**Recommendation 35: Consulting further about changes to the Act**

The Committee recommends the Victorian Government:

- (a) release an exposure draft of the recommended changes to the Act
- (b) consult further with members of parliament and the community before finalising the amendments to the Act.



## Chapter 6: Conclusion

In this report, the Committee has aimed to create a new, more contemporary approach to parliamentary standards in Victoria.

The Parliament of Victoria has, based on all objective evidence, enjoyed a relatively good record on parliamentary standards to date. In this review, the Committee heard the *Members of Parliament (Register of Interests) Act 1978* (Vic) (the Act) has played a role in maintaining this record. However, the clear theme in the evidence to the review was that the Act has become outdated. The Committee was told by people inside and outside the Parliament that the Parliament needs to take action to update its laws and systems to secure the public's trust in its democratic role.

The recommendations in this report — for a new statement of values and broad code of conduct, for a more transparent register of interests, for better training and advice for members of parliament about their obligations and better arrangements for handling alleged breaches of standards — respond to these concerns.

The Committee's recommendations aim to prevent problems arising by ensuring the Act contains clear and workable rules that reflect the current challenges facing members of parliament and modern community expectations about their conduct. They aim to build knowledge and skills amongst individual members of parliament and a strong culture of ethics in the Parliament as an institution. They also aim to secure community confidence by ensuring the Parliament responds appropriately when allegations of misconduct are made.

The Committee urges the Victorian Government and the Parliament of Victoria to address the issues raised in this report to ensure the Parliament of Victoria continues its record of integrity well into the future.

**Adopted by the Law Reform Committee**

**26 November 2009**



## Appendix A: List of written submissions

	Name of individual or organisation	Date received
1	Mr Brendan Donohoe, State Political Reporter, Seven Network	21 April 2009
2	Mr David Koch MLC	29 April 2009
3	Mr Malcolm Lehman, Clerk of the House of Assembly, Parliament of South Australia	7 May 2009
4	Mr Stephen Skehill, Ethics and Integrity Adviser, Legislative Assembly for the Australian Capital Territory	11 May 2009
5	The Hon. Nick Griffiths MLC, President of the Legislative Council, Parliament of Western Australia	11 May 2009
6	Mr Harry Evans, Clerk of the Senate, Australian Senate	13 May 2009
7	New South Wales Legislative Council	14 May 2009
8	Mr Peter Alcock, Clerk of the House of Assembly, Parliament of Tasmania	15 May 2009
9	Mr Richard Torbay MP, Speaker of the Legislative Assembly, Parliament of New South Wales	19 May 2009
10	Mr Peter Bowden	21 May 2009
11	Legislative Assembly of the Northern Territory	26 May 2009
12	The Hon. Richard S. de Fegely	27 May 2009
13	The Hon. Grant Woodhams MLA, Speaker of the Legislative Assembly, Parliament of Western Australia	29 May 2009
14	Mr BC Wright, Acting Clerk of the House of Representatives, Parliament of Australia	29 May 2009
15	Mr Gary Crooke QC, Queensland Integrity Commissioner (Note Mr Crooke's term as Integrity Commissioner ended on 30 June 2009).	29 May 2009
16	Democratic Audit of Australia	29 May 2009
17	Office of the Victorian Privacy Commissioner	1 June 2009
18	Mr Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly, and Mr Wayne Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria	28 October 2009

	<b>Name of individual or organisation</b>	<b>Date received</b>
19	The Hon. Jenny Lindell MP, Speaker of the Legislative Assembly, Parliament of Victoria	1 June 2009
20	Liberty Victoria — Victorian Council for Civil Liberties Inc	3 June 2009
21	National Institute of Governance, University of Canberra (now known as the ANZSOG Institute for Governance)	5 June 2009
22	Kew Cottages Coalition	15 June 2009
23	Mr Ian Dickson, New South Wales Parliamentary Ethics Adviser	15 June 2009
24	Mr Tom Duncan, Clerk of the Legislative Assembly for the Australian Capital Territory	3 July 2009
25	Mr Neil Laurie, Clerk of the Parliament, Parliament of Queensland	3 July 2009
26	Women's Electoral Lobby	9 August 2009
27	Mr Greg Barber MP, The Australian Greens — Victoria	24 August 2009
28	Accountability Round Table	14 September 2009

## Appendix B: List of witnesses

**Public hearing, 29 June 2009**  
**Legislative Council Committees Room, Parliament House**  
**Spring Street, East Melbourne**

<b>Witness(es)</b>	<b>Organisation</b>
The Hon. Jenny Lindell MP, Speaker of the Legislative Assembly	Parliament of Victoria
Mr Ray Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly Mr Wayne Tunnecliffe, Clerk of the Legislative Council	Parliament of Victoria
Professor Brian Costar, Coordinator Professor Jock Given	Democratic Audit of Australia
Associate Professor the Hon. Dr Ken Coghill	Monash University
Ms Anne O'Rourke, Vice-President Mr Jamie Gardiner, Vice-President	Liberty Victoria — Victorian Council for Civil Liberties Inc
Ms Elizabeth O'Keeffe, Director	Transparency International Australia

**Public hearing, 21 July 2009**  
**Room G2, 55 St Andrews Place, East Melbourne**

<b>Witness(es)</b>	<b>Organisation</b>
Mr Brendan Donohoe, State Political Reporter	Seven Network
Ms Helen Versey, Victorian Privacy Commissioner Mr Scott May, Policy and Compliance Officer	Office of the Victorian Privacy Commissioner
Mr Howard Whitton, Visiting Fellow Dr James Swansson, Consultant Researcher	ANZSOG Institute for Governance, University of Canberra (formerly the National Institute of Governance)

**Public hearing, 10 August 2009**  
**Room G5, 55 St Andrews Place, East Melbourne**

<b>Witness</b>
Mr Gary Crooke QC, former Queensland Integrity Commissioner

**Public hearing, 17 August 2009**  
**Waratah Room, Parliament House, Macquarie Street, Sydney**

<b>Witness(es)</b>	<b>Organisation</b>
Dr Simon Longstaff, Executive Director	St James Ethics Centre
The Hon. Peter Primrose MLC, President of the Legislative Council (Note Mr Primrose ceased to be President of the Legislative Council on 17 November 2009). The Hon. Kayee Griffin MLC, Chair of the Legislative Council Privileges Committee Ms Lynn Lovelock, Clerk of the Legislative Council	Parliament of New South Wales
Mr Ian Dickson, New South Wales Parliamentary Ethics Adviser	
The Hon. Jerrold Cripps QC, Commissioner (Note Mr Cripps's term as Commissioner ended on 13 November 2009).	Independent Commission Against Corruption
Mr Paul Pearce MP, Chair, Standing Committee on Parliamentary Privilege and Ethics, Legislative Assembly	Parliament of New South Wales

# Appendix C: List of events attended

Event	Organisations	Date
Australian Public Sector Anti-Corruption Conference 2009	Crime and Misconduct Commission (Qld)  Independent Commission Against Corruption (NSW)  Corruption and Crime Commission (WA)	29-31 July 2009





# Appendix D: *Members of Parliament (Register of Interests) Act 1978*

Version No. 002

## **Members of Parliament (Register of Interests) Act 1978**

No. 9223 of 1978

Version as at 8 February 2008

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**Version No. 002**

**Members of Parliament (Register of Interests) Act 1978**

**No. 9223 of 1978**

Version as at 8 February 2008

An Act to enact a Code of Conduct for Members of the Parliament of Victoria, to establish a Register of certain Interests of Members of that Parliament and for other purposes.

**BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):**

**1 Short title and commencement**

- (1) This Act may be cited as the **Members of Parliament (Register of Interests) Act 1978**.
- (2) This Act shall come into operation on the day upon which it receives the Royal Assent.
- (3) This Act is divided into Parts as follows:
  - Part I—Code of Conduct.
  - Part II—Register of Interests.
  - Part III—General.

**2 Definitions**

In this Act, unless inconsistent with the context or subject-matter—

*family* in relation to a Member means—

- (a) a spouse of that Member; and

s. 2

- (b) any child of that Member who is under the age of 18 years and normally resides with that Member;

**Member** means a person who is for the time being—

- (a) a Member of the Legislative Assembly;  
or
- (b) a Member of the Legislative Council;

**trade or professional organization** means any body corporate or unincorporate of employers or employes of persons engaged in primary secondary or tertiary industry or in any profession trade or other occupation any of the objects of which is the furtherance of the industrial or economic interest of such body or of any of its members.

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**PART I—CODE OF CONDUCT**

**3 Code of conduct for Members**

- (1) It is hereby declared that a Member of the Parliament is bound by the following code of conduct—
  - (a) Members shall—
    - (i) accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests;
    - (ii) ensure that their conduct as Members must not be such as to bring discredit upon the Parliament;
  - (b) Members shall not advance their private interests by use of confidential information gained in the performance of their public duty;
  - (c) a Member shall not receive any fee, payment, retainer or reward, nor shall he permit any compensation to accrue to his beneficial interest for or on account of, or as a result of the use of, his position as a Member;
  - (d) a Member shall make full disclosure to the Parliament of—
    - (i) any direct pecuniary interest that he has;
    - (ii) the name of any trade or professional organization of which he is a member which has an interest;

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- (iii) any other material interest whether of a pecuniary nature or not that he has—  
in or in relation to any matter upon which he speaks in the Parliament;
  - (e) a Member who is a Minister shall ensure that no conflict exists, or appears to exist, between his public duty and his private interests;
  - (f) a Member who is a Minister is expected to devote his time and his talents to the carrying out of his public duties.
- (2) Without limiting the generality of the foregoing in the application and interpretation of the code regard shall be had to the recommendation of the Joint Select Committee of the Victorian Parliament appointed pursuant to The Constitution Act Amendment (Qualifications Joint Select Committee) Act 1973 presented to the Legislative Assembly on the 23rd day of April, 1974 (D.14/1973–74) contained in paragraph 12 of that report.
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**PART II—REGISTER OF INTERESTS**

**4 Definitions**

In this Part, unless inconsistent with the context or subject-matter—

*financial benefit* means—

- (a) the remuneration, fee or other pecuniary sum exceeding \$500 received by the Member in respect of any contract of service entered into or paid office held by the Member; and
- (b) the total of all remuneration, fees or other pecuniary sums received by the Member in respect of any trade, profession or vocation engaged in by the Member where the said total exceeds \$500—

but shall not include any remuneration received by the Member under the **Parliamentary Salaries and Superannuation Act 1968**;

*income source* means—

- (a) any person or body of persons with whom a Member entered into a contract of service or held any paid office; or
- (b) any trade vocation or profession engaged in by a Member;

*register* means the Register of Members' Interests established under this Act.

s. 5

*return period* in relation to an ordinary return of a Member means—

- (a) in the case of a Member whose last return was a primary return the period between the date of the primary return and the 30th day of June next following; and
- (b) in the case of any other Member means the period between the date of his last ordinary return and the 30th day of June next following.

## **5 Dates for submission of primary returns**

- (1) Every person who is a Member of the Legislative Assembly or the Legislative Council on the 1st day of February 1979, other than a person who declares to the Clerk of the Parliaments that he will not be seeking re-election at the next general or periodical election of the Assembly or Council, as the case may be, shall on or before the 28th day of February, 1979 submit to the Clerk of the Parliaments a primary return.
- (2) Every Member who was not a Member of either the Legislative Assembly or the Legislative Council in the Parliament then last past shall, upon taking and subscribing the oath or affirmation as a Member, within 30 days thereafter submit to the Clerk of the Parliaments a primary return.
- (3) Every Member shall on the 30th day of June in each year or within 60 days thereafter submit to the Clerk of the Parliaments an ordinary return.

**6 A primary return shall have the following information**

- (1) For the purposes of this Act a primary return shall be in the prescribed form and contain the following information—
  - (a) a statement of any income source that the Member has or expects to have in the period of twelve months after the date of the primary return;
  - (b) the name of any company or other body in which on the date of the primary return the Member held any office whether as director or otherwise;
  - (c) the information as at the date of the primary return referred to in subsection 2(c), (d), (e), (f) and (i).
- (2) For the purposes of this Act an ordinary return shall be in the prescribed form and shall contain the following information—
  - (a) where the Member receives or is entitled to receive a financial benefit during any part of the return period—the income source of such financial benefit;
  - (b) where the Member holds or has held an office whether as director or otherwise in any company or other body, corporate or unincorporate, during the return period—the name of such company or other body;
  - (c) the name or description of any company, partnership, association or other body in which the Member holds a beneficial interest which exceeds in value \$500;



s. 6

- (d) the name of any political party body or association or trade or professional organization of which the Member is or has been a member during the return period;
  - (e) a concise description of any trust in which the Member holds a beneficial interest or of which the Member is trustee and a member of his family has a beneficial interest;
  - (f) the address or description of any land in which the Member has any beneficial interest other than by way of security for any debt;
  - (g) the source of any significant contribution made in cash or in kind (other than any contribution by the State or any public statutory corporation constituted under the law of the State) to any travel beyond the limits of Victoria undertaken by the Member during the return period;
  - (h) particulars of any gift of or above the amount or value of \$500 received by the Member from a person other than a person related to him by blood or marriage;
  - (i) any other substantial interest whether of a pecuniary nature or not of the Member or of a member of his family or which the Member is aware and which the Member considers might appear to raise a material conflict between his private interest and his public duty as a Member.
- (3) Nothing in this section requires a Member to include in the return any information which has been disclosed in a previous return made by him under this Part.

- (4) A Member may at any time notify the Clerk of the Parliaments of any change or variation in the information appearing on the register in respect of himself or a member of his family.
- (5) Nothing in this section shall be taken to require a Member to disclose the amount of any financial benefit entered on the register in respect of such Member or his spouse.

**7 Register of Members' Interests**

- (1) The Clerk of the Parliaments shall maintain a Register of Members' Interests and shall cause to be entered therein all information furnished to him pursuant to the provisions of section 6.
- (2) The Clerk of the Parliaments shall ensure that no person shall have access to or be permitted to inspect any return submitted under this Act or the register other than a person referred to in subsection (3).
- (3) A person appointed or employed for the purposes of this Act, or authorized to discharge any function of the Clerk of the Parliaments for or on behalf of the Clerk of the Parliaments shall not, except to the extent necessary to perform his official duties or discharge such a function, either directly or indirectly, whether before or after he ceases to be so appointed, employed or authorized make a record of, or divulge or communicate to any person, any information that is gained by or conveyed to him by reason of his being so appointed, employed or authorized, or make use of any such information, for any purpose other than the discharge of his official duties or the discharge of that function.

s. 8

- (4) The Clerk of the Parliaments shall as soon as practicable after—
- (a) the receipt of any primary return or returns; and
  - (b) the receipt of the ordinary returns in any year—

prepare a summary of the information contained in the returns and shall cause a copy of the summary to be laid before each House of Parliament within fourteen days of its preparation if Parliament is then sitting or if Parliament is not then sitting within fourteen days of the next meeting of Parliament.

**8 Restrictions on publications**

After a summary has been laid before the Parliament pursuant to section 7(4) and published as a Parliamentary Paper a person shall not publish whether in Parliament or outside Parliament any information derived from the Parliamentary Paper unless that information constitutes a fair and accurate summary of the information contained in the Parliamentary Paper as is published in the public interest nor publish any comment on the facts set forth in the Parliamentary Paper unless that comment is fair and published in the public interest and without malice.

s. 9

**PART III—GENERAL**

**9 Failure to comply with Act**

Any wilful contravention of any of the requirements of this Act by any person shall be a contempt of the Parliament and may be dealt with accordingly and in addition to any other punishment that may be awarded by either House of the Parliament for a contempt of the House of which the Member is a Member the House may impose a fine upon the Member of such amount not exceeding \$2000 as it determines.

**10 Default of payments of fine**

In default of the payment of any fine imposed on a Member under section 9 to the Consolidated Fund within the time ordered by the House the seat of the Member shall become vacant.

**11 Regulations**

The Governor in Council may make regulations prescribing any matters or things authorized or required or necessary to be prescribed under this Act.

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## Appendix E: Survey of current members of Parliament

14 August 2009

«Name of member»

«Electorate»

«Address\_Line\_1»

«Address\_Line\_2»

«City» «State» «Postcode»

Dear «Name of member»

### **SURVEY OF MEMBERS OF PARLIAMENT – REVIEW OF THE CODE OF CONDUCT AND REGISTER OF INTERESTS**

The Victorian Parliament's Law Reform Committee would like to invite you to participate in a brief anonymous survey about the code of conduct and register of interests for members of parliament in Victoria.

The Committee is conducting the survey for its review of the *Members of Parliament (Register of Interests) Act 1978* (the Act). The Act sets out:

- the current code of conduct for members of parliament in Victoria (section 3)
- the rules for the members' register of interests (Part II).

Some witnesses have told the Committee the current code of conduct in section 3 is too narrow. Some think the code should include general principles or values, similar to the code of conduct for electorate officers. Some think the code should deal with broader issues of conduct and behaviour than just conflicts of interest. Witnesses have also proposed changes to the register of interests, such as requiring members to provide more detail about their interests.

The Committee believes it would be useful to know the range of views held by current Victorian MPs and an anonymous survey would provide that information. The survey focuses primarily on the code of conduct but also gives you an opportunity to comment on the register of interests.

The Committee intends to use the results of the survey in its consideration of whether, and how, the code of conduct and register of interests should be changed.

I would be grateful if you would complete the survey and return it in the envelope provided by **28 August 2009**. You do not need to identify yourself on the survey form.

If you are interested in further information about the Committee's review, you can find the terms of reference, a copy of the Act and the evidence to the review to date, on the Committee's website at [www.parliament.vic.gov.au/lawreform](http://www.parliament.vic.gov.au/lawreform).

If you have questions, please contact the Committee's Executive Officer, Ms Kerry Riseley, on (03) 8682 2851.

We hope to hear from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Johan Scheffer', with a stylized flourish at the end.

Mr Johan Scheffer MLC  
Chair

## SURVEY OF MEMBERS OF PARLIAMENT – REVIEW OF THE CODE OF CONDUCT AND REGISTER OF INTERESTS

### The code of conduct

#### *(a) Principles or values*

Some codes of conduct include general principles or values. These principles or values serve as a basis for the code’s more detailed rules.

One example is the code of conduct for electorate officers in Victoria. It is based on values such as Integrity, Accountability and Respect.

Should the code of conduct for members of parliament in Victoria be changed to include principles or values? If so, what principles or values do you think are important for members of parliament?

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#### *(b) Rules of conduct*

The current code of conduct for members of parliament in Victoria is largely concerned with avoiding and addressing conflicts of interest. Some codes of conduct contain rules about broader issues, such as expected standards of parliamentary and personal conduct.

Here is a list of the types of broader issues addressed by other codes. Please rate how useful it would be for the Victorian code of conduct to address these issues on a scale from 1 (Not useful) to 5 (Very useful).

	Not useful	←—————→					Very useful
	1	2	3	4	5		
Employment outside the Parliament	1	2	3	4	5		
Handling confidential or personal information	1	2	3	4	5		
Appropriate use of public resources	1	2	3	4	5		
Appropriate use of influence	1	2	3	4	5		
Accepting gifts, sponsored travel or hospitality	1	2	3	4	5		
Holding offices or memberships in other organisations	1	2	3	4	5		
Expected standards of conduct in the Parliament	1	2	3	4	5		
Expected standards of personal conduct	1	2	3	4	5		
Dealing with officials	1	2	3	4	5		
Dealing with employees	1	2	3	4	5		
Respecting diversity and human rights	1	2	3	4	5		
Post-parliamentary employment	1	2	3	4	5		

Are there other aspects of your role where guidance from a code of conduct would be useful?

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**(c) Other changes to the code of conduct?**

Do you have any other comments about the code of conduct or how it might be improved?

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**The register of interests**

Should there be any changes to the register of interests rules? If so, what changes would you like to see and why?

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Please return this survey to the Victorian Parliament Law Reform Committee,  
Parliament House, East Melbourne, Victoria, 3002 by **28 August 2009**.



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**Review of the Members  
of Parliament (Register  
of Interests) Act 1978**

**Minority Report**

**30 November 2009**

## **The cancer of corruption**

Corruption is the single greatest cause of poverty in the world today. It is hard to think of a country mired in poverty that is not also mired in corruption. The most important way to make poverty history is to make corruption history.

Australia and Victoria are not immune from the cancer of corruption. We have been the beneficiaries of more than 300 years of struggle against corruption in Westminster jurisdictions, but corrupt tendencies have not been permanently excised from the body politic; they have simply been repressed by continuous effort.

England in the mid to late 17<sup>th</sup> century was riddled with corruption. The payment of bribes to public office-holders to win government contracts, offices and preferments was the norm, and the diversion of public funds for unauthorised purposes was commonplace. However, a series of momentous reforms over successive decades progressively brought about change. Parliamentary control over appropriations, a Parliamentary Committee of Public Accounts, electoral reform, the Comptroller and Auditor-General and a politically independent civil service were crucial institutional safeguards which Victoria inherited or adopted.

Further important reforms introduced in Victoria have included the secret ballot, the Ombudsman, the register of Members' interests and an independent Electoral Commissioner and Electoral Boundaries Commission.

However, corruption and abuse of office tend to re-emerge in different forms from generation to generation. If not recognised and curbed, they will spread with ever increasing vigour and malevolence. As with the price of liberty, the price of freedom from corruption is eternal vigilance.

## **Misuse of elected office for partisan benefit**

The chronic modern form of corruption in Victoria under the Bracks and Brumby governments is misuse of elected office for partisan benefit. Abuses include:

- politically motivated government advertising
- partisan appointments to public offices
- appointments of former ministerial advisers to senior positions in the public service and statutory authorities
- politicisation of other public service appointments
- improper access to and use of confidential information
- favouritism and blackballing in the awarding of contracts and tenders
- extensive use of public service staff to run politically motivated media campaigns
- lack of transparency in land rezoning and other planning decisions
- collusion between ministerial offices and public officials to suppress or manipulate information
- the systematic cessation of publication of data adverse to government
- repeated breaches of FOI law
- repeated refusals to provide documents to Parliamentary committees
- a "deals for donations" culture
- channelling of government grants to organisations associated with political supporters.



Existing institutions in Victoria have proved inadequate to control these abuses. The Auditor-General's code of conduct on government advertising has simply been ignored. The Ombudsman's jurisdiction is confined to matters of administration and the Ombudsman lacks vital investigative resources and powers. The OPI can only investigate corruption within the police force. The code of conduct and disclosure rules for MPs are directed predominantly at personal rather than political corruption.

## **The elephant in the room**

The consequence is that partisan misuse of office has become rife in Victoria over the past ten years.

This is the elephant in the room which the Committee majority refused to confront during this inquiry.

However, numerous witnesses heard by the Committee gave evidence that far-reaching institutional reform was needed to tackle corruption.

## **Evidence sidelined**

Despite the misleading impression given by the majority report, only one witness gave evidence to the inquiry opposing an anti-corruption commission with jurisdiction over Members of Parliament. That witness was Mr Paul Pearce MP, Chair, Standing Committee on Parliamentary Privilege and Ethics, of the NSW Legislative Assembly. In addition to his arguments cited by the majority report, Mr Pearce argued that:

Mr PEARCE—...You have got a piece of legislation which was modelled on the Hong Kong legislation, which was designed to deal with the triad gangs in Hong Kong. We did not have that level of corruption in New South Wales, notwithstanding what was said from time to time or portrayed in various television shows....

Other witnesses cited by the majority report as being critical of an anti-corruption commission in fact gave evidence that the NSW ICAC had been beneficial. Their main concern was to see ICAC work better through clarifying issues relating to Parliamentary privilege.

The President of the NSW Legislative Council, Hon Peter Primrose MLC, and the Chair of the Legislative Council Privileges Committee, Hon Kayee Griffin MLC, gave evidence as follows:

Mrs KRONBERG—I have a question for the President, having been the previous chair of the Privileges Committee, and also invite comment from Ms Griffin, in terms of you holding that role currently, is there a trend developing in terms of the expectations from ICAC? Do you actually see the privileges of the Parliament, the Parliament itself under pressure over time? Is there a ratcheting up in terms of what should or should not be available and, if so, who is winning if there is a contest?

Mr PRIMROSE—...I think the role of the ICAC has actually made us better parliamentarians, but at the same time we are not prepared to say to any agency you have total open slather, because we do have a particular and unique role as parliamentarians, and so it has really been a learning exercise I think and it is a continuing learning exercise on both sides. ...Who is winning? I think both sides. ...

Ms GRIFFIN—I think that is correct, that having ICAC around has made everyone better parliamentarians ... we are very aware of ICAC and I think it probably has made us more aware of it because we have had to do returns, to actually think about what we need to publicly put in those returns and so on. I think perhaps the definition of parliamentary privilege will probably be something that attracts a continuous debate... We live as parliamentarians in an era where we have had ICAC for a couple of decades now and it is something that is part of the framework that operates in New South Wales. (17 August 2009)

Dr Simon Longstaff of the St James Ethics Centre in NSW was asked:

Mrs KRONBERG—...you would have profound insight, I should imagine, into the success or otherwise of having an Independent Commission Against Corruption in this State. I would like you to comment on ... whether there is applicability for that in Victoria?

Dr LONGSTAFF— ... the idea of having an Independent Commission Against Corruption with the broad powers of investigation that this commission enjoys makes a lot of sense because it is able to bring the light of day onto issues which would otherwise be, I think, unaddressed by other measures. So it has been a successful and important institution ... (17 August 2009)

As the majority report sets out, the Hon. Jerrold Cripps QC, then Commissioner of the Independent Commission Against Corruption, testified as follows:

Mrs KRONBERG—Should all State jurisdictions have an ICAC as a normal course of events?

Mr CRIPPS—I keep getting asked this question and I keep answering it by saying if you do not think public sector corruption is a problem in your State or if you think it is but you would rather keep it hidden, no, you should not have an ICAC, but if you think it is a problem and you do want to deal with it, the best way of dealing with it I think is to expose it. (17 August 2009)

Several other witnesses also told the Committee that in their opinion the conduct of Members of Parliament needed to be able to be scrutinised by an independent anti-corruption commission.

Former Speaker of the Victorian Legislative Assembly, Assoc. Professor Dr Ken Coghill, gave evidence as follows:

Assoc. Prof. COGHILL — ... it is certainly my view, as my colleague Associate Professor Lewis has argued very cogently, that it is appropriate for there to be an independent anticorruption body in Victoria with the capacity to inquire, including of its own motion, into allegations of corrupt behaviour by any person. (29 June 2009)

The NSW Parliamentary Ethics Advisor, Mr Ian Dickson, was asked:

Mrs KRONBERG—We don't have ICAC, not yet. Should we have an ICAC?

Mr DICKSON—An Integrity Commission or something like that. I think currently Tasmania is seeking to introduce one...I think it needs to be somebody with clout. I don't have any clout. It is purely advice. Even with post-separation employment it can only end up being name and shame by somebody down the track, whether it be the media or whoever it might be. There should in the first instance be somebody with the clout that oversees the process. Then you come down and you have different levels of where it can be operated from there. (17 August 2009)

This evidence echoes similar calls an anti-corruption commission made in recent years by numerous corruption experts, lawyers, retired senior police officers and media editorials.

## **An anti-corruption commission is needed urgently**

We believe that the rampant abuse of office by the current government makes urgent 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

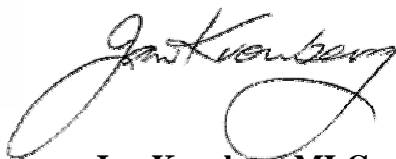
- investigation and exposure of corrupt conduct,
- prevention of corrupt conduct, and
- strengthening of institutional frameworks and practices against corruption

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.

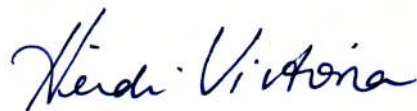
We believe the establishment of an independent anti-corruption commission should have been recommended by the Committee based on both the evidence received and the other compelling considerations we have set out.



**Robert Clark MLA**  
Deputy Chair



**Jan Kronberg MLC**  
Committee Member



**Heidi Victoria MP**  
Committee Member



# Extract from the minutes of proceedings

**Thursday 26 November 2009**

The minutes of the proceedings of the Committee show the following division which took place during the consideration of the draft report.

## **Motion**

**That the text under the heading 'External regulation' in Chapter Five stand part of the report.**

*Moved: Colin Brooks MP*

*Seconded: Martin Foley MP*

The Committee divided on the question:

### **Ayes: 4**

Colin Brooks MP

Luke Donnellan MP

Martin Foley MP

Johan Scheffer MLC

### **Noes: 3**

Robert Clark MP

Jan Kronberg MLC

Heidi Victoria MP

*Carried.*

