



Code of Conduct NSW

12 July 2010

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the (then) NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based, public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Industry and Investment NSW for its work on energy and water, and from Allens Arthur Robison for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

PIAC's work on democratic processes

PIAC is pleased to comment on the review of the *Code of Conduct for Members of the NSW Parliament*. PIAC has an interest in the role and responsibilities of members of parliament as they relate to a functioning democracy, transparent political processes and free and fair elections. PIAC's work in this area includes that undertaken on political donations and election funding for submissions to both state and Federal inquiries¹ as well as a submission to the Senate Finance and Public Affairs Committee inquiry into the Lobbying Code

¹ Kerrie Tucker and Deirdre Moor, *Deepening Democracy: Submission to the Australian Government in response to the Electoral Reform Green Paper* (2009) Public Interest Advocacy Centre
<http://www.piac.asn.au/publication/2009/02/090223-piac-electoral-reform-subhttp://www.piac.asn.au/publications/pubs/sub2009022_20090223.html> at 21 June 12 July 2010.

of Conduct² and more recently a contribution to the Independent Commission Against Corruption Inquiry into the management of lobbying in NSW.³ This submission draws upon this work, focusing on improvements that are needed to improve accountability and transparency that will create public confidence in the parliamentary process.

Disclosure and public information

The public discussion paper released by the NSW Legislative Council Privileges Committee,⁴ specifically asked for comment on whether the information disclosed by members should be available on a public website. The principle that should be applied to this issue is that all reporting requirements should be informed by the objective of ensuring easy access and comprehension by citizens. Reporting should be mandatory, detailed and regular. Members of Parliament providing reports on-line would increase efficiency in collection and distribution of the information if they could input data on-line.

This distribution of information is not the only matter in relation to reporting that should be considered. The information must also be up-to-date, and for this to occur a mechanism for monitoring the content and delivery of reports is necessary. Other countries have a more formal and more regular reporting and monitoring mechanism that is the responsibility of an office independent of Parliament. Canada, for example, has an 'Office of the Ethics Counsellor' that has responsibility for codes that cover similar matters as the NSW Code and the United Kingdom (UK) has a Parliamentary Commissioner for Standards that has responsibility for the register of pecuniary interests of members of parliament.⁵

The role of the Privileges Committee could be supported by a Parliamentary Standards Commissioner⁶ as appointed in the UK for recording and monitoring statements of interest to parliament, conflicts of interest and ensure observance of ethical practices. A Commissioner could also take over the educative role of the committee, providing guidance and training for all Members of Parliament on matters of conduct, propriety and conflicts of interest. The Australasian Study of Parliament Group reported on the role a Commissioner could take, suggesting it could also monitor and propose modifications to any guides or codes, receive and

² Kerrie Tucker, *Regulating influence and access: Submission to the Inquiry into the Lobbying Code of Conduct* by the Senate Finance and Public Affairs Committee (2008) Public Interest Advocacy Centre <<http://www.piac.asn.au/publication/2008/06/080610-lobbying-code-conduct>>http://www.piac.asn.au/publications/pubs/sub2008061_20080610.html >at 21 June 12 July 2010.

³ Brenda Bailey, *Lobbying, transparency and accountability in NSW: Submission to the Independent Commission Against Corruption* (2010) Public Interest Advocacy Centre

⁴ NSW Legislative Council Privileges Committee, *Inquiry into the Operation of the Code of Conduct for Members of the NSW Parliament, Public Discussion paper*, (2010). <<http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/C2EA16BA2CDA7B21CA257729000DB5B1>>at 8 July 2010.

⁵ Parliament of Australia, Parliamentary Library, *Codes of conduct in Australian and some overseas parliaments* (2003), E-brief, online only issue, <<http://www.aph.gov.au/library/intguide/pol/codeconduct.htm>>at 8 July 2010.

⁶ David Yencken and Nicola Henry, *Democracy Under Siege*, (2008) the Australian Collaboration, Victoria, 45.

investigate complaints and possible breaches. The Commissioner in this model would report to Parliament, and be appointed on the recommendation of an all-party Parliamentary committee.⁷

Recommendation

PIAC recommends that the NSW Parliament investigate the establishment of a Parliamentary Standards Commissioner in order to restore and maintain confidence in parliamentary processes.

Use of public resources

The code should describe the principles governing the use of public resources and how the use of resources is publicly reported. Principles and regulations should apply to ensure that parliamentary entitlements cannot be used for politically partisan purposes and that any changes to the use of those resources are subject to independent evaluation.

Recommendation

PIAC recommends that Members of NSW Parliament report publicly on the use of their parliamentary entitlements.

Secondary employment and post-parliamentary employment

While in office, members of parliament should not receive any income from a business or from any other work other than as a member of parliament. However, receipt of royalties received from work undertaken prior to appointment to parliament is acceptable.

Former Ministers ministers and parliamentary secretaries should be banned from lobbying activities for 18 months after leaving office. Members of parliament should not take advantage of information to which they had access, which is not information available to the general public.

Recommendation

PIAC recommends that regulations are be introduced to prevent members of parliament from undertaking lobbying activities for 18 months after leaving office and from using information they had access to in their position, which was not publicly available.

⁷ Accountability Working Party, Australasian Study of Parliament Group, *Be Honest Minister – Restoring Honest Government in Australia* (2007) 14.

Consistency with other codes

Duties as a member of parliament

PIAC recently commented on the ICAC inquiry into lobbying in NSW.⁸ PIAC made several recommendations which, that to take effect require members of parliament to establish codes for their own conduct and relationship with lobbyists. For the system to be procedurally fair it is critical that both lobbyists and ministers and members of parliament are required to meet the same burden of responsibility in terms of their obligations.

The matters that intersect between the two roles are:

- increasing the reporting requirements of Members of Parliament;
- regulation of lobbyists to extend to all Members of both Houses of the Parliament and their staff;
- sanctions included in the regulations;
- ongoing independent evaluation of the effectiveness of any regulations, codes or standards for Members of Parliament, as well as of any Officer charged with monitoring, educating or enforcing codes and that such evaluations be tabled in the Parliament at regular intervals.

Family members

The Federal Office of Prime Minister and Cabinet has a *Standards of Ministerial Ethics*⁹ (the Ethics Code) that provides more detail than the NSW Code. The Ethics Code includes time frames for reporting changes to private interests, and the boundaries on the influence of family members. Application of the controls on family members, a particular aspect on which the NSW Code is silent, should be considered for all Members of Parliament in NSW. The Federal requirements include that:

- transfer of an investments and other interests in any public or private company or business to a family member, nominee or private trust is not an acceptable form or divestment;¹⁰
- members must consider the private interests of members of their families in considering whether a conflict of interest could arise;¹¹
- family members cannot be appointed to positions in their Ministerial or electorate offices or those of other members of the Executive Government, or to any position in an agency in the Minister's own portfolio.¹²

⁸ Bailey, above n 3.

⁹ Office of Prime Minister and Cabinet, *Standards of Ministerial Ethics*, (2008), www.dpmc.gov.au/guidelines/docs/ministerial_ethics.rtf at 8 July 2010.

¹⁰ Ibid Clause 2.11.

¹¹ Ibid Clause 2.12.

¹² Ibid Clause 2.18.

PIAC recommends that reporting include details of meetings with lobbyists to ensure compatibility with requirements placed on lobbyists; and to put in place the same requirements measures as the Office of Prime Minister and Cabinet requirements and including those relating to limitations on family members.

Duties as a member of parliament

The Prime Minister and Cabinet, Standard Ethics Codes refers specifically to the need for Ministers to be accountable for the power and function of their office, including those that act as their delegates.¹³ PIAC agrees that Members of parliament should not be able to claim ignorance of his or her the delegates in their office or department. Some ministers claim that they cannot be held personally responsible for the acts and omissions of others who are involved in the administration of their portfolios because they did not know when they should have known, and those directly answerable to them did know but did not tell them. They are not told because of a culture that allows information be withheld so that the minister can say 'I did not know'. Effectively, personal responsibility is denied. 'Bad government is the inevitable result of a lack of accountability' and fertile ground is prepared for corruption.¹⁴

Opposition and cross bench members should also take responsibility for their electorate and office staff. All members of parliament should be responsible because their vote can be critical. This is particularly the case where the Government does not hold a majority in both houses and balance of power is held by other members of parliament, and is also the case before an election when a change of government is possible. If integrity of the process is a key aim then codes of practice should apply to all members of parliament.

Recommendations

PIAC recommends the members of parliament meet the same reporting requirements as lobbyist in NSW.

PIAC recommends that the advice set out in the Office of Prime Minister and Cabinet, Standards of Ministerial Ethics that describe the employment of, reporting and divesting of interests in regard to family members apply to all NSW members of parliament.

PIAC recommends that the code reflect that Ministers have responsibility for the actions of their portfolios and all members for their office and delegates.

Other matters

PIAC has undertaken work on election funding and the conflicts that may arise between a parliamentarian's role once elected and the role as an election candidate. Controls are needed to prevent the perception that access and influence to a member of parliament can be sold. The Code could provide members of parliament with advice about this potential conflict. For example, the appearance of corruption by gaining undue influence by accessing a member of parliament through fund raising would be avoided if the code advised the member not to attend fundraising functions while in office. PIAC supports the recommendation

¹³ Office of Prime Minister and Cabinet, above n 9, Clause 1.3.

¹⁴ Accountability Working Party Australasian Study of Parliament Group, *Be Honest Minister – Restoring Honest Government in Australia* (2007), 2.

in the paper prepared for the NSW Electoral Commission by Joo-Cheong Tham that members of parliament should be banned from attending party fund-raisers.¹⁵¹⁶

Recommendations

PIAC recommends that members of parliament be banned from participating in party fund-raisers.

¹⁵ Joo-Cheong Tham, *Towards a more Democratic political funding regime in NSW*, (2010) NSW Electoral Commission, 3-5, Recommendation 17.