



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

STANDING ORDERS COMMITTEE

Third Report of the 9th Assembly

including

Draft Members' Code of Conduct and Ethical Standards
and
Draft Amendments to the *Legislative Assembly (Register of
Members' Interests) Act*

Tabled by
The Honourable Paul Henderson, MLA,
Chairman of the Standing Orders Committee
26 February 2004 and ordered to be printed

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Recommendations : Code of Conduct and Ethical Standards

Your Committee recommends that the following Code be adopted by the Legislative Assembly subject to the enactment of a *Legislative Assembly (Members Code of Conduct and Ethical Standards) Act*.

Draft
Legislative Assembly of the Northern Territory
Members' Code of Conduct and Ethical Standards

Tabled by the Chairman of the Standing Orders Committee
The Honourable Paul Henderson, MLA
On 26 February 2004

FINAL VERSION

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MEMBERS' CODE OF CONDUCT AND ETHICAL STANDARDS

Preamble

This Code and Standards is established under section ... of the Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act.

The Code and Standards are intended to be read in conjunction with other relevant laws, the Standing Orders of the Assembly, and any other standards governing the conduct in office of Members of the Assembly which may be established by the Assembly from time to time.

In case of doubt or inconsistency, the Act provides that the Assembly's Standing Orders and other Standards are to be interpreted so as to be consistent with the principles established by the Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act.

Failure to comply with the Code of Conduct and Ethical Standards may be considered by the Privileges Committee of the Assembly or the Auditor-General, as provided by the Act.

As the fundamental objective of the Act is to foster enhanced public confidence in the integrity of the Legislative Assembly and its Members, the Act declares that this objective is not fully satisfied by minimal compliance with the Code.

PART I – GENERAL PRINCIPLES

- 1 The *Legislative Assembly (Members’ Code of Conduct and Ethical Standards) Act* establishes general principles of ethical conduct relevant to the duties, functions and obligations of Members in the Legislative Assembly.
- 2 The Act also requires each Member of the Assembly to ensure that their conduct in office conforms generally to the principles, and is otherwise in accordance with the specific Standards of this Code.
- 3 The principles established by the Act are –
 - **Integrity,**
 - **Accountability**
 - **Responsibility** and
 - **the Public Interest,**
- 4 The *Members’ Code of Conduct and Ethical Standards* is intended to assist Members of the Assembly to meet the objectives of the Act, and to inform the public at large about the standards of ethics and conduct in office which generally apply to Members.
- 5 This Code does not exhaust all possible situations in which the above principles will be relevant to the conduct of Members.
- 6 To assist Members and the general community, each section of the Code provides a *Commentary*, which explains the major reasons and objectives which underpin each principle, and gives examples of appropriate conduct in particular circumstances. The *Standards* set out specific procedures and forms of conduct in public office which are required to be observed by Members of the Legislative Assembly.
- 7 Where a situation arises which is not the subject of a specific Standard under this Code, or where the principles established by the Act are in conflict, a Member is required to make a judgement about what conduct or action represents a reasonable and responsible attempt to meet the overall objectives of the Act.

PART II - COMMENTARY AND STANDARDS

1. *Integrity*

- 1 Recognising that high standards of personal integrity among elected officials is crucial to the viability of democratic institutions, Members are required to ensure that they act with **integrity** in the exercise of the duties and responsibilities of a Member.

Commentary:

- 2 The Assembly's primary function is to make laws "for the peace, order and good government of the Territory"¹.
- 3 Public confidence in the integrity of government decision-making is essential to an effective democracy. Especially in a relatively small community, the perception that a Member stands to obtain an improper personal benefit through their position in the Assembly, can compromise that confidence.
- 4 The Register of Members' Interests is an important mechanism that has evolved as a means of enhancing public trust in the integrity of the Assembly and its decision-making. Declaration and Registration of interests makes available to the public at large information about those private interests which might be thought likely to affect a Member's advocacy or decision-making in the Assembly or its Committees.
- 5 In addition, the public declaration and registration of Members' and related persons' interests provides an objective basis upon which the integrity of Members, and of the Assembly as a whole, may be judged by the community.
- 6 Members are therefore required to identify relevant pecuniary and other interests, and those of their family members, in an annual process of registration. The Register is accessible to the public. Failure to register a relevant personal interest as required by the Assembly constitutes a contempt of the Assembly².

Standards

Conflicts of Interest

- 7 Members are required generally to avoid conflicts between their private interests and the official functions and responsibilities which they have as Members.
- 8 In particular, any pecuniary or other interests of a Member, must be managed in accordance with these Standards, or disposed of, so as to ensure that no Conflict of Interest arises or continues.
- 9 Members are required to ensure that they do not come under any financial obligation to individuals or organisations which might appear to a reasonable person likely to influence the Member improperly in the performance of their duties as a Member.
- 10 Members are required as far as reasonably possible to ensure that they are not seen as being in a position to benefit improperly from their official position.

Declaration of Interests

- 11 While Members are required by law³ to register relevant pecuniary and other interests, this Code requires that a Member shall not vote in any division upon a question in which the Member is aware of an interest which he or she is required to register unless the Member has first declared the interest to the Assembly, irrespective of whether the interest has already been formally registered. The declaration is required to be made:
- (a) at the beginning of their speech if the Member participates in debate on the matter in the Assembly or a Committee of the Assembly; or
 - (b) as soon as practicable after a division is called for after debate on the matter if the Member proposes to vote in that division without having participated in the debate.
- 12 Acting as a consultant or adviser, for any company or business interest and in receipt of a financial benefit, shall be regarded as a declarable interest for the purposes of these Standards.
- 13 In recognition that the representative duties of a Member of the Assembly require a commitment of time and effort at least equivalent to that of full-time employment, and that conflicts of interest are generally to be avoided, Members are required to undertake no other employment or business activity involving them in significant management responsibility or professional effort while they serve as a member of the Assembly.

Honesty

- 14 Members are expected to act honestly in all their official dealings, and to ensure that they take all reasonable steps in the circumstances to ensure that they do not mislead the public or the Assembly on any matter of significance arising from the performance of their functions as a Member.

Self-dealing

- 15 Members often receive information which is either confidential or privileged (that is, not available to the general public). In using such information, a Member is required to respect the status of the information and any conditions attached to its provision to the Assembly.
- 16 Members of the Assembly are required by the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act*, for a period of one year after ceasing to be a Member, not to represent or take up employment or a Directorship with, nor act as an adviser or consultant to, any company, organization, or other private interest [excluding a Northern Territory public sector agency or government body] with which

they had direct and significant involvement in their capacity as a Member of the Assembly in their last twelve months in office. Where the Member was a Minister, this is particularly relevant to the portfolio he/she was responsible for.

- 17 On leaving office a former Member is prohibited by the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act* from taking improper personal advantage of information provided to or generated by the Assembly, to which they had privileged access as a Member.

Gifts

- 18 Members, in their official capacity, may accept customary official gifts, hospitality, tokens of appreciation, and similar formal gestures in accordance with normal social custom, but are required not to seek or encourage any form of gift or benefit in their personal capacity.

Contracts and other Business Relationships

- 19 A Member shall not hold or continue to hold, in their own capacity or through a third party, a contract or like business arrangement for the provision of services to or for any Northern Territory Government body [*as defined*], the Northern Territory Public Sector, or the Legislative Assembly.
- 20 The Code acknowledges that a Member cannot be expected to have detailed knowledge of all the business or other relevant affairs or transactions entered into by a spouse or other related person. However, in making a statement of interests, a Member is expected to have taken reasonable steps to ensure that the activities of his or her spouse or partner or related person are unlikely to give rise to a conflict. Where the Member is a Minister, such reasonable steps are particularly relevant to the portfolio he or she is responsible for.

2. Accountability

- 21 Members are required to observe the principle of **Accountability** in relation to the functions of a Member of the Assembly.

Commentary

- 22 Public office being a public trust, it is a long-established expectation that those public officials who make decisions or exercise powers which affect the welfare, rights or entitlements of the community and individuals are subject to an ethical obligation to ensure that their powers and influence are used lawfully and fairly, and to be prepared to demonstrate in an appropriate way that this obligation has been met.

- 23 The principle of Accountability, in the context of membership of the Legislative Assembly, recognises that citizens are in principle entitled to be informed of the reasons for a decision or policy which affects them.
- 24 Accountability, when given effect, fosters integrity and probity of official decision-making, good governance, and the prevention and detection of corruption, and thereby encourages public confidence in the organisations and individuals which practise it.

3. Responsibility

- 25 Members are required to ensure that their decisions conform with the principle of responsibility, and reflect a proper consideration of all relevant matters, including the reasonably foreseeable consequences for those likely to be affected by them.

Standards

- 26 Members are required to foster by their conduct in office those principles which safeguard democratic rights and freedoms, and good governance, in particular:
- *respect the institution of the parliament*
 - *the Rule of Law*
 - *Recognition of the value of social and cultural diversity*
 - *Fairness and integrity in official decision-making*
 - *Freedom of reporting by media*
 - *A non-partisan Public Service*
 - *Freedom of speech*
 - *Access to justice*
- 27 A Member's decisions, directions, work expectations or personal conduct in office should not be such as to induce other public officials, including public servants, to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity.
- 28 A Member will be held responsible for proven dishonest use or claim of an allowance or other entitlement.
- 29 Members are to responsibly manage the resources and facilities provided to them and their staff at public expense.
- 30 Members are required to recognise that the Public Service is expected to function as a non-partisan public resource, and treat public servants in accordance with established conventions of Public Service neutrality. A Member's conduct in office should not be such as to induce other public officials, including public servants, to fail to comply with the relevant professional standards or code of ethical conduct applicable to them in their official capacity⁴.

31 Members are expected to accept responsibility for ensuring that they promote the observance of these Standards by leadership and example.

4. The Public Interest

32 In performing their official functions and duties, Members of the Assembly are expected to advance “the public interest”.

Commentary:

33 Members of the Assembly are therefore expected to maintain and strengthen the public's trust and confidence in government, by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding the Constitution and the laws, and seeking to advance the public good at all times.

Standards:

34 When taking official decisions, Members are required to act in **the public interest**.

35 In particular, Members must ensure that their decisions and conduct as a Member are based on an honest, reasonable, and properly informed judgement about what will best advance the common good of the people of The Northern Territory.

PART III – IMPLEMENTATION

1 This Code acknowledges the supremacy of the Legislative Assembly in a democratic system of government.

2 The basis of the standards required by this Code is that Members of the Legislative Assembly are selected by and ultimately responsible to their electors in accordance with the law.

3 The provisions of this Code do not limit the authority of the Legislative Assembly to impose standards of conduct on its Members.

References

1 *Northern Territory (Self-Government) Act, s.6*

2 *Legislative Assembly (Registration of Members' Interests) Act, s.10*

3 *Legislative Assembly (Registration of Members' Interests) Act*

4 For example, the *Code of Conduct* of the Northern Territory Public Service under the *Public Sector Employment and Management Act 1995*.

Provisions to be carried in proposed Legislation

The following provisions must be enshrined in law to ensure effectiveness over former Members:

Members of the Assembly are required, for a period of one year after ceasing to be a Member, not to represent or take up employment or a Directorship with, nor act as an adviser or consultant to, any company or business interest with which they had direct contact or involvement in their capacity as a Member of the Assembly in their last twelve months in office.

On leaving office former Members are prohibited by the Ethics in Government Act from taking personal advantage of official information to which they had privileged access as a Member.

A Member shall not hold or continue to hold a contract for the provision of services to or for a government body, the public service, or the Assembly.

The Auditor-General may investigate a claim of failure to register a required interest.

Recommendations: Draft Legislative Assembly (Registration of Members' Interests) Bill

Your Committee recommends that the following Draft Bill be agreed to by the Legislative Assembly in conjunction with the Draft Code of Conduct and Ethical Standards for Members.

Draft
Legislative Assembly (Register of Members' Interests) Bill

Tabled by the Chairman of the Standing Orders Committee
The Honourable Paul Henderson, MLA
On 26 February 2004

FINAL VERSION

Draft Legislative Assembly (*Registration of Members' Interests*) Bill

PART 1 – PRELIMINARY

Definitions

1. In this Act, unless the contrary intention appears—

“**calendar month**” means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the end of the next month;

“**child**”, in relation to a Member, includes an adopted child, a step-child or an ex-nuptial child of the Member;

“**Clerk**” means The Clerk of the Legislative Assembly;

“**committee**” means the Members' Parliamentary Privileges Committee;

“**company**” means a company, whether a private company or a public company;

“**debenture**” includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a company in respect of money that is deposited with or lent to the company;

“**de facto spouse**” is as defined at section 3A of the *Law Reform (Gender Sexuality and Defacto Relationships) Act*;

“**gift**” means—

(a) the transfer of money, property or other benefit—

(i) without recompense; or

(ii) for a consideration substantially less than full consideration; or

(b) a loan of money or property made on a permanent, or an indefinite, basis;

but does not include travel or accommodation provided by an airline under a commercial loyalty scheme.

“**joint venture**” means an undertaking carried on by 2 or more persons in common otherwise than as partners;

“**Member**” means a Member of the Legislative Assembly;

“**month**” means a calendar month;

“**nominee company**” means a company whose principal business is the business of holding marketable securities as a trustee or nominee;

“**officer**”, in relation to a company, means—

(a) director or secretary of the company; or

(b) any other person who is concerned, or takes part, in the management of the company;

“partnership” includes a joint venture;

“private company” means a proprietary company, whether incorporated in The Northern Territory or elsewhere;

“public company” means a company, other than a private company, whether incorporated in The Northern Territory or elsewhere;

“Register” means—

- (a) the Register of Members’ Interests; or
- (b) the Register of Related Persons’ Interests;

“related person”, in relation to a Member, means—

- (a) the spouse of the Member,
- (b) a child of the Member who is wholly or substantially dependent on the Member; or
- (c) any other person—
 - (i) who is wholly or substantially dependent on the Member; or
 - (ii) whose affairs are so closely connected with the affairs of the Member that a benefit derived by the person, or a substantial part of it, could pass to the Member;

“share” means—

- (a) a share in the share capital of a company;
- (b) stock;
- (c) a convertible note; or
- (d) an option;

“sitting day”, in relation to the Parliament, means a day on which the Parliament meets;

“sponsored travel or accommodation” means any travel undertaken, including accommodation incidental to the travel, or any accommodation benefit received, otherwise than in an official capacity, by the Member or a related person in respect of which a contribution (whether in cash or kind) to the cost of the travel (including incidental accommodation) or the accommodation is made by a person other than the Member or a related person but does not include travel or accommodation provided under a commercial loyalty scheme, or meals or sporting or cultural entertainment.

“spouse”, as defined in section 19A(1) in the *Law Reform (Gender Sexuality and Defacto Relationships) Act*, in relation to a Member, includes a de facto spouse of the Member;

“statement of interests” means—

- (a) a statement of interests (Member); or
- (b) a statement of interests (related persons);

“statement of interests (Member)” means the statement of a Member’s interests required to be given by the Member to the Clerk under section 5;

“statement of interests (related persons)” means the statement of the interests of a Member’s related persons required to be given by the Member to the Clerk under section 5;

“trade or professional organisation” means a body (whether incorporated or unincorporated) of—

- (a) employers or employees; or
- (b) persons engaged in a profession, trade or other occupation;

being a body the object, or an object, of which is the furtherance of its own professional, industrial or economic interests or those of any of its Members’;

“year” means period of 12 months commencing on 1 January.

Interpretation – terms relating to companies

- 2.(1)** A person is taken to have a controlling interest in shares in a company if the person is able—
- (a) to dispose of, or to exercise control over the disposal of, the shares; or
 - (b) where the shares are voting shares – to exercise, or to control the exercise of, any voting powers attached to the shares.
- (2)** The question whether a company is a subsidiary of another company is to be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the law of The Northern Territory.
- (3)** A reference in this resolution to the holding company of another company is a reference to a company of which that other company is a subsidiary.

Interpretation – forms

- 3.(1)** A reference to a form by number is a reference to the form so numbered in the Schedule.
- (2)** Strict compliance with a form in the Schedule is not necessary and substantial compliance, or such compliance as the circumstances of a particular case allow, is sufficient.

Custody of Members’ Registrations of Interests

- 4.(1)** The Clerk is to be responsible for holding and secure custody of registrations of interests, and for providing access to Members’ registrations as prescribed.

PART 2 – STATEMENTS OF INTERESTS

Giving of statements

- 5.(1) In accordance with [section of the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act*] each Member shall within one month of making and subscribing an oath or affirmation as a Member, or 30 June of each year, provide to the Speaker, in a form determined by the Clerk from time to time, a statement of—
- (a) the Member's Registrable Interests as at the date of the election, or 30 June of the year in question, as appropriate;
 - (b) the Registrable Interests, of which the Member is aware, of related persons as at the date of the election, or 30 June of the year in question, as appropriate;
- (2) A Member must notify the Speaker in writing of any change in the interests given by the Member within one month of becoming aware of the change.
- (3) Where in any year there is no change to the interests last declared by the Member, the Member is required to advise the Speaker to this effect in writing within one month after 30 June each year.
- (4) A Member is required to include in a statement of interests of a related person, information about the person's interests which are known to the Member.
- (5) A Member is not required to give, in any year, more than one statement of interests.
- (6) The Speaker shall convey a Member's statement of interests or information concerning the interests of a Member into the custody and control of the Clerk upon receipt.

Form of statements and notice of change of details

6. (1) A statement of interests —
- (a) must be in accordance with the documentation requirements specified by the Clerk; and
 - (b) is to relate only to interests held by the Member—
 - (i) the Member alone; and
 - (ii) the Member jointly or in common with a related person.

- (iii) related persons otherwise than jointly or in common with
the Member.

- (2) The Clerk may, in his or her sole discretion, prescribe the documentation requirements for statements of interests, and shall inform the Legislative Assembly of the prescribed requirements by 31 March each year.

Disclosure of interests

- 7. A statement of interests required to be given by a Member must contain the following information—

- (a) in respect of any company in which the Member or a related person is a shareholder or has a controlling interest in shares—

- (i) the name of the company;
- (ii) where the shareholding or interest constitutes a controlling interest in the company – details of the shareholdings of the company in any other company;
- (iii) where the shareholding or interest is held in a private company, the details of the investments or beneficial interests of the company, but the value of those investments or beneficial interests need not be disclosed;
- (iv) the date of commencement of the interest; and
- (v) where the shareholding or interest is held in a private company that is the holding company of another company—

- (1) details of the investments or beneficial interests of the holding company, but the value of those investments or beneficial interests need not be disclosed;
- (2) the name of any company that is a subsidiary of the holding company;
- (3) the name of any company that is a subsidiary of any company that is the holding company's subsidiary; and
- (4) the details of the investments or beneficial interests of those subsidiary companies, but the value of those investments or beneficial interests need not be disclosed;

- (b) in respect of any company of which the Member or a related person is an officer—

- (i) the name of the company;
- (ii) the nature of the office held;
- (iii) the date of commencement of the interest; and

- (iv) the nature of the activities of the company;
- (c) in respect of any family or business trust or nominee company in which the Member or a related person holds a beneficial interest—
 - (i) the name or a description of the trust, or the name of the company, as the case requires;
 - (ii) the nature of the activities of the trust or company;
 - (iv) the nature of the interest;
 - (v) the date of commencement of the interest ; and
 - (vi) details of the investments and beneficial interest of the trust, but the value of those investments or beneficial interests need not be disclosed.
- (d) in respect of any family or business trust in which the Member or a related person is a trustee—
 - (i) the name or a description of the trust;
 - (ii) the date of commencement of the trust relationship; and
 - (ii) the nature of the activities of the trust;
- (e) in respect of any partnership in which the Member or a related person has an interest—
 - (i) the name or a description of the partnership;
 - (iii) the nature of the activities of the interest;
 - (iv) the date of commencement of the partnership; and
 - (iii) the nature of the interest;
- (f) in respect of any real estate in which the Member or a related person has an interest—
 - (i) the location of the relevant property (by reference to suburb or area);
 - (ii) the approximate size of the property;
 - (iii) the purpose(s) for which the property is used, and is intended to be used;
 - (iv) the date of commencement of the interest; and
 - (iv) the nature of the interest;
- (g) in respect of any liability (excluding department store and credit card accounts) of the Member or a related person or a trust of which a Member or a related person is a beneficiary or a private company of which a Member or a related person is a shareholder—

- (i) the nature of the liability;
 - (ii) the date of commencement of the liability, and
 - (ii) the name of the creditor concerned;
- unless—
 - (i) it arises from the supply of goods or services supplied in the ordinary course of any occupation of the Member or business of the trust or private company in which the Member or related person has an interest which is not related to the Member's duties as a Member of the Legislative Assembly; or
 - (ii) the debt is for an amount of \$10,000 or less;
- (h) details of any debenture or similar investment held by the Member or a related person;
- (i) in respect of any savings or investment account of the Member or a related person held with a bank, building society, credit union or other institution—
 - (i) the nature of the account; and
 - (ii) the name of the institution concerned;
- (j) gifts valued at more than \$500 from one source, or where two or more gifts are made from one source during the return period exceed, in aggregate, \$500 provided that a gift received by a Member, the Member's spouse or dependent children, from family members need not be registered unless the Member judges that a conflict of interest may be seen to exist;
- (k) in respect of any sponsored travel or accommodation received by the Member or a related person—
 - (i) the source of the contribution concerned;
 - (ii) the date(s) of the travel; and
 - (ii) the purpose of the travel.
- (l) any other source of income over \$1000 per annum received by—
 - (i) the Member or a related person; or
 - (ii) a private company, or a trust, in which the Member or a related person holds an interest;

or where the income is under \$1000 and the Member judges that a conflict of interest may be seen to exist;
- (m) details of any other asset of the Member or a related person the value of which exceeds \$10,000, other than—

- (i) household and personal effects;
 - (ii) a motor vehicle used only or mainly for personal use; and
 - (iii) personal superannuation or similar entitlements;
- (n) the name of any political party, trade or professional organisation of which the Member or related person is a Member, or the name of any other organisation of which the Member is an officeholder or financial contributor donating \$1000 or more in any single calendar year to that organisation;
- (o) any other interest (whether or not of a pecuniary nature) of the Member or a related person—
 - (i) of which the Member is aware; and
 - (iii) that raises, appears to raise, or could foreseeably raise, a conflict between the Member's private interest and his or her duty as a Member.
- (p) in respect of any interest which the Member has declared in a previous statement and has disposed of in the reporting period:
 - (i) the date of the disposal of the interest;
 - (j) the method of disposal of the interest; and
 - (ii) the name of the person or entity which acquired the interest.

Questions concerning statements

- 8.(1)** If a question relating to whether a matter should or should not be included in a statement of interests is raised by a Member with the Clerk, the Clerk shall resolve the matter with the Member, taking into account any resolution of the Legislative Assembly affecting the matter.

PART 3 – REGISTERS

Keeping of Registers

- 9.(1)** The Clerk shall keep, in such form as the Clerk considers appropriate—
- (a) a Register of Members' Interests; and
 - (b) a Register of Related Persons' Interests.
- (2)** As soon as practicable after receiving a statement of interests made by a Member, the Clerk must—
- (a) in the case of a statement of interests by a Member – enter in the Register of Members' Interests the relevant details contained in the statement; and

- (b) in the case of a statement of interests by a related person – enter in the Register of Related Persons' Interests the relevant details contained in the statement.

- (3) As soon as practicable after receiving a notice of change of information under subclause 5, the Clerk must make such alteration to the information entered in the relevant Register as is necessary to reflect the change.

Custody of Registers

- 10. The Clerk is to have the custody and control of—

- (a) each Register;
- (b) each statement of interests received by the Clerk under section 5; and
- (c) any notice of change of interests received by the Clerk.

Tabling of Register of Members' Interests

- 11. As soon as practicable after—

- (a) the first sitting day of each Parliament; and
- (b) the 30th day of June in each subsequent year during the life of that Parliament;

the Speaker must cause a copy of the current Register of Members' Interests to be laid before the Legislative Assembly.

Publishing of Register of Members' Interests

- 12. The Register tabled in accordance with 11(a) above shall be immediately published as a Parliamentary Paper.

Inspection of Registers

- 13.(1) The Clerk must, at the request of a person, permit the person to inspect the Register of Members' Interests during normal business hours of the office of the Clerk.

- (2) The Clerk must, on request, make the Register of Related Persons' Interests available to—

- (a) the Speaker;
- (b) the Chief Minister;
- (c) any other Leader in the Legislative Assembly of a political party;
- (d) any independent Member of the Legislative Assembly; and
- (e) the Auditor-General .

PART 4 – COMPLIANCE MEASURES

Claims by Members

- 14.(1)** A Member may make an claim against another Member that the other Member has failed to comply with the requirements relating to the disclosure of a relevant interest.
- (2)** The claim must be made in writing to the Speaker.
- (3)** The Speaker must give copies of a claim to the Member to whom it refers, and to the Auditor-General, as soon as practicable.

Consideration of Claims

- 15.(1)** The Auditor-General must consider each claim referred by the Speaker and, for that purpose, may—
- (a)** give each Member concerned the opportunity to be heard; and
 - (b)** obtain information from such other persons, and make such inquiries, as the Auditor-General thinks fit;
- after which the Auditor-General may—
- (c)** make a report to the Legislative Assembly; and
 - (d)** with the report, identify findings of fact, and any recommendations in relation to the matter which the Auditor-General considers appropriate.
- (2)** A report under section 15(1) may not be made unless—
- (a)** the Auditor-General has given the Member against whom the claim has been made an opportunity—
 - (i)** to be heard; and
 - (ii)** to make written submissions; and
 - (b)** the Auditor-General has given the persons that the Member nominates a reasonable opportunity to provide information relevant to the claim.
- (3)** Parliamentary privilege applies to the making of a claim to the Auditor-General under section 14, information provided to the Auditor-General under section 15(2)(b), and a Auditor-General's report made under section 15(1).

Claims by Members of the Public

- 16.(1)** A person may make a claim alleging that a Member has failed to comply with the requirements relating to the disclosure of a relevant interest.
- (2)** The claim must be made in writing to the Auditor-General.
- (3)** The Auditor-General must, before taking any action in relation to the claim, inform the person in writing of the extent to which

qualified privilege may apply to communication with the Auditor-General.

- (4) The Auditor-General may require the person to provide—
 - (a) details of their name and address;
 - (b) details, or further details, of the claim; and
 - (c) copies of any documents or other material in the possession of or reasonably available to the person which supports the claim.
- (5) The Auditor-General may refuse to take action or further action in relation to the claim if the person refuses or fails to comply with a requirement under subsection (4).
- (6) If the Auditor-General considers on reasonable grounds that there is evidence to support a claim, the Auditor-General must give the details of the claim to the Member concerned.

Consideration of Claims

- 17.(1) Where a claim is referred to it, the Auditor-General -
 - (a) shall request the Member concerned to provide a response to the claim; and
 - (i) give the Member the opportunity to be heard;
 - (ii) give other persons nominated by Member the opportunity to provide information; and
 - (iii) make such inquiries as the Auditor-General thinks fit.
- (2) The Auditor-General must make a report to the Legislative Assembly in respect of the claim—
 - (a) if the Member concerned disputes the claim – on completion of consideration of the claim by the Auditor-General;
 - (b) if the Member confirms the allegation – on receiving notice to that effect; and
 - (c) if the Member does not, within a reasonable period, respond to a request given to him or her under subsection (1)(a) – on the expiration of the period.
- (3) The Auditor-General must, with the report, identify findings of fact, and any recommendations in relation to the matter which the Auditor-General considers appropriate.
- (4) The Auditor-General may not, in the report, make a finding that is adverse to the Member concerned unless it has given the Member—
 - (a) a copy of the claim and an opportunity to be heard in relation to the claim; and
 - (b) a copy of the proposed report.

Explanatory Notes

- 18.** The Clerk may produce and publish explanatory notes, and engage in public discussion, concerning the objectives and procedures relevant to the information to be included in the Registers.

PART 5 – ENFORCEMENT

Effect of failure to comply with requirements

- 19.** A Member who knowingly—
- (a) fails to give a statement of interests under section 5(1);
 - (b) fails to notify under section 5(2) a change of interests; or
 - (c) gives a statement of interests, or information, that is false, incomplete or misleading in a material particular;
- is guilty of a contempt of the Parliament and may be dealt with accordingly.

Introduction

On 20 March 2002 Madam Speaker, the Honourable Loraine Braham, MLA wrote to the Chief Minister and the Leader of the Opposition suggesting that the Standing Orders Committee consider a reference on a code of conduct for members.

As a 'starting point' for this consideration Madam Speaker forwarded a copy of a draft Code of Conduct which was tabled in the Western Australian Legislative Assembly by the Premier, the Hon. Geoff Gallop, MLA.

On 20 June 2002 the Chief Minister, the Honourable Clare Martin, MLA tabled two draft documents:

- Amendments to the *Legislative Assembly (Register of Members' Interests) Act* (Appendix 2), and
- Legislative Assembly of the Northern Territory Members' Code of Conduct and Ethical Standards (Appendix 3).

The documents were referred to the Standing Orders Committee for inquiry and report back to the Assembly.

The Chief Minister's speech contained an overview of the proposals and detailed explanations of the relevant provisions (Appendix 4).

Background

A limited number of Australian Parliaments presently have a Members' Code of Conduct. Victoria was the first. In the *Members of Parliament (Register of Interests) Act 1978* there is a prescribed code focusing on conflict of interest; requirements for disclosure of interests, including any direct pecuniary interest, and a general statement that Members' primary responsibility is the performance of their public duty.

In Tasmania the House of Assembly amended Standing Orders in 1996 to include a Code of Ethical Conduct. That code contains a statement of commitment and a declaration of principles. The principles cover 9 areas including matters such as acceptance of gifts, use of information, personal conduct, use of public resources and post-parliamentary employment. There is also a Code of Race Ethics for Members which was adopted at the same time.

In 1998 both Houses of the New South Wales Parliament adopted a Code after the Independent Commission Against Corruption (ICAC) had performed a number of investigations into Members' travel expenditure, finding in one case that a Member had engaged in corrupt conduct. The Code covers 6 main areas, disclosure of conflict of interest, bribery, gifts, use of public

resources, use of confidential information and duties of a Member of Parliament.

In 1998 the Legislative Assembly together with the Legislative Council appointed a Parliamentary Ethics Adviser. The function of this part-time position is to advise any Member on ethical issues concerning the exercise of his or her role as a Member of Parliament including use of entitlements and potential conflicts of interest.

Queensland has had in place a Code of Ethical Standards for Members in its current format since 2001 following a recommendation of the Members Ethics and Parliamentary Privileges Committee in 2000. The Code is an omnibus document which includes a Statement of Fundamental Principles and an overview of obligations which includes disclosure of interests and conflicts of interests, appropriate use of entitlements and a complaints procedure. The Statement of Fundamental Principles is an aspirational statement of concepts and objectives of Members covering the integrity of the Parliament, the primacy of the public interest, independence of action, appropriate use of information and transparency and scrutiny.

In February 2003 the Western Australian Legislative Assembly Procedures and Privileges Committee tabled a report on a Code of Conduct for Members of the Legislative Assembly of Western Australia. The issues addressed by that Code included conduct, disclosure of conflict of interest, bribery, gifts, use of public resources, use of the privilege of freedom of speech, misleading the Parliament and participation in political parties.

Most of the above information was included in a background and information paper prepared for the Committee by the Office of the Clerk in May 2002 and revised in November 2003. A copy of that Paper is at Appendix 1.

The content of various codes of conduct varies widely. However, common elements include the following items: disclosure of conflict of interest, bribery, gifts, use of public resources, use of confidential information and responsibilities and duties of a member of parliament.

Some other matters dealt with in codes include obligations on Members not to abuse their freedom of speech, obligations not to mislead the parliament or the public, impartiality of Members in relationship with lobbyists, disclosure of hospitality and gifts, personal and private conduct of Members, matters relating to election campaigns, post-parliamentary employment restrictions and guidelines for use of Members entitlements.

General principles included in other codes are the primacy of the public interest, diligence, economy, respect for the privacy of others, loyalty to the nation and regard for its laws, honesty, leadership, openness, accountability, objectivity, integrity and selflessness. In the general principles enunciated in the draft Code of Conduct for Members of the Northern Territory Parliament the principles firmly established in Part 1 of the Code are: integrity, accountability, responsibility of behaviour and the public interest.

Objectives

The Committee was aware that such a Code should not necessarily be the subject of strict literal legal interpretation and accordingly need not be a statement of detailed regulations which prescribe every aspect of a Members public and parliamentary life.

Rather, as with other similar codes, the Code should contain a statement of the essential principles which should not be overly prescriptive or compliance driven. The Code should provide guidance and not be a set of rules which could unwittingly trap Members as has been the case in other jurisdictions where compliance measures have been interpreted in a strict literal manner by outside authorities.

Submissions to the Committee

Advice of the reference and copies of the documents tabled by the Chief Minister were posted on the Northern Territory Legislative Assembly web site, together with an invitation to provide written submissions.

Presiding Officers and Clerks of Australian Parliaments, the Northern Territory Auditor-General, Northern Territory Anti-Discrimination Commissioner and the Queensland Crime and Misconduct Commission received formal advice of the reference and were invited to provide a written submission.

Written submissions were received from:

- Mr Gerry Wood, MLA, Member for Nelson
- The New South Wales Legislative Assembly Standing Ethics Committee
- Mr Mike Blake, Northern Territory Auditor-General

An informal submission was received from the Queensland Legislative Assembly Members' Ethics and Parliamentary Privileges Committee.

Work of the Committee

The Committee conducted 11 meetings at which the reference was discussed in detail.

Meeting with Mr Howard Whitton

The Committee agreed to meet with Mr Howard Whitton, the consultant involved in the draft amendments to the *Legislative Assembly (Register of Members' Interests) Act* and the draft Code of Conduct and Ethical Standards for Members of the Legislative Assembly.

A meeting was held with Mr Whitton on 3 September 2002. The discussion covered a range of issues that had been raised during meetings of the Standing Orders Committee. Mr Whitton provided additional information in

respect of the proposed amendments to the Register of Members' Interests in particular the issue of spouse and family reporting requirements, reporting of the value of real estate, shares and other holdings, provisions in other jurisdictions and the recommendations contained in the submission from the Auditor-General.

Consideration of the Amendments to the Legislative Assembly (Register of Members' Interests) Act

Further, to the meeting with Mr Howard Whitton, Members discussed the role of the Auditor-General as contained in the draft Act. The Auditor-General's submission was to the effect that the Clerk should retain the role of Registrar of Members' Interests.

Meeting with the New South Wales Legislative Assembly Standing Ethics Committee

In 2002, the New South Wales Legislative Assembly Standing Ethics Committee completed a review of the Code of Conduct first adopted by the NSW Parliament in 1998 and through the Chairman expressed interest in the comprehensive range of matters covered by the draft Northern Territory Code.

Late in 2002 Members of the NSW Committee undertook a study tour and a meeting was arranged with the Committee on Tuesday 26 November 2002.

The meeting with the Members of the New South Wales Committee was most informative and beneficial to the members of the Standing Orders Committee in its consideration of the draft Code of Conduct and Ethical Standards for Members of the Legislative Assembly.

Consideration of the Code of Conduct and Ethical Standards document

In addition to meeting with the New South Wales Standing Ethics Committee, the Committee also considered and discussed the following documents prepared in relation to the draft Code of Conduct and Ethical Standards:

- Notes on the meeting with the New South Wales Legislative Assembly Standing Ethics Committee
- Notes on issues raised by the New South Wales Legislative Assembly Standing Ethics Committee
- Notes on the Report of the Procedures and Privileges Committee, Western Australian Legislative Assembly—Inquiry into a Code of Conduct and Ethical Standards
- Issues and Options Paper providing a synopsis of issues raised by the NSW Committee on the draft Members' Code of Conduct and Ethical Standards
- Business Paper on unresolved clauses, dated 27 November 2003

Matters for Further Consideration

Legislative Requirements

The Committee notes that some of the contents of the draft Code will require complementary legislative provisions to meet the objectives of the Code.

At the time of the tabling the draft Code the Government indicated that an 'umbrella' Act, notionally entitled the *Legislative Assembly (Members Code of Conduct and Ethical Standards) Act*, was proposed to include provisions for any complementary codes and standards for the conduct of people in public office.

Provisions in the draft Code which may require inclusion in such legislation include the limitations on post-parliamentary employment and the use of privileged information by former Members.

In particular, the Committee notes that the proposed prohibition on Members having contracts and/or business relationships with Northern Territory Government bodies would need to be considered in conjunction with the existing provisions of the *Northern Territory (Self-Government) Act* of the Commonwealth (section 21).

Finally, the Committee notes that, in general terms the operation of the provisions contained in the draft Code and draft amendments will need to take into account the existing provisions of existing Territory and Commonwealth legislation, Standing Orders and other administrative instruments such as the RTD.

List of Appendices

- 1. *Code of Conduct Background Paper, Summary of Current Practice in Australian Parliaments, November 2003.***
- 2. *Amendments to the Legislative Assembly (Registration of Members' Interests) Act tabled by the Chief Minister on 20 June 2002***
- 3. *Draft Legislative Assembly of the Northern Territory Members' Code of Conduct and Ethical Standards tabled by the Chief Minister on 20 June 2002***
- 4. *Chief Minister's Speech to the Legislative Assembly on 20 June 2002***



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
Standing Orders Committee**

**Code of Conduct
Background Paper**

**Summary of Current Practice in
Australian Parliaments**

**Office of the Clerk
November 2003**

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Introduction

On 20 March 2002 Madam Speaker wrote to the Chief Minister and the Leader of the Opposition suggesting that the Standing Orders Committee consider a reference on a code of conduct for members.

As a 'starting point' for this consideration Madam Speaker forwarded a copy of a draft Code of Conduct which was tabled in the Western Australian Legislative Assembly by the Premier, the Hon. Geoff Gallop, MLA (attached).

It is advised that the Western Australian Legislative Assembly Standing Orders Committee has the draft under active consideration. At this stage it is proposed that the Committee report to the Western Australian Legislative Assembly in August 2002.

A summary of "Codes of Ethics/Conduct" presently in place in other Australian jurisdictions follows.

The most extensive published code is that in place in the Queensland Legislative Assembly—*The Code of Ethical Standards*.

While the Northern Territory Legislative Assembly to date has not considered the adoption of such a code, it should be noted that some of the prescriptive and directory elements of other codes are in place in various forms and are provided for in a range of statutory and non-statutory sources.

Northern Territory Legislative Assembly

Conflict of Interest^{3/4} Disclosure of Interests

Legislative Assembly (Register of Members' Interest) Act

Standing Orders—SO 263 (Committees - note no SO re Assembly)

Northern Territory (Self-Government) Act—s.21(3) (note s.44 *Australian Constitution*)

Criminal Code- Bribery

Disqualifications

Northern Territory (Self-Government) Act—s.21 etc

Criminal Code

Requirements of Electoral Law

Behaviour/orderly conduct respect for Chair etc

Standing Orders/Convention (eg sub-judice)

Privilege/contempt

Legislative Assembly (Powers & Privileges) Act

Standing Orders

Use of entitlements/allowances

RTD

Accounting & Property Manual

New South Wales Legislative Assembly

Since 1998 the Legislative Assembly has had in place a code of conduct for its Members, along with Members of the Legislative Council. The code covers such areas as disclosure of conflict of interest, bribery, gifts, use of public resources, use of confidential information and activities as Members of political parties.

The Parliament adopted the code of conduct after the Independent Commission Against Corruption (ICAC) had performed a number of investigations into Member's travel expenditure, and finding (in one case) that a member had engaged in corrupt conduct.

Parliamentary Ethics Adviser

In 1998 the Legislative Assembly, jointly with the Legislative Council, appointed a parliamentary ethics adviser. The function of the position, which is part-time, is to advise any member of Parliament, when asked to do so by that member, on ethical issues concerning the exercise of his or her role as a member of Parliament (including the use of entitlements and potential conflicts of interest). When giving advice the adviser is to be guided by the code of conduct or other guidelines adopted by the house, but cannot give legal advice. The adviser is to furnish to the Parliament each year a report on the number of ethical matters raised, the number of members seeking advice, the amount of time spent in the course of performing the task and the number of times advice was given.

Standing Ethics Committee

In June 2002 the Standing Ethics Committee conducted a review of the Code and concluded that the Code continues to be relevant to contemporary circumstances and should not be substantially changed.

In November 2002 Members of the Committee met with the Standing Orders Committee and a paper from the Committee was forwarded for consideration in the context of the current reference.

It was noted that the Standing Ethics Committee was established by an amendment to the *ICAC Act* which effectively confirmed the ICAC's jurisdiction over Members of Parliament.

Legislative Framework

The amendment to the legislation in 1994 provided for a code of conduct for members of parliament to be part of the web of definitional terms of corrupt conduct in sections 8 and 9 of the *ICAC Act*, which sections establish the boundaries of the kind of acts that might constitute corrupt conduct to be examined by the ICAC. The result is that an act by a Minister or Member could also amount to corrupt conduct if it also amounts to a "substantial breach of an applicable code of conduct". An "applicable code of conduct" is defined in the ICAC Act as, firstly, in the case of a Minister, a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, and secondly, in the case of a member of the Legislative Council or Legislative Assembly (including a Minister of the Crown) a code of conduct adopted for the purposes of this section by resolution of the House concerned.

Whilst it is not claimed that these recent developments have ensured that Members of the New South Wales Legislative Assembly have acted honourably and not in their own interest, it has nevertheless had a influence on the way Members conduct themselves and has made them mindful of how they perform their duties as elected Members of Parliament.

New South Wales: Legislative Council

Code of Conduct for Members

In 1998 the Legislative Council by resolution adopted a code of conduct for Members for the purposes of section 9 of the *ICAC Act*. A substantially similar code was adopted by the Legislative Assembly. The Legislative Council has re-adopted the code in the current Parliament, with continuing effect.

The code of conduct consists of a preamble and six clauses. The preamble includes a statement that Members acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity. The six clauses include prohibitions on:

- voting or asking questions on or promoting any matter in return for payment or any other personal financial benefit (clause 2);
- accepting gifts that may pose a conflict of interest or give the appearance of an attempt to corruptly influence the Member in the exercise of his or her duties (clause 3(b)); and
- knowingly and improperly using official information not in the public domain for the private benefit of Members or others (clause 5).

The code of conduct also requires Members to apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources (clause 4).

As indicated above, a "substantial breach" of the code of conduct can amount to "corrupt conduct" under the *ICAC Act*.

The text of the current code agreed to by both the Assembly and the Council is as follows:

Preamble

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

Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.

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

The Code

1 Disclosure of conflict of interest

- (a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.

(b) this may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.

(c) A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.

2 Bribery

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

3 Gifts

(a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.

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

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

4 Use of public resources

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

5 Use of confidential information

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.

6 Duties as a Member of Parliament

It is recognised that some members are non-aligned and other belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.

Victoria

Members of Parliament (Register of Interests) Act 1978

The Act is divided into 2 parts. The first part sets out a code of conduct for members almost identical as recommended by a Select Committee. The code is not restricted to conflicts arising out of pecuniary interests but extends to any private interest that might be thought to raise a question of interest. The following is an extract from the Act of the Code of Conduct:

"PART 1—CODE OF CONDUCT

Code of Conduct for Members

1 It is hereby declared that a Member of 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—

(i) any direct pecuniary interest that he has;

(ii) the name of any trade or professional organisation 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.

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."

The Code has not been amended since 1978.

Queensland

The Code of Ethical Standards for Members presently in force in Queensland has been in place in its present format since 8 August 2001 and was adopted by the Legislative Assembly on the recommendations of the Members Ethics and Parliamentary Privileges Committee. (Report No. 44, dated 5 September 2000).

The Code is an 'omnibus' document which includes the following sections:

- Statement of Fundamental Principles
- Overview of Obligations
 - Disclosure of interests—register of interests

- Conflicts of interest—ad hoc disclosure
- Conflicts of interest—rules relating to members dealing with the executive government, and prohibited interests
- Conflicts of interest—bribery, advocacy and accepting professional fees
- Authorised use of allowances
- Appropriate use of information
- Conduct of members in the House, including:
 - Orderly conduct and role of the Speaker
 - Freedom of speech
 - Rules of debate
 - sub-judice convention
- Qualifications and disqualifications—electoral laws
- Electorate office staff
- Complaints procedure
 - Procedures for contempts, breach of privilege
 - Procedures for raising and considering matters relating to pecuniary matters
 - Procedure for raising and considering submissions for a citizen's right of reply
- Resolution of conflicts of interest
 - Members' interests
 - Use of resources

The purpose of the Code is described as follows:

- to assist members to better understand the nature of their public office and the distinct obligations that arise by virtue of that office;
- to provide an educative tool to assist members manage conflicts of interest and resolve ethical dilemmas; and
- to provide an overview of the current obligations which members are required to observe.

Statement of Fundamental Principles

The statement of Fundamental Principles is an "aspirational" statement of the concepts and objectives of Members as follows:

1 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.

2 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.

3 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.

4 Appropriate use of information

In the course of their duties members often received 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.

5 Transparency and scrutiny

It is vital to parliamentary democracy that the public have 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.

6 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.

The remainder of the Code document is a compendium of related materials from the following sources:

Constitution of Queensland, Standing and other Orders of the Assembly, Members' Entitlements Handbook, Resolutions of the House including Pecuniary Interests Register and Citizens' Right of Reply and Statute Law including the *Criminal Code*, *Electoral Act*, *Criminal Justice Act* and Corporations and Securities legislation.

Tasmania

Standing Order 2A as agreed by the Legislative Assembly in May 1996.

Code of Ethical Conduct for Members of the House of Assembly

Preamble

As Members of the House of Assembly we recognise that our actions have a profound impact on the lives of all Tasmanian people. Fulfilling our obligations and discharging our duties responsibly requires a commitment to the highest ethical standards.

Statement of commitment

To the people of this State, we owe the responsible execution of our official duties, in order to promote human and environmental welfare.

To our constituents, we owe honesty, accessibility, accountability, courtesy and understanding.

To our colleagues in this Assembly, we owe loyalty to shared principles, respect for differences, and fairness in political dealings.

We believe that the fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Tasmanian people.

We reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our State and its institutions.

Declaration of Principles

Members of this Assembly must carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.

Members of this Assembly must act not only lawfully but also in a manner that will withstand the closest public scrutiny; Neither the law nor this code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

Every Member is individually responsible for preventing potential and actual conflicts of interest, and must arrange private financial affairs in a manner that prevents such conflicts from arising including declaration of pecuniary interest in any matter being considered as part of their official duties as a Parliamentarian.

Members of the Assembly must carry out their official duties objectively and without consideration of personal or financial interests.

Members of the Assembly must not accept gifts, benefits or favours except for incidental gifts or customary hospitality of nominal value.

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

Members of the Assembly must not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.

Members of the Assembly must not use, or allow the use of, public property or services for personal gain.

Members of the Assembly, when leaving public office and when they have left public office, must not take improper advantage of their former office.

Code of Race Ethics for Members of the House of Assembly

As Members of the Tasmanian Parliament we agree:

- 1 To act in a manner which upholds the honour of public office and the Parliament.
- 2 To respect the religious and cultural beliefs of all groups living within Australia in accordance with the Universal Declaration of Human rights.
- 3 To uphold principles of justice and tolerance within our multicultural society making efforts to generate understanding of all minority groups.
- 4 To recognise and value diversity as an integral part of Australia's social and economic future.
- 5 To help without discrimination all persons seeking assistance.
- 6 To speak and write in a manner which provides factual commentary on a foundation of truth about all issues being debated in the community and the Parliament.
- 7 To encourage the partnership of a government and non-government organisations in leading constructive and informed debate in the community.
- 8 To promote reconciliation with indigenous Australians.

Commonwealth Parliament

House of Representatives

To date the House of Representatives has not adopted a code of conduct or ethics for members. However, in 1995 the then Speaker tabled for discussion draft proposals of a working group of members and senators on a code of conduct for members of parliament entitled *Framework of Ethical Principles for Members and Senators*.

Principles listed in the draft proposals were intended to provide a framework of reference for members in the discharge of their responsibilities outlining the minimum standards of behaviour which are expected of elected representatives.

The Paper set out principles under the following headings:

- Loyalty to the Nation and regard for its laws
- Diligence and economy
- Respect for the dignity and privacy of others
- Integrity
- Primacy of the public interest
- Proper exercise of influence
- Personal conduct
- Additional responsibilities of parliamentary office holders

The working group also drafted a document entitled *Framework of Ethical Principles for Ministers and Presiding Officers*.

The Senate

Similarly, the Senate has not adopted any formal code of conduct or ethical behaviour for Senators. However, the Standing Orders of the Senate prescribe rules governing the conduct of Senators in participation of Senate proceedings. Further, conduct of Senators is the particular subject of some Senate resolutions relating to parliamentary privilege.

One resolution prohibits Senators from asking or receiving any benefit in return for discharging their duties. Another resolution encourages Senators to exercise their freedom of speech with respect for the rights of persons outside the Parliament and not to make statements reflecting adversely on such persons without proper evidence. A further resolution provides for the publication of responses by persons adversely affected by such references (Citizens' Right of Reply).

It is also noted that Members and Senators are subject to the contempt jurisdiction of legislatures and may be adjudged to be in contempt of their own legislature and censured for misconduct.

South Australia

The Parliament of South Australia does not have a Code of Conduct for Members. A Joint Committee has recently been established to examine the need for such a code and, if necessary, recommend a draft Code and detail mechanisms for its implementation.

Western Australia

In February 2003 the Legislative Assembly Procedure and Privileges Committee tabled a report recommending the adopting of a Code of Conduct for Members. A copy of the Code and notes on the Report were distributed to Members of the Standing Orders Committee at the Committee meeting in May 2003.

Any alleged breaches of the Code of Conduct may be raised as matters of privilege pursuant to procedures prescribed by Standing Orders.

DRAFT

REGISTRATION OF MEMBERS' INTERESTS

PART 1 – PRELIMINARY

Definitions

1. In this resolution, unless the contrary intention appears—

“**calendar month**” means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the end of the next month;

“**child**”, in relation to a Member, includes an adopted child, a step-child or an ex-nuptial child of the Member;

“**Clerk**” means The Clerk of the Parliament;

“**committee**” means the Members’ Parliamentary Privileges Committee;

“**company**” means a company, whether a private company or a public company;

“**debenture**” includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a company in respect of money that is deposited with or lent to the company;

“**de facto spouse**” means a person who is living as the spouse or domestic partner of the Member although not legally married to that Member;

“**gift**” means—

(a) the transfer of money, property or other benefit—

(i) without recompense; or

(ii) for a consideration substantially less than full consideration; or

(b) a loan of money or property made on a permanent, or an indefinite, basis;

but does not include travel or accommodation provided by an airline under a commercial loyalty scheme.

“**joint venture**” means an undertaking carried on by 2 or more persons in common otherwise than as partners;

“**Member**” means a Member of the Legislative Assembly;

“**month**” means a calendar month;

“**nominee company**” means a company whose principal business is the business of holding marketable securities as a trustee or nominee;

“**officer**”, in relation to a company, means—

(a) director or secretary of the company; or

(b) any other person who is concerned, or takes part, in the management of the company;

“**partnership**” includes a joint venture;

“**private company**” means a proprietary company, whether incorporated in The Northern Territory or elsewhere;

“**public company**” means a company, other than a private company, whether incorporated in The Northern Territory or elsewhere;

“**Register**” means—

(a) the Register of Members’ Interests; or

(b) the Register of Related Persons’ Interests;

“**related person**”, in relation to a Member, means—

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- (d) the spouse of the Member,
- (e) a child of the Member who is wholly or substantially dependent on the Member; or
- (f) any other person—
 - (i) who is wholly or substantially dependent on the Member; or
 - (ii) whose affairs are so closely connected with the affairs of the Member that a benefit derived by the person, or a substantial part of it, could pass to the Member;

“share” means—

- (a) a share in the share capital of a company;
- (b) stock;
- (c) a convertible note; or
- (d) an option;

“sitting day”, in relation to the Parliament, means a day on which the Parliament meets;

“sponsored travel or accommodation” means any travel undertaken, including accommodation incidental to the travel, or any accommodation benefit received, otherwise than in an official capacity, by the Member or a related person in respect of which a contribution (whether in cash or kind) to the cost of the travel (including incidental accommodation) or the accommodation is made by a person other than the Member or a related person but does not include travel or accommodation provided under a commercial loyalty scheme, or meals or sporting or cultural entertainment.

“spouse”, in relation to a Member, includes a de facto spouse of the Member;

“statement of interests” means—

- (a) a statement of interests (Member); or
- (b) a statement of interests (related persons);

“statement of interests (Member)” means the statement of a Member’s interests required to be given by the Member to the Auditor General under clause 5;

“statement of interests (related persons)” means the statement of the interests of a Member’s related persons required to be given by the Member to the Auditor General under clause 5;

“trade or professional organisation” means a body (whether incorporated or unincorporated) of—

- (a) employers or employees; or
- (b) persons engaged in a profession, trade or other occupation;

being a body the object, or an object, of which is the furtherance of its own professional, industrial or economic interests or those of any of its Members’;

“year” means period of 12 months commencing on 1 January.

Interpretation – terms relating to companies

- 2.(1)** A person is taken to have a controlling interest in shares in a company if the person is able—
- (a) to dispose of, or to exercise control over the disposal of, the shares; or
 - (b) where the shares are voting shares – to exercise, or to control the exercise of, any voting powers attached to the shares.
- (2)** The question whether a company is a subsidiary of another company is to be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the law of The Northern Territory.

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- (3) A reference in this resolution to the holding company of another company is a reference to a company of which that other company is a subsidiary.

Interpretation – forms

- 3.(1) A reference to a form by number is a reference to the form so numbered in the Schedule.
- (2) Strict compliance with a form in the Schedule is not necessary and substantial compliance, or such compliance as the circumstances of a particular case allow, is sufficient.

Custody of Members' Registrations of Interests

- 4.(1) The Auditor General is to be responsible for holding and secure custody of registrations of interests, and for providing access to Members' registrations as prescribed.

PART 2 – STATEMENTS OF INTERESTS**Giving of statements**

- 5.(1) In accordance with **[cl n of the Legislative Assembly [Members Code of Conduct and Ethical Standards] Act]** each Member shall within one month of making and subscribing an oath or affirmation as a Member, or 30 June of each year, provide to the Speaker, in a form determined by the Auditor General from time to time, a statement of—
- (a) the Member's Registerable Interests as at the date of the election, or 30 June of the year in question, as appropriate;
- (b) the Registerable Interests, of which the Member is aware, of related persons as at the date of the election, or 30 June of the year in question, as appropriate;
- (2) A Member must notify the Speaker in writing of any change in the interests given by the Member within one month of becoming aware of the change.
- (3) Where in any year there is no change to the interests last declared by the Member, the Member is required to advise the Speaker to this effect in writing within one month after 30 June each year.
- (4) A Member is required to include in a statement of interests of a related person, information about the person's interests which are known to the Member.
- (7) A Member is not required to give, in any year, more than one statement of interests.
- (8) The Speaker shall convey a Member's statement of interests or information concerning the interests of a Member into the custody and control of the Auditor General upon receipt.

Form of statements and notice of change of details

- 6.(1) A statement of interests —
- (a) must be in accordance with the documentation requirements specified by the Auditor General; and
- (b) is to relate only to interests held by the Member—
- (i) the Member alone; and
- (ii) the Member jointly or in common with a related person.
- (iv) related persons otherwise than jointly or in common with the Member.
- (2) The Auditor General may, in his or her sole discretion, prescribe the documentation requirements for statements of interests, and shall inform the Legislative Assembly of the prescribed requirements by 31 March each year.

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Disclosure of interests

7. A statement of interests required to be given by a Member must contain the following information—
- (a) in respect of any company in which the Member or a related person is a shareholder or has a controlling interest in shares—
 - (i) the name of the company;
 - (ii) where the shareholding or interest constitutes a controlling interest in the company – details of the shareholdings of the company in any other company;
 - (v) where the shareholding or interest is held in a private company, the details of the investments or beneficial interests of the company, but the value of those investments or beneficial interests need not be disclosed;
 - (vi) the date of commencement of the interest; and
 - (v) where the shareholding or interest is held in a private company that is the holding company of another company—
 - (1) details of the investments or beneficial interests of the holding company, but the value of those investments or beneficial interests need not be disclosed;
 - (2) the name of any company that is a subsidiary of the holding company;
 - (3) the name of any company that is a subsidiary of any company that is the holding company's subsidiary; and
 - (4) the details of the investments or beneficial interests of those subsidiary companies, but the value of those investments or beneficial interests need not be disclosed;
 - (b) in respect of any company of which the Member or a related person is an officer—
 - (i) the name of the company;
 - (vi) the nature of the office held;
 - (vii) the date of commencement of the interest; and
 - (iv) the nature of the activities of the company;
 - (c) in respect of any family or business trust or nominee company in which the Member or a related person holds a beneficial interest—
 - (i) the name or a description of the trust, or the name of the company, as the case requires;
 - (ii) the nature of the activities of the trust or company;
 - (viii) the nature of the interest;
 - (ix) the date of commencement of the interest ; and
 - (vi) details of the investments and beneficial interest of the trust, but the value of those investments or beneficial interests need not be disclosed.
 - (d) in respect of any family or business trust in which the Member or a related person is a trustee—
 - (v) the name or a description of the trust;
 - (vi) the date of commencement of the trust relationship; and
 - (ii) the nature of the activities of the trust;
 - (e) in respect of any partnership in which the Member or a related person has an interest—
 - (i) the name or a description of the partnership;
 - (vii) the nature of the activities of the interest;
 - (viii) the date of commencement of the partnership; and
 - (iii) the nature of the interest;

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- (f) in respect of any real estate in which the Member or a related person has an interest—
- (i) the location of the relevant property (by reference to suburb or area);
 - (ii) the approximate size of the property;
 - (v) the purpose(s) for which the property is used, and is intended to be used;
 - (vi) the date of commencement of the interest; and
 - (iv) the nature of the interest;
- (g) in respect of any liability (excluding department store and credit card accounts) of the Member or a related person or a trust of which a Member or a related person is a beneficiary or a private company of which a Member or a related person is a shareholder—
- (iii) the nature of the liability;
 - (iv) the date of commencement of the liability, and
 - (ii) the name of the creditor concerned;
- unless—
- (i) it arises from the supply of goods or services supplied in the ordinary course of any occupation of the Member or business of the trust or private company in which the Member or related person has an interest which is not related to the Member's duties as a Member of the Legislative Assembly; or
 - (ii) the debt is for an amount of \$10,000 or less;
- (h) details of any debenture or similar investment held by the Member or a related person;
- (i) in respect of any savings or investment account of the Member or a related person held with a bank, building society, credit union or other institution—
- (i) the nature of the account; and
 - (ii) the name of the institution concerned;
- (j) gifts valued at more than \$500 from one source, or where two or more gifts are made from one source during the return period exceed, in aggregate, \$500 provided that a gift received by a Member, the Member's spouse or dependent children, from family members need not be registered unless the Member judges that a conflict of interest may be seen to exist;
- (k) in respect of any sponsored travel or accommodation received by the Member or a related person—
- (iv) the source of the contribution concerned;
 - (v) the date(s) of the travel; and
 - (ii) the purpose of the travel.
- (l) any other source of income over \$1000 per annum received by—
- (i) the Member or a related person; or
 - (ii) a private company, or a trust, in which the Member or a related person holds an interest;
- or where the income is under \$1000 and the Member judges that a conflict of interest may be seen to exist;
- (m) details of any other asset of the Member or a related person the value of which exceeds \$10,000, other than—
- (i) household and personal effects;
 - (ii) a motor vehicle used only or mainly for personal use; and
 - (iii) personal superannuation or similar entitlements;
- (n) the name of any political party, trade or professional organisation of which the Member or related person is a Member, or the name of any other organisation of which the Member is

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- an officeholder or financial contributor donating \$1000 or more in any single calendar year to that organisation;
- (o) any other interest (whether or not of a pecuniary nature) of the Member or a related person—
 - (i) of which the Member is aware; and
 - (vi) that raises, appears to raise, or could foreseeably raise, a conflict between the Member's private interest and his or her duty as a Member.
 - (q) in respect of any interest which the Member has declared in a previous statement and has disposed of in the reporting period:
 - (k) the date of the disposal of the interest;
 - (l) the method of disposal of the interest; and
 - (ii) the name of the person or entity which acquired the interest.

Questions concerning statements

- 8.(1)** If a question relating to whether a matter should or should not be included in a statement of interests is raised by a Member with the Auditor General, the Auditor General shall resolve the matter with the Member, taking into account any resolution of the Legislative Assembly affecting the matter.

PART 3 – REGISTERS**Keeping of Registers**

- 9.(1)** The Auditor General shall keep, in such form as the Auditor General considers appropriate—
- (a) a Register of Members' Interests; and
 - (b) a Register of Related Persons' Interests.
- (2)** As soon as practicable after receiving a statement of interests made by a Member, the Auditor General must—
- (a) in the case of a statement of interests by a Member – enter in the Register of Members' Interests the relevant details contained in the statement; and
 - (b) in the case of a statement of interests by a related person – enter in the Register of Related Persons' Interests the relevant details contained in the statement.
- (3)** As soon as practicable after receiving a notice of change of information under subclause 5, the Auditor General must make such alteration to the information entered in the relevant Register as is necessary to reflect the change.

Custody of Registers

- 10.** The Auditor General is to have the custody and control of—
- (a) each Register;
 - (b) each statement of interests received by the Auditor General under clause 5; and
 - (c) any notice of change of interests received by the Auditor General.

Tabling of Register of Members' Interests

- 11.** As soon as practicable after—
- (a) the first sitting day of each Parliament; and
 - (b) the 30th day of June in each subsequent year during the life of that Parliament;
- the Speaker must cause a copy of the current Register of Members' Interests to be laid before the Legislative Assembly.

Publishing of Register of Members' Interests

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12. The Register tabled in accordance with 11(a) above shall be immediately published as a Parliamentary paper.

Inspection of Registers

- 13.(1) The Auditor General must, at the request of a person, permit the person to inspect the Register of Members' Interests during normal business hours of the office of the Auditor General.
- (2) The Auditor General must, on request, make the Register of Related Persons' Interests available to—
- (a) the Speaker;
 - (b) the Chief Minister;
 - (c) any other Leader in the Legislative Assembly of a political party;
 - (d) any independent Member of the Legislative Assembly; and
 - (e) the Clerk of the Parliament.

PART 4 – COMPLIANCE MEASURES**Claims by Members**

- 14.(1) A Member may make an claim against another Member that the other Member has failed to comply with the requirements relating to the disclosure of a relevant interest.
- (2) The claim must be made in writing to the Speaker.
- (3) The Speaker must give copies of a claim to the Member to whom it refers, and to the Auditor General, as soon as practicable.

Consideration of Claims

- 15.(1) The Auditor General must consider each claim referred by the Speaker and, for that purpose, may—
- (a) give each Member concerned the opportunity to be heard; and
 - (b) obtain information from such other persons, and make such inquiries, as the Auditor General thinks fit;
- after which the Auditor General may—
- (c) make a report to the Legislative Assembly; and
 - (d) with the report, identify findings of fact, and any recommendations in relation to the matter which the Auditor General considers appropriate.
- (2) A report under clause 15(1) may not be made unless—
- (a) the Auditor General has given the Member against whom the claim has been made an opportunity—
 - (i) to be heard; and
 - (ii) to make written submissions; and
 - (c) the Auditor General has given the persons that the Member nominates a reasonable opportunity to provide information relevant to the claim.
- (3) Parliamentary privilege applies to the making of a claim to the Auditor General under cl 14, information provided to the Auditor General under cl 15(2)(b), and a Auditor's General report made under cl 15(1).

Claims by Members of the Public

- 16.(1) A person may make a claim alleging that a Member has failed to comply with the requirements relating to the disclosure of a relevant interest.
- (2) The claim must be made in writing to the Auditor General.

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- (3) The Auditor General must, before taking any action in relation to the claim, inform the person in writing of the extent to which qualified privilege may apply to communication with the Auditor General.
- (4) The Auditor General may require the person to provide—
 - (a) details of their name and address;
 - (b) details, or further details, of the claim; and
 - (c) copies of any documents or other material in the possession of or reasonably available to the person which supports the claim.
- (5) The Auditor General may refuse to take action or further action in relation to the claim if the person refuses or fails to comply with a requirement under subclause (4).
- (6) If the Auditor General considers on reasonable grounds that there is evidence to support a claim, the Auditor General must give the details of the claim to the Member concerned.

Consideration of Claims

- 17.(1) Where a claim is referred to it, the Auditor General -
 - (a) shall request the Member concerned to provide a response to the claim; and
 - (i) give the Member the opportunity to be heard;
 - (ii) give other persons nominated by Member the opportunity to provide information; and
 - (iii) make such inquiries as the Auditor General thinks fit.
- (2) The Auditor General must make a report to the Legislative Assembly in respect of the claim—
 - (a) if the Member concerned disputes the claim – on completion of consideration of the claim by the Auditor General;
 - (b) if the Member confirms the allegation – on receiving notice to that effect; and
 - (c) if the Member does not, within a reasonable period, respond to a request given to him or her under paragraph (1)(a) – on the expiration of the period.
- (3) The Auditor General must, with the report, identify findings of fact, and any recommendations in relation to the matter which the Auditor General considers appropriate.
- (4) The Auditor General may not, in the report, make a finding that is adverse to the Member concerned unless it has given the Member—
 - (a) a copy of the claim and an opportunity to be heard in relation to the claim; and
 - (b) a copy of the proposed report.

Explanatory Notes

- 18. The Auditor General may produce and publish explanatory notes, and engage in public discussion, concerning the objectives and procedures relevant to the information to be included in the Registers.

PART 5 – ENFORCEMENT**Effect of failure to comply with requirements**

- 19. A Member who knowingly—
 - (a) fails to give a statement of interests al under subclause 5(1);
 - (b) fails to notify under subclause 5(2) a change of interests; or
 - (c) gives a statement of interests, or information, that is false, incomplete or misleading in a material particular;
 is guilty of a contempt of the Parliament and may be dealt with accordingly.

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MEMBERS' CODE OF CONDUCT AND ETHICAL STANDARDS

Preamble

This Code and Standards is established under clause NN of the Legislative Assembly [Members Code of Conduct and Ethical Standards] Act 2002.

The Code and Standards are intended to be read in conjunction with other relevant laws, the Standing Orders of the Assembly, and any other standards governing the conduct in office of Members of the Assembly which may be established by the Assembly from time to time.

In case of doubt or inconsistency, the Act provides that the Assembly's Standing Orders and other Standards are to be interpreted so as to be consistent with the principles established by the Legislative Assembly [Members Code of Conduct and Ethical Standards] Act..

Failure to comply with the Code of Conduct and Ethical Standards may be considered by the Privileges Committee of the Assembly or the Auditor General, as provided by the Act.

As the fundamental objective of the Act is to foster enhanced public confidence in the integrity of the Legislative Assembly and its Members, the Act declares that this objective is not fully satisfied by minimal compliance with the Code.

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PART I – GENERAL PRINCIPLES

1 The *Legislative Assembly [Members Code of Conduct and Ethical Standards] Act* establishes general principles of ethical conduct relevant to the duties, functions and obligations of Members in the Legislative Assembly.

2 The Act also requires each Member of the Assembly to ensure that their conduct in office conforms generally to the principles, and is otherwise in accordance with the specific Standards of this Code.

3 The principles established by the Act are –

- **Integrity,**
- **Accountability**
- **Responsibility** and
- **the Public Interest,**

4 The *Members Code of Conduct and Ethical Standards* is intended to assist Members of the Assembly to meet the objectives of the Act, and to inform the public at large about the standards of ethics and conduct in office which generally apply to Members.

5 This Code does not exhaust all possible situations in which the above principles will be relevant to the conduct of Members.

6 To assist Members and the general community, each section of the Code provides a *Commentary*, which explains the major reasons and objectives which underpin each principle, and gives examples of appropriate conduct in particular circumstances. The *Standards* set out specific procedures and forms of conduct in public office which are required to be observed by Members of the Legislative Assembly.

7 Where a situation arises which is not the subject of a specific Standard under this Code, or where the principles established by the Act are in conflict, a Member is required to make a judgement about what conduct or action represents a reasonable and responsible attempt to meet the overall objectives of the Act.

PART II - COMMENTARY AND STANDARDS**1. Integrity**

1 Recognising that high standards of personal integrity among elected officials is crucial to the viability of democratic institutions, Members are required to

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ensure that they act with **integrity** in acting as a Member of the Assembly, through the lawful, honest exercise of the duties and responsibilities of a Member, uninfluenced by conflicts of interest.

Commentary:

2 The Assembly's primary function is to make laws "for the peace, order and good government of the Territory"¹.

3 Public confidence in the integrity of government decisionmaking is essential to an effective democracy. Especially in a relatively small community, the perception that a Member stands to obtain an improper personal benefit through their position in the Assembly, can compromise that confidence fatally.

4 The Register of Members' Interests is an important mechanism that has evolved as a means of enhancing public trust in the integrity of the Assembly and its decision-making. Declaration and Registration of interests makes available to the public at large information about those private interests which might be thought likely to affect a Member's advocacy or decisionmaking in the Assembly or its Committees.

5 In addition, the public declaration and registration of Members' and related persons' interests provides an objective basis upon which the integrity of Members, and of the Assembly as a whole, may be judged by the community.

6 Members are therefore required to identify relevant pecuniary and other interests, and those of their family members, in an annual process of registration. The Register is accessible to the public. Failure to register a relevant personal interest as required by the Assembly constitutes a contempt of the Assembly².

7 This Code requires a member to make an oral declaration of a personal interest whenever they propose to speak in a debate or vote on a matter before the Assembly to which their interest is relevant.

*Standards**Conflicts of Interest*

8 Members are required generally to avoid conflicts between their private interests and the official functions and responsibilities which they have as Members.

9 In particular, any pecuniary or other interests of a Member, must be managed in accordance with these Standards, or disposed of, so as to ensure that no actual or apparent Conflict of Interest arises or continues.

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10 Members are required to ensure that they do not come under any financial obligation to individuals or organisations which might appear to a reasonable person likely to influence the Member improperly in the performance of their duties as a Member.

11 Members are required as far as reasonably possible to ensure at all times that they are not seen as being in a position to benefit unfairly or improperly from their official position.

Declaration of Interests

12 While Members are required by law³ to register relevant pecuniary and other interests, this Code requires that a Member shall not vote in any division upon a question in which the Member is aware of an interest which he or she is required to register unless the Member has first declared the interest to the Assembly, irrespective of whether the interest has already been formally registered. The declaration is required to be made:

- (a) at the beginning of their speech if the Member participates in debate on the matter in the Assembly or a Committee of the Assembly; or
- (b) as soon as practicable after a division is called for after debate on the matter if the Member proposes to vote in that division without having participated in the debate.

13 Acting as a consultant, adviser, or advocate for any company or business interest, whether paid or unpaid, shall be regarded as a declarable interest for the purposes of these Standards.

14 In recognition that the representative duties of a Member of the Assembly require a commitment of time and effort at least equivalent to that of full-time employment, and that conflicts of interest are generally to be avoided, Members are required to undertake no other employment or business activity involving them in significant management responsibility or professional effort while they serve as a member of the Assembly.

Honesty

15 Members are expected to act honestly in all their official dealings, and to ensure that they take all reasonable steps in the circumstances to ensure that they do not mislead the public or the Assembly on any matter of significance arising from the performance of their functions as a Member.

Self-dealing

16 Members often receive information which is either confidential or privileged (that is, not available to the general public). In using such

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information, a Member is required to respect the status of the information and any conditions attached to its provision to the Assembly. A Member is required not to misuse, or to allow others to misuse, any confidential or privileged information which has come to them through their official functions as a Member, for any private purpose including for their personal advantage.

- 17 Members of the Assembly are required by the *Legislative Assembly [Members Code of Conduct and Ethical Standards] Act 2002*, for a period of one year after ceasing to be a Member, not to represent or take up employment or a Directorship with, nor act as an adviser or consultant to, any company, organization, or other private interest [excluding a Northern Territory public sector agency or government body] with which they had direct and significant involvement in their capacity as a Member of the Assembly in their last twelve months in office.
- 18 On leaving office a former Member is prohibited by the *Legislative Assembly [Members Code of Conduct and Ethical Standards] Act 2002* from taking improper personal advantage of information provided to or generated by the Assembly, to which they had privileged access as a Member.

Gifts

- 19 Members, in their official capacity, may accept customary official gifts, hospitality, tokens of appreciation, and similar formal gestures in accordance with normal social custom, but are required not to seek or encourage any form of gift or benefit in their personal capacity.

Contracts and other Business Relationships

- 20 A Member shall not hold or continue to hold, in their own capacity or through a third party, a contract or like business arrangement for the provision of services to or for any Northern Territory Government body [as defined], the NT Public Service, or the Assembly.
- 21 Where a Member's spouse or partner, or a related person (as defined), holds a contract or like business arrangements for the provision of services to or for any Northern Territory Government body [as defined], the NT Public Service, or the Assembly such an interest constitutes a declarable interest and is required to be registered and declared by a Member in the prescribed circumstances.

2. Accountability

- 22 Members are required to observe the principle of **Accountability** in relation to the functions of a Member of the Assembly, in particular by ensuring that their decisions as a Member are open to public scrutiny

MEMBERS' CODE OF CONDUCT AND ETHICAL STANDARDS

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and justification, and by being prepared at all times to justify their conduct publicly.

Commentary

- 23 Public office being a public trust, it is a long-established expectation that those public officials who make decisions or exercise powers which affect the welfare, rights or entitlements of the community and individuals are subject to an ethical obligation to ensure that their powers and influence are used lawfully and fairly, and to be prepared to demonstrate in an appropriate way that this obligation has been met.
- 24 The principle of Accountability, in the context of membership of the Legislative Assembly, recognises that citizens are in principle entitled to be informed of the reasons for a decision or policy which affects them.
- 25 Accountability, when given effect, fosters integrity and probity of official decisionmaking, good governance, and the prevention and detection of corruption, and thereby encourages public confidence in the organisations and individuals which practise it.

Standards*Public Scrutiny*

- 26 Members are required to conduct all official business on the basis that they may be expected to demonstrate publicly that their actions and decisions in relation to the conduct of public business were taken with the sole objective of advancing the public interest.

Openness

- 27 As holders of public office, Members should in general be as open as possible about the decisions that they take in their official capacity.
- 28 Members are required to be able to demonstrate, in response to a genuine and non-trivial request, that their conduct in office was not arbitrary, unreasonable, without proper justification, lacking in procedural fairness, unreasonable, **or an abuse of public office.**

3. Responsibility

- 29 Members are required to ensure that their decisions conform with the principle of responsibility, that is, that they not reckless or negligent, but reflect a proper consideration of all relevant matters, including the reasonably foreseeable consequences for those likely to be affected by them.

Commentary:

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- 30 High standards of responsible conduct in office by public officials do not simply happen of their own accord - they have to be established by institutional and personal effort, and may require courage and self-denial by officials, and community support, to sustain. The role of members of Parliament in providing leadership is a crucial one.

Standards

- 31 Members are required to act responsibly in upholding the laws of the Northern Territory and Australia, including this Code, and to demonstrate standards of official conduct acceptable to the community at large. These obligations are not fully discharged merely by compliance with the letter of the law or this Code.
- 32 Members are required to foster by their conduct in office those principles which safeguard democratic rights and freedoms, and good governance, in particular :
- *the independence of the Assembly*
 - *the Rule of Law*
 - *Recognition of the value of social and cultural diversity*
 - *Fairness and integrity in official decisionmaking*
 - *Freedom of reporting by media*
 - *A non-partisan Public Service*
 - *Freedom of speech*
 - *Access to justice*
- 33 A Member's decisions, directions, work expectations or personal conduct in office should not be such as to induce other public officials, including public servants, to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity.
- 34 A Member will be held responsible for proven dishonest use or claim of an allowance or other entitlement.
- 35 Members are to be responsible for the resources and facilities provided to them and their staff at public expense.
- 36 Members are required to recognise that the Public Service is expected to function as a non-partisan public resource, and treat public servants in accordance with established conventions of Public Service neutrality. A Member's conduct in office should not be such as to induce other public officials, including public servants, to fail to comply with the relevant professional standards or code of ethical conduct applicable to them in their official capacity⁴.
- 37 Members are expected to accept responsibility for ensuring that they promote the observance of these Standards by leadership and example.

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Under this principle, Members are also expected to take the initiative to discourage or prevent corruption and misconduct by officials.

4. The Public Interest

- 39 Public officials are employed at public expense to serve the community by contributing to good government. In performing their official functions and duties, Members of the Assembly are expected to advance “the public interest”.

Commentary:

- 40 Members of the Assembly are therefore expected to maintain and strengthen the public's trust and confidence in government, by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding the Constitution and the laws, and seeking to advance the public good at all times.

Standards:

- 41 When taking official decisions, Members are required to act in **the public interest**, broadly understood.
- 42 In particular, Members must ensure that their decisions and conduct as a Member are based on an honest, reasonable, and properly informed judgement about what will best advance the common good of the people of The Northern Territory.

PART III – IMPLEMENTATION

- 1 This Code acknowledges the supremacy of the Legislative Assembly in a democratic system of government.
- 2 The basis of the standards required by this Code is that Members of the Legislative Assembly are selected by and ultimately responsible to their electors in accordance with the law.
- 3 The provisions of this Code do not limit the authority of the Legislative Assembly to impose standards of conduct on its Members.

References

- 1 *Northern Territory (Self Government) Act, s.6*

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2. *Legislative Assembly (Registration of Members' Interests) Act, s. 10*
3. *Legislative Assembly (Registration of Members' Interests) Act*
4. *For example, the Code of Conduct of the Northern Territory Public Service under the Public Sector Management and Employment Act 1995*

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Provisions to be carried in proposed Legislation

The following provisions must be enshrined in law to ensure effectiveness over former Members:

Members of the Assembly are required, for a period of one year after ceasing to be a Member, not to represent or take up employment or a Directorship with, nor act as an adviser or consultant to, any company or business interest with which they had direct contact or involvement in their capacity as a Member of the Assembly in their last twelve months in office.

On leaving office former Members are prohibited by the Ethics in Government Act from taking personal advantage of official information to which they had privileged access as a Member.

A Member shall not hold or continue to hold a contract for the provision of services to or for a government body, the public service, or the Assembly.

The Auditor General may investigate a claim of failure to register a required interest.

Extract from *Hansard*

Speech by the Chief Minister, the Honourable Clare Martin, MLA, 20 June 2002

Ms MARTIN (Chief Minister): Madam Speaker, I lay on the Table the draft Members' Code of Conduct and Ethical Standards; and the draft Amendments to the *Legislative Assembly (Register of Members' Interests) Act*. I am very pleased to be able to table these two draft documents. I intend to seek referral of them to the Standing Orders Committee for consideration and report back to the Assembly in the October sittings of parliament.

This draft Members' Code of Conduct and Ethical Standards delivers on a key election promise of the government. Members on this side of the House have long supported a code of conduct for members and an improved register of members' interests. Codes of conduct for elected and appointed public officials define acceptable and unacceptable conduct in office, and provide for disciplinary and other action cases of non-compliance. In general, the proposed code provides guidance to members of the Assembly on conflicts of interest arising from their function as an elected official, the obligation to recognise the need for accountable and responsible conduct in office by members, and the overall duty of a member to seek to advance the public interest.

It is proposed that this code will be created by the enactment of a new law, the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act*. The code is based generally on established Australian and Territory practice, and also draws on models of codification from New Zealand, Canada, the United States and the United Kingdom. While the code sets standards which are ultimately enforceable, it also sets aspirational standards for members' conduct in office, which reflect current best practice internationally. The code does not provide sanctions for breaches of acquired standards. Instead, the act will provide, in line with current Assembly practice, that the Privileges Committee of the Assembly will be able to deal with failure to observe the principles set out in the act and the standards prescribed by the code.

Traditionally, codes of conduct provide accountability arrangements which emphasise dealing with wrongdoing after the event. This code will allow a proactive approach to ethics management designed to reduce the incidents of ethical breaches which have the potential to cause embarrassment to the member, the government or the Assembly, and which may require costly investigations. Examples are, poor management of conflict of interests, and improper involvement in tendering procedures for contracts generally. It also provides a clear basis for community expectations of members' conduct in office, potentially reducing the scope for unwarranted or trivial complaints about the way in which members conduct themselves.

The new act will strengthen existing requirements for members of the Assembly to declare and register relevant pecuniary interests and those of their immediate family. In the interests of providing independent, expert and non-partisan investigation of allegations that a member has failed to declare a significant interest as required, the Office of the Auditor-General will be given the task of investigating the factual basis of any complaint and reporting findings of fact to the Assembly's Privileges Committee.

Looking specifically at the Members' Code of Conduct and Ethical Standards: the preamble outlines the fundamental objective of the act, which is to foster enhance public confidence in the integrity of the Legislative Assembly and its members. The act declares that minimal compliance with the letter of the law and the code will not be necessarily sufficient to meet the standard of conduct envisaged by the code.

Part 1 is General Principles. Clause 1 of the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act* establishes general principles of ethical conduct relevant to the duties, functions and obligations of members in the Legislative Assembly, and requires each member of the Assembly to ensure that their conduct in office conforms generally to the principles and the specific standards of the code. Clause 3 sets out the four principles established by the act which are: integrity, accountability, responsibility and the public interest.

Clauses 6 and 7 are to assist members and the general community. Each section of the code provides a commentary which explains the major reasons and the objectives which underpin each principle, and gives examples of appropriate conduct in particular circumstances. The standards set out specific procedures and forms of conduct in public office which are required to be observed by members of the Legislative Assembly. In cases of doubt, a member is required to make a judgment about what conduct or action is reasonable and responsible.

Part 2 of the code relates to commentary and standards. Principle 1, Integrity: clauses 1 to 3, integrity is required of members in the form of the lawful, honest exercise of the duties and responsibilities of a member uninfluenced by conflicts of interest. This principle is recognised in all Westminster style systems of government. Clause 4, Declaration and Registration of Interests, is currently provided for by standing orders and, in some respect, by the *Legislative Assembly (Register of Members' Interests) Act*. The code, based on provisions to be included in the new act, will clarify and strengthen the public integrity requirements in relation to private interests which might be thought likely to affect the member's advocacy or decision making.

Clause 7: this part of the code requires a member to make an oral declaration of a personal interest whenever they propose to speak in a debate or vote on a matter before the Assembly to which their interest is relevant. This form of declaration is currently only required in relation to contracts in

which the member concerned has an interest. Conflicts of interest: clauses 8 to 11 require that members are required generally to avoid conflicts between their private interests and the official functions and responsibilities which they have as members, by managing the interest or disposing of it so as to ensure that no actual or apparent conflict of interest arises or continues.

Clause 12 deals with declaration of interest. This part of the code requires that a member shall not vote in any division upon a question in which the member is aware of an interest that he or she is required to register, unless the member has first declared the interest to the Assembly, irrespective of whether the interest has already been formally registered. Clause 13 deals with acting as a consultant advisor or advocate for any company or business interest, whether paid or unpaid, and is to be regarded as a declarable interest.

Clause 14 deals with members who engage in no other employment or business activity involving them in significant management responsibility or professional effort while they serve as a member of the Assembly. Honesty. Clause 15: members are expected to act honestly in all their official dealings and to correct significantly misleading or incorrect information given by them. Self-dealing, which is clause 16: this clause provides that a member is required not to misuse or to allow others to misuse any confidential or privileged information which has come to them through their official functions as a member for any private purpose, including for their personal advantage.

Clause 17: members are to be restricted by provisions of the proposed *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act* from certain forms of private capacity employment for a period of one year after ceasing to be a member. Such post-service restrictions are widely imposed internationally, either by law - for example, in the USA - or by convention - in the United Kingdom. Former members of the Assembly will not be able to represent or take up employment or a directorship with, nor act as an advisor or consultant to, any company, organisation or other private interest with which they have direct and significant involvement in their capacity as a member of the Assembly in their last 12 months of office. An exception will be made in the case of appointments of former members to Northern Territory Public Sector agencies or government bodies. A breach of this requirement will attract prosecution under the act and a range of penalties according to the seriousness of the breach.

Clause 18 indicates former members are also to be prohibited from taking improper personal advantage of information provided to, or generated by, the Assembly to which they had privileged access as a member by the proposed legislation. A breach of this requirement will attract prosecution under the act and a range of penalties according to the seriousness of the breach.

Gifts are dealt with in clause 19. This clause provides that members in their official capacity may accept customary official gifts in accordance with

normal social custom but are required not to seek or encourage any form of gift or benefit in their personal capacity.

Clauses 20 and 21 deal with contracts and other business relationships. These clauses require that a member shall not hold or continue to hold in their own capacity or through a third party a contract or like business arrangement for the provision of services to government bodies of the Assembly. Restrictions on members of the Assembly holding contracts or like business arrangements with the executive government are justified by the need to ensure the independence of members and the Assembly itself. Members are required to ensure that they have no financial dealings in their personal capacity either as a contractor, defaulter or consultant with the Assembly or the government. This constraint is not intended to exclude a member's spouse or partner or a related person, as defined, from having such contracts or like business arrangements with the government, but such dealings will constitute a declarable interest and will be required to be registered and declared by a member in the prescribed circumstances. A breach of this requirement will attract prosecution under the proposed *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act* and a range of penalties according to the seriousness of the breach.

Principle 2 of this act is accountability. Clause 22 requires that members observe the principle of accountability in relation to the functions of a member of the Assembly, and this principle is recognised in all Westminster style systems of government. Clauses 23 to 25 deal with accountability in terms of public office being a public trust. Clause 26 deals with public scrutiny and highlights that members are required to accept public scrutiny of their decisions. Clauses 27 and 28 deal with openness. Members are required in general to be as open as possible about the decisions that they take in their official capacity.

Principle 3 deals with responsibility. Clauses 29 and 30: members are required to ensure that their decisions conform with the principle of responsibility, that is, that they be not reckless or negligent but reflect the proper consideration of all relevant matters including the reasonably foreseeable consequences for those likely to be affected by them.

Clause 31: members are required to act responsibly in upholding the laws of the Northern Territory and Australia including this code, and to demonstrate standards of official conduct acceptable to the community at large. These obligations are not fully discharged merely by compliance with the letter of the law or this code.

Clauses 32 to 35: responsibility is discussed in terms of democratic principles and freedoms, good governance and leadership by example. Clause 36: members are required to recognise that the public service is expected to function as a non-partisan public resource to be treated in accordance with established conventions of public service neutrality. Clause 37: members are to take the initiative to discourage or prevent corruption and misconduct.

Principle 4, which is the fourth and final principle of the code, deals with the public interest. Clauses 38 and 39: the code requires members to contribute to good government by seeking to advance the public interest based on an honest, reasonable and properly informed judgement about what will best advance the common good of the people of the Northern Territory.

Part 3 of the bill relates to implementation. Clauses 1 to 3: the code acknowledges the supremacy of the Legislative Assembly in a democratic system of government and recognises that members are not employees in the usual sense, but are primarily responsible and accountable to the Assembly and their electorates. Accordingly, the Members' Code of Conduct and Ethical Standards is to be created by the proposed new *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act* which will create offences and penalties in relation to prohibition or restricted conduct by members of the Assembly including certain conduct arising after a member has left public office. In particular, certain forms of employment in the private sector within a period of a year after leaving public office, and misuse of privileged information by a former member will be prohibited and will be made the subject of prosecution and penalties according to the severity of the offence.

The existing *Legislative Assembly (Register of Members' Interests) Act*, established the requirements for registration of pecuniary and other interests by serving members. The act is to be amended by the insertion of proposed new provisions that will significantly strengthen the requirements for annual registration and *ad hoc* declaration of members' interests. The new act will also provide for claimed breaches of the requirements to be the subject of independent investigation by the Auditor-General, as an officer of the Legislative Assembly. Any penalty for a proven breach of the registration of interest requirements by a serving member is to be decided by the Assembly following investigation by the Auditor-General, whose role is to be limited to making inquiries, reaching findings of facts and providing a report to the Assembly in accordance with the requirements of procedural fairness. All other breaches of the members' code of conduct and ethical standards will remain within the competence of the Legislative Assembly to investigate and decide as it sees fit.

The measures I have outlined will provide the Territory parliament with a rigorous and disciplined framework to deliver improved standards of transparency and accountability for all members. The introduction of the Territory's first overarching legislation aimed at delivering open and accountable government, coupled with a rigorous code of conduct, strengthened registration of members' interests and an increased role for the Auditor-General should be embraced by all members of this House. I call on all members of this House to support these measures, and I look forward to the Standing Orders Committee report in the October sittings.