



## ***Proposals for*** **Standards of Conduct for Members of the Senate<sup>1, 2</sup>**

### **Foreword**

The Australian people are entitled to expect the highest standards of integrity and conduct from all holders of public office, and in particular from their elected representatives in Parliament.

This expectation is grounded on two fundamental principles, namely that public office is a public trust<sup>3</sup>, and that the purpose and function of the Parliament, as established by the Constitution, is to provide peace, order, and good government for the people of Australia.

Parliament is a unique institution. It plays a critical role in our democracy of holding the Executive branch of government to account.

Parliament's Members hold a unique public office established by law, democratic principles, and convention. They exercise discretionary power, whether voting on proposed legislation, considering evidence presented and representations by lobbyists and citizens, participating in the work of parliamentary committees, formulating or debating policy, utilising parliamentary procedures, asking questions of Ministers, bureaucrats, or contributing to public and parliamentary debate on issues of public significance.

### **Purposes of the Standards**

These Standards are intended to:

- a) identify the obligations of all Senators as Members of this House. These obligations reflect the fact that to perform their trustee's duty it is necessary to act without regard to the personal interests in furthering the public interest and the common good of the communities they serve;
- b) promote public confidence in the integrity of Parliament, its members and its processes by the fact of their adoption by the Senate, and by providing a framework of reference

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<sup>1</sup> This draft is prepared by Accountability Round Table; it draws on (i) the UK House of Commons *Code of Conduct* adopted 12 March 2012 and (ii) the Australian *Standards of Ministerial Ethics* (2008 & 2010) and (iii) the Draft Code prepared by the House of Representative's Committee of Privileges and Members' Interests 2011: other similar codifications of standards by comparable Commonwealth countries and various Australian States and Territories have also been considered.

<sup>2</sup> An exactly similar Code to apply to Senators should be adopted by the Senate

<sup>3</sup> For recent discussion, see Chief Justice Robert French, AC "Public Office and Public Trust" 22 June 2011 Canberra (Seventh Annual St Thomas More Forum Lecture);

<http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj22jun11.pdf>

for Senators in the discharge of their responsibilities and a settled public basis for making, and responding to, allegations that a Senator has breached these Standards.

## **Interpretation and application of Code.**

- (a) These standards are intended to be consistent with the *Standards of Ministerial Ethics*, reflecting the fact that Ministers are Members of Parliament who carry additional responsibilities arising from their functions as decision-makers in the Executive government.
- (b) The interpretation and application of these Standards is ultimately the responsibility of the Senate itself, through such mechanisms as it may determine. The Senate may resolve to take advice on any matter arising from the Standards, or the Standards themselves, in its sole discretion.

## **Scope of the Standards**

- (a) These Standards apply to Senators' conduct in public office. A Senator's conduct in their private and personal lives may be subject to scrutiny only where such conduct could be considered, on reasonable grounds, to be such as to compromise public confidence in the integrity of the Parliament and its Members.
- (b) The conduct of a Senator's immediate family, or current or former friends or associates, may be subject to scrutiny only if such conduct could be considered, on reasonable grounds, to be such as to compromise public confidence in the integrity of the Senator concerned.
- (c) The Standards are complementary to the procedural rules of the Senate and the rulings of the Chair, and to those obligations which apply to Senators subject to the Standards of Ministerial Ethics.
- (d) These Standards provide the sole criteria for investigation and determination of alleged misconduct relevant to their public office.

## **The Standards**

### **General Duties of Senators**

1. These Standards recognise that
  - (a), by virtue of the oath, or affirmation, of allegiance taken following election to the Parliament, Senators have a general duty to be faithful and bear true allegiance to the Head of State according to law, and
  - (b) Senators have a general duty to uphold the law, including the general law against discrimination and specific laws relating to corrupt conduct and misconduct in public office.

2. Given that public office is a public trust, Members of Parliament must at all times,
  - (a) act with honesty and probity and with due regard for the principles of integrity, fairness, accountability, responsibility, and public interest, inherent in the concept of public office and expressed as requirements in these Standards,
  - (b) ensure that their personal conduct is, and is seen to be, respectful of the dignity, reputation and integrity of the institution of Parliament,-
  - (c) avoid actual or apparent conflicts of interests, and arrange their private affairs in a manner that bears the closest public scrutiny, recognising that this requirement may not be fully discharged by simply acting within the law.

### **Rules of Conduct**

3. For the avoidance of doubt, Senators are required to observe the following Rules of Conduct, interpreted where necessary so as to be consistent with the *General Duties of Senators*:

#### ***Integrity and Probity***

- 3.1. Senators are required to base their conduct in public office on a consideration of the public interest, and shall avoid situations in which there may be, or appear to be, a conflict between their personal interests and the public interest.
- 3.2. In the event of a conflict of interests occurring a Senator shall take all reasonable steps to resolve the conflict of interests as soon as practicable, and in favour of the public interest.
- 3.3. Senators must ensure they act with integrity – that is, through the lawful and disinterested exercise of the statutory and other powers available to their position, using the resources available to their office for public purposes in a manner which is appropriate to the responsibilities of a Senator.
- 3.4. A Senator may not make use of public sector facilities for party-political fundraising activities other than in those which are available to the public and on the same commercial terms as are available to the general public.
- 3.5. Senators must not allow resources and facilities provided for their use to be used for any purpose that is not authorised.
- 3.6. Senators shall not place themselves under any financial or other obligation to outside individuals or organisations such that they might be, or appear to be, subject to improper influence in the performance of their Parliamentary duties.
- 3.7. In carrying out public business, including making representations or recommendations relating to public appointments, awarding or terminating contracts, or recommending rewards or employment, Senators must make their recommendations or decisions on merit, procedural probity, and the public interest.
- 3.8. Senators are required to regard the skills and abilities of public servants as a public resource, and ensure that public servants are deployed only for appropriate public purposes.

### ***Fairness***

- 3.9. Senators must be able demonstrate that they have taken all reasonable steps to observe relevant standards of procedural fairness and good decision-making in all actions taken by them in their official capacity.
- 3.9.1. In particular, Senators are required to ensure that actions taken by them are unaffected by bias or irrelevant consideration, or improper considerations of private advantage or disadvantage.
- 3.9.2. Senators shall ensure that their demands on public service resources do not encourage or require the breach of any relevant public service law or code of conduct, or compromise the public service obligation of political neutrality.

### ***Accountability***

- 3.10. Senators are required, if called upon to do so, to provide an honest and comprehensive account of their performance of the functions and duties of Parliamentary office.
- 3.10.1. A Senator is expected to conduct all official business on the basis that they can demonstrate publicly that their actions and decisions, in conducting that business, were taken with the sole objective of advancing the public interest.
- 3.10.2. A Senator is required to be accountable for the use of any public resource, ensuring it is used for the conduct of public business and in doing so is not wasteful or extravagant.
- 3.10.3. Senators must be scrupulous in ensuring the legitimacy and accuracy of any claim for entitlement to any allowances, whether for themselves or for others.

### ***Responsibility***

- 3.11. Senators are expected to be honest in the conduct of public office and take all reasonable steps to ensure that they do not mislead the public or the Parliament.
- 3.11.1. It is a Senator's personal responsibility to ensure that any error or misconception in relation to such a matter is corrected or clarified, as soon as practicable and in a manner appropriate to the issues and interests involved.
- 3.11.2. Senators must not, by their actions, directions or conduct in office, encourage or induce any public official, including public servants, to breach the law, including in relation to the use of electorate offices and other resources provided to them in their official capacities.

### ***The Public Interest***

- 3.12. A Senator may not take any action or make any communication in the Senator's capacity as a Member of Parliament with the purpose of improperly advancing a private interest of the Member or of another person.
- 3.12.1. A Senator may not use any privileged information which they have gained in the course of their official duties for improper personal advantage or the improper benefit of any other person or interest.
- 3.12.2. A Senator may not take any action or make any communication in the Senator's private capacity as a Member of Parliament with the purpose of advancing a private

interest of the Senator or of another person.

- 3.12.3. A Senator shall not act as a paid advocate in any proceeding of the Parliament, or in any activity related to their capacity as a member.
- 3.12.4. A Senator shall ensure that any unlawful offer of a benefit of any kind, which is intended to influence his or her conduct as a Senator, (including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to either the Senate, or to any Committee of the Senate or to any Joint Committee), is brought to the attention of an appropriate law-enforcement agency as soon as it is practicable to do so.
- 3.12.5. Senators must declare and register their personal interests, including but not limited to pecuniary interests, assets and affiliations, as required by the Senate from time to time, and must notify the Senate as soon as practicable of any significant change in their private interests as prescribed.
- 3.12.6. A Senator shall draw appropriate attention to any relevant interest in the course of any proceeding of the Senate or its Committees or Joint Committees, and in any communication with Ministers, Senators, public officials or public office holders.
- 3.12.7. Failure to declare or register a relevant and substantive personal interest as required by the Senate may be treated as a prima facie breach of these Standards.

#### ***Contact with Lobbyists***

- 3.13. Senators shall ensure that dealings with lobbyists are conducted in accordance with the Lobbyists Code of Conduct, so that they do not give rise to an actual or apparent conflict of interest.
- 3.14. In dealing with a lobbyist, a Senator shall establish the interests which the lobbyist represents so that informed judgments can be made about the outcome the lobbyist is seeking to achieve, and so that the Senator may assess the potential for any relevant conflict of interests that may arise.
- 3.15. Senators shall ensure that any lobbyist with whom they have official or personal dealings is registered in accordance with the procedures required by the Senate.
- 3.16. Where a Senator receives representations from a foreign government or the agency of a foreign government, special care must be exercised as foreign policy or national security considerations may apply. In such cases, a Senator should advise the Minister for Foreign Affairs of representations received.

#### ***Directorships etc.***

- 3.17. A Senator may not hold a directorship of public or private company or business enterprise during the course of their term in office where such activity significantly restricts the Senator's ability to perform the full range of their duties as a Senator, or gives rise to an actual or apparent conflict of interest.
- 3.18. A Senator may not provide advice or assistance to any enterprise otherwise than in a personally disinterested manner. Where a Senator has, within the previous five years, had a personal association with a company or business materially affected by a parliamentary proceeding the Senator must declare an interest.

3.19. Failure to declare or register a relevant and substantive personal interest as required by the Senate may be treated as a prima facie breach of these Standards.

***Shareholdings etc.***

3.20. In recognition of the role of Senators in determining matters of broad public interest, Senators must divest themselves of investments and other interests in all public or private company or business, other than:

- (a) a public superannuation fund or publicly listed managed fund or trust arrangement in which:
  - (i) the investments are administered by a blind trust and the Senator has no influence over investment decisions of the trust; or
  - (ii) the investments are broadly diversified and the Senator has no influence over investment decisions of the fund or trust; and the fund or trust does not invest to any significant extent in a business sector or activity that could give rise to a conflict with the Senator's public duty; or
- (b) a family-owned business in which the Senator is a non-executive director, and the business does not operate to any significant extent in a business sector or activity that could give rise to a conflict with the Senator's public duty.

3.21. If a Senator becomes aware that a fund or trust, exempted under 3.20 has invested in a company whose activities might give rise to an actual or apparent a conflict with the Senator's public duty, the Senator shall notify the Senate within thirty days and seek liquidation of the investment or withdraw from the fund or trust within ninety days .

3.22. If a Senator is required by these Standards to dispose of an interest of any kind, the transfer of the interest to a relative or family member, or to a nominee or private trust (other than a blind trust arrangement permitted under clause 3.20) is not an acceptable form of divestment.

***Family Members' Interests***

3.23. A Senator must have regard to the pecuniary and other private interests of members of their immediate families, to the extent reasonably known to the Senator, in considering whether an actual or apparent conflict of interests has arisen or is reasonably likely to arise. A Senator should consider encouraging immediate family members to dispose of, or not to invest in, shares in companies which may give rise to a conflict with the Senator's public duty. Where a Senator is aware of the nature of an investment of a family member from which the Senator derives a benefit could give rise to a conflict with the Senator's public duty, the Senator is required to take all reasonable steps to ensure that investment is structured in such a way that the Senator exercises no control over, and obtains no benefit from, the investment.

***Other forms of employment***

3.24. A Senator shall not engage in any professional practice during the course of their term of office where such activity significantly restricts the Senator's ability to perform the full range of their duties as a Senator, or gives rise to an actual or apparent conflict of interest. Senators may maintain registration in a professional organisation and practice sufficiently to maintain registration, but must declare any such activity as a pecuniary interest.

- 3.25. A Senator may receive income from personal exertion other than as a Member of Parliament, where that income is in the form of fees or royalties in respect of activities undertaken solely in a private capacity, provided that such activity does not significantly restrict the Senator's ability to perform the full range of their duties as a Senator, or give rise to an actual or apparent conflict of interest. A Senator must declare any such income as a pecuniary interest.
- 3.26. A Senator shall not act as a consultant or adviser to any company, business, or other interests, whether paid or unpaid, or provide assistance to any such body, for example charities or not-for-profit public interest organisations, except as is appropriate in their official capacity as Senator.

### ***Gifts and Benefits***

- 3.27. Senators are required to exercise the functions of their public office unaffected by considerations of personal advantage or disadvantage.
- 3.28. A Senator, in their official capacity, may accept customary official gifts, hospitality, tokens of appreciation, and similar formal gestures in accordance with any relevant requirements approved by the Senate or its officers<sup>4</sup>
- 3.29. A Senator may not seek, encourage, accept, or retain any form of gift in their personal capacity, or through a third party, where the gift is other than an expression of normal customary hospitality and is of genuinely nominal value. Senators must also comply with any relevant requirements of the Senate or its officers.
- 3.30. A Senator may not seek, encourage, accept, or retain, either personally or through a third party any kind of benefit or other valuable consideration, for themselves or for others, in connection with performing or not performing any element of their official functions or duties as a Senator.
- 3.31. A Senator must take all reasonable steps to ensure that they do not come under any financial or other obligation to individuals or organisations to the extent that they may reasonably appear to be open to improper influence in the performance of their duties as Senator.

### **Employment of Family Members**

4. A Senator shall not appoint or employ in their parliamentary or electorate office a person who is a member of their immediate family, or the immediate family of another Member of Parliament, without the President's express approval.

### **Upholding the Code**

5. The interpretation and application of this Code shall be a matter for the Senate in its sole discretion, whether through the Committee of Privileges or otherwise.
6. The President may obtain independent advice about the interpretation of these Standards in relation to the conduct of Senators relevant to conflict of interest, ethics, parliamentary propriety, or similar matters, and may provide that advice to the Senate at the request of either the Senate or the Senator concerned.

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<sup>4</sup> Such as the Integrity Commissioner proposed to be established by the **National Integrity Commissioner Bill 2012**.

- 7.** A complaint that a Senator's conduct is in breach of these Standards must be made by a Senator and shall take the form of a charge outlining the specific conduct alleged.
  - 7.1. Such charge shall be in writing and directed to the President who shall within seven (7) days accept or dismiss the charge.
  - 7.2. If the President accepts that the facts alleged in the charge, if proved, would constitute a breach of the Standards and that the complainant has satisfied paragraph 8, the President shall, within fourteen (14) days, commission an independent enquiry and the Senator against whom the charge has been made shall be notified in writing within twenty-four hours of an investigator being appointed that the charge has been made and an investigation is to take place.
  - 7.3. The investigation should be conducted with all possible expedition and confidentiality.
  - 7.4. If the President dismisses the charge the complainant shall be so advised in writing and reasons for the decision shall be given.
  - 7.5. If the complainant is dissatisfied with the President's decision then the complainant may place the complaint before the Senate by substantive motion.
  - 7.6. The report shall remain confidential until it is tabled in the Senate and the Senator against whom the complaint has been made shall be notified no later than twenty-four (24) hours prior to tabling.
- 8.** A complaint that a Senator's conduct was in breach of these Standards may be made, provided that the complainant is able to demonstrate an honest belief, held on reasonable grounds, that the complaint is true.
- 9.** The President, at the express direction of the Senate, may commission an independent investigation of a complaint made under paragraph 7 of this Code or of a specific matter relating to a Senator's adherence to these Standards.
- 10.** A Senator subject to investigation under this Code shall cooperate fully with the investigation, and shall be entitled to procedural fairness and confidentiality during the course of the investigations, until such time as the investigation report may be published by the Senate as a proceeding of Parliament.
- 11.** If the conduct of a Senator is found by an investigation under this Code to constitute a breach of these Standards, the finding may be dealt with under Standing Orders relating to misconduct.
- 12.** A Senator may not make uninvited representations, either directly or through a third party, to another Senator, an investigator appointed under paragraph 9, or the President, with the objective of influencing the proper consideration of an alleged breach of these Standards. Failure by a Senator to comply with this requirement may be treated as a prima facie breach of these Standards.