



**Ethics in politics:
Why it matters**

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Executive Summary

In a country with a modern democratic system, the support of the public is vital to the continuance and legitimacy of the government. However, there is a perception in the Australian public that ethics is absent from politics.

The public expects that parliamentarians will represent them and act with honesty and integrity, but believe that these expectations are not being met. This can contribute to a higher level of cynicism, disengagement and apathy with respect to politics. In order to respond to negative public opinion, mechanisms have been developed to restore and maintain ethical standards. However unethical political behaviour remains a problem in contemporary Australian politics whilst parliamentarians may face a series of ethical dilemmas. These dilemmas are exemplified in the following case studies: ICAC and the political demise of Nick Greiner in a case of improper influence; Nick Sherry's travel claims and misuse of allowances; United Kingdom cash-for-influence scandals of the last twenty years in cases of improper influence; the Tasmanian 'Shreddergate' affair in the case of misleading parliament; and Santo Santoro's failures to disclose financial interests in a conflict of interests case.

As demonstrated through this analysis, a broader approach is needed to improve the existing framework for maintaining ethical standards, for example professional development and ethics training. Greater emphasis should be placed on ethics as a meaningful foundation for political behaviour. Ethics matters in politics, not only in terms of public expectations and government legitimacy, but also for the future of democracy.

Section One

Introduction

In a representative democracy, the interests of the public are reflected in public decision making by the voice and conduct of elected representatives. When representatives use their privileged positions for their own benefit, and fail to represent the public interest, public trust is diminished. In contemporary Australia as in other Western democracies, there is a public perception that political processes and the conduct of the majority of politicians is overwhelmed with unethical conduct (*see* McAllister 2000; Young 2001; and Hayward et al 2008). Regardless of the legitimacy of this perception, there can be little doubt that high profile cases of personal and public misconduct such as the Brian Burke scandals of WA and the 'Travel Rorts Affair' of the late 1990s at the Commonwealth level continue to damage public trust. Combined with negative media coverage, political controversies such as these contribute to the high levels of cynicism with which the public view political life. Ironically, this reaction provides insight into the public's high expectations of the standards of political behaviour. But it begs the question: what is appropriate political behaviour?

This question emphasises the need to discuss what some might say is missing from politics: ethics. The term 'ethics' is used in relation to principles of conduct that govern behaviour, and if followed should result in appropriate behaviour. Ethical codes and guidelines have existed in public structures throughout history, principally for the purpose of controlling, monitoring and making public figures accountable for their actions in order to maintain political legitimacy and public stability. This paper focuses on the importance of ethical conduct in politics, both as an element of democratic legitimacy and as an end in itself.

Section one of the paper provides an analysis of ethical considerations, existing mechanisms promoting ethical conduct, and common failures in contemporary Australian politics. Foregrounding this discussion will be the context of 'ethics in politics' with particular focus on why it is relevant in the contemporary world and how it affects public interest. An overview of responsible government and public expectations of political behaviour allows us then to say that there is a strong public desire for parliamentarians to act in the public interest, with high standards of probity and integrity. Paradoxically this same overview, and consideration of the current public feeling towards politicians, suggests that this desire is not being met.

In response to both low public confidence and demonstrated flaws in the political system, a series of ethical codes and structures have been developed in the last twenty five years. This includes codes of conduct, registers of financial interests, specified allowances for example for travel and electoral expenses, and external watchdogs. On reflection, we can surmise that such mechanisms suffer from inherent limitations, and that attempts to regulate ethics are fraught with difficulties. Despite the development of regulatory mechanisms, unethical political conduct still exists in four broad areas – misleading parliament, use of improper influence, misuse of parliamentary privileges, and conflicts of interests. A discussion of these ethical dilemmas using recent examples allows us to consider what they are, why they happen and the damage they can cause to political stability and public trust.

Section two of the paper provides more in-depth analysis of five case studies of unethical political behaviour: ICAC and the political demise of Nick Greiner in a case of improper influence; Nick Sherry's travel claims and the misuse of allowances; the United Kingdom's cash-for-influence scandals of the last twenty years in cases of improper influence; the

Tasmanian 'Shreddergate' affair in the case of misleading parliament; and Santo Santoro's failures to disclose financial interests in a conflict of interests case.

Through this paper we aim both to provide insights into issues regarding ethical political behaviour, and to promote discussion concerning ways to improve the current situation. The development of recommendations born out of these discussions has the potential to improve the public perception of parliamentarians and foster a renewed sense of meaning to ethics in politics.

Ethics and the Political

Ethical behaviour stabilizes communities and provides security, and hence there is an expectation in human communities that people will act ethically and morally. The etymological origin of the words 'ethic' and 'moral' are the Greek and Latin words for custom (Penguin English Dictionary, 2003: 476, 899). 'Custom' in turn means an established practice within a society (ibid.: 342), although distinct meanings are often given to the words ethic and moral. Two definitions of ethical and moral acts state that ethics are the principles of conduct governing behaviour, whilst morals define the acts of will guiding the choice to act rightly among possible courses of action (Russell, 1961: 190).

Throughout human history, ethics and morals have been relied upon as guides for behaviour, in both written and unwritten forms, thus maintaining and strengthening the bonds within a community. Their function has been to keep people in check, by both controlling deviant behaviour, and promoting good behaviour.

Humans within communities rely on the wellbeing of other members for their own survival, by maintaining stability. Therefore, according to a Utilitarian perspective, maintaining behaviour that leads to the greatest happiness for the community is a beneficial survival trait, and as a result this behaviour is considered ethical and so is encouraged. In order for ethics and morals to function in a community they must be maintained by all of the members. Ethical behaviour is reciprocal, so approved actions are rewarded, and if someone were to circumvent the accepted behaviour they would be punished. The punishment would be a reaction to the act according to the ethics and morals accepted for that purpose. According to the 'eye for an eye' method of retribution, a bad act is balanced out by a reaction of a similar kind from the community and any victims. Retributive forms of justice can be found as far back as the zenith of Babylonian culture in the 1700s BCE. Records of retributive justice have been found on a stele on which is written the Code of Hammurabi, now held by the Musée du Louvre in Paris, and include, 'If a man strike a free-born woman so that she lose her unborn child, he shall pay ten shekels for her loss. If the woman die, his daughter shall be put to death.' (King, 1910: 209-210) As with modern regulations and standards regarding ethical behaviour, the Code of Hammurabi consisted of actions and rewards or penalties. In Matthew 5:38 of the King James Bible, sections of the Babylonian code are paraphrased as 'an eye for an eye, and a tooth for a tooth', the origin of the now common phrase. The formation of the Babylonian code would have been as a result of centuries of accumulated incidents and their punishments, culminating in the eventual codifying in the stele we can see today. The purpose of which was to 'bring about the well-being of the oppressed' (King, 1910) as well as maintaining a secure structure in which the society could develop.¹

¹Whilst we acknowledge the religious origins of many systems of morals and ethics, they will not be the focus of this paper.

As indicated in the Code of Hammurabi and other codes of conduct, unethical behaviour would be considered negatively, and not just because it would be at odds with the ethics of some group (Penguin English Dictionary, 2000: 476) but would be judged as such by the greater human community. In order to maintain their position and the stability of the community, following the ethical conduct of a community would be in the best interests of its members. However, sometimes unethical actions are carried out in the interests of the self, in order to gain something through an unethical action or to cause harm to another.

A balance upon which self-interest could be considered is as follows. There is on one hand the benefit to the self and on the other the detriment of the self, and on the other hand the detriment of others against the benefit of others. An ethically acceptable balance would be benefit of the self and benefit of others, or detriment of self and benefit of others and perhaps even detriment of self and detriment of others. However, a balance that could be considered unethical is benefit of self and detriment of others. It is this final set of circumstances which amount to instances of unethical behaviour, behaviour which has a negative effect on the public.

Therefore, correct behaviour is not just measured by the manner in which a person's own interests are met, but the manner in which the interests of the community are or are not met. The expectation of correct behaviour that brings about what the philosopher Jeremy Bentham called 'greatest happiness of the greatest number' does not just rely on public expectations and community wishes. Throughout history, ethical and moral rules have been recorded, as in the case of the Code of Hammurabi, for enforcement by both religious and secular institutions, usually in the forms of religious books and laws respectively. As Bentham suggested, 'it was the business of laws and social institutions to make a harmony between public and private interests, so that each man, in pursuing his own happiness,

should be compelled to minister to the general happiness.' (Russell, 1961: 593) The pursuit of happiness, which is both a product and a condition of social stability and prosperity, is one of the tenets of modern democracy, and is one of the rights of man according to the *United States Declaration of Independence* (Franklin et al, 1776:<http://www.ushistory.org/declaration/document/index.htm>). Another aspect of modern democracy is the right to choose who to trust with the power vested in the institution of the government to maintain public happiness.

In democratic societies like Australia, public officials are elected to represent their constituents' needs using the powers vested in government. As the community's representative, the government can be seen as a microcosm of the greater community. The idea of a microcosm, when applied in the democratic legal system, in the form of randomly chosen juries for example,

...allows the jury to be comprised of a microcosm of society rather than a group of likeminded individuals. This community representation allows the jury to be able to make the best and most effective contributions to social policy or social service initiatives.

(South Australian Council of Social Service, 2009: 3).

In terms of government, microcosm means that 'a governing body should be a miniature replica of the society it represents' (Dickerson and Flanagan, 2008: 17). As such, the expectation is that the accepted practices of ethics and morals within communities will carry over into public life, be they written or unwritten, religious or secular.

As well as acknowledging the 'ethics' and 'morals' that are a part of non-public lives, there are 'ethics' and 'morals' particular to politics and public life that govern the behaviour of public officials. Ethical behaviour in regards to the public sphere would be concerned with a person's actions in terms of how they influence or interfere with the activities of other

people. In this sense, ethics is a vital part of politics as the influence available to public officials is greater than that of many individuals, and so their behaviour needs to be of a higher standard.

As ethics is often concerned with written regulations and rules for behaviour, it is more often associated with the public sphere. Morals are more often associated with personal feelings of duty and right behaviour which go beyond written principles, and are associated more with the personal sphere. Morals are personal and private, and although these values *do* intrude into public lives, it is the public conduct of a public official that is monitored by codes of conduct. This paper will be focusing on ethical behaviour rather than moral behaviour.

In regards to ethics and morals in the political context, the ethical conduct of public officials is important, as their conduct affects the legitimacy of the system of government and its capacity to act in the public good. The task of public officials according to section 51 of the Australian Constitution is to work “for the peace, order and good government of the Commonwealth” (*Constitution of the Commonwealth of Australia*, 2003). In *A Guide on Key Elements of Ministerial Responsibility*, released in 1998 by former Prime Minister John Howard, he acknowledges that as well as the privilege and power of public office there is personal sacrifice, including loss of privacy, time and energy (Howard, 1998: 10). In Prime Minister Kevin Rudd’s ministerial code of conduct *Standards of Ministerial Ethics*, released in 2008, he adds that the public expect a high standard of ethical behaviour from public officials (Rudd, 2007: 2).

The ethical conduct of public officials is a legitimate concern of the public. Public officials were elected to their position on the assumption that they would uphold the highest standards of ethical and moral behaviour, and act according to the values of the majority of

the public. If a public official were to be considered unethical in their actions and behaviour, their accountability and legitimacy would be compromised and with it their capacity to act in the public good.

Responsible Government and the Public Interest

In the Australian system, the mechanism through which public officials are held accountable is the Westminster tradition of responsible government. The structure of 'responsible government' involves a number of conventions designed to make the government and the Parliament responsible and accountable to the voting public. If we see 'accountability' as the obligation to explain one's conduct and be open to criticism, and 'responsibility' as the preparedness to bear the consequences, the consideration of responsible government in a discussion of ethical political behaviour in Australia is essential.

The central tenet of responsible government is that the executive is formed out of the Parliament and as a result relies on the support of the assembly to govern (Heywood, 2002: 314). Simply, this means that governments which fail to respond to public concerns can be held accountable for this by the Parliament. The burden on public officers to represent, respond to and act in the public interest is at the heart of democratic politics (Uhr, 2005b: 34). At its core, democracy means 'rule by the people' and in the Australian system, elected members are charged with representing public interests in political decision making. Prime Minister Kevin Rudd's 2007 *Standards of Ministerial Ethics* states that Members are expected to "...demonstrate publicly that their actions and decisions in conducting public business were taken with the sole objective of advancing the public interest" (6). The democratic

norm is that public officials will act in the wider public interest, and the public trusts officials to respect this (Uhr, 2005b: 33).

For a government to maintain legitimacy, it must uphold this trust. Voters believe that when they elect a Member of Parliament to represent them, their interests are reflected in public decision making. If voters have their expectations of government continually frustrated, it has the potential to undermine confidence in the system itself (McAllister, 2000: 35). The public needs to believe that their interests are being served and protected in Parliament. Without this, governments may become unpopular, risking chances of their re-election. More importantly, the public may lose confidence in the exercise of government itself and the integrity of the democratic system of government may be compromised.

The public have consistently demanded certain standards of behaviour of parliamentarians, and respond with condemnation for failures to meet them. Between 2003 and 2008, the UK's Committee on Standards in Public Life conducted three surveys on public attitudes towards conduct in public life. Based on the outcome of the 2008 survey, the Committee found that the public places particular importance on financial prudence, a selfless dedication to public service, and most importantly *telling the truth* (Hayward et al, 2008: 25). Interestingly, studies show that the public expects even higher ethical standards of politicians than they do of themselves. A 1994 Canadian survey found that most respondents failed to see the problem in cheating on their expense accounts or evading taxes, but were appalled at the possibility of politicians doing the same (Wilson-Smith, 1995: 18 – 20).

Scholars have attributed a number of factors to the public's high expectations of political behaviour. Included in these are not only increases in political participation and education,

but also the transparency afforded by contemporary mechanisms (McAllister, 2000: 29). The media has played a significant role in the dissemination of political information, and has directed public attention towards instances of unethical behaviour, particularly relating to personal misconduct (ibid). In addition, the media's increased access to political information through Freedom of Information legislation, corruption commissions, the existence of corruption watchdogs, commissions of inquiry and parliamentary committees has meant that the public has had enhanced access to the behaviour of public officers (Beahan, 1999: 128). As a consequence, instances of unethical behaviour have become very visible to a disillusioned public.

Within the public's primary expectation to have their interests represented in Parliament, is the secondary expectation that Members will uphold a high degree of personal conduct and ethics. And according to Prime Minister Kevin Rudd 'the Australian people are *entitled* to expect the highest standards of behaviour from their elected representatives' (Rudd, 2008: Foreword, emphasis added). These standards of political behaviour are intimately related because in many cases of unethical political conduct, the problem occurs when someone has put their own interests ahead of the public interest. Also, politicians contribute to the 'high expectations' of probity and propriety by promoting their personal values and integrity in election campaigning. In order to gain support, party candidates consistently promise constituents that they are trustworthy, responsible members of the community in order to gain support, whilst using negative advertising to juxtapose this with their opposition's 'unprincipled' behaviour. The 1996 Federal election campaign for example is seen as 'Australia's most negative election advertising campaign ever' (Atkins, 1996) with the Liberal party making personal attacks against the 'weak character' of then Labor Prime Minister Paul Keating (Young, 2003: 3). Similarly, political figures often use the language of

'ethical behaviour' as a political weapon against opposition parties in Parliament (Williams, 2002: 219). In 2007, Prime Minister John Howard's efforts to be 'tough on ethics' in a battle of integrity with Opposition Leader Kevin Rudd saw the resignation of a Federal Minister for an unplanned 20 minute meeting with WA lobbyist Brian Burke (Koutsoukis and Cohen, 2007). Despite the fact these political displays could be perceived as opportunistic, such a 'commitment to ethics' moulds and intensifies public standards and perceptions of model ethical conduct.

Expectations of high ethical standards and the failure of public officers to maintain them, has resulted in a public that is increasingly cynical and disillusioned about the political process in Australia (Young, 2001). There are a number of elements producing this cynicism. Firstly, the two-party system that dominates Parliament means citizens often feel that their public interests are secondary to party interests (Cook, 2004: 132). Secondly, numerous cases of personal misjudgment, together with the perception that election promises are meaningless make it difficult for the public to engage with politics. Thirdly, some of the trivial aspects of political behaviour including negative advertising during election periods, and the adversarial tactics used in question time, give the public reason to doubt the professionalism and commitment of the Members they elected (Young, 2000: 180). Paradoxically, studies show that whilst the public have high expectations of parliamentarians, they do not believe they will act honestly. In the 2008 UK survey (mentioned above) only 59% of respondents believed government ministers did not take bribes and only 22% believed most government ministers tell the truth (Hayward et al, 2008: 32). Together these factors suggest the public have lost confidence in politicians and the political system itself (Young, 2000: 171).

The deep desire of the public for parliamentarians to act with integrity and in the public interest is too often not met. An awareness of the failure to fulfill public expectations has seen many a Parliament respond through both conventional and institutional means.

Mechanisms

Australian Parliaments have repeatedly been forced to develop mechanisms in response to public and Government concern over ethics in politics. The various means established are two-fold in purpose: to maintain and protect public confidence by bringing integrity to the system, and to minimise unethical political behaviour.

Existing Conventions

In the past, the convention of individual ministerial responsibility would have been the primary protection against unethical conduct. The core principle of this convention is public officers being responsible 'to'. Doctrines of responsible government provide the underlying logic for conventions of individual ministerial responsibility, in that ministers are responsible *for* their actions, *to* the public (Uhr, 2005a: 12). According to Marshall (1989), the responsibility of ministers for their own conduct, and that of their departments is a vital aspect of accountable and democratic Parliamentary government. In effect, individual ministerial responsibility creates a chain of responsibility: public departments are accountable to the minister, the minister is accountable to the executive, the executive accountable to the Parliament, and the Parliament to the public (Heywood, 2002: 372).

The Australian system, like that of Westminster, has no agreed definition for individual ministerial responsibility, and its meaning and application can change from government to government (ibid: 2). However, as Brazier (1997: 270) suggests, there are three common areas of responsibility for ministers: private conduct, general conduct of their department, and acts done or left undone by officials in their department. Within this, there are four actions available to ministers called to apply these standards of responsibility: inform and explain actions and policies; apologise to the Parliament for errors; take action if necessary; or resign (Gay and Powell, 2004: 7). The expectation of ministerial responsibility is that ministers will not act in ways that benefit them personally, and will take responsibility (as the name suggests) for the actions of their department. Ideally, these conventions should uphold ethical political behaviour and the integrity of government. In practice however, the maintenance and implementation of these conventions has been inconsistent.

It is no longer expected that Ministers will take responsibility for every error of their Department (Raffin, 2008: 226). For example, in 2004 WA Minister for Justice Michelle Roberts evaded resignation despite nine prisoners escaping from the Perth Supreme Court building. The Opposition named the Minister negligent, criticising her for failure to act on a 2002 report that highlighted the potential for prisoners to escape the facility (*Sydney Morning Herald*, 2004). Despite serious departmental mistakes, Roberts was able to maintain her position. It is important to note here that many policy decisions flow on from previous governments, making it difficult for new Ministers to take full responsibility. However, public perceptions of accountability and responsibility do not take this into account, hence damage to the integrity of ministerial responsibility.

In addition, a system of individual ministerial responsibility with predictable sanctions has not been established. As the previous example suggests, there are no formalised

consequences for a breach of the conventions. Rather, the question for heads of government in the contemporary context is 'should they be sanctioned?' not 'which sanction applies?' (Kernot, 1996: 136). The non-legal nature of these conventions means any course of action in response to a breach is at the discretion of the Premier or Prime Minister. The concern here is the effect the political environment of the day can have on the consistent and fair application of the conventions. In his article *Individual Ministerial Responsibility During the Howard Years: 1996-2007* (2009) Luke Raffin argues that Prime Minister John Howard's originally strict application of individual ministerial responsibility failed to live up to expectations in later years. In 1997, the 'Travel Rorts Affair' claimed four federal Ministers.² However, despite significant breaches of ministerial responsibility including the Telecard Affair concerning then Workplace Relations Minister Mr Peter Reith, numerous cases of conflict of interest, and significant departmental failures, not a single minister was forced to resign for the next 10 years (Raffin, 2009: 228).

For a number of reasons, but most particularly the need to limit political damage to the government of the day, Australian ministers and heads of government rarely uphold the ideals associated with the doctrines of ministerial responsibility (Uhr, 2005a: 1). Whether it is to protect party colleagues or deflect criticism, ministerial responsibility seen in the context of political decision making fails to protect public confidence or promote ethical behaviour. As a response to the failures of these conventions, Parliaments have gone further to establish written codes that seek to foster appropriate ethical behaviour.

² Senator Bob Woods, Mr Peter McGauran, Mr David Jull and Mr John Sharpe were all forced to resign over ministerial impropriety in relation to the 'Travel Rorts Affair'.

Codes of conduct

The democratic process for ensuring the accountability of public officials is elections, where the public has the power to decide the fate of public officials. As Uhr says,

...elected officials might be expected to make up their own minds on law and policy but they are also expected to bear in mind that the people will have regular opportunities to vote on their performance as well as to discard officials who deviate away from their ethical responsibility to represent the interests of the community electors

(Uhr, 1998: 15).

As this gives the public the opportunity to vote out those they consider are not carrying out their responsibilities as the public intended them to, it is a mechanism for accountability.

Public officials who are granted positions of trust and responsibility are elected because the public trust that they will maintain accepted standards of ethical and moral behaviour. In many election campaigns the candidate will promise to be honest and trustworthy - for example in 1975 Malcolm Fraser encouraged people to 'vote for honesty' (Fraser, 1975: 3).

The *Survey of Public Attitudes towards Conduct in Public Life* in the UK found that the behaviour people value most highly is that of telling the truth (Hayward et al, 2008: 10). As characteristics such as honesty are valued by the public, someone who intends to appeal to them for support could use the promise of honest dealing to get their votes in an election.

However, elections leave open the opportunity to misinform the public, and assume they have adequate knowledge of the system and the candidates, which is not always the case. It is in these situations where, according to Ian McAllister, 'two indirect methods [of ethical regulation have been developed] which involve some form of self-regulation through Parliament, by monitoring conduct through parliamentary privilege or by establishing and enforcing a parliamentary code of ethics' (McAllister, 2000: 25). Regulations and codes of conduct are most often instituted when the public duty and private interests of public

officials are potentially in conflict. So in cases where the conflict is the result of an unethical action from a public official, codes or regulations will be established in order to prevent the action being repeated.

Parliaments which set up their own codes of conduct are self-regulating. Although the terms of the codes will be expected to match public expectations of conduct, they will also be based on the priorities and opinions of those in Parliament at the time. Codes of Conduct such as those set up by Prime Minister John Howard are limited in the extent to which they will be enforced depending on the situation, and are capable of being changed by the Prime Minister of the day. Prime Minister John Howard's *A Guide on Key Elements of Ministerial Responsibility* was formulated to improve standards of governance and bring 'values' into the political system. The use of claims to improve standards of governance illustrates the importance to the public of values in politics and conversely, how important John Howard felt it was to maintain the public's confidence in regards to values.

Regulations and codes of conduct: comparisons and descriptions

Prime Minister John Howard's *A Guide on Key Elements of Ministerial Responsibility* was the first Federal code of conduct in Australia. It includes a list of actions that are inappropriate, with sections explaining what behaviour is expected of public servants and parliamentarians. It acknowledges the high standards expected of public officials, and the sacrifices required from their personal and public lives.

However, over the course of his term in office it became apparent that the *Guide* was seen by the Prime Minister as 'just a guide' (Howard, 1996: 1), and so was more of a statement of values and aspirations rather than rules that could be enforced. For example, soon after the release of the *Guide*, the Assistant Treasurer Jim Short was found to have a potential conflict

of interest, over \$50 000 in ANZ shares (Raffin, 2008: 4). The *Guide* requires that Ministers divest shares relating to their portfolio, and as his responsibilities included banking and superannuation, he should have ridded himself of these shares. Despite calls for his resignation, and admitting that Mr Short had breached the *Guide's* codes, John Howard said that, 'a breach of its provisions should not automatically require a resignation'. (Howard, 1996: 5210-11) Other incidents of unethical actions by public officials lead to the *Guide* being changed to accommodate their transgressions, weakening the legitimacy and by extension the effectiveness of the code of conduct.

In 2007 Prime Minister Kevin Rudd revised chapter 5 of *A Guide on Key Elements of Ministerial Responsibility* in order to respond to recent issues, and to further limit the unethical behaviour of public officials. He stated that 'the Standards will require Ministers to accept higher levels of conduct than has been the case in the past'. (Rudd, 2007: 2) The choice to update the code of conduct is an indication that Prime Minister Rudd felt there were standards that needed to be raised. As there had been a loosening of enforcement regarding the code as Prime Minister John Howard's term went on, Prime Minister Rudd may have wanted to make changes in the interests of appealing to the public's desire for high standards in politics. The changes increased transparency with regards to lobbyists, shareholdings and the use of entitlements.

The Code of Conduct for the House of Lords in the UK consists of an outline of acts and behaviours that are inappropriate and for which parliamentarians will be punished, as well as principles for behaviour they should follow. *The Seven Principles of Public Life* lists the moral principles for public officials – both parliamentarians and public servants – to model their behaviour upon (see Appendix 1). They are selflessness, integrity, objectivity, accountability, openness, honesty and leadership. As with the codes of conduct in Australia,

inappropriate actions are clearly defined, but correct behaviour is not enforced. A similar document from Australia is the draft *Framework of Ethical principles for Members and Senators*, tabled by the Australian Democrats in 1995. (Kernot, 1998: 137)

The framework consisted of eight principles:

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

This document was not accepted by the Parliament, so thus far the only documentation at a Federal level in regards to ethical principles is *A Guide on Key Elements of Ministerial Responsibility and Standards of Ministerial Ethics*.

Codes of conduct also exist outside the Federal Parliament, including codes for state Parliaments (*see* Appendix 2). While not being a code of conduct for parliamentarians, codes applicable to the public sector can be used as comparisons. For example the Commonwealth and Western Australian public service has the *Western Australian Public Sector Code of Ethics*. The standards of behaviour in the Code of Conduct for the Western Australian public sector are referred to as the *Minimum Standards of Conduct and Integrity*, and are organised around three main principles - justice, respect for persons and responsible care. This code is intended to apply to all public sector employees from the Chief Executive Officers to Level 1

Administration Assistants, and although these people are not elected to represent the public, they are the functionaries of those who are.

Allowances and registers of interests

Other restrictions imposed upon public officials in order to maintain ethical behaviour are through rules regarding their privileges and allowances. In the carrying out of their duties in public office, parliamentarians are provided with amounts of money for various purposes, and are limited as to the number of times which they can take advantage of privileges, including printing, travel and accommodation.

Information regarding allowances is made available to Members of the Australian Commonwealth Parliament in the *Senators and Members Entitlements* handbook, and further information can be obtained from the finance areas in various departments, as well as procedural guides. Examples of allowances include travel allowances, annual allowances and electoral allowances, each of which has their own limit and rules. Claiming allowance involves an extensive series of procedures, after which certain allowances such as travel, are made public. These checks and limits are designed not only to control the amount of spending, but also to create transparency of government affairs.

Alongside allowances for Members, registers of interests have also been established at both State and Federal levels in order to create transparency and reduce the risk of conflicts of interest. In a 1975 Federal Government report, the Joint Committee on Pecuniary Interests of Members of Parliament recommended the introduction of a register of pecuniary interests of Members of Parliament. However it was not until 1984 that the House of Representatives established a register and not until 1994 that the Senate followed suit. (Beahan, 1998: 129) Since then, every State and Territory Parliament has established a regulation that Members

register their interests. These registers are similar in form, but using the West Australian *Members of Parliament (Financial Interests) Act 1992* as a model, we can highlight three of the key requirements. Firstly, Members must declare their financial interests to the Clerk within thirty days of being sworn in; secondly, they must declare interests of this nature relating to property, income, trusts, gifts, contributions to travel, positions in unions and debts, among other things; and finally, Members found to have breached this requirement will be found in contempt of the House, and can be dealt with at the discretion of the House.

Like other mechanisms, registers of interests have been developed to create transparency in order to prevent Members from using their influence for personal gain, and to respond to public concerns and accusations about unethical behaviour. Codes of conduct promote a commitment to avoiding conflicts of interest. Prime Minister John Howard's code of conduct for example highlights the importance of maintaining public confidence: "It is vital that ministers and parliamentary secretaries do not by their conduct undermine public confidence in them or the government" (Howard, 1998: 10).

The flaw in registers of interests is that they rely on a number of factors to be effective. Firstly, Members of Parliament must be both honest and energetic in their declaration of financial and other interests; secondly, they must take responsibility to make themselves fully aware of the interests of their spouse and children; and finally, they must bring any potential conflicts of interest to the attention of the Premier or Prime Minister for their advice on the appropriate course of action. Both State and Federal Codes of Conduct expect that it is the Member's responsibility to do this. (Case studies in Section Two of this paper demonstrate the importance of these matters)

External watchdogs

A number of State Parliaments have established independent supervisory bodies in response to serious instances of unethical conduct. Ideally, these independent structures serve to bring governments and their members to account where the Parliament fails to do so (Kernot, 1998: 138)

In 1988, the NSW Government established the Independent Commission Against Corruption (ICAC) in response to growing community concern about corruption following a period of unethical conduct which included the

“... imprisonment of a Chief Magistrate and a Cabinet Minister, criminal trials of senior officials, and an inquiry into the police force, which led to the discharge in disgrace of a Deputy Commissioner of Police”

(ICAC, 2009).

In 2002, Queensland’s Crime and Misconduct Commission (CMC) emerged out of the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC). The CJC was originally established in response to the revelations of police corruption in the 1989 Fitzgerald Report (CMC, 2007). According to the CMC, its three-tiered role includes “combating major crime, raising public sector integrity and protecting witnesses” (ibid). Queensland also has an Integrity Commissioner to provide public officials with advice about conflict of interest issues. While this independent person does not give legal advice, they seek to provide an impartial perspective in order to assist public officials in difficult decision making (QIC, 2005).

The Western Australian Government established a similar body the Corruption and Crime Commission (CCC) in 2004 as an overhaul of the Anti-Corruption Commission. Both NSW’s ICAC and WA’s CCC have functions for dealing with unethical behaviour in the public sector, through prevention and education as well as investigation (CCC, 2009; ICAC, 2009).

Tasmania is currently in the process of acting on a Joint Select Committee recommendation to establish an Integrity Commission (ABC News, 2009). South Australia, Victoria, and the Commonwealth Parliament are yet to establish an independent 'third party' in the same capacity as these bodies, claiming the functions are fulfilled by existing structures (Salusinszky, 2009). Each of these independent bodies has been the object of criticism. The CCC has been criticised for its broad powers, and the use of public hearings in its investigations (*Stateline* 2007). But as Hon. Justice Michael Barker, President of the State Administrative Tribunal of WA argued in 2007, these public hearings mean that unethical behaviour is brought to the attention of the Premier, the Parliament and the public (Barker 2007, 4). Similarly, the ICAC was heavily criticised for its findings in relation to what is known as the Greiner/Metherell Affair just three years after its creation. Political critics condemned the 'ethics police' for confusing political stupidity with corruption (Uhr, 2005b: 128). However, on balance, external watchdogs such as these play a unique role; they provide a 'check and balance' on political conduct without being affected by political or personal loyalties (Thompson, 1995: 159-60).

Regulating ethics

A meaningful assessment of the effectiveness these mechanisms have had on reducing unethical political behaviour and increasing public confidence is outside the scope of this paper. However, several comments can be made about the regulation of ethics.

Whilst some states have developed independent bodies as a check on the behaviour of Members of Parliament, for the most part, Parliaments have a tradition of self-regulation, and an understanding that only the Parliament itself understands the needs of its Members

and potential problems (Coghill et al, 2007: 5).³ Governments opt for various methods of self-regulation in which the heads of government use their discretion to judge cases of misconduct (Uhr, 2005a: 31). The difficulty with this approach is that self-regulating mechanisms such as codes of conduct can be affected by inconsistencies, partisanship and political competition (Williams, 2002: 619). In addition, such convention based mechanisms have no written rules to determine the consequence of a breach. The conventional expectation to explain, apologise, take action or resign is applied inconsistently, if at all (Uhr, 2005a: 1). Unless the misconduct is blatant and/or damaging to the party (as in the case of Senator Santoro), there is little imperative to act in response to unethical behaviour.

The self-regulation approach draws attention to the difference between responsibility and accountability. In a general sense, accountability means to be able to explain one's conduct, and to be open to criticism by another. In the public domain, particularly the Parliament and Public Service, this means that public officials can be monitored and evaluated in their conduct. Responsibility on the other hand means preparedness to bear the consequences of that conduct. Without clearly defined sanctions for misconduct, the onus to take responsibility for one's actions is limited. For this reason, some argue that enforceable rules are necessary to ensure responsibility is taken for unethical behavior.

The mechanisms discussed are not necessarily without merit, but in practice may have little effect unless they can be enforced. Codes of conduct and principle based regulations for example, are ineffective unless they can be acted on. Members and Ministers alike need to know that they will be brought to account for their actions through legislative procedures (Kernot, 1996: 138). And as mentioned, registers of interests and set allowances are not fool-

³ Another issue here is the Constitutional one of the separation of powers. If the Parliament was to be bound by legislation, it would essentially be legislating itself.

proof in isolation. Without enforceability, Members lack motivation to act according to the highest standards of probity and integrity (ibid).

However, in saying this there is an opposing position that argues enforceable regulations, let alone regulations themselves, are ineffective in promoting ethical behaviour. John Uhr (2005a: 191) argues that governments 'get ethics wrong' when they try to address problems with harsher rules and regulations. And if 'getting it wrong' means not reducing unethical behaviour, the media and various commissions would seem to support Uhr's position. Despite an increase in written codes and regulations, some Members of Parliament continue to behave in ethically dubious ways. If the thirty something Federal Ministers who have resigned for impropriety since 1975 is any indication (australianpolitics.com), the evidence suggests existing methods could definitely be more effective.

This position is often foregrounded by a view that 'political ethics' have lost their meaning.

As Professor Jeff Malpas, Professor of Philosophy of the University of Tasmania has said:

'I think that (a weakening of the importance of terms in regards to ethics) has happened within aspects of the State Service in which many State servants and public servants no longer view, for instance, ethical notions like trust, honesty, apolitical judgment and so on, as meaning anything significant because they are simply viewed as part of a quality assurance mechanism which you tick off that is to do with reducing risk, managing and controlling difficulties rather than meaning anything substantive'

(Hansard: 2008, 8).

Uhr's perspective and Malpas' comment here could be seen as promoting a proactive approach to ethical political behaviour, one that seeks to foster qualities of probity and propriety in parliamentarians, rather than simply reacting to failures. Coghill et al (2007: 4) argue that existing mechanisms provide no role in helping Members learn improved standards of conduct in dealing with common ethical dilemmas. Regulations and codes are not enough to guarantee ethical behaviour; they must be seen within a broader framework

of ethics guidance and supported by training, professional responsibility and leading by example (Kernot, 1998: 134). And similar to the professions, Members of Parliament need development training that provides them with the knowledge, skill and ethical standards required to practice competently (Coghill et al, 2008: 73)

The fact that unethical conduct in Australian politics continues to occur is rationale for a broader-ranging approach to promoting and cultivating ethics in the political realm. It is unlikely that either the regulatory or training based approach would be effective in isolation. The situation is complex and multifaceted, and hence requires a multifaceted response. A comprehensive solution could include the combination of codes of conduct and registers of interests for example, with professional development and ethics training.

Ethical Dilemmas

Regardless of existing mechanisms, unethical political behaviour is still problematic for Parliaments across Australia. There are a number of reoccurring ethical dilemmas which parliamentarians may face.

Misleading Parliament

Providing false information or acting in a way that is misleading is both an ethical and moral issue. Honesty is a virtue that is applicable not only to codes of conduct, but is a principle essential to both private and public life. In 2009 a Joint Select Committee on Ethical Conduct in Tasmania produced a report entitled *Public Office is Public Trust*. The report included the gathering of information in the form of statements through public consultation

in regards to ethical conduct. The evidence from the report in regards to ethics, as discussed by Professor Robert Patterson, found that, 'In public administration, integrity refers to 'honesty' or 'trustworthiness' in the discharge of their official duties, serving as an antithesis to 'corruption' or the 'abuse of office'.' (Joint Select Committee on Ethical Conduct, Submission 19, 2009: 1)

It is in the interests of avoiding the perception of 'corruption' or 'abuse of office' that honesty is included in codes of conduct. For example Prime Minister John Howard's *A Guide on Key Elements of Ministerial Responsibility*, (2008) says, 'Ministers must be honest in their public dealings and should not intentionally mislead the Parliament or the public. Any misconception caused inadvertently should be corrected at the earliest opportunity.' (Howard, 1998: 10)

Although this document is not legally enforceable, it is expected that public officials will maintain their standards of behaviour. If a person misleads the Parliament or the public, they ought to attempt to correct their mistake as soon as possible. Prime Minister Kevin Rudd's more recent version also stipulates that it is the Minister's personal responsibility to correct any errors (Rudd, 2007: 8). While the act of misleading is unethical, a lack of responsibility and accountability for it is also unethical. Accountability and responsibility for one's actions are important ethical virtues, and apply to both private and public lives.

Improper influence

Parliamentarians 'are entrusted with considerable privilege and wide discretionary power' (Rudd, 2007: 3) through their work and as such, high ethical standards are expected of them. Given the influence their position provides, inappropriate use of their power can be a significant ethical problem. The abuse of power and/or acts of improper influence can

negatively affect a public official's ability to carry out their duty impartially, and damage the reputation of government in general. In order to limit the overuse of influence, measures in regards to improper influence have been included in codes of conduct. The UK *House of Lords Code of Conduct*, for example requires that Members of the House:

(c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;

(d) must not vote on any bill or motion, or ask any question in the House or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).

(House of Lords, 2001)

The act of undue use of influence also contravenes four of the *Seven Principles of Public Life* - namely integrity, accountability, openness and honesty.

In Australia the current code, *Standards of Ministerial Ethics*, states that,

Ministers must not seek or accept any kind of benefit or other valuable consideration either for themselves or for others in connection with performing or not performing any element of their official duties as a Minister. (Rudd, 2007: 2)

Public Officials receive privileges as a result of their position, such as allowances and influence, and attempting to acquire more than their entitlements is seen by the public as unacceptable and unethical. Accepting financial gain in exchange for the use of influence is generally understood to be corrupt. In the *Public Office is Public Trust Report* of 2009, Rob McCusker of the Australian Institute of Criminology said that there were a number of definitions of the word corrupt, but 'the most commonly used one refers to the abuse of a public position for private gain' (Joint Select Committee on Ethical Conduct, 2006: 4). Given the ethical weight that comes with an action deemed to be 'corrupt', any act in which a public official uses their influence improperly is a serious issue. The impact of cases of

improper influence is shown in the effect of what is known as the 'sleaze' affairs in the UK in the 1990s. These were the cases of a number of politicians in the UK who were alleged to have accepted cash for influence from members of the public. They were such major events that they became synonymous with the word 'sleaze', and any similar incident since has been linked to them in the public's consciousness. In response to these events and the public's distrust that it sparked, then Prime Minister John Major set up the *Committee on Standards of Public Life* (also known as the Nolan Committee), which produced the *Seven Principles of Public Life*. (see Appendix 1)

Conflict of interest

According to the Organisation for Economic Co-Operation and Development (OECD) report, *Guidelines for Managing Conflict of Interest in the Public Service*, a conflict of interests is "a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities" (OECD, 2005: 2). In Australian politics, conflicts of interests are a problem for the government and a frequent trigger for unethical political behaviour when not dealt with effectively.

Conflict of interest cases cut to the core of the primary public expectations of parliamentarians, namely that they will use their positions of influence to act in the public interest. This raises an important point: conflicts of interest can be either perceived or potential. Whether the person in question benefits personally from their influence over decision making matters little; the potential for this to occur is damaging to public confidence and the integrity of the system (NSW Ombudsman, 2003: 1).

Ideally, Members of Parliament should do their utmost to avoid any conflicts of interest – real or perceived. In a perfect democracy Members of Parliament would not engage in activities in their personal life that were not in the majority ‘public interest’. Yet it is widely accepted that this expectation is unrealistic, and in reality conflicts of interest occur frequently (McAllister, 2000: 26). As a result, registers of interest have been designed to create transparency about Members’ personal interests. However, it is prudent to go beyond merely declaring one’s financial holdings.

WA’s Integrity Coordinating Group (ICG), which consists of the Auditor General, Commissioner for Public Sector Standards, Corruption and Crime Commissioner, and the Ombudsman Western Australia, proposes model conduct in relation to conflicts of interest. The ICG has devised ‘6 Rs’ to guide public officers in regard to the appropriate behaviour in response to potential conflicts of interest: register, restrict, recruit, remove, relinquish, and resign (OPSSC, 2009). Each ‘R’ gives guidance as to maintaining the highest standard of integrity and probity in dealing with conflicts of interests, including relinquishing private interests and recruiting an independent third party to provide supervision in decision making (ibid).

Common errors by public officers in regard to conflict of interest include the failure to register interests, and the failure to raise potential conflicts of interest with the Premier or Prime Minister in relation to Government decision making. The conduct of two WA Ministers relating to ownership of Alinta Gas shares provides a demonstration of two different types of conflict of interest and some of the complexities associated with it.

In 2005, WA Minister for Sport and Seniors Bob Kucera was forced to resign after taking part in a Cabinet decision which related directly to a company in which he owned superannuation shares. While he had disclosed his shares to the Parliament, Mr Kucera did

not bring this potential conflict of interest to the attention of the Premier before Cabinet decided to award Alinta Gas \$88 million in stamp duty relief (ABC Radio PM, 2005). Regardless of Mr Kucera's intention, the perceived conflict of interests meant that to be *responsible* for his actions, he had no option but to resign. Planning Minister Alannah MacTiernan was also affected when it was revealed her husband also owned shares in Alinta Gas when she took part in the same Cabinet decision (ABC News Online 2005). According to then Premier Geoff Gallop's *Ministerial Code of Conduct*, Ministers must provide the Cabinet Secretary with a statement of all pecuniary interests of their spouse, de facto or dependent children (Gallop, 2001: 16 March). Ms MacTiernan said that while she should have made herself familiar with her spouse's shares, calls for her resignation were ridiculous (ABC News Online 2005). Premier Geoff Gallop supported the Minister, and she was not required to resign. This case highlights some of the difficulties for Ministers in remaining free of a conflict of interests, and the burden on them to be proactive in the awareness of their interests, perceived or potential.

These cases can be considered as moderate on the scale of unethical behaviour because no significant personal gain was achieved. However, conflict of interest cases are at odds with ethical political behaviour. They offend the primary public expectation that public officers will use their positions of influence to promote the public interest, not for personal gain.

Misuse of Parliamentary entitlements

Members of Parliament are provided with a number of allowances and entitlements to allow them to carry out their official duties. In addition to their salaries, Members are able to claim entitlements such as travel and electorate expenses. These must to be reported. Entitlements

might also include postage, stationery, office accommodation and facilities, but only to a given limit and in relation to official duties.

The types and amounts of parliamentary entitlements are the subject of much debate in the Government, public and media. The use of printing entitlements for example has been the subject of much media attention. The Australian National Audit Office's (ANAO) September 2009 Report criticised the overuse of printing entitlements and made a number of recommendations to increase transparency, and to reform printing and newspaper allowances (Ludwig, 2009). The report sparked public outcry when it was revealed Members had been using their printing allowances for electioneering purposes, a function which is certainly outside of official duties (Lane, 2009). Despite Member dissatisfaction, the Rudd Government has committed to all of the recommendations, and will begin implementation immediately (Ludwig, 2009).

Allowances are provided for a specific reason, and Members must adhere to specified guidelines with regards to the amounts and uses of parliamentary entitlements. Problems occur when Members either exceed their allowed entitlements (as a result of either error or negligence) or deliberately misuse allowances. A particularly blatant example of this is the case of Richard Face. In preparation for his resignation as Minister for Gaming and Racing from NSW politics, Mr Face removed photocopying paper, facsimile machine cartridges, envelopes and postage stamps, and office furniture to establish his own consultancy business (Brown, 2003). After denying all allegations, an ICAC investigation found that in addition to taking the aforementioned articles, Mr Face had also used his parliamentary staff to arrange his post-resignation business (ICAC, 2004). Mr Face was found to be corrupt, and convicted for both misleading the Inquiry and the misuse of parliamentary resources (ibid).

In simple terms, the abuse of parliamentary entitlements is unethical because Members are not supposed to benefit personally from their position. In addition, it is exceptionally damaging to public confidence because the abuse is of tax payers' money. The ANAO Report highlighted that the existing entitlements framework lacks clarification and specific guidance, has limited accountability mechanisms and low public reporting, and is in real need of system review (ANAO, 2009). Unless significant changes occur, the abuse and misuse of parliamentary entitlements is likely to be a continuing problem.

Conclusion

The key problem in the ethical dilemmas and other scenarios discussed here is the abuse of trust. Trust is a central element of representative democracy. By voting in elections citizens effectively transfer responsibility for government to their representatives, trusting they will govern for the public good. Even more, citizens trust that their representatives will use the resources and expertise available to them to make decisions that result in maximum benefit for the community. Representatives are expected to be *trustworthy* and public trust is what gives a democratic government legitimacy.

Parliamentarians form the link between the people and their democratic rights. Therefore, democracy stands and falls on the ability of parliamentarians to respect the rights of their constituents, and do this by acting with integrity. If the public cannot trust their representatives to respect their rights and interests, the government loses legitimacy. Essentially, it would be governing without engaging with the public interest, and as a result could not claim to be democratic. It is therefore fundamentally important that

parliamentarians act ethically to represent the interests of the public and not their own; the legitimacy of the entire democratic system relies on it.

For the most part, Australian parliamentarians uphold the values of responsible government. The key conventions of responsible government promote transparency and accountability, and expect that ministers will represent the public interest rather than benefit personally. These expectations concur with those of the voting public and their deep desire to see parliamentarians act with probity and decency in public decision making. Despite this tradition, transgressions both serious and minor occur, damaging the integrity of public officials and the institution of Parliament itself.

The mechanisms that have been developed in response to this damage have been aimed at restoring and maintaining the integrity and ethical standards necessary to the political process. Codes of conduct provide guidelines for political conduct, while registers and allowances set limits and rules to ensure transparency and accountability. In addition, external bodies such as the ICAC provide an impartial third party to offer judgment when political conduct is in question. However overall, these mechanisms suffer from inherent limitations. For the most part, these mechanisms lack consistency because of their unenforceable nature, and are too easily influenced by the political environment of the day. But more than this, existing structures are reactive in character, and fail to address the problem of unethical political behaviour in itself. This analysis suggests that 'ethics in politics' should be seen in a new light.

The ethical conduct of parliamentarians is a crucial component in a representative democracy. It is hoped that this consideration of ethical political behaviour can stimulate discussion about both why ethics matters in politics, and how ethics can be a meaningful foundation for political behaviour.

Section Two

Case Study One

Topic: The political downfall of Nick Greiner as a result of partiality in the 'Metherell Affair'

Jurisdiction: New South Wales

Timeline

1988

March Liberal Leader Nick Greiner Elected as 37th Premier of New South Wales

May Premier Greiner established the Independent Commission Against Corruption (ICAC) as a response to growing concern with the integrity of public officers.

1991

May Mr Greiner re-elected as Premier with a minority government support

October Terry Metherell, Liberal Member for The Entrance, resigned without notice from the party after being excluded from the new Ministry. He subsequently became an Independent, posing further destabilisation to Greiner's minority government.

1992

April 10 On arrangement with the Premier and Minister for Environment Tim Moore, Metherell resigned from Parliament and was immediately appointed to a senior public service position within the Environmental Protection Authority.

As expected, the safe Liberal seat of The Entrance was gained by the Government, providing it with another Member in the Assembly.

- April The *Sydney Morning Herald* reported public outcry at the Metherell resignation and appointment
- 28 April Parliament referred the matter to the ICAC for investigation
- 1 June ICAC released its report – *Report on investigation into the Metherell resignation and appointment* – finding both Mr Greiner and Mr Moore ‘corrupt’ under the terms of the ICAC; this corruption constituted grounds for dismissal.
- 24 June Mr Greiner resigned as Premier and as a Member of Parliament.
- 21 August Mr Greiner and Mr Moore won their case in the Court of Appeal of the Supreme Court against charges of corruption. While acknowledging that the actions of Greiner and Moore involved partiality, the Court of Appeal found ICAC standards used to establish ‘corrupt’ behaviour to be wrong in the law, and therefore a nullity.

Political context

Plagued by corruption allegations, judicial and police inquiries, and damning media coverage, the NSW Government struggled with ethical political behaviour in the 1980s (Wilkinson, 1996: 231). When Nick Greiner was elected as Liberal Premier in 1988 he promised to restore and protect public administration integrity (Uhr, 2005: 127). Through the immediate creation of the Independent Commission Against Corruption (ICAC), Greiner presented a Government that was serious about democracy:

'If a liberal and democratic society is to flourish we need to ensure that the credibility of public institutions is restored and safeguarded and that community confidence in the integrity of public administration is preserved and justified'

(Greiner, 1988: 674).

But in a bizarre turn of events, the ICAC he had established was the instrument of Greiner's political demise. He had taken a staunch line against the corruption endemic to NSW politics and promised to address the problem. Consequently, the public responded angrily when it was revealed the Premier had attempted to bolster his government's fortune by offering Mr Metherell the Environmental Protection Agency position. State newspapers read: *'The Bold Arrogance of Greinerism'* and *'Disgust in the Avenue for 'Underhand' Greiner'* (*Sun Herald*, 1992; *Sydney Morning Herald*, 1992). To the public, it was yet another instance of 'jobs for the boys'. The Premier had gone against the ethical standards that led him to power; there was no escaping hypocrisy for Greiner.

'Rules' Broken

Greiner's dubious conduct in arranging a senior public service position for Metherell was in clear contravention of the *Public Sector Management Act 1988*. According to the *ICAC Report on Investigation into the Metherell Resignation and Appointment*, Greiner and Moore went through a complex set of arrangements to *create* a public service position for Metherell so that he could resign from parliament and still maintain a useful and challenging profession (ICAC, 1992). The core principles of the Act advocate the selection of applicants who duly apply for a position and have the greatest merit. In his submission to the Commission, Director General of the Environmental Protection Authority (EPA) Neil Shepherd

highlighted that unlike Metherell, the four other directors of the EPA were appointed after exhaustive and orthodox selection processes (ibid, 28).

In terms of the ICAC's ethical standards, Greiner's conduct was 'corrupt'. He was deemed so under s8 (1) of the ICAC Act:

'any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority'

(ibid, 12).

Ethical Issues

There are two related ethical points to consider in relation to Greiner's conduct in the Metherell resignation and appointment. Firstly, while the Supreme Court's Appeal Court later found this judgement of 'corruption' to be wrong in the law, it did not dispute the fact that Greiner used his official functions to act partially (ICAC, 1992b: 6). In a liberal democracy, transparent merit-based appointment procedures are established as a check and balance against government power. In this case, Greiner's government effectively gained more control over the Legislative Assembly as a result of Metherell's resignation and appointment. Greiner knew in advance that the by-election caused by the resignation would very likely result in another seat for the Liberal party.

Secondly, these events have been seen in the context of 'jobs for the boys'. Both Greiner and Moore made secretive arrangements and deals in order for a former party colleague turned political opponent to be offered a position that would see him leave parliament. Greiner used his position of influence to bypass regular appointment procedures. The use of undue influence to affect the outcome of what should be a transparent appointment system

contravenes the very core of ethical political conduct. The expectation is that parliamentarians will act impartially, and not use their position of influence for party political gain.

Conclusions

Political figures criticised the ICAC's judgment of corruption. While there was no doubt that Greiner's behaviour was a serious misjudgement, the ICAC was condemned for perpetuating a trend to analysing political actors in terms of dark, self interested terms (Uhr, 2005: 128). Both NSW Houses however went on to establish Ethics Committees in response to the Commission's findings, with the Legislative Council developing a Code of Conduct in 1996 (Burgmann, 1998:118).

This case is a useful example of the social and political damage caused by using a position of influence for personal gain. For Greiner it meant the end of a political career, and even further damage to public confidence and to the integrity of NSW State Government.

Case Study Two

Topic: Since 1994 there have been a number of cases of Ministers and former Ministers in the UK using their influence in an inappropriate way.

Jurisdiction: The United Kingdom.

Timeline

1994

July A 'sting' operation by UK newspaper *The Sunday Times* reported that two Conservative MPs, Graham Riddick and David Treddinick, had accepted cheques for £1,000 for agreeing to table a parliamentary question. The two politicians were suspended for 10 and 20 days respectively.

The Guardian newspaper alleged that lobbyist Ian Greer had bribed two Conservative Members of Parliament, Tim Smith and Neil Hamilton, in exchange for asking parliamentary questions on behalf of Mohamed Al-Fayed, owner of Harrods department store. Mr Hamilton also received two free nights for free at the Ritz Hotel in Paris.

Tim Smith resigned from his position and admitted to receiving money from Mohamad Al-Fayed.

October Prime Minister John Major set up the *Committee on Standards of Public Life*.
Neil Hamilton and Ian Greer issued libel writs in the High Court against *The Guardian* to clear their names.

December Mohamed Al-Fayed alleged that he had paid Neil Hamilton, in addition to the original allegations that Ian Greer was the paymaster. Neil Hamilton denied this.

1995 *The Committee on Standards of Public Life* draw up the *Seven Principles of Public Life*.

1996 Three days before Neil Hamilton's and Ian Greer's libel actions, three of Mohamed Al-Fayed's employees claimed that they had processed cash payments to the two men. This was denied by both Hamilton and Greer. Three days after this Hamilton and Greer withdrew their libel actions.

1997 A senior civil servant, Sir Gordon Downey, was ordered to conduct an official inquiry into the affair.

25 March Tim Smith resigned from Parliament

Neil Hamilton lost his constituency of Cheshire in the general election, against a candidate standing as an independent 'against corruption'

Early July Sir Gordon Downey published a report, clearing Ian Greer, Neil Hamilton, and Tim Smith of *The Guardian's* original allegations that Ian Greer had paid the two MPs to table questions.

2001

2 July *The House of Lords Code of Conduct* is adopted.

2009 Four Labour Peers allegedly responded to offers of up to £120 000 from reporters posing as lobbyists to amend legislation. They denied the binding nature of the contracts and the two acting Peers, Truscott and Taylor, were suspended from Parliament. As they were former Peers and so no longer

acting Members of Parliament, Lords Moonie and Snape were not eligible for the same penalty.

Political context

These incidents are not limited to a particular party, and whatever the political environment was at the time of the recent cases, it did not differ enough from the previous environment for partisanship to be a factor. The fact that the reporters had the initiative to covertly encourage the parliamentarians to act unethically suggests that there were suspicions they might catch someone out. These suspicions, if known outside the media, could have weakened public trust prior to the cases coming to light.

'Rules' broken

According to the *House of Lords Code of Conduct* Members of the house;

(c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;

(d) must not vote on any bill or motion, or ask any question in the House or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule)'.

(House of Lords Code of Conduct, 2001)

The act of accepting money in exchange for parliamentary influence also breaks four of the *Seven Principles of Public Life*, namely, integrity, accountability, openness and honesty. (see Appendix 1)

If this sort of incident were to occur in Australia, they would be breaking the rules regarding improper influence as stated in former Prime Minister John Howard's 1998 Code of Conduct, *A Guide on Key Elements of Ministerial Responsibility*. This document says that;

Ministers should not accept any benefit where acceptance might give an appearance that they may be subject to improper influence (eg because the giver has or seeks to have a contractual relationship with government or has any other special interest in government decisions).

(Howard, 1998; 11)

Ethical issues

In this case, the main ethical dilemma is the acceptance of cash for influence, which breaches *The House of Lords Code of Conduct*, and would have broken unspoken ethical rules and public expectations prior to the release of this document.

Aside from ethical issues involved in breaking the codes and principles, there are also ethical issues regarding public trust. As the parliamentarians misused their positions, they broke the trust the people put in them to act honestly and ethically, and so not only damaged their own reputations and influence, but that of the government and their parties. Further to the cash for influence cases, the failings of the parliamentarians were compounded by denials and libel actions which were invalid, furthering the public's perception of dishonesty and weakening the legitimacy of the government.

Conclusions

Whether as a result of the previous case of cash for influence or other examples of improper influence, *The House of Lords Code of Conduct*, as previously quoted, was adopted on Monday the 2nd of July 2001.

In the 1994 case involving Mr Smith, Mr Hamilton and Mr Al-Fayed, Prime Minister John Major ordered an inquiry which resulted in the setting up of the *Committee on Standards in Public Life*. The Committee later released the *Seven Principles of Public Life*. MPs financial interests were also put under greater scrutiny with increased regulations.

In a survey carried out by the *Committee on Standards in Public Life* in 2008, it was found that; 22 per cent of people in 2008 think that all or most government ministers tell the truth, compared with 27 per cent in 2006.

And

On the new measure, 44 per cent of respondents said they would trust government ministers 'a lot' or 'a fair amount' to tell the truth, compared with 94 per cent for family doctors, 83 per cent for head teachers and 79 per cent for local police officers. 45 per cent would trust MPs in general 'a lot' or 'a fair amount' to tell the truth, but 62 per cent would trust their local MP to do so.

(Hayward et al, 2008; 10)

The cumulative effect of cases like this can weaken the public trust, and given the media coverage received by the case of Mr Smith, Hamilton and Al-Fayed in particular, it would be difficult to argue that it had not had an impact on the public's perspective of government.

Case Study Three

Case study topic: Tasmanian Senate Deputy Opposition Leader Nick Sherry's improper use of entitlements.

Jurisdiction: Commonwealth of Australia

Timeline

- 1997** Senator Nick Sherry regularly stayed at his mother's house in Opossum Bay, Tasmania, while claiming \$43 000 in travel allowance – an allowance which is not applicable to those staying with family or friends
- October** Senator Sherry's misuse of funds was revealed in the Commonwealth Parliament
- Senator Sherry resigned from his position as Senate Deputy Opposition Leader, and unsuccessfully attempted suicide, for which he named pressure regarding the controversy as one of the causes
- 2001** Re-appointed to front bench
- 2004** Appointed Shadow Minister for Retirement Income and Savings
- 2005** Appointed Shadow Minister for Superannuation and Intergenerational Finance
- 2007** Appointed Shadow Minister for Banking and Financial Services; Minister for Superannuation and Corporate Law
- 2009** Appointed Assistant Treasurer

Political context

Tasmanian Senator Nick Sherry was the Senate Deputy Opposition Leader for the ALP at the time of the improper entitlements coming to light, and so the scandal was quite serious for the Labor Party at the time. The Liberal government used the incident to undermine Labor, claiming that travel rorting was systemic throughout the Hawke and Keating governments.

'Rules' broken

Nick Sherry broke the Parliamentary regulations governing travel allowance under the *Parliamentary Entitlements Act of 1990*. As the Senator was staying at his mother's home, he was not entitled to claim the allowance. Public officials are allowed a set amount of money per year for allowances, such as travel, and must follow a strict procedure of permission and acquittal in order to receive the allowance. Sticking to these guidelines not only maintains the expectations in regards to rules in Parliament, but also the public expectations. The public expect allowances and other privileges involving tax payers' money to be monitored carefully to avoid misspending. As the total amounts spent on travel allowance are released publicly via the Parliamentary website, a high total would be received negatively, and so the breaking of the allowances 'rules' would be apparent. As in this case the allocation of funds was as a result of untruthful information, the breaking of the 'rules' would not be apparent without investigation – this is what occurred.

Claiming travel allowance when the Senator had not incurred the expense broke the regulations for parliamentarians in regards to travel allowance. This was not only a misuse of taxpayers' money, but dishonest and effectively fraud.

Ethical issues

In the case of entitlement, when someone is entitled by their position in public life to certain privileges, it is an abuse of their position and the trust given to them to misuse the entitlements. It is expected that people will maintain their behaviour according to the guidelines, as a result of personal integrity and ethics, and also in the interests of public expectations. As with all cases of unethical behaviour, there are negative effects regarding public expectations of parliamentarians and political life. However, in regard to allowances and financial privileges which are funded by tax-payers money, the effects can be very serious. The abuse of allowances can not only be considered as unethical, but comparable to stealing from the public.

Conclusions

Following a break from Parliament after his resignation, Nick Sherry returned to the front bench in 2001. It was not expected that he would return to any high ranking political positions, despite having demonstrated skills useful in public life. According to an article in *The Australian*;

as one of Labor's acknowledged superannuation experts and secretary of its caucus economics committee, he said he would devote himself to superannuation, tax and economic policy development. Few gave him any prospect of returning to the front bench.

(Montgomery, 2002; *The Australian*)

Since returning to the front bench he has been the Shadow Minister for Retirement Income and Savings (in 2004), Shadow Minister for Superannuation and Intergenerational Finance (in 2005) and in 2007 the Shadow Minister for Banking and Financial Services, and following the election of Labor Prime Minister Kevin Rudd, Minister for Superannuation and

Corporate Law. In 2009 he was appointed the Assistant Treasurer. In December 1998 Prime Minister John Howard released a Code of Conduct which contained sections relevant to the case, such as;

Ministers may accept benefits in the form of gifts, sponsored travel or hospitality only in accordance with the relevant guidelines (provided by the Prime Minister when he writes to ministers about their statements of interests)'.

(Howard, 1998; 11)

Although the Code refers to Ministers, the principles apply to all Parliamentarians. The case was also part of the environment which motivated Prime Minister John Howard to create the *Guide*.

Case Study Four

Topic: Resignation of Senator Santo Santoro due to failure to register interests

Jurisdiction: Commonwealth

Timeline

2005 Senator Santo Santoro purchased shares in biopharmaceutical company CBio
[CBio was working on a breakthrough treatment for arthritis in the aged]

2006

January Senator Santoro appointed as Minister for Ageing within Howard
Government.

August Senator Santoro realised the conflict of interest on receiving a financial
statement.

October He informed the Prime Minister and sold shares immediately. On the sale of
the shares profits went to Family Council of Queensland.

2007

March 13 Courier-Mail printed front page story about Senator Santoro's conflict of
interest in the previous year.

The Opposition pressured the Prime Minister to dismiss Senator Santoro over
failure to disclose.

March 14 Prime Minister Howard ruled out dismissing Santoro, publicly accepting his
conduct as an oversight. Howard commends Senator Santoro's actions once
the issue was raised telling the media 'he was very proactive about the

problem'. The Prime Minister instructed all of his Members to check their financial interests.

March 16 Senator Santoro revealed that on checking his financial records as requested, he had also failed to declare another 70+ share transactions.

Senator Santoro resigned from ministry on the same day.

Political context

While the political environment of the time does not change the facts of the Minister's conflict of interests, it can shed some light on the 'political' nature of resignations and inconsistencies in the application of ethics principles within government.

In the year of a looming election, the period leading up to the Minister's resignation was an intense ethics 'blame game' in Federal Parliament. The magnitude of the Brian Burke scandal in WA had begun to be realised and the Coalition attacked the Labor party, accusing party Members of lacking honesty (*The Age*, 2007). When it was realised that one of the Government's own, Human Services Minister Ian Campbell, had met with Brian Burke in 2005, an embarrassed John Howard invoked his Code of Conduct to force his resignation.

The Opposition juxtaposed the Senator Santoro case against the dismissal of Ian Campbell only a fortnight earlier. For critics in the media, Campbell's 20 minute meeting with Brian Burke was trivial compared to Minister Santoro's failure to disclose so many share transactions (*PM*, 2007). Despite Prime Minister Howard's previously strict adherence to the Code of Conduct he initially supported Minister Santoro's 'inadvertent oversight' (ABC News Online 2007). It was not until the Minister revealed his more than 70 other 'oversights' that the Prime Minister was forced to reconsider his position.

'Rules' Broken

Minister Santoro's conduct in this case is clearly a 'conflict of interest' problem. Not only did he own shares that related to his portfolio as Ageing Minister, he had failed to declare a multitude of other financial interests. As a result of this, Minister Santoro breached three types of 'rules' on ethical behaviour;

- *Individual Ministerial responsibility*: By convention, Ministers should not gain personally from their official duties. While Minister Santoro may not have necessarily gained from his conduct, the perception is that he could have abused his position of power.
- *Prime Minister Howard's Ministerial code of conduct*: "Members of staff must divest themselves, or relinquish control, of sensitive interests such as shares or similar interests in any company or business involved in the area of their ministers' portfolio responsibilities" (Howard 1998, 10).
- *Register of Senators' Interests*: This register requires Senators to declare their financial and other interests to the House within 28 days of appointment, and make alterations within 35 days of their occurrence. Senator Santoro failed to fulfill both of these requirements.

Ethical Issues

While Senator Santoro did not make any decisions that related to shares he owned as Minister for Ageing, Santoro was in a conflict of interest by not disclosing ownership of CBio shares. Similarly, while the 70 plus other undisclosed share transactions may not have been in conflict with the Minister's portfolio, he was *at risk* of a conflict of interest. Registers

of interests and disclosure protocols are designed to create transparency so that conflicts of interest are brought to the attention of Parliament in order to prevent Ministers from having influence over a decision which could benefit them (or their relatives and friends) personally. The failure to disclose was not only detrimental to Senator Santoro's personal integrity, but also to that of the entire Parliament.

This case is about perceived and potential conflict of interest. It could be perceived by the public that by failing to disclose so many company holdings, Senator Santoro was gaining improperly from his position of influence. And by owning shares that actually related to his portfolio, Minister Santoro had the real potential to do this. Both kinds of conflict of interests here are damaging. The opening theme of Prime Minister Howard's 1998 Ministerial Code of Conduct requires that Ministers do not by their conduct undermine public confidence in them or the government (10). While this expectation may seem aspirational, it is central to both the expectations of the public, and the function of stable government. By failing to be aware of financial interests that conflicted with his official duties, Minister Santoro negatively affected the good standing of Government.

Conclusions

When Minister Santoro became aware of his undisclosed financial interest he accepted full responsibility for his actions and resigned. In his resigning statement to the media the Minister admitted his error: 'I failed, to a considerable extent, in some areas of disclosure and for that there is a price to pay' (Lateline, 2007).

The Minister's misconduct damaged the integrity of the Senate in managing the Register of Interests in keeping Senators accountable, and more broadly the Government's commitment to serving public interests. In response to the Minister's failures, a motion was moved in the

Senate to reaffirm the importance of maintaining the integrity of the Register. It highlighted the Register's importance in reassuring the public of the Parliament's honesty and probity, and as a check and balance in a democratic government (Evans, 2007: 33-37).

Case Study Five

Case study topic: In 2007 Steve Kons, then Attorney General and Deputy Premier, misled Parliament when he denied the existence of a document that was later revealed to exist.

Jurisdiction: Tasmania

Timeline

2007

January Steve Kons, then Attorney General, Deputy Premier and Minister for Planning in the Tasmanian government, appointed Simon Cooper to the position of Acting Executive, Commissioner of the Resource Planning and Development Commission.

The Assessment Panel of the Resource Planning and Development Commission overseeing the Gunn's Pump Mill project, lead by Christopher Wright who was recommended by Simon Cooper, decided that the approval process would continue until at least the end of 2007. Later, the Premier, the Hon Paul Lennon, stated that he would like the process shortened, which according to Simon Cooper was his prerogative, although the decision was ultimately up to the Assessment Panel.

8 August A document recommending Simon Cooper for appointment as a magistrate was shredded by Steve Kons, the Tasmanian Deputy Premier, following a private call in his electorate office from Linda Hornsey. Linda Hornsey was then the secretary for the Department of Premier and Cabinet, and as such was not entitled to make recommendations regarding the appointment. She

was also known to have disagreed with Simon Cooper regarding the pulp mill project.

Soon after this, the document was retrieved from the shredder by Nigel Burch, who was then an assistant to Steve Kons and had been present when Linda Hornsey called.

Steve Kons was asked in Parliament whether Simon Cooper was the original nominee, and he told the Parliament that he wasn't. When asked about this after the original recommendation was made public, he said that he didn't think it was an error as the document proving him wrong had been shredded.

Later in August Glenn Hays was recommended for the position.

2008

5 April The Tasmanian newspaper *The Mercury* reported on the changed appointment

6 April Nigel Burch gave Greens MP Kim Booth the document he had secretly reassembled, which Kim Booth later revealed in Parliament.

Steve Kons resigned from his position before question time the next day.

Steve Kons made a public apology to Simon Cooper and Glenn Hay for any embarrassment that this case may have caused.

16 April Nigel Burch publicly revealed himself as the source of the shredded document

June An inquiry is set up to investigate the affair - the Legislative Council Select Committee on Public Sector Appointments.

Political context:

There had been a previous case of a senior Minister from Paul Lennon's government being retired to the backbench for misconduct. This increased the public and parliamentary backlash in the later case.

In regard to the change of recommendation from Simon Cooper to Glenn Hays, newspapers and the public suggested that the change was due to Simon Cooper's opposition to the Gunn's pulp mill project. He had been a critic of the pulp mill, and there were suggestions that withdrawal of the recommendation for his appointment to the magistrate position was 'payback' from those in the government at the time, who had been involved in the development of the pulp mill project,

'The agency which he (Simon Cooper) then controlled released a document under FOI to an opposition MP, who then tabled it in the House of Assembly causing acute personal inconvenience to Ms Linda Hornsey. Given that fact, Ms Hornsey should have recused herself from any involvement in a selection process involving Mr Cooper on the basis of an apparent conflict of interest'.

(Select Committee on Public Sector executive Appointments 2009, 18)

'Rules' broken:

According to Prime Minister John Howard's Standards of Ministerial Ethics document, released in 1998;

Ministers must be honest in their public dealings and should not intentionally mislead the Parliament or the public. Any misconception caused inadvertently should be corrected at the earliest opportunity.

(Howard, 1998; 10)

As Steve Kons would not have been aware of the retrieval of the document, when he said that there was no other recommendation he would have been correct, to the best of his knowledge. When asked whether an alternative recommendation had ever existed, or if

someone else had been informed that they would be appointed to the magistrate position, he was misleading Parliament.

The act of misleading the public and parliament is one which can transcend regulations and codes of conduct, as it is a common expectation that people in both public and private life will uphold some level of honesty and integrity. It is also fundamental to the Westminster system of accountability that Ministers answer truthfully and do not mislead Parliament. If they do the system breaks down.

Ethical issues:

There is a Shakespearian dimension to these events that involves the foibles of human nature, but the problem for Tasmania is that this is not just some soap box drama, it involves the standards of governance and decision-making at the highest levels.

(Putt, 2008)

Events such as these have large impacts on the standards of public life, and are indicative of the problems regarding the ethical behaviour of public officials. As the players were high ranking public officials, it suggests that ethical issues can occur at any level of public life, without regard for the higher standards that should be upheld at the highest level of government. The ethical issues relevant to this case are those of misleading the public and Parliament, and the issue of coercion.

Misleading the parliament and the public:

According to Simon Cooper's testimony to The Legislative Council Select Committee on Public Sector Appointments, he was assured by Steve Kons that he would be appointed to the magistrate position. However, when asked about it in Parliament, Steve Kons denied

this.

The following is an extract of the Hansard record of proceedings from the 8th of April 2007:

Mr MICHAEL HODGMAN - Will you tell the Parliament whether you said anything to Mr Simon John Cooper which might have conveyed to him the idea that you actually proposed to recommend his appointment as a magistrate?

Mr KONS - No, I did not convey or say anything to Mr Simon Cooper about him being appointed as a magistrate. Mr Cooper was and has been on the RPDC and RMPAT during my term as Minister for Planning and the only things we discussed have been in relation to that. I have had two dinners with Mr Cooper and there was just general discussion about RPDC matters and RMPAT and a further one with a group of other lawyers which was just an introduction of myself to a young group of lawyers who wanted to know what was going on in this State and what my views were about the Attorney-General's portfolio.

(Hansard, 2007; 133)

Mr Gary Hill's sworn statement to the Legislative Council Select Committee on Public Executive Appointments contains the following observations concerning the parliamentary debate on Tuesday, 8 April 2008:

I listened to the questions put to KONS by live stream direct from my PC and immediately thought that his response was very serious and that he had misled parliament. I was shocked at his response because it was not the way we had discussed it [the previous day].

(Select Committee on Public Sector Executive Appointments, 2009; 133)

According to Gary Hill's testimony, later that day he asked Mr Kons why he had misled Parliament and was told Mr Kons thought that as the document had been shredded, it could not be produced in Parliament. This indicates not only a cynical disregard for codes of conduct, but also the risks involved in misleading the public and Parliament.

If someone in public and private life were to say something untrue, intentionally or accidentally, it is considered the responsibility of that person to acknowledge the mistake and if possible, make amends. For Parliamentarians this could include a public statement or amending the Hansard prior to its release. The expectation is that *ethical* people will

acknowledge their mistakes. Indeed, Steve Kons made a public apology to Simon Cooper and Glenn Hays for any embarrassment the case may have caused;

I wish to emphasise that at no time did I intend to wilfully mislead the Parliament and I took the earliest available opportunity to correct the record. I realise that the correction does not absolve the initial mistake and for that there must be a consequence. I reiterate that at no stage of my decision to recommend Glenn Hay to be appointed as a magistrate was I instructed by the Premier or the Premier's office not to recommend Simon Cooper, nor was I pressured by the former Secretary of the Department of Premier and Cabinet, Linda Hornsey.

(Select Committee on Public Sector executive Appointments, 2009; 139)

Coercion and inappropriate interference:

There is also an issue regarding inappropriate interference from Linda Hornsey, former Secretary for the Department of Premier and Cabinet. In Parliament while speaking regarding his resignation, the former Minister Steve Kons claimed that there had been no interference from anyone else regarding the ultimate decision to appoint Glenn Hays and shred the recommendation for Simon Cooper.

I reiterate that at no stage of my decision to recommend Glenn Hay to be appointed as a magistrate was I instructed by the Premier or the Premier's office not to recommend Simon Cooper, nor was I pressured by the former Secretary of the Department of Premier and Cabinet, Linda Hornsey. The decision to take Mr Hay's name to Cabinet was mine and mine alone.

(Select Committee on Public Sector executive Appointments, 2009; 102)

According to telephone records retrieved by the police, Steve Kons received a call from Linda Hornsey's landline on the morning of 8th of August 2007. Following this phone call, he shredded the signed document recommending Simon Cooper for the magistrate position. According to the testimony of Nigel Burch;

He went into his office and closed the door, which was unusual. The call was from Linda Hornsey; it was identified as Linda Hornsey by Stephanie. Steve went quickly into his office, closed the door and then shortly afterwards he came out and shredded the appointment in front of Stephanie (an electorate assistant) and me.

(Select Committee on Public Sector executive Appointments, 2009; 26)

Linda Hornsey has been mentioned as not being directly responsible for the magistrate position appointment and so should not have involved herself in the process of choosing the magistrate.

Ms Hornsey had personal difficulties relating to the Pulp Mill Assessment process in connection with Mr Simon Cooper and the RPDC in both March and June of 2007 which were aired in the public domain on 15 June 2007. In light of these events, she was singularly inappropriate as a source of advice about Mr Cooper's suitability for appointment as a Magistrate in August 2007. Such was the perception of bias, that the ethical thing to have done was to refrain from becoming involved.

(Select Committee on Public Sector executive Appointments, 2009; 124-5)

Conclusions:

As a result of this case, Premier Paul Lennon's government was weakened, as well as that of the rest of the Labor party in Tasmania. The reputations of those involved suffered, including Simon Cooper and Glenn Hays, though they both received a public apology from Steve Kons. Glenn Hays continued in the disputed position.

There is no evidence of any regulations being instituted or any other systems changes in response to this case.

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Appendices

(Appendix 1)

The Seven Principles of Public Life

SELFLESSNESS

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

INTEGRITY

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

OBJECTIVITY

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

ACCOUNTABILITY

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

OPENNESS

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

HONESTY

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

LEADERSHIP

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

These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.

Committee on Standards in Public Life. 2001. <http://www.public-standards.gov.uk/index.html>

(Appendix 2)

Summary of codes of conduct in Australian and selected overseas parliaments

	Federal	NSW	Vic	Qld	Tas	SA	WA	ACT	NT
Ministerial Code	√	√	√			√	√	√	
Members' code		√	√	√	√		√	√	
Post-separation employment		√			√	√	√	√	
Register of interests	√	√	√	√	√	√	√	√	√
Ethics/standards mechanism providing advice or conducting investigations		√		√					

McKeown, Diedre. 2006. A survey of codes of conduct in Australian and selected overseas parliaments. *Parliamentary Library*, <http://www.aph.gov.au/library/INTGUIDE/POL/conduct.htm>