

# CODES OF CONDUCT

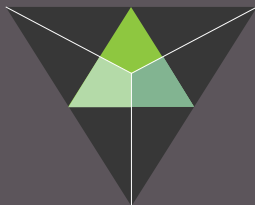
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For Members of Parliament, Ministers  
and Ministerial Staff in Tasmania

JUNE 2011

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INTEGRITY  
COMMISSION



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President  
Legislative Council  
Parliament House  
HOBART TAS

Speaker  
House of Assembly  
Parliament House  
HOBART TAS

Dear Madam President,  
Dear Mr Speaker,

**CODES OF CONDUCT FOR MEMBERS OF PARLIAMENT,  
MINISTERS AND MINISTERIAL STAFF IN TASMANIA**

This report is presented to Parliament in accordance with section 11 (3)  
of the *Integrity Commission Act 2009*.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Murray Kellam".

The Hon Murray Kellam AO  
Chief Commissioner

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# CONTENTS

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<b>Executive Summary</b>	1
<b>Chapter 1:</b> Introduction	5
<b>Chapter 2:</b> Tasmanian Codes	11
<b>Chapter 3:</b> Preventing Parliamentary and Ministerial Misconduct	15
<b>Chapter 4:</b> Members of Parliament Codes of Conduct	31
<b>Chapter 5:</b> Ministers Codes of Conduct	71
<b>Chapter 6:</b> Ministerial Staff Codes of Conduct	121
<b>Chapter 7:</b> Codes of Conduct, their Implementation and Enforcement	145
<b>Chapter 8:</b> Conclusions, Recommendations and Future Directions	155
<b>Appendix One:</b> Model Draft Members of Parliament Code of Conduct	163
<b>Appendix Two:</b> Model Draft Ministers Code of Conduct	166
<b>Appendix Three:</b> Model Draft Ministerial Staff Code of Conduct	170
<b>Appendix Four:</b> Guidance Notes For Model Draft Codes	173
<b>Appendix Five:</b> Receipt and Giving of Gifts and Benefits Guidelines	185
<b>Appendix Six:</b> Methodology	192
<b>Appendix Seven:</b> List of Identified and Provided Materials Bibliography	196
<b>Appendix Eight:</b> Bibliography and Reference List	203

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# EXECUTIVE SUMMARY

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*The Codes of conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania* project is the most significant and comprehensive review conducted in Tasmania for codes of conduct relevant to all State Members of Parliament, Ministers and ministerial staff.

It reflects increasing community expectations about the need for clearly delineated standards of conduct that will inspire the confidence and trust of Tasmanians through strengthening the accountability of Parliamentarians, Ministers and those who work for them.

The project also ensures that the review and updating of the Tasmanian codes of conduct framework at the political level is contemporary and sufficiently robust to set the direction well into the future.

It was requested by the then-Premier, David Bartlett, who sought feedback on the existing Government Members Code of Conduct and a draft Code of Conduct for Ministerial Staff.

The Integrity Commission has responded by researching best practice in this field, nationally and internationally. Research has included the first complete comparative analysis of all Australian codes of conduct for parliamentarians and government ministers.

The Commission's review, recommendations and three proposed model Codes of Conduct for Members of Parliament, Ministers and ministerial staff establish a comprehensive platform that reflects some of the world's leading views and practices guiding ethical conduct. This platform will underpin future training to be developed by the Commission for Parliamentarians, Ministers and ministerial staff in ethical standards and conduct.

The Commission's research has highlighted the fact that codes play a valuable role in defining and communicating acceptable standards of conduct and motivating individuals to demonstrate appropriate behaviour.

It has identified the need for codes of conduct to apply to all Parliamentarians and not only government members or members of the House of Assembly; for specific code of conduct direction and guidance to apply to Ministers; and for expectations of ministerial staff to be clearly defined.

The Commission has, accordingly, developed three model draft codes of conduct, applying to Parliamentarians, Ministers and ministerial staff respectively. Each code recognises and addresses areas of ethical issues relevant to community expectations of behaviour. The model codes are intended to be readily interpreted.

The Commission publishes this report in the hope that Parliament and the Government will accept and implement the following recommendations. The Commission will provide any support, expertise and resources necessary to achieve this.

# KEY RECOMMENDATIONS

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The Commission makes the following key recommendations:

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| <p><b>1</b> The House of Assembly and Legislative Council adopt a code of conduct for the members of each chamber of Parliament.</p>   | <p><b>2</b> This report be referred to the Joint Standing Committee on Integrity for timely consideration and reporting.</p>                 |
| <p><b>3</b> The House of Assembly retains but reviews the current Code of Race Ethics.<br/>The Legislative Council gives consideration to adopting a reviewed Code of Race Ethics.</p>   | <p><b>4</b> State Government adopts codes provided for Ministers and for ministerial staff, and that such codes be tabled in Parliament.</p> |
| <p><b>5</b> Government considers the revision of Receipt and Giving of Gifts and Benefits Guidelines for Government Members of Parliament provided at Appendix Five, and that these constitute new guidelines for Ministers.<br/>Further, that Parliament adopts similar guidelines for all Members of Parliament.</p> | <p><b>6</b> A breach of the Parliamentary Code of Conduct should be considered and dealt with by Parliament itself.</p>                      |
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**7** Current procedures and penalties for dealing with contempt of Parliament should be reviewed, with consideration given to implementing a range of actions to deal with a breach, including remedial actions.

**8** The operation of a code of conduct for Members of Parliament should be reviewed by the Parliamentary Joint Standing Committee on Integrity on a regular basis, such as every three to four years.

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**9** The operation of codes of conduct for Ministers and ministerial staff should be reviewed by Government on a regular basis, such as every three to four years.

**10** The codes of conduct for Members of Parliament, Ministers and ministerial staff should be made available on Government and Parliament websites.

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**11** Members of Parliament, Ministers and ministerial staff should receive information about the relevant code and training in ethical conduct through induction processes or through other training.

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# CHAPTER 1:

## INTRODUCTION

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In October 2010, the Integrity Commission received a request from the then-Premier, The Hon. David Bartlett, for feedback on the *Code of Conduct Government Members of Parliament 2006* and the related *Receipt and Giving of Gifts and Benefits Guidelines for Government Members of Parliament 2006*.

The Commission proposed that the most effective means of providing this feedback would be to conduct a comparative analysis of existing codes for members of parliament, ministers and ministerial staff in other jurisdictions, to establish best practice in this area.

It was also noted that conducting this research would enable the Commission to address its legislative responsibility to provide advice regarding codes of conduct to the Parliament and Government, and facilitate the provision of best practice advice about codes of conduct to Tasmanian public authorities. The research would also enable the Commission to provide information to the public about the standards of conduct to be expected of public officers, and thus enhance community confidence and trust in the accountability and openness of government institutions in Tasmania.

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### PURPOSE OF THE REPORT

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The purpose of this report is to:

- provide information to the public about ethical conduct by members of parliament, ministers and ministerial officers, and the standards of conduct that can be expected of these elected officials and officers; and
- provide advice to both Houses of Parliament about codes of conduct and how these can be implemented and improved.

## THE INTEGRITY COMMISSION

The Integrity Commission began operating on 1 October 2010. The Commission was established by the *Integrity Commission Act 2009* (the Act).

The Act and the Commission resulted from recommendations of an inquiry by the Joint Select Committee on Ethical Conduct.

The Joint Select Committee published its final report, *Public Office is Public Trust*, on 24 July 2009. The report indicated that many Tasmanians had lost faith in open government in Tasmania. It made a number of recommendations. Of particular relevance, it recommended that the Legislative Council adopt a Code of Ethical conduct and a Code of Race Ethics.<sup>1</sup>

The object of the Act and objectives of the Commission are set out in section 3 of the Act:

1. The object of this Act is to promote and enhance standards of ethical conduct by public officers by the establishment of an Integrity Commission.
2. The objectives of the Integrity Commission are to –
  - a. improve the standard of conduct, propriety and ethics in public authorities in Tasmania; and
  - b. enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
  - c. enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

3. The Integrity Commission will endeavour to achieve these objectives by –
  - a. educating public officers and the public about integrity; and
  - b. assisting public authorities deal with misconduct; and
  - c. dealing with allegations of serious misconduct or misconduct by designated public officers; and
  - d. making findings and recommendations in relation to its investigations and inquiries.

## BACKGROUND

### THE PREMIER'S TEN POINT PLAN

In August 2008, as part of the *Trust in Government* package, the Government initiated a major work program on issues relating to sustaining and improving public sector governance. On 19 August, Premier Bartlett announced a *Ten Point Plan to Strengthen Trust in Tasmania's Government*. The plan included:

#### Point 6:

Codes of conduct for Members and Ministers – a new code of conduct for all Members of the Parliament and a strengthened code of conduct for Ministers.

#### Point 7:

A code of conduct for ministerial and parliamentary staff.

<sup>1</sup> Recommendation 5.

## THE PREMIER'S REQUEST

In October 2010, the Premier requested the Integrity Commission to provide feedback regarding the following:

- *Code of Conduct Government Members of Parliament 2006* and the related Receipt and Giving of Gifts and Benefits Guidelines for Government Members of Parliament 2006;
- draft *Code of Conduct Ministerial and Electorate Staff 2010*; and
- an extract from the existing instruments of appointment used for ministerial staff, including the current code of conduct for ministerial staff.

The Commission determined that the most effective means for addressing the request was to undertake an examination and comparative review of existing codes of conduct for all parliamentarians, ministers and ministerial staff in Australia and overseas. This would ensure that any feedback provided to the Premier would be informed by contemporary national and international best practice.

Addressing the Premier's request in this manner also enabled the Commission to address its legislative obligations relating to codes of conduct and standards of ethical behavior, as well as its specific obligations relating to Tasmanian Members of Parliament, as outlined below.

Standards of parliamentary and ministerial conduct are of great interest and importance to the Tasmanian public. Pursuant to the Commission's responsibility to provide advice to the public about standards of conduct, propriety and ethics in public authorities, and to increase ethical awareness in the community, it is considered appropriate that the results of the Commission's analysis, as well as resulting recommendations to Parliament and Government, be outlined in a report and tabled in Parliament pursuant to section 11 (3) of the *Integrity Commission Act 2009*.

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## LEGISLATIVE AUTHORITY

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The legislative authority for this project derives from the *Integrity Commission Act 2009*.

## FUNCTIONS OF THE COMMISSION

Section 8 of the Act outlines the functions of the Commission. These functions include the development of standards and codes of conduct to guide public officers in the conduct and performance of their duties.

## PRINCIPLES OF OPERATION

Section 9 of the Act stipulates that the Commission is to perform its functions and exercise its powers in such a way as to raise standards of conduct, propriety and ethics in public authorities<sup>2</sup> and work cooperatively with public authorities, integrity entities and parliamentary integrity entities to prevent or respond to misconduct.

## PREVENTION, EDUCATION AND ADVICE

the Commission has a number of educative, preventative and advisory functions. These are outlined in section 31 of the Act and in particular include the following functions:

- the provision of advice to public officers and the public about standards of conduct, propriety and ethics in public authorities;<sup>3</sup> and
- the consultation with, and provision of assistance to, principal officers of public authorities in relation to the development and implementation of codes of conduct relevant to those authorities;<sup>4</sup>

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<sup>2</sup> s.5 of the Act defines the Parliament of Tasmania as a public authority.

<sup>3</sup> s.31(c)

<sup>4</sup> s.31(d)

The Commission's research to establish best practice in relation to codes of conduct for parliamentarians, ministers and ministerial staff; the development of model draft codes and provision of these to Parliament; and the tabling of this report about ethical conduct by members of parliament, ministers and ministerial staffers are all consistent with the Commission's responsibility to provide advice, guidance, assistance and information to the public and to public officers about matters of integrity and ethical conduct.

#### **OTHER FUNCTIONS RELATING TO MEMBERS OF PARLIAMENT**

The Act outlines some specific responsibilities for the Chief Executive Officer of the Commission relating to members of parliament. Section 30 of the Act stipulates that the Chief Executive Officer will:

- (a) monitor the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament; and
- (b) prepare guidance and provide training for Members of Parliament and persons employed in the offices of Members of Parliament on matters of conduct, integrity and ethics; and
- (c) review, develop and monitor the operation of any codes of conduct and guidelines that apply to Members of Parliament; and
- (d) where appropriate, propose to a Parliamentary integrity entity possible modifications of any code of conduct or guidelines.

This research project and report, including the development of model draft codes for provision to the Tasmanian Parliament, are also undertaken

pursuant to sections 30 (c) and (d) of the Act. In addition, this project will facilitate the provision of training and guidance to members of parliament as required by section 30 (b).

#### **PARLIAMENTARY STANDARDS COMMISSIONER**

The Act establishes the office of the Parliamentary Standards Commissioner. Under section 29 (1) of the Act, the function of the Commissioner is to provide advice to members of parliament and to the Integrity Commission:

- (a) about conduct, propriety and ethics and the interpretation of any relevant codes of conduct and guidelines relating to the conduct of Members of Parliament; and
- (b) relating to the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament; and
- (c) relating to guidance and training for Members of Parliament and persons employed in the offices of Members of Parliament on matters of conduct, integrity and ethics; and
- (d) relating to the operation of any codes of conduct and guidelines that apply to Members of Parliament.

This report has been produced, and model draft codes developed, with the assistance and advice of the Parliamentary Standards Commissioner.

#### **REPORTS**

Section 11 of the Act enables the Commission to provide reports to Parliament in addition to the annual report. The Commission may, at any time, lay before each House of Parliament a report on any matter arising in connection with the performance of its functions or exercise of its powers.

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## METHODOLOGY AND STRUCTURE OF THIS REPORT

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This report and the attached model draft codes are based upon the Commission's research into the ethical challenges facing members of parliament, ministers and ministerial staff, and how these can be addressed and resolved through codes of conduct and other instruments.

The research consisted of a literature review, an examination of relevant policies and legislation and a comparative analysis of codes of conduct for parliamentarians, ministers and ministerial staff. The Commission requested codes and other relevant documents from parliamentary and other officers in each Australian state and territory and within the Commonwealth Parliament and Government. Similar information was requested from relevant parliamentary and ethics officers in the United Kingdom, Canada and New Zealand.

The literature and materials were examined to ascertain the framework regulating ethical conduct of parliamentarians, ministers and ministerial staff within each of these jurisdictions. The codes of conduct were then compared to identify:

- prevalent themes and issues addressed in the codes;
- terminology and structure;
- details of provisions; and
- method of implementation and enforcement.

From this analysis the Commission was able to identify how codes are commonly developed and implemented and what might constitute 'best practice' for codes.<sup>5</sup>

Chapter Two of the report outlines codes and other provisions currently in place in Tasmania. Chapter Three discusses the standards of conduct and ethics which should be expected of members of parliament, ministers and ministerial staff and challenges that can arise in each of these roles. It also considers how codes of conduct can prevent and address ethical challenges and misconduct, and how codes can and should be enforced.

Chapters Four, Five and Six present the results of the Commission's analysis of codes of conduct for members of parliament, ministers and ministerial staff. Codes from different jurisdictions are compared and minor recommendations developed with respect to particular elements of the codes. As the codes of conduct relating to the United Kingdom, Canada and New Zealand are substantially different in structure and content to those of Australian jurisdictions, they have been dealt with separately at the end of each chapter.

The Commission's conclusions and recommendations are outlined in Chapters Seven and Eight.

The Commission's proposed model draft codes for Tasmanian Members of Parliament, Ministers and ministerial staff are provided in Appendices One, Two and Three. Appendix Four contains "Notes on Guidance" for each of these codes. These notes identify issues that Parliament or Government may view as requiring clarification, or which should be included in accompanying guidance when considering the adoption and implementation of the codes.

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<sup>5</sup> See Appendix Five for a more detailed statement of methodology, including an explanatory note on 'best practice'.

Appendix Five contains a proposed set of Guidelines for Receipt and Giving of Gifts for Ministers, based on the current *Receipt and Giving of Gifts and Benefits Guidelines for Government Members of Parliament 2006*, modified in accordance with the Commission's feedback to the Premier. The Commission considers that these guidelines provide essential clarity and background to the provisions of the proposed model draft code for ministers relating to the receipt of gifts. The applicability of these guidelines to Members of Parliament may also warrant consideration.

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## **CHAPTER 2:**

## TASMANIAN CODES

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Tasmania does not currently have a code of conduct applicable to all Members of Parliament nor does it have a separate code of conduct for ministers or ministerial staff.



## **HOUSE OF ASSEMBLY CODES OF CONDUCT**

On 22 May 1996, the House of Assembly in Tasmania adopted a *Code of Ethical Conduct for Members of the House of Assembly* (the Code of Ethical Conduct) and *A Code of Race Ethics for Members of the House of Assembly* (the Code of Race Ethics). Both codes are located in the House of Assembly's Standing Orders and Rules, Standing Orders 2A and 2B respectively.

The Code of Ethical Conduct is a one page document with a preamble, a statement of commitment and a declaration of principles. Members of the House of Assembly acknowledge the "fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Tasmanian people". Further, members "reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our State and its institutions". The Code's principles require members to act in the public interest, prevent potential and actual conflicts of interest, declare pecuniary interests, not accept gifts, benefits or favours except for incidental gifts or customary hospitality of nominal value, not use their position or knowledge improperly for gain, and not misuse public resources. The Code also states that "Members of this Assembly must act not only lawfully but also in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust".

The Code of Race Ethics is half a page and has eight principles. Under the Code, members agree, among other things, to uphold the honour of public office and the Parliament and the principles of justice and tolerance, respect religious and cultural beliefs of all groups, recognise and value diversity, not discriminate, and promote reconciliation.

Enforcement of the codes of conduct in the Standing and Sessional Orders of the House of Assembly is at the discretion of the Speaker of the House. Serious cases may be referred to the relevant Privileges Committee. Sanctions for breaches range from naming members publicly within the House to suspension and fines, arrest and imprisonment.

## **LEGISLATIVE COUNCIL**

The Legislative Council has no separate formal code of conduct. In its report, *Public Office is Public Trust*, the Joint Select Committee on Ethical Conduct recommended that the Council adopt a code of ethical conduct and a code of race ethics similar to the one already adopted by the House of Assembly.

## **CODE OF CONDUCT: GOVERNMENT MEMBERS OF PARLIAMENT**

For government members (currently Labor Party members and Cabinet appointments, Hon. Nick McKim and Hon. Cassy O'Connor) of the House of Assembly and the Legislative Council, the following code of conduct and guidelines apply:

- the *Code of Conduct Government Members of Parliament 2006*; and
- the related *Receipt and Giving of Gifts and Benefits Guidelines for Government Members of Parliament 2006*. The policy is applicable to all Government Members, Parliamentary Secretaries and their immediate families.

The *Code of Conduct Government Members of Parliament 2006* exists by authority of the Premier, who oversees compliance. The Premier has discretion in dealing with alleged breaches.

#### **REGISTER OF INTERESTS**

Members of the House of Assembly and the Legislative Council are subject to the *Parliamentary (Disclosure of Interests) Act 1996*, which requires disclosure of interests by members. Failure to comply with the Act's provisions may result in a member being held in contempt of Parliament. Breaches can result in a fine of up to \$10 000.

*The Parliamentary (Disclosure of Interests) Act 1996* requires members of both Houses to make a declaration of their interests when first elected to Parliament in accordance with section 4 (2). Members must then lodge a return by 1 October in each subsequent year, as per section 5 (1). Return forms are available from the Clerk of each House, who maintain registers for each House. The registers can be viewed in the Offices of the Clerks or in the Parliamentary Library.

#### **MINISTERS**

Tasmania does not currently have a separate code of conduct for ministers, who are subject to the *Code of Conduct Government Members of Parliament 2006*.

#### **MINISTERIAL STAFF**

Tasmania currently does not have a 'stand alone' code of conduct for ministerial staff. They are currently subject to a code within the existing instrument of appointment. The Government recently drafted a new code for ministerial staff, the *Draft Code of Conduct Ministerial Staff 2010* and requested that the Commission provide feedback on it.

Regardless of whether staff are appointed by instrument of appointment (known as Crown or Royal Prerogative Appointment) or seconded from the State Service, while acting as ministerial staff they are not State Service employees so are not subject to the *State Service Code of Conduct*.



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# CHAPTER 3:

## PREVENTING PARLIAMENTARY AND MINISTERIAL MISCONDUCT

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### INTRODUCTION

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This chapter briefly describes the creation and development of ethical frameworks for parliamentarians, ministers and their staff within Australia and internationally, and considers whether such frameworks address and prevent misconduct and unethical behaviour. Particular attention will be given to the role of codes of conduct and how these might act to prevent unethical behaviour by members of parliament, ministers and staff. Cases of perceived and actual unethical behaviour are outlined, with particular attention to those which have led to the strengthening of ethical frameworks in various jurisdictions.

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### ETHICAL FRAMEWORKS FOR PARLIAMENTARIANS AND MINISTERS

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Debates around appropriate behaviour by members of parliament and ministers, and whether or not particular actions are ethical or unethical, continue unabated in all Australian and many international jurisdictions. However, there is general agreement that holders of these public offices *should* act in an ethical manner.

As Noel Preston, Charles Sampford and Carol Bois comment in the introduction to their 1998 edited volume, *Ethics and Political Practice*, most contributors to the volume “generally assume that contemporary political practice needs a more

explicit and self-conscious infusion of ethical critique”, and that they assume “politics is an inherently ethical enterprise”.<sup>6</sup>

Reflecting the concerns expressed by such commentators, and in reaction to an increasing awareness within the public arena about what constitutes ethical behaviour in public office, public institutions in many democracies have set about creating and developing ethical frameworks aimed at regulating the behaviour of those holding public office. These frameworks include a range of legislation, standing orders, codes of conduct and ethics, policies and processes that aim to regulate conduct and increase transparency, and a number of public offices and organisations such as ethics advisors, commissioners and integrity agencies. As Preston, Sampford and Bois pointed out in 1998: “The development of codes and associated measures for elected officials has become almost universal both in the West and in many other political structures”.<sup>7</sup>

Nevertheless, the question of whether such frameworks, by themselves, actually encourage or otherwise achieve ethical behaviour has not yet been definitively answered. It is possible for holders of public office to be subject to too much regulation and ethical ‘red tape’, leading to a situation where parliamentarians and other public officers become both complacent and skilled at acting in superficial compliance to rules without consideration of deeper ethical issues. Too great a focus on compliance can result in ethical “emptiness” or “lip service”, replacing officers’ own ethical principles and motivation with a utilitarian requirement to comply. It is important that codes and other ethical framework

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6. Preston, N., Sampford, C., and Bois, C-A., 1998, *Ethics and Political Practice*, p.1  
7. Ibid, p.2.

devices are carefully considered and appropriate to their context, and aim to achieve a balance between compliance, guidance and motivation.

Codes, policies and procedures that are ill-considered have the potential to be counter-productive. The proliferation of codes of conduct for public officers and of integrity offices and agencies throughout Australia during the past three decades may suggest that ethical dilemmas and their solution are transferable from agency to agency and jurisdiction to jurisdiction. However, as several commentators have noted, this is not necessarily the case. Each jurisdiction has its own set of standards, principles and contextual constraints – according to John Uhr: “Forms of legislative responsibility vary from system to system, making it unrealistic to expect too much in the way of a general framework of political ethics which suits all legislative or parliamentary systems”.<sup>8</sup>

Ethical frameworks are therefore best developed on the basis of ‘ground up’ initiatives, rather than ‘top down’. The Integrity Commission, in common with other integrity agencies around Australia, does not generally promote a ‘one-size-fits-all’ approach to ethical behaviour, instead seeking first to understand and become informed about particular public agencies and environments before offering advice about ethical conduct and systems of compliance.

The analysis provided in the following chapters is intended as a guide – providing information as to what types of codes, provisions, and other policies and legislation exist in Australian and some international jurisdictions. The analysis has been conducted to examine and compare a number of

external systems, drawing upon these to gather understanding of what might constitute best practice in the field.<sup>9</sup>

The Commission has drawn on this analysis and identified best practice to draft several model draft codes of conduct for Parliament to consider. The Commission has considered this approach appropriate, taking into account the statutory obligation of the Chief Executive Officer to “review, develop and monitor” the operation of any codes of conduct applicable to Members of Parliament, and taking into account existing codes of conduct that may be readily adapted to conform to best practice.

## THE DEVELOPMENT OF ETHICAL FRAMEWORKS AND CODES

As noted above, most Australian jurisdictions now have codes of conduct for parliamentarians, as well as a variety of other ethical framework devices for encouraging or mandating ethical behavior. These include legislation requiring the disclosure of interests; policies and legislation regulating the receipt and giving of gifts; standing orders regulating parliamentary conduct; and, in some cases, ethical advisers and/or integrity offices that provide advice to parliamentarians, ministers and other public officers, as well as investigate and deal with allegations of misconduct.

Many international jurisdictions also have these framework elements in place. The analysis considers frameworks in three comparable jurisdictions: the United Kingdom, Canada and

8. Uhr, J., 1998, “Democracy and the Ethics of Representation”, p.11.

9. For a consideration of what best practice might mean in this and other contexts, see Appendix Five.

New Zealand, paying particular attention to existing codes of conduct. Haig Patapan has noted that: “In the USA, the UK and Canada there has been an increasing emphasis on measures to ensure good government, from basic pecuniary codes and registers to more ambitious codes of conduct, ethical and integrity codes, even ethics commissioners to counsel and advise politicians”. However, Patapan makes it clear that Australia should not be perceived as a frontrunner in these developments, writing in 2001 that: “Until recently Australia appeared suspicious of attempts to ‘institutionalise ethics’”.<sup>10</sup>

Preston, Sampford and Bois identified the United Kingdom’s Nolan Committee on Standards in Public Life as the “granddaddy of recent developments in legislative ethics”.<sup>11</sup> Much has been written about the Committee, appointed under the chairmanship of Lord Nolan in 1994. It made a number of significant recommendations aimed at enhancing the standard of conduct of members of parliament and ministers in the UK. Key recommendations were that: members should be barred from entering into contracts which in any way restrict their freedom of action in Parliament; members should be prohibited from entering into agreements to provide services for organisations acting for multiple clients; there should be fuller disclosures of agreements relating to parliamentary services given by members and fuller disclosure of interests; guidance on avoiding conflicts of interest should be expanded, with attention to standing committees; a new code of conduct for members should be introduced (the report included a draft code); a Parliamentary Commissioner for Standards should be appointed; and a new procedure for investigating complaints about members should be established.<sup>12</sup>

As Jenny Fleming and Ian Holland have pointed out, the Nolan Committee “had no constitutional standing, no legal powers or privileges and yet the principal elements for a government ethics regime have been officially accepted by governments and serve to remind public figures that there are indeed standards to which politicians must aspire”.<sup>13</sup> The House of Commons subsequently adopted a code of conduct in July 1995, and the House of Lords in November 2009.

Ethical frameworks applicable to Canadian federal and provincial parliamentarians developed over time and largely in response to crises and scandals, as with other parliamentary democracies.<sup>14</sup> Although codes of conduct apply to a number of provincial assemblies, Robert Jackson noted in 2001 that “the federal government ... has never accepted the view that rules about ministerial ethics should be legislated or even that codes of conduct should apply to ordinary MPs”.<sup>15</sup> However, developments in Canadian federal politics resulted in the adoption of a conflict of interest code for senior officers in 1994.

The New Zealand Parliament also has shown reluctance to adopt a code of conduct for members, with little significant change occurring in the ethical framework for parliamentarians since Colin Hicks noted in 1998 that “there has been a reluctance ... to develop or produce codes of conduct or otherwise set down standards or rules of behaviour. Rather, the inclination has been to leave it to individual conscience and good sense.”<sup>16</sup> In the Tasmanian context, it is interesting to note Hicks’ rationale for this: “It may have something to do with the fact that as a relatively small country where the chances of things happening without being noticed and corrected are relatively high, the incidence of breaches of the unwritten code are relatively rare”.<sup>17</sup>

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10. Patapan, H., 2001, “Educating Devils: Theoretical Reflections of Ethics and Governance”, p.21.

11. Preston, N., Sampford, C., and Bois, C-A., op cit., p.2.

12. Drawn from Oliver, D., 1995, “The Committee on Standards in Public Life: Regulating the Conduct of Members of Parliament”, pp.592-3.

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13. Fleming, J., and Holland, I., 2001, “The Case for Ministerial Ethics”, p.9.

14. Jackson, R. J., 2001, “Honesty and Corruption in the Canadian Federal Government: Regulating Ethics”, pp.108-110.

15. Ibid, p.111.

16. Hicks, C., 1998, “Changing Institutional Ethics: The New Zealand Case”, p.110.

17. Ibid, p.111.



The Australian Federal Parliament has shown a similar reluctance to adopt a code of conduct. A working group was formed in 1994 to consider standards of ethical conduct. In 1995, the Speaker and the President tabled in their respective chambers a *Framework of Ethical Principles for Members and Senators*.<sup>18</sup> As a result of questions raised by parliamentarians when the framework was tabled, further research was commissioned which resulted in the 1998 paper, "A Code of Conduct for Parliamentarians?". The paper found that codes were one means of encouraging ethical behaviour and were "essential elements in the system of responsible, democratic governance".<sup>19</sup> No code of conduct was implemented as a result of this parliamentary process, characterised by Noel Preston as a "half-hearted, reactive, minimalist exercise which was always doomed for political limbo".<sup>20</sup>

In contrast to the reservations of federal parliamentarians, codes of conduct have been implemented in a number of state parliaments. Victorian parliamentarians have been subject to a code since 1978, when one was enshrined in the *Members of Parliament (Register of Interests) Act*. The code has not been revised since then, although a bill proposing a broader code of conduct was introduced in 2010 but lapsed with dissolution of Parliament that year.

Following a series of scandals, in particular the "Greiner-Metherell affair" in 1992, the New South Wales Parliament came under pressure to develop and adopt a code of conduct. The Houses each set up a committee to develop codes, resulting in markedly different draft codes for each House. In 1998 the Premier and Attorney General released their own draft code, which was subsequently adopted by both Houses. Following this, the

Legislative Council Ethics Committee recommended the establishment of an Ethics Commissioner or Adviser. The position of NSW Ethics Adviser was created in 1998.

In Queensland, the *Parliamentary Committees Act 1995* established the Members' Ethics and Parliamentary Privileges Committee in 1995. The Committee began work on a draft code the same year. This took the form of an inquiry into a code of conduct, calling for public submissions. The final report in September 2000 recommended the adoption of a Code of Ethical Standards and this code came into effect in 2004.

In Western Australia, the 1995 Commission on Government recommended the establishment of a Standing Committee on Privilege in each House of Parliament and the adoption of a uniform code of conduct. It was also suggested that each Standing Committee should review conduct alleged to be in breach of the Code. The Legislative Assembly adopted a code of conduct in 2003.

A Joint Committee of Parliament was established in February 2003 in South Australia to introduce a code of conduct for members of parliament. The report of the Joint Committee on a code of conduct for members of parliament was released on 14 October 2004 and recommended that a code of conduct, in the form of a statement of principles, be adopted for members of parliament by way of resolution of each House of Parliament. While subject to debate in the House of Assembly in November 2004, it has not been adopted by either House to date.

18. Referred to in Mckeown, D., 2006, "A Survey of Codes of Conduct in Australian and Selected Overseas Parliaments", p.1.

19. Brien, A., 1998, "A Code of Conduct for Parliamentarians?", pp.23-4.

20. Preston, N., 2001, "Codifying Ethical Conduct for Parliamentarians 1990-1999", p.48.

The Australian Capital Territory Legislative Assembly adopted a code of conduct in August 2005. The ACT Legislative Assembly also has had a Parliamentary Ethics and Integrity Advisor since 2008. In the Northern Territory, the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act* came into effect on 9 October 2009.

All States and Territories, with the exception of the Northern Territory, have a ministerial code of conduct. The Commonwealth Government also has a code for ministers. The Commonwealth, Victoria and Queensland also have separate codes of conduct for ministerial staff.

The Commission's analysis of parliamentary and ministerial codes of conduct identified a number of important themes within the codes. Themes prevalent across codes of conduct for members of parliament, ministers and ministerial staff included:

- conflicts of interest;
- declaration and divestment of personal interests;
- outside employment;
- gifts and benefits;
- improper advantage; and
- improper use of public resources.

Parliaments and governments have acknowledged these as clear areas or spheres of action where ethical dilemmas and challenges arise for members of parliament, ministers and ministerial staff.

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## MISCONDUCT BY MEMBERS OF PARLIAMENT

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Although all of these issues raise ethical challenges for members of parliament, it is interesting to note that unethical conduct by members occurs less frequently, or perhaps is reported less frequently, than misconduct by ministers.

It is likely that most parliamentary misconduct, when it occurs, goes unreported. Members of parliament have generally not been obvious targets for an opposition party in the way that ministers will inevitably be. Further, the actions of members of parliament are not reported in the media as frequently as ministerial actions, so parliamentary misconduct is less likely to result in political scandal.

The potential for abuse of office is much greater for ministers than for members of parliament. It is for this reason that a number of jurisdictions have implemented a separate code of conduct for ministers.



## MISCONDUCT BY MINISTERS

The presence of the identified themes or issues in the various codes of conduct for ministers reflects an acknowledgement that these areas present particular challenges and areas of risk. A review of acts of reported misconduct or unethical conduct by ministers over previous years identifies this as the case. Examples of reported unethical conduct within each theme are –

### **CONFLICT OF INTEREST, DECLARATION OR DIVESTMENT OF PERSONAL INTERESTS, SHAREHOLDING**

These areas seem to present an ongoing ethical challenge for people in positions of ministerial responsibility. Examples of Commonwealth ministers include:<sup>21</sup>

- in 1996, Assistant Treasurer Jim Short resigned when it was reported that he owned \$50 000 of ANZ shares while carrying ministerial responsibility for administration of banking and superannuation laws;
- in 1997, Small Business Minister Geoff Prosser was forced to resign when it was identified that he held significant interests in three retail complexes and had not adequately disclosed these;
- in the same year, it was alleged that Industry Minister John Moore had shareholdings in technology investment and share trading companies;
- in 1998, in the lead-up to a federal election, it was reported that former Resources Minister Warwick Parer held large share interests in a coalmine and other resource companies. The Prime Minister maintained that there

- was no breach of the Guide, as Parer and his family had not profited from the shares. In his analysis of the incident, Luke Raffin commented that the Prime Minister’s defence of Parer “involved a redefinition of a conflict of interest that rendered the perception of a possible conflict immaterial”;<sup>22</sup> and
- in October 2003, the media reported that Communication Minister Richard Alston’s family trust held shares in Telstra. The Prime Minister held that there was no breach of the Ministers’ Code as the Minister was not made aware of the interest.<sup>23</sup>

At a state level, in October 2005, Minister for Sports and Seniors, Bob Kucera, resigned from the WA Cabinet when it was revealed that his wife held shares in a company which benefitted from a Cabinet decision.

These examples highlight the importance of clarity in a code of conduct for ministers in relation to what constitutes a conflict of interest, as well as emphasis that a conflict can be actual or perceived. They also demonstrate the importance of providing guidance to ministers and to the public as to what interests should be divested or divulged, what the “rules” are in relation to the holding of shares, and what the position of family members’ interests is within a code.

### **OUTSIDE EMPLOYMENT**

The area of outside or secondary employment has also posed ethical difficulties for ministers in previous years.

In his speech to the Senate on 2 March 2006, Senator John Faulkner made reference to the fact that Aboriginal Affairs Minister John Herron had continued his practice as a surgeon while Minister from 1996 to 2001, thus breaching the Minister’s code.<sup>24</sup>

21. For discussion of these incidents and their implications for John Howard’s *Guide on Key Elements of Ministerial Responsibility*, see Raffin, L., 2008, “Individual ministerial Responsibility during the Howard Years 1996 – 2007”, pp.225-247. See also Faulkner, J., 2006, “Government Accountability – The Senate”, speech to the Senate 2 March 2006.

22. Raffin, L., op cit., p.230.

23. “Alston pins blame on his mother for Telstra shares”, *The Age*, 15 October 2003  
24 Faulkner, J., op cit.

He also drew attention to the Prime Minister's own failure to resign as a director of the Menzies Research Centre and the fact that Senator Coonan, then Minister for Revenue, was forced to resign as director of an insurance dispute resolution company operating from her own home.<sup>25</sup>

These examples show that a code of conduct for ministers must make it clear that ministers are not to engage in any outside or secondary employment.

### GIFTS AND BENEFITS

Concerns arise around the issue of ministers receiving gifts and other benefits, due to perceptions of improper influence. For this reason, the receipt of gifts is generally regulated in Australian states, with ministers being required to disclose on a register any gifts received. Complexities can exist in this area, requiring clarification through effective codes of conduct.

An example relates to Defence Minister Joel Fitzgibbon's association with a Chinese businesswoman. During a friendship which spanned a number of years, it was alleged that Fitzgibbon had received gifts from the woman that included first class air fares to China. It was reported that in her records and personal papers, the woman indicated that these gifts resulted in a level of influence with the Minister.

No formal allegations of bribery or abuse of power were made. The Minister resigned over a separate issue in 2009. However, the example demonstrates a need for clarity and control in this area.

### POST MINISTERIAL EMPLOYMENT

Codes of conduct for ministers generally require that ministers take care and seek advice before taking on positions of employment after leaving office, which may give rise to perceived or actual conflicts. Some jurisdictions stipulate a period of

time between ministerial office and post ministerial employment, or that advice should be sought during that time.

Commonwealth Defence Minister Peter Reith attracted negative media attention when he was appointed as a consultant to defence contractor Tenex immediately after resigning as Minister. One media editorial noted that although the move was not illegal, "ethically, it was highly dubious".<sup>26</sup>

In a 2002 paper about the regulation of post ministerial appointments,<sup>27</sup> Ian Holland raises the example of Reith and a number of other cases, including:

- the appointment of former Health Minister Michael Wooldridge as a consultant to the Royal Australian College of General Practitioners;
- Liberal Finance Minister, John Fahey, working for investment bank J.P. Morgan;
- Labor Environment Minister, Ros Kelly, working for environment consultants Dames and Moore; and
- Queensland Labor Deputy Premier, Jim Elder, working on tenders for projects in which he may have had ministerial involvement.

Holland points out that "Ministers hold positions of power and influence. Some of the knowledge they acquire might be of a confidential nature, or could confer on them advantages if subsequently, as private citizens, they were to work in an area related to their former responsibilities".<sup>28</sup> He also notes that some commentators have described Australia as "way behind contemporary democratic practice"<sup>29</sup> in this area.

25. Ibid

26. Abjorensen, N., 2008, "First Termers", *Inside Story*, <http://inside.org.au/first-termers/>, accessed 20 March 2011.

27. Holland, I., 2002, "Post-Separation Employment of Ministers", p.1.

28. Ibid

29. Holland attributes this view to Uhr, J., as quoted in 'The conflict of interest gap', *The Australian*, 16 March 2002.

## **IMPROPER ADVANTAGE (INCLUDING BREACH OF CONFIDENTIALITY)**

This seems to be one of the most common areas in which ethical issues arise for ministers.

In 1992 this issue arose in New South Wales when Premier Nick Greiner and Environment Minister Tim Moore offered former Education Minister and then independent MLA Terry Metherell an executive position in the Environment Protection Authority. Had Metherell accepted the position he would have been required to resign from his parliamentary seat, with the likely result of Liberal Party success in the resulting by-election. The Independent Commission Against Corruption made findings of corrupt conduct in relation to Greiner and Moore.

Allegations of improper release of confidential information were raised against the Federal Minister for Health and Ageing, Dr Michael Wooldridge, in 2000 when it was reported that a significant number of MRI machines were purchased prior to an announcement that there would be a Federal Budget rebate on the machines. Radiologists implicated in the supposed scam reported that the information about a rebate and the conditions for it had been leaked during a meeting with the Minister and his staff. The Minister denied this. The matter was investigated and referred to the public prosecutor who found that there was not enough evidence to prove that fraud had occurred. The issue of how the information was obtained by the radiologists was not clearly resolved. Radiologists at the meeting stated that the information had been disclosed to them, while the Minister and staff denied that this had occurred. In any case, there were no indications that Wooldridge obtained an advantage from the disputed leak.

Improper gain can result from ministers using their position to obtain an advantage for themselves or their families. In 2003, it was alleged that

Minister for Regional Affairs, Territories and Local Government, Wilson Tuckey, used his position to ask for leniency when his son was charged with a traffic fine. It was reported that Tuckey used ministerial letterheads to write to South Australia Police, asking that the fine be overturned.

Senator Graham Richardson resigned from his position as Minister for Transport and Communication in 1992 following allegations that he had used his position to gain an advantage for a friend (and relative by marriage) by lobbying the Marshall Islands President to allow the friend, who was facing forgery charges, to return to Australia. He had also written the friend a letter of recommendation using his ministerial letterhead. Richardson resigned after it was alleged by the Opposition that he had misled Parliament about the incident.

Using ministerial letterheads to improperly influence others can also constitute a misuse of public resources.

The most serious form of improper advantage by a minister would be in a case of clear bribery. The 1989 attempt in Tasmania by Edmund Rouse to bribe Labor MP Jim Cox demonstrated that such actions come at significant political and personal cost. Rouse and his employee served prison sentences and the matter resulted in a Royal Commission which, while clearing former Premier Robin Gray of involvement in the bribe attempt, criticised his conduct in his dealings with Rouse.

Code of conduct provisions relating to improper advantage must be clear in order to motivate compliance and enable the identification of improper actions.

### **IMPROPER USE OF PUBLIC RESOURCES**

Codes of conduct generally stipulate that ministers and members of parliament must use resources for official purposes and not for personal gain, and that ministers are not to misuse resources.

The examples outlined above where it has been alleged that ministers used their official letterhead to obtain an advantage for family members or friends or used their position for improper gain, provide examples of misuse of public resources.

In 1994 Victorian Minister for Industry, Technology and Regional Development, Alan Griffiths, was forced to resign when it was alleged that resources and wages from his electoral office had been used to bail out a business partner from a failed sandwich shop venture.

Some of the most common examples of misuse of resources occur when entitlements such as travel allowances are wrongfully claimed or reported. Between March and July 1997 a series of events occurred in which it was revealed that travel allowance entitlements had been wrongly reported and claimed by ministers and staff. Following allegations against Senate Deputy President Mal Colston, Minister of Administrative Services David Jull requested from his department travel allowance details for members of the House. Jull tabled the report in Parliament but it soon became clear that there were inconsistencies regarding the manner in which overpayments by Labor Ministers and staff and Liberal Ministers and staff had been recorded within the table.

In what became known as the “Travel Rorts” affair, it was also revealed that Minister for Transport and Regional Development John Sharp had over-claimed on his travel entitlements. Further, this amount was not immediately repaid despite Sharp’s undertaking to do so. The Prime Minister asked for the resignations of both Jull and Sharp

in September 1997. Shortly afterwards, Minister Science and Technology Peter McGauran resigned over allegations of excessive travel.

Other circumstances besides travel can give rise to allegations that resources have been misused. In October 2000, it was revealed that a telecard issued to Workplace Relations Minister Peter Reith had accrued a \$50 000 phone bill. This occurred after Reith had provided his card number and pin code to his son, who had then passed these on to a friend. The Prime Minister did not force Reith to resign but it was reported that Reith subsequently paid the bill himself.

In September 2010, the New South Wales Minister for Ports and Waterways was forced to resign when he admitted to the Premier that he had used his parliamentary computer to access adult and gambling websites.

### **MISLEADING STATEMENTS**

The provision of incorrect information to Parliament by a minister is generally considered unethical. In 2001, Federal Minister for Small Business, Ian MacFarlane, admitted that he had provided incorrect information to Parliament. Macfarlane had stated in Parliament that he first became aware of a Liberal Party GST rort when he was contacted by Treasurer Peter Costello’s office, when in fact he had been informed about it earlier.

In Tasmania, Deputy Premier Steve Kons resigned in 2008 after admitting he misled the Parliament in relation to the appointment of a magistrate.

## MISCONDUCT BY MINISTERIAL STAFF

A number of major government scandals have highlighted unethical or improper conduct by ministerial staff.

In the Children Overboard affair, the Senate Select Committee on a Certain Maritime Incident made a number of findings about the conduct of ministerial staff involved in the incident. The incident called into question the proper role and responsibilities of staff. In *Power Without Responsibility*, Anne Tiernan concludes that Peter Reith's ministerial staff acted in an aggressive and inappropriate manner during the incident and that their conduct included "actively inhibiting the provision of written advice from Defence" and "failing to abide by the convention that telling the staffer was the same as telling the Minister".<sup>30</sup>

In 2005, Randall Ashbourne, senior adviser to the South Australian Premier, was charged with abuse of public office and dismissed after it was alleged he had offered government board positions to a Labor MP as an incentive for him to drop a defamation action against the Attorney General.

It is clear that ethical challenges arise for ministerial staff just as they do for members and ministers, and some of these challenges may be unique to their role. Separate codes of conduct for ministerial staff acknowledge these particular challenges and can provide direction to staff.

## HOW EFFECTIVE ARE CODES OF CONDUCT?

As already indicated, having a code in place does not necessarily achieve ethical behaviour, either through compliance, motivation, or the provision of guidance, and having an inadequate or inappropriate code can have a negative effect on the ethical behaviour of public officers. Further, it should be pointed out that codes alone are not sufficient to ensure ethical behaviour by public officers. Preston states that "Arguably, codes require supplementary measures such as education and training, sanctions, ethics advisers and parallel mechanisms adopted by political parties, measures which together constitute a non-minimalist approach to legislative ethics".<sup>31</sup>

However, it is clear that codes have the capacity to influence the behaviour of officers by:

- i) providing clarity to officers and to the public as to expected standards of behaviour, as well as some degree of detail about what these standards "look like" in commonly experienced situations;
- ii) providing clarity about the consequences for acting in breach of these standards, thus enabling officers to make informed decisions about their actions;
- iii) providing agencies with the means to ensure that they have given officers the necessary minimum information to protect them against ill-considered action, and transparency in case such action occurs;
- iv) instilling in officers an understanding and appreciation of what 'public service' means within a jurisdiction and encouraging pride in that service; and

30. Tiernan, A., 2007, *Power Without Responsibility*, p.172.

31. Preston, N., op cit., p.47.



- v) motivating officers to act in a manner that they know will be appreciated and valued by their peers, particularly when the code in question has been implemented through bottom-up action and not imposed from above.

Well developed and implemented codes therefore motivate officers to act ethically, provide guidance as to what behaviour can be considered ethical, and outline the consequences of failing to act in an ethical manner. As Dr Andrew Brien states in “A Code of Conduct for Parliamentarians?”, codes are “not merely cudgels. They are lights”.<sup>32</sup> Brien expresses the view that “codes can provide the foundation for the development of responsible and honourable action, a basis for developing the skills and patterns of behaviour necessary for honourable public life”.<sup>33</sup>

The appropriateness and effectiveness of codes of conduct was considered in great detail by the Nolan Committee. Lord Nolan himself has acknowledged that those holding the view that codes were appropriate for boy scouts and not for mature legislators, had a point: “There are still many who need no code to guide them”.<sup>34</sup> However, Nolan states that he is “convinced” that the Committee was right to advocate the adoption of a code – “Experience has shown that codes of conduct can fill an ethical vacuum, and in doing so can point to the solution to everyday practical problems”.<sup>35</sup>

32. Brien, A., op cit., p.13. See also Uhr, J., 2005, *Terms of Trust*, “Codes are useful compromises between the hard axe of accountability and the soft respect for responsibility”, p.140.

33. Ibid, p.14.

34. Nolan, Rt Hon. Lord, 2001, “Motivating Ministers to Morality”, pp. 17-20.

35. Ibid

## ENFORCEMENT AND COMPLIANCE

An enduring topic of debate regarding codes of conduct is whether they are valuable in the absence of enforcement or compliance frameworks and accompanying sanctions. Most commentators, along with corruption and misconduct prevention practitioners, agree that codes of conduct play a valuable role in defining and communicating the acceptable standards of conduct within an organisation, in providing guidance to officers, and in motivating officers to demonstrate appropriate behaviour, even in the absence of effective enforcement mechanisms.

Some, however, particularly in the media, draw upon the analogy of the ‘toothless tiger’ when considering parliamentary and ministerial codes of conduct, questioning the effectiveness of such codes if public officers are free to ignore them without consequence. Recent inquiries into parliamentary ethics, including by the Nolan Committee, have concluded that codes require some degree of enforcement if they are to inspire public confidence.

This debate relates to enduring questions about democracy and political life. Haig Patapan considers these larger questions in his essay, “Educating Devils’: Theoretical Reflections on Ethics and Governance”,<sup>36</sup> distinguishing between ancient (“classical”) and modern conceptions of government. For the ancients, education to virtue was both a means and an end of good government, while modern approaches to politics do not seek to reform people, but rather take them “as they are” – within this approach, good government is secured through reliance on institutions and processes, including constitutionalism and the separation of powers.

36. Patapan, H., op cit.

Some measures to curb ministerial and legislative behaviour, such as pecuniary requirements and independent bodies, can be seen as modern institutional measures that seek to check and control power. However, other measures and tools, such as codes of conduct and ethics and even to some extent, ethics commissioners and integrity bodies, seek to educate ‘to virtue’ and the proper use of power, drawing on earlier conceptions of government and political ethics.

Following this analysis, it is clear that attempts to enforce ministerial and parliamentary codes of conduct will present challenges for Western democracies. Codes of conduct provide education and guidance and are primarily aimed at motivating individuals to act ethically, while enforcement regimes are modern in conception, seeking to limit power. In practice, these challenges go to the heart of questions about parliamentary and democratic sovereignty – if the people choose representatives and the people are sovereign, by what means can an unelected body such as an appointed commissioner or legislated commission seek to impose sanctions? This same dilemma arises when attempts are made to impose sanctions on elected local government representatives.

With this in mind, the Commission considered the potential alternatives for ensuring compliance with the codes of conduct applicable to parliamentarians, ministers and staff in Tasmania.

## OPTIONS FOR ENFORCEMENT

A number of courses of action could potentially be taken when allegations of misconduct are made against Tasmanian Members of Parliament, Ministers and ministerial staff.

### MINISTERIAL STAFF

Allegations specifically relating to the actions of ministerial staff can and should be dealt with under existing arrangements. At present, responsibility for the management and conduct of ministerial staff, including discipline, rests with the Chief of Staff in the Premier’s Office.

### MINISTERS

If the allegation is against a minister, it may be appropriate for the Premier to consider investigating the matter and taking disciplinary action. Premiers and Prime Ministers have long been regarded as responsible for considering the unethical actions of ministers. However, as can be seen from earlier examples, there is some doubt as to whether and when a Premier or Prime Minister will choose to act against a particular minister. As members of parliament, ministers will also be accountable to Parliament for their actions.

### MEMBERS OF PARLIAMENT

Allegations of misconduct by members of parliament can be investigated and acted upon by the relevant chamber or its representative. For example, the matter could be referred to a Parliamentary Committee for inquiry and report. Where a code is contained in the Standing Orders of the chamber, breaches could be treated as contempt of Parliament. Currently in Tasmania, enforcement of the Standing and Sessional Orders of the House of Assembly and Legislative Council is at the discretion of the Speaker and President of the House.

There is some question as to the appropriateness of existing sanctions. Part 41 of the House of Assembly Standing Orders provides that: “Any Member adjudged by the House to be guilty of Contempt shall be fined at the discretion of the House in a penalty not exceeding Forty Dollars”. If the fine is not immediately paid, the member can be detained in custody for a period not exceeding 14 days but will be liable to pay a fee of four dollars per day for each day’s detention. The member can elect to be detained in custody rather than paying the \$40 fine. It would seem that breaches of the current Code of Ethical Conduct may be dealt with under these orders.

The Legislative Council Standing Orders provide that “whenever any Member shall have been named by the President or the Chair of Committees ... immediately after the commission of the offence of disregarding the authority of the Chair, or of abusing the Rules of the Council by persistently and willfully obstructing the business of the Council, or of disorderly conduct” the President shall put the Question that “such Member be suspended from the service of the Council”. The period of suspension is 24 hours on the first occasion, seven days on the second occasion, and 28 days for any subsequent occasion of the same Session. There is currently no code of conduct in the Standing Orders of the Legislative Council. However, the adoption of such a code may result in these provisions being applied for any breach.

Breaches of the *Parliamentary (Disclosures of Interests) Act 1996* can also be dealt under the above procedures. However, more substantial fines can be imposed for such breaches.<sup>37</sup>

The Commission notes that the adoption of a new code of conduct by members of the House of Assembly and the Legislative Council will likely warrant a review of the sanctions outlined

above. Fines for the range of breaches may need to be more substantial than \$40, as is the case, for example, in relation to the Victorian Code of Conduct. Imprisonment would seem to be an inappropriate sanction for many types of breaches. Suspension may be inappropriate for dealing with conduct occurring outside of the House. Parliament may wish to consider the question of which types of sanctions are appropriate for breaches of the code of conduct, and ensure that these are available in the case of a breach. It may also wish to consider whether Standing Orders should stipulate that breaches will be referred to a particular committee for inquiry and report.

### Legislation

It is possible for codes of conduct relating to members of parliament to be enacted in legislation. When this occurs, penalties for non-compliance can also be stipulated within legislation. However, there remains a question of enforcement – who takes responsibility for ensuring compliance? In practice, Parliament itself would retain this role.

With the exception of Canada, Victoria and the Northern Territory are the only surveyed jurisdictions in which a code of conduct for members of parliament is currently contained in an Act of Parliament. Under section 9 of the *Members of Parliament (Register of Interests) Act 1978* (Vic), contravention of any of the requirements of the Act constitutes a contempt of the Parliament. Section 9 further provides that, in addition to any other punishment that may be awarded by either House of the Parliament for a contempt of the House, the House may impose a fine upon the member of such amount not exceeding \$2000 as it determines. Under section 5 of the Northern Territory *Legislative Assembly (Members’ Code of Conduct and Ethical Standards) Act 2008*, an alleged breach of the code may be referred by the Assembly to the Privileges Committee for inquiry and report. If the

<sup>37</sup> s. 24 (2) (b) *Parliamentary (Disclosure of Interests) Act 1996* states that a fine of up to \$10 000 can be imposed for a breach of the Act, including failure to lodge a return, failure to disclose information, or providing false or misleading information.



Privileges Committee finds the breach established, the Assembly may punish the breach as contempt.

There are some perceived advantages to legislating a code of conduct. It may be that the public will feel more confident in the enforceability of a code if it is enshrined in an Act of Parliament. However, as pointed out, Parliament is still responsible for enforcement. There are also disadvantages to legislating – including the fact that doing so may run the risk of “narrowing” a code if legislators feel compelled to use terminology which is traditionally considered to be enforceable. While codes need to provide clarity and be capable of enforcement, it seems that placing codes within the Standing Orders of Parliament will achieve the same effect, particularly if appropriate sanctions can be applied in the case of a breach, and will also emphasise that regulating the conduct of members is a matter for Parliament.

### **The Commission**

The Commission can itself assess and investigate allegations of misconduct by members of Parliament, ministers and ministerial staff, pursuant to Parts 5 and 6 of the Act. This would most likely occur in the case of allegations of serious misconduct. Following an investigation, a report could be tabled in Parliament. However, under section 100 of the *Integrity Commission Act 2009*, parliamentary privilege is unaffected by the Act and this may, in some cases, restrict the capacity of the Commission to investigate allegations against Members of Parliament, particularly where the alleged misconduct involves statements made to the House or Council.

### **Allegations to be dealt with by Parliament**

In the Commission’s view, the most appropriate body to inquire into misconduct by Members of Parliament will generally be Parliament itself. Matters should be considered by a relevant committee and if considered appropriate, a breach

can be dealt with under the existing Standing Orders, although these procedures may require review.

There may still be a role for the Integrity Commission. As will be further discussed below, even when matters are dealt with by Parliament rather than investigated by the Commission, there are avenues by which the Commission can, if appropriate, have input into the process, performing an independent advisory role, in accordance with its functions and roles set out in section 8 of the Act.

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## **ENFORCING CODES OF CONDUCT AND THE ROLE OF THE INTEGRITY COMMISSION**

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Compliance is an important aspect of codes of conduct from the Commission’s perspective, as the definition of “misconduct” within the *Integrity Commission Act 2009* includes action which constitutes a breach of a code of conduct. The Commission is therefore able (and in fact, is required) to accept and consider complaints alleging a breach of code of conduct by a public officer, including by a Member of the Tasmanian Parliament.

Under Part 5 of the Act, when a complaint is assessed by the Commission it can either be dismissed, it can proceed to investigation, or it can be referred to another authority for action or investigation. Under the principle of enhancing integrity within public authorities, the Commission’s most common course of action upon receipt of an allegation about any public officer is to refer the matter to the relevant public authority and request that it be dealt with by that authority. The Commission has the ability to monitor and audit action taken by the authority in dealing with misconduct. The Commission’s usual approach to such matters is to consider whether the allegation

has been dealt with “reasonably”. This would usually include considering whether the matter has been investigated, whether it has been sustained, whether some form of appropriate managerial, remedial and/or disciplinary action has been taken by the authority, and whether appropriate steps have been taken to prevent such misconduct from occurring in the future.

If a complaint is received by the Commission alleging misconduct by a member of parliament, it will be considered and assessed by the Commission. Under section 38 (1) (d) of the *Integrity Commission Act 2009*, following assessment the Chief Executive Officer can, if it is considered appropriate, refer the matter to an appropriate Parliamentary integrity entity. Section 4 defines a Parliamentary integrity entity as any of:

- a. the President of the Legislative Council;
- b. the Speaker of the House of Assembly.

Section 41 provides that if a complaint is referred to the Parliamentary integrity entity under section 38 (1) (d), the Chief Executive Officer is to be informed of the outcome of the investigation including any action taken, or to be taken, by the Parliamentary integrity entity. This action can then be “audited” by the Commission to establish whether action taken was reasonable and appropriate.

The Commission, along with most other integrity agencies, has significant powers of investigation but does not have the power to impose sanctions on public officers of any authority.

The Commission can refer matters to the Director of Public Prosecutions for consideration of criminal charges. However in the absence of a criminal allegation, the Commission cannot take any legal action against an individual, except for offences stipulated in the Act, such as obstructing or hindering an investigator (section 54). “Misconduct” is not itself an offence under the Act.

After conducting an investigation into allegations of misconduct, or auditing the manner in which another authority has dealt with such allegations, the Commission may recommend that a particular course of action be taken by a public authority in relation to an individual – including options such as the imposing of sanctions, termination of the officer’s employment, or requirements that managerial or remedial action be taken, including the provision of advice and training.

The Commission can also make recommendations about the systems and processes of an authority, including the review and modifying of any systems, policies or processes which may be viewed as contributing to the misconduct or allowing it to occur.

In practice, especially in relation to minor acts of misconduct, which often include a breach of a code of conduct, the Commission is more likely to make recommendations that an authority review and improve its systems and processes, and that training or other remedial action is provided to an officer than that a particular disciplinary course of action is taken or sanction imposed. On the view that authorities are responsible for managing misconduct, the Commission is unlikely to press for sanctions against individuals if they are not imposed by the relevant public authority, particularly in the absence of “serious misconduct”.

Allegations of criminal conduct are likely to be dealt with in the criminal courts and termination of employment may result from the outcome of this. Additionally, it is possible that the Commission will recommend that an officer’s employment be terminated in the case that a serious risk is perceived, particularly to the public (for example, in the case of numerous sustained allegations of excessive force against a police officer, or sustained allegations of improper physical contact between a teacher and students, but where any criminal charges have not been proven). Apart from this, it

is anticipated that the Commission will not often recommend that an authority take a particular course of action or impose a particular sanction against an officer.

Nevertheless, the Commission has an expectation that upon referring a matter to a public authority for investigation or other action, appropriate and reasonable action will be taken. Difficulty may arise in the case of more serious allegations against elected officers, who do not hold office by employment and are therefore not subject to the disciplinary processes in place within other public authorities, including processes of termination.

The Commission's most important power in preventing misconduct is its ability to conduct hearings in public and to table reports in Parliament, publicising the outcomes of its investigations and other action, including audits of action taken by other authorities.

By increasing public awareness of what misconduct looks like and what standards of behaviour by public officers are acceptable and appropriate, and by publicising evidence of acts of misconduct, the Commission expects that the public can itself take on the role of imposing sanctions on an authority or individual.

This occurs through public pressure on an authority either to terminate or sanction an individual or to comply with recommendations, or both. In the case of Ministers, public pressure can lead a Premier to ask for the resignation of an individual. In the case of Members of Parliament, the authority in question (Parliament) cannot terminate the office of an individual. However, the public themselves can achieve this outcome through the electoral process. Thus one of the primary roles of the Commission is to educate the public about integrity issues, as outlined in section 3 (3) (a).

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# CHAPTER 4:

## COMPARATIVE ANALYSIS OF CODES OF CONDUCT FOR MEMBERS OF PARLIAMENT

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### INTRODUCTION

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The jurisdictions of Tasmania, Victoria, Australian Capital Territory, New South Wales, Queensland, the Northern Territory and Western Australia all have codes of conduct for Members of Parliament. However, in Tasmania codes only apply to members of the House of Assembly and to government members.

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### BACKGROUND

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#### **TASMANIAN CODES OF CONDUCT**

On 22 May 1996, the House of Assembly in Tasmania adopted a *Code of Ethical Conduct for Members of the House of Assembly* (Code of Ethical Conduct) and a *Code of Race Ethics for Members of the House of Assembly* (Code of Race Ethics). Both codes are located in the House of Assembly's Standing Orders and Rules, Standing Orders 2A and 2B respectively.

The Code of Ethical Conduct is a one page document which contains a preamble, a statement of commitment and a declaration of nine principles. Members of the House of Assembly acknowledge the “fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Tasmanian people”. Further, members “reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our State and its institutions”. The Code states that “Members of this Assembly must act not only lawfully but also in a manner that will withstand the closest public scrutiny; Neither the law nor this code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust” [emphasis added]. Overall, the Code is aspirational in nature. Its primary focus is on acting in the public interest and preventing improper advantage.

The Code of Race Ethics is half a page long and contains eight principles. It is also aspirational in nature. As its name suggests, its primary focus is on respect and tolerance of different religious and cultural beliefs and the recognition and valuing of diversity. No additional guidance is provided in either code.

Both codes are silent on the issue of enforcement. However, enforcement of the Standing and Sessional Orders of the House of Assembly is in the discretion of the Speaker and President of the House. Sanctions range from naming members publicly within the House, suspension and fines, to arrest and imprisonment.

#### **VICTORIAN CODE OF CONDUCT**

The Victorian Code of Conduct was enacted in 1978. Along with the Northern Territory, it is the only code that is prescribed by statute. The Code forms Part I of the *Members of Parliament (Register of Interest) Act 1978*. Part II of the Victorian Act contains clauses referring to the Register of Interests. The Act was last revised in 2008 which led to a proposal for a broader code of conduct under the Act. A new bill was introduced in 2010 titled *Members of Parliament (Code) Bill 2010*. The Bill lapsed with the dissolution of Parliament in November 2010.

The current Code applies to members of both the Legislative Assembly and the Legislative Council. The Code is just under two pages long and contains two sections with six sub-sections under Section One. The principles themselves are prescriptive, outlining what a member can and cannot do. The main focus of the Code is on registering and avoiding conflicts of interest. No additional guidance is provided.

Breaches of the Code are not discussed in Part I. However, failure to comply with the Act, and thus the Code, is addressed in Part III. An infringement under the Code constitutes contempt of the Parliament. A member may be fined up to \$2000<sup>38</sup>, the non-payment of which will render the member's seat vacant under section 10.

#### **AUSTRALIAN CAPITAL TERRITORY CODE OF CONDUCT**

The Australian Capital Territory Member's Code of Conduct was agreed to by resolution by the Legislative Assembly 25 August 2005. It was last amended on 16 August 2006. The Code applies to members and their staff. It is three pages long and contains a brief preamble which states: "Members agree to respect and uphold the law, not to discredit the institution of Parliament, and to maintain their commitment to the public good through personal honesty and integrity in all their dealings". Further, under the "Duties as Members of the Assembly" section, "Members should avoid any decision or action which may depreciate the reputation of the Assembly and endeavour to reasonably adhere to the Assembly's code of conduct to ensure that their personal conduct meets generally accepted Code and does not discredit or call into question their office of the Assembly".

The main focus of the Code is on managing and avoiding conflicts of interest. Some guidance is provided. The Code is more aspirational in nature than some others; it reminds members of their ethical and legal obligations. The Code emphasises the personal duties and responsibilities of a member.

No mention is made within the body of the Code as to how it will be enforced. However, as a resolution of the Legislative Assembly, any breach is treated as contempt of Parliament.

38. S.9 of the *Members of Parliament (Register of Interests) Act 1978* (Vic).



### NEW SOUTH WALES CODE OF CONDUCT

Both the Legislative Assembly and Legislative Council in New South Wales have adopted the same Code of Conduct for Members. The Legislative Assembly adopted the Code by resolution of the Legislative Assembly on 5 May 1998, while the Legislative Council adopted it by resolution of the Legislative Council on 26 May 1999. The Code was revised and adopted with continuing effect in 2007 by both Houses. Both Codes were adopted for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988 (NSW)*. This allows the Independent Commission Against Corruption to investigate whether a member of Parliament has substantially breached the Code and report its findings to the relevant House to determine what disciplinary action should be taken.

The Codes contain a preamble, seven sections and are two pages long. The preamble states that: “Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales”. Further, “Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales”. The primary focus of the Codes is on conflicts of interest. As every sentence states with “a Member of Parliament must” or “a Member must” the Codes are prescriptive in nature and direct.

Other than the reference to section 9 *Independent Commission Against Corruption Act 1988 (NSW)* the Code is silent on how breaches will be handled.

### QUEENSLAND CODE OF CONDUCT

Queensland Members of Parliament are subject to a Code of Ethical Standards. The Code came into effect in September 2004 and has been revised and amended three times, the last being 11 May 2009. In 2010, a review was conducted of the Code by the Integrity Ethics and Parliamentary Privileges Committee (IEPPC). In October 2010, IEPPC recommended that an updated and simplified version of the Code be presented by the Premier to the Legislative Assembly for approval. IPPEC found that a drafted simplified version of the Code was a more useful document for members as it focused on the fundamental principles of ethical behaviour applicable to members and on the key obligations arising out of these principles. The draft simplified version of the Code was still being considered by the Queensland Legislative Assembly as at 10 March 2011.

The current Code document is 75 pages long and contains five appendices:

1. Appendix 1: Schedule 2 – Registers of Interest – Extract: *Standing Rules and Orders of the Legislative Assembly*;
2. Appendix 2: Contempt – Extract: *Parliament of Queensland Act 2001*; Extract: *Standing Rules and Orders of the Legislative Assembly* (Part 10: Powers, Rights and Immunities);
3. Appendix 3: Citizen’s Right of Reply – Extract: *Standing Rules and Orders of the Legislative Assembly* (Chapter 42);
4. Appendix 4: Guidelines for the use of the Legislative Assembly Crest, Emblems and Other Insignia – Extract: *Legislative Assembly (Queensland) Votes and Proceedings*; and
5. Appendix 5: Code of Conduct for Election Candidates – Extract: *Legislative Assembly (Queensland) Votes and Proceedings*.

The Code contains a table of contents, a statement of the purpose of the Code, and provides the statement of the fundamental principles of the Code and a detailed overview of the member's obligations, outlines how complaints will be handled and how conflicts of interest will be handled and resolved. The stated purpose of the Code is to:

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

The fundamental values underlying the Code are:<sup>39</sup>

1. Integrity of the Parliament.
2. Primacy of the Public Interest.
3. Independence of Action.
4. Appropriate Use of Information.
5. Transparency and Scrutiny.
6. Appropriate Use of Entitlements.

The Code, in comparison to others examined in this chapter, places the greatest focus on conflicts of interest. Frequent reference is made to a member's legal as well as ethical obligations under various Standing Orders, legislation, Resolutions of the House of Assembly and accepted practices and procedures. As a result, the Code is highly prescriptive in nature.

## **NORTHERN TERRITORY CODE OF CONDUCT**

The *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act* (NT) came into effect as of 9 October 2009. Unlike the Victorian Code of Conduct for Members, this Code is the primary focus of the Act.

The Code itself is five pages long and contains a table of contents and consists of two parts. Part 1 contains the introduction and states that the principles of ethical conduct for members fall under four main headings: integrity, accountability, responsibility and the public interest. However, the Code states it “is not to be regarded as an exhaustive statement of the implications of these principles and, in a situation that is not explicitly covered by the Code, the Member must use the Member's own judgement to determine an appropriate course of conduct confirming with these principles”. Further, the Code “is intended to be read in conjunction with other relevant laws, the Standing Orders of the Assembly, and other standards established by the Assembly governing the conduct of Members”. The Code prevails over the Standing Orders or other standards in cases of conflict.

Part 2 of the Code contains the principles, standards and commentary. It contains 11 sub-sections. As with other codes, the primary focus is on the declaration of interests and resolving conflicts of interest. However, there is also a focus on acting in the public interest. Since the Code is pursuant to legislation it is prescriptive in nature and able to be enforced. Unlike the Victorian Code, the Northern Territory Code, despite being in legislative form, contains guidance within the Code to assist Members.

The Code is enforced by the Act under section 5: “the Assembly may refer an alleged breach of the Code to the Privileges Committee to inquire into and report on the alleged breach”. If a breach is established, it is punishable by contempt.

<sup>39</sup> These principles were first adopted by the Queensland Legislative Assembly in May 2001.

**WESTERN AUSTRALIAN CODE OF CONDUCT**

The Code of Conduct for Members of the Legislative Assembly for Western Australia was adopted on 28 August 2003 and has not been revised since. To date, there is no Code of Conduct for the Legislative Council.

The Legislative Assembly Code is three pages long, contains a preamble and 12 principles. The preamble states that as the electorate is the final arbiter of the conduct of members, members must acknowledge that it is “their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of Western Australia”.

Like the New South Wales Codes the Western Australian Code is relatively direct and prescriptive. The majority of its main sentences use the word “must”. The phrases “shall not” or “should not” are also used. Somewhat like the Australian Capital Territory Code, the Western Australian Code reminds members of their individual ethical responsibilities. The primary focus of the Code is on conflicts of interest.

In relation to breaches of the Code, the Code states “alleged breaches of the Code of Conduct should, at the earliest opportunity be dealt with under the procedures prescribed for raising a matter of privilege under the Standing Orders”. It does not include specific penalties for breaching the Code.

**COMPARATIVE ANALYSIS OF MAIN ISSUES ADDRESSED****TABLE 1: ISSUES ADDRESSED IN AUSTRALIAN MEMBERS OF PARLIAMENT CODES OF CONDUCT.**

Jurisdiction	Tas	Vic	NSW	ACT	Qld	NT	WA
Conflicts of Interest	✓	✓	✓	✓	✓	✓	✓
Declaration of Personal Interests	✓	✓	✓	✓	✓	✓	✓
Outside Employment	✗	✗	✓	✗	✓	✓	✗
Gifts and benefits	✓	✗	✓	✓	✓	✓	✓
Improper Advantage	✓	✓	✓	✓	✓	✓	✓
Improper Use of Public Resources	✓	✗	✓	✓	✓	✓	✓

The table demonstrates the main issues addressed within the code of conduct applicable to members of parliament in Australian jurisdictions. The Tasmanian House of Assembly Code of Ethical Conduct is included in the analysis.

Each issue and the guidance, if any, provided within each jurisdiction’s code of conduct is discussed in more detail below.



## CONFLICTS OF INTEREST

Every jurisdiction's members' code contains the conflict of interest principle.

Under the Queensland Code, members must take reasonable steps to avoid, resolve or disclose any conflict of interest that arises in a way that protects the public interest. Members are reminded that their obligations under the Register of Members' Interests do "not supersede the long established rule of members not voting on certain types of questions in which they have a direct pecuniary interest". The Code emphasises this point by referring to Standing Order 259 in full. Standing Order 259 states "no member pecuniarily interested may vote". The Code also refers in full to Standing Orders 260 (Declaration of pecuniary interest in debate and other proceedings)<sup>40</sup>, 261 (Conflict of interests in committee proceedings<sup>41</sup>) and 262 (Disclosure in representations or communications of pecuniary interests). The Code notes that Standing Order 261 is wider than Standing Orders 259 and 260 as it applies to any conflict of interest, not just conflicts arising of a pecuniary nature.

The New South Wales and Western Australian codes state that members "must take all reasonable steps to declare any conflicts of interest between their private financial interests and decisions in which they participate in the execution of their office". Additionally, the Western Australian Code states that members are individually responsible for preventing conflicts of interest and "must carry out their official functions and duties and arrange their private affairs to the best of their endeavours to prevent such conflicts of interest arising".

In the Australian Capital Territory Code, members "are individually responsible for preventing personal conflicts of interest or the perception of a conflict of interest, and must endeavour to arrange their private affairs to prevent such conflicts arising or take all reasonable steps to resolve any conflict that does arise"<sup>42</sup>. The Tasmanian *Code of Ethical Conduct* is similar in that it states: "every Member is individually responsible for preventing potential and actual conflicts of interest, and must arrange private financial affairs in a manner that prevents such conflicts from arising including declaration of pecuniary interest in any matter being considered as part of their official duties as a Parliamentarian".

Under the Victorian Code, a member shall "accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests". Further, a member who is also a minister "shall ensure no conflict exists, or appears to exist, between his public duty and his private interests".

The Northern Territory Code simply states: "Members must avoid conflicts, or apparent conflicts, between their private interest and their official functions". Similar to the Victorian Code, members in the Northern Territory "must ensure that they do not come under any financial obligation to individuals or organisations that are likely, or might reasonably be considered likely, to influence a member improperly in the performance of official functions".

<sup>40</sup> Standing Order 260 is wider than Standing Order 259 as it requires that any pecuniary interest be declared.

<sup>41</sup> This is in addition to Standing Order 259.

<sup>42</sup> Members are also referred to the provisions set out in section 15 of the *Australian Capital Territory (Self-Government) Act 1998* (ACT) and Standing Order 156 of the Legislative Assembly.

### Definitions of Conflicts of interest

Guidance has been provided on what the definition of a “direct pecuniary interest” for the purposes of the Queensland Code involves:

“... it constitutes a direct financial benefit accruing to the Member or a trust company or other business entity in which the Member has an appreciable interest. It would also extend to such an interest held by a Member’s spouse, domestic partner or dependent child. However, it is not to be taken to extend to interests held in common with the public, or a large section of the public, or to vocational interests or matters of public policy”.

For the purpose of the Western Australian and the Australian Capital Territory codes, a conflict of interest exists where a member participates in or makes a decision in the execution of their office knowing that it will improperly and dishonestly further the member’s private interest, or will improperly and dishonestly further another person’s private interest, directly or indirectly. Further, a conflict of interest also exists where a member “executes, or fails to execute, any function or duty knowing that it will improperly and dishonestly benefit their or another person’s private interests directly or indirectly”. In both New South Wales and Western Australia, a conflict of interest does not exist “where the Member is only affected as a member of the public or a member of a broad class”. The Australian Capital Territory Code is worded similarly, “a conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or as a broad class of persons”.

### Management and Recording of Conflicts of interest

In Queensland, the obligation to record any declaration of interests in representations or communications with other members, ministers or other public officers rests solely on the disclosing member. It is acknowledged that formal minutes or even notes will not always be taken at meetings. Disclosing members are advised to make a record of a declaration so that it “can be evidenced in the future should the need arise”. The necessity for and the form of the declaration taken will be determined by the circumstances at the time. The more significant the interest, the higher the onus is on the member to make a formal record of the declaration<sup>43</sup>.

Conflicts of interest are managed on a continuing and ad hoc basis in New South Wales and Western Australia. A member may declare their interests on the Register of Disclosures of their relevant House (in New South Wales) or under the *Members of Parliament (Financial Interests) Act 1992* (in Western Australia) or on an ad hoc basis when speaking on a matter in the House or Committee or in any other public and appropriate manner.

In Victoria, members are to manage conflicts of interest by making full disclosure to Parliament of any direct pecuniary interest that they have, the name of any trade or professional organisation of which they are a member with an interest and any other material interest whether pecuniary or not that they have in relation to any matter upon which they speak in Parliament.

The Northern Territory is the only Code to refer to divestment of interests. Under this Code members “may need to divest themselves of business interests or distance themselves from management by, for example, placing the assets in the administration of a blind trust”.

<sup>43</sup> For a more detailed explanation of the practical effects of the Standing Order and some examples of when a declaration may be required, members are referred to *Information No. 1A of 2004*.

### Guidance provided within the Code

The Queensland Code explains the rationale behind Standing Order 262. The Order recognises “that the role and functions of a member extend beyond the proceedings in the House and its committees and that often members act as advocates for local issues and other projects, initiatives and law reform”. Further, it indicates that members have preferential access to and potential influence of decision-makers. Due to this, the Standing Order ensures that “a Member’s pecuniary interest in the matters the subject to representations or communications with other Members, Ministers and public officers is declared”.

The Queensland Code also provides guidance on the rules relating to members dealing with the executive government and prohibited interests. In summary, restrictions apply to a Member’s financial dealings with the Executive Government and to contracting or transacting business with an entity of the State. A Member may lose their seat if found to have any unauthorised financial dealings with the Executive Government. Exceptions do apply. Members are advised to seek advice if concerned about the application of section 71 of the *Parliament of Queensland Act 2001* to their particular circumstances.

### RECOMMENDATIONS

1. The new Tasmanian code should include the ‘conflict of interest’ principle and should address the following elements:
  - a. how conflicts of interest are to be managed (avoided, managed and resolved in the public interest);
  - b. that Members are individually responsible for preventing conflicts of interest; and
  - c. that a conflict of interest does not arise where the Member is only affected as a member of the public or of a broad class.
2. The new code should use the wording used in the model draft code set out in Appendix One, or words with a similar effect. In particular, the new code should avoid legalistic descriptions of terms and procedures as seen in the Queensland Code. Rather, plain English and simple and concise statements should be used, as seen in the New South Wales and Western Australian Codes.
3. The guidance provided on conflict of interest should address the following:
  - a. the term ‘Conflicts of interest’ should be defined. The differences between real (actual), apparent and potential conflicts of interest should be discussed. It may be beneficial to provide some examples of apparent and potential conflicts of interest (refer to the Western Australian and Australian Capital Territory Codes);
  - b. define relevant terms such as relative, associate and material interests;
  - c. note that the phrase “advantage or benefit” when not used in relation to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) relates to a material interest, regardless of whether it is financial or non-financial;
  - d. note that the conflict of interest may arise where the Member is not trying to further their own interests but those of their families or another person’s interest;
  - e. outline the procedure for declaring, managing and recording of conflicts of interest. E.g. that conflicts of interest are to be managed on a continuing and ad hoc basis as is the case in New South Wales and Western Australia;

- f. note what constitutes “reasonable steps”. It should also be noted here that Members may be required to arrange and manage their private financial affairs in a manner that will avoid conflicts of interest from arising;
- g. refer to relevant Standing Orders;
- h. note that Members should seek the advice of the Parliamentary Standards Commissioner if in doubt; and
- i. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section.

#### **DECLARATION OF PERSONAL INTEREST**

Every code of conduct for members of Parliament within Australia contains the principle requiring members to declare their personal interests.

In Queensland, members have a continuing duty to declare any private interests relating to their public duties as they arise. They must conscientiously comply with the requirements of the Registers of Members’ and Related Persons Interests. It is the personal responsibility of each member to ensure they comply with their disclosure requirements. If in doubt, members can seek advice from the Registrar or the Members’ Ethics and Parliamentary Privileges Committee regarding the interpretation of their requirements.

The Queensland Code is by far the most detailed in setting out the interests or matters to be registered. The code lists 16 separate categories that need to be registered<sup>44</sup>. They are: shareholdings or controlling interests in share or companies; positions held as an officer of a company; beneficial interests in (a) family or business trusts and (b) nominee companies; trustee of family or business trusts;

trustee or director of private superannuation funds; interests in partnerships; interest in real estate; liabilities; debentures, managed funds or similar investments; savings and investment accounts with banks, building societies, credit unions and other institutions; gifts over \$500 from one source, or \$500 in aggregate if two or more gifts from one source during the return period; sponsored travel or accommodation; other sources of income over \$500; other assets over \$5,000; memberships of political parties, trade or professional organisations or name of any other organisation of which the member is an officeholder or financial contributor donating \$500 or more in any single calendar year; and other interests (pecuniary or otherwise) known to the member which raise, appear to raise, or could foreseeable raise, a conflict between the member’s private interests and their duty as a member.

There is no separate section regarding a member declaring their private interests under the New South Wales or Western Australian Codes. Instead, under the “Disclosure of conflict of interest”, “Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office”. This is similar to the Tasmanian Code of Ethical Conduct which states Members “must arrange private financial affairs in a manner that prevents such conflicts from arising including declaration of pecuniary interest in any matter being considered as part of their official duties as a Parliamentarian”.

In the Australian Capital Territory, in order for members’ actions and decisions to be transparent and bolster public confidence in the Assembly and the legislative process, members “are required to disclose their pecuniary interests pursuant to the resolution of the Assembly ‘Declaration of Private Interests of Members’ agreed to on 7 April 1992 (as amended 27 August 1998 and 17 March 2005)”. No additional guidance is provided.

<sup>44</sup> The Queensland Code also provides brief information on what each category entails but that is beyond the scope of this report. For further information, refer to the *Code of Ethical Standards, Legislative Assembly of Queensland*, September 2004 (amended as at 11 May 2009).

Under the Victorian Code of Conduct for Members, which is found in the *Members of Parliament (Register of Interests) Act 1978* s.3, a “Member shall make full disclosure to the Parliament of:

- i. any direct pecuniary interest that he has;
- ii. the name of any trade or professional organization of which he is a member which has an interest;
- iii. any other material interest whether of a pecuniary nature or not that he has
  - a. in relation to any matter upon which he speaks in the Parliament”.

Part II of the Victorian Act outlines a member’s obligations in registering their private interests but as this is outside of the actual Code it is beyond the scope of this analysis.

In the Northern Territory Code, a member “must not vote in any division on a question affecting a declarable interest unless the Member has first declared the interest to the Assembly”. For the purposes of the Code, a declarable interest is:

- a. an interest the member has disclosed, or is required to disclose, under the *Legislative Assembly (Disclosure of Interests) Act* (including such an interest held by a related person within the meaning of that Act); or
- b. an interest of a company or business for which the member acts, for remuneration, as a consultant or advisor.

A declaration must be made if the member wishes to participate in any debate on the matter and must be made at the beginning of the member’s speech. Further, if the member does not wish to participate in the debate then as soon as practicable, before or after, the vote is taken on the matter.

## Procedure

Under the Queensland Code, members are given one month after making the oath or affirmation as a Member of the Legislative Assembly in which to

provide a statement to the Registrar of Members’ Interests<sup>45</sup>. Where there is a change in a member’s interests, the member must notify the Registrar within one month of becoming aware of the change. A member “must also register the interest of their related persons”.<sup>46</sup> If a member’s interests have not changed within the year since the last disclosure, a member may submit a “Confirmation of correct particulars” to the Registrar<sup>47</sup>.

In New South Wales and Western Australia, a member may declare their interests on the Register of Disclosures of their relevant House (in New South Wales) or under the *Members of Parliament (Financial Interests) Act 1992* (in Western Australia) or on an ad hoc basis when speaking on a matter in the House or Committee or in any other public and appropriate manner.

## Access to the Register

In Queensland, the statements provided to the Registrar are published as a parliamentary paper. Additionally, the public and the media may access the register through the office of the Clerk of the Parliament. However, the Register of Related Persons’ Interests is only available for inspection by a limited number of specified persons for privacy reasons<sup>48</sup>.

While no other codes refer to the publishing of the register online, it should be noted that the following jurisdictions currently do publish their registers online: the House of Representatives for the Commonwealth, the Victorian Legislative Council and Legislative Assembly, the South Australian Legislative Council and House of Assembly, the Queensland Legislative Assembly and the Australian Capital Territory Legislative Assembly. The Commonwealth Senate proposes to publish its register from 1 July 2011. The Tasmanian Parliament is also in the process of publishing its registers.

<sup>45</sup> The Clerk of the Parliament.

<sup>46</sup> This may include, for example, their spouse or dependent children.

<sup>47</sup> The disclosure period is 31 July to 30 July.

<sup>48</sup> This includes the Speaker, the Premier, the Member’s Ethics and Parliamentary Privileges Committee and the Auditor-General.



The Northern Territory, Western Australia and New South Wales currently do not publish their registers online.

### Breaches

In Queensland, a member who knowingly fails to comply with the requirements contained in the registers by failing to give a statement of interests, or gives a false, incomplete or misleading statement in a material particular, to the Registrar or fails to notify the Registrar of a change in details is guilty of contempt of Parliament.

No specific mention is made in the codes of other jurisdictions as to what the penalty is if a member fails to disclose or makes a misleading or incorrect disclosure. However, failure to disclose or making false and misleading statements is deemed to be contempt of Parliament in the following jurisdictions: Victoria<sup>49</sup>, the Australian Capital Territory<sup>50</sup>, Tasmania<sup>51</sup>, the Northern Territory<sup>52</sup>, Western Australia<sup>53</sup> and the Commonwealth<sup>54</sup>. In New South Wales, a member may have their seat declared vacant if they breach the regulations<sup>55</sup>. In South Australia, a member may be found guilty of an offence under the *Members of Parliament (Registers of Interests) Act 1983* and fined up to \$5000.<sup>56</sup>

### Guidance provided within the Code

The Queensland Code is the only one to provide information regarding the purpose of the Register of Member's Interests. Members are informed that the registration of interests "provides some basis upon which the integrity of members may be judged". As the source of the requirement for disclosure and registration is the *Standing Rules and Orders of the Legislative Assembly* the relevant orders have been provided in Appendix 1 of the Code.

The Northern Territory Code reminds members of section 21(3) of the *Northern Territory (Self-Government) Act 1978 (Cth)*, which prohibits a member of the Legislative Assembly "who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory under which codes or services are to be supplied to the Territory from taking part in discussions of a matter, or voting on a question, in the Legislative Assembly where the matter or question relates directly or indirectly to that contract".<sup>57</sup>

### RECOMMENDATIONS

1. The new Tasmanian code should include the declaration of personal interest principle and should address the following elements:
  - a. that members are personally responsible for disclosing their pecuniary interests pursuant to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas); and
  - b. that members must not vote or participate in discussions on a matter in which they have a material interest unless they have first declared such interest to Parliament, or in any other public and appropriate manner.

<sup>49</sup> Pt 2, s. 9 of the *Members of Parliament (Register of Interests) Act 1978* (Vic).

<sup>50</sup> As a Continuing Resolution of the Legislative Assembly, adopted 7 April 1992, it forms part of the Standing Orders which, if breached, constitutes contempt of Parliament.

<sup>51</sup> S. 24 of the *Parliamentary (Disclosure of Interests) Act 1996* (Tas).

<sup>52</sup> S. 6 of the *Legislative Assembly (Disclosure of Interests) Act 2008* (NT).

<sup>53</sup> S. 4 of the *Members of Parliament (Financial Interests) Act 1992* (WA).

<sup>54</sup> Resolution 2 and 3 of the *Senate's Standing Orders* adopted 17 March 1997 and Resolution of the *House of Representatives Standing Orders* adopted 8 October 1984.

<sup>55</sup> s. 14A of the *Constitution Act 1902* (NSW).

<sup>56</sup> s. 7.

<sup>57</sup> These rules apply in cases of conflict, or possible conflict, of interests to which the statutory prohibition is inapplicable.

2. The Commission does not recommend that members be required to divest their interests as this is inconsistent with the common practice across the Australian jurisdictions and is more appropriate to managing the personal interests of ministers.

3. The new code should use the wording suggested in the model draft code set out in Appendix One, or words with a similar effect. In particular, the new code should avoid legalistic descriptions of terms and procedures as seen in the Queensland Code. Rather, plain English and simple and concise statements should be used, as seen in the New South Wales and Western Australian Codes. Further, words, such as those used in the Victorian Code, should be avoided. The Victorian Code is statute based whereas the Tasmanian Code is not.

4. The guidance provided on declaring personal interests should address the following:

- a. that reference is made to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) and a member's obligations under that Act;
- b. define any relevant terms, e.g. declarable interest, personal interest, pecuniary interest;
- c. outline the situations where it will be necessary to make a declaration of interests, examples should be provided;
- d. the procedure to be followed when declaring an interest, the timeframes involved, who to make the declaration to, the form and content of the declaration, whose interests need to be disclosed and what the procedure is for when an interest changes;
- e. whether declarations are to be required on an ad hoc basis as well as through primary and ordinary returns;

f. note any restrictions on voting and debating on matters where a member has a declarable interest;

g. if enforcement is not addressed in the Code, outline the consequences of non-compliance with this section is or of non-compliance with the Act;

h. note who is to have access to the Register; and

i. state the rationale behind the Register.

5. That the Register of Interests be published on the internet to bring Tasmania in line with the majority of other Australian jurisdictions.

## GIFTS AND BENEFITS

The principle of gifts and benefits was addressed in each jurisdiction examined except Victoria.<sup>58</sup>

### Receiving Gifts

The Queensland Code does not deal directly with the issue of receiving and giving of gifts and benefits. Rather the Code refers to it as an obligation members have under their disclosure of private interests. Appendix 1, which is an extract from the *Standing Rules and Orders of the Legislative Assembly*, defines a gift for the purpose of the Code as meaning:

- a. "the transfer of money, property, or other benefit –
  - i. without recompense; or
  - ii. for a consideration substantially less than full consideration; or
- b. a loan of money or property made on a permanent, or an indefinite, basis; but does not include upgraded travel provided by an airline".

<sup>58</sup> The declaration of gifts is dealt with in Part II of the *Members of Parliament (Register of Interests) Act 1978* (Vic). The Code of Conduct is contained in Part I. Due to this, it is beyond the scope of this project.



However, only “gifts over \$500 from one source, or \$500 in aggregate if two or more gifts from one source are provided during the return period (excluding gifts received from related persons or from personal friends in a purely personal capacity<sup>59</sup>)” must be declared. Within one month of receiving the gift a member must notify the Registrar in writing of the particulars of the gift.

In both the New South Wales and Western Australian Codes, a member must not accept a gift that may “pose a conflict of interest or which might give the appearance of an attempt to” improperly (in New South Wales) or corruptly (in Western Australia), influence the member in the exercise of their duties. Further, a member “must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests”. Under both Codes a member may accept political contributions in accordance with their jurisdiction’s relevant electoral laws.<sup>60</sup>

The Australian Capital Territory Code states that a member “must register all gifts, payments, fees or rewards valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources”. However, members do not need to register gifts, payments, fees or rewards received by members, their spouse, immediate family or personal friends in a purely personal capacity, unless it gives rise to a conflict of interest. Registration is to be made in accordance with the member’s disclosure obligations under the Member’s Statement of Registrable Interests.

In the Northern Territory, a member “must not solicit or encourage a gift or private benefit from a constituent or other person with whom the Member deals with in an official capacity”. Where an unsolicited gift or private benefit is offered without solicitation or encouragement, a Member

may accept the gift but must disclose it if required under the *Legislative Assembly (Disclosure of Interests) Act 2008*.

In Tasmania, under the House of Assembly’s Code of Ethical Conduct, a member “must not accept gifts, benefits or favours except for incidental gifts or customary hospitality of nominal value”. No guidance is provided in relation to what constitutes an incidental gift or customary hospitality of nominal value. The only potential guidance is that provided in the *Parliamentary (Disclosure of Interests) Act 1996* which states that a member is not required to disclose any gift unless it is valued over \$500.00. No reference is made in the Act to incidental gifts or nominal value.

### Receiving of Benefits

The Queensland Code is the only one that provides detailed information about receipt of benefits. Appendix 1 of the Queensland Code defines sponsored travel or accommodation as meaning “any travel undertaken including accommodation incidental to the travel, or any accommodation benefit received, by the member or a related person in respect of which a contribution (whether in cash or kind) to the cost of the travel (including incidental accommodation) or the accommodation is made by a person other than the member or a related person but does not include:

- travel or accommodation received in an official capacity
- upgraded travel provided by an airline, or upgraded accommodation
- meals or sporting or cultural entertainment
- a benefit received from a family member or family friend where the contribution made by the sponsor is received in a purely personal capacity, and there is no connection or possible conflict of interest between the member’s duties and the interest of the sponsor”.

<sup>59</sup> Unless the member judges that an appearance of a conflict of interest may be seen to exist.

<sup>60</sup> Part 6 of the *Election Funding Act 1981* in New South Wales and Part VI of the *Electoral Act 1907* in Western Australia.

All sponsored travel or accommodation must be declared. The procedure for declaring benefits is the same for as gifts under the Queensland Code.

### Guidance provided within the Code

The Queensland Code also provides guidance on the disclosure requirements of agents for each candidate in an election or by-election. A return must be provided detailing any gifts received and their value and the source of the gifts, including the number of gifts provided and who provided them, during the disclosure period of the election. Members are informed of penalties that apply for failing to provide a return.

### RECOMMENDATIONS

1. The new Tasmanian code should contain a principle on gifts and benefits and should address the following elements:
  - a. that members must not solicit, encourage or accept gifts, benefits or favours which may give the appearance of an attempt to improperly influence the member in the exercise of his or her duties, except for incidental gifts or customary hospitality of nominal value;
  - b. that members must declare gifts and benefits received in the course of their official duties in accordance with the requirements under the *Parliamentary (Disclosure of Interests) Act 1996*.
2. The Commission does not recommend that actual dollar amounts be inserted into the code, as is the case in the Queensland and Australian Capital Territory Codes, but rather actual amounts be provided in guidance accompanying the code.
3. The new code should use the wording suggested in the model draft code set out in Appendix One, or words with a similar effect. In particular, the new code should avoid legalistic descriptions

of terms and procedures as used in the Queensland Code. Plain English and simple and concise statements should be used, as in the New South Wales and Western Australian Codes.

4. The guidance provided on gifts and benefits should address the following:
  - a. reference should be made to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) and a member's obligations to disclose gifts and benefits received under that Act. Any exceptions to this section should be discussed;
  - b. that any relevant terms should be defined, e.g. nominal value, incidental gift, customary hospitality and benefit;
  - c. the procedure to be followed when accepting and registering a gift, the timeframes involved, how to register the gift, the identity of the recipient, etc.;
  - d. reference should be made to the policy on sponsored travel or accommodation. If no policy exists, include guidelines and procedures on sponsored travel or accommodation;
  - e. reference should be made to any policy on accepting political contributions given as gifts as seen in the Queensland Code guidance;
  - f. note a member may accept political contributions in accordance with Tasmania's electoral laws; and
  - g. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section or for non-compliance with the Act.
5. That if no separate policy exists for receiving and giving gifts and benefits, one should be developed and referred to in the guidance section of the new code.

6. That if no policy exists for accepting political donations given as gifts, one should be developed.

### **OUTSIDE EMPLOYMENT**

The jurisdictions of New South Wales, the Northern Territory and Queensland address the principle of outside employment within their Codes. Victoria indirectly refers to this principle.

In the Northern Territory, a member “must not engage in any other employment or business activity that involves a substantial commitment of time and effort”. The rationale for this is that a member’s functions require “a commitment of time and effort at least equivalent to full-time employment”. Further, a member is not to “hold a direct or indirect interest in a contract or arrangement for the provision of goods or services to or for the Territory or an agency or instrumentality of the Territory”.

However, in New South Wales a member is not required to resign from or avoid outside employment. Instead, a member must “take all reasonable steps to disclose at the start of a parliamentary debate:

- a. the identity of any person by whom they are employed or engaged or by whom they were employed or engaged in the last two years (but not if it was before the member was sworn in as a member);
- b. the identity of any client of any such person or any former client who benefited from a member’s services within the previous two years (but not if it was before the member was sworn in as a member); and
- c. the nature of the interest held by the person, client or former client in the parliamentary debate”.

A member is not obliged to disclose the above when they are simply voting on a matter and

not participating in a debate or where they have already disclosed the information in the Pecuniary Interest Register. Further, the obligation does not arise unless a member is aware, or ought to be aware, that the person, client or former client has an interest in the parliamentary debate that goes beyond the general interest of the public.

The Queensland Code indirectly refers to outside employment by stating: “Members are not to place themselves under any financial obligation to outside individuals or organisations, including the executive government, that might influence them in the discharge of their duties and responsibilities, and must act at all times in accordance with rules set down by the Parliament for outside appointments”.

The Victorian Code indirectly addresses this principle, and only in relation to members that are ministers, by stating a member “who is a Minister is expected to devote his time and his talents to the carrying out of his public duties”.

### **RECOMMENDATIONS**

1. The new Tasmanian code should contain a principle on outside employment and should address the following elements:
  - a. that members must not engage in any other employment that involves a substantial commitment of time and effort such as to interfere with their duties as members of parliament.
2. The Commission does not recommend that members be banned from engaging in outside employment. Simple disclosure is not an effective safeguard against preventing potential conflicts of interest nor can it ensure that members devote significant time and energy to their role as a member of parliament. The Commission is of the view that the issue of whether to ban members from outside employment is for Parliament to decide.

3. The new code should use wording suggested in the model draft code set out in Appendix One, or words with a similar effect. It is recommended that plain English and simple and concise statements should be used, as seen in the Northern Territory Code.
4. The guidance provided on outside employment should address the following:
  - a. refer to any rules or guidelines which regulate outside employment by members of parliament;
  - b. define and provide guidance on “substantial commitment of time and effort;
  - c. note any exceptions that may apply;
  - d. list any obligations under the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) that are applicable to members; and
  - e. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section or for non-compliance with the Act.

### IMPROPER ADVANTAGE

Each jurisdiction examined addresses the principle of improper advantage.

In Queensland, a member must “not misuse any confidential or prized information<sup>61</sup>, particularly for personal gain”. The Code stresses that use by a member of confidential or prized information may constitute an offence under the *Corporations Act 2001* (Cth), in particular that it is “an offence for a person with “inside information” to trade in securities that will be affected by the information” under section 1043A. Reference is also made to Standing Order 209 (References to proceedings and disclosure of evidence and documents). Under the Order, unauthorised or premature disclosure of a

committee’s evidence and documents constitutes contempt of Parliament. Further, section 66 of the *Crime and Misconduct Act 2001 (Qld)* “provides that a Member of the Parliamentary and Misconduct Committee who discloses information that has come to the attention of the Member because of their membership of the committee, which is not otherwise authorised for disclosure by the act or the commission, commits an offence”.

In New South Wales and Western Australia, a member “must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others”. Further, in the Western Australian Code, a member shall not use their influence improperly “in order to obtain appointment, promotion, advancement, transfer or any other advantage within the public sector on behalf of themselves or another or to affect the proper outcome of any procedure established under the legislation for the management of the public sector”.

Under the Australian Capital Territory Code a member is not “to misuse any confidential information received, particularly for personal gain or the personal gain of others”. Further, members are reminded of their obligations under the Standing Orders regarding the publication of confidential information. The Australian Capital Territory Code also states that Members “should not appoint close relatives to positions in their own offices or any other place of employment where the Member’s approval is required”.

The Victorian Code states “Members shall not advance their private interests by use of confidential information gained in the performance of their public duty”. Nor shall a member “receive any fee, payment, retainer or reward, nor shall he permit any compensation to accrue to his beneficial interest for

<sup>61</sup> Information that is not available to the public generally.

or on account of, or as a result of, his position as a Member". No additional guidance is provided.

This principle is broken down into two components under the Northern Territory Code: integrity and respect for confidences. The Code states "Members must act with integrity in the exercise of official functions". The rationale for this is that the public must have confidence in the parliament to ensure an effective democracy. In order to maintain public confidence, members must avoid any suggestion that they are exploiting their position to gain an improper personal benefit or gain. In relation to respect for confidences, a member "must respect the confidentiality of information obtained in confidence in the Member's official capacity". A member must also not make improper use of such information to gain a private benefit.

The Tasmania Code of Ethical Conduct for the House of Assembly refers to this principle three times. Firstly, it states a member "must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain". Secondly, that a member "must not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices". Finally, that when leaving and when they have left office a member "must not take improper advantage of their former office".

### **Guidance provided within the Code**

The Australian Capital Territory Code provides guidance stressing that members are privileged to receive confidential or prized information and that it is provided to them to assist in their decision making process for the benefit of the Territory.

### **RECOMMENDATIONS**

1. The new Tasmanian code should contain a principle on improper advantage and should address the following elements:
  - a. that members, during and after leaving public office, must not use their influence improperly in order to obtain appointment, promotion, advancement, transfer or any other advantage or benefit on behalf of themselves or another person or persons;
  - b. that members, during and after leaving public office, must not use official information which is not in the public domain or is obtained in confidence during the course of their official duties or positions, for the advantage or benefit of themselves or another person or persons;
  - c. that members should not appoint their spouse, domestic partner or close relative to positions in their own offices; and
  - d. that members must not receive any fee, payment, retainer or reward, nor shall they permit any compensation to accrue to their beneficial interest for or on account, or as a result of, their position as member.
2. That the principle of improper advantage, which is presently unclear, be clarified. The significant of this principle is illustrated under the current House of Assembly Code of Ethical Conduct which refers to this principle three times.
3. That due to the nature of Tasmania as a relatively small community, it is appropriate to make direct reference to the appointment of family members within the code.
4. The new code should use wording suggested in the model draft code set out in Appendix One, or words with a similar effect. In particular, the new code should avoid legalistic descriptions of terms and procedures as seen in the Queensland Code. It is recommended that plain English and simple and concise statements should be used, as seen in the New South Wales and Western Australia Codes.



5. The guidance provided on improper advantage should:
  - a. stress that members are privileged to receive confidential information to assist them in their decision making processes;
  - b. refer, if appropriate, to any relevant sections of the *Parliamentary (Disclosure of Interests) Act 1996* (Tas);
  - c. outline that bribery of a member of parliament is an offence under s.72 of the *Criminal Code 1924* and outline the consequences of accepting a bribe;
  - d. refer to any policies or guidelines on the proper use and manage of confidential information;
  - e. refer to any policies in relation to employing family members;
  - f. note the procedure to be followed in the event a member is offered compensation to perform a function or duty for which they are already paid, e.g. to whom do they report the matter; and
  - g. if enforcement is not addressed in the preamble/introduction of the Code, should outline the consequences of non-compliance with this section, or of non-compliance with the Act.
6. Parliament should consider whether Members of Parliament should be required to maintain confidentiality of information regardless of whether a personal benefit is obtained.

#### IMPROPER USE OF PUBLIC RESOURCES

Victoria is the only jurisdiction in which the Code does not address improper use of resources.

Both the Queensland Code and the Australian Capital Territory Code address this principle by providing guidance on the proper use of entitlements. In the Queensland Code, members must ensure that they use the entitlements and allowances they receive appropriately. Under the

Australian Capital Territory Code members have a “personal duty to ensure that entitlements and allowances of office pursuant to Remuneration Tribunal Determinations and as summarised in the Members’ Guide are used appropriately in the service of the people of the Australian Capital Territory and not for personal gain”.

The Australian Capital Territory also requires its members to “ensure that resources provided to them at public expense as Members of the Legislative Assembly of the Australian Capital Territory are only used for legitimate parliamentary and electorate purposes”. Additionally, members are not to misuse or permit anyone else to misuse public resources or funds allocated, for political purposes.

The New South Wales and Western Australian codes state that a member “must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources”. The Northern Territory Code states: “Members must manage, economically and responsibly, the resources and facilities provided to them and their staff at public expense”. No additional guidance is provided in any of the codes.

The Tasmanian Code of Ethical Conduct states that a member “must not use, or allow the use of, public property or services for personal gain”. No additional guidance is provided.

#### Guidance provided within the Codes

The Queensland Code refers members to the *Members’ Entitlement Handbook* and the *Members’ Office Support Handbook*, which outline the allowances and entitlements a Member may receive and outlines the procedure for how they are to be claimed. The Code emphasises that it is the personal responsibility of each member to:

- “familiarise themselves with the *Members’ Entitlement Handbook* and the *Members’ Office*

*Support Handbook* and the requirements set out in the handbooks”;

- “lodge any claim or acquittal prescribed for an allowance or benefit”; and
- “ensure that any claim or acquittal lodged contains the necessary detail and is accurate in all respects”.

Members can seek advice from the Speaker and the Clerk of the Parliament regarding the application of the handbooks or any guidelines. Lastly, guidance is provided on consequences for breaching the handbooks or guidelines. The Code stresses that the dishonest use or claim of an entitlement or allowance constitutes an offence under the *Criminal Code*.

As with the Queensland Code, in the Australian Capital Territory members are required to familiarise themselves with the entitlements available to them and ensure the accuracy of all claims are made in accordance with the guidelines set out in the Members’ Guide.

## RECOMMENDATIONS

1. The new Tasmanian code should contain a principle on improper use of public resources and should address the following elements:
  - a. that members must not use public resources, or allow such resources to be used by others, for personal advantage or benefit;
  - b. that members must use and manage public resources in accordance with any rules

or guidelines regarding the use of those resources; and

- c. that members must be scrupulous in ensuring the legitimacy and accuracy of any claim they make on the public purse.
2. Subject to further consultation, the new code should use the wording suggested in the model draft code set out in Appendix One, or words with a similar effect. In particular, the new code should avoid employment-related terminology as seen in the Queensland and Australian Capital Territory Codes. It is recommended that plain English and simple and concise statements should be used, as seen in the New South Wales and Western Australia Codes.
3. Guidance provided on improper use of public resources should address the following:
  - a. refer to any policies and guidelines on the proper use of public resources;
  - b. note that public resources are to be used for legitimate parliamentary and electorate purposes only and are not to be misused for political purposes; and
  - c. if enforcement is not addressed in the preamble/introduction of the Code, should outline the consequences of non-compliance with this section or with the Act.



## COMPARATIVE ANALYSIS OF ADDITIONAL THEMES IDENTIFIED

### MISLEADING STATEMENTS

Both the Queensland Code and the Western Australian Code address the principle of not knowingly misleading parliament.

The Western Australian Code states: “Members must not knowingly mislead the Parliament or the public in statements they make and are obliged to correct the Parliamentary record as soon as possible when incorrect statements are made unintentionally”.

The Queensland Code provides more detail: “any Member who deliberately misleads the House is in contempt of the House”. To establish that a member has deliberately misled the House, the statement must in fact be misleading and it also must be established that the member knew at the time of making the statement that it was incorrect and that the member intended to mislead the House<sup>62</sup>. Where a member unknowingly makes an incorrect or misleading statement, the member has a duty to correct the official record of the House on becoming aware of the fact that the statement is incorrect or that it could be misleading.

### RECOMMENDATIONS

1. The new Tasmanian code should contain a principle on misleading statements and should address the following elements:
  - a. that a member must not intentionally or unintentionally mislead Parliament or the public in statements they make, and are obliged to correct the Parliamentary or the public record in a manner that is appropriate to the circumstances as soon as possible after any incorrect statement is made.
2. The new code should use the wording of the model draft code, or words with a similar effect. In particular, the new code should avoid detailed descriptions as seen in the Queensland Code. It is recommended that plain English and simple and concise statements should be used, as seen in the Western Australia Code.
3. While only two codes contain this principle, the Commission’s view is that this is an important principle in relation to the ethical conduct of Members of Parliament, as it is vital to upholding the principles of the Westminster system and enhancing and maintaining public confidence in Parliament and the ethical standards of Parliamentarians. Due to this, the Commission recommends that this principle be reaffirmed in the new code.
4. The guidance provided on misleading statements should:
  - a. refer to any guidelines or procedures or policies in place on intentionally misleading Parliament;
  - b. define what it means to ‘intentionally’ mislead Parliament;
  - c. outline the process to be followed if a misleading statement is made; and
  - d. if enforcement is not addressed in the preamble/introduction of the Code, outline what the consequences are for non-compliance with this section.

<sup>62</sup> The Code emphasises that the term ‘misleading’ is a wider concept than ‘incorrect’, in that a totally factually correct statement may still be misleading.

## **FREEDOM OF SPEECH**

The Queensland Code and the Western Australian Code also address the freedom of speech principle.

Under the Western Australian Code, a member is reminded to be “mindful of the privileges conferred when speaking in the Legislative Assembly and should consciously avoid causing undeserved harm to any individual who does not enjoy the same privileges”.

The Queensland Code provides brief information on freedom of speech.

## **RECOMMENDATION**

1. Whilst the Commission recognises this principle as an important democratic principle, it is not appropriately dealt with in a code determining the ethical conduct of members. The Commission recommends that the principle of freedom of speech not be addressed in the new Tasmanian code.

## **COMPLYING WITH RELEVANT CODES, LAWS AND DIRECTIONS**

The Australian Capital Territory and the Northern Territory Codes deal with members and their staff complying with relevant codes. The Tasmanian Code of Ethical Conduct briefly refers to compliance with the law. The New South Wales, Australian Capital Territory and Western Australian Codes and the Queensland Code only refer to bribery laws. The Western Australian Code also, along with the Victorian and Northern Territory Codes, requires its Members to act to the highest ethical standards.

## **Compliance with Codes and Laws**

In the Australian Capital Territory, a member “must ensure that their staff are aware of and abide by the relevant codes of conduct applicable to Members’ staff”. Further, members must ensure their staff, where relevant, also comply with the Members’ Code of Conduct and make them aware of their

obligation to help the member comply with the Members’ Code. In both the Australian Capital Territory and the Northern Territory, members, themselves, must observe the obligations placed on them as employers.

The Tasmanian Code of Ethical Conduct states members “must act not only lawfully but also in a manner that will withstand the closest public scrutiny”.

## **RECOMMENDATION**

1. That as members are already required to comply with the law it is not appropriate to include compliance with codes and laws as a principle in the new code, given that codes of conduct are about ethical conduct not legal compliance. Rather, the Commission recommends members are reminded of their obligation to comply with the law and codes in the preamble or introduction to the new code.

## **BRIBERY**

The New South Wales Code is more prescriptive than the Western Australian Code, stating that “a Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which the Member has received, is receiving or expects to receive”. Further, a member “must not knowingly or improperly promote any matter, votes on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive:

- i) a member of the Member’s family;
- ii) a business associate of the Member; or
- iii) any person or entity on bribery from whom the Member expects to receive a financial benefit”.

Accepting bribes constitutes a substantial breach of the Code.

The Western Australian Code states a member “must not promote any matter, vote on any bill or resolution, or ask any questions in the Legislative Assembly or its Committees, in return for payment or any other personal financial benefit”.

In the Northern Territory, a member, in accordance with section 14 of the *Australian Capital Territory (Self-Government) Act 1988*, “must not solicit, accept or receive any remuneration, benefit or profit in exchange for services rendered in the Assembly or one of its committees other than the remuneration and allowances provided for pursuant to section 73 of Act”.

The Queensland Code is legalistic in relation to bribery. References are made in full to sections 59 of the *Criminal Code 1995* (Members of Parliament receiving bribes) and 60 (Bribery of Member of Parliament). Members are informed that the crime of bribery or attempted bribery is punishable by seven years imprisonment. A member may also be disqualified for seven years if found guilty of bribery. Members are also informed that their intention in accepting the bribe is irrelevant. Further, bribery can also be punished by the House as contempt, which is wider and therefore more onerous on members than the criminal offence of bribery.

#### RECOMMENDATION

1. That the new code does not refer to bribery as it is covered by the improper advantage principle with direct reference to be made to bribery in the guidance for that principle. Further, bribery is an offence under *The Criminal Code Act 1924*.

#### ACTING TO THE HIGHEST ETHICAL STANDARDS

Under the Western Australian Code, members “must apply high standards of behaviour and consciously avoid personal abuse and denigration of Parliamentary colleagues”. In Victoria, members

must ensure that their conduct as members must not bring discredit upon Parliament. The Northern Territory requires a member’s conduct in office to “be exemplary in regard to the Member’s work ethic and Code of ethical behaviour”.

#### GUIDANCE PROVIDED WITHIN THE CODE

The Australian Capital Territory Code states that members must familiarise themselves with the following policies and their requirements: occupational health and safety; discrimination, harassment and bullying; equal employment opportunity; acceptable use of information technology and any other relevant policies or legislations.

The Queensland Code also lists two other types of conduct which may be punishable as contempt: advocating in the House on matters in which members have previously been involved professionally, and accepting professional services connected with business of the House.

#### RECOMMENDATION

1. That this principle of ‘acting in the highest ethical standards’ not be included in the body of the new code but rather in the preamble or statement of commitment section as an overriding principle of the code and in guiding the ethical conduct of members of parliament.

#### CONFORMING WITH WESTMINSTER PRINCIPLES, RESPECTING DEMOCRATIC INSTITUTIONS AND PROCESSES AND THE PRINCIPLES OF GOOD GOVERNANCE

New South Wales, Western Australia and Northern Territory address this principle in relation to conforming to Westminster principles. The Northern Territory Code also addresses this principle in relation to respect of democratic institutions and processes and the principles of good governance.

Both the New South Wales and Western Australian codes recognise that members can either be non-aligned or belong to a particular political party. The codes inform members that “organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament”. Further, the Western Australia Code stresses “that a balanced and diversity-respecting Parliament benefits the society it reflects and represents”. Therefore, “a sense of tolerance and respect of different political positions should direct the working environment in the Parliament”.

In the Northern Territory a member “must recognise the public service as a non-partisan public resource, and treat public servants in accordance with established conventions of public service neutrality”. In relation to respect of democratic institutions and processes and the principles of good governance a member must “foster, by their conduct in office, respect for democratic institutions, rights and freedoms and the principles of good governance. In particular, members must foster the following:

- a. respect for the institution of the Parliament;
- b. respect for the Rule of Law;
- c. recognition of the value of social and cultural diversity;
- d. fairness and integrity in official decision-making;
- e. freedom of reporting by media;
- f. the independence of the public service;
- g. freedom of speech;
- h. access to justice”.

The Northern Territory Code also states that a member must “act in accordance with the principle of responsibility”. A member must ensure their decisions are well-informed and take into

consideration the consequences for those likely to be affected by their decisions.

## RECOMMENDATIONS

1. That this principle not be included in the new Tasmanian code as it relates to democratic principles and processes and not to the ethical conduct or standards of members of parliament.
2. That the new code contain a principle on duties as a member of parliament as seen in the current *Government Members of Parliament Code of Conduct 2006* published by the Tasmanian Government and should address the following elements:
  - a. that members must have regard to proper standards of parliamentary conduct and must take particular care to consider the rights and reputations of other before making use of the unique protection available under parliamentary privilege. Further, that this privilege should never be used recklessly or without due regard for accuracy.
3. That greater clarity needs to be provided on this issue particularly as the privilege bestowed upon members of parliament is based on trust and should not be misused for political purposes.
4. The new code should use the wording suggested in the model draft code set out in Appendix One, or words with a similar effect. It is recommended that plain English and simple and concise statements be used.

## ACTING IN THE PUBLIC INTEREST

Only the jurisdictions of the Northern Territory, Western Australian and Tasmania referred to the principle of acting in the public interest.

The Northern Territory Code states “in performing official functions, Members must act in what they genuinely believe to be the public interest. In particular, Members must seek to ensure their decisions and actions are based on an honest, reasonable, and properly informed judgement about what will best advance the common good of the people of the Territory”. Further, members have an obligation “to use the influence conferred upon them in the public’s interest and not for personal gain”.

The Western Australian Code states that one of the prime responsibilities of members is to “represent the interests of their own electorate and their constituents”.

The Tasmanian *Code of Ethical Conduct* requires members to “carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office”. Further, members are informed that “neither the law nor this Code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust”.

## RECOMMENDATIONS

1. That this principle not be included in the body of the new code but rather in the statement of commitment section as an overriding principle of the code, guiding the ethical conduct of Members of Parliament.
2. The background notes to the statement of commitment could define what is meant by ‘public interest’.

## BEING FRANK, HONEST, TRANSPARENT AND IMPARTIAL IN OFFICIAL DEALINGS

The Northern Territory, Western Australian and Tasmanian Codes also refer to the principle of being frank, honest, transparent and impartial in a member’s official dealings.

In Western Australia, members are to “perform their public duty in an objective manner and without consideration of personal or financial interests”. The Tasmanian *Code of Ethical Conduct* is similarly worded - a member “must carry out their official duties objectively and without consideration of personal or financial interests”.

The principle is stated more generally in the Northern Territory – “Members are accountable to the Assembly, their constituents and the public generally”. This requires members to exercise their powers and influence lawfully and fairly. The Code stresses that “the people of the Northern Territory are entitled to know why the Assembly or a Member has taken a particular policy position”. Further, the Code states that members “must act honestly in all their official dealing, and must take care not to mislead the Assembly or the public”.

## RECOMMENDATION

1. That this principle not be included in the body of the new code but rather in the preamble or statement of commitment section as an overriding principle of the code and in guiding the ethical conduct of members of parliament.



## PRINCIPLES EXCLUSIVE TO THE AUSTRALIAN CAPITAL TERRITORY

### CONDUCT TOWARDS ASSEMBLY STAFF

The Australian Capital Territory Code states that it is expected that members and their staff “will extend professional courtesy and respect to all staff of the Assembly”. Any problems or concern with a staff member of the Assembly should be dealt with through the appropriate policies and procedures.

### RECOMMENDATIONS

1. That the *Code of Race Ethics* be reviewed to emphasise respect for all persons without emphasis only on the concept of “race”, and that it be noted in the preamble to a revised *Code of Race Ethics* that the Code is to be read in conjunction with the new Code of Conduct for Members of Parliament. The Code should also be renamed.
2. That this principle not be included in the body of the new Tasmanian code, as it will be addressed in a revised and renamed stand-alone ‘*Code of Race Ethics*’.
3. That the Legislative Council consider adoption of a code similar to the revised ‘*Code of Race Ethics*’.
4. That it be noted in the preamble of the new code that the code is to be read in conjunction with the revised and renamed ‘*Code of Race Ethics*’.

## PRINCIPLES EXCLUSIVE TO TASMANIA

### RESPECT FOR PERSONS

Tasmania, through its House of Assembly *Code of Race Ethics*, is the only jurisdiction to address this principle.

The Code states that members agree to:

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

No additional guidance is provided.

### RECOMMENDATIONS

1. That the *Code of Race Ethics* be reviewed and be renamed to address not only ‘race’ ethics but respect for persons in general.
2. The Commission recommends that a code similar to the revised and renamed House of Assembly’s *Code of Race Ethics* be applied to the Legislative Council.

## COMPARATIVE ANALYSIS IN SELECTED INTERNATIONAL JURISDICTIONS

### INTRODUCTION

The Commission considered codes of conduct in the jurisdictions of Canada, the United Kingdom and New Zealand. Canada and the United Kingdom have codes of conduct for members of parliament. Canada has two separate codes of conduct for members of parliament: a *Conflict of Interest Code for Members of the House of Commons* and a *Conflict of Interest Code for Senators*. The United Kingdom has a *Code of Conduct for Members of Parliament* in the House of Commons, a *Guide to the Code of Conduct*, a code of conduct for Members of the House of Lords and a *Guide to this code*.

### BACKGROUND

#### Canada's Conflict of Interest Code for Members of the House of Commons and Conflict of Interest Code for Senators

Due to the similarities between the two codes, background and general information will be provided here for both codes.

The *Conflict of Interest Code for Members of the House of Commons* came into effect in 2004. It was last revised and amended in June 2009. The Code has been an annexure to the House of Commons Standing Orders since 2004. The *Conflict of Interest Code for Senators* came into effect on 18 May 2005. It was last revised in May 2008.

The Senate Code is 29 pages. The House of Commons Code is nine pages and applies to "conflicts of interest of all Members of the House of Commons when carrying out the duties and functions of their office as Members of the House, including Members who are ministers of the

Crown or parliamentary secretaries". Neither code prevents Senators/Members who are not ministers of the Crown<sup>63</sup> from participating in outside activities<sup>64</sup> as long as they are able to fulfil their functions. Both codes contain a purpose, principles and an interpretation section.

The purpose of both codes is to "maintain and enhance public confidence and trust in the integrity" of senators and members of the House of Commons; provide for greater certainty and guidance in handling conflicts of interest that arise; and establish common standards and a transparent system to address questions relating to the proper conduct of senators/members of the House of Commons by an independent, non-partisan adviser. The House of Commons Code has an additional purpose; to "demonstrate to the public that Members are held to standards that place the public interest ahead of their private interest and to provide a transparent system by which the public may judge this to be the case". The Senate Code also emphasises that the Code is to be interpreted and administered so that "Senators and their families shall be afforded a reasonable expectation of privacy".

Both codes also contain similar principles: senators/members of the House of Commons must recognise and declare that they are expected to, firstly fulfil their public duties and uphold the highest standards to avoid conflicts of interest and "maintain and enhance public confidence and trust" and secondly, "to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest". The House of Commons Code has two additional principles;

<sup>63</sup> Or parliamentary secretaries under the House of Commons Code of Conduct.

<sup>64</sup> Defined as engaging in employment or in the practice of a profession; carrying on a business; being a director or officer in a corporation, association, trade union or non-profit organisation; and being a partner in a partnership. The Senate Code is broader than the House of Commons Code as the above definition is not treated as an exhaustive list whilst it is under the House of Commons Code.



firstly, that members are expected “to serve the public interest and constituents to the best of their abilities”; and secondly “not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgement or integrity except in accordance with the provisions of this Code”. The Senate Code has only one additional principle; for Senators “to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities”.

Each code is quite detailed and prescriptive, and predominately focuses on conflicts of interest and declaring private interests. The Conflict of Interest Code for Senators also has a section in relation to the establishment and administration of the Committee of the Senate which is set up for the purpose of this Code. This is followed by a section on intersessional authority<sup>65</sup>. The concluding sections of the Senator’s Code are administrative in nature, addressing the role of the Senate Ethics Officer in relation to giving opinions and advice, conducting inquiries and investigations and maintaining privacy and confidentiality of Senators’ disclosures. The final section of the Code states that “a comprehensive review of this Code and its provisions and operation” shall be undertaken once every five years.

The *Conflict of Interest Code for Members of the House of Commons* also contains sections on opinions and inquiries and outlines the role of the Conflict of Interest and Ethics Commissioner in relation to these two areas. As with the Senators’ Code, a comprehensive review is to be undertaken every five years.

The Codes are largely silent on the enforcement of breaches that do not involve a failure to disclose. Both Codes state the procedure that will be followed in relation to a failure to disclose a relevant interest and the possible sanctions that may be imposed if the Member is found guilty.

### **United Kingdom’s Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct**

The House of Lords Code was adopted by Resolution by the House of Lords on 30 November 2009 and was amended on 30 March 2010. It is four pages, with the actual provisions of the Code on one page and solely focused on registering and declaring relevant interests.

The associated 20-page Guide was adopted by Resolution by the House of Lords on 17 March 2010 and, like the Code, is binding on all members of the House of Lords. The Guidance, as with the Code, predominately addresses registering and declaring relevant interests.

#### *Code of Conduct*

The purpose of the Code is to provide guidance on the standards of conduct expected by members of the House of Lords in the discharge of their parliamentary duties and to provide the openness and accountability necessary to reinforce public confidence in the performance by members in their duties. The Code does not extend to duties unrelated to parliamentary proceedings or to the member’s private lives nor does it apply to periods of leave, suspension or statutory disqualification from active membership to the House. Its introduction concludes stating “Members are to sign an undertaking to abide by the Code as part of the ceremony of taking the oath upon introduction and at the start of each Parliament”.

<sup>65</sup> For periods of prorogation or dissolution of Parliament.

Under the general principles of the Code, “Members of the House:

- must comply with the Code of Conduct;
- should act always on their personal honour;
- must never accept or agree to accept any financial inducement as an incentive or reward for exercising parliamentary influence;
- must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services”.

The term “personal honour” is defined with the general principles and rules of conduct section of the Guide. Guidance is also provided under this section on financial inducement and parliamentary influence in subsection (c), stating members are able to work “for or hold financial interest in organisations such as representative bodies, trade associations or organisations involved in parliamentary lobbying on behalf of clients”. However, members are prohibited from personally offering parliamentary advice or services to those clients, directly and indirectly.

Paragraph nine of the Code requires members to observe the seven general principles of conduct as set out by the Committee on Standards in Public Life. The seven general principles of conduct are listed in full.

In relation to enforcement, the Code states that the House of Lords Commissioner for Standards is responsible for investigating alleged breaches of this Code and of the rules governing members’ financial support or use of parliamentary facilities. The Code notes the final decision in relation to alleged breaches rests with the House. Members are reminded to “co-operate, at all stages, with any investigation into their conduct by or under the authority of the House”.

The Code concludes outlining the procedure for obtaining advice from the Registrar and how often the Code is to be reviewed (once each Parliament).

### *The Guide*

The purpose of the Guide is to explain the application of the Code and “to help Members discharge the duties that the Code places upon them”. The House of Lords Code states “no written guidance can provide for all circumstances: when in doubt Members should seek the advice of the Registrar of Lords’ Interests”. However, the final responsibility for determining to participate in proceedings or not lies with the member.

Like the Code, the Guide outlines how the Code will be enforced. More detailed information to that seen in the Code is provided. It addresses procedures in making a complaint about a breach of the code and after a complaint has been made by a parliamentary member or a member of the public. The Guide outlines what kind of complaints fall within the remit of the Commissioner and procedures to be followed by the Commissioner in investigating complaints.

The Guide notes that ministers of Crown who are also members of the House of Lords are also subject to the Ministerial Code.

The Guide is divided into six sections: (1) general principles and rules of conduct; (2) registration of interests; (3) declaration of interests; (4) use of facilities and services; (5) financial support; and (6) enforcement. Enforcement has already been addressed above.

### **United Kingdom's Code of Conduct for Members of the House of Commons and Guide to the Code of Conduct**

The House of Commons Code was adopted by Resolution by the House of Commons on 19 July 1995 and was last updated in May 2010. It is five pages, with the actual provisions of the Code on one page and mainly focused on various types of conflicts of interest.

The associated 52-page Guide was approved by the House of Commons on 9 February 2009 and, like the Code, is binding on all members of the House of Commons. The Guide predominately addresses registering and declaring relevant interests.

#### *Code of Conduct*

The Code of Conduct was developed to “assist Members in the discharge of their obligations to the House, their constituents and the public at large by:

- i) Providing guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties, and in so doing;
- ii) Providing the openness and accountability necessary to reinforce public confidence in the way in which Members perform those duties”.

The Code applies to all aspects of a member’s public life, but it does not seek to regulate what a member does in their private and personal lives. It is noted that the obligations set out in the Code are complementary to the rules of the House of Commons, and to those which apply to members as ministers under the Ministerial Code. Members are reminded of their duty to uphold the law and to act in accordance with public interest principles.

The seven general principles identified by the Committee on Standards in Public Life as applying to holders of public office are reiterated and outlined in full. The Code notes that “these principles will be taken into consideration when

any complaint is received of breaches of the provisions in other sections of the Code”.

The Code concludes by outlining the duties in respect of the Parliamentary Commissioner for Standards and the Committee on Standards and Privileges. In particular that “the application of this Code shall be a matter for the House of Commons, and for the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards acting in accordance with Standing Orders Nos 149 and 150 respectively”. Members are informed that they are to “cooperate, at all stages, with any investigation into their conduct by or under the authority of the House”.

#### *The Guide*

In the Guide’s introduction it is stated “the purpose of this Guide is to assist Members in discharging the duties placed upon them by the Code of Conduct agreed by the House”. Members are reminded of their legislative obligations in relation to the *Political Parties, Elections and Referendums Act 2000* and their disclosure obligation in relation to donations and loans to the Electoral Commission.

It emphasises in the introduction that “no written guidance can provide for all circumstances, and the examples included in this Guide should not be regarded as constituting an exhaustive list”. If required, members are required to seek advice from the Parliamentary Commissioner for Standards and the Registrar of Members’ Financial Interests.

The Guide is divided into four sections: (1) Registration of Interests; (2) Declaration of Interests; (3) Lobbying for Reward of Consideration; and (4) Procedure for Complaints. The Resolutions of the House relating to the Conduct of Members are set out in an Appendix.

The introduction concludes by noting that ministers of the Crown who are also members of

the House of Commons “are subject to the rules of registration and declaration in the same way as all other Members (although Ministerial office is not registrable and the restrictions imposed by the ban on lobbying for reward or consideration do not apply to Ministers when acting in the House as Ministers)”. Ministers are subject to further guidelines and requirements under the Ministerial Code that are beyond the scope of the Guide.

Enforcement of the Code and Guide is discussed in the final section of the Guide and addresses procedures to be followed when a complaint has been made by a parliamentary member or a member of the public. It also covers areas outside the Parliamentary Commissioner for Standards remit and the procedure to be followed by the Commissioner in investigating complaints are discussed. Members are reminded that it is a requirement of the Code of Conduct to cooperate with the Committee in Standards and Privileges and the Commissioner with any inquiries.

## COMPARATIVE ANALYSIS OF MAIN ISSUES ADDRESSED

**TABLE 2: MAIN ISSUES ADDRESSED WITHIN SELECTED INTERNATIONAL MEMBERS OF PARLIAMENT CODES OF CONDUCT.**

Jurisdiction	Canada Senate	Canada House of Commons	United Kingdom House of Lords	United Kingdom House of Commons
Conflicts of Interest	✓	✓	✓	✓
Declaration of Personal Interests	✗	✗	✓	✓
Outside Employment	✗	✗	✗	✗
Gifts and benefits	✓	✓	✗	✗
Improper Advantage	✓	✓	✗	✓
Improper Use of Public Resources	✗	✗	✓	✓

**CONFLICTS OF INTEREST**

Both Houses in Canada and the House of Commons in the United Kingdom address the issue of conflicts of interest within their codes.

However, the Canadian codes only refer directly to conflicts of interest in two of their overriding principles and in their statement of commitment. As noted above, senators and members are expected to “fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity” in each senator/member and in the Senate/House of Commons. Further, senators and members are expected to “arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest”.

The United Kingdom House of Commons Code states: “Members shall base their conduct on a

consideration of the public interest, avoid conflict between personal interests and the public interest and resolve any conflict between the two, at once, and in favour of the public interest”. Further, it specifies that members are not to act as a “paid advocate in any proceedings in the House”.

**Guidance Provided Within the Codes**

No additional guidance is provided on this principle under any of the three codes.

**DECLARATION OF PERSONAL INTERESTS**

This principle is addressed in both sets of codes within Canada and the United Kingdom.

Under the Canadian Conflict of Interest Code for Senators “if a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall, on

the first occasion at which the Senator is present consideration of the matter, make a declaration regarding the general nature of the private interest". The declaration can either be made orally or in writing which is recorded. If a senator subsequently becomes aware of an interest that should have been disclosed, the senator must declare this immediately. A senator is not allowed to participate in any debate or other deliberations in the Senate with respect to that matter.

Where a member of the House of Commons in Canada has "a private interest that might be affected by a matter that is before the House of Commons or a committee of which the Member is a member [they] shall, if present during consideration of the matter, disclose orally or in writing the general nature of the private interest at first opportunity". The interest is then recorded. A member must immediately declare if they subsequently became aware of an interest that should have been disclosed. Members are not to participate in debates or vote on a question in which they have a private interest.

As the Code of Conduct for the House of Lords focuses on this principle solely the detail provided in conveying it is great. The Code states that "in order to assist in openness and accountability Members shall:

- register in the Register of Lord's Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions;
- declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion;
- act in accordance with any rules agreed by the House in respect of financial support for Members or the facilities of the House".

Members are informed that the test for determining a relevant interest is "whether the interest might be thought by a reasonable member of the public to influence the way in which a Member of the House of Lords discharges his or her parliamentary duties" and that relevant interests encompasses both financial and non-financial interest. The Code reiterates that it is the member's personal responsibility to ensure their registered interests are up-to-date and correct and that they must register any changes to their interests within one month of it occurring.

The Rules of Conduct concludes by stating a "Member must not act as a paid advocate in any proceedings of the House" and that members are not debarred from participating in proceedings in which they have a relevant interest if they have declared that interest fully.

The House of Commons Code for the United Kingdom, in relation to this principle, reminds members that "in any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials". Further, that members "shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members" Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies".



### Guidance provided within the Code

The Canadian Conflict of Interest Code for Senators provides guidance on the procedure to follow when making declarations, such as when a declaration must be made. Where a senator reasonably believes that another senator has failed to comply with their disclosure requirements, they are advised to raise the matter with the Senate Ethics Officer. Sections 27 to 34 outline and explain a senator's duty to disclose and the role of the Senate Ethics Officer in administering disclosures and assisting senators with their disclosures.

Similar to the Senators' Code, the *Conflict of Interest Code for Members of the House of Commons* also provides guidance on the procedure to follow when making declarations in sections 20 to 25.

### House of Lords Guide

Guidance is provided in the section "general principles and rules of conduct" in relation to participation in parliamentary proceedings, in particular it outlines the factors a member should take into consideration if they are unsure whether or not to participate in parliamentary proceedings in which they have a relevant interest. Detailed guidance is also provided on paid advocacy. The definition and nature of an "exclusive benefit" is discussed as is the restrictions and exceptions that are applicable to this principle.

Under the heading "registration of interests" the Guide outlines the rationale for the Register which is to assist in openness and accountability. The Guide then reiterates the test for a relevant interest and that relevant interests extend to both financial and non-financial interests. The procedure for registering a relevant interest is then outlined. Members must register their interests to the Registrar of Lords' Interests within one month of appointment and within one month notify of any changes to these interests. Until a relevant interest is registered, a member may not undertake any

action, speech or proceeding of the House to which the relevant interest applies. The Guide notes that members may need to register their spouse's interests in some circumstances but not those of a relative or friend.

The value of interests required to be registered and the preparation and publication of the Register are also addressed. A detailed explanation of each category of interest that needs to be registered by members of the House of Lords is at the end of the section on "registration of interests".

Section three of the guide addresses declaration of interests. The guidance states that the provision requiring members to "declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussions" should be interpreted broadly and that it applies to both potential and future interests. However, it is also noted that the provision should be read in conjunction with the fact that the Code does not extent a member's "performance of duties unrelated to parliamentary proceedings, or to their private lives".

Members are informed that there are two methods by which disclosure can be made: registration of the relevant interests in the Register which is open for public inspection; or by a declaration in the course of debate or in other appropriate contexts. The Guide notes that while the duty to declare relevant interests is broader than the duty to register interests given the wide range of issues that may be the subject of a debate, it is "ultimately subject to the Member's decision to speak in a debate or write to a Minister or public servant". The remainder of this section outlines the procedure to be followed for declaring relevant interests in the course a debate and in other appropriate contexts, when declarations are required, the procedures



for declarations of interest in respect of select committees and for written notices.

### House of Commons Guide

The Guide, under the heading “Registration of Member’s Financial Interests” provides detailed notes on the registration of members’ financial interests. It starts by setting out the Rules of the House:

“Every Member of the House of Commons shall furnish to a Registrar of Members’ Financial Interests such particulars of his registrable interests as shall be required, and shall notify to the Registrar any alterations which may occur therein, and the Registrar shall cause these particulars to be entered in a Register of Members’ Interests which shall be available for inspection by the public”<sup>66</sup>.

Further that, “For the purposes of the Resolution of the House of 22 May 1974 in relation of disclosure of interests in any proceeding of the House or its Committees, any interest declared in a copy of the Register of Members’ Financial Interests shall be regarded as sufficient disclosure for the purpose of taking part in any division of the House or in any of its Committees”<sup>67</sup>.

The section also notes that the main purpose of the Register of Members’ Financial Interests which is to provide information of any interest, financial or material, received by a member which might reasonably be thought by others to influence the performance of his or her official duties.

The procedure for registering members’ financial interests is then outlined. Members must register their interests to the Parliamentary Standards Commissioner within one month of their election and must notify changes to their registrable interests within four weeks of the change occurring.

Further, “any Member who has a registrable interest which has not at the time been registered, shall not undertake any action, speech or proceeding of the House (except voting) to which the registration would be relevant until he or she has notified the Commissioner of that interest”. The Guide provided a detailed explanation of each category of interest that must be disclosed by members.

Under the section titled “Declaration of a Members’ Interests”, the Rules of the House that members are to follow are that:

“In any debate or proceeding of the House or its Committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have”<sup>68</sup>.

And

“For the purposes of the Resolution of the House of 22 May 1974 in relation to disclosure of interests in any proceeding of the House or its Committees:

- i. Any interest declared in a copy of the Register of Members’ Financial Interests shall be regarded as sufficient disclosure for the purpose of taking part in any division of the House or in any of its Committees.
- ii. The term “proceeding” shall be deemed not to include the asking of a supplementary question”<sup>69</sup>.

<sup>66</sup> Resolution of the House, adopted 22 May 1974, amended on 9 February 2009.  
<sup>67</sup> Part of the Resolution of the House adopted 12 June 1975, amended on 9 February 2009.

<sup>68</sup> Resolution of the House adopted 22 May 1974.  
<sup>69</sup> Resolution of the House adopted 12 June 1975, amended on 19 July 1995 and on 9 February 2009.

Members in the House of Commons can declare personal interests and financial interests in two ways: firstly, by registration the interests in the Register of Members' Interests which is open for public inspection; or secondly, by declaring the interest in the course of a debate or another appropriate context. This section of the Guide focuses on the procedure for declaring interests in the course of a debate and in other appropriate contexts.

The Guide notes that “the rule relating to declaration of interest is broader in scope than the rules relating to the registration of interests in three important respects” as members must:

- i. not only declare current interest but also relevant past interest and relevant interest which they may expect to have;
- ii. declare relevant indirect interests (such as their spouse's interests); and
- iii. declare non-registrable interest of a financial nature where those interests are affected by the proceedings in question.

It is also noted that members may wish to disclose non-financial interest in particular circumstances as noted in the Guide where they are relevant to the proceedings.

Guidance is provided on how to assess whether an interest is sufficiently relevant to a particular debate. Members are informed all declarations made should be brief but should make specific reference to the nature of the member's interest as to enable a listener to understand the nature of that interest.

The remainder of this section deals with when disclosures are required and the procedures for declaration of interests in respect of written notices, in applications for adjournments or emergency debates, in select committees and other occasions when declarations should be considered. The rule

on declaring interests relating to private bills and for taking part in divisions is also addressed.

### **GIFTS AND BENEFITS**

This principle is dealt with in the Canadian codes.

In Canada, neither a senator or a member or their families “are to accept, directly or indirectly, gifts or other benefits, except compensation authorised by law”, that could reasonably be considered to relate to the senator's position or that might be reasonably perceived to have been given to influence the member in the exercise of their duties or functions of office. Despite this, a gift or benefit may be accepted where it is received as a “normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany” the senator's/member's position.

### **Sponsored Travel**

The Canadian codes also address the issue of sponsored travel. Both codes state that a senator or a member may accept for themselves and guests, sponsored travel that arises from or relates to their position.

### **Guidance provided within the Codes**

Canadian senators and members of the House of Commons are reminded under their respective codes to file a statement disclosing the nature and value of the gift or other benefit and the circumstances under which it was given where the value of the gift or benefit received by the senator/member or a family member exceeds \$500. Senators have 30 days to disclose to the Senate Ethics Officer. Members of the House of Commons have 60 days to disclose, to the Conflict of Interests and Ethics Commissioner. Where a number of gifts or benefits are received from one source within a 12-month period and the total value of the gifts or benefits exceeds \$500, a statement must be provided.

In relation to sponsored travel, senators and members in Canada are also required to file a statement disclosing the name of the person or organisation paying for the trip, the destination/s, purpose and length of the trip, the names of any person accompanying them who are also sponsored, and the general nature of the benefits to be received. Such a statement is only required to be filed if the travel costs per person exceed \$500 and are not paid for personally by the senator or member or those listed in the Codes. Senators must disclose to the Senate Ethics Officer within 30 days after the end of the trip, and members to the Conflict of Interest and Ethics Commission within 60 days after the end of the trip.

## **OUTSIDE EMPLOYMENT**

Both the Upper and Lower House codes in Canada address the principle of outside employment by breaking it down into several components; government contracts, government programs, and partnerships and private corporations.

### **Government Contracts**

The Conflict of Interest Code for Senators states “a Senator shall not knowingly be a party, directly or indirectly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the Senator receives a benefit unless the Senate Ethics Officer provides a written opinion that:

- a. due to special circumstances the contract or other business arrangement is in the public interest; or
- b. the contract or other business arrangement is unlikely to affect the Senator’s obligations under this Code”.

The Conflict of Interests Code for the House of Commons states “a Member shall not knowingly be a party, directly or indirectly or through a subcontract with the Government of Canada or any

federal agency or body under which the Member receives a benefit unless the Commissioner is of the opinion that the contract is unlikely to affect the Member’s obligations under this Code”.

### **Government Programs**

Under both codes for the Senate and House of Commons in Canada, senators and members may participate in a program operated or funded in whole or in part by the Government of Canada<sup>70</sup> in which the senator/member receives a benefit if:

- a. “the eligibility requirements of the program are met”;
- b. there is no preferential treatment with respect to their participation/application; and
- c. no special benefits are received which are not available to other participants.

The Senate Code also has an additional requirement: “the program is of general application or is available to a broad class of the public”.

### **Partnerships and private corporations**

Similar to the government contract principle, “a Senator shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the partnership or corporation receives a benefit unless the Senate Ethics Officer provides a written opinion that:

- a. due to special circumstances the contract or other business arrangement is in the public interest; or
- b. the contract or other business arrangement is unlikely to affect the Senator’s obligations under this Code”.

<sup>70</sup> The Senate Code also refers to any federal agency or body, or a partnership or private corporation in which a senator has an interest.

The component regarding partnerships and private corporations under the Conflict of Interests Code for the House of Commons is also similarly worded to the component for government contracts. It states “a Member shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract with the Government of Canada under which the partnership or private corporation receives a benefit unless the Commissioner is of the opinion that the interest is unlikely to affect the Member’s obligations under this Code”.

### Exception

A senator or a member of the House of Commons may have an interest in a partnership or private corporation that has a contract with the Government of Canada if the senator/member entrusts their interest to one or more trustees on all of the following terms:

- a. the provisions of the trust have been approved by the Senate Ethics Officer/Commissioner;
- b. the trustees are at arm’s length from the senator/members and have been approved by the Senate Ethics Officer/Commissioner;
- c. except as provided in paragraph (d), the trustees may not consult with the senator/members with respect to managing the trust, but they may consult with the Senate Ethics Officer/Commissioner;
- d. the trustees may consult with the senator/member, with the approval of the Senate Ethics Officer/Commissioner and in his or her presence, if an extraordinary event is likely to materially affect the trust property;
- e. in the case of an interest in a corporation, the senator/member resigns any position of director or officer in the corporation;
- f. the trustees provide the Senate Ethics Officer/Commissioner annually with a written report setting out the nature of the trust property, the value of that property, the trust’s net income for the preceding year and the trustees’ fees, if any; and
- g. the trustees give the senator/member sufficient information to permit the senator/member to submit returns as required by the *Income Tax Act 1985* and give the same information to the appropriate taxation authorities.

### Guidance provided within the Codes

The Canadian Codes state that the provisions in relation to government contracts and programs and partnerships and private corporations do not apply to contracts<sup>71</sup> that existed before the senator’s appointment or the member’s election, only to renewals or extensions.

### SHAREHOLDINGS

Both the Senate and the House of Commons in Canada address the principle of shareholdings.

The Conflict of Interest Code for Senators and the Conflict of Interest Code for Members of the House of Commons both state that unless the Senate Ethics Officer (for senators) or the Conflict of Interest and Ethics Commissioner (for the House of Commons) provide a written opinion stating that the holdings are of a significant size to affect the senator’s/member’s obligations under the code, they may own securities in a public corporation that contracts with the Government of Canada<sup>72</sup>.

### IMPROPER ADVANTAGE

This principle is addressed in the two Canadian codes and in the United Kingdom House of Commons Code.

<sup>71</sup> Or other business arrangements under the Senate’s Code.

<sup>72</sup> The Senate Code also refers to any federal agency or body.

The Canadian codes break this principle into three components; furthering private interests; use of influence and use of information.

Senators and members are informed that when performing parliamentary duties and functions, they shall not act or attempt to act in any way to further their or their family's private interests, or to improperly further another person's private interests. The Senate Code also refers to improperly furthering an entity's private interests.

Under the component "use of influence" a senator or member of the House of Commons must not use or attempt to use their position "to influence a decision of another person" so as to further their or their family's private interests, or to improperly further another person's private interests. As with the principle for conflict of interest, the Senate Code also extends the principle to include improperly furthering the private interests of an entity.

In relation to use of information, the Canadian Codes states that a senator or a member shall not use, nor convey or attempt to convey, information obtained due to their position which is not generally available to public to further their or their family's private interest or to improperly further another person's interest. Again the Senate Code extends this to include furthering an entity's interests.

The United Kingdom's House of Commons Code breaks this principle into two components; bribery and improper use of information. In relation to bribery, the Code states "The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament".

In relation to the improper use of information the Code states that "Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain".

### **Guidance provided within the Codes**

Both Canadian Codes provide guidance and clarification on what actions are deemed to further a senator's or a member's private interests and what actions do not further private interests.

No additional guidance is provided in the *United Kingdom Code of Conduct for Members of the House of Commons*.

### **IMPROPER USE OF PUBLIC RESOURCES**

The United Kingdom's House of Commons Code of Conduct directly refers to this principle within its Code, while reference is made solely within the House of Lords Guide to its Code of Conduct.

The House of Commons Code states that "Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services". No additional guidance is provided.

While no direct reference is made in the body of the Code of Conduct for Members of the House of Lords, its associated Guide provides some guidance on this provision in relation to financial support (claiming entitlements) and the use of facilities and services. In relation to the use of facilities and services, the Guide refers members to "the rules on the use of facilities which have been agreed by the House are set out in two House Committee reports which are appended to the *Handbook on facilities and services for Members*".



## PRINCIPLE EXCLUSIVE TO THE UNITED KINGDOM'S HOUSE OF COMMONS

### DISREPUTE

The United Kingdom's House of Commons Code instructs members to at all times conduct themselves "in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute".

### RECOMMENDATIONS

1. In relation to provisions relating to conflicts of interest, the Commission notes that the United Kingdom's House of Commons Code of Conduct states that members of parliament are not to act as paid advocates. The Commission's view is that this issue is covered by the Recommendation made on improper advantage at 1(d) on page 82.
2. In relation to provisions regarding declaration of personal interests, Parliament may wish to consider including in the guidance relating to this principle the test for determining a "relevant interest" as referred to in the United Kingdom's House of Commons Code of Conduct – "whether the interest might be thought by a reasonable member of the public to influence the way in which a Member of the House of Lords discharges his or her parliamentary duties".
3. Further, in relation to declaration of personal interests, the Commission notes the guidance provided in both the United Kingdom's House of Lords and House of Commons Codes of Conduct is detailed. The Commission is of the view that the recommendations provided at pages 70-71 are sufficient for the Tasmanian Code of Conduct for Members of Parliament.
4. In relation to outside employment, the Commission notes that this principle is broken down into several components in both the Canadian Senate and House of Commons. The Commission is of the view that this is not necessary and results in unnecessarily restrictive provisions.
5. In relation to shareholdings, the Commission notes that both the Canadian Senate and House of Commons Code of Conduct addresses shareholdings within their codes and guidance. The Commission notes that this provision is already covered by the *Parliamentary (Disclosure of Interests) Act 1996* at section 7(d);
6. The Commission notes that the United Kingdom's House of Commons Code includes the provision that the acceptance of a bribe is contrary to the law of Parliament. The Commission's view is that reference to bribery under the Tasmanian *Criminal Code 1924* should be included in the guidance as outlined in recommendation 5(c) at page 83.
7. In relation to the provision of disrepute, the Commission recommends that this principle not be included in the body of the new code but rather in the preamble or statement of commitment section as an overriding principle of the code and in guiding the ethical conduct of members of parliament.





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# CHAPTER 5:

## COMPARATIVE ANALYSIS OF CODES OF MINISTERIAL CODES OF CONDUCT

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### INTRODUCTION

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With the exception of the Northern Territory, every jurisdiction in Australia, including the Commonwealth, has a Code of Conduct for Ministers. In Tasmania, Ministers are subject to the Government Members Code of Conduct.

### BACKGROUND

#### Commonwealth Code

The *Commonwealth Standards of Minister's Ethics* applies to both ministers and parliamentary secretaries and came into effect on 6 December 2007. It was last revised in September 2010 after Julia Gillard became Prime Minister. The Code itself is a stand-alone document that has seven pages and includes a table of contents and a foreword.

The Code 's overriding principles specify that ministers, in carrying out their public duties:

- “must ensure that they act with integrity”;
- “must observe fairness in making official decisions”;
- “must accept accountability for the exercise of the powers and functions of their office”; and
- “must accept the full implications of the principles of ministerial responsibility”.

The Code is prescriptive and relatively detailed in the procedures ministers are required to follow to comply with their obligations. The primary focus of the Code is on managing specific types of conflicts of interest.

In relation to breaches, it is at the Prime Minister's discretion to determine whether a minister should stand aside if that minister becomes “subject to an official investigation of alleged illegal or improper conduct”. The Prime Minister may require a minister to stand aside if charged with a criminal offence<sup>73</sup> or if their conduct constitutes a prima facie breach of these Standards. A minister will be required to resign if convicted of a criminal offence or if the Prime Minister is satisfied they have failed to comply with these Standards in a substantive and material manner. The Prime Minister has the discretion to refer the matter to an appropriate independent authority for investigation and advice if the circumstances warrant it.

#### Queensland Code

The *Queensland Minister's Code of Ethics* is contained in Appendix 19 of the *Ministerial Handbook*. The Code came into effect in October 2008; it was last revised in October 2010. It is eight pages long and contains two attachments: Potential Conflicts of Interest as Attachment 1 and a Statutory Declaration as Attachment 2. The Code applies to both ministers and parliamentary secretaries. The guiding principles of the Code are acting with due regard for accountability, fairness, integrity, responsibility and transparency.

The Queensland Code is concise but still quite detailed and prescriptive. The word “minister” is often followed by the words “must” and “will”. The Code's main focus is on managing and handling conflicts of interest.

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<sup>73</sup> Infringement notices, such as an on the spot fine, does not constitute a criminal offence.

Discipline under the Code is at the Premier's discretion, except where the breach constitutes a criminal offence. The Code informs ministers that they are to accept it is at the Premier's discretion to decide whether a minister should be stood down if subject to an official investigation "into a matter of serious impropriety or alleged illegal behaviour of a serious nature". Further, a minister should stand down if charged with such an offence and resign, if required under the *Parliament of Queensland Act 2001*, if convicted.

### **New South Wales Code**

The New South Wales Code came into effect in 1988 after being introduced by the Greiner Government. It was last reviewed and amended in 2006 to reflect changes to post-ministerial employment. The Code itself is contained in the New South Wales Department of Premier and Cabinet's Ministerial Handbook as annexure 1. It applies to both Ministers and their staff. The Code of Conduct for Ministers has not been adopted for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*. The Code, including its sole appendix (Declaration of an Official Gift form) is eleven pages long and contains eight parts not including the preamble and general introduction.

There are two overriding principles of the Code which guide ministerial conduct in office:

1. Ministers will perform their duties honestly and in the best interests of the people of New South Wales; and
2. Ministers will be frank and honest in official dealings with their colleagues and will maintain the confidentiality of information committed to their secrecy.

The Code itself is not intended to be a comprehensive statement of the ethical responsibility of ministers but rather a "broad framework to aid Ministers in the resolution of ethical issues". The Code's introduction stresses that each minister bears personal responsibility for both the decisions they make and for the manner in which they comply with this Code. Finally the introduction requires ministers that they can be held personally responsible in law for any criminal or civil offence committed by them.

The New South Wales Code is quite prescriptive and detailed. It clearly outlines the procedures to be followed regarding the registering of private interests, gifts and benefits and conflicts of interest, etc. The main focus of the Code is on registering of minister's private interests and how to manage conflicts of interest as six of its eight parts deal with conflicts of interest in one form or another.

The Code does not specify how breaches will be dealt with. However, the Premier, as head of the Government, is responsible for disciplining ministers for any breach of the Code.

### **Australian Capital Territory Code**

The Australian Capital Territory Code was tabled on the 2 May 1995 and has been revised twice, with the most recent revision was in February 2004. In the tabling speech by then-Chief Minister Kate Carnell, Ms Carnell noted that the code "is applicable to the immediate families or close relatives of Ministers and ministerial staff employed under the *Legislative Assembly (Members' Staff) Act 1989*".

The 10-page Code contains a table of contents, a preamble and a definition section<sup>74</sup>. The preamble stresses that ministers must ensure their conduct does not “bring discredit upon the Government or Territory”. As with the New South Wales Code, the Australian Capital Territory Code provides guidance to ministers on “how they should act and arrange their affairs in order to uphold these standards”. The Code stresses that ministers are “personally responsible for complying with the Code and for justifying their action and conduct in Cabinet and the Legislative Assembly”.

The overriding general obligations of a minister are contained in the preamble and they are:

- Respect for the Law and Systems of Government;
- Respect for Persons;
- Integrity; Accountability and Honesty;
- Diligence; and
- Economy and Efficiency.

The Code’s main focus is on registering of private interests and conflicts of interest. While the Code is detailed it is not as prescriptive as the New South Wales and Western Australian Codes.

While the Code is silent on how breaches will be handled, it states that issues of compliance or non-compliance are not intended to be reviewable or determined by a court, tribunal or other body.

### **Victorian Code**

The Victorian Ministerial Code of Conduct is still in draft form and is largely based on the Commonwealth “Standards of Ministerial Ethics”. The six-page draft Code contains a statement of values. The body of the Code contains seven sections.

The statement of values provides an aspirational framework, designed to build ethical capacity amongst ministers.

The statement of values forms the overriding guiding principles of the Code and Ministers:

- “must ensure that they act with integrity;
- must observe fairness in making official decisions;
- must accept accountability for the exercise of the powers and functions of their office; and
- must accept the full implications of the principles of ministerial responsibility”.

The preamble to the Code states that it is a model of best practice values and behaviours and is not designed to guarantee ethical conduct by ministers but will increase their awareness of the ethical behaviours and conduct expected of them. The Code provides the community with information on what it should expect of its ministers.

The Code is detailed and like the Commonwealth Code, prescriptive in nature. The words “must” and “shall not” are regularly used. Again, as with the Commonwealth Code, the draft Victorian Code focuses mainly on managing specific types of conflicts of interest.

Alleged breaches of the Code may be referred by the Premier to, and investigated by, the Parliamentary

<sup>74</sup> Defines immediate family, domestic partner and close relative for the purposes of this Code.

Integrity Commissioner. Any guidance, advice or reports received by a minister, including the Premier, may be made public subject to privacy considerations. Failure to comply with a request for information from the Parliamentary Integrity Commission without a reasonable excuse may constitute a breach. Ultimately, the Premier has discretion on what action to take if the minister becomes subject to an official investigation of alleged unsatisfactory conduct, serious misconduct or a crime.

“Unless exceptional circumstances exist, Ministers will be required to stand aside if charged with any criminal offence by Victoria Police or a public body”<sup>75</sup> or resign if convicted.” For a substantial breach of the Code, a minister may be:

- required to take remedial action;
- counselled;
- warned by the Premier;
- reprimanded; or
- asked to resign.

### South Australian Code

The South Australia Ministerial Code of Conduct was introduced on 16 May 2002 by Premier Mike Rann. It came into effect on 1 July 2002. The Code does not appear to have been revised since.

The 26-page Code is a stand-alone document that includes a contents page and its three appendices: Relevant Legislation (Appendix 1); Standing Orders Relevant to Conduct (Appendix 2); and Declaration of Interest by Ministers (Appendix 3). The introduction to the Code contains a brief background statement and establishes the aims of the Code and its status. In particular, ministers are informed that their conduct is not to bring discredit upon the Government or the State and further, that a minister is personally responsible for deciding how to act and conduct themselves, and for the justification of their actions and conduct in parliament.

In relation to the enforcement of the Code, it is the Premier’s responsibility to deal with the minister’s conduct in a manner that retains the confidence of the public. The Premier has discretion on which action to take where a minister is charged with an offence or engages in conduct which prima facie breaches the Code<sup>76</sup>. Actions include: being asked to apologise, being reprimanded, or asked to stand aside or resign. The Code itself is not intended to override the obligations of ministers to comply with any State or Commonwealth Laws. Ministers are advised to familiarise themselves with and at all times comply with these laws. Laws that apply to ministers are provided in Appendix One of the Code.

### Western Australian Code

The Western Australian Ministerial Code of Conduct was tabled in February 2001 by Premier Geoff Gallop and was last revised in September 2008. The Code was also revised between 2005 and 2006. The Code is a stand-alone document spanning 34 pages. It contains 18 sections and has eight appendices:

1. Appendix A: Guidelines for Ministerial Expenses and use of Public Resources;
2. Appendix B: Guidelines for Expenditure on official Hospitality;
3. Appendix C: Guidelines for Ministerial Travel;
4. Appendix D: Guidelines for the Accepting and Giving of Gifts by Ministers;
5. Appendix E: Recordkeeping Responsibilities under the *State Records Act 2000*;
6. Appendix F: Indirect Pecuniary Interests (Remote and Derivative);
7. Appendix G: Disclosure Statement; and
8. Appendix H: Contact with Lobbyist Code.

The Code itself is detailed and includes information on wide-ranging, potentially ethical issues.

Appendices provide more specific guidance and examples pertaining to where the Code’s principles and guidelines should be followed.

<sup>75</sup> For the purposes of this Code, ‘criminal offence’ does not include an infringement notice such as an on the spot fine.

<sup>76</sup> Before exercising discretion, the Premier may refer the matter to an appropriate independent authority for investigation and or advice.

As with the majority of other codes, the Western Australian Code is relatively prescriptive, particularly in relation to registering private interests and managing conflicts of interest, which are the main focus of the Code.

The administration and record-keeping of the Code is through the Cabinet Secretary. All ministers are expected to fully cooperate with the Cabinet Secretary in regards to their obligations under the

Code. No direct reference is made to how breaches of the Code will be handled.

## COMPARATIVE ANALYSIS OF MAIN ISSUES ADDRESSED

**TABLE 3: ISSUES ADDRESSED WITHIN AUSTRALIAN CODES OF CONDUCT FOR MINISTERS.**

Jurisdiction	Cth	Vic	NSW	ACT	Qld	SA	WA
Conflicts of Interest	✓	✓	✓	✓	✓	✓	✓
Declaration/ Divestment of Personal Interests	✓	✓	✓	✓	✓	✓	✓
Outside Employment	✓	✓	✓	✓	✓	✓	✓
Shareholdings	✓	✓	✗	✗	✓	✓	✓
Gifts and benefits	✓	✓	✓	✓	✓	✓	✓
Post Ministerial Employment	✓	✓	✓	✓	✓	✓	✗
Improper Advantage	✓	✓	✓	✓	✓	✓	✓
Improper Use of Public Resources	✓	✓	✓	✓	✓	✓	✓
Misleading Statements	✓	✓	✗	✓	✗	✓	✗

### CONFLICTS OF INTEREST

Every Australian jurisdiction with a code of conduct contains the principle of conflicts of interest in some way. The New South Wales and Queensland Codes are detailed, while the Commonwealth and Victorian Codes do not address this in a separate heading or generally but deal with the different types of conflicts individually, e.g. gifts, outside employment, etc.

### Definitions of Conflicts of Interest

The Queensland Code defines a conflict of interest as involving “a direct or indirect conflict between responsibilities and private interests”. A perceived conflict of interest is “where it could be perceived that private interests could improperly influence the performance of duties, whether or not this is the case”. A potential conflict of interest is defined as arising when “private interests could interfere with official duties in the future”.



Reference to a conflict of interest under the Western Australian Code “is a reference to a possible conflict between the interest in question and the Minister’s duty as a Minister”. For the purposes of the Code a minister is taken to have an interest in a matter “on which a decision is to be made or other action taken by the Minister in virtue of office, if the range of possible decision or action includes decision or action reasonably capable of conferring a pecuniary or other personal advantage on the Minister or the spouse or any child of the Minister”.

Under the South Australian Code, a conflict of interest occurs when a minister is influenced or appears to be influenced by private interests. Private interests can include a minister’s financial or other interests as well as the financial or other interests of the minister’s spouse, domestic partner or children. Further, a conflict of interest does not only encompass actual or direct conflicts between a minister’s public duty and private interests, but also potential or perceived conflicts of interests.

The Western Australia Code’s definition is not restricted to an immediate advantage but instead may take the form of a promise of future benefit, such as a promise of post-parliamentary employment.

Queensland and New South Wales recognise that situations may arise where a minister, a partner, a family member or close associate has an interest in a particular matter before Cabinet but that the possibility of a conflict does not arise because the matter is one of general public policy or that the minister has no greater interest than that of other classes of people in the community. However, such interests still need to be declared and recorded. The minister may continue to participate in Cabinet deliberations.

The Australian Capital Territory puts this more simply: “A Minister will not be taken to have been so influenced [in the exercising of their official

duties] if the interest of the Minister in a matter is no greater than the interest of any member of the public at large, or any section of the public”.

### **Types of Conflicts**

All jurisdictions refer to real (the Commonwealth, Victoria, the Australian Capital Territory and Queensland) or actual (New South Wales, South Australia and Western Australia) conflicts of interest. Only New South Wales and South Australia also refer to an apparent conflict of interest. Every jurisdiction except the Commonwealth and Western Australia refer to the need to disclose potential conflicts of interest as well as actual conflicts, whilst only New South Wales, Queensland and Western Australia require disclosures regarding perceived conflicts of interest. The Australia Capital Territory only requires disclosure for real or potential conflicts that are “material”.

### **Management and Recording of Conflicts of Interest**

Where an actual or apparent conflict of interest arises or is likely to arise, in New South Wales the minister is to disclose the nature of the conflict to the Premier forthwith. A record of the disclosure is then placed on the Schedule to the Register of Interests. The minister must abstain from acting in the matter until the relevant interest has been divested or the Premier provides a written direction to continue acting in the matter. The Premier may appoint another minister to act in the matter if the minister is unwilling or unable to divest the interest or it is otherwise considered to be in the best interests of Executive Government in the State.

The Australian Capital Territory Code is not as prescriptive as some other jurisdictions. It states that a “Minister should take all reasonable steps to avoid situations in which his or her private interests, whether pecuniary or otherwise, materially conflict, or have the potential to so

conflict with his or her public duty". Where the conflict is material, the Chief Minister (or the Cabinet, if the conflict arises from the Chief Minister's interests) should consider 'the imposition of conditions on the exercise of the minister's executive powers in order to minimise the risk of a material conflict of the minister's private interests and public duty'.

As well as recording any conditions imposed on the minister's Register of Interests, the chief executives within the minister's portfolio should also be made aware of the existence of these conditions. Where the conflict is ongoing, the Chief Minister may appoint another minister to act in the matter. Cabinet may also request another minister be appointed to the matter. Appropriate steps should be taken by the minister to avoid participating in discussions on this matter.

Under the New South Wales Code a minister shall not:

- use his or her position for the private gain of the Minister or for the improper gain of any other person; or
- have any material or undisclosed interest in any decision or action taken in virtue of office.

To ensure this, ministers must avoid situations where it might appear that the ministerial position is being used in this way, or that a possible conflict of interest has arisen.

The South Australian Code also requires ministers to "avoid situations in which their private interests conflict, have the potential to conflict or appear to conflict with their public duty". However, ministers are under an obligation to advise the Premier in writing (or the Cabinet in case of the Premier) as soon as possible after becoming aware of any conflicts of interest. The written advice needs to contain sufficient detail of the conflict in order to enable the Premier (or Cabinet) to be able to consider and determine the most appropriate

course of action to be taken. The disclosure is recorded on the Cabinet Register. Where a minister has doubts as to whether or not a conflict will arise, they should promptly consult the Premier (or the Cabinet in case of the Premier). In determining how to deal with a conflict of interest the Premier must consider how the conflicting interest will interfere with or affect the performance of the minister's public duty, if at all and how the public will perceive the minister's continued participation in the matter. Only very serious matters or those that involve the Premier will be referred to the Cabinet for determination. The Premier, in their discretion, may take a number of courses of action in order to manage the conflict of interest. This may include:

- "approving the conduct and allowing the Minister to continue his or her involvement in the matter;
- requiring the Minister to divest him or herself of the relevant private interest;
- asking the Minister to publicly apologise, stand aside or resign<sup>77</sup>; or
- requiring that the Minister not take part in the determinations relating to the conflict. This may involve requiring the Minister to leave the Cabinet room or to delegate certain powers and duties to another Minister".

Where the nature of the conflict is serious, it may be appropriate for the minister to immediately relinquish their private interests or offer their resignation rather than wait for the Premier or Cabinet to consider the matter.

In Queensland, conflicts of interest are to be managed and resolved in accordance with this Code. Ministers are instructed to advise the Premier of any conflict of interest, pecuniary or otherwise, of the minister's partner or dependent family members. If those interests are potentially related to a matter before Cabinet or a Cabinet Committee,

<sup>77</sup> Where a minister refuses to resign, the Premier can require the minister's commission to be withdrawn.

the minister must tender advice to the meeting and then withdraw from the Cabinet Room. The declaration and the withdrawal will be recorded.

In Western Australia, “any conflict of interest [be it actual or perceived] between a Minister’s private interest and their public duty which arises must be resolved promptly in favour of the public interest”.

### **In relation to family members**

In the Commonwealth, Victorian and Australian Capital Territory codes a minister’s close relatives are not to be appointed to positions within the ministerial or electorate offices. The Commonwealth and Victorian codes also refer to the minister’s partner. Further, in the Commonwealth Code family members and spouses must also not be employed in the offices of other member of the executive government without the Prime Minister’s express approval. Under each code, family members must not be appointed to any position within the minister’s own portfolio if the appointment is authorised by the minister.

### **Cabinet Meetings**

Under the New South Wales Code, where an actual or apparent conflict of interest arises or is likely to arise in a meeting of the Executive Council, Cabinet or in any committee or sub-committee of Cabinet, the minister must disclose the existence and the nature of the conflict as soon as practicable after the start of the meeting. The disclosure is recorded in the minutes of the meeting. After the declaration is made, the minister must abstain from participating in the discussion of the matter and from voting on it. No mention is made of the minister having to withdraw from the meeting room.

The Western Australian Code manages conflicts of interest by requiring the minister to advise the Premier in Cabinet of any actual or potential conflict of interest that arises in relation to an item before Cabinet. If a determination is made by the

Premier that a conflict or a potential conflict exists, the minister must withdraw from the Cabinet room while the matter is under discussion. A record of the disclosure and withdrawal will be made by the Cabinet Secretary in the Cabinet minutes. Further, a minister must declare all interests they have awareness of in relation to their spouse, de facto partner or dependent family members that are relevant to a matter before Cabinet. Again, the disclosure is recorded in the Cabinet minutes. The Premier may also require the minister to be absent from all Cabinet discussion relevant to those interests. A conflict of interest may also be raised independently by the Cabinet Secretary in relation to the minister, his spouse, de facto partner or dependent family member. This does not derogate from the minister’s responsibility of disclosure. A record will be made regarding the minister’s absence and the details of the disclosed interests.

In the Commonwealth Code, “Ministers, must, in relation to the matters under discussion in Cabinet or a committee of the Cabinet, declare any private interests, pecuniary or non-pecuniary, held by them or members of their immediate family of which they are aware, which give rise to, or are likely to give rise to, a conflict with their public duties”.

### **Supplementary disclosures**

In New South Wales, if a minister is authorised to continue to act in a matter, regardless of the conflict of interest, he or she is still required to disclose any changes in circumstances that affect the nature or extent of the conflict.

In South Australia, a minister must promptly disclose new or additional material facts where circumstances surrounding the conflict of interest have changed after the initial disclosure.

## Breaches

In South Australia, where a minister fails to disclose a conflict of interest, the Premier (or the Cabinet in case of the Premier) may in their discretion, among other things:

- require the Minister to apologise publicly;
- require the Minister to stand aside or resign;
- refer the matter to an appropriate authority for investigation and require the Minister to stand down during the investigation; or
- discuss the matter with the Minister and then seek the view of Cabinet before making a determination as to how the conduct of the Minister should be dealt with.

## Guidance provided within the Code

The Queensland Code provides examples of potential conflicts of interest in Attachment 1 of the Code. Ministers are also recommended to seek the advice of the Integrity Commissioner on specific matters in relation to potential conflicts of interest.

The New South Wales Code reminds ministers that their responsibility to know of an actual or apparent conflict of interest resides with the individual minister.

To assist ministers in the Australian Capital Territory in assessing whether a conflict of interest is material, a test has been provided in the guidance. The issue is “the likelihood that the Minister possessing the interest could be influenced in the judgement which his or her public duty requires be applied to the matter in hand, or that a reasonable person would believe that he or she could be so influenced”.

The guidance in the South Australian Code provides a number of examples of where a conflict of interest may arise, such as where a minister:

- “has a significant financial interest in a company with whom the Government is contracting;
- has a personal interest in the outcome of a process; or
- receives a right or commission in return for the provisions of a benefit”.

The South Australian Code reiterates the disclosure obligations under the Code are additional to the obligations imposed on ministers under the *Members of Parliament (Register of Interests) Act 1983* (SA).

The Commonwealth Code refers ministers for further information about the management of conflicts of interest in the context of Cabinet discussion to the *Cabinet Handbook*.

## RECOMMENDATIONS

1. The new Tasmanian code should include the conflict of interest principle and should address the following elements:
  - a. how conflicts of interest are to be managed (avoided, managed and resolved in favour of the public interest) between their personal interests and their official duties;
  - b. that ministers must make this disclosure in writing to the Premier as soon as possible upon becoming aware of the conflict;
  - c. that ministers are individually responsible for preventing conflicts of interest; and
  - d. that a conflict or interest does not arise where the minister or another person benefits only as a member of the public or of a broad class of persons.

2. The new code should use words as suggested in the model draft code set out in Appendix Two, or words of a similar effect. In particular, the new code should avoid overly detailed descriptions of procedures as seen in the South Australian Code but rather use plain English and simple and concise statements as seen in the highlighted section on conflicts of interest within the South Australian Code.
3. The guidance provided on conflict of interest should address the following:
  - a. the term “conflict of interest” be defined and the differences between real (actual), apparent (perceived) and potential conflicts of interest be discussed; provide some examples of apparent and potential conflicts of interest. Refer to the Queensland, Western Australian and South Australian Codes;
  - b. note what constitutes “reasonable steps” including the need for ministers to be required to arrange and manage their private affairs in a manner that will avoid conflicts of interest from arising;
  - c. define other any relevant terms, e.g. relative and associate;
  - d. outline the procedure for declaring, managing and recording conflicts of interest. Refer to New South Wales, Australian Capital Territory and South Australia. This includes declaring any changes or new or additional facts in relation to the interest that occur after the initial disclosure;
  - e. outline the procedure to be followed when declaring conflicts of interest in relation to Cabinet Meetings. Refer to New South Wales and Western Australia);
  - f. note that this principle extends to a minister’s spouse, domestic partner or child and that it relates to financial and non-financial interests;
  - g. list the potential conditions the Premier may impose on the exercise of the minister’s executive powers to minimise the risk of a material conflict between the minister’s personal interests and public duties. This may include appointing another minister to act in the relevant matter. Refer to the South Australian and Australian Capital Territory codes;
  - h. outline what procedure a minister should follow if the conflict of interest is of a serious nature, e.g. divest the interest immediately or if they do not wish to divest, to resign;
  - i. note that a minister is not to appoint family members to any position within the minister’s own portfolio unless the appointment has been authorised by the Premier and goes before Cabinet;
  - j. remind ministers to seek the advice of the Parliamentary Standards Commissioner if in doubt in relation to specific matters where there is a potential conflict of interest;
  - k. reiterate that disclosure obligations under this Code are additional to the obligations placed on ministers as members of parliament under the *Parliamentary (Disclosure of Interests) Act 1996* (Tas); and
  - l. even if enforcement is discussed in the preamble/introduction of the Code, the consequences of non-compliance with this section need to be outlined and reiterated. Refer to the South Australian Code.
4. Where appropriate, similar phases and terminology should be used in the members’, ministers’ and ministerial staff Code to promote clarity and avoid confusion for ministers, who



are also Members of Parliament. There will, however, be aspects of these Codes that will differ due to the specific nature of roles and obligations.

5. Some ministerial codes in other jurisdictions contain information on the provisions of the code that in the Commission's view is more suitable for inclusion in the guidance. For example, this may include defining personal interest to include interest of spouses, domestic partners and children, and the processes for disclosure.

#### **DECLARATION/DIVESTMENT OF PERSONAL INTEREST**

The principle of declaring or divesting of personal interests is a common element throughout all jurisdictions with codes of conduct for ministers.

#### **Declaration vs divestment**

Under every ministerial code of conduct examined, ministers are required to declare, register, make adequate disclosure of, furnish a copy of the most recent returns containing, state, disclose all or provide notification of their private interests. In Western Australia, ministers are required to provide the Cabinet Secretary with:

- “a copy of each return that they lodge under the *Members of Parliament (Financial Interests) Act 1992* when lodging that return”; and
- “at the same time, a statement disclosing all the pecuniary and other interests of the Minister not already disclosed in their return, as well as the pecuniary and other interest of the Minister's spouse, de facto partner and all dependant members of the Minister's family”.

The responsibility to declare all pecuniary and other interests of ministers and each minister's spouse, de facto partner and dependent family members lies solely with the minister.

For New South Wales, ministers must also furnish a written declaration to the Premier containing the following information:

- “particulars<sup>78</sup> of events which have occurred since the period covered by the return, and which (or the consequences of which) would have to be disclosed in the next return made under the relevant legislation”;
- “such further particular as the Premier may require of anything dealt with in the return or declaration, or of anything the Premier considers ought to have been dealt with”; and
- “such particulars<sup>79</sup> as the Premier may require of any other pecuniary interests, direct or indirect, that the person may have in any property or under any contract, arrangement or transaction yielding a material benefit to the person; or of pecuniary interests<sup>80</sup>... that the person's spouse or children may have”.

The Queensland Code states “the responsibility of making adequate disclosure of all pecuniary and other interest of the Minister and the Minister's partner, lies solely with the Minister”. A minister is required to fill out a statutory declaration declaring to the Premier that adequate disclosure has been made.

The Australian Capital Territory's Code reiterates that ministers are obliged as members of the Legislative Assembly to state their registrable private interests in the Register of Members' Interests. Additionally, that divestment is viewed as a way of avoiding a material conflict of interest.

Only in New South Wales and the Australian Capital Territory must ministers also divest their private interests.

<sup>78</sup> Includes changes in the state of affairs disclosed in the return (e.g. ownership of real property) and new events (e.g. receipts of declarable gifts).

<sup>79</sup> Must include ‘such details as the Premier requires of the assets, sources of revenue or transactions of any company or other body in which the person, or the person's spouse or children, may have a direct or indirect pecuniary interest’.

<sup>80</sup> Similar to those described in the relevant regulation or within paragraph 2.3(c) of this Code.



In New South Wales, at the request of the Premier a person proposed for appointment as a minister must divest themselves of any interests that “could create the impression of a material conflict with the responsibilities to be discharged in the portfolio to which the appointment is to be made”. In addition, where there is a significant change in the minister’s private interests, or a change to their ministerial responsibilities, the minister must consult with the Premier to determine whether divestment of interest is required. The Premier may also from time to time review a minister’s private interests and their responsibilities to determine whether it would be appropriate for divestment to occur to avoid the appearance of a conflict of interest.

### **Timeframe in which to declare or divest**

The jurisdictions of New South Wales and South Australia apply a set timeframe within which ministers must declare their private interests. New South Wales requires the minister to furnish the Premier with a copy of their most recent return under the *Constitution (Disclosures by Members) Amendment Act 1981* (NSW) to be made within four weeks of their appointment. If no return has been furnished, the same particulars obliged to be furnish in the return must be provided to the Premier.

In South Australia a minister must within 14 days of taking office notify the Cabinet Office of all private interests already disclosed to Parliament under the *Member of Parliament (Register of Interests) Act 1983*. Ministers also have 14 days to disclose the private interests of their spouse, domestic partner, children or business associates.

### **Supplementary disclosures**

In the Commonwealth, ministers must “notify the Prime Minister of any significant change in their private interests within twenty-eight days of its occurrence”.

Under the Western Australian Code, “significant changes in the declared interests of the Minister or those of their spouse, de facto or dependent family members shall be disclosed to the Cabinet Secretary in a supplementary statement within four weeks of the Minister becoming aware of those changes”.

New South Wales requires changes and further particulars in private interests to be declared in writing as required as the event or material change occurs.

South Australia briefly refers to supplementary disclosure by stating that “any information amending ... statements tabled after the receipt of the annual ordinary returns in accordance with the *Member of Parliament (Register of Interests) Act* (SA), will be recorded in the Cabinet Register by Cabinet Office”.

### **Types of Interests to be declared/divested**

As stated above, in Western Australia all pecuniary and other interests of the minister, their spouse or de facto partner and all dependent family members must be provided to the Cabinet Secretary. In addition, ministers must disclose all pecuniary or other interests “held under a private company or other entity or arrangement that operates a family farm, family business or family investments or trust”.

Queensland only requires disclosure of all pecuniary and other interests of the minister and the minister’s partner.

In South Australia, ministers must also disclose all private interests to Parliament under the *Member of Parliament (Register of Interests) Act 1983* (SA) and the private interests of their spouse, domestic partner, children or business associates which might conflict with their ministerial duties<sup>81</sup>.

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<sup>81</sup> This includes details of individual components of any family trusts in which a minister has an interest.

The Commonwealth and Victorian codes necessitates disclosure of personal interest including, but not limited to, pecuniary interest as required by Parliament. Ministers are also required to comply with any additional requirement for declarations of interests as determined by the Prime Minister and Premier respectively. Lastly, ministers do not have to declare but must have regard to the pecuniary and other interests of members of their family (immediate family only under the Commonwealth Code) to the extent known by them, in considering whether a conflict of interest (be it real or apparent) arises between their families' private interests and their official duties.

### **Acceptable forms of divestment**

It is acceptable in the Australian Capital Territory to divest shares to a trust that is conducted at arm's length from the minister and their immediate family. In particular, the minister and their immediate family must not be involved in the decisions affecting the conduct of the trust. The existence of the trust must be disclosed to Cabinet. It is also acceptable for potential conflicts to be appropriately managed but no further guidance is not provided on how this can be achieved.

In New South Wales, it is not acceptable to divest of interests by transferring those interests to the spouse, a minor child, a nominee or any trust, company or association in which the minister has or would have a substantial interest. The guidance concludes by stating that the disclosure requirements under this section of the Code do not relieve a minister of their disclosure requirements prescribed in later sections of the Code.

### **Breaches**

The Commonwealth and Victorian codes specifically state that "failure to declare or register a relevant and substantive personal interest as required by the Parliament constitutes a breach" of the codes.

### **Guidance provided within the Code**

#### *General*

The only additional guidance provided under the Victorian Code of Conduct for Ministers is that the Premier has the discretion to refer conflict of interest matters to the Parliamentary Integrity Commissioner for advice and guidance.

An example of the statutory declaration required to be filled out by Queensland ministers is provided as an Attachment (No.2) in the Queensland Code. In instances where divestment of pecuniary interests "gives rise to significant stamp duty, capital gains tax, share pre-emption rights, timing issues for inherited shares subject to probate, guarantees for family members and the use of formal undertakings for individual circumstances the Minister should consult with the Premier prior to completing a statutory declaration".

The Western Australian Code acknowledges that some pecuniary interest may be sufficiently indirect, minimising disclosure requirements expected of ministers. Guidelines are provided in Appendix F of the Code to assist ministers in providing the appropriate level of detail when completing their disclosure statements.

The guidance provided in the New South Wales Code reaffirms a minister's compliance with section 14A of the *Constitution Act 1902* (NSW) and its relevant regulations in regards disclosure of pecuniary and other interests of members. In relation to declarations made under the Code, all returns and declarations will be kept in the Register of Interests by the Department of Premier and Cabinet.

This is the same in South Australia where all details and disclosures are recorded in the Cabinet Register which is maintained by Cabinet Office. In Western Australia, all disclosed information is recorded and retained by the Cabinet Secretary.

### *Regarding conflicts of interest*

In the Australian Capital Territory, the Code's guidance states that ministers – in addition to any obligations imposed on them as members – need to inform the Chief Minister (or in the case of the Chief Minister, the Cabinet) of any potential conflict of interest between their private interests and their executive functions. All such disclosures are recorded and maintained by the Secretary to the Cabinet, to be tendered at the next Cabinet Meeting. Similarly, in Cabinet meetings, ministers must immediately declare any private interests, pecuniary or otherwise or any other matter, held by themselves or their immediate family in matters under discussion where a conflict may arise. Again such declarations are recorded by the Secretary to Cabinet. It is then up to those present at the meeting to determine whether the minister withdraws or continues to take part in the discussion.

South Australia also requires its ministers to bring to Cabinet's attention conflicts of interest, even if the conflict arises out of interests already declared and recorded in the Cabinet Register. In addition, all proposals that go before Cabinet contain a written statement by the submitting minister as to whether an actual or potential conflict of interest arises from the private interests in relation to the proposal under consideration. Where a conflict is indicated to arise, the details of the said conflict must be disclosed in an appendix (the form for this is set out in Appendix 3 of the Code) to the Cabinet submissions. The form can also be used to declare interest in any matter before Cabinet. The form is to be tendered to the Premier or acting Cabinet Chair for consideration before deliberation begins. The attitude of the Cabinet and the action taken in response is then recorded on the form to be signed by the Premier and filed in the Cabinet Register. Once a conflict has been validly disclosed the Minister must withdraw from the Cabinet room for those deliberations.

The Western Australian Code also requires real or perceived conflicts of interest to be brought to the Cabinet's attention, whether in relation to a minister, their spouse, de facto partner or dependent family member.

Lastly, the New South Wales Code states "Ministers should avoid situations in which they have or might reasonably be thought to have a private interest which conflicts with their public duty".

### **RECOMMENDATIONS**

1. The new code should include the declaration of personal interest principle and should address the following elements:
  - a. that ministers are personally responsible for making adequate disclosure to the Premier of all financial and other interests, in accordance with their obligations under the *Parliamentary (Disclosure of Interests) Act 1996* (Tas);
  - b. that ministers, upon assuming office as a minister, must take transparent steps to deal with the financial and other interests of themselves, their spouse, domestic partner or dependent persons, which could create the impression of a material conflict with the minister's public duties.
2. The new code should use words as suggested in the model draft code set out in Appendix Two, or words of a similar effect. In particular, the new code should avoid legalistic descriptions of terms and procedures as seen in the New South Wales and Western Australian Codes. Rather, plain English and simple and concise statements should be used.

3. The guidance provided on declaring personal interests should:

- a. refer to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) and to a minister's obligations under the Act;
- b. refer to any other relevant policies or guidelines which would assist a minister in determining what kind of interests should be disclosed to the Premier;
- c. outline the procedure for declaring interests, e.g. the timeframe new ministers have in which to declare their interests, and the procedure for making ad hoc disclosures;
- d. confirm whether a minister, where they have a personal interest in a matter that has yet to be declared, must abstain from acting in that matter until transparent steps have been taken to deal with that interest or the Premier has provided written direction to continue acting in that matter;
- e. prescribe the acceptable forms of transparent steps (divestment) that can be taken, e.g. whether it is acceptable to use 'blind trusts'. It should be reiterated that transferring those interests to family members is not an acceptable form of divestment. If 'blind trusts' are an acceptable form of divestment, the conditions to be placed on such trusts should be outlined, e.g. that investments are broadly diversified and the minister has no influence over investment decisions of the fund or trust; and the fund or trust does not invest in any significant extent in a business sector that could give rise to a conflict of interest with the minister's public duty;
- f. note the timeframe and the procedure for making supplementary disclosures regarding changes in personal interests;
- g. note that this principle extends to a minister's spouse, domestic partner and children and that it refers to financial and non-financial interests;
- h. note whether a minister must disclose all financial and other interests held under a private company or other entity or arrangement that operates a family farm, family business or family investments or trusts; and
- i. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section and for non-compliance with the Receipt and Giving of Gifts and Benefits or with the Act.

4. As with members of parliament, ministers have obligations regarding declaration of personal interests and these are outlined in the Members of Parliament Code. It is recommended that the extra responsibilities of ministers be outlined in the new code as suggested in the model draft code detailed in Appendix Two.
5. Ministers are obliged to divest themselves of any interests giving rise to a conflict of interest, consistent with the Australian Capital Territory and the New South Wales Codes.

#### **GIFTS AND BENEFITS**

The principle of receiving and giving gifts and benefits is addressed in every jurisdiction.

#### **RECEIVING GIFTS**

In relation to receiving gifts, the Queensland Code states that ministers are not to "accept any gift offered in connection with the discharge of their office except as permitted within the Ministerial Handbook".

Under the New South Wales Code, “Ministers shall not solicit or accept any gift or benefit the receipt or expectation of which might in any way tend to influence the Minister in his or her official capacity to show or not to show favour or disfavour to any person”. All such gifts, offer or suggestions, made directly or indirectly, must be reported to the Premier at the first opportunity.

The Australian Capital Territory Code makes ministers aware of particular sections of the *Crimes (Offences Against the Government) Act 1989*<sup>82</sup> that prohibit the receipt of gifts and benefits in certain circumstances. Ministers are also told to have regard to section 14(1)(c) of the *Australian Capital Territory (Self-Government) Act 1988*<sup>83</sup>. Under no circumstances may a Minister or member of the immediate family accept a gift of money where the offer is in any way connected to the official position of the Minister. However, ministers and their immediate family may accept gifts from either overseas or Australian representatives of Government.

In the case of the Commonwealth and Victoria, ministers in their official capacity may accept “customary official gifts, hospitality, tokens of appreciation, and similar formal gestures in accordance with the relevant guidelines, but must not seek or encourage any form of gift in their personal capacity”.<sup>84</sup> In addition, “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”. Ministers must comply with disclosure requirements of Parliament regarding the declarations of gifts.

This is to ensure that ministers do not come under financial or other obligation to a third party or give the appearance that they are being improperly influenced in the performance of their official duties as a minister.

Similarly, in South Australia, ministers are not to “seek or encourage any form of gift or benefit from any person in their personal capacity. They also “must not seek or accept any kind of gift, benefit or other valuable consideration either for themselves or for others performing (or not performing) any element of their official duties as a Minister” except for the remuneration payable in respect of their official positions. All gifts and benefits offered to ministers to do what they are already paid to do must be reported to the Premier (or to the Cabinet in the case of the Premier) as soon as possible to be recorded.

In Western Australia, “in no circumstances will Ministers be able to accept money or gifts in kind by way of free accommodation or free air travel”. Prior endorsement by the Premier is required where accommodation or travel is offered on a “guest of government” basis or by a private organisation. Further, “Ministers, their spouses, de facto partners and dependent families shall avoid circumstances in which the acceptance of an offer by way of a gift or any other consideration could result in a conflict of interest with public duty, or in circumstances in which an offer is made with the objective of securing, or in return for, favour or preferment”. Where there is any doubt, ministers are advised to consult with the Premier, who may refer it to the Cabinet. A minister may accept on behalf of the Government gifts from representatives of governments overseas or within Australia and from private organisations or individuals in overseas countries where it is customary to give gifts.

<sup>82</sup> This Act has been repealed and replaced with Part 3 of the *Criminal Code 2002* (Act). In particular, parts 3.3. Fraudulent Conduct, 3.4 False or Misleading Statements, Information and Documents and 3.7 Bribery and Related Offences.

<sup>83</sup> “A member vacates office if the member takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under section 73”.

<sup>84</sup> The Victorian Code rationale for this is that “in accordance with other requirements of this Code, Ministers must ensure that such gifts do not involve a conflict of interest or undermine confidence in the integrity of Government processes”.



### Exception

In New South Wales, the Australian Capital Territory and South Australia, a minister may accept a gift where refusal would cause offence or the gift is an act of goodwill towards the State or Territory. In South Australia the gift can only be accepted if ministerial independence will not be comprised or appear to be comprised. The receipt of the gift must still be recorded and dealt with in accordance with the South Australian Code.

Where the gift is an act of goodwill but is deemed inappropriate for public display within the Australian Capital Territory or South Australia, the Chief Minister/Premier or Cabinet (in the case of the Chief Minister/Premier) may allow the minister or their family to retain the gifts on condition that they pay any excess in value (over \$200) into the Territory Public Account (in the Australian Capital Territory) or into the gift fund in the Department of the Premier and Cabinet (in South Australia) .

### Procedure

Where a gift received is valued at more than \$500 in New South Wales and the minister wishes to retain the gift, a declaration form<sup>85</sup> must be completed and submitted to the Director General of the Department of Premier and Cabinet. In addition, a cheque payable to the New South Wales Treasury and covering the difference between the valuation limit of \$500 and the value of the gift<sup>86</sup> must be delivered to the Office of Protocol and Special Events for processing. All gifts valued at \$500 or more are recorded on the register at the Office of Protocol and Special Events and become the property of the State. Those not retained by the minister will be located in galleries, museums or other appropriate government establishments.

The Victorian Code also specifies that all gifts or travel contributions of more than \$500 must be registered. The value of the gift or benefit will be indexed and rounded to the nearest \$100. Gifts and benefits received from family members are excluded from disclosure but gifts from friends over \$500 must be disclosed. Where a minister receives a number of gifts individually valued below the threshold from the same source but the aggregate total is above the threshold, disclosure will be required.

The receipt of gifts and benefits with a retail value of more than \$200 must be reported as soon as practicable to the Chief Minister (or in the case of the Chief Minister, the Manager of Chief Minister's Support) to be registered and valued within the Australian Capital Territory. The Chief Minister or the Cabinet (if the Chief Minister) will determine how the gift will be dealt with.<sup>87</sup>

As in the Australian Capital Territory, all gifts in the nature of souvenirs, mementos and symbolic items likely to have a retail value in Australia of \$200 or more must be declared to the Premier under the South Australian Code. Additionally, gifts and benefits from government representatives that are likely to be over \$200 must be reported as soon as possible to the Premier or a Minister nominated by the Premier to arrange for such gifts and benefits to be deposited with the Chief Executive Officer of the Department of the Premier and Cabinet. The Premier, or the Cabinet if the gift is given to the Premier, will determine how the gift will be dealt with, e.g. as with the Australian Capital Territory, the gift may be offered to an art gallery or museum or be permanently displayed in the Cabinet Room or a Government office.

<sup>85</sup> Provided in Appendix A of the Code.

<sup>86</sup> To be determined by a registered valuer at the wholesale price of the country of origin.

<sup>87</sup> The gift may be offered to a gallery or public institution. It may be permanently displayed in the Legislative Assembly Building or a Government office.



## Overseas gifts

Gifts received overseas in the course of official duty are to be declared under the New South Wales Code:

- “when received overseas, to Australian customs at the point of entry, if the gift falls outside the normal duty free passenger concession or if the gift is subject to quarantine inspection; and
- if an overseas gift does not qualify for duty free entry under the normal passenger concession, customs duty and other relevant taxes are payable at the appropriate rate”.

A record is kept by the Premier in a Schedule to the Register of Interests, which is then forwarded to the Office of Protocol and Special Events who record the details on the Gift Register.

## Gifts to family members

In New South Wales, ministers are required to take all reasonable steps to ensure that their spouses, children or staff member do not receive gifts or benefits which could give the appearance of an indirect attempt to influence or secure favour with the minister.

Under the South Australian Code, “Ministers must not and are responsible for ensuring that their spouse, domestic partner and/or children:

- do not accept any money by way of gift; and
- do not accept a gift in kind by way of free air travel or accommodation or any other gift or benefit, the acceptance of which may reasonably be construed as an attempt to secure, unduly or improperly, the favour of a Minister; or would give rise to an actual, potential or perceived conflict of interest with public duty. In case of doubt, the Premier should be consulted”.

## Token gifts

In the jurisdictions of New South Wales, the Commonwealth, Victoria, South Australia and Western Australia, token gifts or moderate acts of hospitality or goodwill (e.g. lunch and honorary memberships) may be accepted without the minister needing to declare or report the offer or their receipt. In New South Wales and South Australia, ministers still need to satisfy themselves and bear personal responsibility for the fact that acceptance will not comprise or appear to comprise their ministerial independence. Token gifts in South Australia refer to a gift in the nature of a souvenir, token of appreciation, memento or symbolic item where the retail value is likely to be less than \$200. The acceptance of such gifts from private organisations or individuals within Australia or overseas is allowed by both ministers and members of their immediate family under the South Australian Code. In Western Australia, the gift must be in the nature of a souvenir, a memento, or a symbolic item of low material value (e.g. cufflinks, brooches, plaques and books).

## Giving of gifts

The New South Wales Code instructs ministers on the procedure involved for giving of gifts. Ministers can purchase appropriate gifts suitable to the occasion with State funds or select a gift already purchased from the Office of Protocol and Special Events. Advice should be sought from the Office of Protocol and Special Events where ministers are in the habit of selecting their own gifts, to avoid embarrassment. Gifts are selected for their craftsmanship and Australian character and wherever practicable are to be New South Wales products. The Code recommends discreet enquiries be made in advance of upcoming visits by the minister’s office to ascertain the likely value of the gift to be received by their minister to assist in selecting an appropriate gift.

### Receiving of benefits

Regarding the acceptance of benefits in Western Australia, a minister must “not knowingly accept travel or hospitality sponsored wholly or partly by any person, organisation, business or interest group which carries on the business or travel or hospitality, where such acceptance would create an obligation and is not related to the business of the Minister’s portfolio; unless the travel or hospitality is approved by the Premier, or unless it is provided at rates which are openly available to groups of people other than Minister of the Crown, or by reason of its triviality could not reasonably be construed as creating an obligation”.

Similarly, in New South Wales ministers “shall avoid all situations in which the appearance may be created that any person or body through the provision of hospitality or benefits of any kind is attempting to secure the influence or favour of a Minister”.

In the Australian Capital Territory, “offers of hospitality, free air travel and/or accommodation by other Governments or private organisations may be accepted if the acceptance of such offers may bring benefits or advantages to the ACT or, in the case of other Governments, is an act of goodwill which is likely to forge or cement good relationships between Governments if accepted or could create offence if refused”.

The Australian Capital Territory Code also refers to the acceptance of honorary memberships of clubs and the acceptance of Patronages<sup>88</sup>. Such benefits can be accepted if the minister is satisfied, and bear the personal responsibility, that their ministerial independence is not comprised or appears to be comprised by such benefits. In addition, ministers must advise when accepting offers of patronages that such acceptance will not influence Government decisions in relation to funds for that organisation.

In Victoria, a minister will not be required to register official hospitality received as part of the regular, expected duties of a member of parliament, including duties undertaken as part of the responsibilities as a minister.<sup>89</sup>

Under the South Australian Code, a benefit also refers to a future benefit, for example a promise of future employment either for the minister or minister’s immediate family. Further, a gift or benefit may not be offered to the minister in return for anything in particular. It is the fact that it may create the impression that the minister is under an obligation that is in conflict with the public duties.

### Guidance provided within the Code

Attention is drawn in the New South Wales Code to the provisions of the *Crimes Act 1900* (NSW), in particular those sections relating to ‘corrupt rewards’. The New South Wales Code provides guidance on the process for issuing gifts in particular circumstances.

The Australian Capital Territory refers ministers to the *Code of Practice for Official Hospitality, Gifts and Protocol* for detailed information concerning the handling of official gifts. Ministers are reminded to comply with the Chief Minister’s Department Travel Guidelines when making arrangements for ministerial travel and the relevant Remuneration Tribunal Determination covering travel on official or Assembly business.

In South Australia, ministers are reminded that they are legally obliged to declare gifts and benefits accepted under *Members of Parliament (Register of Interests) Act 1983* (SA), and of their continuing obligation to disclose interest giving rise to potential conflict in the Cabinet Register.

<sup>88</sup> Any such acceptance needs to be included on the Minister’s Declaration of Interests.

<sup>89</sup> This is in recognition of the fact that the role of a minister often requires accepting hospitality in some form.

Guidance is provided under the Western Australian Code on the correct procedure to be followed in respect to ministerial travel (contained in Appendix C) and the guidelines for the acceptance and giving of gifts by ministers (Appendix D). Ministers are also reminded of their legal obligation under sections 9 and 10 of the *Members of Parliament (Financial Interests) Act 1992* (WA) to disclose all gifts received and the details of any person who made financial or other contributions to their travels, respectively, in their annual return. The Code stresses that due to the potential for conflicts of interest arising in the process of giving gifts, guidance beyond “simple adherence to the reporting requirements of the Act” is needed.

## RECOMMENDATIONS

1. The new code should contain a principle on gifts and benefits and should address the following element:
  - a. that ministers must not solicit, encourage or accept gifts, benefits or favours either for themselves or for another person in connection with performing or not performing any element of their official duties as a minister;
  - b. that any such gift, offer or suggestions, made directly or indirectly, must be reported to the Premier at the first opportunity;
  - c. ministers may accept all customary gifts, hospitality, tokens of appreciation and similar formal gestures in accordance with the relevant guidelines; and
  - d. that ministers may, in a purely personal capacity, accept gifts from a relative, friend or acquaintance which do not give rise to or create the appearance of a conflict of interest.
2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix

Two. In particular, the new code should avoid legalistic descriptions of terms and procedures as seen in the Australian Capital Territory Code. Rather, plain English and simple and concise statements should be used, as seen in the New South Wales Code.

3. The guidance provided on gifts and benefits should:
  - a. refer to Receipt of Gifts and Benefits Guidelines for Ministers (Appendix Five) and to a minister’s obligations under that policy in relation to receiving and giving gifts and benefits including sponsored travel. Any exceptions to this section and the policy should be discussed in Guidance;
  - b. refer to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) and a minister’s obligations to disclose gifts and benefits received under that Act. Any exceptions to this section or the Act should be discussed;
  - c. define any relevant terms, e.g. nominal value, token gift, sponsored travel;
  - d. provide a brief outline of the procedure to be followed under the Receipt of Gifts and Benefits Policy for Ministers when accepting and giving gifts and benefits; and
  - e. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section and for non-compliance with the new Receipt and Giving of Gifts and Benefits or with the Act.
4. Guidelines be provided on receiving and giving gifts and benefits. Attached to this report is a suggested Receipt and Giving of Gifts and Benefits Policy based on the existing Government policy and including the Commission’s recommendations.

## OUTSIDE EMPLOYMENT

Every jurisdiction with a code of conduct for ministers addresses the principle of outside employment.

### Directorships

In all jurisdictions, a minister must on assuming office resign from or decline all directorships in public and/or private companies. In Queensland, ministers must resign immediately. Under the New South Wales Code, ministers are only required to resign from companies “whose interests are such as to be likely to give rise to the appearance of conflicting interests or responsibilities of the Ministers”.

In the Australian Capital Territory, “Ministers should cease to be actively involved in the day to day conduct of any business” unless there is some special, technical or other reasonable grounds for the Chief Minister (or the Cabinet in the case of the Chief Minister) to deem it appropriate for the Minister to continue being involved with that activity. The Chief Minister (or Cabinet) “may agree to conditions on the exercise of Ministerial functions to avoid any conflict with the Minister’s responsibilities” in their portfolio(s).

Ministers may also retain directorships in private and public companies and businesses in the Commonwealth and Victorian codes, with the express approval of the Prime Minister and the Premier respectively. Approval to retain a directorship will only be given where the Prime Minister (based on the advice of the Secretary of the Department of the Prime Minister and Cabinet) or Premier is satisfied that no conflict of interest is likely to arise.

Under the South Australian Code, ministers are required to resign and decline directorships from public companies on taking office and are not allowed to provide advice or assistance to such companies except as required in their official capacity as a minister. As with the Australian Capital

Territory, the Commonwealth and Victoria, if express approval is given by the Premier, a Minister may retain the directorship. Again, approval will only be given if the Premier is satisfied that the directorship is unlikely to give rise to a conflict of interest with the Minister’s portfolio responsibilities. Any offer of directorship must be immediately disclosed to the Premier for assessment.

### Business or professional associations and trade unions

In the Commonwealth and Victoria, ministers must not provide advice or assistance to any enterprise or other interest, paid or unpaid, except as required in their official capacity as a minister and must withdraw from any professional practice or the management of any business. A minister “may not receive any income from business in any form, otherwise than as provided for by” the Commonwealth or Victorian Governments, “or from personal exertion other than as a Minister and Member of Parliament”.<sup>90</sup>

This is similar to the South Australia Code which states that “Ministers should not act as consultants to any company, business, association or other organization or provide assistance to any such body, except as may be appropriate in their official capacity as Minister”.<sup>91</sup> As such, ministers “must cease to be actively involved in the day to day conduct of any professional practice or in any business in which they were engaged before assuming office”. Ministers must also not accept any retainers or income from personal exertion other than their remuneration as a minister and member of parliament.

<sup>90</sup> This requirement does not preclude the receipt of income in respect of activities undertaken before assuming office (e.g. royalties) as long as they are declared in accordance with the requirements of Parliament and any additional requirements by the Prime Minister or Premier respectively.

<sup>91</sup> This requirement does not apply where the Premier has given permission for the minister to continue involvement in a family company.

The Code also stresses that ministers “should arrange their affairs so as to avoid any suggestion that a union or professional association of which they are a member has any undue influence”. In particular, ministers should resign from paid positions and receive no remuneration from a union or professional association.<sup>92</sup>

Further, in Commonwealth and Victorian jurisdictions, where a minister has a past personal association with a company or business and is required to make a decision that will impact that enterprise individually or along with a small number of other enterprises, the minister should pass responsibility for the decision to a minister nominated by the Prime Minister (in the Commonwealth) or the Premier (in Victoria). At Commonwealth level, the responsibility may also be passed to the senior minister in the portfolio.

The Queensland Code also requires ministers to immediately resign from or decline all positions held in business or professional associations or trade unions on assuming office.

In Western Australia, ministers must resign from all positions held in business or professional associations and trade unions as identified by them through their disclosure obligations under the *Members of Parliament (Financial Interests) Act 1992* (WA).

However, both the Queensland and Western Australian Codes recognise that individual membership of business or professional associations or trade unions does not constitute a “position”.

## **Public appointments**

South Australia is the only jurisdiction that requires ministers, on taking office, to give up public appointments that “give rise to a conflict of interest with their Ministerial duties and portfolio responsibilities”. Where there is any doubt as to whether a conflict arises, ministers are advised to consult with the Premier (or the Cabinet in the case of the Premier).

## **Family farms, businesses and investments**

In the Commonwealth, Victorian, Queensland and Western Australian codes, a minister may hold a directorship in a private company operating a family farm, business or investment. In Queensland and Western Australia, provided the directorship does not conflict with official duties, a minister will be allowed to retain their position as a director. Further, in Queensland, a statutory declaration regarding such holdings, including any resignations since taking up office, must be provided to the Premier.<sup>93</sup> Ministers are reminded to declare with the Premier any potential or perceived conflicts of interest arising from such holdings, in a statutory declaration.

Under the Commonwealth and Victorian Codes, “where a Minister is aware of the nature of investments of family members from which they derive a beneficial interest and which might give rise to a perception of a conflict of interest, those interests should be structured so that the Minister exercises no control over the investment”.

## **Guidance provided within the Code**

The guidance in the New South Wales Code states that a minister may be required to divest their personal interest (this includes resigning from a directorship) after consulting with the Premier regarding a significant change in their interest or an addition to their responsibilities as a minister.

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<sup>92</sup> This requirement does not preclude a minister from retaining a right to vote as a member of a union or professional association.

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<sup>93</sup> The Code refers ministers to the example of a statutory declaration in Attachment 2 to the Code.



Similarly, under the Commonwealth and Victorian Codes, where a minister has received approval to remain a director and that company subsequently begins to operate in an area in which the minister may be required to make decisions, it is the responsibility of the minister to immediately declare and resolve any conflict of interests that arise to the satisfaction of the Prime Minister, again based on the advice of the Secretary of the Department of the Prime Minister and Cabinet (in the Commonwealth) or the Premier (in Victoria).

The South Australian Code is the only code to provide advice on non-public bodies, stating that ministers need to declare their involvement in any pressure group or other non-public organisations whose objectives may potentially conflict with Government policy. This requirement does not apply to local community, charitable, voluntary and sporting organisations. Additionally, it is also the only Code to offer advice about product endorsement: “Ministers must not endorse any products or services or associate themselves with the marketing of any products or services for any personal financial reward or benefit”. However, this does not prevent ministers from endorsing any product or service which promotes economic development or local employment. Nor does it prevent ministers from appearing in party political advertisements or political public service type advertisements or announcements where no fee is paid.

The Western Australian Code also requires ministers to resign from other positions that may present a real or perceived conflict of interest. Ministers are advised to consult the Cabinet Secretary if in any doubt.

## RECOMMENDATIONS

1. The new code should contain a principle on outside employment under the heading of ‘Directorships and other forms of employment’ and should address the following elements:
  - a. a minister must resign or decline directorships of public and/or private companies and businesses on taking up office as a minister, except where express approval has been provided by the Premier;
  - b. that on assuming office, a minister must resign from all positions held in business or professional associations or trade unions. It should be noted that individual membership does not constitute a ‘position’;
  - c. that ministers should not act as consultants to any company, business or other interests, paid or unpaid, or provide assistance to any such body, except as may be appropriate to their official capacity as minister; and
  - d. that a minister may hold a directorship in a private company operating a family farm, business or investment, with the express approval of the Premier.
2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Two. It is recommended that plain English and simple and concise statements should be used, as seen in the Commonwealth and Victorian Codes.
3. Guidance provided on outside employment should:
  - a. outline the factors on which the Premier may take into consideration when granting approval for outside employment;
  - b. outline the procedure to be followed where circumstances change and a



potential conflict of interest arises when a Premier has given express approval for retention of a directorship;

- c. outline the procedure to be followed in relation to the management of family farms, business and companies;
  - d. state whether ministers need to declare their involvement in any pressure group or other non-public organisations whose objectives may potentially conflict with Government policy; and
  - e. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section;
4. In relation to this principle, the Ministerial Code will require different elements to those in the Members of Parliament Code due to the greater level of commitment required from ministers in respect to time and their higher level of responsibility. There is also a greater chance that a conflict will arise between a minister's official public duties and secondary employment.

## **SHAREHOLDINGS**

Out of the Australian jurisdictions that have a ministerial code of conduct, all but New South Wales and the Australian Capital Territory contain a principle that addresses shareholdings and whether or not it is acceptable for ministers to continue to hold shares while in office.

## **Divestment**

All jurisdictions require ministers to divest their interests, with Queensland, South Australia and Western Australia clearly stating this is to occur on assuming office. Western Australia imposes the strictest time frame, "immediately after appointment ... shall take action to divest", in South Australia "within 14 days of taking up office, Ministers must actively take steps to divest themselves completely" and in Queensland, "Ministers, must, within one month after taking office, divest". Queensland takes the requirement of divestment further by stating that ministers must "divest themselves and otherwise relinquish control of all shares and similar interests". The Commonwealth and Victoria require the divestment of interests but do not specify that this must occur on assuming office.

## **Types of interests to be divested**

Queensland and South Australia require ministers to divest shareholdings and other interests, while the Commonwealth and Victoria require divestment of investments and other interests. In Western Australia, the interests to be divested are "shareholdings in any company and interests in partnership and trusts, by virtue of which a conflict exists, or could reasonably be expected to exist, with their portfolio responsibilities". The Commonwealth, South Australian and Victorian divestment requirement applies to both public and private companies. In the Commonwealth and Victoria, a minister does not have to divest interests

in “public superannuation funds or publicly listed managed funds or trust arrangements where:

- the investments are broadly diversified and the Minister has no influence over investment decisions of the fund or trust; and
- the fund or trust not invest to any significant extent in a business sector that could give rise to a conflict of interest with the Minister’s public duty”.

South Australia only requires divestment of interests that “may create a conflict of interest as a result of their portfolio responsibilities”. It goes further to say that “other than those interests allowed by this code or approved by the Premier in accordance” with the Code.<sup>94</sup> The Queensland Code only applies to shares and similar interests in for-profit companies, regardless of whether they are in the minister’s portfolio or not. While it does not specify which type of company it applies to, Western Australia’s requirement that ministers shall divest themselves of “shareholdings in any company and interests in partnership and trusts” is broad enough to encompass both private and public companies.

### Acceptable forms of divestment

In none of the jurisdictions is it an acceptable form of divestment to transfer the interest to a partner. It is also unacceptable to transfer an interest to a “family member or to a nominee or private trust” in Western Australia, Victoria and the Commonwealth. Western Australia specifically states which family members the restriction applies to: spouses, de facto partners or dependent family members. In South Australia it is only unacceptable to transfer to an immediate family member. Ministers are able to transfer their interests to outside professional nominees or trusts provided “the Minister or family member exercises no control over the operation of the nominee or trust”. Transfers to outside professional nominees or trusts must first be

disclosed and approved by the Premier on a case-by-case basis. The Premier must be satisfied that:

- the investment in the managed fund or trust is in a broadly diversified portfolio and is at “arm’s length”; or
- the investment is in a superannuation investment fund; or
- the receipt and divestment of shares and interests is pursuant to a will or as a result of the demutualisation of a company or other exceptional circumstances; and
- that there is no reasonable basis for a conflict of interest to arise.

Under the Queensland Code, ministers and their partners may “transfer control to an outside professional nominee, a blind trust or other trust (e.g. managed fund)” on the condition neither the Minister, their partner or immediate family exercises no control “on the operation of the nominee or trust”.<sup>95</sup>

### Additional requirements

South Australia has two additional requirements under its Code in relation to shareholdings. Firstly, during their term, ministers must not acquire shareholdings or other financial interest in any public or private companies in their private capacity. Secondly, provided it does not create a conflict of interest with their portfolio responsibilities, ministers are entitled to retain any shares or interests held before their appointment on the condition that they do not trade in those shares during this period.

<sup>94</sup> The Code specifically states that “Nothing in this Code prevents Ministers from holding a share in a credit union where the holding of a share is a condition of membership of the union”.

<sup>95</sup> The Code states that ‘this provision does not apply to property investments merely held as property’.

## Guidance provided within the Code

### *General*

Ministers are advised under the South Australian Code, in order to comply with the Code, to obtain professional advice regarding the divestment of their interests.

The Queensland Code affirms that as members of the Queensland Legislative Assembly, ministers must comply with the requirements of the Register of Members' Interests held by the Clerk of the Parliament.

### *Conflicts of interest*

Under the Commonwealth and Victorian Codes, if a minister becomes aware that investment in a fund or a trust might give rise "to a perception of a conflict of interest" they should inform the Prime Minister (in the case of the Commonwealth) or the Premier (in the case of Victoria) immediately and "liquidate the investment in the fund or trust if required to do so". Victoria also requires the conflict to be referred to the Parliamentary Integrity Commissioner for advice and guidance.

### *Interests held by the Minister's partner*

In South Australia, the Code clarifies that a minister's spouse, domestic partner, and/or dependent children are not required to divest themselves of their interests nor are they prevented from acquiring shares or other financial interest in their own name during the minister's term of appointment. Instead, an obligation is placed on ministers to report their immediate family members' investments to the Members' Register of Interests so their interests can be disclosed on the Cabinet Register.

However, in Queensland a minister's partner should divest or otherwise relinquish control of their shares "unless such ownership is in a company which the partner is employed by". In this instance, a minister must declare such a holding.

In the Commonwealth and Victoria, a minister should encourage their family members "to dispose of, or not to invest in, share in companies which operate in their area of responsibility". Where a minister becomes aware that a family member may derive a beneficial interest from an investment that could give the perception of a conflict of interest, those interests need to be structured so that the minister exercises no control over the investment.

## RECOMMENDATIONS

1. A provision dealing with shareholdings be included in the Ministerial Code but is not required in the Members of Parliament Code. This need arises as a result of the portfolio responsibilities of ministers.
2. The principle on shareholdings should address the following elements:
  - a. that on assuming office, a Minister must relinquish control of all shareholdings and other interests in partnerships and trusts, both public and private, where a conflict exists, or could reasonably be seen to exist, with their portfolio responsibilities; and
  - b. that it is not an acceptable form of divestment to transfer interests to a partner, family member or to a nominee or private trust.
3. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Two. In particular, the new code should avoid detailed descriptions of terms and procedures as seen in the South Australian Code. Rather, plain English and simple and concise statements should be used;

4. The guidance provided on shareholdings should:

- a. Identify the timeframe in which ministers are to relinquish control of their shareholdings;
- b. Determine what types of interest are to be relinquished, whether in private or public companies or both; list the appropriate types of divestments; and identify whether or not it is acceptable to use “blind trusts”;
- c. define the term “family”;
- d. note any exceptions that apply, e.g. owning shareholdings in public superannuation funds or a publicly listed managed fund or trust arrangement where certain conditions are met. Refer to the Commonwealth and Victorian Codes;
- e. note whether ministers are allowed to acquire further shareholdings or other financial interests in any public or private companies in their private capacity. Further, whether ministers are – provided it does not create a conflict of interests with their portfolio responsibilities – entitled to retain any shares or interest held before their appointment on the condition that they do not trade in those shares during their appointment;
- f. determine the procedure ministers are to follow when a conflict of interest arises between a shareholding or other interest and their portfolio responsibilities. See the Victorian and Commonwealth Code;
- g. note whether a minister’s partner and family are required to divest their own personal interests. Further, whether they are prevented from acquiring more shares or other financial interests in their own name during the minister’s term of appointment. Refer to any disclosure requirements the minister has in relation

to their partner and family’s interests. Outline any exceptions that may apply;

- h. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section.

**POST-MINISTERIAL EMPLOYMENT**

Post-ministerial employment is addressed in every jurisdiction.

In New South Wales, “Ministers, while in office or following resignation or retirement, should take care in considering offers of post-separation employment or engagement, or when proposing to otherwise provide services to third parties after they leave office, to avoid a perception that:

- the conduct of the Minister or former minister while in office is or was influenced by the prospect of the employment or engagement or by the Ministers or former Minister’s intention to provide services to third parties; or
- the Minister or former Minister might make improper use of confidential information to which he or she has or had access while in office”.

To avoid creating such perceptions, ministers, while still in office, must obtain advice from the Parliamentary Ethics Adviser before accepting any employment or engagement or providing services to a third party which relates to their portfolio responsibilities held during the previous two years. Additionally, within the first 12 months of leaving office, former ministers must also obtain advice before accepting any employment or engagement or providing services to third parties<sup>96</sup> which relate to their former portfolio responsibilities during their last two years of office.<sup>97</sup>

<sup>96</sup> This includes establishing a business to provide such services.

<sup>97</sup> This does not apply to any employment or engagement by the Government.

The Australian Capital Territory and Western Australian Codes also require ministers to “exercise care in taking up employment or business activities in the period immediately after leaving Government”. In particular, under the Australian Capital Territory Code, special care should be taken when accepting offers of employment from, or becoming engaged in the internal management of the affairs of, persons, companies or bodies:

- “which are in a contractual relationship with the State/Territory Government;
- which are in receipt of subsidies or benefits from the Government not received by a section of the community at large;
- in which the Government is a shareholder;
- which are in receipt of Government loans, guarantees or other forms of capital assistance; or
- with which the departments or branches of Government are, as a matter of course, in a special relationship.

### Undertakings

Ministers are required to make three undertakings under the Queensland Code: one in relation to the use of confidential information in future employment (different from the one discussed under the Improper Advantage section of this Chapter); one in relation to accepting post-ministerial employment; and one in relation to lobbying.

A minister must “undertake not to take personal advantage, in any future employment, of information obtained as a Minister which is not publicly available, including confidential information on pending contracts or dealings”.<sup>98</sup> Additionally, a minister must undertake “for a period of two years after leaving office (Parliamentary Secretaries for a period of 18 months), they will exercise care in considering offers of employment or providing services, and

will not have business meetings with Government representatives, in relation to their official dealings as a Minister during their last two years in office”. Queensland ministers must also undertake that “for a period of two years after leaving office, they will not undertake lobbying activities (as set out in the *Integrity Act 2009* (Qld)) in relation to their official dealings as a Minister in their last two years in office”.

In both the Commonwealth and Victorian Codes, ministers are required to undertake that “for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, Parliament or public service on any matters on which they have had official dealings as Ministers in their last eighteen months of office”. The Commonwealth Code also makes reference to the defence force. In addition to this, the Commonwealth Code also requires ministers to undertake on leaving office that they will not “take advantage of information to which they have had access as a Minister, where that information is not generally available to the public”.

The South Australia Code is the only one to require a written undertaking by a minister within 14 days of taking up office that they will not take up employment with, accept a directorship of or act as a consultant to any company, business or organisation for a two-year period after ceasing to be a minister:

- a. “with which they had official dealings as Minister in their last 12 months in office; and
- b. which:
  - is in or in the process of negotiating a contractual relationship with the Government; or
  - is in receipt of subsidies or benefits from the Government not received by a section of the community or the public; or
  - has a government entity as a shareholder; or

<sup>98</sup> This does not apply to statutory appointments or any information a minister has of another department which is not confidential.



- is in receipt of government loans, guarantees or other forms of capital assistance; or
- engages in conduct directly inconsistent with the policies and activities of the Minister,

without the prior written consent of the Commissioner for the Public Employment in consultation with the Premier of the day”.<sup>99</sup>

Consent may be withheld where the Commissioner may, after consultation with the Premier, decide that the appointment may lead to public concern that the decisions and statements made by the minister whilst in office were influenced by the prospect of future employment or that the new employer could make improper use of official information to which the minister has access. Additionally, the Commissioner may “recommend that the former Minister stand aside from participating in certain activities of the employer for a two year period”.

### **Guidance provided in the code**

In relation to the first undertaking under the Queensland Code, ministers are reminded that unlawful disclosure of confidential information, including Cabinet-in-Confidence information, may constitute a criminal offence. Ministers are also reminded that the second and third undertakings do apply to Government appointments,<sup>100</sup> advocacy or dealings on behalf of not-for-profit entities,<sup>101</sup> or personal, social or other contact generally available to members of the public. Lastly, ministers are informed that if there is any doubt regarding compliance with the Code’s requirements, the Premier may seek the advice of the Integrity Commissioner.

The only guidance provided in the New South Wales Code in relation to this principle is the reminder that requirements set out in this part of the Code are in addition to any requirement that applies to them as a member of parliament.

Under the Australian Capital Territory Code, where a minister intends to leave the Government in order to accept an offer of employment received, the minister must immediately notify their acceptance to the Chief Minister (or in the case of the Chief Minister, to Cabinet). The Chief Minister (or Cabinet) has the discretion to alter “Ministerial arrangements in light of any offer accepted”. Upon leaving office, ministers are reminded that confidential information gain during office must not be used and that care should be exercised to ensure preferential treatment for the new employer or business is not obtained by use of contacts and personal influence by the former minister. Ministers are also reminded of this last point in the Western Australian Code of Conduct.

No additional guidance is provided under the Victorian Code. While the Commonwealth Code reiterates that minister “shall ensure that their personal conduct is consistent with the dignity, reputation and integrity of the Parliament”.

<sup>99</sup> This restriction does not apply to unpaid appointments in non-commercial organisations or “appointments in the gift of the Government”.

<sup>100</sup> e.g. board memberships.

<sup>101</sup> e.g. engagements with charity organisations and churches.



## RECOMMENDATIONS

1. Post ministerial employment is a provision that needs to be included in the Ministerial Code and is not required in the Members of Parliament Code. This need arises as a result of the portfolio responsibilities of ministers.
2. The new code should contain a principle on post-ministerial employment and should address the following elements:
  - a. that, upon leaving office, a minister must undertake that for a period of two years, they will not take up any employment with, accept a directorship of, or act as a consultant to any company, business or organisation with which they have had official dealings as a minister in their last 12 months in office; and
  - b. that, on leaving office, a minister must undertake to not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for the private advantage or benefit of themselves or another person or persons.
3. The new code should use words or words of a similar effect as suggested in the model draft code set out at Appendix Two. In particular, the new code should avoid detailed descriptions of terms and procedures as seen in the Australian Capital Territory and New South Wales Codes. Rather, plain English and simple and concise statements should be used, as seen in the Commonwealth and Victoria Codes.
4. Guidance provided on post-ministerial employment should:
  - a. outline the procedures for giving an undertaking on post-ministerial employment, for how it is to be taken, to whom the undertaking is to be made, and when;
  - b. refer to any relevant policies or guidelines on post-ministerial employment;
  - c. specify what type of companies, businesses or organisations the section extends to. Refer to the South Australian and Australian Capital Territory code;
  - d. note whether advice or permission needs to be sought from a third party before accepting employment offers;
  - e. note that the undertaking in relation to confidential information does not apply to statutory appointments. Further, that it does not apply to any information a minister has about another department which is not confidential;
  - f. reiterate that unlawful disclosure of confidential information, including Cabinet-in-Confidence information, may constitute a criminal offence;
  - g. reiterate that care be exercised in any new employment to ensure preferential treatment for the new employer or business is not obtained by use of contacts and personal influence by the former minister;
  - h. reiterate that, if in doubt, ministers seek the advice of the Parliamentary Standards Commissioner; and
  - i. if enforcement is not addressed in the preamble/introduction of the Code, outline what the consequences are for non-compliance with this section.
5. In view of the nature of submissions made to the Joint Select Committee on Ethical Conduct in 2009 and because post ministerial employment is an issue that impacts significantly on public perceptions of integrity in Government, it is recommended that this provision be applied stringently and that the time period for which this provision applies be two years.

## **IMPROPER ADVANTAGE**

The principle of improper advantage is addressed in every jurisdiction that has a code of conduct for ministers.

### **Maintaining confidentiality**

The Queensland and South Australian Codes stress that Cabinet proceedings are confidential and in Queensland, not to be disclosed without the Premier's consent. Queensland also cautions against disclosing confidential information or Government information likely to injure the public interest. In Western Australia, "Ministers will maintain the confidentiality of information committed to their secrecy in the Executive Council, in Cabinet or otherwise in accordance with their duties". Further, a minister will maintain the confidentiality of information acquired in office upon resignation, retirement or dismissal. The New South Wales Code states that "Ministers will uphold their oath of secrecy as Executive Councillors and will maintain the confidentiality of information committed to their secrecy in the Executive Council or in Cabinet". Additionally, "in conformity with their Executive Councillor's oath and the requirement of confidentiality of Cabinet proceedings, Ministers will make no unauthorised use or disclosure of information committed to their secrecy".

Under the Australian Capital Territory Code, ministers "will maintain the confidentiality of information received in confidence, in Cabinet or otherwise in accordance with their duties". The Code not only refers to a minister's obligation to maintain the confidentiality of Cabinet and, to protect the security of, Government documents, it also states that ministers must ensure that their staff preserve the confidentiality of Cabinet and protect the security of Government documents. As with the Western Australian Code, the Australian Capital Territory Code also requires ministers to maintain the confidentiality of information acquired in office upon resignation, retirement or dismissal.

## **Improper use of information**

The Commonwealth and Victorian Codes of Conduct both recognise that a minister's public life may encroach on their private life. Despite this, both codes stress that it is critical that ministers do not use public office for private purposes. In particular, ministers must not use any information they gain in the course of their official duties, including information gained in the course of Cabinet discussions under the Commonwealth Code, for personal advantage or the benefit of any other person. In Victoria, this is extended to include personal benefits for any individual, enterprise or group outside their status as a member of the public or a section of the public.

The Australian Capital Territory Code says that "no Minister will use information obtain in the course of official duties to gain a direct or indirect financial advantage for himself or herself, or any other person". The South Australian and New South Wales are similarly worded.

New South Wales takes this requirement further by stating a minister shall not:

- "communicate such information to any other person with a view to the private advantage of that other or of any third person unless that communication is authorised by law; and
- make investments or enter into dealings in which the Minister might reasonably be thought to have, by virtue of office, access to relevant information not generally available to other persons".

Lastly, as with the Western Australian and Australian Capital Territory Codes, the New South Wales Code requires ministers on resignation or retirement to maintain the secrecy of information acquired in office which could not be properly used or disclosed if the minister had remained in the office.

## Undertakings

South Australia, Western Australia and Queensland are the only jurisdictions to require an undertaking from their ministers in relation to this principle.

Under the South Australian Code, ministers are required within 14 days of taking up office to provide a written undertaking to the Premier (or to the Cabinet if the Premier) that they will not disclose to any person any information to which they had access to as a minister which is not publicly available after leaving office. In addition to this, ministers must give an undertaking to not use any confidential information to obtain a personal advantage or benefit not enjoyed by the general public, after leaving office.

In the Western Australian and Queensland Codes, ministers “shall undertake not to use information obtained in the course of official duties to gain for themselves or any other person a direct or indirect financial advantage”. Queensland extends this to during and after their term of office. Further, whilst no undertaking is required, ministers will not solicit or accept any benefit, for themselves or other persons, in respect of the exercise of their discretion.

## Improper use of position

The Australian Capital Territory also refers to improper use of position. Ministers need to ensure that their official power or position is not used improperly for personal advantage. In particular, a minister must not knowingly use their “position, or the information gained as a result of that position, for the improper gain of the Minister, the Minister’s close relatives or any other person”.

In relation to the employment of family members, the South Australian Code states that “Ministers should not exercise the influence obtained from their public office, or use official information, to gain any improper benefit for themselves or another”.

A minister’s spouse, domestic partner and children can only be appointed to a position in an agency within the minister’s own portfolio if the appointment is first approved by the Premier or Cabinet.

## Collective responsibility

Reference is made to collective responsibility in the Queensland, South Australian, Australian Capital Territory and Western Australian Codes: that each minister is responsible, along with all other ministers, for the decisions of Cabinet. In the Queensland, Australian Capital Territory and South Australian Codes, ministers are informed that if they are unable to publicly support a Cabinet decision, the proper course is to resign.

## Breaches

South Australia has the only code to deal with breaches for the improper use of information for advantage. Under the Code a minister who deliberately or recklessly breaches Cabinet confidentiality should resign. The Premier may ask the minister to resign.

## Guidance provided within the Code

Under the South Australian Code, ministers are not prevented from using general skills and knowledge acquired by them in the course of and during their period of office, nor are they required to keep confidential any information required to be disclosed by law or that is in the public domain.

However, under the Western Australian, South Australian and Australian Capital Territory Codes, ministers must scrupulously avoid investments and transactions involving confidential information they have acquired as a minister and which may result in unreasonable or improper (in Western Australia and South Australia) or greater (in the Australian Capital Territory) advantage being gained which is not available to the public.

The Australian Capital Territory Code also refers to ministers having regard to their obligations under privacy legislation in regard to the use of personal details of individuals.

The South Australian Code also stresses that the wrongful disclosure of sensitive information, and even the appearance of conflict between a minister's private interests and the use of sensitive information, may bring the individual minister or the Government into disrepute. Further, it stresses that it is very important for ministers to maintain strict confidentiality of information and "take care not to use special knowledge they have gained in such a way as to give even the appearance of benefiting or avoiding loss to their private financial interests".

In the Queensland Code, an example is provided in Attachment 1 (example 4: Non-pecuniary Interests) to illustrate how confidential information might be used to gain an improper advantage.

## RECOMMENDATIONS

1. The new code should contain a principle on improper advantage and should specify:
  - a. that a minister, upon assuming office, must undertake to not use their position improperly to gain a direct or indirect personal advantage for themselves or any other person or entity not enjoyed by the general public;
  - b. that a minister must maintain the appropriate confidentiality of information received in the official course of their duties, in Cabinet or otherwise, during their appointment and upon resignation, retirement or dismissal from office;
  - c. that a minister, on assuming office, must undertake not to use any information obtained in the course of their official
- d. that a minister must not appoint their spouse, domestic partner or close relative to a position in their ministerial or electorate office.
2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Two. In particular, the new code should avoid legalistic descriptions of terms and procedures as seen in the New South Wales Code. It is recommended that plain English and simple and concise statements should be used, as seen in the Western Australian Code;
3. The guidance provided on improper advantage should:
  - a. outline the procedures for giving an undertaking on improper advantage, for how it is to be taken, to whom the undertaking is made, and when;
  - b. refer to any relevant policies and guidelines regarding the management and use of confidential information and the proper use of official powers;
  - c. define any relevant terms, e.g. does retirement include loss of a minister's seat in parliament;
  - d. refer to any relevant laws and Standing Orders, including reference to privacy laws;
  - e. note any exceptions that apply to the disclosure of confidential information, e.g. authorised by law;
  - f. refer to any policies in relation to the employment of family members;

- g. reiterate that ministers must take care to maintain the strict confidentiality of information and to take care not to use special knowledge they have gained in such a way as to give them even the appearance of benefiting or avoiding loss to their private financial interests;
  - h. provide examples to illustrate improper use of confidential information and use of position; and
  - i. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section.
4. That the Code for Ministers include a specific provision that confidentiality of information is maintained. This is necessitated by the portfolio responsibilities of ministers and the access ministers have to Cabinet documents and deliberations.
  5. That ministers be required to make an undertaking that they will not use information obtained in the course of their official duties or their position improperly.

#### **IMPROPER USE OF PUBLIC RESOURCES**

All of the jurisdictions with codes of conduct for ministers contained the principle of proper use of public resources. The Queensland Code only refers to the proper use of public servants and not the use of other public resources.

#### **Appropriate use of public resources**

In Western Australia, ministers are required to make economical use of public resources provided to them as office holders and make every endeavour to prevent misuse of public resources by other persons. Similarly, in the Australian Capital Territory and South Australia “Ministers will be scrupulous in their use of public property, services and facilities, and will make every endeavour to

prevent misuse by other persons”. New South Wales requires that “Minister shall be scrupulous in their use of public property, services and facilities”. South Australia also states that the resources provided are for the effective conduct of public business and must not be wasted or used extravagantly but used economically at all times. Both the Commonwealth and Victoria are more prescriptive; requiring ministers to not subject such resources to wasteful or extravagant use, and that due economy is to be observed at all times. In particular, ministers must “be scrupulous in ensuring the legitimacy and accuracy of any claim for entitlement to ministerial, parliamentary or travel allowance”.

Further, ministers in the Commonwealth, Victoria and South Australia must regard the skills and abilities of public servants as a public resource to be utilised appropriately. Also in South Australia, “Ministers are expected to ensure that public servants are deployed for the maximum benefit of the people of South Australia and that their abilities are made available for the purposes of good government and public administration”. The Queensland Code also states the talents and abilities of public servants be maximally available to the public but makes no references to the proper use of public resources.

In the Australia Capital Territory ministers have an obligation to account to the Assembly fully and effectively for all the money they have “authorised to be spent, forgone, invested or borrowed on behalf of the Territory”. Further, they are individually accountable for the administration of their Departments and Agencies to the Assembly. In relation to publicly funded publicity, ministers need to ensure it is relevant to Government responsibilities and “is not party political in tone”.



South Australia is similar to the Australia Capital Territory in that there is an obligation on ministers “to account to Parliament fully and effectively for all monies they have authorized to be spent, invested or borrowed”. Further, “Ministers are obliged to give Parliament a full, accurate, and timely accounts of all public monies over which Parliament has given them authority”.

All jurisdictions, except Queensland, require that public resources are only to be used in connection with official duties and not for personal use, benefit or gain. The Commonwealth, Victorian and South Australian codes use the phrase “for the effective conduct of public business”. Further, in South Australia, ministers and their staff are to make all reasonable endeavour to avoid (including the appearance of) using governmental departmental offices for private or party political purposes. In New South Wales, ministers are to “avoid any action or situation which could create the impression that such are being used for their own or for any other person’s private benefit or gain”.

### **Guidance provided within the Code**

In relation to the appropriate use of public servants, the Commonwealth, Victorian and South Australian codes state that the political and other personal interests of public servants are only to be regarded by a minister if such interests pose a conflict of interest or gives rise to a breach to the established convention of public service neutrality. The Queensland Code words this slightly differently: “Ministers should employ the talents of public servants to their fullest, whatever the political preferences of those public servants may be, provided only that those public servants behave in accordance with the Westminster convention of public service neutrality”.

The Commonwealth Code also requires ministers to provide an honest and comprehensive account of the exercise of public office and the activities of the agencies within their portfolios in response to any bona fide and reasonable enquiry by a member of parliament or a parliamentary committee. Ministers are also reminded to comply with the relevant guidelines for the use of official residences — for example, no electoral fundraising activities are to take place within official residences.

The guidance provided in the Western Australian Code reminds ministers of their responsibilities under section 52 of the *Financial Management Act 2006*<sup>102</sup> and refers to Appendix A of the Code for guidelines on ministerial expenditure and use of public resources and Appendix B for guidelines for expenditure on official hospitality.

Additional guidance is provided in the Australian Capital Territory Code regarding the use of attractive and portable assets such as mobile phones, fax machines, palm pilots, etc. Ministers are reminded these assets need to be returned upon leaving office for their asset number to be checked off against the asset register. The Guidelines for the appropriate use of the Cab Charge Card provided to ministers is also referred to. Further, the guidance provided states ministers are to adhere to the guidelines issued by the Speaker in relation to the use of the facilities of the Legislative Assembly building and offices.

For ministers to provide full accounts to Parliament regarding the expenditure of public monies, the South Australian Code instructs Ministers to keep appropriate records and ensure all officers of their departments and agencies regularly account for the expenditure and allocation of resources under the officer’s control. The guidance provides an example of how to avoid creating the appearance of using public resources for a political party’s purpose.

<sup>102</sup>. Regarding “the financial management of services under the control of their portfolio agencies and for monitoring the functions of the accountable authorities of those agencies”.



A reference is also made to the use and oversight guidelines for ministerial credit cards.

## RECOMMENDATIONS

1. The new code should contain a principle on improper use of public resources and should address the following elements:
  - a. that ministers must not use public resources, or allow such resources to be used by others, for personal advantage or benefit;
  - b. that a minister must use and manage public resources in accordance with any rules or guidelines regarding the use of those resources;
  - c. the ministers must be scrupulous in ensuring the legitimacy and accuracy of any claim for payment of any ministerial, parliamentary or other allowance; and
  - d. that ministers must regard the skills and abilities of public servants as a public resource to be used appropriately.
2. Subject to further consultation, the new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Two. It is recommended that plain English and simple and concise statements should be used, as seen in the Commonwealth, Victorian and Australian Capital Territory Codes.
3. The guidance provided on improper use of resources should:
  - a. refer to any policies and guidelines on the proper use of public resources and on the use of official facilities and equipment;
  - b. refer to the relevant record keeping policies and procedures;
  - c. reiterate that ministers are obligated to provide Parliament with a full, frank and timely account of all public monies over which Parliament has given them authority;
  - d. reiterate that ministers are only to give regard to the political and other personal interests of public servants where it is reasonable to assume that such interests may pose a conflict of interest or constitute a breach to the established convention of public service neutrality;
  - e. note that public resources are to be used for official purposes only and that resources are not to be used for political purposes; and
  - f. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences for non-compliance with this section.
4. The Commission is of the view that it is appropriate to include a provision that ministers must not allow others to misuse public resources. This is necessary due to the departmental responsibilities of ministers.
5. The provision about public servants is important and the Commission recommends that this should be included to prevent potential misuse of the public service.

## MISLEADING STATEMENTS

The Commonwealth, Victoria, South Australia and the Australian Capital Territory Codes all contain the principle that ministers should not mislead Parliament.

In South Australia, a minister must ensure “they do not deliberately mislead the public or the Parliament on any matter of significance arising from their functions”. A minister bears the personal responsibility to “ensure that any inadvertent error or misconception in relation to a matter is corrected or clarified, as soon as possible and in a manner appropriate to the issues and interests involved”.

In the Commonwealth and Victorian Codes, “Ministers are expected to be honest in the conduct of public office and take all reasonable steps to ensure that they do not mislead the public or the Parliament”. Again, the minister bears the personal responsibility to ensure any error or misconception “is clarified and corrected, as soon as possible and in a manner appropriate to the issues and interests involved”.

In the Australian Capital Territory, a minister, in order to be answerable to the Assembly, needs “to ensure that they do not wilfully mislead the Assembly in respect of their Ministerial responsibilities”. A minister who misleads the Assembly will be asked to resign or be dismissed. To ensure that ministers do not mislead the Assembly, they must take reasonable steps to ensure “the factual content of statements they make in the Assembly are soundly based and that they correct any inadvertent error at the earliest opportunity”.

## RECOMMENDATIONS

1. The new code should contain a principle on misleading statements which should include:
  - a. that a minister must not intentionally or unintentionally mislead Parliament or the public in statements they make and ministers are obliged to correct the Parliamentary or the public record in a manner that is appropriate as soon as possible after any incorrect statement is made.

2. The new code should use words or words of a similar effect as used in the model draft code. It is recommended that plain English and simple and concise statements should be used, as seen in the Commonwealth and Victorian Codes.
3. Guidance provided on misleading statements should:
  - a. refer to any guidelines, procedures or policies in place on intentionally misleading Parliament or the public;
  - b. define what it means to “intentionally mislead” Parliament or the public;
  - c. outline the process to be followed if a misleading statement is made; and
  - d. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences for non-compliance with this section.

## COMPARATIVE ANALYSIS OF ADDITIONAL THEMES IDENTIFIED

### FAIRNESS AND RESPECT

The jurisdictions of the Commonwealth, Victoria and Queensland contain the principle of fairness. The Australian Capital Territory Code contains the principle of respect for persons. The South Australian Code addresses both.

#### Fairness

For the purpose of the Queensland, Commonwealth and Victorian Codes, “fairness” refers to procedural fairness. Ministers must “demonstrate that they have taken all reasonable steps to observe relevant standards of procedural fairness and good decision making applicable to decisions made by them in their official capacity”. In particular, under the

Commonwealth and Victorian Codes, a minister is required to ensure that official decisions made by them as a minister are “unaffected by bias or irrelevant consideration, such as considerations of private advantage or disadvantage”.

The South Australian Code does not refer directly to procedural fairness but implies the principle by stating “Ministers should not make an official decision without first giving due consideration to the merits of the matter at hand and the impact the decision is likely to have on the rights and interests of the people involved and the citizens of South Australia”. Similar to the Queensland, Commonwealth and Victorian Codes, ministers in South Australia must “use all reasonable endeavours to obtain all relevant information and facts before making a decision on a particular issue and should consult, as appropriate, in relation to the matter at issue”. Ministers are reminded that all decisions made in connection with their official duties should be in “the interests of advancing the interests of the citizens of South Australia”.

### **Respect for persons**

In the Australian Capital Territory, ministers must treat other members of the Legislative Assembly, other officials and members of the public honestly and fairly “with proper regard for their dignity, rights, entitlements, duties and obligations, and should at all times act responsively in the performance of their public duties”. In particular when making public references about individuals in the course of their duties, a minister is not to dishonestly or recklessly attack the reputation of any other person. The South Australian Code also states that a minister is not to “dishonestly or wantonly and recklessly attack the reputation of any other person” in the discharge of their public duties.

### **Guidance provided within the Code**

Under the Australian Capital Territory Code, where a defamation action is taken against a Minister, the Chief Minister and Cabinet (or just Cabinet in the case of the Chief Minister) are to be informed immediately. The decision as to whether the Territory will provide financial assistance to the minister is made in accordance with the *Government’s Guidelines for the Provision of Assistance to ACT Ministers and Members in Relation to Legal Proceedings*.

### **RECOMMENDATIONS**

1. The new code should contain principles of ‘fairness and respect’ and ‘respect for persons’ which should ensure:
  - a. that a minister must take all reasonable steps to observe relevant standards of procedural fairness in decisions made by them in their official capacity. It should be noted that such decisions are to be unaffected by bias or irrelevant considerations; and
  - b. that ministers are to treat everyone with respect, courtesy and in a fair and equitable manner without harassment, victimisation or discrimination.
2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Two. It is recommended that plain English and simple and concise statements should be used, as seen in the Commonwealth and Victorian Codes.
3. Guidance provided on ‘respect for persons’ should:
  - a. refer to any relevant policies and guidelines in relation to harassment and discrimination;
  - b. refer to and explain the requirements of procedural fairness; and

- c. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences for non-compliance with this section.
- 4. This principle should be included in the Minister's Code due as there is no separate Code of Race Ethics for ministers, while there is for members of parliament.

## LOBBYING

Lobbying is dealt with in the Commonwealth, Victorian, New South Wales and Western Australian Codes.<sup>103</sup>

The New South Wales Code states that ministers must comply with the New South Wales Government Lobbyist Code of Conduct.<sup>104</sup>

The Commonwealth Code also refers ministers to its Commonwealth Lobbying Code of Conduct (which is provided in Appendix A). Ministers are instructed to handle any dealings with lobbyists in accordance with the Lobbyist Code to avoid giving rise to a conflict of interest between their public duty and private interests. In the Victorian Code, ministers are instructed to handle their dealings in accordance with the principles of this Code.

In particular, for both the Commonwealth and Victoria, ministers must ensure that any lobbyists with whom they have dealings are properly registered. All instances of non-compliance must be reported. Ministers are also reminded of the undertaking they must give that for 18 months after ceasing to be minister, they will not lobby, advocate or have business meetings with members of government, parliament, public service or defence force personnel on any matter in which they had official dealings as minister in the last 18 months of being in office.

In Western Australia, ministers and parliamentary secretaries "must comply with the Contact with Lobbyist Code" and are not to permit lobbying by anyone who is not listed on the Government's Register of Lobbyists". A copy of the Contact with Lobbyists Code is provided in Appendix H.

## Guidance provided within the Code

The Commonwealth Code provides a brief outline of what the Commonwealth Lobbying Code of Conduct entails and refers ministers to a website for more information. The Code stresses the importance of establishing whose interests the lobbyist represents if acting on behalf of a third party to allow the minister to make an informed judgement about the outcome they seek. Further, ministers are informed that special care must be exercised where representation being made on behalf of a foreign government or agency of a foreign government as foreign policy or national security considerations may apply. In appropriate cases, the Minister for Foreign Affairs should be advised of representations received.

The Western Australian Code also refers ministers to the actual Lobbying Code for further details. The website for the Register of Lobbyists is provided.

## RECOMMENDATIONS

1. The new code should contain a principle on lobbying which should address the following element:
  - a. That, to avoid giving rise to a conflict of interest between their public duties and personal interests, ministers must handle any dealings with lobbyists in accordance with the Tasmanian Lobbyist Code of Conduct.
2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Two. It is recommended that plain English and simple and

<sup>103</sup> The jurisdictions of South Australia and Queensland have a separate Code of Conduct for Lobbyists which they do not refer to in the body of their Codes.

<sup>104</sup> The website where the code is located is also provided.

concise statements should be used, as seen in the New South Wales Code;

3. Guidance provided on lobbying should:
  - a. refer to the Lobbyist Code of Conduct for further detail and outline any key points of the Code;
  - b. note how to find the Lobbyist Code;
  - c. stress the importance of establishing *whose* interests the lobbyist represents if acting on behalf of a third party, to allow the minister to make an informed judgment about the outcome they seek; and
  - d. emphasise that special care should to be exercised where representations are being made on behalf of a foreign government or agency of a foreign government as foreign policy or national security considerations may apply.
4. This principle is specifically included in the Minister's Code due to the greater degree of risk surrounding interactions between ministers and lobbyists. This risk results from the decision-making responsibilities of ministers.

#### **ACTING IN THE PUBLIC INTEREST**

The Commonwealth, Victoria and New South Wales codes all refer to acting in the public interest.

The New South Wales Codes states that "Ministers will exercise their office honestly and in the public interest". This principle is also one of the overriding principles of the New South Wales Code.

The Commonwealth and Victorian Codes state that ministers "are expected to conduct all official business on the basis that they may be expected to demonstrate publicly that their actions and decisions in conducting public business were taken with the sole objective of advancing the public interest". This principle also forms part of the statement of values in both Codes.

#### **RECOMMENDATION**

1. The principle of 'acting in the public interest' not be included in the body of the new code but rather in the preamble or statement of commitment section as an overriding principle of the code and in guiding the ethical conduct of ministers.

#### **COMPLYING WITH RELEVANT CODES, LAWS AND DIRECTIONS**

New South Wales, the Australian Capital Territory, South Australia and Western Australia all refer to this principle. The Australian Capital Territory and Western Australia contain the principle of acting to the highest ethical standards.

Under the South Australian Code, a minister must ensure that in carrying out his or her duties "their conduct in office is, in fact and in appearance, in accordance with this Code of Conduct". Observance with the Code is promoted through leadership and example and ensuring that ministers comply with and uphold all applicable laws. Further, ministers must also comply with the relevant Standing Orders of Parliament (provided in Appendix 2) in parliamentary proceedings.

In the Australian Capital Territory, ministers must "uphold the law of the Australian Capital Territory and Australia, and will not be a party to their breach, evasion, or subversion". In particular, "Ministers will act with respect towards the institution of the Legislative Assembly" and ensure that their conduct, privately or professionally, does not bring the Assembly into disrepute or damage public confidence in the system of government. Further, a minister needs to ensure that their personal conduct does not adversely affect their ability, the ability of other members of the Legislative Assembly or other public official's ability to perform their official duties, "or adversely affect



public confidence in the integrity of the system of government or public sector management". Therefore, there is an obligation on ministers to inform the Chief Minister (or Cabinet, if the Chief Minister) if they are subject to any inquiry, investigation or criminal or civil proceedings.

The Australian Capital Territory Code as well as the New South Wales, Australian Capital Territory and Western Australian Codes state that the minister is responsible for ensuring that members of their staff are aware and comply with their relevant ethical obligations. The New South Wales, Australian Capital Territory and Western Australian Codes also requires staff members of ministers to make such disclosure or divestment of personal interest as is appropriate regarding the minister's portfolio.<sup>105</sup> The Western Australian Code also stresses that ministers have a high standing in the community and should lead by example by "striving to perform their duties to the highest ethical standards". Therefore, ministers "are to act with integrity in the performance of official duties, and are to be scrupulous in the use of official information, equipment and facilities.

### Guidance provided within the Code

The Western Australian Code also refers to and provides some information on the Corruption and Crime Commission. Ministers are referred to the Corruption and Crime Commission website for detailed guidelines on *Dealing with Misconduct in the Public Sector*.

Guidance under the Australian Capital Territory Code also reminds ministers to ensure that their staff members are aware of their obligation to support the minister's compliance with the Code.

### RECOMMENDATION

1. That, because ministers are already required to comply with the law, it is not appropriate to portray 'complying with relevant codes, laws and directions' as a principle in the new code as codes of conduct are about ethical conduct not legal compliance. Rather, the Commission recommends that ministers are reminded of their legal obligation to comply with the law in the preamble to the new code.

### INTERACTION WITH PUBLIC SERVANTS

Only the Australian Capital Territory, Western Australian, the Commonwealth, Victoria and South Australian Codes separately address ministerial interactions with public servants.

In the Australian Capital Territory Code, ministers are instructed to assume that public servants will comply with the ethical obligations placed on them under the *Public Sector Management Act 1994* (ACT) whilst acting in accordance with the Westminster convention of public service neutrality. Ministers are also instructed not to "ask public servants to engage in activities that are contrary to the principles and ethical obligations imposed on public servants by the Act or that may call into question their political impartiality".

Where a minister has reason to believe a public servant has departed from their ethical obligations, the matter is to be raised with the relevant Chief Executive (in the case of the Chief Executive, the Chief Executive of the Chief Minister's Department). If it is a public servant in another minister's portfolio, the matter is to be raised with them.

The Western Australian Code states that a "Ministers' obligation in relation to the establishment of proper relations between Ministerial officers and departments and agencies are set out in section 74 of the *Public Sector Management Act 1994*". No further guidance is provided.

<sup>105</sup> The Western Australia and Australian Capital Territory Codes also state that 'other action' may be required as deemed appropriate by the Minister or the Premier/ Chief Minister respectively.



Both the Commonwealth and Victorian Codes specify that a minister “must not encourage or induce other public officials, including public servants, by their decisions, directions or conduct in office to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity”. Further, there is an expectation on ministers to put in place reasonable measures within their areas of responsibility to discourage and prevent corrupt conduct by officials.

In South Australia, not only are ministers responsible for ensuring that their own personal conduct is consistent with the dignity, reputation and integrity of Parliament but they are also responsible to Parliament for the actions of staff within their portfolio. As with the Commonwealth and Victorian Codes, the South Australian Code requires ministers to “ensure that their decisions, directions and conduct in office do not encourage or induce other public officials, including public servants, to breach the law, or fail to comply with the relevant code of ethical conduct applicable to them in their official capacity”. Again, ministers are to implement reasonable measures to prevent and discourage corrupt conduct by officials within their portfolios.

## RECOMMENDATIONS

1. The new code should contain a principle on ‘interacting with public servants’ and should address the following element:
  - a. that ministers must not encourage or induce other public officials, including public servants, by their decisions, directions or conduct in office to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity.
2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Two. It is recommended that plain English and simple and

concise statements should be used, as seen in the Commonwealth and Victorian Codes.

3. That this principle be included as a separate element in the new ministerial code due to the important relationships between ministers and public servants.

## CARETAKER PROVISIONS

The Western Australian, Australian Capital Territory, Queensland and South Australian Codes provide details of the caretaker provisions and a minister’s responsibility under them. Under the Western Australian Code the provisions generally adopted are:

- “significant appointments are not made;
- major policy decisions are not taken which would be likely to commit an incoming government (including the implementation of new policies or approval of major projects within government programs);
- no commitments are made to major contracts or undertakings;
- Members of Parliament do not undertake air travel at public expense for electioneering purposes;
- electioneering is not undertaken through government advertising, publications or electronic communications;
- public sector officers do not use public resources or their positions to support party political activities”.

The Australian Capital Territory and Queensland Codes just refer to the Government not:

- making any new significant appointments;
- entering into new major contracts or undertakings that would bind an incoming Government; or
- embarking on any new policy initiatives that would bind an incoming Government;

unless it is a matter of urgency.

In the Australian Capital Territory Code, where it is not possible not to defer a matter, the Government should consult with the Opposition. Ministers are referred to and reminded to adhere to the Guidelines on Arrangements to Apply to the Pre- and Post-Election Period.

In the South Australian Code, ministers are required “to accept certain caretaker conventions during the period leading up to an election”. Ministers are referred to separate guidance on the Caretaker Conventions available from the Premier.

#### RECOMMENDATION

1. The Commission recommends that a principle dealing with ‘caretaker provisions’ not be included in the new code as it relates to a democratic process rather than an ethical principle.

#### PRINCIPLES EXCLUSIVE TO PARTICULAR JURISDICTIONS

The following principles were exclusive to various jurisdictions. The Western Australian Code had one additional principle: conformity with the Westminster principles and respect for democratic institutions and processes, rights and freedoms and the principles of good governance. The Australian Capital Territory Code also contains only one additional principle: exercise of due diligence, attention and care. The New South Wales Code contains one additional principle of being frank, transparent, honest and impartial in official dealings. Finally, the South Australian Code contains one additional principle: accountability.

#### WESTERN AUSTRALIA

##### CONFORMING WITH WESTMINSTER PRINCIPLES, RESPECTING DEMOCRATIC INSTITUTIONS AND PROCESSES AND THE PRINCIPLES OF GOOD GOVERNANCE

The Western Australian Code reminds ministers that under a Westminster system of government, ministers have both individual and collective responsibilities. Importantly, that a minister’s has a paramount responsibility to act as a trustee of the public interest in performing their functions as ministers and are answerable to parliament and through the parliament to the people of Western Australia. To ensure this, ministers should be as open as possible and give reasons for their decisions and actions.

#### RECOMMENDATION

1. The Commission recommends that a principle dealing with ‘conforming with Westminster principles, respecting democratic institutions and processes and principles of good governance’ not be included in the new code as it relates to democratic principles and processes and not to the ethical conduct or standards of ministers. Instead it should be referred to in the preamble to the code.

## AUSTRALIAN CAPITAL TERRITORY

### **EXERCISING DUE DILIGENCE, CARE AND ATTENTION**

The Australian Capital Territory's Code states "Ministers should exercise due diligence, care and attention, and at all times seek to achieve the highest standards practicable in relation to their duties and responsibilities in their official capacity as a Government Minister". No additional guidance is provided on this matter.

### **RECOMMENDATION**

1. The Commission recommends that a principle dealing with 'exercising due diligence, care and attention' not be included in the body of the new code but rather in the preamble or statement of commitment section as an overriding principle of the code and in guiding the ethical conduct of Ministers.

## NEW SOUTH WALES

### **BEING FRANK, HONEST, TRANSPARENT AND IMPARTIAL IN OFFICIAL DEALINGS**

Under the New South Wales Code ministers must "be frank and honest in official dealings with colleagues". This is also an overriding principle of the Code. No reference is made to official dealings with the public.

### **RECOMMENDATION**

1. That a principle dealing with 'honesty, transparency and impartiality in official dealings' not be included in the body of the new code but rather in the preamble or statement of commitment section as an overriding principle of the code and in guiding the ethical conduct of ministers.

## SOUTH AUSTRALIA

### **ACCOUNTABILITY**

Ministers "must provide information to the Parliament when requested to do so". Ministers are obliged to be open and transparent.

### **Guidance provided within the Code**

Ministers are not required to disclose information which is prevented by law from being disclosed or when in it is not in the interests of the public to do so. Further, there is no obligation to disclose information that is "genuinely confidential in a commercial context" (their emphasis). A minister must fully cooperate with the Auditor-General in any enquiry made of a particular minister or ministers in general.

### **RECOMMENDATION**

1. That a principle dealing with 'accountability' not be included in the body of the new code but rather in the preamble or statement of commitment section as an overriding principle of the code and in guiding the ethical conduct of ministers.

## COMPARATIVE ANALYSIS OF SELECTED INTERNATIONAL MINISTERIAL CODES OF CONDUCT

The United Kingdom has produced a code of conduct for ministers. However, both Canada and New Zealand provide some guidance for ministerial ethical conduct in various documents. While these documents are not codes and therefore outside the scope of this analysis, for the sake of completeness a brief introductory paragraph has been provided on the guidance produced in each jurisdiction.

### UNITED KINGDOM

The Ministerial Code was first published in 1992 and was last reviewed in May 2010. The 25-page Code contains a foreword note by the Prime Minister and a table of contents. Annexed to the Code are the seven principles of public life as set out by the Committee on Standards in Public Life. The code focuses on various types of conflict of interest, while the guidance addresses how to manage them.

The Code's purpose is to provide guidance to ministers "on how they should act and arrange their affairs in order to uphold these standards". The Code applies to all ministers. However, the Code notes that it is the personal responsibility of all ministers to decide how to act and conduct themselves in light of the Code. Further, that "Ministers must also comply with the Codes of Conduct for their respective Houses and also any requirements placed on them by the Independent Parliamentary Standards Authority".

Additionally, certain provisions contained within relevant sections of the Code are outside the scope of this report and are therefore not included in the analysis. They are the stand-alone principle of collective responsibility, a ministers duty to

parliament to account for policies and decisions of their departments, disclosure to parliament except when not in the interest of the public, ministers requiring civil servants to give evidence before parliamentary committees, and that ministers must keep their roles as minister and constituency member separate.

The Guidance to the Code is quite detailed and addresses a number of sections that are outside the scope of this analysis unless otherwise indicated in this report. They are: the ministers and the government, ministers and appointments, ministers and their departments, ministers and civil servants, ministers' constituency and party interests, ministers, the presentation of policy and ministers and parliament and travel by ministers. It is largely an administrative document, outlining the procedures ministers are to follow in carrying out their duties and their roles and responsibilities within the Westminster system.

The Code states that "it is not the role of the Cabinet Secretary or other officials to enforce the Code". Where an allegation of a breach has been made, the Prime Minister if, after consulting the Cabinet Secretary, feels further investigation is warranted will refer the matter to the independent adviser on minister's interests.

### CANADA

Canada does not have a separate code of conduct for ministers. Rather guidance on the ethical behavior of ministers is provided within three documents: the *Conflict of Interest Act 2006 (CA)*, *Accountable Government: A Guide to Ministers and Ministers of State 2008* and *Policies and Guidelines for Ministers Office 2008*. Additionally, ministers that are also Members of the House of Commons are also subject to the Conflict of Interest Code for Members of the House of Commons.

The *Conflict of Interest Act 2006* establishes clear rules regarding conflicts of interest and post-employment for public office holders by assisting in minimising conflicts of interest and if they do arise, helping resolve them in the public's interest. The *Accountable Government: A Guide to Ministers and Ministers of State* outlines the standards of conduct expected of ministers, such as managing and resolving conflicts of interest, lobbyists and the proper use of public resources. However, for the most part it addresses administrative, procedural and institutional matters. The Guide complements the *Conflict of Interest Act 2006* (CA) and helps establish a rigorous conflict avoidance regime in Canada.

The *Policies and Guidelines for Ministers Office* is a detailed document which outlines the relevant policies and guidelines that apply to ministers and exempt ministerial staff. Conflicts of interest, gifts and hospitality, travel, and the proper use of public resources and facilities are addressed. The document provides a general oversight of the major policies and refers ministers to the various policies and guidelines for more information.

## NEW ZEALAND

New Zealand's ethical guidance for ministerial conduct is contained in its *Cabinet Manual* in Chapter 2 (Ministers of the Crown: Appointment and Role) and Chapter 8 (Official Information). As with Canada's *Accountable Government: A Guide to Ministers and Ministers of the State*, the *Cabinet Manual* predominately addresses administrative, procedural and institutional matters. The manual addresses the following issues: conduct of ministers, the declaration and registration of a minister's personal interests, conflicts of interest, gifts and benefits, outside employment, ministerial travel and the proper use of official information.

## COMPARATIVE ANALYSIS OF ISSUES ADDRESSED

**TABLE 4: ISSUES ADDRESSED WITHIN THE UNITED KINGDOM'S MINISTERIAL CODE OF CONDUCT.**

Jurisdiction	United Kingdom
Conflicts of Interest	✓
Declaration of Personal Interests	✓
Outside Employment	✓
Gifts and benefits	✓
Post Ministerial Employment	✗
Improper Advantage	✗
Improper Use of Public Resources	✓
Misleading Statements	✓

## CONFLICTS OF INTEREST

The Ministerial Code of Conduct for the United Kingdom states that in relation to conflicts of interest, "Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their public interests".

## Guidance provided within the Code

Ministers are informed in the guidance that it is the "personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the independent adviser on Minister's Interests".

To avoid conflicts of interest, ministers are advised to give up membership or chairmanship of a select committee or All Party Parliamentary Group on



taking office. Ministers are informed that there is no requirement preventing ministers from holding trade union membership but care must be taken to avoid any suggestion of undue influence. Additional guidance is provided on retaining membership.

In relation to constituency interests, the guidance provides that ministers must take particular care to avoid any possible conflict of interest when making a decision within their own department which might impact their own constituencies. Further, ministers should advise their permanent secretary, or if a junior minister, the Secretary of State, of the interest so their responsibilities can be arranged to avoid any conflicts of interest.

#### **DECLARATION OF PERSONAL INTERESTS**

While no direct reference is made to this principle within the actual body of the Code, it is referred to in the guidance provided.

#### **Guidance provided within the Code**

The guidance outlines the procedure to be followed by ministers in declaring their interests. They are informed that on appointment the minister must provide “their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict”. This list also covers a minister’s spouse or partners or close family member’s interest which might give rise to a conflict of interest. It is noted that it may be appropriate in some circumstances for the minister to meet with the independent adviser on minister’s interest to agree on any action that needs to be taken in managing any interests. Where a minister has required an interest they are required to declare that interest to any ministerial colleagues before discussing public business which impacts on that issue. The minister is also required to remain entirely detached from the deliberations regarding that interest.

In relation to financial interest, “Ministers must scrupulously avoid the danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests”. Ministers are required to either divest of the interest or take alternative steps to prevent a conflict of interest from arising. The decision to divest or take alternative steps must be guided by advice from the Permanent Secretary and the Independent adviser on Minister’s Interests. Reference is also made to the fact that a minister’s decisions “should not be influenced by the hope or expectation of future employment with a particular firm or organisation”.

#### **GIFTS AND BENEFITS**

The United Kingdom’s Ministerial Code states that “Ministers should not accept any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation”.

#### **Guidance provided within the Code**

The guidance states that this principle applies to gifts offered to the minister’s family members as well.

Ministers are advised that where there is any doubt regarding the acceptance of gifts, they should seek the advice of their Permanent Secretary and the Independent Adviser on Minister’s Interests. Guidance is then provided on when gifts need to be declared and the procedure for declaring gifts. In particular, ministers are informed that where a gift received is under £140 it may be retained by the minister, but gifts over this amount must be declared and become the property of the Government.

While it is not referred to in the actual body of the Code, guidance is provided on travel by ministers, including sponsored travel. The guidance states “offers of free travel should not normally be accepted”. The only exception to this is where the offer is made by an



overseas government and the offer does not create an undue obligation on the minister.

### **OUTSIDE EMPLOYMENT**

As with declaration of personal interest, the Ministerial Code in the United Kingdom makes no direct reference to this principle within the body of the Code but rather refers to it in the guidance provided.

Ministers are informed that upon taking office they “should give up any other public appointment they may hold”. If a minister wishes to retain the appointment they must seek the advice of their permanent secretary and the independent advisor on minister’s interests.

Further, ministers should not accept “invitations to act as patrons of, or otherwise offer support to, pressure groups, or organisations dependent in whole or in part on Government funding”. A minister may associate himself with a charity as long as they “take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as ministers to those to whom appeals are directed and for this reason they should not approach individuals or companies personally for this purpose”.

### **IMPROPER USE OF PUBLIC RESOURCES**

The Ministerial Code requires ministers to “not use government resources for Party political purposes”.

#### **Guidance provided within the Code**

Ministers are informed in the guidance that facilities are provided to enable them to carry out their official duties and are not to be used for party or constituency work as they are provided at the public’s expense. In particular “official facilities and resources may not be used for the dissemination of material which is essentially party political”.

### **MISLEADING STATEMENTS**

The United Kingdom’s Ministerial Code stresses that “it is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister”.

### **LOBBYING**

While no provision is included on this principle in the actual body of the Code, the guidance is provided and states “on leaving office, ministers will be prohibited from lobbying Government for two years”. Further, that they must seek advice from the Independent Advisory Committee on Business Appointments “about any appointments or employment they wish to take up within two years of leaving office”.

### **PUBLIC OFFICIALS**

In relation to a Minister’s interaction with public officials, the Ministerial Code states that “Ministers must uphold the political impartiality of the civil service and not ask civil servants to act in any way which would conflict with the *Civil Service Code as set out in the Constitutional Reform and Governance Act 2010*”.

#### **Guidance provided within the Code**

The guidance to the Ministerial Code indicates that “Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions, and should have regard to the *Principles of Scientific Advice to Government*”.

### **RECOMMENDATIONS**

1. Parliament/Government may wish to consider including a provision that requires ministers to

give up membership or chairmanship of a Select Committee or All Party Parliamentary Group on taking office. However, the Commission notes that this may not be appropriate in the Tasmanian context.

2. It is not appropriate to make a particular stipulation dealing with the provision of constituency interests, as seen in the conflict of interest provision in the United Kingdom Code of Conduct for Ministers, as this issue is already covered generally by the conflict of interest provision in the model draft code set out in Appendix Two.



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# CHAPTER 6:

## COMPARATIVE ANALYSIS OF MINISTERIAL STAFF CODES OF CONDUCT

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### INTRODUCTION

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The Commission is aware of three jurisdictions in which separate codes of conduct exist for ministerial staff – the jurisdictions of the Commonwealth, Victoria and Queensland.

### BACKGROUND

#### **Commonwealth Code of Conduct**

The Code of Conduct for Commonwealth ministerial staff was tabled in the Senate by Special Minister of State, Senator John Faulkner, on 26 June 2008 and is a stand-alone document that is just over a page in length. The Code of Conduct applies to ministerial staff, consultants and electorate officers employed under the *Members of Parliament (Staff) Act 1984*. Other than what is indicated below, the Code itself does not provide additional guidance on the 21 principles it contains. It has not been reviewed since it was implemented.

The Code's principles are prescriptive and each principle clearly states the type of conduct or compliance required by Commonwealth ministerial staff, e.g. "must divest themselves, or relinquish control, of interests in any private company or business and/or direct interest in any public company involved in the area of their Ministers' portfolio responsibilities".

In relation to breaches of the Code, "any sanctions imposed under this Code will be determined after consultation with the relevant Minister by the Chief of Staff of the Prime Minister, acting on advice from the Government Staffing Committee".

The main focus of the Code appears to be on establishing the appropriate working relationship between ministerial staff and Australian Public

Service employees, whilst recognising “the important and trusted role of Ministerial staff is providing advice and assistance to Ministers”<sup>106</sup>.

### **Victorian Code of Conduct**<sup>107</sup>

The Victorian Code of Conduct came into effect in September 2009. As with the Commonwealth Code, it is a brief, stand-alone document of one and half pages. The Code defines the term “Ministerial staff” as ministerial officers employed under section 98 of the *Public Administration Act 2004* (Vic). Further, the Code is incorporated into the contracts of ministerial staff and compliance with it is therefore a term of employment. Due to this, a breach of the Code may result in disciplinary action and possible termination of employment.

As with the Commonwealth Code, no additional guidance is provided regarding the 12 principles and it has not been reviewed since coming into effect. Each principle is prescriptive in a similar manner to the Commonwealth Code.

The main focus of the Victorian Code is on conflicts of interest, with six of the 12 principles dealing with these issues.

### **Queensland Code of Conduct**<sup>108</sup>

The Queensland Code of Conduct for Ministerial Staff was developed in 2002 and last reviewed on 22 October 2010. The Code was developed for all people employed within the ministerial office (excluding the minister) and applies to all officers (this includes voluntary workers and consultants who use public resources or have access to official information).

The Code itself it is a lengthy, detailed document spanning 23 pages. It contains a table of contents and five ethical obligations which in turn are broken down into a number of components. The majority of the 23 pages are devoted to providing detailed guidance on the various components of the five ethical obligations.

Breaches of the Code and the procedures to be followed are discussed at the front of the document in some detail. Options for dealing with breaches are canvassed. The breach may be dealt with under existing disciplinary provisions, include formal or informal employee counselling, and/or “the application of procedures for the management of diminished performance”. Serious breaches amounting to fraud, stealing or corruption will be referred to the Police and the Crime and Misconduct Commission (CMC). Allegations of official misconduct will also be referred to the CMC for investigation consistent with the *Crime and Misconduct Act 2001* (Qld).

Unlike the Commonwealth and Victorian Codes of Conduct, the Queensland Code is based on the principles set out in the *Public Sector Ethics Act 1994* (Qld). The five broad ethical obligations are aspirational in nature; it is the additional guidance provided that is prescriptive in nature, outlining the conduct and expectations required of ministerial staff members. To assist in illustrating several of the ethical issues discussed in the guidance, hypothetical examples are provided.

As with the Victorian Code of Conduct, the main focus of the Queensland Code of Conduct is on conflicts of interest in general and on more specific types of conflicts of interest, e.g. accepting hospitality, with 13 separation sections within the guidance covering conflicts of interest.

106. Australian Public Service Commission, Australian Government, 2008, “New Code of Conduct for Ministerial Staff”.

107. Note that with the change of Government in Victoria (November 2010) the Ministerial staff Code of Conduct is no longer current.

108. Note that due to the length of the Queensland Code of Conduct for Ministerial Staff only the principles or components of the principles that contain a strong ethical element have been analysed. For example, the guidance provided on how to challenge an official instruction is not analysed.

## COMPARATIVE ANALYSIS OF MAIN THEMES AND ISSUES ADDRESSED

**TABLE 5: ISSUES ADDRESSED WITHIN AUSTRALIAN MINISTERIAL STAFF CODES OF CONDUCT.**

Theme/Issue	Commonwealth	Victoria Ministerial Staff	Queensland Ministerial Staff
Conflicts of Interest	✓	✓	✓
Declaration/Divestment of Personal Interests	✓	✓	✓
Gifts and benefits	✓	✓	✓
Outside Employment	✓	✓	✓
Improper Advantage	✓	✓	✓
Improper Use of Public Resources	✓	✓	✓
Privacy	✓	✓	✗
Community Activities	✗	✓	✓
Probity In Tendering	✗	✓	✗
Dealing with Stakeholders	✓	✓	✓
Dealing with Departments	✓	✓	✓

**CONFLICTS OF INTEREST**

All three Codes contain a principle addressing conflicts of interest.

The wording of the principle in the Victorian and the Commonwealth Codes is similar, requiring ministerial staff to take reasonable steps to avoid any actual, potential or perceived (in Victoria) or real or apparent (in the Commonwealth) conflicts of interest in connection with their employment. Both jurisdictions require ministerial staff to disclose such interests to their employer. In particular, the Victorian Code requires that ministerial staff

provide a declaration upon commencement of their employment and every July thereafter. Additionally, under the Victorian Code ministerial staff “must take care to ensure that their private activities and involvement in community or political organisations do not give rise to any actual or perceived conflicts with their work”.

Under the Queensland Code, ministerial staff must ensure that their “personal, religious or professional interests do not improperly affect” their official capacity and that all conflicts be resolved in favour of the public interest.



## Guidance provided within the Code

Of the three jurisdictions that provide codes for ministerial staff, Queensland gives the most extensive guidance, particularly regarding conflicts of interest in general and specific types of conflicts of interest (e.g. gifts and entertainment). For the purpose of the Queensland Code, a conflict of interest arises in situations where a ministerial staff officer has a private or personal interest (pecuniary or otherwise) which is sufficient to influence or appear to influence the independent exercise of their official duties. The Code provides guidance on the types of conflicts addressed and handled by the Code<sup>109</sup> and emphasises that any conflict of interest that constitutes a criminal offence<sup>110</sup> will be dealt with appropriately. Hypothetical examples are provided to illustrate the differences between a real, apparent and potential conflict of interest. The section on conflicts of interest in general concludes by stating that in the course of their duties, staff “should not give preference to any person, organisation, or interest as a result of any private association with that person, organisation or interest”. It further states that their actions, conduct and relationships should not raise concerns about their willingness and ability to:

- serve the government of the day, through their minister;
- “use the powers, influence, resources and information available to their official position properly”;
- “maintain proper confidentiality of official information”; and
- “refuse to use, or avoid using, the powers or influence of public office, official resources, or official information, for personal or other improper advantage”.

Guidance is also provided under the Queensland Ministerial Staff’s Code on how to deal with conflicts of interest. Ministerial staffers are informed that, on becoming aware of a real or perceived conflict of interest, they must immediately approach a senior staff member or the Minister and disclose and explain the real or perceived conflict of interests. The Minister or senior staff member will then determine what action needs to be taken to resolve the conflict.

A hypothetical example is provided to illustrate this point. Finally, the Code concludes in regards to handling conflicts of interest that “Ministerial Services, Department of Premier and Cabinet, is able to provide assistance and should be contacted to assist in facilitating the placement of the officer into a suitable position either on a temporary or permanent basis” if so required.

## RECOMMENDATIONS

1. The new code should include the ‘conflict of interests’ principle and should address the following elements that:
  - a. ministerial staff are to take reasonable steps to avoid any actual, potential or perceived conflicts of interest, financial or non-financial, in connection with their employment;
  - b. ministerial staff are personally responsible for preventing conflicts of interests;
  - c. ministerial staff must take care to ensure that their private activities and involvement in political and community organisations do not give rise to any actual or perceived conflicts of interest; and
  - d. all conflicts are to be resolved promptly in favour of the public interest.

109. Gifts and entertainment, outside employment, future employment and relatives and friends.

110. Bribery, influence peddling, improper use of official information and insider trading with official financial transactions.

2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Three. In particular, the new code should avoid overly detailed descriptions of procedures as seen in Queensland ministerial staff code. It is recommended that plain English and simple and concise statements should be used as seen in the Commonwealth and Victorian ministerial staff codes.

3. The guidance provided on conflict of interest should:
- a. define the term, “Conflict of interest”;
  - b. discuss the differences between actual, perceived and potential conflicts of interest and where and how they might arise. It may be beneficial to provide some examples of perceived and potential conflicts of interest as well as noting which interests to which the principle extends, e.g. financial *and other* interests;
  - c. note that a conflict of interest may arise even when a ministerial member of staff is not trying to further their own interests but that of their family or of another person;
  - d. outline the procedure for declaring, managing and recording conflicts of interest, e.g. that conflicts are to be managed on a continuing and ad hoc basis;
  - e. outline what constitutes “reasonable” steps and list the ways a conflict of interest might be resolved;
  - f. refer to any relevant policies and procedures on conflicts of interest;
  - g. note that ministerial staff should seek advice from their supervisor or manager if in doubt in relation to whether a conflict of interest exists or on how to resolve it; and

- h. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section.

#### **DECLARATION/DIVESTMENT OF PERSONAL INTEREST**

All three Codes of Conduct for ministerial staff contain a principle addressing the declaration or divestment of personal interests.

Both Victoria and the Commonwealth have a simply stated principle. Victoria requires that on commencement of employment and each July thereafter, ministerial staff will declare their interests in a Declaration of Private Interests form. The Commonwealth’s principle is more direct and stricter, requiring ministerial staff to “divest themselves, or relinquish control, of interests in any private company or business and/or direct interest in any public company involved in the area of their Ministers’ portfolio responsibilities.

Similar to Victoria, the Queensland Ministerial Staff Code requires ministerial staff to “declare private interests where they might present a conflict of interests” with their public duties. However, unlike Victoria, Queensland requires ministerial staff to not only declare their interests for registration annually but also to make immediate ad hoc declarations, either in writing or orally, of emergent conflicts of interest as they arise, regardless of whether it is an actual, potential or apparent conflict of interest. The obligation to lodge a statement of pecuniary interest with their relevant minister annually is created in the *Ministerial Handbook*. The Code refers ministerial staff to the Handbook for further guidance on the statement.

## RECOMMENDATIONS

1. The new code should include the declaration of personal interest principle and should address the following element that:
  - a. ministerial staff must annually, and on a continuing ad hoc basis, declare their private interests to the Chief of Staff, Premier's Office.
  - f. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section or of non-compliance with the Act;
  - g. consider an optional recommendation to outline who is to have access to the Interests Register; and
  - h. consider an optional recommendation to outline the rationale behind the Interests Register.
2. The new code should use words or words of a similar effect, as suggested in the model draft code set out in Appendix Three. In particular, the new code should avoid detailed descriptions of terms and procedures as seen in the Queensland Code. Rather, plain English and simple and concise statements should be used as seen in the Victorian Code.
3. Guidance provided on declaring personal interests should:
  - a. refer to any relevant policies, directives or guidelines in relation to ministerial staff declaring their interests;
  - b. address the procedure to be followed when declaring an interest, the timeframes involved, who to make the declaration to, the form and content of the declaration, whose interests need to be disclosed and what the procedure is for change in an interest;
  - c. define any relevant terms, e.g. declarable interest, personal interest, pecuniary interest;
  - d. determine the procedure for making ad hoc disclosures, including when they are required;
  - e. note any restrictions that apply to acting in a matter if a ministerial staff member has a relevant interest in it;
  4. Divestment of interest as stipulated in the Commonwealth Code should not be included in the Tasmanian code.

## GIFTS AND BENEFITS

Gifts and benefits were addressed in all three codes, with more emphasis and guidance provided in the Queensland Code than in the Victorian or Commonwealth Codes.

Both the Victorian and Commonwealth Codes require ministerial staff to declare, in writing, to their minister all gifts and sponsored travel received in connection with their employment. The Commonwealth Code also specifies that all hospitality received also needs to be declared and that all declaration needs to be made within a reasonable time frame.

As with the principles of conflicts of interest and declaration/divestment of personal interests, the Queensland Code's actual principle for gifts and benefits is not as onerous as the Victorian and Commonwealth Code. Queensland merely requires ministerial staff to "refrain from seeking gifts and benefits for personal or private gain in connection with the performance of official duties".

### Guidance provided within the Code

While the Queensland Ministerial Staff Code principles on gifts and benefits are aspirational, the guidance provided in the Code narrows this principle down significantly. The guidance expressly states that ministerial staff should not accept any gift or benefit in any form, in connection with their official duties, except where:

- “the gift or benefit is of token or nominal value only; or
- the gift is offered when the employee retires or leaves the workplace, or on similar social occasions where a personal gift is customary; or
- the gift or benefit is to be treated as a reportable gift and retained by the department”.<sup>111</sup>

Further, the guidance in the Queensland Ministerial Staff Code provides that careful consideration needs to be given to the circumstances in which any gift or benefit is given, prior to accepting or retaining the gift or benefit. If the circumstances may give rise to an understanding by the donor or a reasonable observer that the ministerial staff may be under some form of obligation to the donor, the gift should not be accepted. Reference is made to provisions of the *Criminal Code 1985* (Qld) and the *Crime and Misconduct Act 2001* (Qld) regarding gifts that constitute criminal offences<sup>112</sup>.

Further, while hospitality is not directly referred to in the Queensland Ministerial Staff Code principle, it is implied that hospitality is a type of gift and benefit for the purposes of the principle. The guidance provided in the Queensland Code defines hospitality as “any ephemeral benefit offered to an officer, by any outside individual or organisation<sup>113</sup> in connection with the officer’s official position

(e.g. a cup of tea and a biscuit through to travel and accommodation or seats in a corporate box [to] a sporting fixture)”. As with gifts and benefits, the circumstances in which the hospitality is offered must be considered. Offers of hospitality can be accepted where it is appropriate and in the public interest<sup>114</sup> to do so. Hypothetical examples are provided, illustrating various situations where hospitality can and cannot be accepted. Finally, the guidance concludes with words of caution: when in doubt, err on the side of caution by seeking advice from the Minister, a senior staff member or colleagues, make a record of their assessment and if appropriate, pay for their own expenses.

### RECOMMENDATIONS

1. The new code should contain a principle on ‘gifts and benefits’ and should address the following elements that:
  - a. ministerial staff must not solicit, encourage or accept gifts, benefits or favours which may give the appearance of an attempt to improperly influence the ministerial staff in the exercise of his or her duties; and
  - b. ministerial staff must declare all gifts and benefits, including hospitality, received in connection with official duties, in accordance with relevant policies.
2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Three. In particular, the new code should avoid detailed descriptions of terms and procedures as seen in the Queensland Code. Rather, plain English and simple and concise statements should be used, as seen in the Commonwealth and Victorian Codes.

111. For additional information regarding the giving and receiving of gifts ministerial staff members are referred to the Ministerial Handbook.

112. Such as secret commissions and kickbacks.

113. Such as clients, contractors, lobbyist, professional groups or other government agencies.

114. In order to establish effective business relationships, exchange information, or gain operational intelligence to enhance the administration and effectiveness of the Minister’s Department.

3. The guidance provided on gifts and benefits should:

- a. refer to any relevant legislation, policies and guidelines relating to the receipt and giving of gifts and benefits, including hospitality. If applicable, refer to any policy on sponsored travel. A brief overview of the gifts and benefits and hospitality policy should be provided, e.g. outline the instances when and when not it is acceptable to accept gifts and benefits, token gifts as opposed to valuable gifts;
- b. determine to whom the principle extends, e.g. to the member of ministerial staff's family;
- c. note any exceptions to this principle;
- d. define any relevant terms, e.g. nominal value, token gift, hospitality, sponsored travel;
- e. outline the procedure to be followed when accepting and registering a gift, the timeframes involved, the form and content of the declaration, how to register the gift, and who to make the declaration to;
- f. note that if in any doubt as to whether a gift or benefit needs to be disclosed, the ministerial staff member is to seek advice from their supervisor or manager; and
- g. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section.

**OUTSIDE EMPLOYMENT**

Outside employment was addressed in every ministerial staff code of conduct. As with the principle of gifts and benefits, the Victorian and Commonwealth Codes contained more narrow principles, while the Queensland Code used the guidance it provided to narrow down the broad principle.

Under the Victorian and the Commonwealth Codes, ministerial staff must have no involvement with any outside employment or be involved in the daily work of any business or retain directorship of a company without written approval of their minister (in Commonwealth) or the Premier's Chief of Staff (in Victoria). The only real difference between the two principles is that the Victorian Code directly refers to "paid outside employment" whereas the Victorian Code, by its silence, encompasses both paid and unpaid outside employment. Neither code addresses post-separation employment. As with gifts and benefits, no additional guidance is provided on this principle.

In Queensland, ministerial staff members need to avoid, rather than cease involvement, concurrent outside employment or post-separation employment and only if it involves or is perceived to involve, a conflict of interest. In relation to post-separation employment, ministerial staff are required to undertake, for a period of 18 months upon leaving office, to "not have business meetings with Government representatives in relations to their official dealings as a ministerial staff member during their last 18 months in office". Ministerial staff are also required to undertake that, for two years after ceasing employment with the public sector, "they will not undertake lobbying activities in relation to their official dealings within their last two years in public sector employment". The Code's guidance also reiterates that in accordance with government policy on post separation employment, ministerial staff "are not to hold business meetings with the following former public officials:

- persons who have ceased to hold office as a Minister (within the last two years) on matters that they dealt with in their last two years in office;
- persons who have ceased to hold office as a Parliamentary Secretary (within the last 18 months) on matters which they dealt with in their last two years in office; and



- persons who have ceased employment as senior departmental staff or ministerial staff (within the last 18 months) on matters they dealt with in their last 18 months of public sector employment”.

## RECOMMENDATIONS

1. The new code should contain a principle on ‘outside employment’ and should address the following element that:
  - a. ministerial staff must not engage in any outside employment, retain directorship of a company or be involved in the daily work of any business without the written approval of the Chief of Staff of the Premier’s Office.
2. The new code should contain a principle on ‘post-ministerial staff employment’ and should address the following elements that:
  - a. ministerial staff must undertake, upon leaving office, that for a period of 18 months after ceasing to be a ministerial staff member, they will not have business meetings with public officials with whom they had official dealings as a ministerial staff member in their last 18 months in office; and
  - b. ministerial staff must undertake, upon leaving office, that for a period of two years after ceasing to be a ministerial staff member, they will not engage in lobbying activities relating to any matter in relation to which they had official dealings in their last two years in office.
3. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Three. It is recommended that plain English and simple and concise statements should be used, as seen in the Commonwealth and Victorian Codes.
4. Guidance provided on outside employment should:
  - a. refer to any rules, guidelines or policies which regulate outside employment by ministerial staff and post-separation employment;
  - b. note any exceptions that apply;
  - c. refer to any rules, guidelines or policies in relation to political participation by ministerial staff. It should be noted that if a ministerial staffer becomes a candidate at an election for election as a member of either House of State or Federal Parliament, he or she must resign their appointment on becoming such a candidate;
  - d. note the procedure to be followed when seeking approval for outside employment;
  - e. note the procedure to be followed if approval is given for outside employment and subsequently a conflict of interest arises between public duties and such outside employment; and
  - f. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section.
5. Guidance provided on outside employment should:
  - a. refer to any rules, guidelines or policies which regulate post-separation employment by ministerial staff;
  - b. note any exceptions that apply;
  - c. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section.
6. Due to the Tasmanian context, the Commission is of the view that stringent provisions



be applied in regards to post-separation employment and lobbyist activities, as adopted in the Queensland Ministerial staff Code rather than the Commonwealth and Victorian Codes.

### **IMPROPER ADVANTAGE**

All three jurisdictions cover the principle of improper advantage.

Ministerial staff are not to “make improper use of their position or access to information to gain or seek to gain a benefit or advantage for themselves or any other person” under both the Commonwealth and Victorian Codes.

In Queensland, ministerial staff must “safeguard official information and not disclose or use it improperly”. As with other principles under the Queensland Code, additional guidance is provided on this principle outlining the procedures ministerial staff should follow to comply with it. Essentially, ministerial staff “are not to use their influence with any person, to improperly obtain appointment, promotion, advancement, transfer, or any other advantage, either personally or on behalf of another, or to affect the proper outcome of any procedure established under legislation or government policy”. Moreover, when making decisions ministerial staff are not to take into account any attempt to influence their decision unless the involvement of the person seeking to exert influence is required or is consistent with any relevant government policy or legislation.

### **Guidance provided within the Code**

The Queensland Ministerial Staff Code also covers guidance on providing testimonials and references regarding selection and performance, in particular, how false and deliberately misleading testimonial and references are dishonest but can also constitute official misconduct and may amount to an abuse of office. Guidance is provided on the disclosure of official information and the private use of official

information. In particular, ministerial staff are informed that the use of confidential or privileged information gained as a ministerial staff member to further their own private pecuniary or other interests creates a conflict of interest and may constitute a criminal offence. This is demonstrated by a hypothetical example.

### **RECOMMENDATIONS**

1. The new code should contain a principle on improper advantage and should address the following elements that:
  - a. ministerial staff must not use their status, power or authority gained from their employment to improperly obtain appointment, promotion, advancement, transfer or any other advantage or benefit on behalf of themselves or another person or persons;
  - b. ministerial staff, during and after leaving office, must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their official duties or positions, for the advantage or benefit of themselves or another person or persons;
  - c. ministerial staff must not use their status, power or authority gained from their employment in order to gain, or seek to gain, a gift, benefit or advantage for themselves or for any other person; and
  - d. ministerial staff are not to misuse information or material acquired in or in connection with the performance of their official duties.
2. The new code should use words or words of a similar effect as suggested in the model draft code set out in Appendix Three. In particular, the new code should avoid detailed descriptions of terms and procedures as seen in

the Queensland. It is recommended that plain English and simple and concise statements should be used, as seen in the Commonwealth and Victorian codes.

3. Guidance provided on improper advantage should:

- a. refer to any policies or guidelines on the proper use of confidential and official information, including the disclosure of such information;
- b. distinguish that information can be misused regardless of whether the information is confidential or not or whether an advantage or benefit has been obtained;
- c. note that ministerial staff must carry out their duties objectively and without consideration of personal or financial advantage for themselves or another person or persons;
- d. define who is a public official – reference could be made to the definition contained in the *Integrity Commission Act 2009*;
- e. note any exceptions as to when it is appropriate to disclose confidential information, e.g. when required by law;
- f. refer to any policies relating to the employment of family members;
- g. reiterate that ministerial staff must not use their position to support particular issues or a political party during an election campaign. Further, that material from political parties and hot-to-vote material, whether produced by a political party or any other organisation, must not be displayed within the precincts of government buildings, or on other Crown property or vehicles (with the exception of party specific electorate offices or vehicles allocated to Members of Parliament);

- h. note the procedure to be followed in the event that a member of ministerial staff is offered compensation to perform a function or duty they are already paid to do, e.g. who do they report the matter to;
- i. refer to any relevant laws and regulations relating to bribery;
- j. reiterate that it is a privilege to receive confidential information which assists decision-making processes;
- k. stress that ministerial staff have a continuing obligation to keep confidential information acquired in the course of their official duties confidential and not to disclose such information for personal advantage or benefit for themselves or others; and
- l. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences of non-compliance with this section;

4. The terminology used by the Tasmanian Department of Premier and Cabinet in their Draft Ministerial and Electorate Staff Code of Conduct of “status, power or authority” be adopted in provisions relating to improper use of position.
5. The provisions of the code make it clear that failure to maintain confidentiality will constitute a breach of the code, regardless of whether or not a benefit is obtained. This is necessary due to the confidential nature of information accessible by ministerial staff.

## IMPROPER USE OF PUBLIC RESOURCES

The use of public resources is addressed in each of the three Codes.

Both the Commonwealth and Victorian Codes state that public resources must be used in a proper manner with due economy observed at all times. Further, that ministerial staff must be “scrupulous in ensuring the legitimacy and accuracy of any claims for entitlements”. The Commonwealth Code also states that the Commonwealth “resources are not to be subject to wasteful or extravagant use”.

Similar to the layout of some of its other principles, the Queensland Code has broken this principle into seven different components:

- “use or manage both human and material resources efficiently and effectively;
- seek to optimise program outcomes;
- conserve and safeguard public assets;
- implement corruption prevention strategies;
- budget honestly;
- not misuse agency equipment or vehicles; and
- respect the environment”.

### Guidance within the Code

The majority of the guidance provided in the Queensland Ministerial Staff Code focuses on defining public resources,<sup>115</sup> the appropriate use of public assets and resources,<sup>116</sup> and the necessity for all expenditure to be validated and authorised by an authorised, independent person. For guidance relating to financial matters associated with the Office and on how to avoid waste and extravagant expenditure of public resources, ministerial staff are referred to the *Ministerial Handbook* and the *Financial Administration and Audit Act 1977*.

## RECOMMENDATIONS

1. The new code should contain a principle on improper use of public resources and should address the following elements that:
  - a. ministerial staff must not use public resources, or allow such resources to be used by others, for personal advantage or benefit;
  - b. ministerial staff must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources; and
  - c. ministerial staff must be scrupulous in ensuring the legitimacy and accuracy of any claims they make on the public purse.
2. The new code should use words or words of a similar effect, as suggested in the model draft code set out in Appendix Three. It is recommended that plain English and simple and concise statements should be used, as in the Commonwealth and Victorian Codes.
3. The guidance provided on improper use of public resources should:
  - a. refer to and outline any applicable policies and guidelines relating to the proper use of public resources, including any procurement policies. It should be reiterated that ministerial staff must not use publicly funded resources to support particular issues or their private parties during the election campaign. Further, it should be stipulated that material from political parties and how-to-vote material, whether produced by a political party or any other organisation, must not be displayed within the precincts of government buildings, or on other Crown property or vehicles (with the exception of party specific electorate

<sup>115</sup>. As material resources, human skills and knowledge, intellectual property and official information. Further, that intangible assets (corporate learning, public support and positive staff morale and commitment) should be treated as valuable resources.

<sup>116</sup>. Including the use of government issued credit cards and the home, community and personal use of public assets and resources, e.g. resources should not be used for non-government or private use without appropriate prior permission.

offices or vehicles allocated to Members of Parliament);

- b. reiterate that ministerial staff must make economical use of the public resources which are made available to them to undertake their duties. Further, that public resources are not to be subject to wasteful or extravagant use, and due economy is to be observed at all times;
- c. refer ministerial staff to any relevant record keeping policies;
- d. refer to any policies and guidelines on the proper use of public resources;
- e. note that public resources are to be used for work-related purposes only; and
- f. stipulate that web pages and e-mail systems provided by agencies should not be used to publish or transmit political material;
- g. if enforcement is not addressed in the preamble/introduction of the Code, outline the consequences for non-compliance with this section.

- 4. That the explanation of the concepts explained in the Queensland Ministerial Code is better provided in the guidance to the Code rather than in the actual Code.

#### **DEALINGS WITH STAKEHOLDERS (RESPECT FOR PERSONS)**

Each of the three jurisdictions touched upon the principle of dealing with stakeholders (respect for persons) in various forms.

The Commonwealth and Victoria capture this principle by separating it into two components; respect for persons and the provision of information. In relation to respect for persons both codes stated that ministerial staff should treat with respect and courtesy all stakeholders and members of the public that they have contact

with in the course of their employment. Similarly, both codes stated in relation to the providing of information; that Ministerial staff must “not knowingly or intentionally provide false or misleading information in response to a request for information that is made for official purposes in connection with their employment”.

Under the Queensland Ministerial Staff Code this principle is referred to as “Respect for Persons”. The Code breaks the principle down even further than the Commonwealth and Victorian Codes by stating ministerial staff are expected to:

- “treat the public and other staff in a reasonable, courteous, equitable and fair manner;
- not harass or abuse clients or other staff;
- be timely in responding to clients and staff; and
- uphold public respect for [their] Minister, the Minister’s department and its mission”.

#### **Guidance provided within the Code**

Unlike other principles, little guidance is provided in the Queensland Ministerial Staff Code on this matter. Ministerial staff are instructed to treat their co-workers and clients “with dignity and respect and [to] be tolerant of the view[s] held by others which may differ from their own”. Further, ministerial staff are required to comply with relevant equal employment opportunity policies and preventing and resolving sexual harassment and discrimination and harassment policies and procedures.

## RECOMMENDATIONS

1. The new code should contain a principle on 'respect for persons' and should address the following element that:
  - a. ministerial staff are to treat everyone with respect, courtesy and in a fair and equitable manner without harassment, victimisation or discrimination.
2. The new code should contain a principle on 'misleading information' and should address the following element that:
  - a. ministerial staff must not knowingly provide false or misleading information in response to a request for information that is made for official purposes in connection with their employment. Ministerial staff must respond in a timely manner to such requests.
3. The new code should use words or words of a similar effect as suggested in the model draft code in Appendix Three. It is recommended that plain English and simple and concise statements should be used.
4. The guidance provided on improper use of public resources should:
  - a. refer to any relevant policies and guidelines in relation to harassment, discrimination and diversity. Any relevant policies, procedures and guidelines relating to customer service should also be referred to; and
  - b. if enforcement is not addressed in the preamble/introduction of the code, outline the consequences for non-compliance with this section;
5. The guidance provided on misleading statements should:
  - a. refer and outline the requirements of procedural fairness; and

- b. if enforcement is not addressed in the preamble/introduction of the code, outline the consequences for non-compliance with this section.

6. This principle is more detailed than in the Members of Parliament Code of Conduct due to the fact that there is no Code of Race Ethics for ministerial staff as there currently is for members of parliament.
7. The breakdown of the principles as seen in the Queensland Code should be addressed in the guidance to the code rather than within the actual code.

## DEALING WITH DEPARTMENTS

While every jurisdiction addresses this principle, the Commonwealth and Queensland Codes place more emphasis on this issue than on the Victorian Code.

The Victorian Code states that ministerial staff have a key role in facilitating "direct and effective communication between their Minister's Department and their Minister". This is achieved by respecting and following "the protocols established to guide these relationships and the prompt handling of paperwork and advice".

As with the principle of dealing with stakeholders, the Commonwealth has broken this principle into two components: facilitating communication, and ministerial staff contact with Public Service employees. The Commonwealth's wording in relation to facilitating communication is the same as that of the Victorian Code. In relation to ministerial staff contact with Public Service employees, the Commonwealth Code requires that ministerial staff:

- "not knowingly or intentionally encourage or induce a public official by their decisions, directions or conduct to breach the law or parliamentary obligations or fail to comply with an applicable code of ethical conduct;



- acknowledge that ministerial staff do not have the power to direct APS employees in their own right and that APS employees are not subject to their direction; and
- recognise that executive decisions are the preserve of Ministers and public servants and not ministerial staff acting in their own right.

On the other hand, the Queensland Code does not contain a principle on facilitating communications or on ministerial staff contact with public service employees. Instead, the Code requires ministerial staff to:

- “not distract officers from carrying out their duties;
- adhere to management principles and practices which foster the rights, dignity and well-being of employees; and
- acknowledge and encourage the contributions and aspirations of co-workers”.

### Guidance within the Code

Particular emphasis in the Queensland Ministerial Staff Code guidance is placed on ministerial contact with Queensland Public Service Employees. Ministerial staff “are not to direct, or attempt to direct, a public service employee” unless acting “under the express direction or expressly on behalf of a person with the authority to direct a public service employee” nor ask or direct a public service employee to take any action inconsistent with that employee’s duties and obligations as specified by legislation.

Unlike the Victorian and Commonwealth Codes, the Queensland Code also provides guidance regarding managerial obligations for ministerial staff who manage or supervise other staff.

### RECOMMENDATIONS

1. The new code should contain a principle on ‘dealing with departments’ and should address the following elements that:
  - a. ministerial staff do not knowingly or intentionally encourage or induce a public official by their decisions, directions or conduct to breach the law or parliamentary obligations or fail to comply with an applicable code of ethical conduct; and
  - b. ministerial staff must acknowledge that they do not have the power to direct public service employees in their own right and that those public service employees are not subject to their direction.
2. The new code should use words or words of a similar effect as suggested in the model draft code in Appendix Three. It is recommended that plain English and simple and concise statements should be used, as seen in the Commonwealth and Victorian Codes.
3. The guidance provided on dealing with departments should:
  - a. refer to any relevant policies and guidelines in relation to dealing with departments and with public servants;
  - b. refer to the State Service Principles and Code of Conduct. It should also reiterate that in their dealings with the State Service, ministerial staff should act in a way which recognises and upholds the political impartiality of State Servants and does not conflict with the State Service Principles and Code of Conduct;
  - c. refer to any policies and guidelines on facilitating communication between ministers and departments;



- d. reiterate that executive decisions are the preserve of ministers and public servants and not ministerial staff acting in their own right;
  - e. outline what actions ministerial staff may take on behalf of their Ministers, e.g. convey to State Servants their Minister's views and work priorities, including on issues of presentation and form;
  - f. note the actions a ministerial staff must *not* take, e.g. suppress or supplant the advice being prepared for Ministers by State Servants, although they may comment on such advice;
  - g. note the appropriate interaction between ministerial staff and Statutory Office holders; and
  - h. if enforcement is not addressed in the preamble/introduction of the code, outline the consequences of non-compliance with this section.
4. This provision should be included in the code, particularly in view of the lack of clarity identified regarding the role of ministerial staff in a number of high profile Australian incidents.

#### **COMPLYING WITH RELEVANT CODES, LAWS AND DIRECTIONS**

The final principle which all three jurisdictions address is the obligation of ministerial staff to familiarise themselves with and comply with all relevant codes, laws and reasonable directions.

Both the Commonwealth and the Victorian Codes state that ministerial staff must “comply with any authorised and reasonable direction received in the course of their employment”. The Victorian Code also requires ministerial staff to read the *Code of Conduct for Victorian Public Sector employees* and apply the principles and values in their work as

appropriate. In addition to this, the Commonwealth Code also requires ministerial staff to:

- “make themselves aware of the Values and Code of Conduct which bind Australian Public Service (APS) and Parliamentary Service employees;
- familiarise themselves with this code of conduct upon the commencement of their employment;
- comply with all applicable Australian law; and
- comply with all applicable codes of conduct, including the lobbying Code of Conduct”.

The Queensland Code also breaks this principle down, requiring ministerial staff to:

- “comply with all reasonable, lawful instructions relating to [their] work;
- exercise [their] role lawfully; and
- disclose fraud, corruption and maladministration to the relevant authority”.

#### **Guidance provided within the Code**

The Commonwealth Code states “for the purpose of this Code, “Australian laws” means any Act, including the MOP(S) Act, or any instrument made under an Act, or any law of a State or Territory, including any instrument made under such a law”.

#### **RECOMMENDATION**

1. That, because staff members are already required to comply with the law, it is not appropriate to portray the principle ‘complying with relevant codes, laws and directions’ in the new code, as codes of conduct focus on ethical conduct not legal compliance. The Commission recommends instead that ministerial members of staff are reminded of their legal obligation to comply with the law in the preamble to the new code.

## COMPARATIVE ANALYSIS OF ADDITIONAL THEMES IDENTIFIED

### BEING FRANK, HONEST, TRANSPARENT AND IMPARTIAL IN OFFICIAL DEALINGS

The Commonwealth and Queensland Codes of Conduct address this principle.

The Commonwealth Code states that ministerial staff must “behave honestly and with integrity in the course of their employment”. However, in Queensland this principle is broken into several components:

- “implement decisions and policies faithfully and impartially;
- avoid bias, favouritism and discrimination in policy formulation and implementation;
- follow principles of natural justice;
- base your decisions and other actions on thorough and dispassionate analyses; and
- be able to take responsibility and give justifications for decisions and actions”.

### Guidance provided within the Code

The guidance in the Queensland Code states that for advice to be frank, comprehensive and based on accurate representation of the facts, it need to set out the advantages, disadvantages, costs and consequences of the available options and where appropriate recommend a specific course of action. Particular emphasis is placed on procedural fairness in decision-making and the guidance outlines the considerations and obligations of Ministerial staff when exercising a discretionary power.

### RECOMMENDATIONS

1. The Commission recommends that the current Tasmanian Department of Premier and Cabinet’s *Draft Ministerial and Electoral Staff*

*Code of Conduct* be followed by including, under the Statement of Commitment, the following two principles:

- a. that ministerial staff agree to behave honestly and with integrity in the course of their employment; and
  - b. that ministerial staff agree to be frank, timely, transparent and impartial in official dealings.
2. The new code should use words or words of a similar effect, as suggested in the model draft code set out in Appendix Three. It is recommended that plain English and simple and concise statements be used.
  3. The background notes to the Statement of Commitment should:
    - a. reiterate that for advice to be frank, comprehensive and based on available facts, it needs to set out the advantages, disadvantages, costs and consequences of the available options, and where appropriate, recommend a suitable course of action;
    - b. note that ministerial staff have a duty to ensure they are properly informed on the issues on which they provide advice;
    - c. note that ministerial staff, before providing advice to Ministers, have an obligation to seek adequate briefing, consult where appropriate and give due consideration to all viable options including advice from the State Service;
    - d. refer to and outline the requirements of procedural fairness;
    - e. reiterate that ministerial staff have a duty of care in the performance of their work, particularly where members of the public may rely on the information or advice provided by ministerial staff; and

- f. reiterate that decisions and actions taken by ministerial staff must be made objectively, impartially, honestly and without pre-judgement.

### **EXERCISE DUE DILIGENCE, CARE AND ATTENTION**

Both the Commonwealth and Queensland Ministerial Staff Codes include the principle of exercising due diligence, care and attention in the execution of their official duties.

Under the Commonwealth Code ministerial staff must “act with care and diligence in the performance of their employment”. Within the Queensland Code, obligations under this principle are broken down into:

- “providing comprehensive and rigorous advice;
- exercising a duty of care in relation to stakeholders;
- avoiding negligence, for example by giving sufficient attention to detail;
- striving for high standards in public administration;
- being willing to update and expand their concepts, skills and abilities; and
- possessing the competence and skills for the job in hand.

### **Guidance provided within the Code**

In the guidance provided in the Queensland Ministerial Staff Code, ministerial staff are reminded of their obligation to work diligently, perform their duties to the best of their abilities and exercise due care.

### **RECOMMENDATIONS**

1. The new code should contain a principle on the need to ‘exercise due diligence, care and

attention’ in the Statement of Commitment and should address the following element that:

- a. ministerial staff agree to act with care, attention and due diligence in the performance of their duties.
2. The new code should use words or words of a similar effect, as suggested in the model draft code set out in Appendix Three. It is recommended that plain English and simple and concise statements be used.
  3. The Commission recommends the breakdown of the principles as seen in the Queensland Code be addressed in the background to the Statement of Commitment of the code rather than in the actual code.

### **PRIVACY**

Only the Victoria and Commonwealth Codes address the principle of privacy. Under the Commonwealth Code, ministerial staff must “maintain appropriate confidentiality about their dealings with their Minister, other Ministers, other ministerial Staff, and APS and Parliamentary Service employees”. In Victoria, they must “familiarise themselves with the Privacy principles and ensure they maintain the confidentiality of personal information of individuals they gain through their employment”. The Victorian Code also provides the following guidance: that ministerial staff “must observe appropriate confidentiality about their dealings with their Minister, other Ministers, MPS, other ministerial staff, and Victorian Public Sector and Parliamentary employees”.

### **RECOMMENDATION**

1. The Commission does not recommend a principle dealing with privacy be included in the new Code, as it relates to confidentiality of information and is therefore covered under the improper advantage principle. As ministerial staff are already required to comply with the

law, it is not appropriate to portray this as a principle in the new code, given that codes of conduct focus on ethical conduct not legal compliance. The Commission recommends, instead, that ministerial staff are reminded of their legal obligations in the preamble to the new code.

### COMMUNITY ACTIVITIES

Both the Victorian and Queensland Codes address the role of ministerial staff within the community. The Victorian Code states ministerial staff “must take care to ensure that their private activities and involvement in the community or political organisations do not give rise to any actual or perceived conflicts with their work and that they abide by any guidelines issued by the Premier”. The Queensland Code simply states that “conduct outside of the workplace can have a bearing on a person’s suitability for certain official roles” when a matter of integrity is involved. No additional guidance is provided.

### RECOMMENDATION

1. The Commission does not recommend a principle dealing with community activities be included in the new Code, as it is already covered under the conflict of interest principle.

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### PRINCIPLES EXCLUSIVE TO PARTICULAR JURISDICTIONS

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The following identified principles were exclusive to the different jurisdictions. The Commonwealth Code had only one additional principle: overseas travel. The Victorian Code contained two additional principles: probity in tendering and political office. There are also two additional

principles relevant to the ethical conduct of ministerial staff in the Queensland Code: to act in the public interest, and to conform to the Westminster principles and respect democratic institutions and processes, rights and freedoms and the principles of good governance.

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### PRINCIPLES EXCLUSIVE TO THE COMMONWEALTH

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#### Overseas Travel

In the Commonwealth Code, when travelling overseas on official business, Ministerial staff must “behave in a manner consistent with the APS Values and Code of Conduct, to the extent they apply to officials on duty overseas”.

### RECOMMENDATION

1. The code will be binding on ministerial staff when exercising their official duties, regardless of their location. Due to this, the Commission recommends no inclusion of a principle dealing with overseas travel.

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### PRINCIPLES EXCLUSIVE TO VICTORIA

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#### Probity in Tendering

Under the Victorian Code, ministerial staff must exercise care when dealing with business contacts to ensure they abide by probity requirements at all times. In particular, ministerial staff must follow any guidelines and protocols issued in relation to contacting firms currently involved in major Government tenders.<sup>117</sup>

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<sup>117</sup>Reference is made specific statutory requirements in relation to procedures to some areas of government, e.g. gaming.

## RECOMMENDATION

1. As ministerial staff are already required to comply with the law and relevant policies, it is not appropriate to include a principle dealing with probity in tendering in the new code as codes of conduct are about ethical conduct not legal compliance.

## Political Office

In Victoria, ministerial staff “must not hold office as a local Government Councillor” while employed as a ministerial staff member. Moreover, they must take leave from their position if they “nominate for elected office at Local, State or Federal level from the time they lodge their nomination”.

## RECOMMENDATION

1. The new Code should not include a principle dealing with political office as it is already covered under the outside employment principle.

## PRINCIPLES EXCLUSIVE TO QUEENSLAND

## Acting in the public interest

Briefly put, ministerial staff members are required under the Queensland Code to “act in the public interest”. No additional guidance is provided.

## RECOMMENDATION

1. The Commission recommends that a principle dealing with acting in the public interest not be included in the body of the new code but rather in the preamble or statement of commitment section as an overriding principle of the code and in guiding the ethical conduct of ministerial staff.

## Conforming with Westminster principles, respect for democratic institutions and processes and the principles of good governance

This principle contains the following components that ministerial staff must:

- “accept that the elected government has the right to determine policy and priorities;
- observe the conventions of Cabinet government and Queensland’s Westminster system;
- be responsive to the government of the day; and
- serve the government of the day, through [their] Minister”.

As with the above principle, no additional guidance is provided.

## RECOMMENDATION

1. It is not necessary to include a principle dealing with ‘conforming with Westminster principles, respect for democratic institutions and process and principles of good governance’ in the new code, as it relates to democratic principles and processes and not to the ethical conduct or standards of ministerial staff members.

## COMPARATIVE ANALYSIS OF SELECTED INTERNATIONAL MINISTERIAL STAFF CODES OF CONDUCT

### INTRODUCTION

Of the jurisdictions of Canada, the United Kingdom and New Zealand, only the United Kingdom has produced a code of conduct for ministerial staff. The United Kingdom refers to ministerial staff as “special advisors”.

### BACKGROUND

#### United Kingdom’s Code of Conduct for Special Advisers

The United Kingdom’s *Code of Conduct for Special Advisers* came into effect in 2001 and was last revised in June 2010. The Code is a stand-alone document, 14 pages in length and contains two annexures: The Civil Service Code (Annex A) and the Seven Principles of Public Life (Annex B).

The Code is a detailed document providing comprehensive guidelines on a number of topics outside the scope of this analysis such as job specification, status, contacts with the media, and relations with Government Party.

The Code states that “special advisers are temporary civil servants appointed under Article 3 of the *Civil Service Order in Council 1995*. They are exempt from the general requirement that civil servants should be appointed on merit and behave with impartiality and objectivity so that they may

retain the confidence of future governments of a different political complexion”.

The *Code of Conduct for Special Advisers* should be read in conjunction with the *Civil Service Code*. The Code predominately focuses on the political involvement by special advisers.

The management and conduct of special advisers, including discipline under this Code, is the responsibility of the Minister who appointed them. However, the Code does note that it is “open to the Prime Minister to terminate employment by withdrawing his consent to an individual appointment”.

### COMPARATIVE ANALYSIS OF ISSUES ADDRESSED

**TABLE 6: ISSUES ADDRESSED WITHIN  
THE UNITED KINGDOM SPECIAL  
ADVISERS CODE OF CONDUCT.**

Issue	United Kingdom House of Commons
Conflicts of Interest	✓
Declaration/Divestment of Personal Interests	✗
Gifts and benefits	✓
Outside Employment	✗
Improper Advantage	✓
Improper Use of Public Resources	✓
Privacy	✗
Community Activities	✗
Probity In Tendering	✗



Dealing with Stakeholders	✓
Dealing with Departments	✓

### CONFLICTS OF INTEREST

While the Code does not directly refer to conflicts of interest, it does state that special advisers “should not receive benefits of any kind which others might reasonably see as compromising their personal judgement or integrity”. Further, special advisers “should avoid anything which might reasonably lead to the criticism that people paid from public funds are being used for party political purposes”.

### GIFTS AND BENEFITS

Special advisers “are required to declare details of gifts and hospitality received in accordance with the rules set out in their departmental staff handbooks”.

The Code goes on to state that each department will publish information about gifts and hospitality received on a quarterly basis.

### POST-SEPARATION EMPLOYMENT

Under the Code, special advisers are reminded that they are subject to the Business Appointment Rules. Further, it specifies that under the rules “they are required to submit an application to the Head of their former Department for any appointments or employment they wish to take up within two years of leaving the Civil Service”. The independent Advisory Committee on Business Appointments will then consider the application.

Special advisers, as civil servants, are reminded not to “publish or broadcast personal memoirs reflecting their experience in government, or enter into commitments to do so, while in Crown employment”. The procedure for submitting memoirs for approval is outlined.

### IMPROPER ADVANTAGE

The Code states that special advisers are not to “misuse their official position or information acquired in the course of their official duties to further their private interest or the private interests of others”. Further, it specifies that special advisers “should not, without authority, disclose official information which has been communicated in confidence in Government or received in confidence from others”.

Special advisers are also reminded of their continuing obligation to maintain confidentiality after they have left employment as a special adviser.

### IMPROPER USE OF PUBLIC RESOURCES

Under the Code of Conduct, special advisers are required to “not use official resources for party political activity”. The Code states the rationale for this is that special advisers are employed to serve the objectives of the government and department in which they work and this justifies their being able to use public funds.

### DEALINGS WITH STAKEHOLDERS (RESPECT FOR PERSONS)

Special advisers should “not deceive or knowingly mislead Parliament or the Public”.

In addition to this, special advisers are informed that the highest standards of conduct are expected of them and, “specifically, the preparation or dissemination of inappropriate material or personal attacks has no part to play in the job of being a special adviser as it has no part to play in the conduct of public life. Any special adviser found to be disseminating inappropriate material will automatically be dismissed by their appointing Minister”.

### DEALING WITH DEPARTMENTS

In relation to dealing with civil servants, the Code states that special advisers “should act in a way which upholds the political impartiality of civil servants and does not conflict with the *Civil Service Code*”. In particular, special advisers must not:

- i. “ask civil servants to do anything which is inconsistent with their obligations under the *Civil Service Code*;
- ii. behave towards permanent civil servants in a way which would be inconsistent with the standards set by the employing department for conduct generally; and
- iii. suppress or supplant the advice being prepared for Ministers by permanent civil servants although they may comment on such advice”.

The Code provides guidance on what a permanent civil servant should do if he or she has concerns about any request from a special adviser. Further, it specifies that “special advisers should not be involved in issues affecting a permanent civil servant’s career such as recruitment, promotion, reward and discipline”.

### BEING FRANK, HONEST, TRANSPARENT AND IMPARTIAL IN OFFICIAL DEALINGS

The Code refers to honesty and states that “special advisers should conduct themselves with integrity and honesty”.

### POLITICAL OFFICE/ACTIVITY

Special advisers are informed that they “must not take part in national political activities, which are: holding, in a party political organisation, office which impinges wholly or mainly on party politics in the field of Parliament, the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly or the European Parliament; speaking in public on matter of national articles or leaflets; being announced publicly as a candidate or prospective candidate for Parliament, the Scottish

Parliament, the National Assembly for Wales, the Northern Ireland Assembly or the European Parliament; and canvassing on behalf of a candidate for the institutions or on behalf of a political party”.

In particular, a special adviser must resign if they are publicly identified as a candidate or prospective candidate for Parliament, or if they wish to take part in a General, European or by-election campaign or help in a party headquarters or research unit during such a campaign.

The procedure for involvement in local politics in a private capacity and what defines local political activities is also outlined. In particular, “special advisers may undertake, or continue to undertake, all forms of local political activity, but not local activities in support of national politics”.

### RECOMMENDATIONS AND OTHER MATTERS FOR CONSIDERATION

1. In relation to gifts and benefits, the Commission notes that the United Kingdom Code specifies that information on gifts and benefits received is to be published on a quarterly basis. The Commission recommends that Parliament/ Government consider publishing information on gifts and benefits received by ministerial staff on an annually basis.
2. In relation to post-separation employment, it is noted that the United Kingdom’s Code is more stringent as it requires advisers to submit an application for any employment they wish to take up within two years of leaving the civil service. It is the Commission’s view that the recommendations made at page 259 are more appropriate and in line with the Tasmanian environment.

3. The Commission notes that in the United Kingdom's Code, civil servants are prohibited from publishing or broadcasting memoirs of their time in the civil service without approval. This may be something that the Parliament/Government may wish to consider with the view to covering this within any guidance provided on outside and post-ministerial staff employment.
4. In relation to improper use of public resources, if Parliament/Government considers there is a risk of public resources being used improperly for party political purposes by ministerial staff they may wish to include this provision.
5. In relation to dealing with departments, the Commission notes that the United Kingdom's Code contains a provision which specifically relates to advice being prepared for ministers by civil servants. Parliament/Government may wish to consider the inclusion of this provision in the new Code.

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# CHAPTER 7:

## CODES OF CONDUCT, THEIR IMPLEMENTATION AND ENFORCEMENT

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### BEST PRACTICE IN CODES OF CONDUCT

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Chapter Four acknowledges that effective codes are carefully considered and appropriate to their context, and that they should achieve a balance between compliance, guidance and motivation.

The analysis of codes of conduct for parliamentarians, ministers and ministerial staff has enabled the Commission to formulate broad recommendations about the structure and language that should be used in codes of conduct. In the Commission's view, these recommendations will facilitate the balance referred to above, in that codes developed along the lines recommended provide clear and useful guidance regarding expected standards of behaviour; will serve as a motivation to act ethically, honourably and responsibly; and finally, will constitute a framework within which breaches of these standards will be clearly and easily identifiable, and thus enable any appropriate enforcement or disciplinary action to be taken.

The *Australian Standard for Organisational Codes of Conduct AS 8002:2003* sets out a number of principles which, if followed, enable the development of effective codes of conduct for organisations. These principles apply to codes for a large variety of organisations and do not negate the principle that each code must be tailored to and suitable for the needs and environment of an individual organisation and its officers. It can, in fact, be argued that parliaments are quite unique organisations and it is therefore important that standards and principles relating to codes for other organisations are not applied uncritically to these pre-eminent democratic

institutions. Nevertheless, it is also worth referring to these standards and principles as a reference point when developing a code.

The Standard states that: “A Code should be drafted in consultation with employees and any other relevant stakeholders. It should be drafted in positive terms using a personal tone and in plain English. Code rules should address specific stated problems, rather than broad general principles, and should underpin the activities, policies and decision making in an entity”.<sup>118</sup> The Standard then lists a variety of issues that should be considered in a code, including conflict of interest, outside employment, gifts, confidentiality and a number of others. A code of conduct should also state the consequences of non-compliance.

The Independent Commission Against Corruption has published a guide to improving organisational codes of conduct. The Guide recommends that, when reviewing codes of conduct, agencies:

- start with values;
- make the Code practical, helpful and relevant;
- use model draft codes issued by central agencies as starting points only;
- make the Code enforceable; and
- keep the Code simple, direct and positive.<sup>119</sup>

The question of what might constitute a useful Code of Conduct for parliamentarians has also been addressed by Dr Andrew Brien in development of his paper for the Commonwealth Parliament, “A Code of Conduct for Parliamentarians?”. Brien considers the elements necessary to a system of laws and applies these principles to the question of a Code for parliamentarians.

He concludes that “there are twelve conditions that a code designed for parliamentarians should satisfy if it is to be effective. A code should aim to:

- foster trust, in parliament, parliamentarians and the system of parliamentary democracy
- promote the functioning of parliament
- respect the operation and status of parliament as an institution
- be capable of being honoured and, in fact, actually work
- refocus public attention from the conduct of parliamentarians and their ethics and place it on policy and deliberation
- avoid litigation about powers of the code and interpretation
- improve parliament’s position as the creator of law and as a check on the executive
- be open yet allow for the protection of privacy
- allow for knowledge and acceptance of the code by parliamentarians and citizens
- have stable, fair public enforcement mechanisms
- fit within an existing culture of discipline mechanisms
- be, and be seen to be, impartially administered”<sup>120</sup>

Brien notes that these criteria are relatively easy to meet.

Based on the comparative analysis of codes of conduct and the accompanying review of ethical frameworks within various jurisdictions, the review of examples of parliamentary and ministerial misconduct as reported in the literature and media, the Commission’s own expertise in misconduct

118. Australian Standard AS 8002-2003: “Organisational Codes of Conduct”, p.7.

119. Independent Crime and Corruption Commission, 2002 “Codes of Conduct: the Next Stage”, pp.7-9.

120 Brien, A., op cit.

and corruption prevention, and drawing upon the AS 8002:2003 and other expert commentary about what constitutes an effective code, the Commission has formulated a number of principles for developing effective codes of conduct for parliamentarians, ministers and ministerial staff.

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## STRUCTURE AND INCLUSIONS

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### CODE

The Commission's review demonstrates that effective codes are brief and concise. They should be contained within two to three pages. Brief and concise codes provide clarity for officers and the public in understanding what behaviour is expected of officers. This not only facilitates compliance with the code on the part of officers, but also makes it easier to identify a breach of the code and take appropriate action. That is, concise codes enable clear guidance, and facilitate compliance. They can also avoid the de-motivation of officers, which can occur in the case of lengthy codes.

It is advisable for the greatest areas of risk or the most common ethical challenges faced by officers to be addressed at the start of the code. It is also advisable for each provision or section to be given a clear, bolded heading, to enable quick and easy reference to relevant principles and provisions.

### PREAMBLE

It is appropriate for codes to be preceded by a preamble which consists of a considered statement about the responsibilities of officers, and the ethical standards required of them. A concise and well-written preamble enables officers to engage with and take ownership of a code. The preamble makes the purpose of the code clear, thus motivating officers to comply.

### ETHICAL PRINCIPLES

Similarly, it is appropriate for the preamble to be followed by a statement of the values or principles on which the code is based. These again should be developed in consultation with officers, and enable officers to engage with a code and understand its basis. Understanding and engagement, as well as identification with stated values, encourage officers to comply with a code.

### OTHER REQUIREMENTS: COMPLIANCE, DISREPUTE

Prior to commencement of a code, some other broad statements should be considered for inclusion. Best practice codes are often preceded by a statement that officers must comply with relevant laws, policies and procedures and a statement that officers must not act in such a manner as to bring Parliament into disrepute.

### ENFORCEMENT

Prior to commencement of a code, a statement should be included that outlines whether and how the code will be enforced – including any applicable consequences for breaching the code.

### REVIEW

It should be stated at the commencement of the code (or alternatively at the end of the code) that the code will be subject to periodic review and a date for review should be stipulated.

### GUIDANCE

It may be appropriate and useful for guidance to be provided with or following a code. Guidance can refer officers to relevant policies and legislation, clarify and define terms, provide details on how to comply, and provide examples of behaviour that might constitute a breach of the code.



Probably the most appropriate and effective structure for providing guidance is that adopted by the House of Commons and House of Lords in the United Kingdom, wherein the code and the guidance are two separate documents but the intention is that they are always considered in conjunction with each other.

## LANGUAGE

### PLAIN ENGLISH

The use of plain English promotes clarity in a code, and avoids unnecessary complexity. “Legalistic” language should be avoided. Plain English enables officers to comply with a code and encourages engagement and ownership of a code. Further, it makes it easy for officers to obtain guidance about the appropriate standards of conduct. If further detail is necessary to provide clarity, this can be contained in the guidance following the code.

### ACTIVE, POSITIVE, PRESCRIPTIVE LANGUAGE

The Commission’s analysis indicated that best practice involves the use of strong and prescriptive language. Language should be active, for example “must”, “will”, or “should”. Passive language (for example “members are advised that ...” or “members should give due consideration to ...”) does not encourage compliance with a code and can cause difficulties in enforcement. Additionally, robust language provides reassurance to officers and to the public that standards are clear and will be upheld.

## CURRENT CODES AND MODEL CODES

Members of the House of Assembly are currently subject to the Code of Ethical Conduct. This Code has been in place since 1996, so it is not surprising that some aspects of the Code do not meet contemporary best practice. For example, the current Code does not include some areas which require addressing in a code for parliamentarians, such as outside employment, and also has some wording which may be considered to lack clarity. Further, the current Code does not provide guidance to members as to how they can meet the requirements outlined in the Code.

Government Members of Parliament are currently subject to the Government Members Code, which has been in place since 2006. This Code largely meets best practice, although there are some elements where slight modification is warranted. For example, in the area of “improper advantage”, the Government Members Code uses three similar terms (“advantage”, “gain” and “benefit”), where it may be more useful to utilize one term which is then clearly defined in guidance.

In accordance with the Commission’s view that an effective code of conduct for members of parliament will be one that applies to all members of the House of Assembly and Legislative Council, we have used the current Code of Ethical Conduct as the basis on which to draft a new ‘model’ code for members of parliament. However, we also have drawn from the Government Members’ Code any particularly effective and useful phrases, provisions and wording, and implemented these into the model draft code where appropriate.

For consistency in interpretation, we have then utilised this model draft code for members of parliament as a basis for drafting model codes of conduct for ministers and ministerial staff.

Thus the model draft codes attached at Appendices One, Two and Three have been created through a process of:

- following the best practice principles outlined above;
- drawing upon the minor recommendations regarding individual principles and provisions demonstrated by the comparative analysis of codes and outlined in Chapters Four, Five and Six; and
- drawing from the current Ethical Code of Conduct and the Government Members Code of Conduct.

Consideration of best practice in codes and of the codes currently in place in Tasmania have led in some cases to a modification of the minor recommendations identified through the comparative analysis. For example, when conducting analysis on existing codes in other jurisdictions, and identifying “themes”, and in the discussion of this process in Chapters Four, Five and Six, the Commission has adopted the most common and convenient ordering of provisions and principles. However, consideration of these themes within the Tasmanian context, as well as the best practice principle that issues are dealt with in order of importance, has led to the conclusion that this order is not the most appropriate. In accordance with this, provisions in the proposed model draft codes have been reordered.

The Commission is also of the view that it is important to retain statements of principle and commitment which have previously been considered by Parliament and confirmed over

a number of years, and that these should only be modified where necessary or appropriate. These statements in the current Code of Ethical Conduct presumably already reflect the values and principles which members of the Tasmanian House of Assembly believe underpin their role and ethical responsibilities. The attached model draft codes therefore drawn substantially on the existing preamble and Statement of Commitment.

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## GUIDELINES REGARDING GIFTS AND BENEFITS

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The analysis has demonstrated that it is advisable for parliamentarians, ministers and their staff to be able to refer to separate guidelines relating to the giving and receipt of gifts and benefits. This is a complex area requiring greater detail than can reasonably be encompassed in the Codes of Conduct.

At the request of the Premier, the Commission has analysed the current *Receipt and Giving of Gifts and Benefits Guidelines for Government Members of Parliament*. The Commission has made a number of suggestions for improvement to these guidelines, which are attached at Appendix Five.

It is considered that these guidelines should more appropriately apply to ministers, and that Parliament may wish to consider adopting a similar set of guidelines applicable to members of Parliament.

## THE PARLIAMENTARY STANDARDS COMMISSIONER

As discussed in Chapter One, the *Integrity Commission Act 2009* established the office of the Parliamentary Standards Commissioner.

The Parliamentary Standards Commissioner has an important role to play in relation to the parliamentary Code of Conduct. Under section 28 of the Act the Parliamentary Standards Commissioner is to provide advice to Members of Parliament and the Integrity Commission:

- a. about conduct, propriety and ethics and the interpretation of any relevant codes of conduct and guidelines relating to the conduct of members of parliament; and
- b. relating to the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of members of parliament; and
- c. relating to guidance and training for members of parliament and persons employed in the offices of members of parliament on matters of conduct, integrity and ethics; and
- d. relating to the operation of any codes of conduct and guidelines that apply to members of parliament.

Thus the Commissioner has a role in providing advice and guidance on the codes of conduct to Tasmanian Members of Parliament. Under section 29, this advice may be provided on a confidential basis.

In the attached model draft code for members of parliament, it has been emphasised that members may seek confidential advice from the Parliamentary Standards Commissioner as to any matter arising under that Code.

## EMBEDDING CODES OF CONDUCT: IMPLEMENTATION, REVIEW AND TRAINING

Effective codes of conduct can enhance and achieve ethical conduct through motivation, guidance and compliance, as long as appropriate efforts are made to “embed” the Code in its organisational environment, and to encourage officers to engage with and have ownership of the code and the values and principles which underpin it. Best practice in embedding codes of conduct involves a number of actions:

- making sure officers are aware of the code through publication, induction and by other means;
- ensuring officers understand what the code of conduct requires through the provision of training in ethical conduct, standards of behaviour and the code itself; and
- publication of the code so that the public is aware of the standards of ethical conduct expected of officers.

### CONSULTATION AND REVIEW

Engagement with a code can be supported through a process of consultation and review within an agency. As the model draft code attached has been produced with close reference to existing codes applicable to Tasmanian Members of Parliament, it is considered that members should be able to engage with the code more easily than in a situation where a code does not exist. It may be appropriate for Parliament to refer the model draft code to the Joint Standing Committee on Integrity for consideration and reporting.

As ethical standards and contextual conditions are subject to change over time, codes of conduct should be subject to review. The period for review of a code should normally not be longer than two years. However, in the case of a code for Parliament, it would be appropriate to lengthen this time frame, for example, to three to four years.

### **PUBLICATION OF THE CODE**

Codes of conduct for members of parliament, ministers and ministerial staff should be publicised on Government and Parliament websites. It is important that members of parliament and of the public are aware of the standards of ethical conduct expected and required of members, ministers and their staff.

### **TRAINING**

Members of parliament, ministers and ministerial staff should also receive, or be able to access, training in ethical conduct and compliance with their relevant code of conduct on a regular basis.

Under section 30 of the *Integrity Commission Act 2009*, the Commission's Chief Executive Officer has a responsibility to prepare guidance and provide training for Members of Parliament and persons employed in the offices of Members of Parliament on matters of conduct, integrity and ethics.

Following from this research project and report, the Commission, in consultation with the Parliamentary Standards Commissioner, will commence development of training programs for Members of Parliament, Ministers and ministerial staff.

The Commission has developed and currently delivers information sessions and ethical training workshops to a variety of public officers on misconduct awareness, compliance with codes of conduct and ethical conduct. These sessions include the opportunity for officers to work through ethical scenarios to gain a fuller understanding of what

compliance with their Code entails. A key motivator for many officers is gaining an awareness of what conduct their peers consider to be ethical and appropriate. The Commission's workshops provide officers with the opportunity to discuss ethical challenges and dilemmas amongst their peers, and to gain a fuller appreciation of what "ethical conduct" looks like in their work environment. The Commission pays attention to the audience attending workshops to ensure that scenarios are appropriate to the audience, and if possible, works with the public authority employing the officers attending to ensure that the training is targeted to the needs of their officers.

In assisting the development of training for members of parliament, ministers and ministerial staff, the Commission will make similar efforts to ensure that the workshops and scenarios employed are relevant and useful for these public officers. This may involve the collection of a 'casebank' of scenarios for use in training for parliamentary and ministerial officers, and for parliamentarians and ministers themselves. These scenarios or cases could be sourced from other jurisdictions, including cases reported in the media (such as those referred to in Chapter Four) and any cases discussed in the Commission's liaison with other integrity agencies and parliamentary and integrity officers. The scenarios can also be obtained through consultation with Parliament and Government. Consideration of the proposed model draft codes would provide an ideal opportunity for members of parliament, ministers and ministerial staff to provide examples of ethical dilemmas which they consider being relevant and which would be useful to include in any training program.

The Commission also proposes to continue to liaise with parliamentary clerks, Departments of Premier and Cabinet and other integrity agencies to increase understanding and communication about the ethical dilemmas facing parliamentarians,

ministers and their staff. Developing a network of “Parliamentary Integrity” officers, entities and representatives would be a useful means of continuing dialogue across jurisdictions about ethical issues and challenges, and identifying effective ways of preventing and dealing with these.

The Commission is currently exploring the possibility of liaising with the University of Tasmania to develop an additional training program, on ethical decision making. This program or workshop is intended to be used in conjunction with the Commission’s existing code of conduct, misconduct awareness and ethical conduct training workshop, and will provide public officers with an additional “tool” to assist them in ensuring that their behaviour and actions meet appropriate ethical standards. It may be possible to develop this workshop for the use of parliamentarians, ministers and ministerial staff.

#### **THE PARLIAMENTARY STANDARDS COMMISSIONER**

The Parliamentary Standards Commissioner also has an important role in the provision of advice and training to Members of Parliament. Section 28 (1) (c) of the *Integrity Commission Act 2009* outlines that one of the functions of the Commissioner is to “provide advice to Members of Parliament and to the Integrity Commission ... relating to guidance and training for Members of Parliament and persons employed in the offices of Members of Parliament on matters of conduct, integrity and ethics”.

The Commission envisages that any training program for Parliamentarians will be developed and implemented on the advice of, and in consultation with, the Parliamentary Standards Commissioner.

## **ENFORCEMENT**

As discussed in Chapter Three, there remains a question about how codes of conduct for members of parliament, ministers and ministerial staff can be effectively enforced.

Following from the discussion in Chapter Three, and from the preceding consideration of enforcement regimes within various jurisdictions, it seems appropriate that ministerial staff continue to be subject to existing disciplinary and managerial arrangements. There may, however, be a lack of clarity arising when seconded ministerial staff are subject to disciplinary action which results in their termination under the ministerial staff code of conduct. As the current State Service Code of Conduct refers to conduct occurring “in the course of that employee’s State Service employment”,<sup>121</sup> there is a question as to whether a person terminated for misconduct while acting as a member of ministerial staff can subsequently be subject to appropriate managerial and disciplinary action when returning from secondment. This may require some further consideration by the Commission and by Government, and such consideration may require some attention to the current State Service Code of Conduct.

It is also appropriate that the Premier remain responsible for dealing with allegations against Ministers. However it should be noted that Ministers are also Members of Parliament, and if their conduct constitutes a breach of the parliamentary code of conduct, this could be dealt with in the same manner as a breach by any other Member.

<sup>121</sup>. Office of the State Service Commissioner, 2000, “State Service Code”, found in section 9 of the *State Service Act 2000* (Tas).



As discussed in Chapter Three, the most problematic situation is where a breach occurs as the result of action by a member of parliament. It seems appropriate to the Commission that a code of conduct relating to Members of Parliament be placed within the Standing Orders of Parliament (as is the case with the current House of Assembly Code of Ethical Conduct), and that action in breach of this code be dealt with by the relevant House, or by a nominated committee. Any breach of the code would thus constitute a breach of the Standing Orders, and may represent contempt of Parliament. Parliament itself (or its representative in the form of the Speaker or President) could then impose an appropriate sanction.

The model draft codes thus include a statement that “A breach of this Code will also constitute a breach of Standing Orders able to be dealt with by the Chamber concerned.”

There is a concern that current procedures for dealing with contempt may not be sufficient and appropriate. As outlined in Chapter Three the current sanctions outlined in the Standing Orders of each chamber are limited and may require review.

The Integrity Commission may still have an important role to play in this process. As noted in Chapter Three, the most significant role the Commission can play in relation to suspected misconduct is to bring the facts to light, and to oversee how authorities deal with misconduct and provide advice to improve their capacity to do so. This role can be played by the Commission in the consideration of a complaint made against a Member of Parliament by a member of the public.





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## CHAPTER 8:

# CONCLUSIONS, RECOMMENDATIONS AND FUTURE DIRECTIONS INTRODUCTION

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### CONCLUSIONS

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The Commission was requested by the Premier to provide feedback on the current *Government Members Code of Conduct*, the draft *Code of Conduct Ministerial and Electorate Staff*, and the current *Receipt and Giving of Gifts and Benefits Guidelines for Government Members of Parliament*.

The Commission's Chief Executive Officer has a responsibility under section 30 of the Act to:

- review, develop and monitor the operation of any codes of conduct and guidelines that apply to Members of Parliament; and
- where appropriate, propose to a Parliamentary integrity entity possible modifications of any code of conduct or guidelines.

The Commission's proposal for responding to the Premier's request involved an analysis of currently existing codes of conduct for ministers and parliamentarians in other Australian and some international jurisdictions, as well as a review of the current Tasmanian codes. This work led to the formulation of best practice recommendations for ministerial and parliamentary codes of conduct, and identified some aspects of current Tasmanian codes which do not currently meet best practice.

A consideration of best practice principles in developing codes of conduct and of existing codes in Tasmania, has enabled the Commission to draft model codes for Members of Parliament, Ministers and ministerial staff. It was considered appropriate that these codes, along with a report about the Commission's analysis, be provided to Parliament with a recommendation that the codes be adopted and implemented.

It is recommended that the code for Members of Parliament be referred to the Joint Standing Committee on Integrity for consideration and reporting and that the codes for Ministers and ministerial staff be adopted by Government and tabled in Parliament. The Commission's view is that, while the operation of the codes should be subject to periodic review, it is important that there is stability in codes applying to Members of Parliament, Ministers and ministerial staff. Therefore, although the application of codes of conduct for Ministers and ministerial staff is a matter for the Government of the day, there would need to be significant reasons for an incoming Government to alter the codes of conduct adopted by a previous Government and tabled in Parliament.

As standards of parliamentary and ministerial ethical conduct are of great interest and importance to the Tasmanian public, it was also considered appropriate that the results of the Commission's analysis, as well as resulting proposals to Parliament and Government, be tabled in Parliament pursuant to section 11 (3) of the *Integrity Commission Act 2009*.

The Commission's primary conclusions were that:

- some members of parliament are currently not subject to any code of conduct and this should be addressed;
- aspects of current codes of conduct applying to some members of parliament, ministers and ministerial staff do not meet current best practice, and this should be addressed.

For example,

- i) some areas of ethical complexity are not currently addressed separately, such as

outside employment, misleading statements and duties as a member of Parliament;

- ii) no guidance is provided to assist members of parliament in complying with a code's requirements;
- iii) there is insufficient attention to the concept of 'public interest' within the current House of Assembly code; and
- iv) many provisions require greater clarification. For example, within provisions relating to disclosure of interests, it is not stated that members must comply with their obligations to disclose interests pursuant to the *Parliamentary (Disclosure of Interests) Act 1996*, and it is not clear in provisions relating to improper advantage that members must not use their influence improperly in order to obtain appointment, promotion, advancement, transfer or any other advantage or benefit on behalf of themselves or another person or persons; and

- it is essential to draw upon best practice demonstrated by codes of conduct in other jurisdictions to develop strong codes of conduct for members of parliament, ministers and ministerial staff.

The Commission anticipates that Parliament and Government will accept the conclusions of this report and will endeavor to implement the changes necessary to address the identified issues. The Commission is keen to provide any support, expertise and resources necessary to achieve this objective.

## RECOMMENDATIONS

The Commission has drafted model codes for members of parliament, ministers and ministerial staff based on the results of our comparative analysis of codes in other jurisdictions, a consideration of best practice principles in developing and implementing codes of conduct, and with reference to existing Tasmanian codes. These codes will provide clarity to Members of Parliament, Ministers and ministerial staff, and also to the public, in regard to the standards of ethical conduct that should be expected of those who hold these positions.

1. The House of Assembly and Legislative Council adopt a code of conduct for the members of each chamber of Parliament.
2. This report be referred to the Parliamentary Joint Standing Committee on Integrity for timely consideration and reporting.
3. The House of Assembly retains but reviews the current Code of Race Ethics.  
The Legislative Council gives consideration to adopting a reviewed Code of Race Ethics.
4. State Government adopts codes provided for Ministers and for ministerial staff, and that such codes be tabled in Parliament.
5. Government considers the revision of Receipt and Giving of Gifts and Benefits Guidelines for Government Members of Parliament provided at Appendix Five, and that these constitute new guidelines for Ministers.  
Further, that Parliament adopts similar guidelines for all Members of Parliament.
6. A breach of the Parliamentary Code of Conduct should be considered and dealt with by Parliament itself.
7. Current procedures and penalties for dealing with contempt of Parliament should be reviewed, with consideration given to implementing a range of actions to deal with a breach, including remedial actions.
8. The operation of a code of conduct for Members of Parliament should be reviewed by the Parliamentary Joint Standing Committee on Integrity on a regular basis, such as every three to four years.
9. The operation of codes of conduct for Ministers and ministerial staff should be reviewed by Government on a regular basis, such as every three to four years.
10. The codes of conduct for Members of Parliament, Ministers and ministerial staff should be made available on Government and Parliament websites.
11. Members of Parliament, Ministers and ministerial staff should receive information about the relevant code and training in ethical conduct through induction processes or through other training.

## FURTHER WORK FOR THE INTEGRITY COMMISSION

This research project has highlighted a number of areas relating to the ethical frameworks for parliamentarians and ministers which both impact on and are affected by Codes of Conduct and the ability of officers to comply with these.

### PARLIAMENTARY STAFF

Codes of conduct relating to the staff of members of parliament, and those relating to parliamentary officers, have not been considered in this report. The Commission intends to continue its work in this area, in accordance with our legislative obligation to provide advice on, and develop codes of conduct for public officers.

### REGISTERS

Parliamentarians and ministers in Tasmania currently have a responsibility to disclose certain interests, gifts and benefits, and these are maintained on the following registers:

- Register of Interests of Members of the House of Assembly
- Register of Interests of Members of the Legislative Council
- Gifts Register

These registers represent an important part of the ethical framework for parliamentarians and ministers in Tasmania. The Commission's review of codes of conduct has not included a specific comparison or review of the processes and policies relating to these registers, except insofar as the requirements of the registers impact upon the ethical standards expected of parliamentarians and ministers, as outlined in their respective codes of conduct.

Section 30 (a) of the *Integrity Commission Act 2009* requires the Commission's Chief Executive Officer to "monitor the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament". To enable the Chief Executive Officer to fulfil this responsibility, the Commission is currently developing a proposal outlining how this role can be carried out, and what it might require. This proposal has included a comparative analysis of how this role is carried out in other jurisdictions. Consideration will be given, during the course of this activity, to the question of the appropriateness and effectiveness of current registers.

### POLITICAL DONATIONS

The Commission's research demonstrated that there is a lack of clarity around the issue of political donations, and how such donations impact upon a parliamentarian's ability to act ethically and in compliance with the relevant code of conduct. One of the Commission's minor recommendations is that, if no policy exists for accepting political donations, one should be developed. It is clear from the analysis that further consideration of this area is required. The Commission thus proposes to conduct research into the area of political donations in the medium term future, in an attempt to formulate some best practice recommendations relating to the regulation of this complex and ethically challenging issue.

## **LOBBYING**

The investigative and prevention work of other Australian integrity agencies suggests that lobbying activities present particular challenges to the integrity of Parliament and Government. Additionally, the Commission has a function under section 8 (1) (e) of the *Integrity Commission Act 2009* to “establish and maintain codes of conduct and registration systems to regulate contact between persons conducting lobbying activities and certain public officers”. The scope of this current research project did not allow for adequate consideration of this complex area. The Commission thus proposes to conduct research into this area in the short term future, with a view to making recommendations aimed at implementing best practice regulatory processes around lobbying activities. This research would involve an examination of these processes in other Australian and international jurisdictions, as well as consideration of the activities of other integrity agencies in this area.







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# APPENDICES

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# APPENDIX 1:

## CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

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### PREAMBLE

Members of Parliament should recognise that their actions have a profound impact on the lives of all Tasmanian people. Fulfilling their obligations and discharging their duties responsibly requires a commitment to the highest ethical standards to maintain and strengthen the democratic traditions of the State and its Institutions.

Merely avoiding breaking the law will not always be enough to guarantee an acceptable standard of conduct. Members of Parliament must act not only lawfully but also in a manner that will withstand the closest public scrutiny. Neither the law nor this Code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust. In making choices about conduct Members should have regard to prevailing community values and standards. They should also, where possible, avoid giving unnecessary offence to groups in the community whose beliefs and views differ from the mainstream.

As Members of Parliament should promote and support this Code by leadership and example.

Members may seek confidential advice from the Parliamentary Standards Commissioner as to any matter arising under this Code.

A breach of this Code will also constitute a breach of Standing Orders able to be dealt with by the Chamber concerned.

### STATEMENT OF COMMITMENT

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

To the people of this State, we owe honesty, accessibility, accountability, fairness, transparency, courtesy, respect and understanding.

To our fellow Members of Parliament, we owe loyalty to shared principles, respect for differences, and fairness in political dealings.

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

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

This Code has been developed for the guidance of all Members of Parliament. It sets out principles to assist Members in observing the expected standards of conduct in public office and to act as a benchmark against which that conduct can be measured.

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## THE CODE

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### CONFLICT OF INTEREST

So as to protect and uphold the public interest, Members must take reasonable steps to avoid, resolve or disclose any conflict of interest, financial or non-financial, that arises or is likely to arise, between their personal interests and their official duties.

Members are individually responsible for preventing conflicts of interest.

A conflict of interest does not exist where the Member, their spouse or domestic partner, relative or associate is affected only as a member of the public or of a broad class of persons.

#### **DECLARATION OF PERSONAL INTERESTS**

Members are personally responsible for disclosing their financial and other interests in accordance with their obligations under the *Parliamentary (Disclosure of Interests) Act 1996*.

Members who have a material interest in a matter being considered as part of their official duties must not vote or participate in discussions on that matter unless they have first declared their interest to Parliament, or in any other public and appropriate manner.

#### **IMPROPER ADVANTAGE**

Members, during and after leaving public office, must not use their influence improperly in order to obtain appointment, promotion, advancement, transfer or any other advantage or benefit on behalf of themselves or another person or persons.

Members, during and after leaving public office, must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties or position, for the advantage or benefit of themselves or another person or persons.

Members must not appoint their spouse, domestic partner or close relative to a position in their own office.

Members must not receive any fee, payment, retainer or reward, nor shall he or she permit any compensation to accrue to his or her beneficial interest for or on account of, or as a result of, his or her position as a Member, other than compensation to which they are entitled as Members of Parliament.

#### **IMPROPER USE OF PUBLIC RESOURCES**

Members must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.

Members must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.

Members must be scrupulous in ensuring the legitimacy and accuracy of any claim they make on the public purse.

#### **GIFTS AND BENEFITS**

Members must not solicit, encourage or accept gifts, benefits or favours which may give the appearance of an attempt to improperly influence the Member in the exercise of his or her duties, except for incidental gifts or customary hospitality of nominal value.

Members must declare gifts and benefits received in connection with their official duties as required by the *Parliamentary (Disclosure of Interests) Act 1996*.

#### **MISLEADING STATEMENTS**

Members must not intentionally or unintentionally mislead Parliament or the public in statements they make and Members are obliged to correct the Parliamentary or the public record in a manner that

is appropriate to the circumstances as soon as possible after any incorrect statement is made.

#### **OUTSIDE EMPLOYMENT**

Members must not engage in any outside employment that involves a substantial commitment of time and effort such as to interfere with their duties as Members of Parliament.

#### **DUTIES AS A MEMBER OF PARLIAMENT**

Members observe proper standards of parliamentary conduct and must take particular care to consider the rights and reputations of others before making use of the unique protection available under parliamentary privilege. This privilege should never be used recklessly or without due regard for accuracy.

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#### **PROCEDURE**

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This Code was adopted by Parliament on XX MONTH 2011 and is operational from this date. This Code will be reviewed every four years by the Parliamentary Joint Standing Committee on Integrity. It will next be reviewed on XX MONTH 2015.



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# APPENDIX 2:

## CODE OF CONDUCT FOR MINISTERS

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### **PREAMBLE**

Ministers are expected to behave according to the highest ethical standards in the performance of their duties as they hold a position of trust, and have a great deal of discretionary power which can have a significant impact on citizens of Tasmania. Therefore Ministers must commit themselves to the highest ethical standards to maintain and strengthen the democratic traditions of our State and its Institutions.

Merely avoiding breaking the law will not always be enough to guarantee an acceptable standard of conduct. Ministers must act not only lawfully but also in a manner which withstands the closest public scrutiny. Neither the law nor this Code is designed to be exhaustive, and there will be occasions on which Ministers will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust. In making choices about conduct, Ministers should have regard to prevailing community values and standards. They should also, where possible, avoid giving unnecessary offence to groups in the community whose beliefs and views differ from the mainstream.

If a Minister engages in conduct which constitutes a breach of this Code, the Premier shall decide, in his or her discretion, upon an appropriate course of action. A Minister may, among other things, be asked to apologize, required to take remedial action, counselled, reprimanded or asked to resign or stand aside. Before making a decision, the Premier may refer the matter to an appropriate independent authority for investigation and/or advice.

Ministers are obliged to report any Code non-compliance by themselves or by another Minister to the Premier, or in the case of the Premier to Cabinet.

Ministers may seek confidential advice from the Parliamentary Standards Commissioner as to any matter arising under this Code.

### **STATEMENT OF COMMITMENT**

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

To the people of this State, we owe honesty, accessibility, accountability, fairness, transparency, courtesy, respect and understanding.

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

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

This Code has been developed for the guidance of all Ministers. It sets out principles to assist Ministers in observing the expected standards of conduct in public office and to act as a benchmark against which that conduct can be measured.

## THE CODE

### CONFLICTS OF INTEREST

So as to protect and uphold the public interest, Ministers must take reasonable steps to avoid, resolve or disclose any conflict of interest, financial or non-financial, that arises or is likely to arise, between their personal interests and their official duties.

Ministers must declare any such conflict of interest in writing to the Premier as soon possible after becoming aware of the conflict.

Ministers are individually responsible for preventing conflicts of interest.

A conflict of interest does not exist where the Minister, their spouse or domestic partner, relative or associate is affected only as a member of the public or of a broad class of persons.

### DECLARATION AND DIVESTMENT OF PERSONAL INTERESTS

Ministers are personally responsible for making adequate disclosure to the Premier of all financial and other interests in accordance with their obligations under the *Parliamentary (Disclosure of Interests) Act 1996*.

A Minister, upon assuming office as a Minister, must take transparent steps to deal with the financial and other interests of themselves, their spouse, domestic partner or dependent persons, which could create the impression of a material conflict with the Minister's public duties.

### IMPROPER ADVANTAGE

Ministers must undertake, upon assuming office, not to use their position improperly to gain a direct or indirect personal advantage for themselves or any other person or entity not enjoyed by the general public.

Ministers must maintain the appropriate confidentiality of information received in the official course of their duties, in Cabinet or otherwise, during their appointment and upon resignation, retirement or dismissal from office.

Ministers must undertake, upon assuming office, not to use any information obtained in the course of their official duties so as to gain a direct or indirect personal advantage for themselves or any other person or entity not enjoyed by the general public.

Ministers must not appoint their spouse, domestic partner or close relative to a position in their Ministerial or electoral office.

### IMPROPER USE OF PUBLIC RESOURCES

Ministers must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.

Ministers must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.

Ministers must be scrupulous in ensuring the legitimacy and accuracy of any claim for the payment of any Ministerial, parliamentary or other allowance.

Ministers must regard the skills and abilities of public servants as a public resource to be utilised appropriately.

### **GIFTS AND BENEFITS**

Ministers must not solicit, encourage or accept gifts, benefits or favours either for themselves or for another person in connection with performing or not performing their official duties as a Minister.

The offering of any such gifts, benefits or favours, made directly or indirectly, must be reported to the Premier at the first opportunity.

Ministers may accept all customary official gifts, hospitality, tokens of appreciation, and similar formal gestures in accordance with the relevant guidelines.

Ministers may, in a purely personal capacity, accept gifts from a relative, friend or acquaintance which do not give rise to or create the appearance of a conflict of interest.

### **DIRECTORSHIPS AND OTHER FORMS OF EMPLOYMENT**

Except with the express approval of the Premier, Ministers will resign or decline directorships of public or private companies and businesses on taking up office as a Minister. Approval to retain a directorship of a private company or business will be granted only if the Premier is satisfied that no conflict of interest is likely to arise.

Ministers will resign from all positions held in business (or professional) associations or trade unions on taking up office as a Minister. Individual membership of such business or professional association and of a trade union does not constitute a 'position'.

Ministers shall not act as a consultant or adviser to any company, business, or other interest, whether paid or unpaid, or provide assistance to any such body, except as may be appropriate in their official capacity as Minister.

A Minister may hold a directorship in a private company operating a family farm, business or investment with the express approval of the Premier.

### **SHAREHOLDINGS**

Ministers, upon assuming office, must relinquish control of all shareholdings and other interests in partnerships and trusts, public and private, where a conflict of interest with their portfolio responsibilities exists, or could be reasonably be expected to exist.

It is not an acceptable form of divestment to transfer interests to a partner, family member or to a nominee or private trust.

### **POST-MINISTERIAL EMPLOYMENT**

Ministers must undertake that upon leaving office and for a period of two years thereafter, they will not take up any employment with, accept a directorship of, or act as a consultant to any company, business or organisation with which they have had official dealings as a Minister in their last 12 months in office.

Ministers must undertake that upon leaving office they will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for the private advantage or benefit of themselves or another person or persons.

### **MISLEADING STATEMENTS**

Ministers must not intentionally or unintentionally mislead Parliament or the public in statements they make and are obliged to correct the Parliamentary or the public record in a manner that is appropriate to the circumstances as soon as possible after any incorrect statement is made.

### **RESPECT FOR PERSONS**

Ministers must take all reasonable steps to observe relevant standards of procedural fairness in decisions made by them. Such decisions are to be unaffected by bias or irrelevant considerations.

Ministers are to treat everyone with respect, courtesy and in a fair and equitable manner without harassment, victimisation or discrimination.

### **LOBBYISTS**

Ministers must handle any dealings with lobbyists in accordance with the Tasmanian Lobbyist Code of Conduct to avoid giving rise to a conflict of interest between their public duty and personal interests.

### **PUBLIC OFFICIALS**

Ministers must not by their decisions, directions or conduct in office encourage or induce public officials to break the law, or to fail to comply with a code of ethical conduct applicable to such public officials.

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## **PROCEDURE**

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This Code was adopted by Parliament on XX MONTH 2011 and is operational from this date. This Code will be reviewed every four years by the Parliamentary Joint Standing Committee on Integrity. It will next be reviewed on XX MONTH 2015.

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# APPENDIX 3:

## CODE OF CONDUCT FOR MINISTERIAL STAFF

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### PREAMBLE

Ministerial staff recognise that they play an important role in providing advice and support to Ministers in the performance of their duties. Their proximity to the most significant decisions of government is a privilege that carries with it an obligation to act with honesty and integrity, to promote the public interest, and to ensure that their conduct meets the highest ethical standards at all times.

The term ‘ministerial staff’ includes advisers in specific portfolio or policy areas, administrative support staff and electorate staff. It also includes permanent State Servants who have been seconded to a ministerial office via a secondment arrangement made under Section 46(1)(b) of the *State Service Act 2000*. For the period of their secondment these employees are employed outside of the State Service. Any reference to ‘ministerial staff’ in this Code shall be read as including all the categories listed above.

Ministerial staff are not subject to the *State Service Act 2000* as they are appointed by an instrument of appointment. Ministerial staff are bound by their instrument of appointment to observe the provisions of this Code.

Merely avoiding breaking the law will not always be enough to guarantee an acceptable standard of conduct. Ministerial staff must not only act lawfully but also in a manner which withstands the closest public scrutiny. Neither the law nor this Code is designed to be exhaustive, and there will be occasions on which ministerial staff will find it necessary to adopt more stringent norms

of conduct in order to protect the public interest and to enhance public confidence and trust. In making choices about conduct ministerial staff should have regard to prevailing community values and standards. They should also avoid giving unnecessary offence to groups in the community whose beliefs and views differ from the mainstream.

Ministerial staff may seek advice from the Chief of Staff, Premier’s Office, as to any matter arising under this Code.

The responsibility for the management and conduct of ministerial staff, including discipline, rests with the Chief of Staff, Premier’s Office. A breach of this Code may result in disciplinary action being taken against a member of ministerial staff, including but not limited to, counselling, a written reprimand, repayment of expenses via deductions from salary, reduction in salary, reassignment of duties and termination of employment.

Ministerial staff are obliged to report any non-compliance with this Code by themselves or by other ministerial staff to the Chief of Staff, Premier’s Office.

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### STATEMENT OF PRINCIPLES

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Ministerial staff must recognise the importance of transparent and open government, and acknowledge that they are expected to behave according to the highest standards of personal conduct in the performance of their duties to maintain and strengthen the democratic traditions of our State and its Institutions.

Ministerial staff must agree to act in the public interest and abide by the following ethical principles:

- to have respect for law;
- to respect our system of government;
- to behave honestly and with integrity in the course of their employment;
- to be frank, timely, transparent and impartial in official dealings;
- to act with care, attention and due diligence in the performance of their duties; and
- to use public resources in a proper manner with due economy, and not subject those resources to wasteful or extravagant use.

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## THE CODE

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### **CONFLICT OF INTEREST**

Ministerial staff must take reasonable steps to avoid any actual, potential or perceived conflicts of interest, financial or non-financial, in connection with their employment.

Ministerial Staff are personally responsible for preventing any such conflicts of interest.

Ministerial staff must take care to ensure that their private activities and involvement in political and community organisations do not give rise to any actual or perceived conflicts of interest.

All conflicts of interest are to be resolved promptly in favour of the public interest.

### **DECLARATION OF INTERESTS**

Ministerial staff must annually, and on a continuing ad hoc basis, declare their private interests to the Chief of Staff, Premier's Office.

### **IMPROPER ADVANTAGE**

Ministerial staff must not use their status, power or authority gained from their employment improperly in order to obtain appointment, promotion, advancement, transfer or any other advantage or benefit on behalf of themselves or another person or persons.

Ministerial staff, during and after leaving office, must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties or positions, for the advantage or benefit of themselves or another person or persons.

Ministerial staff must not use their status, power or authority gained from their employment in order to gain, or seek to gain, a gift, benefit or advantage for themselves or for any other person.

Ministerial staff are not to misuse information or material acquired in or in connection with the performance of their official duties.

### **IMPROPER USE OF PUBLIC RESOURCES**

Ministerial staff must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.

Ministerial staff must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.

Ministerial staff must be scrupulous in ensuring the legitimacy and accuracy of any claims they make on the public purse.



### **GIFTS AND BENEFITS**

Ministerial staff must not solicit, encourage or accept gifts, benefits or favours which may give the appearance of an attempt to improperly influence the ministerial staff in the exercise of his or her duties.

Ministerial staff must declare all gifts and benefits, including hospitality, received in connection with official duties, in accordance with relevant policies.

### **OUTSIDE EMPLOYMENT**

Ministerial staff must not engage in any outside employment, retain directorship of a company or be involved in the daily work of any business without written approval of the Chief of Staff of the Premier's Office.

### **POST MINISTERIAL STAFF EMPLOYMENT**

Ministerial staff must undertake, upon leaving office, that for a period of 18 months after ceasing to be a ministerial staff member, they will not have business meetings with public officials with whom they had official dealings as a ministerial staff member in their last 18 months in office.

Ministerial staff must undertake, upon leaving office, that for a period of two years after ceasing to be a ministerial staff member, they will not engage in lobbying activities relating to any matter in relation to which they had official dealings in their last two years in office.

### **MISLEADING STATEMENTS**

Ministerial staff must not knowingly provide false or misleading information in response to a request for information that is made for official purposes in connection with their employment. Ministerial staff must respond in a timely manner to such requests.

### **DEALING WITH DEPARTMENTS**

Ministerial staff are 'not to knowingly or intentionally encourage or induce a public official by their decisions, directions or conduct to breach the law or parliamentary obligations or fail to comply with an applicable code of ethical conduct'<sup>1</sup>.

Ministerial staff must acknowledge that they do not have the power to direct public service employees in their own right and that those public service employees are not subject to their direction.

### **RESPECT FOR PERSONS**

Ministerial staff are to treat everyone with respect, courtesy and in a fair and equitable manner without harassment, victimisation or discrimination.

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## **PROCEDURE**

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This Code was adopted by the Government on XX MONTH 2011 and is operational from this date. This Code will be reviewed every four years. It will next be reviewed on XX MONTH 2015.

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1. Taken directly from dot point 10, *Code of Conduct for Ministerial Staff (C'With)*, 2008, Commonwealth.

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# APPENDIX 4:

## GUIDANCE NOTES FOR MODEL DRAFT CODES

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### CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

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#### NOTES ON GUIDANCE

##### BACKGROUND NOTES TO STATEMENT OF COMMITMENT

- “Official duties” may require definition;
- The term “Public interest” may require discussion.

##### CONFLICT OF INTEREST

- The term ‘conflicts of interest’ should be defined. The differences between real (actual), apparent and potential conflicts of interest should be discussed. It may be beneficial to provide some examples of apparent and potential conflicts of interest. Examples are provided in the Western Australian and Australian Capital Territory Code.
- Some terms may require definition, e.g. relative, associate and material interest.
- Consider noting that the phrase ‘advantage or benefit’ when used not in relation to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) relates to a material interest, regardless of whether it is financial or non-financial.
- Guidance could note that a conflict of interest may arise where the Member is not trying to further their own interests but that of a member of their family, or another person’s interest.
- Guidance could outline the procedure for declaring, managing and recording of conflicts of interest, e.g. that conflicts of interest are to

be managed on a continuing and ad hoc basis as is the case in NSW and WA.

- Guidance could address what might constitute ‘reasonable steps’. It should also be noted here that Members may be required to arrange and manage their private financial affairs in a manner that will avoid conflicts of interest from arising.
- Reference should be made to the relevant Standing Orders in regard to pecuniary interests.
- Guidance could note that Members should seek the advice of the Parliamentary Standards Commissioner if in doubt.
- If enforcement is not addressed in the preamble/introduction of the Code, guidance should outline the consequences of non-compliance with this section.

##### DECLARATION OF PERSONAL INTERESTS

- References should be made in Guidance to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) and a Member’s obligations under that Act.
- Any relevant terms should be defined, e.g. declarable interest, personal interest, pecuniary interest.
- Guidance could outline the situations where it will be necessary to make a declaration of interest, and examples should be provided.
- Guidance should outline the procedure to be followed when declaring an interest, the timeframes involved, who to make the declaration to, the form and content of the declaration, whose interests need to be disclosed and what the procedure is for when an interest changes.

- Guidance could specify whether declarations are to be required on an ad hoc basis as well as through primary and ordinary returns.
- Guidance should note any restrictions on voting and debating on matters where a Member has a declarable interest.
- If enforcement is not addressed in the Code, Guidance should outline the consequences of non-compliance with this section or of non-compliance with the Act.
- For consideration: Who is to have access to the Register?
- For consideration: Include in Guidance the rationale for and purpose of the Register.

#### **IMPROPER ADVANTAGE**

- Guidance could stress that Members are privileged to receive confidential information to assist them in their decision making processes.
- Guidance should refer, if appropriate, to any relevant sections of the *Parliamentary (Disclosure of Interests) Act 1996* (Tas).
- Guidance should refer to bribery of Member of Parliament in s.72 of the *Criminal Code 1924* (Tas) and outline the consequences of accepting a bribe.
- Guidance should refer to any policies or guidelines on the proper use and management of confidential information.
- Guidance should outline any policies in relation to the employment of family members.
- Guidance should note the procedure to be followed in the event that a Member is offered compensation to perform a function or duty for which they are already paid, e.g. who do they report the matter to.

- If enforcement is not addressed in the Code, guidance should outline the consequences of non-compliance with this section. The consequences, as outlined in the Act, of non-compliance with the Act should also be outlined.

#### **IMPROPER USE OF PUBLIC RESOURCES**

- Guidance should refer Members to any policies and guidelines on the proper use of public resources.
- It may be necessary to note that public resources are to be used for legitimate parliamentary and electorate purposes only, and that resources are not to be misused for political purposes.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **GIFTS AND BENEFITS**

- References should be made in Guidance to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) and a Member's obligations to disclose gifts and benefits received under that Act. Any exceptions to this section should be outlined and discussed.
- Any relevant terms should be defined in Guidance, e.g. nominal value, incidental gift, customary hospitality and benefit.
- Guidance should stipulate the procedure to be followed when accepting and registering a gift, the timeframes involved, how to register the gift, the identity of the recipient.
- Guidance should refer to the relevant policy on sponsored travel or accommodation. If no policy exists, include guidelines

and procedures on sponsored travel or accommodation.

- Guidance should refer to any policy on accepting political contributions given as gifts as seen in the Queensland Code’s Guidance.
- Guidance should note a Member may accept political contributions in accordance with Tasmania’s electoral laws.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section or with the Act.

## OUTSIDE EMPLOYMENT

- Guidance should refer to any rules or guidelines which regulate outside employment by Members of Parliament.
- Guidance could define and provide some discussion on what might constitute a ‘substantial commitment’ of time and effort;
- Any exceptions that may apply should be outlined in Guidance.
- Again, Guidance should list any obligations under the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) that are applicable to Members.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section or with the Act.

## MISLEADING STATEMENTS

- Any guidelines or procedures or policies currently in place relating to the intentional misleading of Parliament should be referred to in Guidance
- Guidance could define what it means to ‘intentionally mislead’ Parliament.

- Guidance should outline the process to be followed if a misleading statement is to be made.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section or with the Act.

## CODE OF CONDUCT FOR MINISTERS

### NOTES ON GUIDANCE

#### CONFLICT OF INTEREST

- The term ‘conflict of interest’ should be defined in Guidance. The differences between real (actual), apparent (perceived) and potential conflicts of interest should be discussed. It may be beneficial to provide some examples of apparent and potential conflicts of interest. Reference can be made to the Queensland, Western Australian and South Australian Codes.
- Guidance should note what constitutes ‘reasonable steps’. It should also be noted here that ministers may be required to arrange and manage their private financial affairs in a manner that will avoid conflicts of interests from arising.
- Any relevant terms could be defined in Guidance, e.g. relative and associate.
- Guidance should stipulate the procedure for declaring, managing and recording conflicts of interest. Reference could be made to the Codes of New South Wales, Australian Capital Territory and South Australia. The procedure would include declaring any changes or new or additional facts in relation to the interest which occur after the initial disclosure.

- Guidance may outline the procedure to be followed when declaring conflicts of interest in relation to Cabinet Meetings. Reference could be made to the Codes of New South Wales and Western Australia.
- Guidance should note that this principle extends to a minister's spouse, domestic partner or child and that it relates to financial and non-financial interest.
- Guidance could list the potential conditions the Premier may impose on the exercise of the minister's executive powers to minimise the risk of a material conflict between the minister's personal interests and public duties. This may include appointing another minister to act in the relevant matter. Reference could be made to the South Australian and Australian Capital Territory Codes.
- Guidance should note that a minister is not to appoint family members to any position within the minister's own portfolio unless the appointment has been authorised by the Premier, or in the case of the Premier, by the Cabinet.
- Guidance should stipulate the procedure to be followed if the conflict of interest is of a serious nature, e.g. divest the interest immediately or if they do not wish to divest, to resign.
- Guidance could remind ministers to seek the advice of the Parliamentary Standards Commissioner, if in doubt, in relation to specific matters in relation to potential conflicts of interest.
- Guidance should reiterate that the disclosure obligations under this Code are additional to the obligations placed on ministers as Members of Parliament under the *Parliamentary (Disclosure of Interests) Act 1996 (Tas)*.
- Even if enforcement is discussed in the preamble/introduction of the Code, the consequences of non-compliance with this

section should be outlined and reiterated. Reference could be made to the South Australian Code for suitable wording etc.

#### **DECLARATION AND DIVESTMENT OF PERSONAL INTERESTS**

- Guidance should refer to the *Parliamentary (Disclosure of Interests) Act 1996 (Tas)* and to a minister's obligations under the Act.
- Guidance should refer to any other relevant policies or guidelines which would assist a minister in determining what kind of interests should be disclosed to the Premier.
- Guidance should stipulate the procedure for declaring interests, e.g. the timeframe new ministers have in which to declare their interests, the procedure for making ad hoc disclosures.
- Guidance could confirm whether a minister, where they have a personal interest in a matter that has yet to be declared, must abstain from acting in that matter until transparent steps have been taken to deal with that interest or the Premier has provided written direction to continue acting in that matter.
- Guidance should prescribe the acceptable forms of transparent steps (divestment) that can be taken, e.g. whether it is acceptable to use 'blind trusts'. It should be reiterated here that transferring those interest to family members is not an acceptable form of divestment. If blind trusts are an acceptable form of divestment, the conditions to be placed on such trusts should be outlined, e.g. that the investments are broadly diversified and the minister has no influence over investment decisions of the fund or trust; and the fund or trust does not invest to any significant extent in a business sector that could give rise to

a conflict of interest with the minister's public duty.

- Guidance should note the timeframe and the procedure for making supplementary disclosures regarding changes in their personal interests.
- Guidance should note that this principle extends to a minister's spouse, domestic partner and children and that it refers to financial and non-financial interests.
- It should be noted in Guidance whether a minister must disclose all financial and other interests held under a private company or other entity or arrangement that operates a family farm, family business or family investments or trusts.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section, and with the Receipt and Giving of Gifts and Benefits and with the Act.

#### **IMPROPER ADVANTAGE**

- Guidance should outline the procedure for the giving of the undertaking, for how it is taken, to who the undertaking is being made and when.
- Guidance should refer to any relevant policies and guidelines regarding the management and use of confidential information and the proper use of official powers.
- Guidance should refer to any relevant laws and Standing Orders, including privacy laws.
- Guidance could define any relevant terms, e.g. does retirement include loss of a minister's seat in Parliament?
- Guidance should note any exceptions that apply to the disclosure of confidential information, e.g. any disclosures authorised by law.

- Guidance should refer to any relevant policies relating to the employment of family members.
- Guidance could reiterate that ministers must take care to maintain the strict confidentiality of information and to take care not to use special knowledge they have gained in such a way as to give them even the appearance of benefiting or avoiding loss to their private financial interests.
- Examples could be provided which illustrate improper use of confidential information and improper use of position.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **IMPROPER USE OF PUBLIC RESOURCES**

- Guidance should refer to any policies and guidelines on the proper use of public resources and on the use of official facilities and equipment.
- Guidance should refer to the relevant record keeping policies and procedures.
- Guidance could reiterate that ministers are obliged to provide Parliament with a full, frank and timely account of all public monies over which Parliament has given them authority.
- Guidance should emphasise that ministers should only have regard to the political and other personal interests of public servants where it is reasonable to assume that such interests may pose a conflict of interest or constitute a breach to the established convention of public service neutrality.
- Guidance could note that public resources are to be used for official purposes only, and not for political purposes.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance



should outline the consequences of non-compliance with this section.

## **GIFTS AND BENEFITS**

- Reference should be made in Guidance to the new Receipt of Gifts and Benefits Policy for Ministers and to a minister's obligations under that policy in relation to receiving and giving gifts and benefits including sponsored travel. Any exceptions to this section and the policy should be discussed.
- Guidance should refer ministers to the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) and a minister's obligations to disclose gifts and benefits received under that Act. Any exceptions to this section or the Act should be discussed.
- Any relevant terms could be defined, e.g. nominal value, token gift, sponsored travel.
- Guidance should provide a brief outline of the procedure to be followed under the Receipt of Gifts and Benefits Policy for Ministers when accepting and giving gifts and benefits.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section, with the Receipt and Giving of Gifts and Benefits and with the Act.

## **OUTSIDE EMPLOYMENT**

- Guidance could outline the factors which the Premier may take into consideration when granting approval for outside employment.
- Guidance could outline the procedure to be followed where circumstances change and a potential conflict of interest arises after a Premier has given express approval to retain a directorship.
- Guidance should outline the procedure to be followed in relation to the management of family farms, business and companies.

- Guidance could address whether ministers need to declare their involvement in any pressure group or other non-public organisations whose objectives may potentially conflict with Government policy.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

## **SHAREHOLDING**

- Guidance should stipulate the timeframe in which the minister is to relinquish control of their shareholdings.
- Guidance could outline what types of interest are to be relinquished, whether in private or public companies or both and list the appropriate types of relinquishments. Whether it is acceptable to use 'blind trusts' should also be discussed here.
- Guidance could define the term 'family'.
- Guidance should note any exceptions that apply, e.g. owning shareholdings in public superannuation funds or publicly listed managed funds or trusts arrangement where certain conditions are met. Reference should be made to the Commonwealth and Victorian Codes.
- Guidance could note whether ministers are allowed to acquire further shareholdings or other financial interest in any public or private companies in their private capacity. Further, whether, provided it does not create a conflict of interests with their portfolio responsibilities, Ministers are entitled to retain any shares or interest held before their appointment on the condition that they do not trade on those shares during their appointment.
- Guidance should outline the procedure which ministers are to follow when a conflict of interest does arise between a shareholding or other interest and their portfolio

responsibilities. See the Victorian and Commonwealth Code.

- Guidance should note whether a minister's partner and family are required to divest their own personal interests. Further, whether they are prevented from acquiring more shares or other financial interests in their own name during the minister's term of appointment. Reference should be made to any disclosure requirements the minister has in relation to their partner's and family's interests. Any exceptions that may apply should be noted.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **POST-MINISTERIAL EMPLOYMENT**

- Guidance should outline the procedure for the giving of the undertaking, for how it is taken, to who the undertaking is being made and when.
- Guidance could refer to any relevant policies or guidelines on post-ministerial employment.
- Guidance could specify what type of companies, businesses or organisations the section extends to. Reference can be made to the South Australian and Australian Capital Codes on this issue.
- Guidance could note whether advice or permission needs to be sought from a third party, e.g. from the Chief of Staff, before accepting employment offers within a certain period of ceasing to be a minister.
- Guidance should note that the undertaking in relation to confidential information does not apply to statutory appointments. Further, Guidance could specify that the undertaking does not apply to any information a minister has about another department which is not confidential.

- Guidance should reiterate that unlawful disclosure of confidential information, including Cabinet-in-Confidence information, may constitute a criminal offence.
- Guidance could reiterate that care should be exercised in any new employment to ensure preferential treatment for the new employer or business is not obtained by use of contacts and personal influence by the former minister.
- Guidance should reiterate that, if in doubt, ministers should seek the advice of the Parliamentary Standards Commissioner.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **MISLEADING STATEMENTS**

- Guidance could refer to any guidelines or procedures or policies in place on intentionally misleading Parliament or the public.
- Guidance could define what it means to 'intentionally mislead' Parliament or the public.
- Guidance should stipulate the process to be followed if a misleading statement is made.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **RESPECT FOR PERSONS**

- Guidance should refer to any relevant policies, guidelines and legislation relating to harassment and discrimination.
- Guidance could refer to and explain the requirements of procedural fairness.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

## LOBBYING

- The Lobbyist Code of Conduct should be referred to for further detail and any key points of the Code outlined.
- Guidance should be provided as to the location of the Lobbyist Code.
- Guidance could stress the importance of establishing whose interests the lobbyist represents if acting on behalf of a third party, to allow the minister to make an informed judgement about the outcome they seek.
- Guidance could emphasise that special care needs to be exercised where representations are being made on behalf of a foreign government or agency of a foreign government as foreign policy or national security considerations may apply.

## CODE OF CONDUCT FOR MINISTERIAL STAFF

### NOTES ON GUIDANCE

#### BACKGROUND NOTES TO PREAMBLE

#### Breaches of the Code

- Guidance should note that any sanctions imposed under this Code will be determined by the Chief of Staff, Premier's Office, after consultation with the Premier and relevant minister.
- Guidance should stipulate the procedure for investigating and determining whether a ministerial staff member has breached the Code.

#### BACKGROUND NOTES TO STATEMENT OF COMMITMENT

- Guidance could emphasise that for advice to be frank, comprehensive and based on available facts, it needs to set out the advantages, disadvantages, costs and consequences of the available options, and where appropriate, recommend a suitable course of action.
- Guidance should note that ministerial staff have a duty to make sure they are properly informed on the issues on which they provide advice.
- Guidance could note that ministerial staff, before providing advice to ministers, have an obligation to seek adequate briefing, consult where appropriate and give due consideration to all viable options including advice from the State Service. The rationale behind this is that the minister is accountable for whatever happens in his or her office, including the advice prepared – particularly if it differs from that offered by the State Service - and must therefore accept the consequences of relying on that advice.
- Guidance could refer to and outline the requirements of procedural fairness.
- Guidance could emphasise that ministerial staff have a duty of care in the performance of their work, particularly where members of the public may rely on the information or advice provided by ministerial staff.
- Guidance could reiterate that decisions and actions taken by ministerial staff must be made objectively, impartially, honestly and without pre-judgement.

## **CONFLICT OF INTEREST**

- The term ‘Conflict of interest’ should be defined in Guidance. For example, a conflict of interest may arise where a ministerial staff member is in a position to take part in, or influence, an official decision and that interference may improperly advantage the staffer personally, or a relative or associate.
- The differences between actual, perceived and potential conflicts of interest, and situations where they might arise, should be discussed in Guidance. It may be beneficial to provide some examples of perceived and potential conflicts of interest. Guidance should note to which interests the principle extends, e.g. financial and other interests.
- Guidance could note that a conflict of interest may arise even when a member of ministerial staff is not trying to further their own interests but that of their family or of another person.
- Guidance should stipulate the procedure for declaring, managing and recording conflicts of interest, eg. that conflicts are to be managed on a continuing and ad hoc basis.
- Guidance could outline what might constitute ‘reasonable’ steps, and list the ways a conflict of interest might be resolved.
- Guidance should refer to any relevant policies and procedures relating to conflicts of interest.
- Guidance should state that ministerial staff should seek advice from the supervisor or manager if in doubt in relation to whether a conflict of interest exists or on how to resolve it.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

## **DECLARATION OF INTERESTS**

- Guidance should refer to any relevant policies, directives or guidelines in relation to declaration of interests by ministerial staff.
- Guidance should stipulate the procedure to be followed when declaring an interest, including the timeframes involved, who to make the declaration to, the form and content of the declaration, whose interests need to be disclosed and what the procedure is for change in interests.
- Any relevant terms could be defined in Guidance, e.g. declarable interest, personal interest, pecuniary interest.
- Guidance should stipulate the procedure for making ad hoc disclosures and when these are required.
- Any restrictions that apply to acting in a matter, if the member of ministerial staff has a relevant interest in it, should be outlined in Guidance.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section, or with the Act. Guidance could stipulate who is to have access to the Register and the rationale behind the Register.

## **IMPROPER ADVANTAGE**

- Any policies or guidelines on the proper use of confidential and official information, including the disclosure of such information, should be outlined in Guidance.
- Guidance could distinguish that information can be misused regardless of whether the information is confidential or not or whether an advantage or benefit has been obtained.

- Guidance could emphasise that ministerial staff must carry out their duties objectively and without consideration of personal or financial advantage for themselves or another person or persons.
- Guidance could define who is a public official
  - reference could be made to the definition contained in the *Integrity Commission Act 2009*.
- Guidance could outline any exceptions as to when it is appropriate to disclose confidential information, e.g. when required by law.
- Any policies relating to the employment of family members could be referred to in Guidance.
- Guidance should stipulate the procedure to be followed if a member of ministerial staff is offered compensation to perform a function or duty which they are already paid to do, e.g. who do they report the matter to.
- Guidance should refer to any relevant laws and regulations relating to bribery.
- Guidance could emphasise that it is a privilege to receive confidential information which assists with the decision making processes.
- Guidance could emphasise that ministerial staff must not use their position to support particular issues or a political party during an election campaign. Further, that material from political parties and how-to-vote material, whether produced by a political party or any other organisation must not be displayed within the precincts of government buildings, or on other Crown property or vehicles (with the exception of party specific electorate offices or vehicles allocated to Members of Parliament).
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **IMPROPER USE OF PUBLIC RESOURCES**

- Guidance should refer to and outline any applicable policies and guidelines relating to the proper use of public resources, including any procurement policies. It should be reiterated here that ministerial staff must not use publicly funded resources to support particular issues or their parties during the election campaign. Further, that material from political parties and how-to-vote material, whether produced by a political party or any other organisation, must not be displayed within the precincts of government buildings, or on other Crown property or vehicles (with the exception of party specific electorate offices or vehicles allocated to Members of Parliament).
- Guidance could discuss that ministerial staff must make economical use of the public resources which are made available to them to undertake their duties. Further, that public resources are not to be subject to wasteful or extravagant use, and due economy is to be observed at all times.
- Guidance should direct ministerial staff to any relevant record keeping policies.
- Guidance could note that public resources are to be used for work-related purposes only.
- It could be stipulated in Guidance that web pages and e-mail systems provided by agencies should not be used to publish or transmit political material.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **GIFTS AND BENEFITS**

- Reference should be made in Guidance to any relevant legislation, policies and guidelines relating to the receipt and giving of gifts and



benefits, including hospitality. If applicable, Guidance should refer to any policy on sponsored travel. A brief overview of the gifts and benefits and travel and hospitality policies should be provided, e.g. outline the instances when and when it is not acceptable to accept gifts and benefits and token gifts as opposed to valuable gifts.

- Guidance should identify persons to which the principle applies, eg. to a member of the ministerial staff member's family.
- Any exceptions to this section should be noted.
- Guidance could define any relevant terms, e.g. nominal value, token gift, hospitality, sponsored travel.
- Guidance should stipulate the procedure to be followed when accepting and registering a gift, the timeframes involved, the form and content of the declaration, how to register the gift, and to who the declaration should be made to.
- Guidance could note that if there is any doubt as to whether a gift or benefit should be disclosed, the ministerial staff member should seek advice from their supervisor or manager.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **OUTSIDE EMPLOYMENT**

- Guidance should refer to any rules, guidelines or policies which regulate outside employment by ministerial staff.
- Guidance should also refer to any rules, guidelines or policies in relation to political participation by ministerial staff. It should be noted here that if a ministerial staffer becomes a candidate at an election for election as a members of either House of State or Federal Parliament, he or she must resign their appointment on becoming such a candidate.

- Guidance should note any exceptions that apply, e.g. volunteer work.
- Guidance should stipulate the procedure to be followed when seeking approval for outside employment and the procedure to be followed if approval is given for outside employment and subsequently a conflict of interest arises between public duties and such outside employment.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **POST MINISTERIAL STAFF EMPLOYMENT**

- Guidance should refer to any rules, guidelines or policies which regulate post-separation employment.
- Guidance should refer ministerial staff to the Lobbyist Code of Conduct and any other rules, guidelines or policies relating to lobbying and ministerial staff. A brief overview of the Code should be provided in Guidance.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **MISLEADING INFORMATION**

- Guidance could outline the requirements of procedural fairness.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

#### **DEALING WITH DEPARTMENTS**

- Guidance should refer to any relevant policies and guidelines relating to dealing with



Departments and with public servants. This could include outlining what ministerial staff can convey to State Servants or direct State Servants to do.

- Guidance should refer to the State Service Principles and Code of Conduct. It should also reiterate that in their dealings with the State Service, ministerial staff should act in a way which recognises and upholds the political impartiality of State Servants and does not conflict with the State Service Principles and Code of Conduct.
- Guidance should refer ministerial staff to any policies and guidelines on facilitating communication between ministers and departments. It should be reiterated here that ministerial staff are to facilitate direct and effective communication between their minister's department(s) and their minister.
- Guidance should emphasise that executive decisions are the preserve of ministers and public servants, and not of ministerial staff acting in their own right.
- Guidance should outline what actions ministerial staff may take on behalf of their ministers, e.g. convey to State Servants their ministers' views and work priorities, including on issues of presentation and form.
- Guidance should be provided on the actions a ministerial staff must not take, e.g. suppress or supplant the advice being prepared for ministers by State Servants, although they may comment on such advice.
- Reference could also be made in Guidance to the appropriate interaction between ministerial staff and Statutory Office holders.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

## **RESPECT FOR PERSONS**

- Guidance should refer to any relevant policies and guidelines relating to harassment, discrimination, and diversity. Any relevant policies, procedures and guidelines relating to customer service should also be referred to in Guidance.
- Guidance could outline the requirements of procedural fairness.
- If enforcement is not addressed in the preamble/introduction of the Code, Guidance should outline the consequences of non-compliance with this section.

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# APPENDIX 5:

## RECEIPT AND GIVING OF GIFTS AND BENEFITS – POLICY GUIDELINES FOR MINISTERS 2011

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### 1. APPLICATION OF POLICY

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1.1 These guidelines apply to:

- Ministers and Parliamentary Secretaries;
- The immediate families of Ministers and Parliamentary Secretaries (ie spouses, partners and dependent children and/or relations) but only in relation to or consequential on the official duties of the Ministers or Parliamentary Secretaries.

1.2 Any reference to ‘Minister’ in this policy shall be read as including all the categories listed above.

1.3 Where the Premier is the Minister who has received or is giving a gift, then the reference to ‘the Premier’ in this document as the approving authority shall be read as meaning the Secretary, Department of Premier and Cabinet.

1.4 A dependent relation is defined as a person who’s affairs are so closely connected with the Minister’s affairs that a benefit derived by that person, or a substantial part of it, could be passed to the Minister.

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### 2. DEFINITION OF GIFTS

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2.1 For the purposes of this policy, a gift has its common meaning and includes but is not limited to:

- a gift of money;
- a gift of a physical object;
- the conferring of a benefit; or
- indirect or concealed gifts such as:
  - the permanent or indefinite loan of money or property;
  - the sale or transfer of property at less than full value; or
  - the provision of a benefit which has a financial or commercial value for less than full value; (that has been presented, donated or transferred.)

2.2 Gifts:

- made in a will;
- to or from a relative, friend or acquaintance outside of the course of official duties in a purely personal capacity and which do not give rise to or create the appearance of a conflict of interest; or
- that form part of an approved assistance programme such as a disaster relief arrangement; (do not fall within the scope of this policy).

2.3 In cases of doubt, the matter should be referred to the Premier or the Secretary, Department of Premier and Cabinet for determination.

### 3. PRINCIPLES

#### 3.1 The acceptance and giving of gifts by

Ministers should be guided by the principles set out below. It is inevitable that situations will arise which are not adequately dealt with by this policy. The exercise of good judgement is often required and it is the responsibility of the Minister to decide what is appropriate. Guidance can be obtained from the Premier or the Secretary, Department of Premier and Cabinet if required.

3.2 The overriding concern is to ensure that no conflict exists or appears to exist between the public duty and the private interest of a Minister. Such conflict or appearance of conflict could relate to a Minister's past, current or future duties.

3.3 The propriety of accepting any gift must always be judged in terms of the possibility of creating or appearing to create a conflict of interest notwithstanding that the gift might be of lesser value than the monetary limits established by this policy.

3.4 Other than for token gifts, Ministers should indicate that it is contrary to Government policy to accept gifts. There are circumstances, however, where the acceptance of a gift on behalf of the State is necessary such as where:

- refusal would adversely affect the interests of the State;
- refusal would cause offence or embarrassment;

- refusal would be contrary to the cultural norms of the donor; or
- the gift is part of a formal exchange of gifts between the Tasmanian Government and another government, institution, company or person approved by the Premier (eg those items presented at meetings with Ministers of the diplomatic and consular corps).

Ministers still need to satisfy themselves that their Ministerial independence will not be comprised or appear to be comprised. The acceptance of such gifts is to be dealt with in accordance with the procedures outlines in section 4.2.2 to 4.2.4.

3.5 Under no circumstances should Ministers accept gifts involving the transfer of money or financial Instruments, regardless of value.

3.6 Regular or frequent gifts from a single source should be discouraged and avoided.

3.7 Ministers should not give, or make available any gift or benefit other than as required for the discharge of their official duties in any circumstances which would give rise to or create the appearance of a conflict of interest. This includes gifts and benefits offered to the Minister to do what they are already paid to do.

3.8 Ministers should take all reasonable steps to ensure that their spouses, partners, dependent children or relations do not receive gifts or benefits which could comprise Ministerial independence by giving the appearance of an indirect attempt to influence, or secure favour with, the Minister.

Any such gifts or benefits offered, whether made directly to the Minister or indirectly to their family, must be reported to the Premier as soon as possible so as to be the subject of record.

declared and automatically become the property of the Crown;

(ii) Gifts must also be declared and become the property of the Crown where more than one gift is received from one source in any calendar year and the aggregated amount of those two or more gifts exceeds \$200.00;

(iii) Where the value of a gift referred to in (i) is less than \$200.00 the Minister may apply to the Premier to retain the gift;

(iv) The value of a gift is assessed on the basis of the Australian wholesale price in Australian dollars. The value of a gift received overseas will be assessed on the wholesale price of the country of origin;

(v) If there is any doubt as to whether a gift exceeds the \$200.00 limit, the Department of Premier and Cabinet will obtain a formal valuation from a valuer competent in the appropriate field. Any costs incurred in obtaining the valuation are to be borne by the Minister's portfolio department.

## 4. RECEIPT OF GIFTS

### 4.1. TOKEN GIFTS

4.1.1 Table favours, mementoes, remembrances or other tokens bestowed at an official function and other gifts received as souvenirs, marks of courtesy or of a seasonal nature may be accepted and retained by Ministers provided that they are of a value of \$50.00 or less (e.g. books, diaries, ties and scarves, pens, pins and badges, etc) and do not give rise to or create the appearance of a conflict of interest.

### 4.2 PERSONAL GIFTS

4.2.1 Personal gifts are those items which are clearly intended for the personal use or consumption of the recipient. Such gifts would include bottles of wine, hampers of food, etc. Again the value should not exceed \$50.00 and the gift itself should not give rise to or create the appearance of a conflict of interest. Ministers may also retain personal gifts valued below \$50.00. Where a personal gift is given that is over \$50.00 approval, but under \$200.00, must be sought from the Premier to retain the gift.

### 4.3 OTHER GIFTS

#### 4.3.1. Ownership

(i) All gifts, other than token or personal gifts, received in the course of official duty are to be

#### 4.3.2. Declaration and future use of gifts

(i) Within 14 days of receiving a gift of any valued over \$50.00 or, where the gift was received overseas, within 14 days of returning to Australia the Minister shall inform the Protocol Office of the gift.

(ii) Where a gift is received overseas, it must be declared to Australian customs at the point of entry if the gift falls outside the normal duty free passenger concession or if the gift is subject to a quarantine inspection. Where a gift received overseas does not qualify for duty free entry under normal passenger concessions, all custom duties and other relevant taxes are payable at the appropriate rate. In either

instance, the State Protocol Office should be notified.

(ii) The Protocol Office must evaluate all gifts received to assess whether such gifts are required to be declared and registered (ie it is not a token or personal gift) and consult with the Minister or the Minister's staff on its intended future use.

(iv) If the gift is to be declared, the Protocol Office shall:

- complete a Declaration of Official Gift form; and
- forward the declaration to the Minister's office for the Minister to sign.

Signed forms are then to be returned to the Protocol Office, which will update the Gifts register.

(v) All gifts, other than token gifts and personal gifts, must be declared and surrendered to the Protocol Office. A Minister may apply to the Premier to retain the gift. The State of Tasmanian will have first call to retain any gifts deemed to be of historical or cultural significance regardless of value.

(vi) A copy of the appropriate format for a declaration is attached at Annexure A.

(vii) Ministers are encouraged to make practical recommendations concerning the future of surrendered gifts.

(viii) For every declared gift the Premier will approve its future use including, but not limited to:

- Transferral on loan for display in the Minister's ministerial office;

- Transferral on loan for display in other Government offices;
- Transferral on loan to a repository of items of cultural, educational or historical significance including museums, galleries, libraries, archives, schools or community institutions for display;
- Storage or use by a Government agency;
- Donation to a non-profit organisation or charity;
- Disposal of, reduced to scrap or otherwise destroyed; or
- Retention by the Minister.

#### **4.3.3. Display of gifts in ministerial offices**

(i) A Minister may request that declared gifts be issued on loan for display in his or her ministerial office.

(ii) Any gift issued to a Minister on loan must be returned to the Protocol Office when the Minister no longer holds office, or if the item is required for official purposes, or at the request of the Secretary, Department of Premier and Cabinet.

(iii) After an election all gifts on display in ministerial offices must be left in their original position and will be administered by the Protocol Office until the incoming Government confirms their continued display or other use.

#### **4.3.4. Disposal of gifts**

(i) Subject to the Premier's approval and within the requirements of any law and policies concerning the disposal of Crown property, the Secretary, Department of Premier and Cabinet has sole

discretion concerning the storage or disposal of gifts not retained elsewhere.

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## 5. GIVING OF GIFTS

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5.1 Ministers should refrain from giving any gift or benefit other than in accordance with their official duties in any circumstances which would give rise to or create the appearance of a conflict of interest. Ministers should have regard to economy and appropriateness when selecting a gift. To avoid embarrassment, advice should be sought from the State Protocol Office prior to the giving of the gift.

5.2 Where a gift (over the value of \$200.00) is to be made, the permission of the Premier must be obtained. The request may be in respect of a specific person or for an event or trip where the specific recipients may not be able to be identified in advance.

5.3 Where more than one gift is to be given to an individual or single organisation, and the value of the gifts given in any 12-month period is over \$200.00 the approval of the Premier must be obtained.

5.4 Where the Premier has approved a gift or gifts over the value of \$200.00 to be made by a Minister, A Declaration of Official Gift is to be forwarded to the Secretary, Department of Premier and Cabinet within 14 days of giving the gift or, where the gift was made overseas, within 14 days of returning to Australia.

5.5 A copy of the appropriate format for a declaration is attached at Annexure A.

5.6 The Department of Premier and Cabinet will maintain a register of gifts given. The register will provide information on:

- Date gift given;
- Name of Recipient;
- Identity of the Gift Donor;
- Description of Gift; and
- Estimated value.

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## 6. SPONSORED TRAVEL

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6.1 Ministers are not to knowingly accept sponsored travel wholly or partly from non-government sources except in accordance with these guidelines.

6.2 Sponsored travel includes the provision of transport, accommodation or living expenses to Ministers other than from official funds or the Minister's own resources.

6.3 The expectation is that Ministers travelling on official duties will do so at the expense of the State or, in certain cases, the Commonwealth.

6.4 All offers of sponsored travel other than from the Commonwealth are to be referred to the Premier for prior endorsement. In normal circumstances, such a request should arrive with the Premier at least six weeks prior to the proposed travel.

6.5 Sponsorship by another body may be approved particularly if acceptance of the offer could be considered of benefit to the State. Sponsorship by private firms or groups, however, is more likely to give rise to the appearance of a conflict of interest.



6.6 Offers of sponsored travel are not made acceptable by being undertaken in the Minister's own time or in an unofficial capacity particularly where any link exists or could be construed between the offer and the official duties of the Minister.

6.7 This part of the policy does not apply to:

- travel taken as an official of an organisation which does not create or give the
- appearance of creating a conflict of interest; and travel associated with Parliamentary duties including parliamentary associations.

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## 7. FUNCTIONS, ENTERTAINMENT AND HOSPITALITY

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7.1 The occasional provision of passes or tickets to entertainment events (eg sporting events and cultural activities) is normally regarded as hospitality and not as a gift unless there is a potential for a conflict of interest arising or being seen to arise in relation to the receipt of such hospitality.

7.2 Frequent hospitality from a single non-official source, other than from family and friends in a purely personal capacity, especially when not associated with a distinctive or seasonal event is unacceptable and should be discouraged.

7.3 In general terms, hospitality which is directed at establishing networking links between Ministers

and persons associated with an organisation or industry, or at introducing a product or service to a Minister as part of a general launch is acceptable. The key issue is whether the hospitality is aimed at inappropriately influencing the Minister in the exercise of some specific or general duty or power either individually in directing the activities of their department or through the exercise of a discretion, or collectively through the decisions of the Government.

7.4 Working lunches and dinners associated with a particular project or task are also not usually considered as gifts. Of importance in these circumstances is the nature of the benefit received (eg that the venue of a meal matched the nature of the work undertaken).

7.5 Care should be taken when hospitality is associated with sponsored travel. In all cases where travel is involved, the guidelines for sponsored travel should be followed.

7.6 The Minister's duty is to preserve the appearance as well as the actuality of independence of judgement and action from improper influence. The appropriateness of any hospitality is normally a matter for the individual Minister. Guidance can be obtained from the Premier or the Secretary, Department of Premier and Cabinet.

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## 8. GIFTS REGISTER

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8.1 The Department of Premier and Cabinet maintains a register of official gifts received by Ministers.

8.2 The register provides information on:

- Date gift received;
- Name of Recipient;
- Identity of the Gift Donor;
- Description of Gift;
- Estimated value; and
- Agreed disposal/recommended use.

8.3 Each calendar year before the last sitting day, the Premier will cause the register for that year to be tabled in the House of Assembly.

8.4 The Department of Premier and Cabinet will publish the register of official gifts received and the register of official gifts made on the internet with real time disclosure.

8.5 Ministers are personally responsible for ensuring the accuracy of the register in relation to gifts received by them.

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# APPENDIX 6:

## METHODOLOGY

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The commission's research into codes of conduct for parliamentarians, ministers and ministerial staff within Australia consisted of:

- Literature review
- General overview and information gathering
- Comparative analysis of codes including macro analysis and a micro analysis.

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### LITERATURE REVIEW

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A literature review was conducted to identify areas of prior academic research in relation to codes of conduct for members of parliament, ministers and their staff. The literature review included an examination of case studies involving misconduct or unethical conduct by parliamentarians, ministers and their staff. This review enabled an examination of ethical dilemmas that have faced parliamentarians in the past, how these have traditionally been dealt with and whether such approaches need to be reviewed. Particular emphasis was placed on the recommendations which have been made by observers and commentators to avoid similar incidents of misconduct occurring in the future, and to make codes of conduct more robust.

The literature review demonstrated that very little comparative work has been undertaken in relation to ethical frameworks for ministers and parliamentarians, or to the codes of conduct existing within various jurisdictions. Three works in this area should be noted - firstly Dr Andrew Brien's 1998 Paper for the Commonwealth Parliament. Although this paper did not contain a detailed

analysis of various Australian codes of conduct for parliamentarians, it did consider many of the issues raised in this review, and paid attention to processes and codes existing within Canada and the United Kingdom, comparing these to processes and ethical challenges for Australian parliamentarians.<sup>1</sup>

The second study to note is an analysis conducted by Noel Preston in 2001, "Codifying Ethical Conduct for Australian Parliamentarians 1990 - 1999".<sup>2</sup> Preston's article outlines the development of codes of conduct for members of parliament up until 2001, and then undertakes a brief but insightful comparative analysis of the contents of the codes. The usefulness of this analysis, for the purposes of this project, was limited by the brevity of the article and also by the fact that the analysis was undertaken ten years ago, and thus did not take into account many recent developments in area. Further, the analysis did not consider best practice in codes of conduct for parliament or for other organisations, thus could not provide detailed information about what might constitute an effective code.

Finally, the Department of Parliamentary Services' Background Note 'A survey of codes of conduct in Australian and selected overseas parliaments' by Deirdre McKeown was valuable to the Commission in carrying out the current research project, in that, as discussed above, it provided details about which codes were in force in various jurisdictions. This information was then able to be verified by the Commission by requesting confirmation and additional information from various officers, as outlined above. However, the survey did not contain a comparative analysis of the codes: "It does not compare codes of conduct or include codes covering the public service or ministerial staff."<sup>3</sup>

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1 Dr Andrew Brien, 1998, "A Code of Conduct for Parliamentarians?".

2 Noel Preston, 2001, "Codifying Ethical Conduct for Parliamentarians 1990-1999", *Australian Journal of Political Science* 36(1) pp.45-59.

3 McKeown, D., 2006, "A survey of codes of conduct in Australian and selected overseas parliaments", Background Note, Department of Parliamentary Services, 15 June 2006, p.1.

## GENERAL OVERVIEW AND INFORMATION GATHERING

The Commission conducted a search of relevant documents and materials. This involved a preliminary review of websites of Parliaments and Departments of Premier and Cabinet or their equivalent to identify which jurisdictions had codes of conduct for each group and to locate other relevant documents.<sup>4</sup> A general internet search was also conducted.

In October 2010, the Commission wrote to parliamentary librarians within Australia to request codes of conduct relating to members of parliament, ministers and ministerial staff, and other documents and materials relevant to the conduct of parliamentarians. A request was also made to the New Zealand Parliamentary Librarian.

As the project progressed, it became apparent that some clarification and verification was required regarding the documents and materials supplied or identified through independent research. In January 2011, correspondence was sent to every Department of Premier and Cabinet or its equivalent and also to parliamentary clerks for houses of Parliament in each Australian jurisdiction. Correspondence was also sent to the House of Lords Commissioner of Standards and the House of Commons Parliamentary Commissioner for Standards in the United Kingdom, the Senate Ethics Officer and the Conflict of Interest and Ethics Commissioner in Canada, and the Clerk of Parliament in New Zealand seeking clarification about codes in those jurisdictions. A list of documents identified or supplied in response to the Commission's request is provided in Appendix 7.

## COMPARATIVE ANALYSIS OF CODES OF CONDUCT

The below table shows which jurisdictions have particular separate codes of conduct.

**TABLE 1 CODES OF CONDUCT FOR MEMBERS OF PARLIAMENT, MINISTERS AND STAFF.**

Jurisdiction	Code of Conduct for Members of Parliament	Code of Conduct for Ministers	Codes of Conduct for Ministerial Staff
Commonwealth	✗	✓	✓
Tasmania	✓	✗	✗
Victoria	✓	✓	✓
Australian Capital Territory	✓	✓	✗
New South Wales	✓	✓	✗
Queensland	✓	✓	✓
South Australia	✗	✓	✗
Northern Territory	✓	✗	✗
Western Australia	✓	✓	✗

4. Such as Standing Rules and Orders, relevant legislation, Ministerial Handbooks, Cabinet Handbooks and Public Sector Codes of Conduct and Values.

## EXCLUSIONS

The analysis was limited to codes specific to members of parliament, ministers and staff. Public sector codes of conduct applying to ministerial staff as well as public servants were not examined<sup>5</sup>. Only stand-alone ministerial staff codes of conduct were subject to analysis. This analysis also excluded consideration of ministers' codes, where ministerial staff are subject to that code.

Codes of conduct for staff of Members of Parliament were not analysed for the purposes of this report.

## MACRO ANALYSIS

Once the relevant documents and materials had been identified and obtained, themes were identified through analysis of the various codes and their contents and review of the literature in the area of parliamentary and ministerial misconduct. Themes were classified as either primary or additional themes. Primary themes were consistent within the codes and had received media or academic attention. Additional themes were not common to all codes and often were exclusive to one jurisdiction.

Primary and additional themes identified for each code type are:

### Members of Parliament

The primary themes identified for members of parliament were:

- conflicts of interest;
- declaration or divestment of personal interests;
- outside employment;
- gifts and benefits;

- improper advantage (confidentiality); and
- improper use of public resources.

Additional themes identified were: misleading statements; freedom of speech; compliance with relevant codes, laws and directions; conformity with Westminster principles, respect for democratic institutions and processes and the principles of good governance; acting in the public interest; being frank, honest, transparent and impartial in official dealings and conduct towards assembly staff.

### Ministers

The primary themes identified for ministers were:

- conflicts of interest;
- declaration or divestment of personal interests;
- outside employment;
- shareholdings;
- gifts and benefits;
- post ministerial employment;
- improper advantage (confidentiality);
- improper use of public resources; and
- misleading statements.

Additional themes identified were: fairness and respect; lobbying; acting in the public interest; compliance with relevant codes, laws and directions; interaction with public servants; caretaker provisions; conformity with Westminster principles, respect for democratic institutions and processes and the principles of good governance; exercise of due diligence, care and attention; being frank, honest, transparent and impartial in official dealings; and accountability.

<sup>5</sup> In New South Wales the Department of Premier and Cabinet's Code of Conduct applies to ministerial staff. In the Northern Territory, ministerial staff members are subject to the Northern Territory Public Sector Principles and Code of Conduct made pursuant to the *Public Sector Employment and Management Act 2002*. In Western Australia, ministerial staff members are subject to provisions relating to conduct as set out in section 9 of the *Public Sector Management Act 1994*, the *Public Sector Code of Ethics* and the Department of Premier and Cabinet's Code of Conduct (currently under review).

### Ministerial staff

The primary themes identified for ministerial staff were:

- conflicts of interest;
- declaration and divestment of personal interests;
- outside employment;
- gifts and benefits;
- improper advantage;
- improper use of public resources;
- dealing with stakeholders;
- dealing with departments; and
- compliance with relevant codes, laws and directions.

Additional themes identified were the exercise of due diligence, care and attention; being frank, honest, transparent and impartial in official dealings; privacy; community activities; overseas travel; probity in tendering; political office; acting in the public interest; and conforming with Westminster principles, respect for democratic institutions and processes and the principles of good governance.

### Themes common across the three types of codes

The following themes were common across codes of conduct for members of parliament, ministers and ministerial staff:

- conflicts of interest;
- declaration and divestment of personal interests;
- outside employment;
- gifts and benefits;
- improper advantage; and
- improper use of public resources.

### Micro Analysis

The final stage involved a more detailed analysis of the codes and their contents. Where a jurisdiction covered a particular theme or principle, other factors were considered, including: the language used; the level of obligation required of a Member, minister or ministerial member of staff; and whether any instruction or guidance was provided. The micro analysis, in conjunction with the literature review, enabled the Commission to identify what might be considered best practice in the development of codes of conducts for parliamentarians, ministers and their staff.

## UNDERSTANDING “BEST PRACTICE”

The term ‘best practice’ is used frequently throughout this report. Despite increasingly common usage, it is not always clear what precisely is meant by the term.

Sometimes the term is used to refer to established best practice, which has been ascertained over a period of time, and which follows from rigorous research and analysis within a field.

Despite our own comparative analysis of codes and a number of surveys and academic considerations of the issues surrounding codes of conduct for parliamentarians and ministers, we are of the view that insufficient research has been conducted to establish what exactly constitutes best practice in this narrow sense, within this particular field.

We therefore have utilized the term ‘best practice’ in this report to refer to practice which we consider, and which our analysis and other evidence supports, will improve an outcome – in this case, will enhance the ethical conduct of parliamentarians, ministers and ministerial staff.



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# APPENDIX 7:

## LIST OF IDENTIFIED AND PROVIDED MATERIALS

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The following documents were identified by the Commission through its own research or were provided to the Commission, upon request, by parliamentary and other officers in jurisdictions which were subject to the comparative analysis.

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