

Review of Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff

Summary Report

Prepared for the Joint Standing Committee on Integrity

24 May 2016

1. Introduction

- 1.1. This Summary Report provides an update on the status of codes of conduct for Members of Parliament, Ministers and Ministerial staff. It is provided in response to a request from the Joint Standing Committee on Integrity ('JSC') that the Integrity Commission ('the Commission') undertake such a review.
- 1.2. The Summary Report provides an overview of the Commission's original report on the issue: *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania* (2011) ('the 2011 report'), and a detailed review of the draft Code of Conduct for Members of Parliament ('the draft MPs Code').

2. Background

- 2.1. A key function of the Commission is to '*review, develop and monitor the operation of any codes of conduct and guidelines that apply to Members of Parliament*'.¹
- 2.2. The issue of codes of conduct for MPs, Ministers and Ministerial staff was raised by the Commission in the 2011 report. The report contained model draft codes of conduct for each of the above groups, and recommended that each House of Parliament adopt the relevant code for that House, and that the State Government adopt the codes for Ministers and Ministerial staff.²
- 2.3. Since that time, a Code of Conduct for Ministers was issued by the then Premier in 2012. The code reflected the model provisions proposed by the Commission, and included associated policy on gifts and benefits and detailed guidance notes. In 2014, the current Premier re-issued the code and associated documentation. The Commission is generally pleased with the Ministerial Code however notes that a review of the Code is warranted.
- 2.4. The Commission released an update report on codes of conduct in December 2015: *Enhancing Accountability Mechanisms for Members of Parliament and Ministerial Staff: a progress update* ('the 2015 update report'). This report served as a reminder and a prompt for further action by Parliament and the Government.
- 2.5. The Commission has consulted with the Parliamentary Standards Commissioner, the Reverend Professor Michael Tate, in considering the 2011 report and in developing the revised draft MPs Code.

3. Consideration of the 2011 Report

- 3.1. The Commission has considered the 2011 report in the preparation of this Summary Report. We have not however undertaken a detailed review of all aspects of that report and do not propose to release a revised version.
- 3.2. The Commission considers that the 2011 report remains a solid and well-crafted document that can be relied upon with confidence. In broad terms, it is considered that there is little that can be meaningfully added to the discussion and recommendations in that document.
- 3.3. The work on what constitutes an effective code (chapter 7 of the 2011 report) is very much in-line with what the Commission subscribes to now. From our experience in other parts of the

¹ *Integrity Commission Act 2009*, s 30(c).

² Integrity Commission, *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania* (2011), 157.

public sector (such as local government), the advice in the report should continue to be followed. There are however some aspects of good practice that have further developed and could be applied to the draft codes:

- Further emphasising that codes of conduct should build upon and reflect organisational values and principles. To a degree, this is embodied (in the MPs and Ministerial codes) by the 'Statement of commitment' that follows the Preamble; however the Commission considers that this should be re-framed and revised as a 'Statement of values'.
 - Each ethical standard should contain a core ethical, or 'principle', statement. This sets the aspirational target of the respective standard, and should be framed in the positive ie what MPs and Ministers seek to achieve, rather than what they must not do. This approach has been utilised in the recently enacted Code for Local Government elected representatives and would not change the intent of the ethical statements.
 - The 'principle' statement in each standard should be presented in a bolder format. This will assist to keep the ethical statement clear and concise, and differentiate them from the supporting 'behavioural' statements.
 - The supporting 'behavioural' statements within each ethical standard should also be framed in the positive where possible, accepting that some 'must not...' statements may be necessary.
- 3.4. The 2011 report recommends guidance information be included to support each code, and such guidance has been issued in association with the Code of Conduct for Ministers. The Commission continues to support this approach however notes that this information must not usurp the code itself, should be concise, and point to relevant sources of information and procedure.
- 3.5. The Commission's 2015 update report notes the essential work that needs to be undertaken in other related areas to complement the codes of conduct and to ensure robust and integrated ethical framework. This work needs to be coordinated and in-tandem with the review and release of any codes of conduct for MPs and Ministers.

4. Review of Draft Code Conduct for Members of Parliament

- 4.1. The revised draft MPs Code is presented for consideration and discussion by the JSC, and members of each House of Parliament.
- 4.2. The revised draft code is provided in Attachment A of this Summary Report. Explanatory notes for the modifications to the draft MPs Code are provided in Attachment B. The draft MPs Code as originally proposed in the 2011 report is provided in Attachment C.
- 4.3. The revisions have been undertaken in accordance with the suggested changes outlined in cl 3.3 of this Summary report (above), based upon current good practice and the Commission's experience in developing codes of conduct throughout the public sector.
- 4.4. The Commission, in consultation with Rev Prof Tate, considers that there do not exist any new emerging areas of ethical risk that would warrant the removal or addition of new ethical standards within the draft code.
- 4.5. It is noted that further work is required to prepare suitable Guidance notes to accompany the draft MPs Code. These notes are required to further define and clarify terms used in the code eg 'close relative' (Use of public office), 'associate' (Conflict of interest), 'nominal value' (Gifts and benefits).

5. Code of Conduct for Ministers

- 5.1. The JSC has requested that the Commission review the Ministerial Code, given it has been in place for some time now.

- 5.2. The Commission has been unable to undertake this review within its current resources. It is considered that the review should be undertaken in consultation with the Government and the Department of Premier and Cabinet, and the Parliamentary Standards Commissioner. The Commission is happy to lead this process.
- 5.3. It is noted that many of the proposed revisions to the draft MPs Code will be applicable to the Ministerial code, recognising that the Ministerial code has additional ethical standards that are specific to the Ministerial role.

6. Draft Code of Conduct for Ministerial Staff

- 6.1. The Commission has not considered the draft Code of Conduct for Ministerial Staff.
- 6.2. The Commission's 2015 update report states:

[30] *As was the case in 2011, instruments of appointment for Tasmanian ministerial staff refer to a 'standard of conduct' and contain comprehensive requirements that reflect the wording of the State Service Code of Conduct.³ On the election of the current government, a new code for ministerial staff was presented by the Department of Premier and Cabinet for consideration. However, the government has continued to use the existing standard contained within the instruments of appointment. The instruments are administered by the Premier's Chief of Staff; they are not publicly available.*

[31] *The Commission considers that a system in which the form of the code is unknown to the public, and in which the administration of such a code is largely invisible, is not transparent. A publicly available, stand-alone, code of conduct would facilitate oversight by the Commission and other relevant bodies, and also the general public.*

...

[34] *Beside Tasmania, there are three Australian jurisdictions that do not have publicly available codes for ministerial staff.⁴*

- 6.3. The Commission notes that the Government has stated that '*[t]he ministerial staff conduct requirements will now be publically available to view on the Department of Premier and Cabinet website, in line with the Integrity Commission's recommendation*'.⁵ The Commission has been unable to confirm whether this has occurred.
- 6.4. Any further review of the current Instruments of Appointment and the Commission's proposed code of conduct should be undertaken in consultation with the Government and the Department of Premier and Cabinet. The Commission is happy to lead this process.

7. Conclusion

- 7.1. The Commission has undertaken a detailed review of the draft Code of Conduct for Members of Parliament. This is provided for the consideration and action of the JSC and members of either House of Parliament.
- 7.2. Further work is required to develop associated Guidance notes to define and clarify terms used in the Code, and to consider other relevant legislation eg *Parliamentary (Disclosure of Interests) Act 1996*.
- 7.3. Further consultation is required as part of any review of the codes relating to Ministers and Ministerial staff. The Commission is happy to lead this process.

³ See *State Service Act 2000* (Tas) s 9.

⁴ Integrity Commission, *Enhancing Accountability Mechanisms for Members of Parliament and Ministerial Staff: a progress update* (2015), 13.

⁵ Attorney-General, Dr Vanessa Goodwin, 18 December 2015: http://premier-dev.dpac.tas.gov.au/releases/integrity_commission_update_report.

Revised Draft Code of Conduct for Members of Parliament
Draft for Joint Standing Committee on Integrity
20 May 2016

Note: to be read in conjunction with Explanatory Notes (Attachment B)

PREAMBLE

Members of Parliament 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 the integrity of its institutions.

Compliance with the law is not always enough to guarantee an acceptable standard of conduct. Members must act not only lawfully, but also in a manner that will withstand the closest of public scrutiny. This Code has been developed for the guidance of all Members of Parliament. It sets out ethical standards and 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.

Neither the law nor this Code is designed to be exhaustive, and there will be occasions where 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.

Members of Parliament are to promote and support this Code by leadership and example.

Statement of values

This Code is derived from the fundamental values of the institution of the Parliament in this State. By adopting and upholding this Code, all Members of Parliament share in and support these values.

As Members of Parliament, we value:

- the public interest and the fundamental objective of public office to act solely in terms of the public interest;
- the improvement of the economic and social conditions of all Tasmanian people, and our service to our fellow citizens to achieve this;
- the promotion of human, social and environmental welfare through the responsible execution of our official duties;
- integrity, honesty, accessibility, accountability, fairness, transparency, courtesy, respect and understanding;
- loyalty to shared principles, respect for differences, and fairness in political dealings to our fellow Members of Parliament; and
- ethical political practices that support the democratic traditions of our State and its institutions, and the rejection of political corruption.

ETHICAL STANDARDS

Conflict of interest

A member protects and upholds the public interest by taking all reasonable steps to avoid, disclose and manage any conflict of interest that arises, or is likely to arise, between her/his personal interests and her/his official duties.

A conflict of interest may be financial or non-financial. A conflict of interest may be potential, actual or perceived.

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.

Each member is individually responsible for avoiding and managing conflicts of interest.

Declaration of personal interests

A member is personally responsible for full and accurate disclosure of her/his financial and other interests, particularly 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.

Use of public office

A member makes proper use of her/his office to represent and serve the community, conducting herself/himself in ways that maintain the trust and confidence of the public in the office of a Member of Parliament.

A member, during and after leaving public office, must not use her/his influence as a member to obtain appointment, promotion, advancement, transfer or any other advantage or benefit on behalf of herself/himself or other persons.

A member must not appoint their spouse, domestic partner or close relative to a position in her/his own office.

A member must not receive any fee, payment, retainer or reward, or 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 a Member of Parliament.

Use of official information

A member makes appropriate use of official information strictly for the purpose of performing her/his role as a Member of Parliament in the best interests of the public.

A member must protect confidential and official information in her or his possession or knowledge, and only release it if she or he has the authority to do so.

A member, 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 her/his official duties or position, for the advantage or benefit of themselves or other persons.

Use of public resources

A member uses public resources strictly for the purpose of performing her/his role as a Member of Parliament, and in accordance with any rules and guidelines regarding the use of those resources and assets.

A member must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.

A member must be scrupulous in ensuring the legitimacy and accuracy of any claim they make on the public purse.

Gifts and benefits

A member adheres to the highest standards of transparency and accountability in relation to offers of gifts or benefits, and carries out her/his duties as a Member of Parliament without being influenced by personal gifts or benefits.

A member must not solicit, encourage or accept gifts, benefits or favours which may improperly influence the member in the exercise of her/his duties, or may give the appearance of improper influence. Exceptions to this are incidental gifts or customary hospitality of nominal value.

A member must declare gifts and benefits received in connection with her/his official duties as required by the *Parliamentary (Disclosure of Interests) Act 1996*.

Accuracy of statements

A member makes statements in Parliament and in public that are accurate and honest.

A member must not intentionally or unintentionally mislead Parliament or the public in statements they may make.

A member is obliged to correct the Parliamentary record 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

A member carefully manages employment outside of Parliament to ensure that any such employment does not interfere with her/his duties as a Member of Parliament.

A member must not engage in any employment outside Parliament that involves a substantial commitment of time and effort such as to interfere with their duties as a member.

Parliamentary conduct

A member conducts herself/himself in Parliament in ways that will protect the public interest, and enhance public confidence and trust in Parliament.

A member must observe proper standards of parliamentary conduct.

A member 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.

FURTHER INFORMATION

Advice for Members

Members may seek confidential advice from the Parliamentary Standards Commissioner as to any matter arising under this Code.

Guidance notes

Guidance notes may be developed to accompany the Code. The notes should address specific terms in the Code that require clarification to guide members in the achievement of the standards in the Code.

The notes may also identify other legislation or parliamentary policies or procedures that may require consideration by members and Parliament in implementing the Code.

Breaches of the Code

A breach of this Code will also constitute a breach of Standing Orders able to be dealt with by the Chamber concerned. In dealing with any breach of the Code, consideration may be given to any Guidance notes accompanying the Code for definition or clarification of specific terms contained within the Code.

Status and review of the Code

This Code was adopted by Parliament on XX (MONTH) 20XX and is operational from this date.

The Code will be reviewed every four years by the Parliamentary Joint Standing Committee on Integrity. It will next be reviewed on XX (MONTH) 20XX.

Explanatory Notes: Revisions to the Draft Code of Conduct for Members of Parliaments

Preamble

- Largely unchanged, however some sentences have been moved from the original 'Statement of Commitment' to this section to assist with the overall flow of the messages within the Code.
- One new sentence ('Appropriate guidance notes ...') has been inserted into the second paragraph to make the connection between the Code and other subsidiary notes and policies that may be required to help define the standards provided in the Code.
- The two final paragraphs of the original Preamble have been moved to the 'Further information' section at the end of the document.

Statement of values

- This section is now provided as a sub-section of the Preamble. This effectively provides a cover page outlining the reasoning for the Code and members' responsibilities under the Code.
- 'Statement of values' replaces the previous heading of 'Statement of commitment'. This better reflects the reliance on values and principles in the Code.
- The first paragraph has been inserted to introduce the values, and to link them to Parliament.
- The dot-point list contains all of the statements from the original Code, with some re-ordering and re-framing as 'positive' values.

Ethical standards

- 'Ethical standards' replaces the previous heading of 'The Code' to reflect the standards to be achieved by members.
- All of the topics from the original Code are retained, with variation to the text as outlined below.
- To enhance the principles-based approach, each topic now includes:
 - A 'principle statement' (in bold): this provides the aspirational standard, and is framed in the positive; followed by
 - 'Behavioural statements': these guide member behaviour and provide what members must/must not do.

This approach reflects current good practice in codes of conduct, and is based upon research into other successful codes. It also reflects the approach taken with the recent code of conduct for Local Government elected members, as enacted by the State Government.

Conflicts of interest

- A new paragraph ('A conflict of interest may be ...') has been inserted to explain the nature of conflicts of interest.

Use of public office

- The previous heading of 'Improper Advantage' has been broken into two sections: 'Use of public office' and 'Use of official information', given these are two discrete areas of risk and conduct. These headings have been framed in the 'positive'.
- The new principle statement has been inserted based upon the relevant values ie maintaining public trust and confidence.

Use of official information

- The new principle statement has been inserted based upon the relevant values ie using information in the best interests of the public.

- A new behavioural statement ('A member must protect confidential and official information ...') has been inserted to address the standard behaviour for releasing confidential or official information.

Use of public resources

- The principle statement has been inserted based upon text contained in the original Code.

Gifts and benefits

- The new principle statement has been inserted based upon the relevant values ie acting in the best interests of the public.

Accuracy of statements

- The heading has been re-framed in the positive.
- The new principle statement has been inserted based upon the relevant values ie accuracy and honesty.

Outside employment

- The new principle statement has been inserted based upon the relevant values ie non-interference with the member's duties.

Parliamentary conduct

- New heading to replace 'Duties as a Member of Parliament'
- The new principle statement has been inserted based upon the relevant values ie protection of the public interest.

Further information

- New heading to replace 'Procedures'

Advice for members

- Text moved from Preamble of original Code.

Guidance information

- New section added to reference possible Guidance notes (as recommended in the 2011 report) to define specific terms used in the Code, and the need to consider other legislation, or parliamentary policies or procedures.

Breaches of the Code

- Text moved from Preamble of original Code.
- New sentence added ('In dealing with any breach of the Code ...') to explicitly link the Code and any Guidance notes containing definitions or clarifications of terms contained in the Code.

Status and review of Code

- New heading, using existing text.

Original Draft Code of Conduct for Members of Parliament (2011)

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.

THE CODE

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.

PROCEDURE

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.