



OUR REF: 2022/003353

29 August 2022

The Hon Rob Valentine MLC
Committee Chair
Joint Standing Committee on Integrity

By email: integrity@parliament.tas.gov.au

Dear Mr Valentine,

Code of Conduct for Members of Parliament

Thank you for the opportunity to provide a submission to the review of the Code of Conduct for Members of Parliament (the Code), and apologise for the delay in our response. Please find below our observations on the Code, endorsed by the Board of the Commission.

Overall we consider the Code to be strong, based in principles and values, and still highly relevant. Our comments should be taken in this light.

A clear process for managing alleged breaches and sanctions should be outlined

In the absence of clear processes, alleged breaches of the Code may be politicised, made public, and not formally or consistently managed. There should be a clear statement in the Code for how the alleged breaches are to be handled and investigated. This could include referral of alleged breaches to the Integrity Commission where appropriate.¹

Where an allegation is investigated, an independent investigator should be able to recommend consequences for breaches of the Code.

Breaches may be dealt with by the relevant House as a matter of privilege,² but the specific process for how sanctions are decided and applied is unclear, including any review or procedural fairness mechanisms.

Inconsistent incorporation of the Code

The Code is treated differently in each of House of Parliament.

¹ The Integrity Commission does not have jurisdiction over conduct, or an attempt to engage in conduct, in connection with a proceeding Parliament.

² Parliamentary codes of conduct: a review of recent developments. McKeown & Sloane, *Politics and Public Administration*, 2022.

The Code has been incorporated into the Standing Orders of the House of Assembly. However the Standing Orders version does not include the General Information section at the end of the Code; this section includes comments on Members' duties and expectations, which should possibly be included in the Code.

The Code has not been incorporated into the Legislative Council's Standing Orders. We understand that this is to provide flexibility in responses to particular alleged breaches of the Code.

One manifestation of the difference in treatment of the Code is that, unlike the House of Assembly, MLCs do not formally subscribe to the Code on their first sitting day (as do MHAs). As an example from another jurisdiction, the Parliament of the Australian Capital Territory places all this detail in the code itself:

Within the first six months after an election for the Assembly, the Assembly shall reaffirm its commitment to the principles, obligations and aspirations of the code. Where a new member is elected to fill a vacancy the new member shall, before he or she makes an inaugural speech, affirm that he or she will abide by the code.

The Code should describe its scope, including that the Code does or does not apply to Members in their private lives

The Code states:

*This Code sets out ethical standards and principles to assist Members in observing expected **standards of conduct in public office** and to act as a benchmark against which their conduct can be measured. (emphasis added)*

This suggests that the Code's application is limited to conduct in the performance of a Member's duties as a public officer. This potentially causes ambiguity as to when the Code applies.

By way of example, some jurisdictions make this more explicit:

- ▼ New South Wales: The Code applies to Members in all aspects of their public life. In complying with this Code, Members shall base their conduct on a consideration of the public interest, avoiding conflict between personal interest and their duties as a Member of Parliament. It does not apply to Members in their purely private and personal lives.
- ▼ United Kingdom: The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.

The Code should include specific requirements in relation to modern standards of workplace conduct

The Code contains references to respect, inclusion and diversity; however we suggest that the Code be amended to include stronger language prohibiting bullying, harassment, sexual harassment and discrimination. The language in the Code of Conduct for Ministers (May 2021) could be adopted, with the addition of reference to inclusive gender identities:

Ministers are committed to ensuring and enabling for both women and men [all gender identities] a safe, respectful and inclusive environment that is free from discrimination, harassment, sexual harassment and bullying, and that they are respected and valued and treated as equals in both public and private life.

Ministers are to value diversity and work respectfully with people of different cultures, ages, ethnicities, religions, abilities, and sexual orientations and identities.

The Code should address the treatment of parliamentary and other public sector employees, including contractors, volunteers, and interns

The Code notes that, among other values, Members of Parliament value,

integrity, honesty, accessibility, accountability, fairness, transparency, courtesy, respect and understanding, without harassment, victimisation or discrimination

Other jurisdictions specifically address the treatment of parliamentary and public sector employees, including the impartiality of the public service:

- ▼ **ACT:** ... in all their dealings with staff of the Assembly and members of the ACT Public Service:
 - (a) extend professional courtesy and respect; and
 - (b) recognise the unique position of impartiality and the obligations of Public Service officials.
- ▼ **NT:** Members must recognise the public service as a non-partisan public resource, and treat public servants in accordance with established conventions of public service neutrality.
- ▼ **QLD:** Members should treat members of the public, officers and employees of the Parliamentary Service and other public officials with courtesy, honesty and fairness, and with proper regard for their rights, obligations cultural differences, safety, health and welfare. Members should not use abusive, obscene or threatening language (either oral or written) or behaviour towards any officer, employee or member of the public.

The Code could reference the specific context of the small community of Tasmania

Tasmania is a relatively small community, and it is inevitable that Members' interests may, or may be seen to, intersect with their public duties. It may assist to have this explicitly referenced in the Code.

For example, the NT code identifies the context of being a small community in maintaining public trust:

Public confidence in the integrity of parliamentary decision-making is essential to an effective democracy. In order to maintain that confidence, it is essential, especially in a relatively small community, for members to avoid any

suggestion that they are exploiting their position to gain an improper personal benefit.

Engagement with Tasmanian Aboriginal community

It is a positive that the Code specifically references the Universal Declaration of Human Rights, and Members' engagement with Indigenous Australians. It is the only Australian parliamentary code to do so.

The statement, 'Members should promote reconciliation with Indigenous Australians', could be re-worded to 'Members agree to ...', consistent with other provisions in this section.

Additional issue

Scheduled discussions with Members

The Commission is currently developing a program of facilitated discussions with Members on ethical conduct and integrity; we hope to initiate this in late 2022. The discussions will necessarily reference the Code and how it is serving Members. If considered appropriate by the Committee, we can provide further feedback on the Code following this program.

I hope that our feedback is useful for the Committee's review. Please feel free to contact me if you require any clarification or further information.

Yours sincerely,



Michael Easton

Chief Executive Officer