



Ethical conduct and misconduct risks in
Tasmanian parliamentary elections
Consultation paper

05 August 2024

Have your say: The use and
misuse of public resources
in parliamentary elections



INTEGRITY
COMMISSION
TASMANIA

The objectives of the Integrity Commission are to:

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with, and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

We acknowledge and pay our respects to Tasmanian Aboriginal people as the traditional owners of the land upon which we work. We recognise and value Aboriginal histories, knowledge and lived experiences, and commit to being culturally inclusive and respectful in our working relationships with all Aboriginal people.

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This report and further information about the Commission can be found on the website at www.integrity.tas.gov.au.

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1. Introduction

The Integrity Commission (the Commission) is an independent statutory authority established by the *Integrity Commission Act 2009* (Tas). The Commission's objectives are to:

- ▼ improve the standard of conduct, propriety and ethics in public authorities in Tasmania
- ▼ enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with, and
- ▼ enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

Section 31 sets out the Commission's educative, preventative and advisory functions. This includes a function to 'undertake research into matters related to ethical conduct' and to 'take such steps as the Integrity Commission considers necessary to uphold, promote and ensure adherence to' standards of ethical conduct.

2. Background

Elections are a cornerstone of democracy; it is essential that the public have confidence that elections are carried out ethically. In 2021, the Commission started a research paper series on ethical conduct and potential misconduct risks in Tasmanian parliamentary elections.¹ We have released 2 papers in this series: one about offences and campaign conduct under the *Electoral Act 2004* (Tas),² and another on grant commitments in election campaigns.³ We are currently working on a third paper about the use and misuse of public resources in Tasmanian parliamentary elections.

This third paper will consider potential misconduct risks associated with the use of publicly funded resources during election campaigns. **Resources** includes staff, advertising and communications, and other allowances. The consequences of the misuse of resources during parliamentary elections may include the following:

- ▼ *The misdirection of taxpayer-funded resources* – staff, infrastructure and allowances are provided to ensure the efficient operation of government for the public's benefit. When these resources are instead used for political campaigning, people may be deprived of support or services that should have been available to them.
- ▼ *Adverse effects on electoral competition* – the governing party has greater access to public resources than the opposition party, minor parties and independents. This is called an **incumbency benefit**. If misused, this greater access to resources may advantage the incumbent government to the detriment of fair electoral competition and political equality.

Our research paper series aims to ensure that misconduct risks are communicated to the public and to promote discussion about potential solutions. The third paper will draw on the experiences of Tasmanian state elections, as well as cross-jurisdictional research from Australia and, where appropriate, overseas. We are inviting key stakeholders and the public to make a submission on this paper to ensure that the solutions are relevant to the Tasmanian context. We are facilitating this process and focusing the discussion through this consultation paper.

This consultation paper outlines the key topics that may be covered in the research paper. Each topic is accompanied by submission prompts to assist you. You are also welcome to highlight relevant issues for consideration beyond these topics.

We will read and carefully consider all submissions. We will treat all submissions as public unless you ask for your submission to be treated as confidential or for your name (and/or the name of your organisation) not to be published.

We will not publish submissions that we believe are defamatory or offensive. If your submission includes information that could identify other people, then all or part of that submission may not be published.

Copyright in submissions remains with the author(s), not with the Integrity Commission.

The deadline for submissions is **10:00 am on Monday, 2 September 2024**.

You can provide your submission in writing via one of the following options:

- ▼ **email:** contact@integrity.tas.gov.au
- ▼ **post:** Election resources paper
Integrity Commission Tasmania
GPO Box 822
Hobart TAS 7001

Queries about the submission process can be made via email to contact@integrity.tas.gov.au.

3. Key issues for discussion

3.1. Legal and regulatory framework

The relevant legislation, policies and guidelines that govern the use of public resources generally and during parliamentary elections include:

- ▼ the *Parliamentary Salaries, Superannuation and Allowances Act 2012* (Tas)
- ▼ the Tasmanian Industrial Commission inquiry into salaries, allowances and other benefits⁴
- ▼ the 'Members' Resource Allowance'⁵
- ▼ the *Handbook for Elected Members of the House of Assembly and Prescribed Parliamentary Office Holders in Tasmania*⁶
- ▼ the codes of conduct for Ministers,⁷ Members of Parliament (MPs),⁸ state servants⁹ and ministerial staff¹⁰
- ▼ the *Tasmanian Government Communications Policy*¹¹
- ▼ the *Electoral Act 2004* (Tas)
- ▼ the *Charter of Budget Responsibility Act 2007* (Tas)
- ▼ the *Department of Premier and Cabinet Guidelines on the Caretaker Conventions and the Operations of Government during the Caretaker Period*,¹² and
- ▼ the *Tasmanian Electoral Commission Candidate Handbook: House of Assembly Elections*.¹³

Submission prompt

1. Do you have any general comments or observations on the appropriateness and effectiveness of this legal and regulatory framework?

3.2. Staff time

The general categories of staff are as follows:

- ▼ **State servants** (the Tasmanian State Service) are responsible for supporting the elected government to implement its agenda and policies, regardless of political considerations.
- ▼ **Ministerial staffers** provide political analyses and advice to Ministers. In Tasmania, the majority of staffers are Crown Prerogative Appointees, but some are secondees from the State Service.¹⁴
- ▼ **Electorate officers** help MPs discharge their responsibilities to their electorate by liaising with constituents, engaging with the media and supporting the fulfilment of parliamentary duties.

State servants, ministerial staffers and electorate officers are public officers whose salaries are paid by the public. In exchange, it is expected that these officers will support the executive, MPs and Ministers in performing their carrying out their duties and portfolio responsibilities.

These public officers may exercise their right to political expression and participation, just like other citizens. However, they must be mindful of their professional obligations and the potential for conflicts of interest to arise. This is particularly true in the context of elections.

The period before a House of Assembly election is known as the **caretaker period**. During this time, it is generally understood that public officers must only engage in political campaigning in their own time, whether this be voluntary contributions outside work hours or by taking leave. Moreover, Ministers should not direct these staff to perform political activities to support their re-election. However, it is acknowledged that the boundaries between the political and ministerial, parliamentary, and electorate work of some of these officers can be blurry.

The Victorian red shirts scandal highlighted the risks of ill-defined boundaries and insufficient training and guidance for Members and electorate officers, as well as the poor oversight of allowances and entitlements, particularly regarding staff.¹⁵ More recently, the Northern Territory Independent Commissioner Against Corruption has been investigating an allegation that in the lead-up to the 2020 General Election, staff from the Department of the Chief Minister and Cabinet had engaged in political work during office hours to support the Territory Labor Party's election campaign.¹⁶

In Tasmania, the Members' handbook states that 'Members may only use publicly funded resources in connection with official duties and not for personal benefit or party political activity'.¹⁷ Section 7.5 outlines 'Ministerial and Parliamentary Support' employee conduct; however, there are no express prohibitions on political activity outlined in this section.¹⁸

During the caretaker period, MPs do not hold office. However, they do still receive their salary and taxpayer-funded support. Ministers continue to hold their office as Minister during the caretaker period, even though they are not MPs during this period. Ministerial and electorate office staff also continue to hold office and are paid a salary during the caretaker period.

Submission prompt

1. Do the codes of conduct, caretaker convention guidelines, Members' handbook and other sources provide enough guidance to Ministers and MPs about the duties of ministerial staff, electorate officers and state servants during election campaigns? If not, what are the gaps/weaknesses?
2. What should be done to improve transparency, oversight and accountability to prevent the misuse of ministerial and parliamentary support staff during election campaigns?

3.3. Advertising and communications

Taxpayer-funded advertising campaigns and communications are supposed to be informative. They should be used to ‘inform people of their rights and obligations under official policies and laws, and to educate and mobilise them on threats to health and safety’.¹⁹

However, at the state, territory and federal levels, taxpayer-funded advertising and communications are often politicised, particularly in the lead-up to elections. Often, this involves promoting government achievements, policies or programs. This also extends to when otherwise legitimate campaigns are launched strategically in the lead-up to or during an election campaign to confer a political advantage.²⁰

The *Electoral Act 2004* (Tas), Members’ handbook, *Tasmanian Government Communications Policy*, Tasmanian Electoral Commission candidate handbook and caretaker conventions guidelines all have some influence on advertising and communications generally and regarding election periods. In particular, the caretaker conventions emphasise that Tasmanian Government campaigns should not promote the policies or achievements of the government, highlight the role of particular Ministers, or relate to issues that are disagreed upon by government and non-government parties.²¹ However, it has been observed that Tasmania has ‘very limited requirements’ with respect to regulating taxpayer-funded advertising and communications.²²

Submission prompt

1. Do the *Electoral Act 2004*, communications policy, caretaker conventions guidelines and other sources provide adequate guidance on taxpayer-funded advertising and communications during election campaigns?
2. What should be done to improve transparency, oversight and accountability to prevent the misuse of taxpayer-funded advertising and communications during election campaigns?

3.4. Travel and other allowances

MPs are granted various taxpayer-funded allowances for travel, vehicles and infrastructure (such as electorate offices) to enable them to serve their constituents and play an active role in their communities.

In Tasmania, Members are entitled to various travel-related allowances, including a motor vehicle allowance and an away-from-home travelling allowance to support them in conducting ‘official parliamentary business’.²³ Instead of a vehicle allowance, Members may elect to be provided with a ‘fully maintained private-plated vehicle for parliamentary, electorate and private use’.²⁴ The meaning and scope of ‘official parliamentary business’ and ‘parliamentary, electorate and private use’ are not defined.

The misuse of taxpayer funds to travel during election campaigns is a recognised misconduct risk area. As recently as May 2024, the Northern Territory Independent Commissioner Against Corruption released an investigation report about the alleged misuse of resources in taxpayer-funded travel for political purposes before and during the Northern Territory 2020 General Election.²⁵

Other parliamentary allowances have also attracted controversy, particularly those that are ambiguously defined and allow for considerable discretion, such as the Members' Resource Allowance available to Tasmanian Members.²⁶

Submission prompt

1. Do the *Parliamentary Salaries, Superannuation and Allowances Act 2012*; Tasmanian Industrial Commission reports; Members' handbook; and other sources provide adequate guidance on the use of taxpayer-funded travel and other allowances?
2. What should be done to improve transparency, oversight and accountability to prevent the misuse of travel allowances during election campaigns?

3.5. Policy and election commitment costing process

Under Part 6 of the *Charter of Budget Responsibility Act 2007* (Tas), the Premier and the Leader of an Opposition party are entitled to request that the Secretary of the Department of Treasury and Finance cost their party's publicly announced election policies between the dissolution of the House of Assembly and the closure of the election polls.

This measure is intended as a service to the public, so that constituents may inform themselves of the possible costs of specific commitments before voting. Similar processes are available at state, territory and federal levels. However, these processes could also be weaponised for political advantage. For example, in 2013, then-prime minister Kevin Rudd stated that the government had identified a \$10 billion hole in the Coalition's savings claim based on figures from the Department of Treasury and Finance and the Parliamentary Budget Office. This claim prompted the secretaries of Treasury and Finance to issue a joint statement denying that they had undertaken costings of the opposition party's policies, a 'highly unusual intervention' which was 'forced upon them to protect the impartiality of the Commonwealth public service'.²⁷

Submission prompt

1. Does the Tasmanian policy and election commitment costing process deliver value to the Tasmanian public?
2. How should this process be changed to ensure that it delivers value to the public?

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