

# REVIEW OF THE MEMBERS' CODE OF CONDUCT AND THE DECLARATION OF MEMBERS' INTERESTS FORM

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

MARCH 2021

REPORT 3



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## RESOLUTION OF APPOINTMENT

The Standing Committee on Administration and Procedure Committee is established pursuant to Standing Order 16:

16. (a) A Standing Committee on Administration and Procedure is established at the commencement of each Assembly to:
  - (i) undertake self-referred inquiries or inquiries referred by the Assembly and, in addition, in the third year of an Assembly term the committee shall inquire into and report on the operation of the standing orders and continuing resolutions of the Assembly with a view to ensuring that the practices and procedures of the Assembly remain relevant and reflect best practice;
  - (ii) advise the Speaker on:
    - (A) Members' entitlements including facilities and services;
    - (B) the operation of the transcription service (Hansard);
    - (C) the availability to the public of Assembly documents;
    - (D) the operation of the Assembly library;
  - (iii) arrange the order of private Members' business, Assembly business and Crossbench Executive Members' business;
- (b) the Committee shall consist of:
  - (i) the Speaker;
  - (ii) the Government whip;
  - (iii) the Opposition whip; and
  - (iv) a representative of the crossbench (or if a single party, the whip of that party);
- (ba) Should a whip be unable to attend a meeting, the Party nominated deputy whip may attend in their place;
- (c) the Speaker shall be the Chair of the Committee; and
- (d) the Committee shall have the power to consider and make use of the evidence and records of the Standing Committee on Administration and Procedure appointed during the previous Assemblies.

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# 1. REVIEW AND DISCUSSION

- 1.1. At the meeting of the Standing Committee on Administration and Procedure (the Committee) on 30 November 2020 the Clerk reminded Members of the requirement for all members to, within 6 months after an election affirm their commitment to the principles, obligations and aspirations of the code. It was agreed that a review of the code of conduct be undertaken immediately, to allow Members to affirm their commitment to the (possibly) revised code within 6 months as required by the continuing resolution. It was proposed that the declaration of Members' interests forms also be reviewed.
- 1.2. On 8 December 2020 the Speaker wrote to Mr Skehill, the Assembly's Ethics and Integrity Advisor and asked if he were able to undertake the review.
- 1.3. At its meeting on 18 March 2021, the Committee considered the review conducted by the Ethics and Integrity Advisor. In its discussion the Committee reviewed attachment B of the report as it highlighted the proposed changes.
- 1.4. In his review, in addition to seeking submissions from all Members, Mr Skehill also requested responses from the Clerk, the Commissioner for Standards and the Chief Executive Officer of the ACT Integrity Commission.
- 1.5. No responses were received from Members in relation to the code of conduct and 1 response relating to the Declaration form. Mr Duncan and Dr Crispin provided substantive responses.
- 1.6. Mr Skehill's report is at Appendix A.
- 1.7. The Committee, in discussing the report from Mr Skehill, agreed with the recommended changes to the Code of Conduct and to the revised Declaration of Interests form.
- 1.8. In relation to the Declaration of private interests of members, detailed in Continuing Resolution 6, the Committee discussed and agreed to the proposal that any alteration to the declaration should be made to the Clerk within 28 days, not the 60 days previously required. The Committee recommended that Continuing Resolution 6 be amended accordingly.
- 1.9. The Assembly has established the practice that, at the beginning of each new Assembly, Members affirm/reaffirm their commitment to abide by the Code of Conduct. For the 10<sup>th</sup> Assembly it had been agreed that this would occur after the review have been completed.
- 1.10. In order for Members to meet their obligation to affirm/reaffirm their commitment to the Code in a timely manner after an election, the Committee proposes that a review of the effectiveness of the Code of Conduct be undertaken at the end of each Assembly to ensure its completion prior to the six months in paragraph (21) expiring.
- 1.11. It was agreed to amend the Code of Conduct to enable to Speaker to initiate a review at end of each Assembly by a suitably qualified person, following consultation with the Standing

Committee on Administration and Procedure.

- 1.12. The matter of new Members who are sworn in as a result of filling a vacancy in the Assembly was also discussed.



## 2. RECOMMENDATIONS

### RECOMMENDATION 1

- 2.1. That continuing resolution 5 being the *Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory* be amended by omitting all words and substituting:
- "Continuing resolution 5*

CODE OF CONDUCT FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

This resolution provides for a code of conduct for Members of the Legislative Assembly.

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members and that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- (3) Members should uphold the separation of powers and the rule of law
- (4) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- (5) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- (6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny.
- (7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources.

- (8) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
- (9) Members should treat each other with courtesy and propriety, observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (10) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they should:

- (11) Treat all people with courtesy, and respect the diversity of their backgrounds, experiences and views.
- (12) Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
  - (a) comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth);
  - (b) declare their private interests and those of their immediate family and ensure that their declaration is kept up to date, as required by Continuing Resolution 6 (as amended or replaced from time to time); and
  - (c) disclose at a time and in a manner appropriate to the circumstances any financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) and any friendship, relationship or other circumstance which a reasonable observer, informed of that matter, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.
- (13) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.
- (14) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person, and not accept any inappropriate benefit in connection with their activity as a Member.

- (15) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (16) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information unless required by law, or improperly for the private benefit of themselves or another person.
- (17) In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members' Staff) Act 1989*:
  - (a) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
  - (b) not employ a family member as defined in that Act;
  - (c) take all reasonable steps to ensure that, as far as practicable, their personal staff are mindful of the Member's commitment to this Code of Conduct, and assist the Member to comply with this Code of Conduct; and
  - (d) not seek to require or encourage their personal staff to engage in any conduct that may amount to a breach of any code of conduct applicable to those staff from time to time.
- (18) In all their dealings with staff of the Assembly, staff of other Members and members of the ACT Public Sector:
  - (a) extend professional courtesy and respect;
  - (b) act consistently with accepted workplace conduct standards; and
  - (c) recognise the unique position of impartiality and the obligations of public sector officials, including members of the ACT Public Service .
- (19) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
- (20) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.

- (21) 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.
- (22) Where a member who had not voted on the most recent reaffirmation required under clause (21) is elected to the Assembly, that member shall, before he or she makes an inaugural speech or otherwise participates in parliamentary processes, affirm that he or she will abide by the code.
- (23) At the end of each Assembly the Code of Conduct shall be reviewed by a suitably qualified person, appointed by the Speaker, in consultation with the Standing Committee on Administration and Procedure. ”

## RECOMMENDATION 2

- 2.2. **That Continuing Resolution 6 being the *Declaration of private interests of Members* be amended by omitting all words and substituting:**

**“Continuing resolution 6**

### **DECLARATION OF PRIVATE INTERESTS OF MEMBERS**

That—

- (1) within 28 days of the making and subscribing of an oath or affirmation as a Member of the Legislative Assembly for the Australian Capital Territory each Member of the Legislative Assembly shall provide to the Clerk of the Legislative Assembly a declaration of the private interests of themselves and their immediate family in the form as presented to the Assembly by the Speaker from time to time and shall notify any alteration of those interests to the Clerk within 28 days of that alteration occurring;
- (2) under the general direction of the Speaker, the Clerk shall store the declarations of private interests made by each Member and arrange for the declarations and updates for that Assembly to be placed on the Legislative Assembly website on the internet. When a Member vacates his or her seat or is not re-elected at the next general election for the Assembly, the Clerk shall retain those declarations for seven years, after which the Clerk shall destroy all declarations made by that Member in his/her custody and remove those declarations from the Legislative Assembly website on the internet;
- (3) any declaration stored by the Clerk be made available for perusal to any person on request; and
- (4) this resolution has effect from the commencement of the Second Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.”

Joy Burch MLA, Chair

March 2021

## APPENDIX A: REVIEW OF THE CODE OF CONDUCT FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY—CONDUCTED BY MR STEPHEN SKEHILL, ETHICS AND INTEGRITY ADVISOR

**REVIEW OF  
THE MEMBERS' CODE OF CONDUCT  
AND  
THE DECLARATION OF MEMBERS' INTERESTS FORM**

**Stephen Skehill**

**Ethics and Integrity Advisor to the Members of the  
Legislative Assembly for the Australian Capital Territory**

**9 March 2021**

## Introduction

On 8 December 2020 the Speaker Ms Joy Burch MLA, on behalf of the Standing Committee on Administration and Procedure, asked me if I would be able to conduct a review the Members' code of conduct and the declaration of Members' interests form. I advised that I would be happy to do so.

On 23 December 2020 I was advised that the Speaker had commissioned me to undertake that review.

## Methodology

On 2 January 2021 I wrote to each Member inviting submissions to assist me in the review. In doing so I said:

*Without in any way wishing to limit the issues you might wish to raise, you might like to consider the following questions:*

- **Code of Conduct**
  - *Does the Code fail to govern any aspect of Members' conduct that should be regulated by the Code?*
    - *if so, how should the Code be amended to appropriately govern that conduct?*
  - *Does the Code inappropriately regulate any aspect of Members' conduct?*
    - *if so, how should the Code be amended to more appropriately govern that conduct?*
  - *Does the Code unreasonably intrude into any aspect the private lives of Members?*
    - *if so, how should the Code be amended to avoid any unreasonable intrusion?*
  - *Is any provision of the Code expressed in terms that are inappropriate, ambiguous or confusing?*
    - *if so, how should the Code be re-phrased to avoid that result?*
  - *Could the Code be amended to provide better guidance to Members about what conduct is permissible or impermissible?*
    - *if so, how should the Code be amended to provide that better guidance?*
- **Declaration of Members' interests**
  - *Does the current Statement of registerable interests form require disclosure of all interests that a Member should be required to declare?*
    - *if not, what additional interests should have to be declared?*
  - *Does the form require sufficient detail to be provided for each registerable interest?*



- *if not, what additional detail should be required?*
- *Does the form require too much detail to be provided for any interest?*
  - *if so, what detail should no longer be required?*
- *Does the form unreasonably require disclosure of interests that should remain the private business of a Member or their family?*
  - *if so, what interests should no longer be required to be declared?*
- *Does the requirement to declare interests of a "Member's spouse (including de facto spouse) and any who are wholly or mainly dependent on the Member for support" unreasonably extend to persons other than the Member?*
  - *if so, what persons other than the Member should be excluded from the disclosure requirement?*
- *Does the requirement to declare interests of a "Member's spouse (including de facto spouse) and any who are wholly or mainly dependent on the Member for support" fail to extend to persons whose interests a member should be required to declare?*
  - *if so, what additional persons other than the Member should be included within the disclosure requirement?*
- *Does the requirement that a Member declare interests of other persons "to the extent to which the Member is aware of them" allow a Member to knowingly fail to make reasonable inquiry about the interests of those other persons?*
  - *If so, to what extent should a Member be required to make inquiry?*
- *Is any part of the form expressed in terms that are inappropriate, ambiguous or confusing?*
  - *if so, how should the form be re-phrased to avoid that result?*
- *Could the form be amended to provide better guidance to Members about what interests must be declared or the detail required?*
  - *if so, how should the form be amended to provide that better guidance?*

Additionally, I wrote in similar terms to:

the Clerk of the Legislative Assembly, Mr Tom Duncan;

the Commissioner for Standards, the Hon Dr Kenneth Crispin QC; and

the Chief Executive Officer of the ACT Integrity Commission, Mr John Hoitink.

As well as inviting submissions, I also:

reviewed my own records of the advice I had provided to Members over the years in relation to compliance with the code of conduct and the declaration of interests; and

examined the forms used for the declaration of members' interests in other Australian Parliaments.

I received substantive and thought-provoking submissions from both Mr Duncan and Dr Crispin.

I received submissions from no individual Member in relation to the code of conduct.

I received one submission from an individual Member in relation to the declaration of interests form.

The Chief Minister indicated on 22 January 2021 that he would provide a coordinated submission on behalf of all Labor MLAs after caucus consideration. On 1 March 2021 he advised as follows:

"My colleagues and I have considered these matters and I can confirm that we consider the framework is sufficient as it currently stands.

On completion of the review process, I can also confirm Labor MLAs are happy to review any proposal changes, ahead of the Legislative Assembly affirming or reaffirming its commitment to the code, and the tabling of any necessary materials for public record."

I deal with the issues raised in each submission below.

### **The Code of Conduct**

The current *Code of Conduct for All Member of the Legislative Assembly for the Australian Capital Territory* is at [Attachment A](#). It is embodied in Continuing Resolution 5.

The original code was established on 25 August 2005 and amended on 16 August 2006. A substantial rewrite of the original code was endorsed by the Assembly on 24 October 2013, following consideration of a 31 July 2012 report I prepared at the request of the Standing Committee on Administration and Procedure. That version was in turn amended on 3 August 2017 following consideration of a further report I prepared on the operation of the new code, again at the request of the Standing Committee on Administration and Procedure.

In my view, an important element of the current code is its requirement that the Assembly, within six months after an election for the Assembly, shall reaffirm its commitment to the principles, obligations and aspirations of the code. This periodic reaffirmation not only serves as a reminder to Members of their commitment to the code but also provides an opportunity for Members to consider whether or not the code should be amended to ensure its ongoing relevance.

The fact that no Member sought to raise with me any concern about the requirements of the code would seem to indicate that Members do not see its requirements as unreasonable or unduly inhibiting their performance of their duties as Members.

At the same time, it is at least theoretically possible that the code is insufficiently demanding and does not set standards for Members' conduct at a level as high as they should be. My own view,

however, is that this is not the case and that the code as currently drafted generally strikes a reasonable balance.

Having regard to the issues that have been raised with me over the years by Members seeking advice on compliance with the code, I am of the opinion that the code has provided useful guidance to Members in considering whether or not to embark on a particular course of conduct, in deciding whether or not to seek advice before doing so, and in assessing the advice they have received. To the best of my recollection, on no occasion has a Member suggested to me that it would have been helpful if the code had more expressly dealt with an issue they were confronting, and I have myself generally found the code to be useful in providing a background and framework for consideration of the issues that have been raised with me.

That is not to say, of course, that the current code cannot be enhanced.

Mr Duncan drew attention to clause 11 of the code which sets out an undertaking that Members will treat "all citizens of the Australian Capital Territory" with courtesy and respect. He noted that, citizenship being a matter of Commonwealth responsibility, individuals are citizens of Australia rather than of a State or Territory. More significantly, he noted that Members not infrequently interact with people who do not live or work in the ACT and suggested that those people should be afforded the same courtesy and respect. He suggested that clause 11 should apply to "everyone". I agree with this sentiment and propose a consequential amendment to the code in the revision-mode version at Attachment B.

Mr Duncan drew attention to gaps in the professional courtesy, respect and recognition afforded by the present wording of clause 18 in its application to "staff of the Assembly and members of the ACT Public Service". He noted that, under the Public Sector Management Act, there are public sector employees who are not members of the ACT Public Service, such as staff of the Audit Office, Electoral Commission, Integrity Commission, Canberra Institute of Technology, Courts administration and Director of Public Prosecutions. I agree with him that these officials should equally be covered by clause 18 and propose a consequential amendment to the code in the revision-mode version at Attachment B.

Mr Duncan noted that there was no provision in the code dealing expressly with "Member to Member" conduct and suggested that a Member wishing to complain about the conduct of another Member towards them would at present need to rely upon the courtesy and respect obligation in clause 11. I do not agree fully with him in this regard, as I think clause 9 would also have potential relevance.

The amendment to clause 11 proposed above arguably would make reliance on that clause in such a case more readily available than under the present drafting, but nevertheless I think the issue is worthy of more specific treatment. I thus propose in the revision-mode version at Attachment B an amendment to clause 9 to more directly address the matter.

Mr Duncan noted that clause 17 is confined in its scope to the staff of a Member employed under the *Legislative Assembly (Members' Staff) Act 1989* and expressed a concern that the code would not deal adequately with "Members who, for example, engaged in bullying or harassing behaviour towards another member's staff, or to OLA staff, or to another member".

I am not sure that these concerns are entirely well-founded. Clause 17 addresses a very specific situation in which Members perform the additional and demanding role and responsibility of “employer”. As such, I believe specific treatment of that role in the code is appropriate.

When they act outside that role, they are bound by other provisions of the code when they deal with people other than their own staff –

- clause 11 requires courtesy and request when dealing with anyone (at least as amended as proposed above);
- clause 8 requires Members to respect the dignity and privacy of individuals;
- clause 18 requires professional courtesy, respect and recognition in dealings with Assembly staff and (as amended as proposed above) all public sector officials; and
- clause 9 (at least as proposed to be amended as above) requires courtesy and propriety in their dealings with other Members.

Nevertheless, I do think that clause 18 could be amended to reinforce the need for Members to act consistently with commonly accepted workforce expectations when dealing with employees generally, and I thus propose a further amendment to that clause in the revision-mode version at Attachment B.

Finally, Mr Duncan suggested that the language in clauses 17(c) and (d) could be problematical. These provisions require Members to “direct” certain action by their personal staff and it may be difficult for a Member to demonstrate that each staff member had at all times been subjected to an appropriate direction. Instead, Mr Duncan suggested that these clauses might be better directed at Member conduct that would encourage or induce staff conduct inconsistent with an applicable staff code. I agree with this suggestion and propose suitable amendments in the revision-mode version at Attachment B.

Dr Crispin suggested a number of amendments to clause 12(c):

- that a required disclosure should be made not only in a manner appropriate to the circumstances but also at a time appropriate;
- that the word “other” should be deleted because an interest, even if previously disclosed, may take on heightened significance in the context of a particular transaction or proposal; and

- that disclosure should also be required of relevant friendships, relationships or other circumstances that might give rise to a perception of conflict, and not just of a “financial or non-financial” interest.

I agree with each of these suggestions and have included proposed suitable amendments in the revision-mode version at [Attachment B](#).

Dr Crispin also suggested that the code should contain a provision limiting the value of personal gifts and benefits that a member may receive.

Currently the code, in clause 14, requires a Member not to solicit to undertake, or undertake, any activity as a Member in return for an improper benefit. So stated, as Dr Crispin noted, it “would not seem to prevent the acceptance of an unsolicited and perhaps unexpected gift of a new Mercedes from a property developer”.

However, clause 12(b) of the code does require Members to declare their pecuniary interests and keep those declarations up to date in accordance Continuing Resolution 6 as amended or replaced from time to time. (Please note that in the revision-mode version at [Attachment B](#) I have amended the reference to this resolution to make it easier to locate.)

I share Dr Crispin’s concern about the potentially serious problems that may arise if Members are able to accept gifts with impunity. However, I am not convinced that simply prohibiting the acceptance of gifts above a particular value is the best approach. In a principles-based document such as the code, I think it preferable to prohibit only the acceptance of an “inappropriate benefit” and to thereafter rely on the process for the declaration of gifts and other benefits accepted to allow proper scrutiny of whether acceptance was appropriate in all the circumstances. In some circumstances, a gift of any value should be declined – for example, where it is offered as a bribe. In other cases, acceptance of a valuable gift may be appropriate – for example, where it is to be raffled and the proceeds donated to a charity. This the position adopted in other Australian jurisdictions.

Accordingly, I have included an amendment to clause 14 in the revision-mode version at [Attachment B](#). I deal with the declaration process in the following section of this report.

Finally, Dr Crispin noted that the hyperlink to the *Australian Capital Territory (Self-Government) Act 1988* in the version of the code included on the Assembly website does not take the reader to that Act but to an index of instruments made under it. Clearly, the OLA IT system administrator should correct this and could do so without the need for any Assembly consideration as it would not require a change to the text of the code as passed by the Assembly.

As I noted earlier, it is a requirement of the current code in clause 21 that the Assembly, within six months after an election for the Assembly, shall reaffirm its commitment to the principles, obligations and aspirations of the code. Clause 21 then goes on to state:

“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.”

This provision has been interpreted to apply only to new Members who fill casual vacancies but not to new Members who are appointed in a general election.

In my view, it is inappropriate that a new Member filling a casual vacancy should be bound to agree to abide by the code at the commencement of their parliamentary duties, but other new Members should have a period of up to 6 months where they are unregulated by any personal commitment to the code when returned Members would be bound by their commitment under the reaffirmation given in the previous Assembly.

I thus propose an amendment to clause 21 in the revision-mode version at [Attachment B](#) so that all newly elected Members, and Members returned after a break in Assembly membership, are required to affirm that they will abide by the code before the commencement of their parliamentary duties.

### **The Declaration of Members' Private Interests**

Members are required to declare "the private interests of themselves and their immediate family" by Continuing Resolution 6, a copy of which is at [Attachment C](#).

This declaration is to be made "in the form as presented to the Assembly on 30 November 2018", a copy of which is at [Attachment D](#).

Guidance for Members as to the declaration of private interests and the receipt of gifts is included in the Tenth Assembly Members Guide and is at [Attachment E](#). It should be noted that this document is inconsistent with Continuing Resolution 6. That resolution requires notification of alterations in interest to be provided within 60 days, while the guidance document incorrectly requires such notification within 28 days.

The Speaker's request to me was that I "undertake a review of the declaration of members' interests form" (my emphasis). I have interpreted this as limiting the scope of my review to some extent. While I believe it does extend to the terms of Continuing Resolution 6 which requires the creation of the form and makes reference to its content, I have taken the view that it does not require or permit me to inquire into related issues such as the administrative arrangements for the collection of completed forms and posting their content on the Assembly website.

In this latter regard, Mr Duncan's submission included the following:

"In relation to format and lodging arrangements, currently Members lodge the form, and any alteration of interests, with the Clerk in either hard copy or signed pdf copy via email (Members input directly onto the form either by hand or into the Word version). The form is then placed on the Assembly's website, usually within 24 hours of receiving it, however, if there is staff absences it may take a little longer.

The possibility of having this process automated has been discussed, for example, having a system developed where each Member lodges and updates their information directly onto the website. One benefit of this approach would be that the system would allow any person accessing the Assembly website to be able to search for particular information within the

declarations. Currently, each declaration needs to be viewed and searched individually and depending on the format it has been provided to the Clerk, the search function is not always available. Another benefit would be that the information is available as soon as the Member inputs it onto the website.

A search of other parliament's websites seems to indicate that they offer the same sort of registration of interests as we do, but with appropriate IT advice and funding, I am sure a suitable technological solution could be developed."

While I have taken the view that these issues are beyond my terms of reference, I note them here so that the Committee can consider whether or not they warrant further consideration, which would seem to me to be appropriate as I perceive that a relatively straightforward IT system could greatly enhance the purpose and utility of disclosure while at the same time simplifying and reducing the associated workload for Members.

Declaration of the interests of parliamentarians is required in all Australian jurisdictions. It serves an important purpose in placing on the public record those interests which are felt to have the highest likelihood of giving rise to an actual or potential conflict of interest. While a code of conduct may contain provisions requiring the avoidance or resolution of such conflicts, the declaration process allows more objective observation of the actions of a member of parliament. I thus believe that, no matter how good the ACT members' code is, the declaration of interests process is valuable and should continue.

Continuing Resolution 6 provides that:

- (1) within 28 days of the making and subscribing of an oath or affirmation as a Member of the Legislative Assembly for the Australian Capital Territory each member of the Legislative Assembly shall provide to the Clerk a declaration of the private interests of themselves and their immediate family in the form presented to the Assembly on 30 November 2017 and shall notify any alteration of those interests to the Clerk within 60 days of that alteration occurring;" (my emphasis).

In this regard I note a number of points.

First, if the current form is to be altered in any way, the underlined words will need to be amended to reference the date of presentation of the new form to the Assembly.

Second, while Members are required to provide their first declaration of interests within 28 days, amendments to those interests are only required to be provided within 60 days. I do not support this difference. An alteration of interests can be equally significant as an interest was previously declared, or even more significant. There is a clear public interest in the private interests of Members and their immediate families being open to scrutiny. In my view, there is no good justification for delaying the potential for scrutiny of a change in a Member's interest – especially as an alteration may involve a completely new interest to those previously declared and that new interest may be far more worthy of such scrutiny. I

believe a 28 day time limit should apply to both initial and amending declarations. If that is accepted, then the text of the resolution should be emended in this respect also.

Third, the resolution refers to “a declaration of the private interests of themselves and their immediate family”. Despite this, the current form at Attachment D is titled “Statement of registrable interests”. In my view that title is far too anodyne and even misleading – it sounds like an incident of real property conveyancing. I have thus titled the revised draft form at Attachment F as what it plainly is – a Declaration of Member’s Private Interests.

Continuing Resolution 6 then provides in paragraph (2) that “under the general direction of the Speaker, and in accordance with section 11 of the form”, the Clerk shall store the declarations made and arrange for them to be placed on the Assembly website. Neither section 11 of the current form nor any other provision of it is relevant to the storage and internet display of Members’ declarations. Clearly, the underlined text should be deleted from the resolution.

I turn now to what interests a Member should be required to declare.

There are, I believe, a number of key points to be borne in mind.

First, no form, no matter how detailed and how well crafted, can ever be expected to capture all those things about a Member’s life that might conceivably give rise to an actual or perceived conflict with their duties as a Member. At best, a declaration of interests form might capture some minimum information about those aspects that might potentially give rise to a conflict of interest issue. Proper management of conflicts of interest may require some additional disclosure in certain circumstances. For this reason, I believe that Members completing their declarations should be alerted to the possibility that they may need to do more than simply complete the relevant form.

Second, there is no necessary link between the potential for conflict and the monetary value of an interest. For example, a Member with a mortgage held by a particular bank may have a conflict of interest in dealing with an item of Assembly business impacting that bank, or banks generally, regardless of the amount of the mortgage. At best, a declaration of interests form might alert Members and others of a potential for conflict that warrants further and maybe more detailed consideration. For this reason, I believe that the declaration form should not focus on values, other than to indicate minor interests that need not be declared.

Third, Members are entitled to some, but not absolute, privacy. In seeking and attaining parliamentary office, they necessarily forgo some of the right to privacy enjoyed by ordinary members of the community. But they do retain residual rights to privacy and the compulsory disclosure imposed by a declaration of interests form should require no more detail about a Member’s private interests than is necessary for the purpose of alerting Members and others of a potential for conflict that warrants further and maybe more detailed consideration. Accordingly, I believe the declaration form should generally collect generic rather than highly detailed information.

Fourth, to the extent that a disclosure of interests form requires disclosure of the private interests of the immediate family of a Member, the intrusion on privacy is even greater.



Those people have not themselves sought public office and should not unduly have obligations imposed upon them. Accordingly, I think the right of a family member to refuse to supply details of their personal affairs to a Member who is not otherwise aware of those details should be respected.

Fifth, the definition adopted for the “immediate family” of a member must be clearly drawn so as to give certainty as to which relatives are caught by it and to limit that intrusion, but that does not mean that relationships with other more distant family cannot be equally or even more problematical. Again, additional disclosure involving other family members may be required in certain circumstances to properly manage an actual or perceived conflict of interest. The notification form should alert Members to this possibility.

Sixth, if a declaration of interest is to serve its intended purpose, the information declared must be made available on a timely basis and regularly kept up to date. Annual declarations would in my view be insufficient, but a requirement for immediate notification of a new or changed interest would be too onerous. I believe a 28 day period for initial declarations and notification of changes to them strikes a reasonable balance.

Seventh, it needs to be recognised that a requirement for declaration of too much detail about particular interests (particularly place of residence and financial interests) may expose a Member or their family to an increased risk of personal harm or fraudulent activity.

And finally, if it is to be effective, the process of making declarations must be as simple as possible and avoid undue limitation on the time Members might otherwise devote to the performance of their duties as a Member. In particular, the form itself must clearly explain what information is required and not simply cross-reference other documents that may be not easily found or conveniently applied. Enhanced IT systems may, as noted above, serve a valuable purpose in this regard.

As mentioned above, I received a submission from only one Member in relation to the disclosure of interests. That Member was concerned with the security implications of unwanted visitation arising from the requirement that the “precise location” of property other than their principal place of residence be declared, together with the “purpose for which the property is owned”. The draft revised form at [Attachment 7](#), in acknowledgement of this concern and consistent with the seventh point noted above, only requires that property be identified by reference to suburb, town or region.

Examination of the disclosure of interest regimes in other Australian parliaments shows that:

- they are all different - while there are many points of commonality, there is no one regime that has been accepted by others as “best practice”;
- they vary in the manner of their imposition – some are established by statute, others by resolution;

- they vary widely in the degree of detail required to be disclosed about particular types of interest and the family members who are covered; and
- they vary significantly in the forms used, with some requiring recourse to other documents to gain a full understanding of the disclosure requirement or the information disclosed.

At Attachment 7 I set out a proposed new form. I suggest that, from a design perspective, it should be viewed as a “starting point” rather than a “finished product”. It would undoubtedly benefit from some refinement by a forms design specialist with graphic and IT skills far beyond my limited capacity. But, subject to that:

- it is designed to pay full regard to the 8 key points set out above; and
- it is informed by my examination of the forms used in other Australian parliaments and departs from them only where I believe that to be warranted.

In preparing this draft new form I have of necessity had to exercise a great number of “judgement calls” about whose interests need to be declared, what interests need to be declared, what details need to be provided for declared interests and what details do not need to be prepared.

I would of course be happy to discuss with Committee members any questions that may have about why I exercised any such judgement in a particular way.

**Stephen Skehill**

**Ethics and Integrity Advisor to the Members of the  
Legislative Assembly for the Australian Capital Territory**

**9 March 2021**

## Attachment A

### Continuing resolution 5

#### Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory

5

This resolution provides for a code of conduct for Members of the Legislative Assembly.

##### Resolution agreed by the Assembly

**25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, 30 July 2019)**

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members and that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- (3) Members should uphold the separation of powers and the rule of law.
- (4) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- (5) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.

- (6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny.
- (7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources.
- (8) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
- (9) Members should observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (10) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they should:

- (11) Treat all citizens of the Australian Capital Territory with courtesy, and respect the diversity of their backgrounds, experiences and views. In particular, Members should by their words and actions demonstrate, and by their example and leadership encourage and foster others to show, respect for the peaceful, temperate and lawful exercise by all members of the community of their shared and individual rights and entitlements, including freedom of religion, freedom of association and freedom of speech.
- (12) Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
  - (a) comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988 (Cwth)*;
  - (b) declare their pecuniary interests and ensure that their declaration is kept up to date pursuant to the resolution of the Assembly 'Declaration of Private Interests of Members' agreed to on 7 April 1992 (as amended or replaced from time to time); and
  - (c) disclose in a manner appropriate to the circumstances any other financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of

persons) which a reasonable observer, informed of that interest, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.

- (13) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.
- (14) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person.
- (15) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (16) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information unless required by law, or improperly for the private benefit of themselves or another person.
- (17) In their capacity as an employer on behalf of the Territory under the Legislative Assembly (Members' Staff) Act 1989:
  - (a) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
  - (b) not employ a family member as defined in that Act;
  - (c) direct their personal staff to be mindful of the Member's commitment to this Code of Conduct, and to assist the Member to comply with this Code of Conduct; and
  - (d) direct their personal staff to comply with any code of conduct applicable to those staff from time to time.
- (18) 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.
- (19) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
- (20) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.
- (21) 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.

## Attachment B

### *Continuing resolution 5*

**CODE OF CONDUCT  
FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY**

This resolution provides for a code of conduct for Members of the Legislative Assembly.

**Resolution agreed by the Assembly**

**25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, [xxxxx 2021](#))**

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members and that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- (3) Members should uphold the separation of powers and the rule of law
- (4) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- (5) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- (6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny.
- (7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources.

- (8) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
- (9) Members should [treat each other with courtesy and propriety](#), observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (10) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they should:

- (11) Treat all [people](#) with courtesy, and respect the diversity of their backgrounds, experiences and views.
- (12) Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
  - (a) comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth);
  - (b) declare their [private](#) interests [and those of their immediate family](#) and ensure that their declaration is kept up to date, as required by Continuing Resolution 6 (as amended or replaced from time to time); and
  - (c) disclose [at a time and](#) in a manner appropriate to the circumstances any financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) [and any friendship, relationship or other circumstance](#) which a reasonable observer, informed of that [matter](#), might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.
- (13) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.
- (14) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person, [and not accept any inappropriate benefit in connection with their activity as a Member.](#)
- (15) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (16) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information unless required by law, or improperly for the private benefit of themselves or another person.



- (17) In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members' Staff) Act 1989*:
- (a) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
  - (b) not employ a family member as defined in that Act;
  - (c) take all reasonable steps to ensure that, as far as practicable, their personal staff are mindful of the Member's commitment to this Code of Conduct, and assist the Member to comply with this Code of Conduct; and
  - (d) not seek to require or encourage their personal staff to engage in any conduct that may amount to a breach of any code of conduct applicable to those staff from time to time.
- (18) In all their dealings with staff of the Assembly, staff of other Members and members of the ACT Public Sector:
- (a) extend professional courtesy and respect;
  - (b) act consistently with accepted workplace conduct standards; and
  - (c) recognise the unique position of impartiality and the obligations of public sector officials, including members of the ACT Public Service .
- (19) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
- (20) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.
- (21) 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.
- (22) Where a member who had not voted on the most recent reaffirmation required under clause (21) is elected to the Assembly, that member shall, before he or she makes an inaugural speech or otherwise participates in parliamentary processes, affirm that he or she will abide by the code.

## Attachment C

# Continuing resolution 6

## Declaration of private interests of Members

**6**

**This resolution provides that Members shall, within 28 days of taking their seats, declare their private interests. The resolution also sets out how those interests may be accessed.**

### Resolution agreed by the Assembly

**7 April 1992 (amended 27 August 1998, 17 March 2005, 6 March 2008, 10 December 2009 and 30 November 2017)**

That—

- (2) within 28 days of the making and subscribing of an oath or affirmation as a Member of the Legislative Assembly for the Australian Capital Territory each Member of the Legislative Assembly shall provide to the Clerk of the Legislative Assembly a declaration of the private interests of themselves and their immediate family in the form as presented to the Assembly on 30 November 2017 and shall notify any alteration of those interests to the Clerk within 60 days of that alteration occurring;
- (3) under the general direction of the Speaker, and in accordance with section 11 of the form, the Clerk shall store the declarations of private interests made by each Member and arrange for the declarations and updates for that Assembly to be placed on the Legislative Assembly website on the internet. When a Member vacates his or her seat or is not re-elected at the next general election for the Assembly, the Clerk shall retain those declarations for seven years, after which the Clerk shall destroy all declarations made by that Member in his/her custody and remove those declarations from the Legislative Assembly website on the internet;
- (4) any declaration stored by the Clerk be made available for perusal to any person on request; and
- (5) this resolution has effect from the commencement of the Second Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.

## Attachment D

### Current Declaration form



**Legislative Assembly** for the  
**Australian Capital Territory**

**Register of Members' Interests**

### Statement of registerable interests

Particulars of my private interests and those of my immediate family of which I am aware are set out below.

In accordance with continuing resolution 6, I undertake to provide any alteration to these declarations within 60 days of that alteration occurring.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

It is suggested that the *Explanatory Notes* accompanying each section be read before completing.

Revised November 2017

## Explanatory note

The purpose of the Statement of Registrable Interests form is to place on the public record Members' interests which may conflict, or may be seen to conflict, with their public duty.

No form can cover all possible circumstances and Members should consequently bear in mind the purpose and spirit of the return in deciding which matters should be registered.

There is the need to include under all headings interests to the extent to which the Member is aware of them, of the Member's spouse (including de facto spouse), and any who are wholly or mainly dependent on the Member for support.

When interests are held jointly with a spouse or dependants, the interests need to be included only as interests of the Member with an appropriate notation such as "jointly owned with spouse".

Where interests could be included under more than one heading, it is suggested they need be included only under the most specific heading unless two aspects need to be disclosed (e.g. real estate, plus a mortgage liability on that real estate).

**Note:** MLAs may have other reporting requirements through the *Electoral Act 1992*. This is separate from the OLA declaration.

# Statement of registerable interests

## 1. Shareholders in public and private companies (including holding companies) indicating the name of the company or companies

	Name of the company (including holding and subsidiary companies if applicable)
Self	
Spouse	
Dependants	

### Explanatory notes:

- Notify any relevant interest in any shares (as defined in Corporations Law) including equitable as well as legal interest, whether held directly or indirectly, which enables a Member, the Member's spouse or dependants to exercise control over the right to vote or dispose of those shares.
- Where interests are held in a private holding company (i.e. a proprietary company formed for the purpose of investing in subsidiary companies) all such subsidiary companies, and any subsidiary companies held by those subsidiary companies, should be named.

## 2. Family and business trust and nominee companies in which a beneficial interest is held

	Name of trust / nominee company	Nature of operation	Beneficial interest
Self			
Spouse			
Dependants			

### Explanatory notes:

- Family and business trust and nominee companies
  - in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and
  - in which the Member, the Member's spouse, or dependant is a trustee (but not including a trustee of an estate where no beneficial interest is held by the Member, the Member's spouse or dependant), indicating the name of the trust, the nature of its operation and the beneficiary of the trust.

**Note:** That both beneficial interest and trustee responsibilities (except as trustee of a deceased estate where neither the Member, the Member's spouse nor dependants are beneficiaries of the estate) should be specified.

## 3. Real estate, including the location and the purpose for which it is owned

	Location	Purpose for which owned
Self		
Spouse		
Dependants		

**Explanatory note:**

- Members should specify the precise location of the property and purpose for which the property is owned (Members are not required to list the address of their principal place of residence).

**4. Registered directorships of companies**

	Name of company	Activities of company
Self		
Spouse		
Dependants		

**Explanatory note:**

- Indicate the name of the company and the activities of the company.

**5. Partnerships, indicating the nature of the interests and the activities of the partnerships**

	Name	Nature of interests	Activities of partnership
Self			
Spouse			
Dependants			

**Explanatory notes:**

- Under “nature of the interests” specify level of current involvement in partnerships (e.g. “financial (non-working partner), consultant”, etc).
- Specify the purpose or operations of the partnerships (e.g. investment, consultancy, etc).

## 6. Liabilities, including the nature of the liability and the creditor concerned

	Name of liability	Creditor
Self		
Spouse		
Dependants		

### Explanatory notes:

- Include all liabilities (e.g. mortgages, hire-purchase arrangements, personal loans and overdrafts).
- Need not be disclosed are Liabilities incurred on a department store account.
- Need not be disclosed are Liabilities incurred on a credit card unless the credit card has been used to obtain a cash advance in excess of \$5,000 and the advance is outstanding for a period in excess of 60 days.

## 7. The nature of any bonds, debentures, and like investments

	Type of investment	Body in which investment is held
Self		
Spouse		
Dependants		

### Explanatory note:

- "Investments" mean all investments including placement of monies, which attract interest or other benefits.

## 8. Savings or investment accounts, including their nature and the name of the bank or other institutions concerned

	Nature of account	Name of bank / institution
Self		
Spouse		
Dependants		

### Explanatory note:

- Savings accounts and investment accounts should be included.
- Ordinary, non-interest-bearing cheque accounts should not be included.

## 9. The nature of other assets (excluding household and personal effects) each valued at over \$5,000

	Nature of other assets
Self	
Spouse	
Dependants	

### Explanatory notes:

- List all personal possessions of value other than ordinary household or personal effects.
- Items which might be listed under more specific headings (e.g. investments gifts received, etc) need not be included here.
- As a general rule of thumb, items of under \$5,000 value may not require inclusion under this heading unless they are of a nature which might be sensitive to implications of conflict of interest.
- Collections should be included.
- Motor vehicles for personal use need not to be included.
- Superannuation entitlements, including self-managed super funds, should be included.

## 10. The nature of other substantial sources of income

	Nature of income
Self	
Spouse	
Dependants	

### Explanatory notes:

- The Member's own salary and allowances as a Member of the Assembly need not be included.
- Include a spouse's income from employment or a business undertaking and any income received by the Member, the Member's spouse or dependants from investments, annuity arrangements, pensions or under governmental assistance schemes (but not including family allowances). There is no need to show the actual amount received. A simple reference to "income for investments set out above" is sufficient for investment income.

**Note:** As a general rule of thumb, income over \$5,000 per annum might be notifiable but smaller amounts from sources which might, in the judgement of the Member, involve sensitivity or be capable of misconstruction should be included.



## 11. Gifts, gifts-in-kind, and/or any sponsored travel or hospitality received valued at more than \$200 in a financial year

	Details of gifts / travel / hospitality
Self	
Spouse	
Dependants	

### Explanatory notes:

- Gifts received by Members and their families from family members or personal friends in a purely personal capacity need not be disclosed unless the Member judges an appearance of conflict of interest may be seen to exist.
- A series of smaller gifts from the same person/organisation that cumulatively exceed \$500 in a financial year should be declared.
- Serial receipt of hospitality e.g. regular receipt of free Theatre tickets or tickets from sporting organisations should be declared if the collective value exceeds \$500 in a financial year.
- 'Sponsored travel' means any free or concessional travel undertaken by the Member, the Member's spouse or dependants sponsored wholly or partly by a person, organisation, business or interest group or foreign Government or its representative. It does not include the travel entitlements received by a Member, the Member's spouse or dependants under any determination by the Remuneration Tribunal nor travel undertaken as a Member of an official Assembly delegation. The purpose for which the travel was undertaken should be shown.
- 'Hospitality' refers to free or concessional accommodation or entertainment provided to the Members, the Member's spouse or dependants wholly or partly by any person, organisation, business or interest group or foreign Government or its representative.
- There is also no need to include entertainment received as a function and role as MLA such as a reception or dinner hosted by a High Commissioner/Ambassador, Industry or community groups.
- In all cases in deciding whether travel or hospitality should be included in a return, a Member should exercise his or her judgement having regard to any appearance of conflict of interest that may arise.

**12. Membership of any organisation**

	Names of organisations
Self	
Spouse	
Dependants	

**Explanatory notes:**

- Membership of all organisations should be disclosed. Examples might include unions, political organisations, business groups, community organisations, lobby groups and sporting or other clubs.

**13. Any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise**

	Nature of interest
Self	
Spouse	
Dependants	

**Explanatory notes:**

- List any other interest that, in the opinion of the Member, holds the potential for a real or apparent conflict of interest with a Member's public duties to arise.

## Notification of alteration(s) of interests since most recent declaration

The following alternation(s) of interests have occurred since my most recent declaration.

### Addition

	Item	Details
Self		
Spouse		
Dependent		

### Deletion

	Item	Details
Self		
Spouse		
Dependent		

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

## Attachment E

### Guidance for Members in the Tenth Assembly Members Guide

#### Declaration of private interests

- 3.34 By order of the Assembly, members are required to provide to the Clerk a declaration of the private interests of themselves and their immediate family. The declaration must be made in a Statement of registrable interests form which covers a range of matters, including shareholdings in public and private companies, family and business trusts and nominee companies, real estate holdings and gifts. This declaration must be provided by each member within 28 days of being sworn in.
- 3.35 Notification of alterations must be lodged with the Clerk within 28 days of the alteration occurring.
- 3.36 Declarations of members' interests, and alterations, are published on the Assembly's website.
- 3.37 Members must specify the precise location of any real estate in which they or their immediate family holds an interest; however, they are not required to state the precise location of their principal private residence.
- 3.38 Members are also directed to chapter 14 of this guide on travel entitlements, which addresses issues associated with keeping a record of frequent flyer points accrued whilst travelling on Assembly business.
- 3.39 A copy of the Statement of registrable interests form is available on the Assembly intranet. Contact the Clerk (ext. 50191) for more information on members' responsibilities in relation to declaring their interests.
- 3.40 The resolution outlining the declaration of members' private interests is included in the standing orders and continuing resolutions of the Assembly (see continuing resolution 6).

#### Receipt of gifts

- 3.41 There may be occasions where members, in the course of their official duties, receive an official gift (that is, a gift that is received in the course of representing the Assembly on official business such as interstate committee travel).
- 3.42 Official gifts are those that are presented to the Assembly by individuals or institutions, that are of an enduring nature and that, in some way, speak to the unique background of the benefactor or to the relationship between the Assembly and the benefactor, such as particular cultural artefacts, artworks, or ceremonial or commemorative objects.
- 3.43 Perishable gifts such as gifts of alcohol, flowers or confectionery products are not deemed to be official gifts, nor are low-value items such as lapel pins, pens/pencils or other types of stationery paraphernalia.

- 3.44 Where an MLA or staff member of the Legislative Assembly receives such a gift, it should be provided to the Speaker's office, along with a completed form. The Speaker will determine whether or not to accept the gift into the official gift collection. In the event that the gift is not accepted, it will be returned.
- 3.45 An MLA must declare any individual gift over the value of \$200, and any gifts from the same donor that cumulatively exceed \$500, on their Statement of registrable interests form (available on the Assembly intranet).
- 3.46 Members should indicate on the form whom the gift was from, a description of the gift, the date on which it was received, the approximate value of the gift, and the occasion or event at which the gift was given.
- 3.47 Where the Speaker determines that the gift may be retained by the member or where a gift is received by a member that has not been given in an official capacity, it is important that the member updates their Statement of registrable interests form and provides the updated information to the Clerk.

3.48 The Statement of registrable interests form provides:

- Gifts received by Members and their families from family members or personal friends in a purely personal capacity need not be disclosed unless the Member judges an appearance of conflict of interest may be seen to exist.
- A series of smaller gifts from the same person/organisation that cumulatively exceed \$500 in a financial year should be declared.
- Serial receipt of hospitality (for example, regular receipt of free theatre tickets or tickets from sporting organisations) should be declared if the collective value exceeds \$500 in a financial year.
- 'Sponsored travel' means any free or concessional travel undertaken by the Member, the Member's spouse or dependants sponsored wholly or partly by a person, organisation, business or interest group or foreign Government or its representative. It does not include the travel entitlements received by a Member, the Member's spouse or dependants under any determination by the Remuneration Tribunal nor travel undertaken as a Member of an official Assembly delegation. The purpose for which the travel was undertaken should be shown.
- 'Hospitality' refers to free or concessional accommodation or entertainment provided to the Members, the Member's spouse or dependants wholly or partly by any person, organisation, business or interest group or foreign Government or its representative.
- There is also no need to include entertainment received as a function and role as MLA such as a reception or dinner hosted by a High Commissioner/Ambassador, Industry or community groups.
- In all cases in deciding whether travel or hospitality should be included in a return, a Member should exercise his or her judgement having regard to any appearance of conflict of interest that may arise.

3.49 Additional information on the presentation of gifts is in chapter 17.

## Attachment F

# Declaration of Member's Private Interests

### Introductory Notes:

The *Code of Conduct for all Members of the Legislative Assembly of the Australian Capital Territory* set out in Continuing Resolution 5 requires that Members:

“Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:

- (a) comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth);
- (b) declare their pecuniary interests and ensure that their declaration is kept up to date pursuant Continuing Resolution 6 (as amended or replaced from time to time); and
- (c) disclose at a time and in a manner appropriate to the circumstances any financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) and any friendship, relationship or other circumstance which a reasonable observer, informed of that matter, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.”

[NOTE – the above quotation will need to be amended if the Code is amended as recommend elsewhere in this report.]

This form must be completed and lodged with the Clerk of the Assembly:

- by a re-elected Member: within 28 days of the date of the declaration of the outcome of the election at which they are re-elected; and
- by a newly-elected Member or a former Member who was not a Member during the immediately preceding Assembly: within 28 days of being sworn in as a Member.

Amendments to this form must be completed and lodged with the Clerk of the Assembly within 28 days of any change in interests which necessitates amendment of previously declared interests.

Completion of this form and keeping it up to date will satisfy the requirements of Continuing Resolution 6 for “declaration of the private interests of themselves and their immediate family”.

However, Members should be aware that completing this form provides only the minimum action required of a Member. Circumstances may arise where action beyond mere disclosure of an interest is required in order to comply with the Code of Conduct. *For example*, in order to comply with the Code requirement to avoid or resolve a conflict of interest or the perception of a conflict, it may also be necessary for a Member to stand aside from Assembly consideration or government decision-making affecting or potentially affecting a declared interest.

Members should also be aware that the minimum disclosure required by this form may be insufficient disclosure. Circumstances may arise where it may be necessary for a Member to make

additional disclosures of their interests or those of other persons even where not required by this form. *For example*, disclosure (and possibly other action) may be required in relation to:

- a personal relationship, whether or not intimate or close, with a person who is not the Member's de facto spouse;
- the interests of a family member such as a parent, sibling or grandchild who is not part of the Member's "immediate family" for the purposes of this form;
- a financial interest or relationship that is not a shareholding, partnership, ownership or income interest required to be declared in this form; or
- more specifically identifying an interest declared in this form, such as the precise address of a property the value of which could be affected by Assembly or government town-planning decisions.

In this form, "immediate family" means:

- a person to whom the Member is legally married, even if separated (referred to in this form as a "spouse");
- a person with whom the Member lives in a marriage-like de facto relationship (referred to in this form as a "partner"); and
- a natural, adopted or step child who is wholly or principally dependent on the Member or their spouse or partner, regardless of the age of the child.

It is not necessary to name the members of your immediate family. Where multiple persons need to be referred to within a category listed in the form, identifying terminology such as "Spouse" and "Partner" or "Child 1", "Child 2" etc. may be used. Where you do not have family in a particular category, you may enter "N/A".

You must provide in respect of the interests of your immediate family details that are known to you or that you can ascertain by reasonable inquiry. If a member of your immediate family refuses or fails to provide information not otherwise known to you at your request, you should enter the annotation "information not known and declined".

In completing this form, an interest may need to be declared under more than one category. *For example*:

- ownership of an investment property may need to be declared under "Real Estate" and rent earned from that property may also need to be declared under "Other Income"; or
- engaging in legal practice may need to be declared under both "Other Income" and "Membership" of a professional organisation.

If the space provided on this form is insufficient to record all required detail, additional pages should be added.

Advice in relation to completion of this form may be sought from either the Clerk of the Assembly or the Assembly's Ethics and Integrity Adviser.

## Declaration of Member's Private Interests

**Members Name:** .....

### Item 1: Real Estate:

The location of all real estate must be shown but street addresses are not required – suburb, town or region names may be used instead. Where real estate is only partly-owned, an annotation such as “joint tenant” or “tenant in common” should be included. Real estate held by a trust you have declared at Item 6 need be declared only under that item.

#### Principal Place of Residence:

Member	.....
Spouse/Partner	.....
Child	.....

#### Secondary Place(s) of Residence:

Member	.....
Spouse/Partner	.....
Child	.....

#### Other Real Estate:

Member	.....
Spouse/Partner	.....
Child	.....

### Item 2: Other Income

You must show here the source of income such as that derived from other employment, from investment or from distribution by a trust. In this Item, “other income” does not include your Assembly salary or allowances. Actual amounts of income are not required to be provided. Sources of income must be shown for the immediately preceding financial year to 30 June, and expected details for the current financial year to 30 June next.

Member	.....
Spouse/Partner	.....
Child	.....

### Item 3: Shareholdings

You must list here the names and any other required details of all companies in which shares are held, whether solely or jointly with others. Numbers and values of shares held are not required to be provided. Shares held by a trust you have declared at Item 6 need be declared only under that item.

#### Publicly listed companies (name of company only required):

Member	.....
Spouse/Partner	.....
Child	.....

#### Private companies (full name of each company and a description of its objects and activities is required):

Member	.....
Spouse/Partner	.....
Child	.....

Subsidiary companies (you must list here, for each subsidiary of any private company listed above, the full name of each subsidiary that is fully or majority owned by that private company, and a description of its objects and activities):



Member .....  
 Spouse/Partner .....  
 Child .....

#### Item 4: Partnerships

You must list here the name of each partnership of which you are, or a member of your immediate family is, a member. For each partnership, you must provide a statement of the objects and activities of the partnership. It is not necessary to name each other member of a partnership but you must provide an exact or estimated percentage share of the interest held in the partnership by you or a member of your immediate family.

Member .....  
 Spouse/Partner .....  
 Child .....

#### Item 5: Offices Held

You must list here offices held in any corporation, partnership, association or other body (including a trade union, professional or business association and an owners corporation under the *Unit Titles (Management) Act 2011*) and, for each such entity, provide its name and address and a description of its objects and activities.

Member .....  
 Spouse/Partner .....  
 Child .....

#### Item 6: Trusts (other than a blind trust)

You must list here any trust under which a beneficial interest is held by you or a member of your immediate family, or in which you or a member of your immediate family is a trustee and another member of your (immediate or extended) family holds a beneficial interest. For each such trust, you must provide a description of the activities of the trust, the nature of the beneficial interest, the source(s) of income of the trust, the location (by suburb, town or region) of any real estate held by the trust, and the names of companies in which the trust holds shares or an interest in shares.

Member .....  
 Spouse/Partner .....  
 Child .....

#### Item 7: Blind Trusts

You must list here any blind trust under which you or a member of your immediate family holds a beneficial interest. For each such trust, you must provide a description of the blind trust and the name and address of the person who manages the blind trust.

Member .....  
 Spouse/Partner .....  
 Child .....

#### Item 8: Estates

You must list here any estate in which you or a member of your immediate family are appointed as an executor and hold a beneficial interest. For each such estate, you must list the name of the estate and a description of the beneficial interest.

Member .....  
 Spouse/Partner .....  
 Child .....

**Item 9: Personal Debt**

You must list here a description of the debt (for example, mortgage, hire-purchase, overdraft, personal loan) and the name of the creditor. You do not need to show amounts owed. Credit cards should be included even if the amount owing is paid each period without interest being incurred. Debts of less than \$500 or multiple debts owed to the same person or organisation with a combined total of less than \$500 do not need to be included.

Member	.....
Spouse/Partner	.....
Child	.....

**Item 10: Other Assets**

You must list here assets held that are not listed in any other category on this form (such as savings or investment accounts, debentures, bonds, superannuation accounts etc., for which the name of the bank or other institution is to be provided). You do not need to list ordinary household effects or motor vehicles used for private purposes. You do not need to provide a value for listed assets individually or in total.

Member	.....
Spouse/Partner	.....
Child	.....

**Item 11: Gifts**

You must list here any gift you have received while a Member other than:

- unsolicited and unconditional gifts received in a purely personal capacity from family members or personal friends;
- gifts received as a Member and passed to and accepted by the Speaker for inclusion as an asset of the Assembly;
- other gifts received as a Member with a value of less than \$200 each or, where multiple gifts are received from the same person or organisation or group of related persons or organisations, with a combined value less than \$500 in a financial year.

You must also list gifts of that value received by a member of your immediate family because of your position as a Member – that is, other than gifts received by them in a purely personal capacity, Gifts in the form of hospitality, entertainment, travel or accommodation do not need to be listed here but must be listed under Item 12.

You do not need to list here political donations that are disclosed or required to be disclosed to the ACT Electoral Commission.

Discounts, rebates or similar received in connection with the supply of goods or services do not need to be listed if they are provided in the ordinary course of the supplier's business and are generally available on the same terms to other members of the public.

Member	.....
Spouse/Partner	.....
Child	.....

**Item 12: Travel, Accommodation, Entertainment and Hospitality**

You must list here any free or concessional travel you have undertaken where the cost or part of the cost was met other than by the Assembly – that is, including by any other person, organisation, business or interest group or a foreign government or its representative. You do not need to list travel entitlements received by you or your immediate family under a Remuneration Tribunal determination or as a member of an official Assembly delegation. In each case you must list the purpose of the travel. Complimentary membership of airline lounges should also be shown.

You must also list free or concessional accommodation, entertainment or hospitality you have accepted, whether or not provided in association with travel, where the cost or part of the cost was met other than by the Assembly – that is, including by any other person, organisation, business or interest group or a foreign government or its representative – but only where the value of any individual item exceeds \$200 or, where multiple items are received from the same person or organisation or group of related persons or organisations, with a combined value in excess of \$500 in a financial year.

You must also list free or concessional travel, accommodation, entertainment or hospitality received by a member of your immediate family because of your position as a Member – that is, other than items received by them in a purely personal capacity.

Member	.....
Spouse/Partner	.....
Child	.....

### Item 13: Memberships

You must list here all organisations of which you are a member, including unions, political organisations, business groups, community organisations, lobby groups and sporting or other clubs.

You may also list, if you think it appropriate, memberships of such organisations held by members of your immediate family.

Member	.....
Spouse/Partner	.....
Child	.....

### Item 13: Other Disclosure

You may include under this item any other fact or circumstance which you believe it is appropriate to disclose for the purpose of avoiding or resolving an actual or perceived conflict of interests with your duties as a Member.

Member	.....
Spouse/Partner	.....
Child	.....

Signature: .....

Name: .....

Date: ...../...../.....

## Amendment to Member’s Declaration of Private Interests

For each change, addition or deletion, show the corresponding Item number of the Declaration of Member’s Private Interests form and details of the change, addition or deletion.

The following amendments have occurred since my most recent declaration:

**Additions:**

Member	Item: ..... Detail:.....
Spouse/Partner	Item: ..... Detail:.....
Child	Item: ..... Detail:.....

**Deletions:**

Member	Item: ..... Detail:.....
Spouse/Partner	Item: ..... Detail:.....
Child	Item: ..... Detail:.....

Signature: .....  
Name: .....  
Date: ...../...../.....