



Legislative Assembly for the
Australian Capital Territory

Standing Committee on the Integrity
Commission and Statutory Office
Holders

Submission Cover Sheet

Inquiry into the effectiveness of transparency arrangements for Members of the Legislative Assembly

Submission number: 009

Submitter: ACT Greens

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Submission to Inquiry into Inquiry into the effectiveness of transparency arrangements for Members of the Legislative Assembly

By Shane Rattenbury on behalf of ACT Greens MLAs

I would like to thank the Committee for the opportunity to provide a submission to this inquiry. I hope the insights below gained from my 15 years' experience as a Member of the ACT Legislative Assembly (MLA), including as Speaker, Minister, and non-executive Member.

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Recommendations

It is recommended that the Inquiry:

1. Provide recommendations that improve independent oversight of existing travel reporting schemes, and/or their amalgamation with the disclosure processes of Elections ACT, so that there is a timely and improved disclosure scheme.
2. Ensure reported valuations for airline lounge membership are fair and reflective of their true value.
3. Examine Members' diary transparency in accordance with Westminster principles, applicable legislation, and the Australian Constitution's implied freedom of political communication.
4. When considering any changes to Member diary transparency arrangements, ensure that resourcing implications for members are also clearly identified.
5. That the Inquiry consider any potential external consequences arising from the Integrity Commission's Inquiry into Lobbying.

6. Examine how Members' staffing allocation may be set so as to be consistent with the Latimer House Principles and thereby remove any conflict of interest from the executive.
7. Examine how the Ministerial Code of Conduct could be improved with elements such as an independent arbitrator, a transparent process for handling and resolving complaints, a process for handling complaints in the Chief Minister, as well as regular reporting.
8. Examine how to maintain community confidence in Ministerial decisions whilst they subject to an Integrity Commission inquiry in a way that balances fairness, transparency, and natural justice.

Travel

The motion passed by the Assembly 9 April calls for:

(i) the publication, each quarter, of information on Members' externally sponsored and Assembly related and funded travel;

It should be noted that there are existing arrangements in place for the disclosure of Assembly-funded travel. This is published online by the Office of the Legislative Assembly for six-month periods.¹ These reports are comprehensive, but may not be considered sufficiently timely. The Greens would support reforms to increase the frequency with which this information is published.

There are existing arrangements for gifts-in-kind received by an MLA to be reported within seven days to Elections ACT – by the MLA directly in the case of an independent, or by their party in the case of a member of a registered political party. This information is published online² and by definition includes externally sponsored travel and airline memberships. However, this disclosure scheme is limited to only cumulative gifts over \$1,000 in a financial year from a particular donor across the party group (the party plus its MLAs and associated entities). This means that some lower-cost travel events below this threshold will be out-of-scope of the Elections ACT disclosures.

Members are also expected to disclose any (all) free or concessional travel on their declarations of Members' interests, both for themselves and their immediate families. This should theoretically capture all travel, covering both that which is disclosed to Elections ACT and all other travel. However, a limitation of this scheme is that the declarations of Members interests are only tested when challenged in the Assembly. There is no independent oversight of the declarations.

¹ <https://www.parliament.act.gov.au/members/ethics-and-accountability>

² <https://www.elections.act.gov.au/funding-disclosures-and-registers/gift-returns>

The Greens would welcome reforms which improve independent oversight of existing schemes, and/or their amalgamation with the disclosure processes of Elections ACT, so that there is improved visibility and enforcement of what are already supposed to be comprehensive disclosure schemes. This may require additional resources to support the work of the Office of the Legislative Assembly and/or the Electoral Commissioner.

The Inquiry may also wish to properly consider a fair valuation of airline memberships in line with their true value. Memberships to the QANTAS Chairmans' and Virgin Beyond Lounges have historically been valued at \$590 by its recipients. This valuation has not changed since at least 2019 despite inflation and does not accurately reflect the value of the services provided to membership-holders. As a comparison, the renewal of a QANTAS Club membership costs \$629 for a 12-month period³ whilst offering a significantly lower level of service than is available to members of the QANTAS Chairman's Club.

Diaries of non-executive Members

The motion passed by the Assembly 9 April 2025 calls for the publication of all Members' diaries with the following:

(ii) the publication, each quarter, of Members' diaries setting out all reportable meetings, events and functions attended that relate to their responsibilities as Members taking into consideration the potential for:

(A) retrospective commencement from the start of the 11th Assembly;

(B) the preclusion of personal and family matters; electorate or party political matters; media interviews or recordings; any scheduled meeting or event that the Member did not actually attend; or any information which might disclose personal details about an individual, affect a court case, or disclose information about security, public safety, or law enforcement;

(C) appropriate protections for whistleblowers, privacy, or sensitive information; and

The existing standards for the disclosure of Ministerial diaries are based on the principle of *individual ministerial responsibility*⁴. It is associated with the idea that Ministers, wielding significant executive power, must be subject to proportionate transparency for accountability purposes.

³ <https://www.qantas.com/au/en/frequent-flyer/the-qantas-club/membership-types.html>

⁴

[https://www.aph.gov.au/About Parliament/House of Representatives/Powers_practice_and_procedure/practice5/chapter2#ind](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice5/chapter2#ind)

The matters precluded from being disclosed in the existing scheme of Ministerial diary reporting at point (ii)(B) above in effect distinguish between executive and non-executive business such that Ministers are not expected to disclose the matters they undertake outside of the scope of their Ministerial duties. Applying the definitions as prescribed above to non-executive members would structurally produce nil-returns, consistent with the current design.

Should any decision be taken to amend the scope of disclosures, including for the publication of non-executive members diaries, then appropriate protections for whistleblowers, privacy and sensitive information, as described in (ii)(C), will be critical. This is necessary to preserve the concept of *parliamentary privilege*⁵ and for compatibility with other privacy expectations under the ACT's *Human Rights Act 2004*. We must ensure appropriate protections are in place to provide confidence to anyone who wishes to meet with and disclose matters to their elected representative(s) without the possibility of prejudicial outcomes or negative treatment as a hallmark of a healthy and robust democracy.

The ability of constituents to access their MLA representatives is also part of the implied freedom of political communication under the Australian constitution's system of representative democracy. Any burden upon the implied freedom must, consistent with High Court precedents, be properly and justifiably targeted according to the three tests of suitability, necessity and adequacy in balance. Suitable protections for natural persons meeting with their representatives will be paramount in justifying any possible burdening of the implied freedom. The committee should remain alert to the fact that if reform is contrary to the implied freedom, it may not be practical or even possible to enact the reform in a way that will satisfy the High Court's tests.

It should be noted the publication of Ministerial diaries occurs in New South Wales, Queensland, Victoria and the ACT and is a common call by transparency advocacy groups for implementation in other Australian jurisdictions. This reflects Ministers exercising the greater decision-making responsibilities that includes the allocation of public resources through appropriations and subordinate instruments. Should the ACT publish non-executive Members' diaries it would be the first, and only, jurisdiction in Australia to do so. To the best of our knowledge, no advocacy groups are calling for non-executive Member diary transparency, and are prioritising transparency for Ministers given their decision-making power on the allocation of resources.

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[https://www.aph.gov.au/About Parliament/House of Representatives/Powers_practice_and_procedure/practice5/chapter19](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice5/chapter19)

The problem seeking to be addressed has not been clearly articulated, and the call for the publication of non-executive Member diaries has been heard from **only** the ACT Chief Minister.

The Greens support transparency arrangements that are compatible with Westminster principles, applicable legislation, and the Australian Constitution's implied freedom of political communication. The Greens note additional resources may be required to ensure compliance with any new and additional disclosure requirements, both for executive and non-executive members. A proper consideration of the scope of diaries for publication will add clarity and confidence to any disclosure scheme and ensure that the scope of work to produce the diaries can be appropriately resourced.

ACT Integrity Commission inquiry into lobbying

Funding for the ACT Integrity Commissioner to conduct their suggested inquiry into lobbying has now been included in the 2025-26 budget. The Greens are committed to supporting the Commissioner in their inquiries in any respect that the Commissioner requests, and I look forward to the Assembly receiving their eventual findings.

It should be recognised that a principal motivator for the publication of Ministers' diaries, and by extension the possible publication of Members' diaries, is to provide transparency over lobbying activities. It is therefore highly likely that the Commission will examine the current and potential scope of this practice in the course of their investigations. The Assembly should be wary of prejudicing these investigations through any pre-empting of its conclusions, and should remain prepared to enact a second wave of reforms if a first wave is enacted prior to receiving the Commission's report.

Members' staffing

The motion passed by the Assembly on 9 April 2025 called for greater transparency of Members' staffing. The Greens strongly support ensuring consistency of transparency arrangements for staffing expenditure between executive and non-executive offices. We recommend aligning executive reporting practices to non-executive reporting practices.

Differences in reporting structures have arisen due to the funding for staffing costs being derived from different sources of appropriation. Executive members' staff are funded from the ACT Executive budget and are supported by HR functions in the Chief Minister's directorate, whereas non-executive members' staff are funded from and receive administrative HR support through the Office of the Legislative Assembly. The annual report of the Office of the Legislative Assembly reports on the staff expenditure

profile for each non-executive MLA office, including the base allocation, pledges of funding made between offices to support some staff between shared between multiple offices, the actual staff expenses incurred, contractor expenses incurred, and any unspent amount permitted to be rolled over to the next financial year.⁶

All executive staff are employed through the Office of the Chief Minister and then allocated to one or more Minister's areas of work. Ministers' offices do not share or pledge resources with each other – rather, the Chief Minister's office manages all resources.

In examining the transparency around Members' staffing it is important to question how those allocations are established. Currently under *Legislative Assembly (Members' Staff) Act 1989*, non-executive staff allocations are set by the Chief Minister through one of two disallowable instruments made under the Act:

- Legislative Assembly (Members' Staff) Member's Salary Cap Determination (in the case of members)⁷; or
- Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination (in the case of the Speaker)⁸.

The Chief Minister also has the power via the Appropriation Bill, to determine the staffing of Executive members. Whilst the Assembly has the power to vote down or amend down the particular line item it still gives the Chief Minister the power of the first proposal. This control by the Chief Minister over both executive and non-executive members' resources creates a perceived and actual conflict of interest that is detrimental to our democracy.

It is also contrary to section VII of the Latimer House principles on the separation of powers, which states at point 6 that “an all-party committee of members of parliament should review and administer parliament's budget which should not be subject to amendment by the executive.”⁹

Due to limitations imposed by section 65 of the *ACT Self-Government Act 1988* concerning the financial prerogative of the Crown, directly legislating parliament's control over its budget would be challenging. Nonetheless, processes and conventions can and should be established which empower the parliament to guide or direct the Treasurer in the provision of parliament's budget, including the staffing allocation for Members. This aligns with calls from transparency advocates for reform at the federal

⁶ https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/2619808/Annual-report-2023-2024-with-correction.pdf - See Table 14 on page 49

⁷ Current instrument: <https://www.legislation.act.gov.au/di/2025-90/>

⁸ Current instrument: <https://www.legislation.act.gov.au/di/2025-91/>

⁹ <https://www.cpahq.org/media/dhfajkpg/commonwealth-latimer-principles-web-version.pdf>

level.¹⁰ There is also some precedent with the NSW Parliamentary Remuneration Tribunal setting the number of electorate staff allocated to Members of the New South Wales Parliament, which could serve as inspiration for ACT reforms.¹¹

An independent tribunal could recommend, or even set, all executive and non-executive members' staff in a similar manner to how the salaries of MLAs are determined. The ACT Remuneration Tribunal could be well placed to take on this function.

Ministerial Code of Conduct complaints processes

There is currently a robust, independent, and transparent system for the handling of complaints of breaches of the Members' code of conduct. The system for the handling of complaints that Ministers have breached the Ministerial code of conduct is far less rigorous, lacking independence and transparency. An allegation of a breach of the Ministerial Code of Conduct must be referred to the Chief Minister, who has a structural conflict of interest relating to the stability of his Government and Cabinet. There is a potential risk that whether a breach should be found could be grounded more in politics than in questions of fact. There is no guidance as to what kind of investigation takes place following an allegation, if any – only that any allegation should be referred to the Chief Minister. There are also no mechanisms in place to handle a complaint about the Chief Minister's adherence to the Code of Conduct.

This is particularly important given the scope of Ministers' (or Chief Minister's) decision-making powers and the fact that information is not always publicly available due to reasons of executive privilege. It is suggested that the Committee examine how the Ministerial Code of Conduct could be improved with elements such as an independent arbitrator, a transparent process for handling and resolving complaints, a process for handling complaints about the Chief Minister, as well as regular reporting.

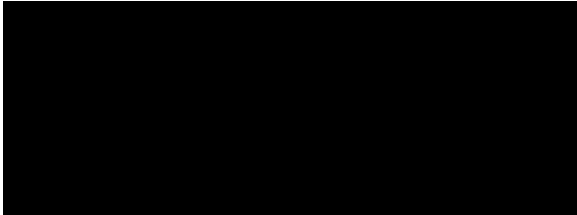
Ministers subject to ACT Integrity Commissioner Inquiries

The ACT Integrity Commission Act has wide ranging secrecy provisions to protect professional reputations whilst an investigation is underway. This may be entirely appropriate in some circumstances, but it does raise the question as to the appropriate level of transparency that is required when a Minister is involved in, or subject to, an

¹⁰ <https://australiainstitute.org.au/wp-content/uploads/2025/02/P1744-Democracy-Agenda-for-the-48th-Parliament-Web-3.pdf>

¹¹ Electorate staff are determined under section 10(3)(b) of the *Parliamentary Remuneration Act 1989* (NSW).

Integrity Commission investigation. This is particularly the case where that inquiry may raise questions of confidence in that Minister's decision-making ability in their role whilst awaiting for the outcome of the Integrity Commissioner's inquiry. The Committee may wish to examine how to maintain community confidence in Ministerial decisions whilst they subject to an Integrity Commission inquiry in a way that balances fairness, transparency, and natural justice. This may need to be evaluated on a case-by-case basis in terms of the nature of the issue under inquiry, the Minister's responsibilities, and any other relevant matter.



Shane Rattenbury MLA

6 August 2025