

4. Membership of the Assembly

Qualification and disqualification

- 4.1. The Self-Government Act provides that the qualification of a person to be elected and to take a seat as a Member of the Legislative Assembly shall be as provided by an enactment made by the Legislative Assembly.¹ In addition, it provides, at s 14, disqualification provisions where a member vacates their office as a member. These are general provisions relating to absence from the Assembly or the acceptance of remuneration for services rendered in the Assembly. The Electoral Act contains a range of provisions relating to the eligibility of persons to nominate for election to the Assembly and eligibility, together with ineligibility, provisions for members.

Nomination

- 4.2. A person is not eligible to be nominated for election to be a member of the Assembly unless, at the hour of nomination, the person is eligible to be a member or would, apart from certain disqualification provisions relating to paid office under the Crown (as set out in s 103(2)(b) of the Electoral Act; see also under the heading ‘Ineligibility provisions’ below in this chapter), be eligible to be a member.² Provisions relating to paid office under the Crown do not prevent a person from nominating for election as a member but do preclude the person from being eligible to be an MLA.
- 4.3. In the event of a casual vacancy, s 192 of the Electoral Act sets out conditions for candidature for a seat in which a casual vacancy has occurred. A person may apply to be a candidate for a seat where a casual vacancy arises if:
- (a) the person was a candidate in the last election for the electorate in which the vacancy has occurred; and
 - (b) the person was not elected; and
 - (c) he or she is an eligible person.³

1 Self-Government Act, s 67. Sections 67(2) to (5) of the Act, as originally enacted, set out qualification and disqualification provisions on an interim basis.

2 Electoral Act, s 104. A person must also be nominated in accordance with the provisions of s 105 of the Act.

3 That is, a person who is eligible to be an MLA or who would, apart from the provisions relating to paid office under the Crown, be eligible to be an MLA.

Eligibility for membership

4.4. To be eligible to be a Member of the Legislative Assembly a person must be:

- (a) an Australian citizen; and
- (b) at least 18 years old; and
- (c) an elector or entitled to be an elector.⁴

4.5. The Self-Government Act, at s 67C, sets out the qualifications of electors;⁵ in addition, the Electoral Act makes provision for the enrolment of electors.⁶

4.6. A person is entitled to be enrolled for an electorate in the Territory if the person is entitled to be enrolled on the Commonwealth electoral roll (other than as a person who has made a claim for age 17 enrolment) and the person's address is within the electorate.⁷ A person is not entitled to be enrolled for more than one electorate. Subject to certain provisos, all persons who have attained 18 years of age and who are Australian citizens or British subjects who were on a Commonwealth of Australia electoral roll before 26 January 1984 are entitled to enrolment.⁸

Ineligibility provisions

4.7. A person is not eligible to be a member of the Assembly if that person is a member of the Parliament of the Commonwealth or the legislature of another state or territory.⁹ In addition, a person is ineligible to be a member if that person:

- holds an office or appointment (other than a prescribed office)¹⁰ under the law of the Territory, the Commonwealth, a state or another territory; or
- is employed by the Territory, the Commonwealth, a state or another territory or by a Territory authority or a body (whether corporate or not) established by a law of the Commonwealth, a state or another territory; and

4 Electoral Act, s 103(1).

5 Persons who are entitled to vote at a general election (of Members of the Legislative Assembly); see Self-Government Act, s 3.

6 The Electoral Act defines an elector as a person who is enrolled or is taken to be enrolled for an electorate. See Electoral Act, dictionary.

7 Electoral Act, s 72(1); Commonwealth Electoral Act, s 100.

8 Commonwealth Electoral Act, s 93. The provisos relate to persons who are not entitled to enrolment due to holding a temporary visa within the meaning of the Migration Act or being an unlawful non-citizen under that Act, persons of unsound mind, persons serving a sentence of three years or longer for offences against Commonwealth, state or territory law, and persons convicted of treason or treachery who have not been pardoned. Also of direct relevance is Part VIII of the Commonwealth Electoral Act, which deals in detail with enrolment procedures.

9 Electoral Act, s 103(2)(a).

10 'Prescribed office' means an office of Speaker, Deputy Speaker, Chief Minister, Deputy Chief Minister, Minister or MLA; see Electoral Act, s 103(2)(b)(i).

- is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in relation to the office, appointment or employment.¹¹

4.8. In addition, a person is not eligible to be a member of the Assembly for a disqualification period of two years after a conviction or finding in the following circumstances:¹²

- if the person is convicted of an offence against:
 - s 285 of the Electoral Act, for the electoral offences of offering, soliciting or accepting an electoral bribe, or s 288 of the Act, dealing with the offence of hindering or interfering with the free exercise of a right or the free performance of a duty under the Electoral Act by violence and intimidation; or
 - s 28 of the *Crimes Act 1914* (Cth), which deals with the offence of hindering or interfering with a person's free exercise or performance of any political right or duty by violence or by threats or intimidation of any kind; or
 - Part 2.4 of the *Criminal Code 1995* (Cth), which relates to the extensions of criminal responsibility¹³ relating to an offence against s 28 of the Crimes Act referred to above; or
- if the person is found by the Court of Disputed Elections to have contravened, within the meaning of Part 16 of the Electoral Act (Disputed elections, eligibility and vacancies), s 285 or s 288 of the Electoral Act, as referred to above.¹⁴

Disqualification provisions

4.9. Section 14 of the Self-Government Act provides that a member vacates their office as a member if they:

- are not qualified to take a seat as a member at any time after the beginning of the first meeting of the Assembly after a general election;¹⁵
- are absent without permission of the Assembly from four consecutive meetings of the Assembly;¹⁶ or

11 Electoral Act, s 103(2)(b).

12 Electoral Act, s 103(5).

13 Dealing with the offences of attempting to commit a criminal offence, complicity and common purpose, procuring the conduct of an innocent agency, incitement, conspiracy and references in Acts to offences.

14 Electoral Act, s 103.

15 Thus, while a person who held paid office under the Crown as set out in paragraph 103(2)(b) of the Electoral Act (see 'Ineligibility provisions' in this chapter) would be eligible to be nominated for election as a member (Electoral Act, s 104), they would be disqualified if they held such an office and were entitled to remuneration or allowance in relation to the office, appointment or employment at any time after the beginning of the first meeting of the Assembly after a general election.

16 Or such number of consecutive meetings as is specified by enactment for the purposes of s 14(1)(b)(i) of

- take or agree to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under s 73 of the Self-Government Act.¹⁷
- 4.10. To date, no member has ever vacated office. A person who has vacated an office of member may be re-elected.¹⁸
- 4.11. The Assembly does not possess the power to expel one of its members.¹⁹ The Supreme Court, as the Court of Disputed Elections, has jurisdiction to hear and determine questions referred to the court by resolution of the Assembly relating to the eligibility of persons who have been declared elected to be members of the Assembly or vacancies in the membership of the Assembly.²⁰ Where such a resolution is adopted, the Speaker is required to give the Registrar of the Supreme Court a statement of the question and any supporting documentation in the possession of the Assembly.²¹

Oath or affirmation of allegiance

- 4.12. Section 9 of the Self-Government Act requires members to make and subscribe an oath or affirmation before the Chief Justice of the Supreme Court of the Australian Capital Territory or some person authorised by the Chief Justice ‘before taking his or her seat’ in the Assembly.²²

the Self-Government Act. No such specification has been made.

17 Self-Government Act s 73 makes provision for the payment of remuneration and allowances in respect of services in certain offices, including the offices of Member of the Assembly, Presiding Officer (Speaker) and Deputy Presiding Officer (Deputy Speaker) of the Assembly, minister, Chief Minister and Deputy Chief Minister. In the section, ‘office’ includes an office declared by an enactment to be an office to which the section applies. The provision (Self-Government Act, s 14(1)(c)) does not apply to a superannuation scheme that is established by or under an enactment and under which certain prescribed benefits are provided. The *Superannuation (Legislative Assembly Members) Act 1991* makes provision for superannuation benefits for Members of the Legislative Assembly and, in accordance with the provisions of s 73(2)(a) of the Self-Government Act, the Assembly has enacted the *Remuneration Tribunal Act 1995*, which has established a tribunal to determine the remuneration and allowances to be paid, and the entitlements to be granted, to the holders of certain offices, including the office of member.

18 Self-Government Act, s 14(2).

19 Section 24 of the Self-Government Act provides that, until it makes a law with respect to its powers, the Assembly and its members and committees have the same powers as the powers for the time being of the House of Representatives, its members and committees. Section 8 of the Parliamentary Privileges Act provides that a House of the Commonwealth Parliament does not have the power to expel a member from its membership. See Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly, under the heading ‘Sources of the Assembly’s non-legislative powers and immunities’.

20 Electoral Act, s 252.

21 Electoral Act, s 276.

22 The practice of requiring an oath from members of parliament in England arose during the politico-religious conflicts of the 16th century. There is no record of a particular oath being required of members of the House of Commons in the Middle Ages. The original oath required members to subscribe to the religious settlement of the English Reformation; it was supplemented by a specifically anti-Roman Catholic oath in the early 17th century, repudiating any claims of papal authority. Various forms of the oath used by the Commons continued to exclude Roman Catholics (until 1829), Jews (until 1866), freethinkers and those with a religious objection to swearing an oath. In 1888, after an extended campaign in support of the English secularist Charles Bradlaugh, who was elected to the House of

- 4.13. Section 9(3) of the Self-Government Act provides, however, that s 9 has effect subject to any amendment made by an enactment of the Legislative Assembly.
- 4.14. Section 6A of the *Oaths and Affirmations Act 1984* provides:
- (1) A member of the Legislative Assembly must, before taking his or her seat, make and subscribe either or both of the following:
 - (a) an oath or affirmation in accordance with the form in schedule 1A, part 1A.1;
 - (b) an oath or affirmation in accordance with the form in schedule 1A, part 1A.2.²³
- 4.15. These provisions were originally inserted into the Oaths and Affirmations Act in 1995. The Assembly considered the Oaths and Affirmations (Amendment) Bill 1995, which sought to remove from the oath or affirmation any reference to the Queen and her heirs and successors and replace it with an oath or declaration to serve the people of the Australian Capital Territory.²⁴ During consideration of the bill, an amendment was proposed that would require members to make and subscribe an oath or affirmation in the form set out in Part 1A.1 of the current Act and an oath or affirmation set out in Part 1A.2. The proposed amendment was itself amended by the Assembly by inserting ‘or’ after ‘and’. The amendment, as amended, was agreed to, as was the bill, as amended.²⁵
- 4.16. A further change made by the 1995 amendments is that all members must now make and subscribe an oath and/or affirmation before the Chief Justice of the Supreme Court or a judge of the court authorised by the Chief Justice.²⁶
- 4.17. The relevant schedule of the Oaths and Affirmations Act was later amended by the *Courts and Other Justice Legislation Amendment Act 2018*, which had the effect of allowing a member to ‘promise’, rather than ‘swear’, and to name a god recognised by the person’s religion rather than ‘Almighty God’.

Commons on a number of occasions but did not take the oath, the Oaths Act (UK) permitted members to make an affirmation, finally removing any religious test. See *Redlich*, Vol II, pp 62-64.

23 This section has effect despite s 9 of the Self-Government Act.

24 Assembly Debates, 21 June 1995, pp 969-971.

25 MoP, No 21, 18 October 1995, p 159; Assembly Debates, 18 October 1995, pp 1779-1793. The Bible usually made available for members wishing to make an oath is the new revised standard version, though other texts may be used.

26 Oaths and Affirmations Act, s 10A. Prior to the commencement of the *Oaths and Affirmations (Amendment Act) 1995*, it was the practice that, once members made their oath or affirmation after being elected at a general election, the Chief Justice authorised the Speaker, pursuant to the provisions of s 9(2) of the Self-Government Act, to administer the oath or affirmation to members elected to fill casual vacancies. See MoP, No 114, 23 August 1994, p 663.

- 4.18. In its current form, Part 1A.1 of Schedule 1A of the Act specifies the following wording:

Oath

I, A.B., swear (or the person taking the oath may promise) by Almighty God (or the person may name a god recognised by the person's religion) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law. So help me God! (or the person may use a similar expression recognised by the person's religion)

Affirmation

I, A.B., solemnly and sincerely declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

- 4.19. Part 1A.2 of the schedule reads:

Oath

I, A.B., swear (or the person taking the oath may promise) by Almighty God (or the person may name a god recognised by the person's religion) that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law. So help me God! (or the person may use a similar expression recognised by the person's religion)

Affirmation

I, A.B., solemnly and sincerely declare and affirm that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law.

- 4.20. The term of office of a Member of the Legislative Assembly commences at the end of the day on which the polls are declared.²⁷ The phrase 'before taking his or her seat' used in the Self-Government Act is interpreted to mean that a member, duly elected, cannot participate fully in the Assembly—for example, take part in debate, vote, lodge an MPI²⁸ or be appointed to committees²⁹—until they have taken the oath or affirmation.³⁰

27 Electoral Act, s 196.

28 MoP, No 102, 30 July 2019, p 1533.

29 For an alternative view, see *Odgers*, p 175: 'the Senate appoints senators to committees, and senators may participate in the proceedings of those committees before they have been sworn in'. *May* (p 177, n 6 and p 953, n 6), notes that, on three occasions on which there were 'special circumstances', members have been appointed to committees without having taken the oath.

30 In the House of Commons there are examples of members, particularly members of Irish nationalist parties, being duly elected but refusing to make an oath or affirmation. In 2001, the House of Commons reaffirmed the practice (which had been temporarily abandoned) whereby members who had not taken their seats nevertheless had access to the services of the parliamentary departments and 'support for their costs'. See *May*, p 177.

Note that a member, duly elected to the Legislative Assembly, may be appointed as a minister prior to taking an oath or affirmation; for example, a member was appointed to fill a casual vacancy on

Titles

- 4.21. Various questions have arisen regarding the mode of address of Members of the Legislative Assembly.³¹ In the House of Representatives chamber, members are referred to by the names of their electorates—for example, ‘the member for Bean’ or ‘the member for Fenner’. Members of the Senate are referred to by adding the prefix ‘Senator’ to their surnames. Where a member has an official title such as Prime Minister, that can also be used. In the ACT, because members are elected from multi-member electorates, the electorate name is not a unique identifier and the practice in the chamber is to refer to members by name or, if appropriate, official title. Other titles, such as professional designations or military ranks, may be used if appropriate.³²
- 4.22. The use of the designation ‘Member of Parliament (MP)’ rather than ‘Member of the Legislative Assembly (MLA)’ was considered in discussions with the Clerk in early Assemblies. The advice received was that state and territory members used a variety of appellations, usually MLA. In Victoria, New South Wales and South Australia the abbreviation ‘MP’ is used, largely on the basis of practice established in the 19th century. Members of the ACT Legislative Assembly use the post nominal ‘MLA’.
- 4.23. The question of whether ministers or non-executive MLAs are entitled to use the title ‘The Honourable’, has been raised by members with successive Clerks of the Assembly. The title ‘The Honourable’ is used by a range of public office holders, including Commonwealth and state ministers; the Presiding Officers of the Commonwealth and state and Northern Territory parliaments; members of the Legislative Councils of state parliaments; and judges of various federal and state courts. The title has never been used by ACT MLAs, ACT Government ministers or the Speaker³³ of the Legislative Assembly.
- 4.24. The traditional justification for the use of the title by ministers is that Commonwealth, state and Northern Territory ministers are appointed by the Crown’s representative in their respective jurisdictions and are members of an executive council. This is not the case in the ACT, where ministers are appointed from among the members of the Assembly by a Chief Minister elected by the Assembly. Nor does the ACT have a ‘head of state’ analogous to the Governor-General, state governors or the Northern Territory’s Administrator.

5 April 2006 and was appointed a minister on 6 April but did not make the oath or affirmation until 2 May 2006.

31 For instance, the Speaker in the Eighth Assembly made a ruling that members should refer to other members (in the Assembly) by their title and their surname. See Assembly Debates, 14 May 2014, pp 1458 and 1530.

32 Assembly Debates, 22 November 1989, Statement by Speaker Prowse.

33 The use of the term ‘Speaker’ for the Presiding Officer was adopted in the First Assembly and formally confirmed by the resolution of the Assembly of 27 March 1992, pursuant to s 11(2) of the Self-Government Act.

- 4.25. It is probable that the Speaker of the Assembly would have a case for seeking to adopt the title, with the Presiding Officers of the Northern Territory and Norfolk Island providing precedents.
- 4.26. Different views exist as to how the honorific might most appropriately be conferred on, or assumed by, ministers or the Speaker. On one view, the title could only be adopted by a minister after a decision by the Governor-General (the Chief Minister having raised the matter with the Prime Minister, who would advise the Governor-General).³⁴ Should a Speaker of the Assembly, who is independent of the ACT Executive, wish to raise the matter, it is presumed that they would be entitled to approach the Governor-General directly.
- 4.27. An alternative view³⁵ is that, because the Self-Government Act does not make provision for a governor or an administrator but instead provides that the ACT Executive is vested with the ‘prerogatives of the Crown’,³⁶ it is open to the executive to confer the honorific on ministers by its own hand.³⁷
- 4.28. A further question that has been asked but is contingent on the right to use the title being granted in the first place is: under what terms would former ministers and Presiding Officers be entitled to retain the title after they ceased to hold office? There are various rules applying to this matter in the different Australian jurisdictions. Some office holders retain the title for life, while others have to apply to the Crown’s representative for permission to do so.
- 4.29. In its 2018 review of standing orders, the Standing Committee on Administration and Procedure noted the ongoing interest in the use of the title ‘The Honourable’ and recommended that the Government seek advice on the ‘legal and protocol issues’ associated with its use.³⁸

34 Advice provided to the Clerk by the Assistant Secretary, Awards and National Symbols, Department of Prime Minister and Cabinet, 20 October 2004.

35 In its response to recommendation 7 of the Standing Committee on Administration and Procedure report—*Review of the Standing Orders and Continuing Resolutions of the Legislative Assembly*—the ACT Government stated that:

It had been thought that because the ACT does not have a vice-regal function within its system of government and therefore no Executive Council to advise it, use of the honorific ‘The Honourable’ was not applicable.

Following legal advice provided by the ACT Government Solicitor, it has been established there is no legal barrier to the ACT adopting the honorific title ‘The Honourable’ for members of the ACT Executive during their term of office.

Across Australia, apart from a few instances where the issue is addressed by law, the use of the honorific ‘The Honourable’ is determined by convention and courtesy in accordance with practices that vary from one jurisdiction to another within Australia.

36 Self-Government Act, s 37(d).

37 Such a construction of s 37(d) conceives that the ACT Executive is in the position of being above members of the executive councils that operate in other jurisdictions which have a responsibility to advise the representative of the Crown. On this view, the ACT Executive does not merely advise the Crown but is taken to possess and to exercise certain of the Crown’s powers itself.

38 In its response to recommendation 7 of the Standing Committee on Administration and Procedure’s report—*Review of the standing orders and continuing resolutions of the Legislative Assembly*—the ACT

Attendance and leave of absence

- 4.30. In addition to keeping a members' roll (see Chapter 8: Sittings of the Assembly, under the heading 'First meeting'), the Clerk is obliged to record the attendance of members at each sitting of the Assembly in the *Minutes of Proceedings*.³⁹ Members' attendance is recorded in the *Minutes of Proceedings* just above the printed signature of the Clerk. The entry usually states that 'All Members were present at some time during the sitting except', with the names of those absent then being recorded. Where a member has been granted leave, it is recorded.⁴⁰
- 4.31. The Assembly, on motion without notice, may give leave of absence to any member, and such motion has priority over all other business. A member who has leave of absence is excused from service in the Assembly or any committee. The leave is forfeited should the member attend the service of the Assembly chamber before the expiration of the leave granted.⁴¹
- 4.32. The Self-Government Act provides that a member vacates their office if they are absent without permission of the Assembly from four consecutive meetings of the Assembly.⁴² To date, no member has been in breach of the rule. The number of meetings required to trigger the provision is able to be varied by an enactment of the Assembly but, to date, no such enactment has been made.
- 4.33. It is the practice that members who anticipate being absent from the Assembly move a motion seeking leave of absence for a specified period. Until 2008, members were not compelled to state the reasons for leave of absence being sought. On one occasion, the grounds for a leave of absence were omitted from the motion by way of amendment.⁴³ In 2008, a new standing order was inserted requiring members to state the reason for leave.⁴⁴

Government states that:

The existing approach to titling for members of the Legislative Assembly has now been in place for 30 years and is consistent with the egalitarian, modern nature of the ACT.

Members of the Legislative Assembly need to be accessible to the people who elected them and introducing a title such as 'The Honourable' could create a perceived barrier between Members and the community they represent.

There will be no change to the existing approach to addressing members of the Legislative Assembly, and no change made to how they are titled.

39 Standing orders 21 and 25.

40 There has been an occasion where a member has been granted leave by the Assembly, only to have that leave forfeited after attending the chamber during the period of leave. See MoP, No 126, 18 February 2020, pp 1875 and 1877.

41 Standing orders 23 and 24.

42 Self-Government Act, s 14(1)(b).

43 MoP, No 52, 29 March 1990, pp 212-213; Assembly Debates, 29 March 1990, pp 1123-1133. The member seeking leave had given reasons which precipitated a long debate as to whether there was even a requirement to seek leave in the particular circumstances. The debate also canvassed whether it was necessary for the member to participate in the activity for which he was seeking leave.

44 MoP, No 132, 6 March 2008, pp 1388-1389. House of Representatives practice is for leave to be given with a reason, and it was suggested during the 2008 review of the standing orders that the Legislative

4.34. Should a member be inadvertently absent—for example, due to illness—the respective whip or the Manager of Government Business will often move that a leave of absence be granted for the member.⁴⁵ When the Assembly has resolved to adopt a sitting pattern with extended breaks (for example, Christmas and winter breaks), it has been common practice for the Manager of Government Business to move that a leave of absence be given to all members for the period set out in the resolution.⁴⁶ Thus, members who are absent from the Territory or Australia retain leave should the Assembly be recalled at short notice. Members have sought and received leave for the purposes of:

- attending volunteer fire brigade duties interstate;⁴⁷
- ministerial business interstate;⁴⁸
- attendance at a conference/seminar;⁴⁹
- medical reasons/illness/ill-health;⁵⁰
- family bereavement;⁵¹
- being overseas on Assembly business;⁵²
- family reasons/business;⁵³
- personal reasons;⁵⁴ and
- maternity.⁵⁵

4.35. On 21 March 2019, the standing orders were amended in order that ‘a Member who is pregnant shall be entitled, without a vote of the Assembly, to 18 weeks maternity leave of absence, and that leave shall commence at a time notified by the Member to the Speaker’.⁵⁶

Assembly adopt the House of Representatives practice and require that the motion requesting leave state the reason for the leave.

45 MoP, No 32, 24 September 2002, p 319; Assembly Debates, 24 September 2002, p 319.

46 MoP, No 4, 9 December 2004, p 45.

47 MoP, No 7, 12 February 2009, p 87.

48 MoP, No 13, 26 March 2009, p 159; MoP, No 23, 18 June 2009, p 253; MoP, No 92, 17 February 2011, p 1151; MoP, No 153, 7 June 2012, p 2019.

49 MoP, No 30, 25 August 2009, p 325; MoP, No 117, 25 August 2011, 1477.

50 MoP, No 33, 15 September 2009, p 364; MoP, No 34, 16 September 2009, p 378; MoP, No 38, 15 October 2009, p 421; MoP, No 39, 10 November 2009, p 435; MoP, No 54, 16 March 2010, p 617; MoP, No 55, 17 March 2010, p 627; MoP, No 67, 30 June 2010, p 760; MoP, No 90, 15 February 2011, p 1117; MoP, No 93, 8 March 2011, p 1157; MoP, No 96, 29 March 2011, p 1204; MoP, No 100, 6 April 2011, p 1246.

51 MoP, No 38, 15 October 2009, p 421.

52 MoP, No 38, 15 October 2009, p 432.

53 MoP, No 56, 18 March 2010, p 641; MoP, No 61, 5 May 2010, p 687; MoP, No 145, 1 May 2012, p 1865.

54 MoP, No 69, 17 August 2010, p 789.

55 MoP, No 91, 17 March 2015, p 1025; MoP, No 51, 21 March 2018, p 738.

56 Standing order 22. See MoP, No 99, 4 June 2019, p 1489.

Ethics and integrity

Members' interests

- 4.36. There are a number of statutory provisions and orders of the Assembly that regulate the propriety of members' behaviour in relation to their pecuniary and other interests. The Assembly has also adopted a code of conduct⁵⁷ for members, by way of a continuing resolution, which complements the statutory and other requirements (see under the heading 'Code of Conduct' in this chapter).
- 4.37. As noted above in this chapter, members may not be members of other Australian legislatures, nor may they hold certain offices or appointments or be employed by the Crown if there is any remuneration or allowance involved. In addition, penalties apply if members neglect their Assembly duties or accept payment or benefits for advocacy or services rendered in the Assembly. A member vacates their office should they, with stipulated exceptions, take or agree to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly.⁵⁸
- 4.38. Should a member render themselves ineligible for membership, their seat in the Assembly would automatically become vacant. However, were there to be a dispute over whether the circumstances fell within the terms of the legislation, the matter would have to be referred by resolution of the Assembly for decision by the Court of Disputed Elections.
- 4.39. The Assembly has ordered that members declare their private interests⁵⁹ and those of their immediate family members and has also addressed the issue in the code of conduct for members. The code of conduct states that members should 'declare their pecuniary interests and ensure that their declaration is kept up to date pursuant to the resolution of the Assembly ...'.⁶⁰

57 Continuing resolution 5, 'Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory', resolution agreed to by the Assembly, 25 August 2005 (as amended).

58 Self-Government Act, s 14. During Senate consideration of the self-government legislation in 1988, an amendment seeking to disqualify persons who were undischarged bankrupts, had taken or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, were in the course of compounding with creditors or making an assignment of remuneration for the benefit of creditors from taking a seat as a Member of the Legislative Assembly was negated. See Senate Debates, 24 November 1988, pp 2819-22.

59 Continuing resolution 6, 'Declaration of Private Interests of Members', resolution agreed by the Assembly, 7 April 1992, (as amended).

60 Continuing resolution 5, 'Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory', resolution agreed to by the Assembly, 25 August 2005 (as amended), paragraph (12)(b).

Conflict of interest

4.40. The Self-Government Act requires that a member who is party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract. The Assembly must decide any question concerning the application of this provision and ensure that any contravention of the provision does not invalidate anything done by the Assembly.⁶¹

4.41. The terms of standing order 156 are almost identical to those of s 15 of the Self-Government Act. Standing order 156 provides that:

A Member who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract. Any question concerning the application of this standing order shall be decided by the Assembly.

4.42. In relation to participation in committee proceedings, standing order 224 states:

A Member may not sit on a committee if that Member has any direct pecuniary interest in the inquiry before such committee.

4.43. The terms of standing order 156 are similar to those of House of Representatives standing order 134, though the Assembly provision is broader in its application. Critical differences are that the House of Representatives restriction is limited to ‘a particular direct pecuniary interest’ and, perhaps more importantly, that it does not apply to questions of public policy.⁶²

4.44. The members’ code of conduct states that members should ‘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

61 Self-Government Act, s 15. During consideration of the Australian Capital Territory (Self-Government) Bill, the Senate agreed to an amendment to ensure that this provision would stand as a separate section (it was originally a subclause of the preceding clause of the bill (now s 14 of the Self-Government Act)), the proposer of the amendment stating that the clauses were so important to probity in government operations that they should be separate and appear as a standalone section. See Senate Debates, 24 November 1988, p 2738.

62 For background on the evolution of the rule, see *House of Representatives Practice*, pp 147-149; Joint Committee on Pecuniary Interests of Members of Parliament, *Declaration of interests*, AGPS, 1975, pp 9-10; and Dr Robert Kaye, *Corruption versus conflict of interest: the British experience*, ESRC Centre for Analysis of Risk and Regulation, London School of Economics and Political Science, 2003. The rule is based on a 1666 resolution of the House of Commons and an 1811 ruling by Speaker Abbot which applied to private bills. The Assembly, like the House of Representatives, has no provision for private bills in its current practices and procedure.

arise ...⁶³ Further, under amendments to the code passed by the Assembly on 30 March 2021, members must:

... 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.⁶⁴

- 4.45. To date, there have been three motions in the Assembly challenging the right of members to propose matters or participate in deliberations on conflict of interest grounds. On each occasion the motion was negated. On the first occasion, on 17 June 1992, a point of order was taken concerning a member's sponsorship of a bill (seeking to allow pharmacists to prescribe methadone) when the member was President of the Pharmacy Guild in the Territory and was understood to conduct a pharmacy business.
- 4.46. The Speaker ruled that either the member could withdraw the bill of her own accord or the Assembly, once it had seen the bill, could decide whether its presentation was a contravention of standing order 156 (and s 15 of the Self-Government Act). After the presentation of the bill and the sponsor's agreement in principle speech, the Assembly considered a motion (moved by leave) to discharge the bill. Following debate, the motion was negated.⁶⁵
- 4.47. On the second occasion, on 9 April 1997, a motion was moved urging certain named members to abstain from any Assembly proceedings related to the gambling industry, which included the operation of gaming machines. The preamble to the motion noted that one member received a substantial remuneration primarily derived from gaming machines and six members (as members of a particular party) received a substantial financial benefit primarily derived from gaming machines. Following extensive debate, the motion was negated.⁶⁶

63 Continuing resolution 5, 'Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory', resolution agreed to by the Assembly, 25 August 2005 (as amended), paragraph (12).

64 Continuing resolution 5. See also MoP, No 7, 30 March 2021, p 87, and the Standing Committee on Administration and Procedure, *Review of the Members' Code of Conduct and the Declaration of Members' interests form*, March 2021, Report 3, p 30.

65 During discussion of the initial point of order and debate on the motion, issues raised included whether a contract was yet in place (it being stated that there was no direct contract but that what was occurring was in effect an attempt to set up the circumstances where a contract could be made between the Territory and pharmacists) and whether the sponsor should consider her participation on the Select Committee on Drugs when it considered these matters. See MoP, No 12, 17 June 1992, p 61; and Assembly Debates, 17 June 1992, pp 914-915 and 919-928.

66 MoP, No 84, 9 April 1997, pp 625, 627; Assembly Debates, 9 April 1997, pp 756-767 and 808-824. See also Chapter 17: Committees, where a similar issue is discussed.

- 4.48. On the third occasion, on 25 March 2010, during a debate on a motion to refer to the Standing Committee on Public Accounts a report of the ACT Gambling and Racing Commission on the proposed sale of the Canberra Labor Club, a point of order was raised by the opposition, pursuant to standing order 156, in which the Speaker's ruling was sought as to whether the Treasurer and the Minister for Gaming and Racing should be excluded from debate on the grounds that they employed staff who were 'members of the executive committee of the ALP'.⁶⁷ In responding to the point of order, the Speaker stated that whether or not a particular set of circumstances offended standing order 156 was a matter for the Assembly to determine and not the Speaker.⁶⁸
- 4.49. Accordingly, a motion was then moved by the opposition to exclude the two ministers from participating in the debate on the referral of the report to the committee. The debate was adjourned to the next sitting and remained on the *Notice Paper* until the end of the Seventh Assembly, at which time it lapsed. The same day that the debate was adjourned, the Assembly passed a motion calling on the Speaker to obtain advice from the Ethics and Integrity Adviser (see under 'Ethics and Integrity Adviser' in this chapter and Chapter 5: The Speaker and other officers) in relation to:
- (a) the scope of standing order 156;
 - (b) the existence, or extent, of any conflicts of interest that may arise for Members in relation to the activities of Members' staff; and
 - (c) any conflicts of interest that may arise as a result of Members' interests, direct or indirect, in any licence, payment, contract, lease or other transaction issued under Territory law.⁶⁹
- 4.50. The advice of the Ethics and Integrity Adviser was presented by the Speaker in the Assembly on 6 May 2010. In it, the adviser observed that standing order 156 was more or less identical to s 15 of the Self-Government Act and that his advice was therefore directed towards this section in the statute rather than the operation of the standing orders.⁷⁰
- 4.51. The advice cautioned against a too literal interpretation of s 15 which otherwise would mean that ministers could not respond to questions in relation to contracts they had entered into on behalf of the Territory and that members who were leaseholders could not participate in budget debates where an increase in rates was proposed.

67 MoP, No 59, 25 March 2010, p 664.

68 Assembly Debates, 25 March 2010, p 1491.

69 MoP, No 59, 25 March 2010, p 669.

70 MoP, No 62, 6 May 2010, p 699.

4.52. The Ethics and Integrity Adviser concluded:

- The section operates where the member is a party to a contract with the territory in a personal capacity, not where they are a party on behalf of the Territory.
- The section operates where a member, while not a party to a contract with the Territory, has an interest of a nature recognised by law and held in a personal capacity and not on behalf of the Territory. It does not apply where the interest is simply a matter of curiosity or of a political connection.
- The contract or interest must be materially related to the subject matter of Assembly discussion or voting.
- To be materially related, the interest must be such as to give rise to reasonably held apprehension that the member's participation in proceedings may be biased by concern for personal gain or avoidance of personal loss. A mere concern that the member may be motivated by political views is not sufficient.
- The contract or interest cannot be too remotely related to the subject matter being discussed, and it will be too remote if there is no reasonable apprehension that it will provide an operative motivation for the member participating in Assembly discussion.

4.53. The Ethics and Integrity Adviser also noted that s 15 of the Self-Government Act has no counterpart in the states and that similar provisions in the Northern Territory and Norfolk Island self-government legislation⁷¹ made it clear that the interest must relate to a contract under which goods or services are to be supplied to the Territory. Further, under the Commonwealth Constitution, a person is incapable of being chosen or of sitting as a senator or a Member of the House of Representatives if they have 'any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons'.⁷²

4.54. It would appear then that Assembly members are subject to limitations over and above those applying in other Australian jurisdictions. There are other precedents relating to conflicts of interest:

- Following presentation of the Second-Hand Dealers and Collectors (Amendment) Bill 1995, a member advised the Assembly, in accordance with standing order 156, that he was a licensed general auctioneer in the Territory.⁷³

71 As it then existed.

72 See Commonwealth Constitution, s 44(v).

73 The member did not participate in debate on the bill. See MoP, No 10, 1 June 1995, p 65; Assembly Debates, 1 June 1995, pp 692693, Assembly Debates, 22 June 1995, pp 1136-1137.

- Following the presentation of two bills addressing issues dealing with rural leases in the Territory, a member informed the Assembly that he would not be taking part in the debate or voting on the bills as he was a rural lessee.⁷⁴
- On the resumption of consideration of a bill to restrict times for gaming machine operations, a member, identifying himself as a director of a licensed club and noting the provisions of standing order 156, stated that he intended to participate in the debate and vote on the question. He sought the guidance of the Assembly as to whether he was 'in conflict'. The chair, stating that he would allow the House 'to sort it out', took the unusual course of seeking the views of members present and, there being support for the member participating in the proceedings, called upon the member to carry on.⁷⁵
- During consideration of the Long Service Leave (Cleaning, Building and Property Services) Amendment Bill 2001 (which provided for a portable long service scheme for employees in the contract cleaning industry), a member advised the Assembly that, though she was closely related to a person who had a business 'of this nature', she proposed to participate in debate and vote on the question.⁷⁶
- A member having declared an interest in a bill that had been already considered by the Assembly,⁷⁷ the Assembly (on the following sitting day) noted the declaration and its timing and resolved that her participation in the debate was a failure to comply with s 15(1) of the Self-Government Act but noted that her participation was in the public interest.⁷⁸ On two later occasions the Assembly resolved that, notwithstanding the fact that the member had a residential tenancy agreement with the ACT Government, it was in the public interest to allow her to participate in any future discussion or vote on a question related to specific orders of the day,⁷⁹ though, immediately prior to the second occasion, the Assembly had negated a motion that had proposed that, notwithstanding her residential tenancy agreement, it was in the public interest to allow her to participate in any future discussion of a matter, or vote on a question, in relation to public housing issues.⁸⁰
- An Assistant Speaker ruled that two members who had, at the time, employed family members on their staff 'should refrain from participating in the debate on the Legislative Assembly (Members' Staff) Amendment Bill 2008 in accordance with standing order 156'.⁸¹ In his statement of 25 March 2010, Speaker Rattenbury indicated that the position adopted by the Assistant

74 MoP, No 61, 2 September 1999, p 537; Assembly Debates, 2 September 1999, p 2777.

75 MoP, No 136, 22 August 2001, p 1659; Assembly Debates, 22 August 2001, p 3174.

76 MoP, No 140, 30 and 31 August 2001, p 1856; Assembly Debates, 30 August 2001, p 3868.

77 MoP, No 30, 18 August 2005, p 277.

78 MoP, No 31, 23 August 2005, p 291.

79 MoP, No 33, 25 August 2005, p 324; MoP, No 42, 16 November 2005, p 452.

80 MoP, No 42, 16 November 2005, pp 451-452.

81 MoP, No 154, 21 August 2008, p 1727.

Speaker on this occasion (that is, that a ruling on the application of standing order 156 could be made from the chair) was not a 'correct precedent' and that it was a matter for the Assembly to determine.⁸²

- On a debate on the Work Health and Safety Amendment Bill 2018, a member of the opposition sought to draw to the Deputy Speaker's attention that a particular non-executive member had previously stated an affiliation with a union which, the opposition member argued, would be a beneficiary of the legislation.⁸³ The opposition member cited standing order 156 and the relevant part of the members' code of conduct relating to the avoidance or prevention of a conflict of interest or the perception of a conflict of interest. The Deputy Speaker noted that there were constitutional implications arising from s 15 of the Self-Government Act and that advice would be sought from the Clerk. On 1 August 2018, Speaker Burch made a statement in which she affirmed the position articulated by Mr Rattenbury in his ruling of 25 March 2010⁸⁴ and advised that it was a matter for the Assembly, rather than the Speaker, to decide questions relating to conflicts of interest and that continuing resolution 5A (that is, the code of conduct) provided a mechanism by which a complaint could be made to the Commissioner for Standards where a member wished to pursue that course.⁸⁵

4.55. Prior to consideration of a notice of a motion proposing to amend the resolution of the Assembly embodying the members' code of conduct, the Assembly resolved that, notwithstanding an employment contract a member had with a family member, it was in the public interest to allow the member to participate in any future discussion of a matter, or vote on a question, in relation to the code of conduct for members.⁸⁶ In 1994, the Assembly also considered a motion proposing that it endorse the principles that members are elected to serve the Assembly in a full-time capacity and that members so elected should not engage in the activities of any business, trade or profession in the course of their term in the Assembly. The motion was negated.⁸⁷

4.56. Following concerns raised in the Assembly regarding the participation in a government auction of taxi licence plates of a family company linked to a member of the Assembly,⁸⁸ the Chief Minister wrote to the Auditor-General seeking advice on guidelines to assist MLAs and government officials in making decisions on matters which may affect or be influenced by members of their families, her specific query being: 'What should the guidelines be for commercial dealings with companies, partnerships or individuals who are partners of family members

82 Assembly Debates, 25 March 2010, p 1491.

83 Assembly Debates, 31 June 2018, pp 2457-2461.

84 Assembly Debates, 1 August 2018, p 2471.

85 MoP, No 63, 1 August 2018, p 891.

86 MoP, No 69, 16 August 2006, pp 772-773.

87 MoP, No 33, 7 December 1994, p 809; Assembly Debates, 7 December 1994, pp 4654-4659.

88 MoP, No 25, 26 October 1995, p 181-182; Assembly Debates, 26 October 1995, pp 2064-2098, 2102, 2105, 2114 and 2115-2124.

of MLAs?'.⁸⁹ In his report *1995 Taxi Plates Auction*,⁹⁰ the Auditor-General found that the selection of the auctioneer in question was fair and unbiased and that there was no evidence that the selection process was influenced by the member or the responsible minister.

Declaration of interests

- 4.57. The Assembly, by order, also requires members to disclose certain interests by providing to the Clerk declarations of their private interests and those of their immediate families. Since 2010, the declarations have been published on the Assembly website.
- 4.58. The order of the Assembly setting out the requirement was first adopted on 24 May 1989,⁹¹ and adopted on a continuing basis (unless amended or repealed) on 7 April 1992.⁹²
- 4.59. The order of the Assembly, incorporated as 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 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.⁹³

89 The company concerned was established by the father of a serving member and included the name of the member though the member no longer held any shares in the company. See Standing Committee on Public Accounts, *Review of Auditor-General's Report No 2 1996*, Report No 18, August 1996, p 3.

90 Auditor-General, Report No 2 of 1996, dated 26 March 1996.

91 MoP, No 3, 24 May 1989, p 15; Assembly Debates, 24 May 1989, pp 114-118.

92 MoP, No 2, 7 April 1992, p 13.

93 Amended 30 March 2021. Standing Committee on Administration and Procedure, *Review of the Members' Code of Conduct and the Declaration of Members' interests form*, March 2021, Report 3, p 10.

4.60. Continuing resolution 6, and the form used by members to declare their interests, was the subject of a review by the Assembly's Ethics and Integrity Adviser and a subsequent report of the Standing Committee on Administration and Procedure in the Tenth Assembly.⁹⁴ The recommendations arising from the review were adopted by the Assembly on 30 March 2021.⁹⁵ One significant change to the resolution was that the time within which members are required to declare any alteration of their interests was reduced from 60 days to 28 days.

Code of conduct

4.61. Questions about the regulation of the behaviour of members of the Assembly, and specifically whether the Assembly should adopt a code of conduct for members, were debated almost from the beginning of self-government in the ACT.⁹⁶ The Standing Committee on Administration and Procedures first considered a code of conduct in an inquiry initiated in September 1990.⁹⁷ The committee's report recommended the adoption of a code and included a draft.⁹⁸ The recommendation was not taken up in that Assembly. Resolutions of the Assembly on freedom of speech and citizen's right of reply in May 1995 also reflected a concern that members do not abuse their powers and privileges.

4.62. The Auditor-General's 1995 report *1995 Taxi Plates Auction*, mentioned above in this chapter, concluded that the prominent positions enjoyed by members (and senior public officials) by virtue of their status and/or influential role in public sector activities and their access to the community at large should not be used to advance the interests of any person related to the member or official or any group, company, association et cetera in which the member or official may have a pecuniary or personal interest.⁹⁹

4.63. On 28 August 1996, the Standing Committee on Public Accounts presented report No 18, which reviewed the Auditor-General's Report No 2 of 1996.¹⁰⁰ The committee recommended, among other things, that the government develop a draft code of conduct for members when dealing with matters that may affect or be influenced by family connections and commercial relations with companies and individuals that are partners or family members of MLAs and guidelines

94 Standing Committee on Administration and Procedure, *Review of the Members' Code of Conduct and the Declaration of Members' interests form*, March 2021, Report 3.

95 MoP, No 7, 30 March 2021, p 87.

96 A resolution providing for a register of members' interests was adopted by the Assembly in May 1989. A similar continuing resolution was agreed in April 1992 and continues in force, as amended in August 1998 and March 2005.

97 MoP, No 75, 19 September 1990, pp 305-306; Assembly Debates, 19 September 1990, pp 3413-3445.

98 Standing Committee on Administration and Procedures, *Inquiry into the Proposed Ethics Committee/Code of Conduct*, May 1991.

99 Auditor-General, *1995 Taxi Plates Auction*, Report No 2 of 1996, 26 March 1996, pp 30-31.

100 MoP, No 60, 28 August 1996, p 422; MoP, No 100, 28 August 1997, p 754; Assembly Debates, 28 August 1996, pp 2731-2732.

for government officials in dealing with businesses associated with members of the Assembly. Though the government supported the development of a code of conduct, it expressed concern with the recommendation, regarding the development of a code of conduct as being a role for the legislature.¹⁰¹

- 4.64. In September 1996, the Assembly referred the development of a code of conduct for all Members of the Legislative Assembly to the Standing Committee on Administration and Procedure for inquiry and report, with particular reference to parliamentary and personal conduct, conflict of interest (including a member's affiliation or membership of any organisation or association that could potentially constitute a conflict of interest), gifts, use of public office, the application of s 14 of the Self-Government Act and a complaints and investigation procedure.¹⁰² The committee did not report in the Third Assembly.¹⁰³
- 4.65. The report of the Select Committee on the Report of the Review of Governance supported the adoption of a code of conduct and the appointment of an ethics commissioner.¹⁰⁴
- 4.66. The matter was referred to the Standing Committee on Administration and Procedure in the Fourth Assembly,¹⁰⁵ together with a discussion paper entitled *A Parliamentary Ethics Adviser for the ACT Legislative Assembly*.¹⁰⁶ The committee recommended the adoption of a code of conduct, and a draft code was appended to the committee's report which included provisions related to conflicts of interest, disclosure of pecuniary interests, receipt of gifts, payments and rewards, and advocacy/bribery.¹⁰⁷ The recommendation was not followed up in that Assembly.

101 Government Response to Standing Committee on Public Accounts Report, *Review of Auditor General's Report No 2 1996—Taxi Plates Auction*, Report No 18, August 1996; MoP, No 75, 11 December 1996, p 543; Assembly Debates, 11 December 1996, p 4707. A corrigendum was presented on 10 April 1997; see MoP, No 85, 10 April 1997, p 636.

102 MoP, No 67, 26 September 1996, p 470; Assembly Debates, 26 September 1996, pp 3426-3446.

103 On 4 December 1997, the Speaker, as presiding member, made a statement concerning the inquiry. The Speaker outlined the progress of the inquiry and the matters that the committee had considered and indicated that one of the catalysts for the inquiry had been the Auditor-General's report on the taxi plates auction. See MoP, No 115, 4 December 1997, p 930; Assembly Debates, 4 December 1997, pp 4613-4614.

104 Select Committee on the Report of the Review of Governance, *Report of the Select Committee on the Report of the Review of Governance*, June 1999. See MoP, No 53, 30 June 1999, p 436.

105 MoP, No 16, 27 August 1998, pp 129-30; Assembly Debates, 27 August 1998, pp 1429-1430.

106 MoP, No 54, 1 July 1999, p 462; Assembly Debates, 1 July 1999, pp 2024-2025.

107 Standing Committee on Administration and Procedure, *Code of Conduct for Members of the Legislative Assembly and a Parliamentary Ethics Adviser for the ACT*, Report No 8, August 2001.

- 4.67. A further inquiry of the Standing Committee on Administration and Procedure,¹⁰⁸ arising out of a privilege matter, reported in August 2004 and again recommended the adoption of a code of conduct, based on its earlier report on the subject, with inclusions relating to members' conduct as employers and appropriate conduct for members' staff.¹⁰⁹ With a general election due in a matter of weeks, the Fifth Assembly took no further action on the report. The code of conduct recommended in this report was eventually adopted by the Sixth Assembly, on the motion of the Speaker, with minor amendments, on 25 August 2005.
- 4.68. The code of conduct supplements the statutory obligations placed on members and the provisions of standing orders and resolutions of the Assembly. It reminds members that they shall not act in a manner inconsistent with their duties and obligations as members and 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'.¹¹⁰
- 4.69. The code includes, among other requirements, provisions in relation to upholding the separation of powers and the rule of law, acting in the public interest, being accountable for decisions, making proper use of resources, and acting with integrity, honesty and diligence.
- 4.70. The code also sets standards for the conduct of members as employers. Members undertake that they should:
- (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;¹¹¹
 - (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.

108 MoP, No 43, 12 December 2002, p 490; Assembly Debates, 12 December 2002, pp 4386-4389. The reference was one of three made in the aftermath of the report of the Select Committee on Privileges, *Unauthorised diversion and receipt of a Member's emails*, November 2002.

109 MoP, No 112, 5 August 2004, p 1599; Assembly Debates, 5 August 2004, pp 3557-3558.

110 Continuing resolution 5, 'Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory', paragraph (2).

111 In 2008, the Assembly passed the Legislative Assembly (Members' Staff) Amendment Bill, a private member's bill, which had the effect of prohibiting the employment or engagement of family members by MLAs.

- 4.71. Members are required to treat all people with courtesy, and respect the diversity of their backgrounds, experiences and views and, in their dealings with staff of the Assembly, staff of other members and members of the ACT public to:
- (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.
- 4.72. To date, the code of conduct has been reviewed three times since its adoption in 2005, on each occasion by the Assembly's Ethics and Integrity Adviser¹¹² upon a request of the Standing Committee on Administration and Procedure.
- 4.73. Since 2012, it has been the practice that within the first six months after an election for the Assembly, the Assembly reaffirms its commitment to the principles, obligations and aspirations of the code.¹¹³

Ministerial codes

- 4.74. Ministerial codes of conduct have been presented in the Assembly in May 1995,¹¹⁴ August 1998,¹¹⁵ February 2004¹¹⁶ and May 2012.¹¹⁷ These codes were not instituted or endorsed by the Assembly.

Respectful dialogue

- 4.75. In the Ninth Assembly, following a terrorist attack on mosques in Christchurch, New Zealand, the Assembly resolved that the Standing Committee on Administration and Procedure review the members' code of conduct to form a view on whether it ought to be enhanced to reflect each members' responsibility to engage in respectful dialogue.
- 4.76. The resolution followed public statements that had been made by an Australian senator about what he thought were the reasons for the attack.

112 For more information see under the heading 'Ethics and Integrity Adviser' below in this chapter and in Chapter 5: The Speaker and other officers.

113 This practice was formally incorporated into the code of conduct by way of amendment to continuing resolution 5 on 3 August 2017. Also incorporated was the requirement for a new member, elected to fill a casual vacancy, to affirm (prior to making an inaugural speech) that they will abide by the code. The resolution was further amended on 30 March 2021 as follows: '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'.

114 MoP, No 2, 2 May 1995, p 14; Assembly Debates, 2 May 1995, pp 52-60.

115 MoP, No 15, 26 August 1998, p 124; Assembly Debates, 26 August 1998, pp 1370-1371.

116 MoP, No 89, 12 February 2004, p 1122; Assembly Debates, 12 February 2004, pp 308-309.

117 MoP, No 145, 1 May 2012, p 1871.

- 4.77. After seeking the advice of the Ethics and Integrity Adviser, the committee recommended, and the Assembly later agreed, that the code of conduct be amended in order that members were to be required to:

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.¹¹⁸

Ethics and Integrity Adviser

- 4.78. On 10 April 2008, the Speaker moved a motion enabling the appointment of the Ethics and Integrity Adviser for the Legislative Assembly. The position, which is modelled on the NSW Parliament's Ethics Adviser, provides advice to members on the Assembly's code of conduct, use of entitlements and potential conflicts of interest. The opposition moved an amendment to the motion requesting that the Speaker present a bill to the Assembly to provide for such a position. The amendment was defeated, and the motion was passed.
- 4.79. The position was advertised in the media, and a panel comprising the Speaker, the Human Rights Commissioner for the ACT and the Clerk interviewed candidates. On 25 June 2008, the Speaker made an announcement in the Assembly that he had appointed a former Australian Government Solicitor and Secretary to the Commonwealth Attorney-General's Department to the part-time position.¹¹⁹ An adviser has since been appointed following the commencement of each new Assembly.
- 4.80. More information on the Ethics and Integrity Adviser is included in Chapter 5: The Speaker and other officers.

Employment of family members

- 4.81. On 5 August 2008, the Speaker, as chair of the Standing Committee on Administration and Procedure, presented a report into a review of the members' code of conduct that had been adopted by the Assembly in 2004. The report recommended that the restriction on members employing family members be removed from the code of conduct. The Speaker dissented from the report, and in his dissenting report recommended that the relevant legislation be amended so that members would not be permitted to employ close relatives. He also

118 Standing Committee on Administration and Procedure, *Respectful Dialogue*, Report No 14, July 2019, p 3.

119 MoP, No 138, 10 April 2008, pp 1445-1447. See also MoP, No 143, 25 June 2008, p 1548.

recommended that he present such a bill in the August 2008 sittings, with a view to the Assembly considering the bill before the conclusion of the Sixth Assembly (the election for the Seventh Assembly was held in October 2008).

- 4.82. On 7 August 2008, the Speaker introduced the Legislative Assembly (Members' Staff) Amendment Bill 2008, the purpose of which was to prevent members from employing close family relatives. The bill was passed on 21 August 2008, and members are now prohibited from employing family members or engaging family members as consultants or contractors.¹²⁰

Investigation into staffing arrangements

- 4.83. In the Seventh Assembly, a government backbencher was granted leave to move a motion concerning various press reports that the Leader of the Opposition had been written to by the Clerk over a period of two years about his failure to ensure that his staff had complied with the relevant employment provisions under the members' staff enterprise agreement.¹²¹
- 4.84. The motion, which was subsequently agreed to, expressed grave concern at the Leader of the Opposition's actions, directed him to provide a written statement to the Assembly answering 12 questions, and directed the Speaker to commission an independent workplace audit of staffing arrangements and to determine whether inappropriate payments were made to staff in the office of the Leader of the Opposition for the period 2009-12.¹²²
- 4.85. Later, the Leader of the Opposition provided a written statement answering the questions set out in the resolution and made a statement.¹²³
- 4.86. The Speaker subsequently announced that he had appointed a retired Commonwealth Ombudsman to conduct the review¹²⁴ who was to be assisted in the review task by a local consulting firm specialising in workplace investigations.
- 4.87. The report on the review made several recommendations concerning members' staffing arrangements, as well as recommending that the Assembly undertake a review of its code of conduct for members and consider the appointment of an independent ethics commissioner.¹²⁵

120 For a definition of 'family member' see LAMS Act, dictionary, p 17.

121 MoP, No 133, 14 February 2012, p 1723.

122 MoP, No 133, 14 February 2012, p 1725.

123 MoP, No 135, 16 February 2012, p 1752.

124 MoP, No 138, 23 February 2012, p 1783.

125 MoP, No 145, 1 May 2012, p 1866.

Complaints to the Legislative Assembly Commissioner for Standards

4.88. The position of Legislative Assembly Commissioner for Standards was established by way of a continuing resolution (5AA) agreed to by the Assembly on 31 October 2013.¹²⁶ The functions of the commissioner are to investigate complaints against members and to report to the Standing Committee on Administration and Procedure. Anyone may make a complaint to the commissioner, via the Clerk of the Assembly, about a member's compliance with the members' code of conduct or the rules relating to the registration or declarations of interests.¹²⁷

Receiving and investigating complaints

4.89. If the commissioner receives a complaint about a member and the commissioner believes on reasonable grounds that there is sufficient evidence to justify investigating the matter, and the complaint is not frivolous, vexatious or only for political advantage, the commissioner is required to investigate the matter and report to the Standing Committee on Administration and Procedure.¹²⁸

4.90. The commissioner's role is not to make a final determination as to whether a member has committed any wrongdoing. Instead, the commissioner conducts an investigation and reports their findings, including whether or not an allegation is viewed by the commissioner as being substantiated on the available evidence. It is for the Standing Committee on Administration and Procedure to consider reports of the commissioner and to then convey its own views to the Assembly as to particular findings and any action that it thinks ought to be taken. The Assembly as a whole then determines whether or not a member is found to have breached the members' code of conduct or the rules relating to the registration or declarations of interests. The Assembly will also determine what action, if any, it might take against a member.¹²⁹

4.91. In his first report as the Legislative Assembly's inaugural Commissioner for Standards, Dr Ken Crispin QC had this to say about the level of substantiation that he thought would be reasonable to apply in considering a complaint:

The approach usually followed in cases involving suggested breaches of noncriminal codes of conduct is to adopt the so-called 'civil' standard of proof on the balance of probabilities, though the strength of the evidence necessary to establish the relevant facts even to that standard may vary according to the

126 MoP, No 40, 31 October 2013, pp 409-415.

127 Continuing resolution 5AA, paragraph (5).

128 Continuing resolution 5AA. On 24 March 2015, the Standing Committee on Administration and Procedure adopted protocols for the investigation of complaints against members. Among other things, the protocols make provision for procedural fairness and are directed towards ensuring that 'complaints can be investigated fully, fairly and efficiently'. The protocols are available on the Legislative Assembly website.

129 For instance, depending on the severity of the conduct, it would be open to the Assembly to direct that a member issue a formal apology or to suspend the member from the service of the Assembly, pursuant to standing order 202.

nature of what is alleged. As Dixon J. commented in *Briginshaw v. Briginshaw* ((7) (1938) 60 CLR, at p 362) “the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved’. (See 7 also *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* [1992] HCA 66 Mason C.J., Brennan, Deane and Gaudron JJ at paragraph 2).

Of course, the Committee is free to determine the relevant issues as it seems fit but, in the absence of some indication that it intends to adopt a more stringent standard, I have assumed that it is likely to adopt the usual approach taken in relation to such matters. Accordingly, I have borne in mind the need to consider whether evidence revealed by the investigation would be likely to be accepted by the Committee as substantiating any aspect of the complaint to that standard.¹³⁰

- 4.92. On 23 February 2015, the Leader of the Opposition wrote to the Speaker claiming breaches of the code of conduct by a minister.¹³¹ The matter was referred to the Commissioner for Standards, who conducted an investigation pursuant to continuing resolution 5AA and presented a report to the Standing Committee on Administration and Procedure. No further action was recommended by either the commissioner or the committee in relation to the conduct at issue. Throughout the Eighth and Ninth Assemblies, a further four matters were investigated and reported on by the commissioner. In each case, the commissioner found that there had been no breach of the code of conduct or requirements relating to declarations of interest by members, and in each case the Standing Committee on Administration and Procedure recommended in its associated reports that no further action be taken.¹³²
- 4.93. On 10 and 11 August 2016, a member wrote to the Speaker to claim that the Leader of the Opposition had breached paragraphs 7 and 15 of the code of conduct. The matter was referred to the Commissioner for Standards by the Speaker. Having considered the commissioner’s report, the Standing Committee on Administration and Procedure recommended in its report on the matter that no further action ought to be taken.¹³³ The committee’s report included a dissenting report by a non-executive government member in which he claimed that the manner in which the Speaker referred the complaint to the commissioner was ‘improper’. In support of this claim, the member stated that the Speaker’s referral letter contained ‘value-

130 Standing Committee on Administration and Procedure, *The Conduct of Ms Burch MLA*, Report 6, June 2015, Appendix C, p 6.

131 Prior to 2016, the Speaker received complaints made relating to the code of conduct, who would pass them on to the Commissioner for Standards. Complaints are now received by the Clerk; see paragraph (5) of continuing resolution 5AA.

132 Each report of the commissioner has been made available in the relevant report of the Standing Committee on Administration and Procedure, all of which are available on the Assembly website.

133 Standing Committee on Administration and Procedure, *The Conduct of Mr Hanson MLA*, Report 11, August 2016, p 2.

laden information’ about the merits of the allegation, an action which the member argued was not done pursuant to the relevant continuing resolution providing for the Speaker’s role in the referral process.¹³⁴ The majority report included a recommendation that there be a reconsideration of ‘the role of the Speaker and the Deputy Speaker in the referral of a possible breach of the Code of Conduct to the Commissioner for Standards’.¹³⁵

- 4.94. In the Ninth Assembly, following a recommendation of the Standing Committee on Administration and Procedure,¹³⁶ the relevant continuing resolution was amended in order that matters are referred to the commissioner via the Clerk of the Assembly.¹³⁷
- 4.95. In the Tenth Assembly, the commissioner investigated and reported to the committee in relation to a complaint that had been received in the lead-up to the 2020 election concerning the possible misuse of Assembly facilities by a member.¹³⁸ The commissioner found that, in his opinion, the member ‘breached the requirements of diligence in paragraph ... (1) of the Code and transparency in paragraph (6)’. The Standing Committee on Administration and Procedure recommended that the member concerned apologise, through the Speaker, to the Assembly, which the member duly did.¹³⁹ Also in the Tenth Assembly, a matter was referred to the commissioner relating to the ‘alleged misuse’ of information. The allegation centred on conduct that was said to have occurred on the part of a member prior to their election to the Tenth Assembly (that is, at a time when they were not an MLA). Given that the continuing resolution does not explicitly give the commissioner jurisdiction in such matters, the Assembly passed an ad hoc resolution ‘to ensure that the Commissioner ha[d] coverage of the matter’.¹⁴⁰
- 4.96. More information on the Commissioner for Standards is outlined in Chapter 5: The Speaker and other officers, under the heading ‘Legislative Assembly Commissioner for Standards’.

134 Standing Committee on Administration and Procedure, *The Conduct of Mr Hanson MLA*, Report 11, August 2016, Appendix D, *Dissenting Report—Mr Hinder MLA*, p 19.

135 Standing Committee on Administration and Procedure, *The Conduct of Mr Hanson MLA*, Report 11, August 2016, p 2.

136 Standing Committee on Administration and Procedure, *Commissioner for Standards Referral Process*, May 2017.

137 MoP, No 22, 3 August 2017, p 317.

138 Standing Committee on Administration and Procedure, *Report on the Conduct of Mr Coe, MLA*, Report 2, February 2021, p 2.

139 MoP, No 7, 30 March 2021, p 90.

140 MoP, No 15, 10 May 2021, pp 170-171, 178. The commissioner recommended that the complaint be dismissed and the Standing Committee on Administration and Procedure recommended that no further action be taken against the member (see Standing Committee on Administration and Procedure, *Report on the Conduct of Mr Milligan, MLA*, June 2021, pp 4 and 7).

Lobbyist register and lobbying code of conduct

- 4.97. On 5 August 2014, the Assembly established the ACT Lobbying Code of Conduct by way of resolution (continuing resolution 8AB) and shortly after introduced the *ACT Lobbyist Regulation Guidelines* (continuing resolution 8AC).¹⁴¹ Together, the two resolutions govern the operation of lobbying activities in the ACT and set out requirements for lobbyists¹⁴² and public officials.¹⁴³
- 4.98. The preamble to the code states that:
- (a) Free and open access to the institutions of government is a vital element of our democracy.
 - (b) Ethical lobbying is a legitimate activity and an important part of the democratic process.
 - (c) Lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with public officials.
 - (d) In performing this role, there is a public expectation that lobbyists will be individuals of strong moral calibre who operate according to the highest standards of professional conduct.
 - (e) This Code of Conduct is designed to ensure that contact between lobbyists and public officials is conducted in accordance with public expectations of transparency, integrity and honesty.
- 4.99. Among other requirements, the code introduces a ‘cooling-off’ period during which a person who has been an MLA or employed under either the *Public Sector Management Act 1994* or the *Legislative Assembly (Members’ Staff) Act 1989*, is not to engage in lobbying activities.¹⁴⁴
- 4.100. The Clerk is responsible for the maintenance of the ACT Register of Lobbyists, which must include the name and contact details of all lobbyists operating in the ACT jurisdiction. The Clerk is also responsible for receiving complaints where a lobbying activity has been conducted by a person required to be registered but who is not registered or where a lobbyist has breached the applicable code of conduct.

141 The establishment of the code and the guidelines followed the tabling, in June 2014, of the Standing Committee on Administration and Procedure report on lobbyist regulation, which drew heavily on advice provided by the Assembly’s Ethics and Integrity Adviser.

142 A lobbyist is ‘Any person, company or organisation who conducts lobbying activities on behalf of a third party, or whose employees or other personnel conduct lobbying activities on behalf of a third party, where such lobbying activities are ordinarily carried out in the expectation of receiving direct or indirect financial reward or other valuable consideration whether or not the amount thereof is ascertainable at the time such activities are conducted’.

143 Public officials are: MLAs, persons employed under either the LAMS Act, or the Public Sector Management Act.

144 In the case of an MLA, 18 months is prescribed, and in the case of person employed under either the Public Sector Management Act or the LAMS Act, the prescribed period is 12 months.

- 4.101. In the Ninth Assembly, the Standing Committee on Administration and Procedure inquired into the register of lobbyists and whether it should be extended to include in-house government relations staff, industry associations, project management liaison officers, and companies. In its report on the inquiry, the committee recommended that no change be adopted.¹⁴⁵

Contempt of the Assembly, ACT Criminal Code

- 4.102. It is open to the Assembly to treat misconduct by a member as a contempt of the Assembly. Additional information on contempt of the Assembly is included in Chapter 2: Parliamentary privilege—the powers and immunities of the Assembly, under the heading ‘Power to punish contempts’.
- 4.103. Members are subject to the laws in force in the Territory, including in relation to criminal offences. Chapter 3 of the *Criminal Code 2002* includes members and ministers in its definition of ‘territory public official’ and ‘public official’ who are subject to provisions relating to criminal offences such as abuse of public office by public officials, conspiracy to defraud and intention to dishonestly influence a public official in the exercise of their duty as a public official.¹⁴⁶

Integrity Commission

- 4.104. On 29 November 2018, the Assembly passed the Integrity Commission Bill 2018. The resulting enactment made provision for the establishment of an Integrity Commission, given the statutory function of:
- investigating corrupt conduct;
 - referring criminality or wrongdoing to appropriate authorities;
 - preventing corruption through research and risk mitigation;
 - providing education programs; and
 - fostering confidence in the Legislative Assembly and public sector.¹⁴⁷
- 4.105. The legislation establishing the commission came about after two separate select committee inquiries in the Ninth Assembly made a total of 133 recommendations on considerations the committees sought to have taken into account in developing the legislation.¹⁴⁸

145 Standing Committee on Administration and Procedure, *Inquiry into the ACT Register of Lobbyists*, Report 10, March 2019.

146 *Criminal Code 2002*, Chapter 3.

147 Integrity Commission Act, s 23(1).

148 The Select Committee on the Independent Integrity Commission, which reported on 31 October 2017 and the Select Committee on an Independent Integrity Commission 2018, which reported on 31 October 2018. On 6 June 2018, a private member’s bill (the Anti-Corruption and Integrity Commission Bill 2018) was presented by the Leader of the Opposition. On 26 July 2018, the government released its exposure draft of the Integrity Commission Bill 2018. On the recommendations of the 2018 select committee,

- 4.106. The Integrity Commission Act grants the commission wide powers to investigate corruption, including through public examinations.¹⁴⁹ The commission also has significant coercive powers, including the power to refer a person to the Supreme Court for contempt for failing to answer a question relevant to an examination, refusing to produce a document or thing required by an examination summons, failing to attend an examination required by summons, or refusal to take an oath when required.¹⁵⁰
- 4.107. The commission has jurisdiction to investigate and report on allegations of corrupt conduct¹⁵¹ as they relate to judicial officers, ACT Public Service entities¹⁵² and Legislative Assembly entities.
- 4.108. A Legislative Assembly entity is:
- a Member of the Legislative Assembly;
 - a member of staff of an MLA;
 - the Office of the Legislative Assembly;
 - an officer of the Assembly; and
 - a member of staff of an officer of the Assembly.
- 4.109. Corrupt conduct is broadly drawn. Section 9 of the Act states that:
- (1) For this Act, *corrupt conduct* is conduct—
 - (a) that could—
 - (i) constitute a criminal offence; or
 - (ii) constitute a serious disciplinary offence; or
 - (iii) constitute reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official; and
 - (b) that is any of the following:
 - (i) conduct by a public official that constitutes the exercise of the public official’s functions as a public official in a way that is not honest or is not impartial;
 - (ii) conduct by a public official or former public official that—
 - (A) constitutes a breach of public trust; or

the Assembly agreed that government’s draft bill proceed with the amendments recommended in the committee’s report and that the Assembly not proceed with the private member’s bill.

149 Integrity Commission Act, s 143.

150 Integrity Commission Act, s 166.

151 Integrity Commission Act, s 9.

152 Integrity Commission Act, s 16.

- (B) constitutes the misuse of information or material acquired by the official in the course of performing their official functions, whether or not the misuse is for the benefit of the official or another person;
- (iii) conduct that adversely affects, either directly or indirectly the honest or impartial exercise of functions by a public official or a public sector entity;
- (iv) conduct that—
 - (A) adversely affects, either directly or indirectly the exercise of official functions by a public official or public sector entity; and
 - (B) would constitute, if proved, an offence against a provision of the Criminal code, chapter 3 (Theft, fraud, bribery and related offences);
- (v) conduct that involves any of the following:
 - (A) collusive tendering;
 - (B) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety, protect the environment or facilitate the management and commercial exploitation of resources;
 - (C) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage;
 - (D) defrauding the public revenue;
 - (E) fraudulently obtaining or retaining employment or appointment as a public official;
- (vi) conduct engaged in by a person in relation to conduct mentioned in subparagraphs (i) to (iv) (the *primary conduct*), that would constitute an offence against the Criminal Code, part 2.4 (Extensions of criminal responsibility) on the basis that the primary conduct is an offence, whether or not the primary conduct is in fact an offence.

- (2) For subsection (1) (a) it does not matter if—
 - (a) proceedings or action in relation to the conduct can no longer be taken;
or
 - (b) the conduct happened outside the Territory.

4.110. Information on the application of parliamentary privilege in the context of the exercise of the Integrity Commission's powers is in Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly. Information on the appointment and oversight arrangements for the commissioner, who is an Officer of the Assembly, is included in Chapter 5: The Speaker and other officers, under the heading 'Integrity Commissioner'.

Public Interest Disclosure Act

4.111. Members, their staff and staff of the Office of the Legislative Assembly are subject to relevant provisions of the *Public Interest Disclosure Act 2012*. The Act was substantially amended in the Ninth Assembly by the *Public Interest Disclosure Amendment Act 2020*. The Integrity Commission now plays a significant role in the administration of the public interest disclosure arrangements across the Territory public sector.¹⁵³

4.112. The object of the PID Act is to promote the public interest by:

- (a) providing a way for people to disclose disclosable conduct; and
- (b) ensuring people who make public interest disclosures are protected and treated respectfully; and
- (c) ensuring public interest disclosures are properly investigated and dealt with; and
- (d) ensuring that appropriate consideration is given to the interests of people who make public interest disclosures and the people who are the subject of the disclosures.¹⁵⁴

4.113. Under the Act, disclosable conduct means:

... an action or a policy, practice or procedure of a public sector entity, or public official for a public sector entity, that—

- (a) is maladministration; or
- (b) results in a substantial and specific danger to public health or safety, or the environment.¹⁵⁵

4.114. However, disclosable conduct does not include an action or a policy practice or procedure of a public sector entity, or a public official for a public sector entity, that—

- (a) relates to a personal work-related grievance of the person disclosing the conduct; or
- (b) is to give effect to a policy of the Territory about amounts, purposes or priorities of public expenditure.¹⁵⁶

153 PID Act, Part 6.

154 PID Act, s 6.

155 PID Act, s 8(1).

156 PID Act, s 8(2).

4.115. The Act provides significant protections for persons making a disclosure, including immunity from liability in certain areas of the law. Section 35(a)(iv) of the Act provides that where a person makes a disclosure and the disclosure is made in relation to a Member of the Legislative Assembly, the disclosure is not a contempt of the Assembly.¹⁵⁷

Term of office

4.116. The current term of office of members elected at a general election of the Assembly is approximately four years.¹⁵⁸ This was the term originally proposed when the self-government legislation was introduced into the Commonwealth Parliament in 1988.¹⁵⁹ At self-government the term was three years,¹⁶⁰ being extended to three years and eight months as a result of the amendment to the Electoral Act which deferred the date of the election for the Fifth Assembly from February to October 2001. The current term of four years was set by the *Electoral Amendment Act 2003*.¹⁶¹

4.117. Section 10 of the Self-Government Act provides:

The term of office of a member duly elected begins at the end of the day on which the election of the member is declared and, unless sooner ended by resignation or disqualification, or by dissolution of the Assembly, ends on the polling day for the next general election.

157 Section s 24 of the ACT Self-Government Act provides that the Assembly may make laws declaring the powers of the Assembly and its members and committees (so long as they do not exceed the powers of the House of Representatives). Although not an exhaustive, or even comprehensive declaration under s 24 of the Self-Government Act, s 35(a)(iv) nonetheless declares a limitation on the Assembly's contempt power.

158 In fact, it is usually slightly less than four years as it commences on the day the election of members is declared. It can be more or less than four years in the event of:

- an ordinary election being deferred due to an election of senators or a general election of members of the House of Representatives being held on the day set out in the Electoral Act (the third Saturday in October in the fourth year after the year in which the last ordinary election was held); or
- an extraordinary general election occurring should (a) a general election be required (i) following a dissolution of the Assembly (pursuant to s 16 of the Self-Government Act); (ii) pursuant to the provisions of s 48 of the Self-Government Act, or (b) the Court of Disputed Elections declares an election void (s 275 of the Electoral Act); or (c) a supplementary election being required pursuant to s 126 of the Electoral Act.

159 See House of Representatives Debates, 19 October 1988, p 1922. The provision was amended in the Senate to provide for three-year terms; see Senate Debates, 24 November 1988, p 2824.

160 Though the term of office of members of the First Assembly was less, being from 8 May 1989 to 15 February 1992.

161 Act No 54 of 2003. The amendments applied from each ordinary election after the ordinary election held on 16 October 2004. For a summary of proposals to alter the term, see Standing Committee on Legal Affairs, *Changing the term of Assembly Members from three years to four years*, Report 7, 14 October 2003.

- 4.118. 'Ends on the polling day' is interpreted to mean the end of that day.¹⁶²
- 4.119. Members of the Assembly who are office holders—the Speaker,¹⁶³ Chief Minister or ministers—retain those offices until the newly elected Legislative Assembly elects a Speaker and, in the case of the Chief Minister and ministers, a Chief Minister,¹⁶⁴ unless they vacate those offices at an earlier date by resignation, disqualification as a member or pursuant to a vote of the Assembly.
- 4.120. Where the term of office of a member ends on the polling day for a general election and the member is re-elected, for the purposes of s 73 (remuneration and allowances) of the Self-Government Act, the person is taken to have continued to serve as a member until the day on which the election of the member is declared.¹⁶⁵

Resignation

- 4.121. A member may resign their office as a member by written notice delivered to the Speaker or, during the absence of the Speaker from the Territory or from duty, to the Deputy Speaker.¹⁶⁶ The person receiving a notice of resignation must arrange for it to be presented to the Assembly as soon as practicable after its receipt.
- 4.122. Section 13 of the Self-Government Act merely provides that a member resigns by giving written notice to the person designated by the Assembly to receive it. The practice in the Assembly has been to follow that of the House of Representatives and consider that a member's resignation takes effect and their seat becomes vacant from the time of its receipt. However, it must be noted that the terms of s 37 of the Constitution, which deals with resignations of members of the Commonwealth Parliament, differ from those of s 13 of the Self-Government Act, the former providing that 'A member may by writing ... resign his place, which thereupon shall become vacant'.¹⁶⁷

162 Advice of the Deputy Law Officer, Constitutional and Law Reform Branch, Attorney-General's Department, 10 October 1991.

163 Self-Government Act, s 12.

164 Self-Government Act, s 46.

165 Self-Government Act, s 73.

166 Self-Government Act, s 13. See also resolution of the Assembly of 27 March 1992: MoP, No 1, 27 March 1992, p 5; standing order 24A.

167 Oral advice of 16 March 1989, from the Commonwealth Department of Territories (ACT Government Unit), was that 'Unless specifically stated to be otherwise in the written advice of resignation a Member's resignation takes effect at the commencement of the delivery process whether that is the physical act of handing the notice to the person authorised to receive it; or posting the notice or using some other means of delivery'.

Death while in office

4.123. Since the establishment of the Assembly in 1989, one member has died while in office.¹⁶⁸ Following the death of the member, the Speaker wrote to the Electoral Commissioner to advise of the casual vacancy and a countback was initiated in accordance with the Electoral Act (see Chapter 3: Elections and the electoral system, under the heading 'Casual vacancies').

Dissolution of the Assembly

4.124. In the event of dissolution of the Assembly by the Governor-General, the term of office of all members would end at the time and date specified in the proclamation of dissolution.

Remuneration and entitlements

4.125. Section 73 of the Self-Government Act makes provision for the payment of remuneration and allowances to persons holding the office of member of the Assembly and a range of other offices (Presiding Officer (Speaker), Deputy Presiding Officer (Deputy Speaker), Chief Minister, Deputy Chief Minister, minister and any office declared by enactment to be an office to which s 73 applies).¹⁶⁹ Persons holding these offices are to be paid such remuneration and allowances as determined or specified by or under an enactment or, in any other case, as determined by the Remuneration Tribunal (Cth). These tasks are now performed by the ACT Remuneration Tribunal.¹⁷⁰

168 MoP, No 41, 28 November 2017, p 549.

169 Self-Government Act, paragraph 73(1)(g).

170 The ACT Remuneration Tribunal was established by the Remuneration Tribunal Act, which commenced on 21 December 1995. In exercising its powers and obligations under the Act, the Tribunal is independent of the government, and its determinations are not subject to disallowance by the Legislative Assembly. Prior to its establishment the responsibilities now undertaken by the ACT Tribunal were discharged by the Commonwealth Remuneration Tribunal. The Remuneration Tribunal Amendment Bill 1999 proposed to place restrictions on persons who could be appointed as members of the Tribunal and to make determinations of the Tribunal disallowable instruments. The question that the bill be agreed to in principle was negated. See MoP, No 49, 5 May 1999, p 403; MoP, No 124, 2 May 2001, pp 1360-1361; Assembly Debates, 5 May 1999, pp 1327-1328; Assembly Debates, 2 May 2001, pp 1381-1387.

- 4.126. Section 9 of the *Remuneration Tribunal Act 1995*, in conjunction with s 73 of the Self-Government Act, requires the tribunal to inquire into and determine the remuneration and allowances to be paid to and the entitlements to be granted to the Presiding Officer, Deputy Presiding Officer, Chief Minister, Deputy Chief Minister and ministers and members other than ministers by reason of their membership of the Assembly or by reason of their holding particular offices or performing particular functions in relation to the Assembly. As at 30 June 2021, these offices are:
- Leader of the Opposition in the Assembly;
 - Deputy Leader of the Opposition in the Assembly;
 - Government Whip in the Assembly;
 - Opposition Whip in the Assembly; and
 - the Presiding Member (however designated) of a committee of the Assembly.¹⁷¹
- 4.127. The tribunal is required to make determinations under sections 9 and 10 of the Act each year.¹⁷² Determinations must be in writing and presented to the Chief Minister. The Chief Minister must cause the determination to be laid before the Assembly within six sitting days after the day they receive it.¹⁷³
- 4.128. In addition to the basic rate of salary for members and additional salaries for certain offices, the Remuneration Tribunal determines various other allowances, including travelling allowance, a motor vehicle allowance, and a resettlement allowance. It also determines entitlements in relation to salary packaging and class of air travel. There is no provision to disallow a determination of the tribunal in the Remuneration Tribunal Act.¹⁷⁴
- 4.129. Superannuation arrangements for members are covered by the *Legislative Assembly (Members' Superannuation) Act 1991*.¹⁷⁵

171 Remuneration Tribunal Act, s 9(3).

172 Remuneration Tribunal Act, s 9 relates to inquiries in relation to certain members of the Assembly and section 10 relates to inquiries in relation to holders of certain [other] offices. Section 13 as amended requires the Tribunal to make the determinations within one year of 21 December 1996 and at subsequent intervals of not more than one year.

173 Remuneration Tribunal Act, s 12.

174 In the Fourth Assembly, a private member's bill was introduced to amend the Remuneration Tribunal Act in order that determinations of the Tribunal could be disallowed by the Assembly (see MoP, No 49, 5 May 1999, p 403). The bill was not successful.

175 Members who were elected before the 2008 general election and have had a relevant period of service (section 3C of the Act), and no discontinuance (section 3A of the Act), are members of an unfunded defined benefit superannuation scheme. The defined benefit superannuation scheme has been closed to members elected from 2008 onward. Those members elected at or after the 2008 general election, and who were not an existing member of the defined benefit superannuation scheme prior to the election, assume membership of a choice of fund accumulation superannuation scheme (See Chapter 3 of the Act).

- 4.130. The LAMS Act makes provision for members and office holders to employ staff in accordance with arrangements made by the Chief Minister and subject to determinations and directions made by the Chief Minister. The arrangements for employment and the conditions determined by the Chief Minister for the staff of both office holders and members are disallowable instruments.¹⁷⁶
- 4.131. Furnished and equipped office suites are provided within the Assembly building to members for their use, and the use of their staff, for parliamentary and constituency related purposes. Offices and related facilities are not provided for campaigning or election related purposes.

¹⁷⁶ As such, they must be notified and presented to the Assembly pursuant to the provisions of the Legislation Act.