

# Code of Conduct for Ministers

May 2021



# CODE OF CONDUCT FOR MINISTERS

## PREMIER'S FOREWORD

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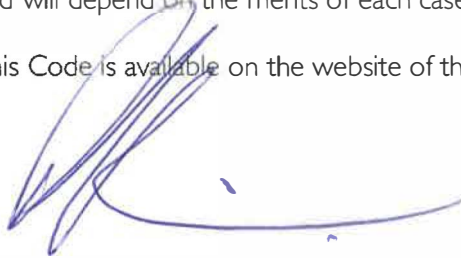
All Members of Parliament must abide by high ethical standards set by the Parliament of Tasmania.

To complement the standards, a Code of Conduct for Ministers, together with Guidance Notes and a Receipt and Giving of Gifts Policy, have been developed which sets out additional obligations applying to Ministers accepting office in my Government.

The Code reflects the expectation that Ministers, while in the service of the people of Tasmania, must uphold the highest standards of integrity and be honest, professional and accountable in the performance of all their duties.

The Code applies between myself as Premier and each Minister. Ministers must observe the Code at all times and the consequences of any failure to do so is a matter between me and the Minister concerned, and will depend on the merits of each case.

This Code is available on the website of the Department of Premier and Cabinet.



Peter Gutwein MP

**Premier**

May 2021

# CODE OF CONDUCT FOR MINISTERS

## PREAMBLE

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Ministers are expected to behave according to the highest ethical standards in the performance of their duties as they hold a position of trust, and have a great deal of discretionary power which can have a significant impact on citizens of Tasmania. Therefore, Ministers must commit themselves to the highest ethical standards to maintain and strengthen the democratic traditions of our State and its institutions.

Merely avoiding breaking the law will not always be enough to guarantee an acceptable standard of conduct. Ministers must not only act lawfully but also in a manner which withstands the closest public scrutiny. Neither the law nor this Code is designed to be exhaustive, and there will be occasions on which Ministers will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust. In making choices about conduct, Ministers should have regard to prevailing community values and standards. They should also, where possible, avoid giving unnecessary offence to groups in the community whose beliefs and views differ from their own.

Recognising the convention of collective responsibility for Government decisions, Ministers are obliged to report any Code non-compliance by themselves or by another Minister to the Premier, or in the case of the Premier, to Cabinet.

Ministers may seek confidential advice from the Parliamentary Standards Commissioner as to any matter arising under this Code.

### **Code of Conduct Guidance Notes and Receipt and Giving of Gifts Policy**

Code of Conduct Guidance Notes and Receipt and Giving of Gifts Policy are annexed to this Code as guidance to Ministers about the practical application of the Code and the process to be followed when declaring the receipt and giving of gifts.

### **Review**

This Code was adopted by the Government on 19 May 2021 and is operational from this date. It will be reviewed when required, but at least every four years.

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## **Conflicts of Interest**

Any material conflict between a Member's private interest and his or her official duties which arises must be resolved promptly in favour of the public interest.

So as to protect and uphold the public interest, Ministers must take reasonable steps to avoid, resolve or disclose any material conflict of interest, financial or non-financial, that arises or is likely to arise, between their personal interests and their official duties.

Ministers must declare any such conflict of interest in writing to the Premier as soon as possible after becoming aware of the conflict.

Ministers are individually responsible for preventing conflicts of interest.

A conflict of interest does not exist where the Minister or a close relative is affected only as a member of the public or of a broad class of persons.

## **Declaration and Divestment of Personal Interests**

Ministers are personally responsible for making adequate disclosure to the Premier of all financial and other interests that they are obliged to disclose under the *Parliamentary (Disclosure of Interests) Act 1996*.

A Minister, upon assuming office as a Minister, must take steps to deal with the financial and other interests of him or herself, their partner or dependent persons, which could create the impression of a material conflict with the Minister's official duties.

## **Shareholdings**

Ministers, upon assuming office, must relinquish control of all shareholdings and other interests in partnerships and trusts, public and private, where a material conflict of interest with their portfolio responsibilities exists, or could be reasonably expected to exist.

It is not an acceptable form of divestment to transfer interests to a partner, family member or to a nominee or private trust.

## **Directorships and other forms of Employment**

Except with the written approval of the Premier, Ministers will, on taking up office as a Minister, resign or decline directorships of public or private companies and businesses. Approval to retain a directorship of a private company or business will be granted only if the Premier is satisfied that no conflict of interest exists or is likely to arise.

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Ministers will resign from all positions held in business (or professional) associations or trade unions on taking up office as a Minister. Individual membership of such business or professional association and of a trade union does not constitute a 'position'.

Ministers shall not act as a consultant or adviser to any company, business, or other interest, whether paid or unpaid, or provide assistance to any such body, except as may be appropriate in their official capacity as Minister.

A Minister may hold a directorship in a private company operating a family farm, business or investment with the written approval of the Premier.

## **Gifts and Benefits**

Ministers must not solicit, encourage or accept gifts, benefits or favours either for themselves or for another person in connection with performing or not performing their official duties as a Minister.

The offering of any such gifts, benefits or favours, made directly or indirectly, must be reported to the Premier as soon as practicable.

Ministers may accept all customary official gifts, hospitality, tokens of appreciation, and similar formal gestures in accordance with the relevant guidelines.

Ministers may, in a purely personal capacity, accept gifts from a relative, friend or acquaintance which do not give rise to or create the appearance of a conflict of interest.

Ministers are to comply with the Receipt and Giving of Gifts Policy annexed to this Code.

## **Improper Advantage**

Ministers are not to use their position improperly to gain a direct or indirect personal advantage for themselves or any other person or entity not enjoyed by the general public.

Ministers must maintain appropriate confidentiality of the information they receive in the official course of their duties, in Cabinet or otherwise, during their appointment and also after their resignation, retirement or dismissal from office.

Ministers are not to use any information obtained in the course of their official duties so as to gain a direct or indirect personal advantage for themselves or improperly for any other person or entity not enjoyed by the general public.

A close relative of a Minister is not to be appointed to a position in the Ministerial or electorate office of that Minister.

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## **Improper Use of Public Resources**

Ministers must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.

Ministers must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.

Ministers must be scrupulous in ensuring the legitimacy and accuracy of any claim for the payment of any Ministerial, parliamentary or other allowance.

Ministers must regard the skills and abilities of public servants as a public resource to be used appropriately.

## **Misleading Statements**

Ministers must not deliberately make statements that mislead Parliament or the public and in line with Parliamentary practice are obliged to correct the record in a manner that is appropriate to the circumstances, as soon as possible after any incorrect statement is made.

It is recognised that a mistake or referring to incorrect information does not, in and of itself, constitute the offence of misleading Parliament as long as it is corrected as soon as possible once the error is identified.

## **Fairness of decision making**

Ministers must take all reasonable steps to observe relevant standards of procedural fairness in decisions made by them. Such decisions are to be unaffected by bias or irrelevant considerations.

## **Respect for Persons**

Ministers must not only act lawfully but also in a manner that withstands the closest public scrutiny.

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

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

## **Public Officials**

Ministers must not by their decisions, directions or conduct in office encourage or induce public officials to break the law, or to fail to comply with a code of ethical conduct applicable to such public officials.

Ministers are to respect the apolitical role of the public servants.

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## **Lobbyists**

Ministers must handle any dealings with lobbyists in accordance with the Tasmanian Government Lobbying Code of Conduct to avoid giving rise to a conflict of interest between their public duty and personal interests.

## **Post-Ministerial Employment**

Ministers must undertake that, upon leaving office and for a period of two years afterwards, they will exercise care in considering offers of employment, directorships or acting as a consultant to any company, business or organisation with which they have had official dealings as a Minister in their last 12 months in office.

Ministers must undertake that upon leaving office they will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for the private advantage or benefit of themselves or another person or persons.

## **Breaches**

Any allegation that a Minister has breached this Code of Conduct is to be referred to the Premier. Recognising the convention of collective responsibility for Government decisions, Ministers are obliged to report any Code non-compliance by themselves or by another Minister to the Premier, or in the case of the Premier, to Cabinet.

If a complaint is made to the Premier about an alleged breach of the Code, it is up to the Premier to determine if, or how, the complaint is to be investigated. There is no single way of investigating a complaint. The principles of natural justice and procedural fairness are to apply.

If a Minister engages in conduct which is found to constitute a breach of the Code, the Premier shall decide, in his or her discretion, upon an appropriate course of action. The appropriate sanction will depend on the nature and seriousness of the breach.

If a Minister is found to have breached the Code, the Minister may, among other things, be:

- asked to apologise;
- required to take remedial action;
- counselled;
- reprimanded;
- required to stand aside from any or all ministerial responsibilities for a period of time;
- asked to resign as a Minister; or
- recommended to the Governor for dismissal from his or her ministerial appointments.

# Code of Conduct for Ministers

## Annexure I - Guidance Notes

May 2021



# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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### I Introduction

I.1 The following notes are provided as guidance to Ministers about the practical application of the Code of Conduct for Ministers (the Code).

I.2 Ministers may seek confidential advice from the Parliamentary Standards Commissioner as to any matter arising under this Code.

I.3 In the Code and the associated guidance the following terms have the meanings specified:

“close relatives” mean the Minister’s immediate family, the Minister’s parents and siblings and the partners of the Minister’s children and siblings;

“dependent person” means any person financially dependent on the Minister;

“immediate family” means the Minister’s partner, and the children of the Minister or the Minister’s partner;

“Minister” means a Minister of the Crown and a member of Cabinet who is not a Minister;

“official duties” means the statutory and non-statutory functions of a Minister, but excludes those activities that are undertaken by a Minister as a general member of parliament and in relation to a member of Cabinet who is not a Minister means only functions related to his or her membership of Cabinet; and

“partner” means the person to whom a person is married; or who is in a significant relationship with a person, within the meaning of the *Relationships Act 2003*.

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### 2 Conflicts of Interest

#### Code

Any material conflict between a Minister's private interest and his or her official duty which arises must be resolved promptly in favour of the public interest.

So as to protect and uphold the public interest, Ministers must take reasonable steps to avoid, resolve or disclose any material conflict of interest, financial or non-financial, that arises or is likely to arise, between their personal interests and their official duties.

Ministers must declare any such conflict of interest in writing to the Premier as soon as possible after becoming aware of the conflict.

Ministers are individually responsible for preventing conflicts of interest.

A conflict of interest does not exist where the Minister or a close relative is affected only as a member of the public or of a broad class of persons.

#### Guidance

##### 2.1 *Nature of conflicts of interest*

- 2.1.1 Ministers have a duty to disclose and resolve material conflicts of interest. Generally a private interest can only create a conflict with official duties if it is material.
- 2.1.2 A material conflict of interest exists when a Minister in carrying out his or her official duties is, or reasonably appears to be, improperly influenced by private interests or when an official decision of the Minister could improperly advantage the Minister personally, or a close relative, especially, but not only, in a financial sense.
- 2.1.3 A material conflict of interest is one that is significant or important or one which a reasonable person would think is important to the Minister's official duties or to a decision to be made by the Minister. A Minister must think about and declare any facts or interests that a reasonable person in the same or similar circumstances would be expected to know to be relevant to the issues at hand or to a decision to be made. This means that the interest must:
- be a real or substantial interest, not theoretical, remote, contingent or otherwise insubstantial; and
  - have (or reasonably appear to have) the capacity to influence the conduct of a Minister, whether or not it actually has or will do so.

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A Minister should ask him or herself what an ordinary reasonable person would do or think in the same or similar circumstances. A material interest may arise if, as a result of a Minister's action or decision, the Minister, a close relative or a dependent person will or is likely to suffer a detriment or receive a benefit.

2.1.4 A conflict of interest does not only encompass actual or direct conflicts of interest between a Minister's official duty and private interests. A potential or perceived conflict of interest may also constitute a material conflict of interest.

2.1.5 Private interests of a Minister may include not only a Minister's financial or other interests but the financial or other interests of the Minister's close relatives.

2.1.6 There are many circumstances in the context of the Minister's position in which conflicts of interest may arise. For example, a conflict may arise where a Minister:

- has a significant financial interest in a company with whom the Government is contracting; or
- has a personal interest in the outcome of a Government process (eg the granting of a licence).

2.1.7 The circumstances which could give rise to a conflict of interest are not necessarily restricted to those where an immediate or short-term advantage will be gained. They may instead take the form of a promise of a future benefit, such as a promise of post-parliamentary employment.

2.1.8 A conflict of interest can arise from avoiding a personal loss as well as gaining a personal advantage – whether financial or otherwise.

2.1.9 Care needs to be taken with the receipt of any gifts or hospitality, as this often gives rise to a real or perceived conflict of interest.

2.1.10 The following (non-exclusive) list of matters may be useful when seeking to identify a conflict of interest:

- Is there a competing interest between a Minister's official duties and his or her private interests or duties?
- Is there a realistic expectation that the Minister will, directly or indirectly, gain a financial or other personal or professional benefit or suffer a financial or other personal or professional detriment as a result of a decision or action or inaction by the Minister?

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- Does the matter have the potential to affect the financial, professional or personal situation of the Minister's close relatives or any other associate of the Minister?
- Does the matter have the potential to impact on the value of the shares or other property owned by the Minister or a close relative or associate of the Minister?
- Does the matter have the potential to affect the private business interests of a Minister, his or her close relatives or associates?
- Does the matter have the potential to affect any debts owed by the Minister or his or her close relatives or associates?
- Will the Minister or one or more of his or her close relatives or associates personally benefit or gain influence from or be affected detrimentally by the Minister's decision, action or inaction?

2.1.11 The identification and declaration of a private interest that may give rise to a conflict with a Minister's official duties is the responsibility of the Minister concerned.

### 2.2 *Examples of potential conflicts of interest*

#### Example 1: Direct Interests

2.2.1 Ministers may have financial interests in matters in which they have a direct involvement in decisions pertaining to that interest. These pose a realistic risk of conflict. Examples could include:

- an interest in a company that trades directly with the State of Tasmania;
- a directorship or management of a company which is affected by a Cabinet or other government decision; or
- membership of a community group which applies for a grant where the Minister has control over decision about the payment of the grant.

#### Example 2: Indirect Interests

2.2.2 A Minister may have a pecuniary interest several steps removed from him or her. This interest may, but not necessarily, be sufficiently indirect so as not to pose a realistic risk of conflict.

2.2.3 An example of this interest is where a Minister holds an interest in a company which is not itself affected by a Cabinet or other government decision, but where that company in turn holds shares in another company that will be affected by such a decision. These situations may arise

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at multiple removes, i.e. a company may hold shares in a second company that holds shares in a third company which is affected by a Cabinet or other government decision. In this type of scenario the company affected by the relevant decision may be several steps distant from the company in which the Minister has an interest.

- 2.2.4 While this may give rise to a conflict of interest in some circumstances, the interests of the Minister will often be so distant and insignificant so as to pose no realistic perception of a material conflict of interest. In many cases such interests will be unknown to a Minister, especially if the interest resides with another member of the Minister's family. Whether it is reasonable for a Minister to have been unaware of this interest when involved in a related Cabinet decision will depend on all the circumstances, including the size and value of the interest concerned, its degree of remoteness from the Minister and the nature of the decision being made.
- 2.2.5 For example, if a Minister is the trustee of a trust fund together with other trustees and has the power to vote or make decisions on the investments or business conducted by the fund then the risk of a conflict of interest increases even if the fund is managed by another party. One option to mitigate this risk may be to amend the trust deed of the fund to preclude any trading or business with the State of Tasmania or place investment decisions at arm's length from the Minister.
- 2.2.6 Given the potential variation and complexity of financial investments, it is strongly recommended that Ministers seek their own legal, financial or ethical advice on their personal circumstances.

### Example 3: Remote Interests

- 2.2.7 Ministers may have pecuniary interests that are sufficiently remote from their influence and control that they do not pose a realistic risk of material conflict. An example is an interest in a managed trust fund, where a Minister has no control over investment decisions, and where the investment profile of the fund is broadly spread.
- 2.2.9 The Minister would declare this interest (i.e. income from the relevant fund) under the *Parliamentary (Disclosure of Interests) Act 1996*. Details of the investments of that entity are not required.
- 2.2.10 Once a remote interest has been declared no further declaration or disclosure is required unless a Minister becomes aware of circumstances that might give rise to a real or perceived material conflict of interest.

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2.2.11 For the purpose of determining whether an interest should be treated as a remote interest and so not likely to be considered material, the following factors may be relevant:

- the extent to which the Minister can influence investment decisions of the entity;
- the extent to which the Minister is involved in the management of the entity;
- the extent to which a Minister reasonably may be expected to have a detailed knowledge of the investments of the entity; and
- the extent to which an entity's investments are sufficiently diversified that the value of a Minister's interest would be unlikely to be significantly affected by decisions of Cabinet.

### Example 4: Non-pecuniary Interests

2.2.12 During the course of official duties Ministers will be privy to a substantial amount of confidential, personal and government information. The use of confidential and government information by a Minister to gain for him or herself, or any person, a direct or indirect financial advantage that may accrue either during or after the Minister's term of office is a clear breach of duty.

2.2.13 For example, if a Minister was aware that a significant government contract was about to be awarded to a particular company, conveying that information to an associate or family member who was looking to invest in a company of that type would be a clear breach of this Code. Similarly, a Minister awarding a government contract to a company run by a close relative or associate purely on the basis of that association would clearly be in breach of this Code.

### Example 5: General Interests

2.2.14 Ministers may have a perceived conflict of interest due to their own general personal interests or those of a partner, immediate family member or other close relative.

2.2.15 However, the possibility of a conflict does not arise because the matter concerns a general public policy or where the Minister (or his or her family) has no greater interest than that of other classes of people in the community generally - for example all secondary school students (where a Minister has school children), or all businesses paying payroll tax (where the Minister's partner owns a business).

2.2.16 There may be occasions where an interest should be declared. For example, a Minister may bring a submission to Cabinet which proposes changes to the way in which boat licence fees are set, while that Minister may also personally own a boat. Given that the Minister has no greater interest than that of other boat owners in the community, it is appropriate for the Minister to declare the interest and for a record to be made that the Minister declared a

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perceived conflict of interest. However given the lack of materiality, the Minister may continue to participate fully in the determination of the Government's policy on the matter.

### 2.3 *Cabinet*

- 2.3.1 A Minister who has a material interest in a matter to be discussed in Cabinet must declare the interest to the Premier (or other Minister who is presiding at the meeting) at the commencement of the meeting.
- 2.3.2 The Premier, possibly after discussion with other members of the Cabinet, may agree that the Minister has a material conflict of interest in the matter.
- 2.3.3 If it is determined that the Minister has a material conflict of interest in the matter, he or she will not be able to take part in the discussion or decision-making on that matter.
- 2.3.4 The Minister may be asked to absent him or herself from Cabinet for the purposes of discussing whether there is a material conflict of interest in relation to that matter and the matter itself.
- 2.35 The fact of any declaration of interest, a determination that it is material and any absence from the Cabinet discussion on a matter is to be recorded in any resulting Cabinet Decision about that matter.

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### 3 Declaration and Divestment of Personal Interests

#### Code

Ministers are personally responsible for making adequate disclosure to the Premier of all financial and other interests that they are obliged to disclose under the *Parliamentary (Disclosure of Interests) Act 1996*

A Minister, upon assuming office as a Minister, must take steps to deal with the financial and other interests of him or herself, their partner or dependent persons, which could create the impression of a material conflict with the Minister's official duties.

#### Guidance

##### 3.1 Declaration of Personal Interests

- 3.1.1 Disclosure of interests is an important initial step in the avoidance of a material conflict of interest.
- 3.1.2 The obligation of a Minister who has a material interest in a matter to be discussed in a meeting of Cabinet (as specified in section 2.3) and the disclosure requirements under the Policy on the Receipt and Giving of Gifts (see separate section) and in the *Parliamentary (Disclosure of Interests) Act 1996* are based on the need to avoid actual or perceived conflicts between the official duty of a Minister and his or her private interests.
- 3.1.3 The *Parliamentary (Disclosure of Interests) Act 1996* requires Ministers (as members of Parliament), to make a declaration of their interests by lodging a return with the Clerk of the relevant House by 1 October in each year. The Act also provides a mechanism for Members to make a discretionary declaration of any interest, pecuniary or not, which is not covered by the Act or which the Member feels may give rise to a conflict of interest. All matters which are disclosed in a return by a Member, whether on a mandatory or discretionary basis, form part of a register of interests which is a public document.
- 3.1.4 Interests held by a Minister's immediate family are not covered by the legislation although a Minister could choose to declare them in a discretionary disclosure.
- 3.1.5 If a Member does not have a current return published on the Parliamentary website, prior to an appointment as a Minister, the Member is to provide the Premier with a copy of the return most recently made by him or her under the *Parliamentary (Disclosure of Interests) Act 1996*. If



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he or she hasn't yet had to make a return, then he or she shall provide the same particulars as he or she would be obliged to provide in a return.

3.1.6 In addition to providing his or her most recent return, the Minister is to provide the Premier with a written declaration at the earliest opportunity with the following information:

- Particulars of any changes to their circumstances which could affect their ministerial responsibilities which occurred after they made their last annual declaration of interests, and which (or the consequences of which) would have to be disclosed in their next return. For example changes in the ownership of real property, as well as new events, such as the receipt of gifts that would be required to be disclosed in a subsequent return;
- Such further particulars that the Minister considers are relevant to his or her responsibilities about which the Premier should be informed or as the Premier may require.

3.1.7 Any Minister who believes that interests held by him or her, or an immediate family member, may give rise to a real or perceived conflict of interest should discuss the matter with the Premier or the Parliamentary Standards Commissioner as soon as practicable.

3.2 *Divestment of Personal Interests*

3.2.1 Ministers should wherever possible arrange their private financial affairs in a manner that prevents a material conflict of interest from arising in relation to their official duties.

3.2.2 A material conflict of interest may be avoided either by divestment of the relevant interest or by appropriate management of a potential conflict.

3.2.3 Divestment of interests in shares to a trust which is conducted at arm's length from the Minister and his or her immediate family is considered an acceptable strategy. The Minister and his or her immediate family may not be involved in decisions affecting the conduct of the trust and the existence of the trust is to be disclosed to the Premier.

3.2.4 The categories of interests which may give rise to a material conflict are:

- Sources of income, not including parliamentary or ministerial salary;
- Interests in real property including disposed property where the use of the property or the right to re-acquire it is retained or there is an arrangement made by the Minister where the he or she obtains the use and benefit of the property;

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- Interests in corporations other than those formed for a community purpose or not-for-profit corporations;
- Formal positions held in a trade union or professional or business association, not including mere membership of such a body;
- Significant debts to a natural or corporate person or in aggregate except debts to relatives, those owed to people or organisations whose normal course of business includes lending or those arising from goods or services supplied to a business unconnected with ministerial duties;
- Any sponsored travel worth \$250 or more, or \$250 or more in aggregate over a year from a single source (excluding publicly funded travel or contributions from relatives or political parties, or travel which is related to a non-parliamentary occupation ); and
- All gifts over \$500, or \$500 or more in aggregate over a year from a single source, plus details of the donor (excluding gifts from relatives).

3.2.5 A Member proposed to be appointed as a Minister is to, at the request of the Premier, divest him or herself of any interests which could create the impression of a material conflict with the responsibilities to be discharged in the portfolio(s) to which the appointment is to be made.

3.2.6 On assuming office, a Minister is to cease to be actively involved in the day to day conduct of any business in which the Minister was engaged prior to assuming office unless, on some reasonable grounds, the Premier, or in the case of the Premier the Parliamentary Standards Commissioner, deems it appropriate for a Minister to continue with that activity. In particular, unless deemed appropriate a Minister is to:

- Resign any directorship of a public company, and of any private company whose interests are such as to be likely to give rise to the appearance of conflicting interests or responsibilities of the Minister; and
- Cease to take an active part in any professional practice or in any business in which the Minister was engaged prior to assuming office.

3.2.7 The Premier may agree to conditions on the exercise of Ministerial functions to avoid any conflict with the Minister's responsibilities in his or her portfolio or portfolios. In the case of the Premier, Cabinet may give such approval based on advice from the Parliamentary Standards Commissioner.

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- 3.2.8 Throughout their period in office, a Minister is to advise the Premier in writing as soon as practicable of:
- Any changes to his or her circumstances which could affect his or her ministerial responsibilities which occur after they make their annual declaration of interests, and which (or the consequences of which) would have to be disclosed in their next return; and
  - Particulars of any material change in any interests of them or their close relatives that may affect their ministerial responsibilities not covered by the previous subparagraph, for example, interests of a member of their immediate family, and shall do so as the event or material change occurs.
- 3.2.8 Whenever there is a change, or addition, to the responsibilities of a Minister, that Minister shall consult with the Premier to determine if that change warrants a divestment of any interests then held by the Minister or his or her immediate family.
- 3.2.9 The Premier may review from time to time the interests and the official responsibilities of each Minister for the purpose of determining whether it would then be appropriate either for those responsibilities to be varied or for interests to be divested so as to avoid the appearance of any conflict of interest.
- 3.2.10 A Minister who has to divest interests because of a real or perceived conflict is not able to avoid that conflict or perceived conflict by transferring those interests to his or her immediate family, or to a nominee or to any trust, company or association in which the Minister has, or would thereby have, a substantial interest (ie a role in or influence over decisions about those interests).
- 3.2.11 When a Minister considers that he or she has a personal interest in a matter that has yet to be declared, he or she is to abstain from acting in that matter until he or she has consulted the Premier about the matter. To avoid any conflict or perceived conflict the Premier may, subject to the provisions of the *Constitution Act 1934*, ask another Minister to act for and on behalf of that Minister in relation to that matter.

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### 4 Shareholdings

#### Code

Ministers, upon assuming office, must relinquish control of all shareholdings and other interests in partnerships and trusts, public and private, where a material conflict of interest with their portfolio responsibilities exists, or could be reasonably be expected to exist.

It is not an acceptable form of divestment to transfer interests to a partner, family member or to a nominee or private trust.

#### Guidance

- 4.1 Ministers are to divest themselves of investments and other interests in any public or private company or business, other than public superannuation funds or publicly listed managed funds or trust arrangements where:
- The investments are broadly diversified and the Minister has no influence over investment decisions of the fund or trust; and
  - The fund or trust does not invest to any significant extent in a business sector that could give rise to a conflict of interest with the Minister's official duties.
- 4.2 If a Minister becomes aware that a fund or trust has invested in a company that might give rise to a perception of a conflict of interest, the Minister should inform the Premier immediately. In deciding if there is a possible conflict, a Minister may seek the advice and guidance from the Parliamentary Standards Commissioner for advice.
- 4.3 A Minister must also liquidate or dispose of the investment in the fund or trust if required to do so.
- 4.4 A Minister who has to dispose of a shareholding and other interests in partnerships and trusts, because of a real or perceived conflict is not able to avoid that conflict or perceived conflict by transferring that shareholding or interest to his or her immediate family, or to a nominee or to any trust, company or association in which the Minister has, or would thereby have, a substantial interest (ie a role in or influence over decisions about those interests).

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### 5 Directorships and other forms of Employment

#### Code

Except with the written approval of the Premier, Ministers will on taking up office as a Minister resign or decline directorships of public or private companies and businesses. Approval to retain a directorship of a private company or business will be granted only if the Premier is satisfied that no conflict of interest exists or is likely to arise.

Ministers will resign from all positions held in business (or professional) associations or trade unions on taking up office as a Minister. Individual membership of such business or professional association and of a trade union does not constitute a 'position'.

Ministers shall not act as a consultant or adviser to any company, business, or other interest, whether paid or unpaid, or provide assistance to any such body, except as may be appropriate in their official capacity as Minister.

A Minister may hold a directorship in a private company operating a family farm, business or investment with the written approval of the Premier.

#### Guidance

- 5.1 Ministers are to devote their time to carrying out their official, parliamentary and other public duties.
- 5.2 A Minister may not receive any income from a business or personal action other than as a Minister and Member of Parliament, otherwise than as provided for by the Code.
- 5.3 Ministers are required to withdraw from any professional practice or the management of any business. (This requirement does not apply where a Minister has the Premier's permission to continue an interest in a family business).
- 5.4 The restriction on income does not preclude receipt of payments, such as royalties, in respect of activities undertaken before assuming ministerial office. However these earnings should be declared in accordance with the requirements of the *Parliamentary (Disclosure of Interests) Act 1996* and any additional requirements under the Code and related guidance.
- 5.5 Ministers may retain their membership of any business (or professional) associations or trade unions. However, they should not remain or be appointed a formal position, for example Secretary or President of a trade union. Ministers may hold positions within the political party to which they belong and they may retain token figurehead positions such as the position of "patron" or equivalent in not-for profit community organisations.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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### 6 Gifts and Benefits

#### Code

Ministers must not solicit, encourage or accept gifts, benefits or favours either for themselves or for another person in connection with performing or not performing their official duties as a Minister.

The offering of any such gifts, benefits or favours, made directly or indirectly, must be reported to the Premier as soon as practicable.

Ministers may accept all customary official gifts, hospitality, tokens of appreciation, and similar formal gestures in accordance with the relevant guidelines.

Ministers may, in a purely personal capacity, accept gifts from a relative, friend or acquaintance which do not give rise to or create the appearance of a conflict of interest.

#### Guidance

6.1 Ministers are to refer to the Receipt and Giving of Gifts Policy annexed to the Code of Conduct.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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### 7 Improper Advantage

#### Code

Ministers are not to use their position improperly to gain a direct or indirect personal advantage for themselves or any other person or entity not enjoyed by the general public.

Ministers must maintain appropriate confidentiality of the information they receive in the official course of their duties, in Cabinet or otherwise, during their appointment and also after their resignation, retirement or dismissal from office.

Ministers are not to use any information obtained in the course of their official duties so as to gain a direct or indirect personal advantage for themselves or improperly for any other person or entity not enjoyed by the general public.

A close relative of a Minister is not to be appointed to a position in the Ministerial or electorate office of that Minister.

#### Guidance

- 7.1 Ministers must avoid taking advantage of their official position for private benefit. Official duties must be carried out objectively and without consideration of personal or financial gain.
- 7.2 Some of the information that comes to Ministers may be commercially sensitive or sensitive in some other way. Its wrongful disclosure may have an adverse impact on individuals, private commercial entities, or the State.
- 7.3 Information not in the public domain which is obtained in the course of a Minister's official duties must not be turned to private advantage, even after leaving public office.
- 7.4 Ministers must avoid investments and transactions about which they have obtained confidential information as a Minister that may result in an advantage that is unreasonable or improper, or which may result in an advantage which is greater than that presented to any member of the public at large, or any section of the public. Even the appearance of benefit or of avoidance of loss to a Minister's private interests, without any actual effect, may bring accusations of conflict and bring individual Ministers into disrepute.
- 7.5 It is important for Ministers not only to maintain strict confidentiality about this information, but to take care not to use the special knowledge they have gained in such a way as to give even the appearance of benefiting or avoiding loss to their private financial interests.
- 7.6 Ministers also need to be careful with the use and disclosure of personal information and have regard to the provisions of the *Personal Information Protection Act 2004*.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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- 7.7 Within the Parliament, Ministers must take particular care to consider the rights and reputations of others before making use of the unique protections available under parliamentary privilege. This privilege should never be used recklessly or without due regard for accuracy.
- 7.8 Ministers should not accept payment for presentations at conferences, making speeches, opening premises or writing media articles of an official nature or which directly draw on their responsibilities or experience as Ministers even with a view to donating the fee to charity. If the organisation in question insists on making a donation to a charity on its own volition then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.



# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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### 8 Improper Use of Public Resources

#### Code

Ministers must not use public resources, or allow such resources to be used by others, for personal advantage or benefit.

Ministers must use and manage public resources in accordance with any rules and guidelines regarding the use of those resources.

Ministers must be scrupulous in ensuring the legitimacy and accuracy of any claim for the payment of any Ministerial, parliamentary or other allowance.

Ministers must regard the skills and abilities of public servants as a public resource to be utilised appropriately.

#### Guidance

- 8.1 Ministers are provided with resources (property, services, funds and facilities) at public expense for the effective conduct of their official duties. Such public resources are not to be subject to wasteful or extravagant use, and due economy is to be observed at all times.
- 8.2 Public property or services are to be used in connection with official duties must not be used for personal gain.
- 8.3 Ministers must ensure that their use of public resources is above reproach, and must use reasonable endeavours to prevent misuse by other persons. Ministers must avoid any arrangement which may give rise to an accusation that they, or someone close to them, is obtaining an immediate benefit or subsidy from public resources.
- 8.4 Careful use and oversight of expenditure is essential and is to be in accordance with any applicable Treasurer's Instructions and legislation (such as the *Financial Management and Audit Act 1990*).
- 8.5 Ministers must be scrupulous in ensuring the legitimacy and accuracy of any claim for entitlement to allowances (eg travel, accommodation, meals etc).
- 8.6 Ministers are to regard the skills and abilities of public servants as a public resource, and are expected to ensure that public servants are deployed only for appropriate public purposes.
- 8.7 Ministers are to avoid using government departmental offices for private or party political purposes.
- 8.8 Party political functions or events are not to be paid for out of departmental funds, and neither should anything connected with an election campaign.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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- 8.9 Ministers may be provided with attractive, portable assets such as mobile phones, home fax machines, iPads, lap top computers etc. Ministers must ensure that these items are returned upon leaving office unless a purchase arrangement is entered into with the relevant department.
- 8.10 Ministers are provided a car with driver services, to enable them to safely travel long distances and to meet their state-wide responsibilities. If the Minister is away from their residence on Ministerial duties, this service is available to them to be used at their discretion.

# CODE OF CONDUCT FOR MINISTERS

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### 9 Misleading Statements

#### Code

Ministers must not deliberately make statements that mislead Parliament or the public and in line with Parliamentary practice are obliged to correct the record in a manner that is appropriate to the circumstances, as soon as possible after any incorrect statement is made.

It is recognised that a mistake or referring to incorrect information does not, in and of itself, constitute the offence of misleading Parliament as long as it is corrected as soon as possible once the error is identified.

#### Guidance

- 9.1 In the Westminster system Ministers are answerable to Parliament and, through Parliament, to the general community.
- 9.2 Ministers are accountable to both Parliament and the community for the administration of those statutes, departments, authorities and other entities for which they are responsible under the Administrative Arrangements in place at the time.
- 9.3 Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest which should be decided in accordance with any relevant statutes and conventions.
- 9.4 Ministers should give reasons for their decisions and actions.
- 9.5 Ministers are required to provide an honest and comprehensive account of their exercise of public office, and of the activities of the agencies within their portfolios, in response to any reasonable and bona fide enquiry by a member of the Parliament or a Parliamentary Committee
- 9.6 Ministers are to give accurate and truthful information to Parliament and the public. Ministers are expected to take all reasonable steps to ensure that they do not mislead the Parliament or the public.
- 9.7 It is a Minister's personal responsibility to ensure that any inadvertent error is corrected or clarified, as soon as practicable and in a manner appropriate to the nature of the misinformation and the issues and interests involved.
- 9.8 Ministers who intentionally mislead or are dishonest to Parliament or the public will be expected to offer their resignation to the Premier.

# CODE OF CONDUCT FOR MINISTERS

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### 10 Fairness in decision making

#### Code

Ministers must take all reasonable steps to observe relevant standards of procedural fairness in decisions made by them. Such decisions are to be unaffected by bias or irrelevant considerations.

#### Guidance

- 10.1 Ministers are to take all reasonable steps to observe relevant standards of procedural fairness and good decision-making applicable to decisions made by them in their official capacity.
- 10.2 When taking decisions in connection with their official duties, Ministers must do so in terms of advancing the public interest and before making a decision should obtain all relevant information and facts, consult and take advice as appropriate on the matter at issue, take proper account of the merits of the matter, and give due consideration to the rights and interests of the persons involved, and the interests of Tasmania.
- 10.3 Ministerial decisions are to be made objectively, impartially, honestly and without pre-judgment while having due regard to the Government's stated policy framework. In particular, decisions are to be unaffected by bias or irrelevant consideration, such as considerations of private advantage or disadvantage.
- 10.4 A Minister has an obligation to exercise his or her own judgement on each issue in the interests of the entire State and not simply to act in the interests of his or her constituents, or other groups.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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### 11 Respect for people

#### Code

Ministers must not only act lawfully but also in a manner that withstands the closest public scrutiny.

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

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

#### Guidance

- 11.1 Members of the public are entitled to a fair hearing by their elected representatives and Ministers should treat the information passed on to them in their official capacity with an appropriate degree of confidentiality.
- 11.2 All people with whom a Minister has official dealings should be treated with respect and courtesy.
- 11.3 Ministers should have regard to community values and standards and, where possible, avoid giving unnecessary offence to groups in the community.
- 11.4 Ministers, in all their dealings with other persons, should have regard to prevailing community values and standards, including accessibility, gender equality, diversity, inclusion and respectful language.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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### 12 Public Officials

#### Code

**Ministers must not by their decisions, directions or conduct in office encourage or induce public officials to break the law, or to fail to comply with a code of ethical conduct applicable to such public officials.**

**Ministers are to respect the apolitical role of the public service.**

#### Guidance

- 12.1 The public service owes its loyalty to the government of the day and its duty is to implement that Government's policy program. Ministers are often in a position to give directions to public servants about the performance of their official duties
- 12.2 In our Westminster tradition it is the Government that makes the decisions about policies and programs. The public service provides advice - comprehensive, frank, timely, evidence-based advice – and information that helps the Government make those decisions, and once those decisions are made it implements the decisions of Government (irrespective of what advice has previously been provided).
- 12.3 Public servants are apolitical. This means that policy advice and implementation is provided on a basis that is independent from the party political system, and free from personal political bias and beliefs - not being 'political' in their public comments, that is not supporting one party over another, and not publicly refuting current government policy. It also means that a public servant has a willingness to implement an agenda and the decisions of the Government of the day with which the public servant may disagree.
- 12.4 In no circumstances should a public servant ever be instructed to commit an illegal act or to refrain from carrying out a statutory duty. Indeed, as a matter of law, a Minister has no lawful authority to give, and a public servant has no obligation or authority to accept, such an instruction.
- 12.5 This rule applies with even greater force to the relationship between Ministers and holders of statutory offices, many of whom will also be employed as public servants. Acts frequently assign a set of responsibilities to an office holder or statutory body operating at arm's length from the Government. These arrangements are designed to remove specific decision-making and investigative processes from political influence and it is essential that they remain, and are seen to remain, free from interference.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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- 12.6 It is also improper, and may be illegal, to encourage a public servant to act unethically or to engage in political activity during work time or using public resources; for example, a public servant should not be instructed to provide confidential information to a company tendering for a contract.
- 12.7 The political and other personal interests of public servants are to be disregarded unless such interests pose a conflict of interest or give rise to a breach of established conventions of public service neutrality.
- 12.8 It is quite proper, however, for a Minister to seek a briefing on the exercise of a statutory power by an official working in an agency administered by that Minister.
- 12.9 Government Departments, other agencies and the people employed in them are responsible to a specific Minister (in some cases more than one) in their work. For this reason Ministers should only deal directly with the departments and agencies and parts of departments and agencies for which they are personally responsible. If information is required about another portfolio area (which it often will be) the request should be directed through the office of the responsible Minister.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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### 13 Lobbyists

#### Code

Ministers must handle any dealings with lobbyists in accordance with the Tasmanian Government Lobbying Code of Conduct to avoid giving rise to a conflict of interest between their public duty and personal interests.

#### Guidance

13.1 This is covered by the *Tasmanian Government Lobbying Code of Conduct*.



# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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### 14 Post-Ministerial Employment

#### Code

Ministers must undertake that upon leaving office and for a period of two years thereafter, they will exercise care in considering offers of employment directorships, or to act as a consultant to any company, business or organisation with which they have had official dealings as a Minister in their last 12 months in office.

Ministers must undertake that upon leaving office they will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for the private advantage or benefit of themselves or another person or persons.

#### Guidance

14.1 Ministers should exercise care in taking up employment or business activities, or otherwise providing services to third parties in the period immediately after leaving Government.

14.2 Ministers need to avoid a perception that:

- The conduct of the Minister or former Minister while in office is or was influenced by the prospect of the employment or business activity or by the Minister or former Minister's intention to provide services to third parties; or
- The Minister or former Minister might make improper use of confidential information to which he or she has or had access while in office.

14.3 Particular care should be taken in acceptance of offers of employment from, or becoming engaged in the business activities of or otherwise providing services to, persons, businesses or other bodies:

- Which are in a contractual relationship with the Tasmanian Government;
- Which are in receipt of subsidies or benefits from the Government not received by a section of the community at large;
- In which the Government is a shareholder;
- Which are in receipt of Government loans, guarantees or other forms of capital assistance; or
- With which the departments or other entities of Government are, as a matter of course, in a special relationship.

# CODE OF CONDUCT FOR MINISTERS

## GUIDANCE

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- I 4.4 Ministers should note that these guidelines do not apply to Government appointments (such as board memberships), advocacy or dealings on behalf of not-for-profit entities (such as engagements with charity organisations, churches or the like), or personal, social or other contact generally available to members of the public.
- I 4.5 Where a Minister receives an offer of employment and intends to leave the Government in order to take up the offer, the Minister should immediately disclose his or her acceptance of the offer to the Premier, or in the case of the Premier, to Cabinet. The Premier (or Premier-elect where appropriate), has the discretion to advise alteration to the Ministerial arrangements in light of any offer accepted.
- I 4.6 In all areas, confidential information gained during office must not be used and care should be taken to ensure that preferential treatment for the new employer or the persons, business or other bodies is not obtained by the use of contacts and personal influence by the former Minister.
- I 4.7 For a period of two years after leaving office, Ministers are not to undertake lobbying activities (as set out in the *Tasmanian Government Lobbying Code of Conduct*) in relation to any matter concerning their dealings as a Minister in their last two years in office.

# CODE OF CONDUCT FOR MINISTERS

## DEALING WITH BREACHES

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- 1 Any allegation that a Minister has breached this Code of Conduct is to be referred to the Premier. Recognising the convention of collective responsibility for Government decisions, Ministers are obliged to report any Code non-compliance by themselves or by another Minister to the Premier, or in the case of the Premier to Cabinet.
- 2 There is no single way of investigating a complaint. The principles of natural justice and procedural fairness are to apply.
- 3 If a complaint is received the Premier may:
  - Investigate and then determine whether the Minister has breached the Code of Conduct;
  - Establish procedures for another person to investigate and provide recommendations about whether a Minister has breached the Code of Conduct;
  - Consult with other people on an appropriate procedure for considering the allegation;
  - Seek advice from other people including but not limited to the Parliamentary Standards Commissioner on the actions of the Minister and whether a breach of the Code has occurred; and
  - Refer the matter, as a complaint, to an appropriate body.
- 4 If a Minister engages in conduct which is found to constitute a breach of the Code, the Premier shall decide, in his or her discretion, upon an appropriate course of action. The appropriate sanction will depend on the nature and seriousness of the breach.
- 5 If a Minister is found to have breached the Code, the Minister may, among other things, be:
  - Asked to apologise;
  - Required to take remedial action;
  - Counselling;
  - Reprimanded;
  - Required to stand aside from any or all ministerial responsibilities for a period of time;
  - Asked to resign as a Minister; or

# CODE OF CONDUCT FOR MINISTERS

## DEALING WITH BREACHES

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- Recommended to the Governor for dismissal from his or her ministerial appointments.

# Code of Conduct for Ministers

## Annexure 2 - Receipt and Giving of Gifts Policy

May 2021

# RECEIPT AND GIVING OF GIFTS

## POLICY

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### **1. Application of Policy**

1.1 These guidelines apply to:

- Ministers and other members of Cabinet;
- The immediate families and dependants of Ministers and other members of Cabinet, but only in relation to, or consequential on, the official duties of the Ministers or, for persons who are not Ministers, their membership of Cabinet.

1.2 Any reference to a 'Minister' in this policy shall be read as including a person who is not a Minister but who is a member of Cabinet (listed above).

1.3 Where the Premier is the Minister who has received or is giving a gift, then any reference in this document to 'the Premier' as the approving authority shall be read as a reference to the Secretary, Department of Premier and Cabinet.

1.4 This policy is an annexure to the Code of Conduct for Ministers.

### **2. Definition of Gifts**

2.1 For the purposes of this policy, a gift has its common meaning and includes but is not limited to:

- a gift of money;
- a gift of a physical object;
- the conferring of a benefit; or
- indirect or concealed gifts such as:
  - the permanent or indefinite loan of money or property;
  - the sale or transfer of property at less than full value;
  - the provision for less than full value of a benefit which has a financial or commercial value; or
  - a gift that has been presented, donated or transferred.

2.2 Gifts:

- made in a will;

# RECEIPT AND GIVING OF GIFTS

## POLICY

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- to or from a relative, friend or acquaintance outside of the course of official duties (i.e. in a purely personal capacity) and which do not give rise to or create the appearance of a conflict of interest; or
- that form part of an approved assistance program such as a disaster relief arrangement;

do not fall within the scope of this Policy.

2.3 In cases of doubt, the matter may be referred to the Premier, the Secretary, Department of Premier and Cabinet or the Parliamentary Standards Commissioner for advice.

### 3. Principles

3.1 The acceptance and giving of gifts by Ministers should be guided by the principles set out in this Policy.

3.2 It is inevitable that situations will arise which are not adequately dealt with by the Policy. The exercise of good judgement is often required and it is the responsibility of the Minister to decide what is appropriate. Guidance can be obtained from the Premier, the Secretary, Department of Premier and Cabinet or the Parliamentary Standards Commissioner if required.

3.3 The overriding concern is to ensure that no conflict exists, or appears to exist, between the public duty and private interests of a Minister. Such conflict or appearance of conflict could relate to a Minister's past, current or future duties.

3.4 The propriety of accepting any gift must always be judged in terms of the possibility of creating, or appearing to create, a conflict of interest notwithstanding that the gift might be of less value than the monetary limits established by this policy.

3.5 Other than for token gifts, Ministers should indicate that it is contrary to Government policy to accept gifts. There are circumstances, however, where the acceptance of a gift on behalf of the State is necessary such as where:

- Refusal would adversely affect the interests of the State;
- Refusal would cause offence or embarrassment;
- Refusal would be contrary to the cultural norms of the donor; or

# RECEIPT AND GIVING OF GIFTS

## POLICY

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- The gift is part of a formal exchange of gifts between the Tasmanian Government and another government, institution, company or person approved by the Premier (eg those items presented at meetings with Ministers of the diplomatic and consular corps).
- 3.6 Under no circumstances should Ministers accept gifts involving the transfer of money or financial Instruments, regardless of value.
- 3.7 Regular or frequent gifts from a single source should be discouraged and avoided.
- 3.8 Ministers should not give, or make available any gift or benefit, other than as required for the discharge of their official duties in circumstances that would give rise to, or create the appearance of, a conflict of interest. This includes gifts and benefits offered to the Minister to do that which they are already paid to do.
- 3.9 Ministers should take all reasonable steps to ensure that their immediate family or dependants do not receive gifts or benefits which could compromise Ministerial independence by giving the appearance of an indirect attempt to influence, or secure favour with, the Minister.
- 3.10 Any gifts or benefits offered, whether made directly to the Minister or indirectly to their immediate family or dependents, must be declared to the Premier as soon as possible to be assessed as to whether it requires to be registered.

## 4. Receipt of Gifts

### 4.1. *Token Gifts*

- 4.1.1 Table favours, mementoes, remembrances or other tokens bestowed at an official function and other gifts received as souvenirs, marks of courtesy or of a seasonal nature may be accepted and retained by Ministers provided that they are of a minor value (eg. books, diaries, ties and scarves, pens, pins and badges, etc) and do not give rise to, or create the appearance of, a conflict of interest.

### 4.2 *Personal Gifts*

- 4.2.1 Personal gifts are those items which are clearly intended for the personal use or consumption of the recipient. Such gifts would include bottles of wine, hampers of food,



# RECEIPT AND GIVING OF GIFTS

## POLICY

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etc. Again the value should be minor and the gift itself should not give rise to, or create the appearance of, a conflict of interest. Ministers may also retain personal gifts.

### 4.3 *Other Gifts*

#### 4.3.1. Ownership

- All gifts, other than token and personal gifts, received in the course of official duty are to be declared and automatically become the property of the Crown.
- Gifts must also be declared where more than one gift is received from one source in any calendar year and the aggregated amount of those two or more gifts exceeds \$500.00.
- Where the value of a single gift is less than \$500.00 the Minister may apply to the Premier to retain the gift.
- The value of a gift is assessed on the basis of the Australian wholesale price in Australian dollars. The value of a gift received overseas will be assessed on the wholesale price of the country of origin.
- If there is any doubt as to whether a gift exceeds the \$500.00 limit, the Department of Premier and Cabinet will obtain a formal valuation from an appropriate source. Any costs incurred in obtaining the valuation are to be borne by the Ministerial and Parliamentary Support budget.

#### 4.3.2. Declaration and Future Use of Gifts

- Within 14 days of receiving a gift or, where the gift was received overseas, within 14 days of returning to Australia the Minister shall inform the Manager, Protocol in the Ministerial and Executive Services unit of the Department of Premier and Cabinet of the gift.
- Where a gift is received overseas, it must be declared to Australian Customs at the point of entry if the gift falls outside the normal duty free passenger concession, or if the gift is subject to a quarantine inspection. Where a gift received overseas does not qualify for duty free entry under normal passenger concessions, all custom duties and other relevant taxes are payable at the appropriate rate. In either instance, the Manager, Protocol should be notified. If the gift is to be retained by the Crown, any

# RECEIPT AND GIVING OF GIFTS

## POLICY

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duties and other relevant taxes may be borne by the Ministerial and Parliamentary Support budget.

- Ministerial and Executive Services must evaluate all gifts received to assess whether such gifts are required to be declared and registered (ie it is not a token or personal gift) and consult with the Minister or the Minister's staff on its intended future use.
- If the gift is to be declared, Ministerial and Executive Services shall:
  - complete a Declaration of Official Gift form; and
  - forward the declaration to the Minister's office for the Minister to sign.
  - Signed forms are then to be returned to the Manager, Protocol, who will update the Gifts register.
- All gifts, other than token and personal gifts, must be declared and surrendered to Ministerial and Executive Services. A Minister may apply to the Premier to retain the gift. The State of Tasmania will have first call to retain any gifts deemed to be of historical or cultural significance regardless of value.
- A copy of the appropriate format for a declaration is attached at Annexure A.
- Ministers are encouraged to make practical recommendations concerning the future use of surrendered gifts.
- For every declared gift the Premier will approve its future use including, but not limited to:
  - Transferred on loan for display in the Minister's parliamentary or ministerial office;
  - Transferred on loan for display in other Government offices;
  - Transferred on loan to a repository of items of cultural, educational or historical significance including museums, galleries, libraries, archives, schools or community institutions for display;
  - Stored or used by a Government agency;
  - Donated to a non-profit organisation or charity;
  - Disposed of, reduced to scrap or otherwise destroyed; or

# RECEIPT AND GIVING OF GIFTS

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- Retained by the Minister.

### 4.3.4. Display of Gifts in Ministerial or Parliamentary offices

- A Minister may request that declared gifts be issued on loan for display in his or her ministerial or parliamentary office.
- Any gift issued to a Minister on loan must be returned to Ministerial and Executive Services when the Minister no longer holds office, or if the item is required for official purposes, or at the request of the Secretary, Department of Premier and Cabinet.
- After an election all gifts on display in ministerial or parliamentary offices must be left in their original position and will be administered by Ministerial and Executive Services until the incoming Government confirms their continued display or other use.

### 4.3.5. Disposal of Gifts

Subject to the Premier's approval and within the requirements of any law and policies concerning the disposal of Crown property, the Secretary, Department of Premier and Cabinet has sole discretion concerning the storage or disposal of gifts not retained by the Crown.

## 5. **Giving of Gifts**

- 5.1 Ministers should refrain from giving any gift or benefit, other than in accordance with their official duties in circumstances that would give rise to, or create the appearance of, a conflict of interest. Ministers should have regard to economy and appropriateness when selecting a gift. To avoid embarrassment, advice should be sought from the Manager, Protocol prior to the giving of the gift.
- 5.2 Where a gift (over the value of \$500.00) is to be made, the permission of the Premier must be obtained. The request may be in respect of a specific person or for an event or trip where the specific recipients may not be able to be identified in advance.
- 5.3 Where more than one gift is to be given to an individual or single organisation, and the value of the gifts given in any 12-month period is over \$500.00, the approval of the Premier must be obtained.

# RECEIPT AND GIVING OF GIFTS

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- 5.4 Where the Premier has approved a gift or gifts over the value of \$500.00 to be made by a Minister, a Declaration of Official Gift is to be forwarded to the Secretary, Department of Premier and Cabinet within 14 days of giving the gift or, where the gift was made overseas, within 14 days of returning to Australia.
- 5.5 A copy of the appropriate format for a declaration is attached at Annexure A.
- 5.6 The Department of Premier and Cabinet will maintain a register of gifts given. The register will provide information on:
- Date gift given;
  - Name of Recipient;
  - Identity of the Gift Donor;
  - Description of Gift; and
  - Estimated value.

### **6. Sponsored Travel**

- 6.1 Except in accordance with these guidelines, Ministers are not to knowingly accept travel that is sponsored wholly or partly from non-government sources.
- 6.2 Sponsored travel includes the provision of transport, accommodation or living expenses to a Minister other than from official funds or the Minister's own resources.
- 6.3 The expectation is that Ministers travelling on official duties will do so at the expense of the State or, in certain cases, the Commonwealth.
- 6.4 All offers of sponsored travel, other than from the Commonwealth, are to be referred to the Premier for prior endorsement. In normal circumstances, such a request should arrive with the Premier at least six weeks prior to the proposed travel.
- 6.5 Sponsorship by another body may be approved particularly if acceptance of the offer could be considered of benefit to the State. Sponsorship by private firms or groups, however, is more likely to give rise to the appearance of a conflict of interest.
- 6.6 Offers of sponsored travel are not made acceptable by being undertaken in the Minister's own time, or in an unofficial capacity, particularly where any link exists or could be construed between the offer and the official duties of the Minister.

# RECEIPT AND GIVING OF GIFTS

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6.7 This part of the policy does not apply to:

- Travel taken as an official of an organisation which does not create, or give the appearance of creating, a conflict of interest; and
- Travel associated with parliamentary duties including parliamentary associations.

### **7. Functions, Entertainment and Hospitality**

7.1 The occasional provision of passes or tickets to entertainment events (eg sporting events and cultural activities) is normally regarded as hospitality and not as a gift, unless there is a potential for a conflict of interest arising, or being seen to arise, in relation to the receipt of such hospitality.

7.2 Frequent hospitality from a single non-official source, other than from family and friends in a purely personal capacity, especially when not associated with a distinctive or seasonal event is unacceptable.

7.3 In general terms, hospitality which is directed at establishing networking links between Ministers and persons associated with an organisation or industry, or at introducing a product or service to a Minister as part of a general launch is acceptable. The key issue is whether the hospitality is aimed at inappropriately influencing the Minister in the exercise of some specific or general duty or power, either individually in directing the activities of their department or through the exercise of a discretion, or collectively through the decisions of the Government.

7.4 Working lunches and dinners associated with a particular project or task are also not usually considered as gifts. Of importance in these circumstances is the nature of the benefit received (eg that the meal venue matched the nature of the work undertaken).

7.5 Care should be taken when hospitality is associated with sponsored travel. In all cases where travel is involved, the guidelines for sponsored travel should be followed.

7.6 The Minister's duty is to preserve the appearance, as well as the actuality, of independence of judgement and action from improper influence. The appropriateness of any hospitality is normally a matter for the individual Minister. Guidance can be obtained from the Premier, the Secretary, Department of Premier and Cabinet or the Parliamentary Standards Commissioner.

# RECEIPT AND GIVING OF GIFTS

## POLICY

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### **8. Gifts Register**

- 8.1 The Department of Premier and Cabinet maintains a register of official gifts received and given by Ministers.
- 8.2 The register provides information on:
- Date gift received;
  - Name of Recipient;
  - Identity of the Gift Donor;
  - Description of Gift;
  - Estimated value; and
  - Agreed disposal/recommended use.
- 8.3 Each calendar year before the last sitting day, the Premier will cause the register for that year to be tabled in the House of Assembly.
- 8.4 The Department of Premier and Cabinet will also publish the register on the internet.
- 8.5 Ministers are personally responsible for ensuring the accuracy of the register in relation to gifts received or given by them.

# RECEIPT AND GIVING OF GIFTS

## ANNEXURE A



### Declaration of Official Gift

Name of Minister	
Portfolio	
Description of gift (attach further pages if required)	The Ministerial and Executive Services unit of the Department of Premier and Cabinet will prepare this form for your Minister's signature. Please provide all relevant information to <a href="mailto:protocol@dpac.tas.gov.au">protocol@dpac.tas.gov.au</a> .
Estimated / actual value of gift (strike out whichever is inapplicable)	
Date of receipt / making of gift (strike out whichever is inapplicable)	
Identity of donor / recipient of gift (strike out whichever is inapplicable)	
Recommendation concerning future use of gift	<input type="checkbox"/> To remain Property of the Crown <input type="checkbox"/> To be donated to an organisation (Minister's choice *) <input type="checkbox"/> To be retained by the recipient

Signature of Minister		Date of declaration	
Approved		Date of approval	

## RECEIPT AND GIVING OF GIFTS

### ANNEXURE A

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\* Once arranged the organisation name and date given must be provided to Ministerial and Executive Services by email at [protocol@dpact.tas.gov.au](mailto:protocol@dpact.tas.gov.au).

SAMPLE