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**Decoding the code: applying the CPA code of conduct
benchmarks to the Legislative Assembly for the ACT**

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Introduction

In April 2015 a workshop hosted by the Parliament of Victoria brought together parliamentarians and Clerks¹ from across the nine regions of the Commonwealth Parliamentary Association (CPA) as well as other experts in the field. As a result of that workshop (there had been preliminary work undertaken by Monash University with interviews being conducted during a CPA conference in October 2014 in Cameroon) the CPA, on 24 April 2015 produced the *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*.² The document contained 67 benchmarks and states:

The CPA encourages Branches to use the Benchmarks as a set of provisions related to each other and together aimed to improve the integrity and performance of each legislature. Branches are encourage[d] to take the underlying contribution to integrity of each recommended Benchmark and adapt it to a particular parliamentary system so as to guide the conduct of Members and to benefit the performance of the parliament.

This paper examines how the *Code of Conduct for All Members of the Legislative Assembly for the Australian Capital Territory* (adopted on 25 August 2005), and other relevant instruments and arrangements, compare to the recommended benchmarks.

Background

The Legislative Assembly first examined whether it should have a code of conduct in 1991—two years after the Assembly was established. Despite committee inquiries in the First, Third, Fourth and Fifth Assemblies, which all recommended or encouraged the adoption of some form of a code of conduct, it wasn't until the Sixth Assembly in August 2005 that the Assembly formally adopted a code.³ The mover of the motion (the then Speaker, Wayne Berry MLA) noted in his comments the research from the respected social commentator Hugh Mackay who stated in 2001 that:

Australians view the honesty and ethics of Members of both State and Federal Parliament as only slightly better than those of car salesmen. Only 7 per cent of Australians believe that Members of both State (down 2 per cent, since 1997) and Federal (down 2 per cent) Parliament are of high or very high standards of honesty and ethics. The only profession rating lower than Members is car salesmen

In 2008 the Assembly further enhanced its integrity framework by passing a continuing resolution to appoint an Ethics and Integrity Adviser. The role of the Adviser is to provide advice to Members (on request), on ethical issues concerning the exercise of their official roles (including the use of entitlements and potential conflicts of interest), as well as giving advice that is consistent with the code of conduct or other guidelines.

¹ I was one of the clerks attending the workshop.

² Commonwealth Parliamentary Association, *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*, 2015.

³ *Minutes of Proceedings*, No 33, 25 August 2005, pp 318-24.

Subsequently, in 2013 the Assembly passed a further continuing resolution (CR 5AA) to appoint a Commissioner for Standards. The role of the Commissioner is to investigate specific matters referred to the Commissioner by the Speaker (or, in the case of a complaint made about the Speaker, the Deputy Speaker) and report to a committee of the Assembly which will, in turn, report to the Legislative Assembly on the outcome of any such investigation. Under the resolution any member of the public, member of the ACT Public Service or Member of the Assembly may make a complaint about a Member's compliance with the Members' code of conduct or the rules relating to the registration or declaration of interests.

Review of the code of conduct and affirming commitment to the code

The Assembly has reviewed the code of conduct on two occasions, both with the assistance of the Ethics and Integrity Adviser. The first review was conducted in October 2013, some eight years after the code was adopted. As part of that review the Adviser recommended that, at the commencement of each Assembly, there should be a motion for all Members to reaffirm their commitment to the code. On 24 October 2013 the Assembly passed the following resolution:

That we, the Members of the Eighth Legislative Assembly for the Australian Capital Territory, having adopted a code of conduct for Members, reaffirm our commitment to the principles, obligations and aspirations of the code.

The current Assembly is considering the second review (also conducted by the Ethics and Integrity Adviser) and it is expected that further refinements of the code will be adopted in August 2017. It is expected that Members of the Ninth Assembly will also reaffirm their commitment to the amended code in August 2017.

How have the Ethics and Integrity Adviser and the Commissioner for Standards operated?

As can be seen from Table 1, Members have made fairly regular use of the Ethics and Integrity Adviser since the role commenced in 2008. Each year the adviser is required to provide a report to the Speaker outlining the number of advices given and the sorts of matters (in general terms) that were the subject of advice (which the Speaker tables in the Assembly), as well as meet annually with the Standing Committee on Administration and Procedure (chaired by the Speaker and comprising each party's whip).

TABLE 1 ETHICS AND INTEGRITY ADVISER – NUMBER OF MEMBERS SEEKING ADVICE AND NUMBER OF ISSUES ON WHICH ADVICE WAS SOUGHT

| Year | No of Members that sought and received advice | No of individual advices provided |
|--------------|--|--|
| 2008-09 | 5 | 6 |
| 2009-10 | 2* | 3 |
| 2010-11 | 5 | 6 |
| 2011-12 | 3 | 4 |
| 2012-13 | - | - |
| 2013-14 | 4 | 6 |
| 2014-15 | 8 | 12 |
| 2015-16 | 7 | 14 |
| Total | 34 | 51 |

* Advice was also sought by a resolution of the Assembly relating to standing order 156

The Commissioner for Standards has been in operation at the Assembly since 2013, and since that time there have been four referrals (see Table 2). There is currently a proposal before the Assembly that the Speaker’s role in the process (ie, ascertaining whether a complaint is not vexatious etc) be reduced, and that complaints be referred directly to the Commissioner. As can be seen from Table 2, most of the complaints about MLAs so far have been raised by another MLA, but the Commissioner has not upheld any of the complaints referred to date.

TABLE 2 REFERRALS TO THE COMMISSIONER FOR STANDARDS

| Year | Alleged breach | Raised by | Breach of code found / not found |
|-------------|--|------------------|---|
| 2015 | Breaches of sections 3, 5, 9 and 10 of the Members’ Code of Conduct relating to: <ul style="list-style-type: none"> . seeking to gain financial or other benefit . acting in the public interest . public trust and confidence . conflicts of interest | Member | Not found |

| Year | Alleged breach | Raised by | Breach of code found / not found |
|------|---|--------------------------------------|----------------------------------|
| 2016 | Breaches of sections, 3, 5, 9 and 10 of the Members' Code of Conduct relating to: <ul style="list-style-type: none"> . seeking to gain financial or other benefit . acting in the public interest . public trust and confidence . conflicts of interest | Member | Not found |
| 2016 | Breaches of sections 7 and 15 of the Members' Code of Conduct relating to: <ul style="list-style-type: none"> . not disclosing confidential information . professional courtesy and respect | Member | Not found |
| 2016 | Breaches of section 3 and 6 of the Members' Code of Conduct relating to: <ul style="list-style-type: none"> . seeking to gain financial or other benefit . proper use of public resources | Campaign Director, Canberra Liberals | Not found |

How does the Assembly's code of conduct and related arrangements fare when measured against the CPA benchmarks?

Attachment A is an assessment of the Assembly's code of conduct against the CPA recommended benchmarks for codes of conduct for Members of Parliament. The assessments were made by myself and the Director of the Office of the Clerk, and we sought advice and input from the Assembly's Ethics and Integrity Adviser. Rather than assessing the Assembly as either meeting or not meeting the 67 benchmarks, we adopted the following rating scale:

2—Fully complies with the spirit and the letter of the benchmark

1—Partially complies with the spirit and the letter of the benchmark

0—Does not comply with the spirit and the letter of the benchmark.

We adopted this methodology as there were a number of benchmarks where, although we did not fully comply, there were substantive measures in place to address the underlying principle enunciated.

As can be seen from Attachment A, the ACT Legislative Assembly achieved a score of 96 out of a possible 132, or 77 per cent. Whilst a pleasing result, it indicates more work needs to be done, although, as we explain, we found some of the benchmarks difficult to measure against.

Do some of the benchmarks need to be modified?

In undertaking this exercise it became apparent that the benchmarks might benefit from modification in several areas in order that parliaments can use them to enhance their codes of conduct.

Benchmarks that we found difficult to measure or where we queried their usefulness are listed below, and comments about them are shown in Attachment A.

| No | Benchmark | Comment |
|-------|---|--|
| 3.1.4 | There should be an effective mechanism to verify any disclosure and to immediately notify any discrepancy in a public report to the House. | <p>Verification of disclosures made to the parliament by Members would be a very resource intensive exercise.</p> <p><i>The Assembly does not provide for an explicit mechanism for 'verifying any disclosure' but it is not clear how verifying a disclosure might produce an enhanced integrity outcome.</i></p> <p><i>The non-disclosure of information that is required to be disclosed pursuant to resolution is where integrity issues arise and the prospect of confirming non-disclosure presents obvious logistical difficulties.</i></p> <p><i>The onus is, and should be, on parliamentarians to disclose all information as required under relevant statute/regulation. Members of the Assembly by agreeing to abide by the code also acknowledge that a non-disclosure of relevant interests could give rise to an investigation by Standards Commissioner.</i></p> |
| 4.6 | Members if unable to discuss an ethical dilemma with an ethics adviser or having done so, remain in doubt, must act with caution and not engage in any potentially compromising action. | Ascertaining whether a Member has discussed a matter or has acted with caution and not engaged in any potentially compromising action is very difficult to measure. |
| 7.1.8 | Ensuring that newly elected members receive induction in the Code of Conduct, and engaging in self-assessment of their individual ethical competence. | Asking Members (who are very busy in the respective roles) to engage in self assessment on their individual ethical competence poses some logistical problem (ie, who would administer the assessment), as well as how it would be measured whether Members have completed such an assessment. |

Perhaps if the benchmarks were to be reviewed those listed above might warrant some revision /reconsideration.

Conclusion

The Legislative Assembly for the ACT has taken great strides in its endeavour to establish an effective code of conduct regime. Assessing the Assembly's code of conduct against the CPA recommended benchmarks has been a useful exercise, and has identified where further reform and enhancement needs to be done.

Applying the CPA Code of Conduct Benchmarks to the Legislative Assembly for the ACT—Assessment

Rating scale

2—Fully complies with the spirit and the letter of the benchmark

1—Partially complies with the spirit and the letter of the benchmark

0—Does not comply with the spirit and the letter of the benchmark

Proposed

Highly developed (score between 84-114)—The Parliament actively addresses ethics and integrity issues through a number of different procedural and institutional arrangements, including independent mechanisms to regulate, assess and adjudge the conduct of its members in a manner that would give electors a high level of confidence that the parliament and its members are operating in accordance with generally accepted ethical standards and that members will be held to account for misconduct.

Developed (score between 56-83)—The Parliament has several measures in place to address ethics and integrity issues. However, there are opportunities to improve arrangements in a number of areas to ensure that electors have confidence that the parliament and its members are operating in accordance with generally accepted ethical standards and that members will be held to account for misconduct.

Developing (score between 0-56)—The Parliament has limited arrangements in place to address ethics and integrity issues. There are a large number of areas where improvements can be made in order that electors can have a high level of confidence that the parliament and its members are operating in accordance with generally accepted ethical standards and that members will be held to account for misconduct.

Summary of results

There are 57 individual benchmarks and a possible maximum score of 114 using the above rating scale. The Legislative Assembly scored 84 or 73.68 percent.

Assessment

| Benchmark | Comment/Reference | Rating |
|--|--|--------|
| Benchmarks for Codes of Conduct for Parliamentarians | | |
| <p>3.1 Disclosure and Publication of Interests</p> <p>The code shall indicate that each Member shall disclose every interest which may create a perception of conflict between an interest and the duties and responsibilities set out in PRINCIPLES.</p> | <p>Continuing resolution (CR) 6</p> <p>Para 10 of the Code of Conduct (CoC) embodied in continuing resolution 5.</p> | 2 |
| <p>3.1.1 Each Member shall disclose to the Parliament all relevant interests that a reasonable person might think could give rise to the perception of influencing behaviour between the Member's duties and responsibilities and his/her personal interests (eg land and property assets, share-holdings, gifts, foreign travel, symbolic rewards (e.g. honorary degree), sources of income, remunerated employment, directorships, liabilities, hospitality and affiliations). These may be subject to a specified thresholds. This applies to items received and could also apply to items donated or given. These shall be disclosed immediately following election and continuously updated within a reasonable period specified by the parliament above a specified threshold (5 to 30 days is suggested).</p> | CR 6 and CoC para 5 relating to conflicts of interest | 2 |
| <p>3.1.2 A Member shall not vote in a division on a question about a matter, other than public policy (i.e. government policy, not identifying any particular person individually and immediately) in which he or she has a particular direct pecuniary interest above a threshold (if specified).</p> | Section 15 of the ACT Self-Government Act Standing Order (SO) 156 | 2 |
| <p>3.1.3 A Member shall not use for personal benefit confidential information (i.e. non-public information) gained as a public officer.</p> | Para 13 of the CoC | 2 |

| Benchmark | Comment/Reference | Rating |
|---|--|--------|
| <p>3.1.4 There should be an effective mechanism to verify any disclosure and to immediately notify any discrepancy in a public report to the House.</p> | <p>The Assembly does not provide for an explicit mechanism for ‘verifying any disclosure’ but it is not clear how verifying a disclosure might produce an enhanced integrity outcome.</p> <p>The non-disclosure of information that is <i>required</i> to be disclosed pursuant to resolution is where integrity issues arise and the prospect of confirming non-disclosure presents obvious logistical difficulties.</p> <p>The onus is, and should be, on parliamentarians to disclose all information as required under relevant statute/regulation. Members of the Assembly by agreeing to abide by the code also acknowledge that a non-disclosure of relevant interests could give rise to an investigation by Standards Commissioner.</p> | 0 |
| <p>3.1.5 The Parliament shall publish the interests disclosed and the purposes and amounts of expenditure of public funds by each Member as soon as practicable in the most accessible means available e.g. parliamentary website. (In open data format).</p> | <p>MLAs do not spend public funds. However, all declarations are available as Word documents on the Assembly’s website.</p> | 2 |
| <p>3.1.6 These provisions also apply to interests held by the member’s spouse or close family members.</p> | CR 6 | 2 |
| <p>3.2 Use of Public Property</p> <p>A code should make provision to the effect that a Member may use public funds, property or facilities only in the public interest and as permitted by law (does not include for party political purposes).</p> | <p>Para 6 CoC makes provision for the ‘proper use’ of Territory property. ‘Proper use’ would tend to exclude use of a publically provided resource for party political purposes.</p> <p>Section 14(1)(c) of the Self-Government Act also, arguably, establishes a cause of action for a member vacating his or her seat were he/she to use public property for a party political purpose.</p> <p>Guidance on these matters is provided in the Members’ Guide.</p> | 2 |

| Benchmark | Comment/Reference | Rating |
|---|---|--------|
| 3.3 Inducements | | |
| 3.3.1 A Member shall not accept any form of inducement that could give rise to conflict of interest or influence behaviour. | Paragraph 11 of the CoC SO 277(c) also establishes that an inducement may be treated as a contempt of the Assembly. | 2 |
| 3.3.2 A member shall not engage in paid lobbying, paid parliamentary advice or paid advocacy. | No explicit prohibition exists but, together, SO 277(c), s 14(1)(c) of the Self-Government Act, and para (5) of the CoC, all give rise to a general injunction against such activities. Para 3 of the CoC also establishes requirements in relation to conflicts of interest, which would be breached through paid lobbying, advice or advocacy. | 2 |
| 3.3.3 A Member shall not use his or her position to seek or secure future employment, paid lobbying, consultancy work or other remuneration or benefit upon ceasing to be a Member of Parliament. | Same as 3.3.2 | 2 |
| 3.3.4 A Member shall represent the interests of constituents on an equitable basis and not on the basis of personal or political affiliations, or inducements. | Together, paras (2), (3), (4), (8) of the CoC make suitable provision. | 2 |
| 3.4 Civility Members shall treat each other, the Parliament and the people with respect, dignity and courtesy, including parliamentary staff. | Together, paras (8) and (15) of the CoC | 2 |
| 3.5 Behaviour A Member shall not assault, harass, or intimidate another person. | The code provides that members must be respectful in their dealings and paragraph 3 requires that members comply with relevant laws, which include common law and statutory offences in relation to assault, harassment and intimidation. | 2 |

| Benchmark | Comment/Reference | Rating |
|---|---|----------|
| <p>3.6 Attendance</p> <p>Every member shall attend every sitting of the House, in accordance with practice of the House, except with reasonable excuse, or in the case of extended absences, if excused in accordance with the practice of the House.</p> | <p>Section 14(1)(b) of the Self-Government and SOs 22-24 Act address this .</p> | <p>2</p> |
| <p>Ethics Adviser</p> <p>As part of an effective implementation of a Code of Conduct, advice shall be available to individual MPs to help them decide how to deal with ethical dilemmas. A code of conduct may provide for an ethics adviser according to the following model.</p> | | |
| <p>4.1 The adviser shall be independent of influence by any person in giving advice. (The House should designate the title of the office)</p> | <p>The Assembly has, by virtue of CR 6A, an Ethics and Integrity Adviser who is independent in the exercise of the his/her functions (can only be removed from office for 'proved misbehaviour or mental incapacity on a resolution agreed to by the Assembly' CR 6A, para (8)</p> | <p>2</p> |
| <p>4.2 The adviser shall be selected by a non-partisan process or other method designed to secure multiparty support.</p> | <p>CR 6A, para (7)</p> | <p>2</p> |
| <p>4.3 The adviser shall have knowledge, experience, personal qualities and standing within the community suitable to the office; skill in professional ethics or law is desirable.</p> | <p>No explicit requirement. However, the practice has been that the Ethics and Integrity Adviser has these skills, knowledge and qualifications and this has been reflected in the publicly available selection criteria for the appointment and in the candidate that has been selected to perform the role.</p> | <p>2</p> |
| <p>4.4 The Code shall protect the adviser from removal except for proven misbehaviour or other reasonable grounds.</p> | <p>CR 6A, para (7)</p> | <p>2</p> |

| Benchmark | Comment/Reference | Rating |
|--|--|--------|
| 4.5 Members shall endeavour to routinely discuss ethical dilemmas with an ethics adviser. | <p>All members are encouraged to discuss ethical quandaries or potential conflicts of interest with the Adviser.</p> <p>The Clerk also routinely advises MLAs to this effect. The Adviser meets with all new MLAs each Assembly to explain the role, the sorts of issues that come within his/her remit and how to make contact.</p> <p>The Adviser's annual report (required pursuant to resolution) indicates that the Adviser has been consulted with a degree of regularity by MLAs [See attachment]</p> | 2 |
| 4.6 Members if unable to discuss an ethical dilemma with an ethics adviser or having done so, remain in doubt, must act with caution and not engage in any potentially compromising action. | While there is no specific provision to this effect by virtue of having agreed to comply with the code Members have in effect undertaken not to engage in any potentially 'compromising action'. | 0 |
| 4.7 Advice may be sought on conflicts of interest and any issue arising from codes of conduct and ethics and integrity issues. | CR 6A, 'Provision of advice' — paras (1) and (2) | 2 |
| 4.8 The adviser shall base advice in each instance on the facts as related by the MP and any other relevant facts of which s/he becomes aware. | CR 6A, 'Records'—para (1) | 2 |
| 4.9 The adviser shall not disclose the fact that s/he has been consulted, nor any information provided by the MP or any advice given to the MP. | CR 6A, 'Records'—para (2). In addition, the Ethics and Integrity Adviser signs a deed of confidentiality (subject to any resolution of the Assembly requiring disclosure of the Adviser's records). | 2 |
| 4.10 Advice sought and given is confidential, and shall not be accessible through provisions for freedom of information. However the person who seeks written advice may make it, and the related request, public. | CR 6A, 'Records'—para (2) and (3) In addition, the Ethics and Integrity Adviser signs a deed of confidentiality. This is subject to paragraphs (2) and (3) of CR 6A which enable advice to be released where the member who has requested the advice agrees or where the Assembly calls for the production of records where a member has sought to rely on the advice given. | 2 |
| 4.11 The adviser shall not investigate any complaint. | The Adviser has no investigative function | 2 |

| Benchmark | Comment/Reference | Rating |
|--|--|--------|
| <p>Enforcement</p> <p>As part of the effective implementation of a code, an independent system for investigating alleged breaches should be established; a suggested model follows:</p> | <p>CR 5AA makes such provision by establishing a Commissioner of Standards.</p> | 2 |
| <p>5.1 Complaints and Investigations.</p> <p>A code shall make provisions to the effect that:</p> | | |
| <p>5.1.1 A complaint alleging breach of the Code by a Member shall be made to an identified office holder who must forthwith refer it to an investigator for investigation of the facts.</p> | <p>CR 5AA, para (5)</p> | 2 |
| <p>5.1.2 At least one investigator must be appointed by the House as soon as practicable following adoption of the Code.</p> | <p>CR 5AA, para (1)</p> | 2 |
| <p>5.1.3 An Investigator shall be independent of Parliament, any Member of the Parliament, Government, or political party or grouping, and is appointed for a fixed term.</p> | <p>CR 5AA, paras, (1), (2)</p> | 2 |
| <p>5.1.4 The investigator must be selected by a non-partisan process or other method designed to secure multiparty support.</p> | <p>CR 5AA, paras, (1), (2)</p> | 2 |
| <p>5.1.5 An Investigator shall have knowledge, investigative skills, experience, personal qualities and standing within the community suitable to the office.</p> | <p>There is no express provision but practice has lent itself to the achievement of this benchmark and publicly available selection criteria make adequate provision for skills and experience requirements.</p> <p>The Commissioner is a well-respect former Supreme Court Justice.</p> | 2 |
| <p>5.1.6 The Code shall protect the investigator from removal except for proven misbehaviour or other reasonable grounds.</p> | <p>CR 5AA, para (3)</p> | 2 |
| <p>5.1.7 The investigator may determine that a complaint is frivolous or vexatious and decline to investigate it.</p> | <p>CR 5AA, para (6)(b)</p> | 2 |

| Benchmark | Comment/Reference | Rating |
|--|--|--------|
| 5.1.8 A Member and the complainant shall treat any complaint as if sub judice. | No express provision in the resolution, however, the protocols for investigation of complaints against members promulgated by the Commissioner and adopted by the Standing Committee on Administration and Procedure state that 'These protocols have been drafted with a view to ensuring that complaints can be investigated fully, fairly and efficiently. The Commissioner will not be influenced by any publicity and will ask complainants to await the results and not seek to agitate the same issues in the press at least until the investigation has been completed'. | 1 |
| 5.1.9 Any Member of Parliament shall cooperate with and assist an Investigator in the investigation of any complaint under the Code. | CoC, para (17) | 2 |
| 5.1.10 If there is evidence of a breach of criminal law, it must forthwith be referred to the police or corruption control agency as appropriate. | No express provision has been made. This matter was addressed in a comprehensive submission to the Select Committee on an Integrity Commission. | 0 |
| 5.1.11 After investigation, the investigator must present a report to the Presiding Officer (or Deputy if concerning the Presiding Officer) who must determine whether or not a breach has occurred, and if a breach has occurred, refer the report to the House for further proceedings in accordance with its rules. | The procedure is slightly different but addresses the substantive issue in the benchmark. See CR 5AA, para 4(b), para 9 | 2 |
| 5.1.12 If a complaint has become known publicly and has not been upheld, this outcome shall be made public. | No express provision. However, this is the practice that has applied with each of the investigations that have occurred since the arrangements were introduced. The publication order is within the ambit of the Standing Committee on Administration and Procedure. | 1 |

| Benchmark | Comment/Reference | Rating |
|---|--|--------|
| <p>5.2 Appeal or review</p> <p>The Code shall make provision that a Member against whom a complaint has been upheld, has rights to appeal or review.</p> | <p>The Commissioner does not decide/determine matters (that is the role of the relevant committee and the Assembly plenum upon receipt of a report).</p> <p>Both the committee and the Assembly effectively offer up opportunities for a member to appeal or seek the review of the finding of the Commissioner.</p> <p>General principles of natural justice and procedural fairness are provided for the Commissioner's protocols.</p> | 2 |
| <p>5.3 Sanctions and penalties</p> | | |
| <p>5.3.1 The Code shall specify graduated sanctions and penalties for breaches of the Code according to the seriousness of the effects of breaches on the functioning, reputation and legitimacy of the parliament.</p> | <p>The sanctions that are available to the Assembly are a matter for the Assembly to determine depending of the given facts that apply in a given set of circumstances.</p> <p>The Assembly does not have the power to fine or imprison a person.</p> | 0 |
| <p>5.3.2 The Code shall specify that a Member convicted of a breach of the criminal law, may in addition be subject to a sanction or penalty if found to have breached the Code.</p> | <p>This would appear to be redundant.</p> <p>Such a power undoubtedly exists and there are mechanisms under the standing orders to effect an additional measure of parliamentary accountability in these circumstances along the lines envisaged in the benchmark.</p> | 1 |
| <p>Making and updating the code</p> <p>The House shall ensure that its Code of Conduct remains relevant, is reviewed and revised periodically, is up to date and is familiar to its Members of Parliament</p> | | |
| <p>6.1.1 The Code shall be made by the House of Parliament whose Members are to be subject to its provisions (i.e. by each House in a bicameral Parliament) and remains in force unless and until remade.</p> | <p>The code remains in place by virtue of CR 5. The code is reaffirmed by MLAs with each new Assembly.</p> | 2 |
| <p>6.1.2 The Code shall be established by a decision of the House of Parliament to which it relates.</p> | CR5 | 2 |

| Benchmark | Comment/Reference | Rating |
|--|--|--------|
| 6.1.3 The Code shall be subject to continuous and regular review. A mechanism shall be established for this purpose and to report to the parliament on its operation immediately following each general election, and in response to requests by the Presiding Officer and at such other times as it wishes. | This is the Assembly's practice. The code remains in place by virtue of CR 5. The code is reaffirmed by MLAs with each new Assembly. | 2 |
| <p>Fostering a culture of ethical conduct</p> <p>Each House should sustain a culture of ethical conduct reflecting a sound understanding of the parliamentary role, the public interest and the institution of parliament. Such a culture may be facilitated by:</p> | | |
| 7.1.1 Introductory and continuing education to assist Members to enhance their skills in ethical deliberation. | Assembly conducts seminars for new MLAs which include presentations on ethics by the Ethics and Integrity Adviser. | 1 |
| 7.1.2 Induction which includes mentoring and experience-sharing activities involving both new and experienced Members. | Induction is conducted for new members. There is no 'experience-sharing' component. | 1 |
| 7.1.3 Exemplary behaviour by those in leadership roles. | Paragraph 9 of the CoC specifically calls for members to 'promote and support these principles by leadership and example....' | 2 |
| 7.1.4 Endeavours to detect and act to deter even minor breaches from which serious breaches may develop. | <p>The Assembly's arrangements specifically prohibit investigation of minor breaches via the Commissioner of Standards.</p> <p>However, the Office of the Legislative Assembly, through the normal course of administration and exercising internal financial controls, acts to both detect and deter minor breaches associated with the use of entitlements and other matters within its statutory functions.</p> <p>There is a broader discussion around the desirability of applying the same investigative and adjudicative mechanisms to minor or accidental breaches as would be applied to serious breaches. The notion of 'rectification' which has been used by the UK Standards Commissioner introduces a degree of 'process proportionality' – that is, less serious breaches are dealt with by way of less exacting and less onerous</p> | 1 |

| Benchmark | Comment/Reference | Rating |
|--|---|--------|
| | investigative and adjudicative modalities, while more serious matters are dealt with via more robust processes. | |
| 7.1.5 Members being encouraged to consult with the Ethics Advisor before acting on a matter that raises ethical issues. | Members are routinely advised by the Clerk to consult with the Ethics and Integrity Adviser. | 2 |
| 7.1.6 Members acknowledging and accepting provisions of a Code of Conduct when swearing an Oath or making an Affirmation. | <p>The Assembly does not require this as part of the oath/affirmation procedure. However, a resolution is passed each Assembly affirming the code and members adherence to it.</p> <p>The Assembly is currently contemplating the inclusion of provisions to require new members to accept and acknowledge the code prior to taking an oath of affirmation.</p> | 1 |
| 7.1.7 Publishing and making available the Code to both Members and the public. | Available on the Assembly website . | 2 |
| 7.1.8 Ensuring that newly elected members receive induction in the Code of Conduct, and engaging in self-assessment of their individual ethical competence. | <p>New members are provided induction in relation to the code of conduct and in relation to the role of the Ethics and Integrity Adviser.</p> <p>The highlighted text would appear to be an overly prescriptive provision/ excessively granular. There are a range of different mechanisms by which members might be able to engage with ethics curricula other than by way of self-assessment.</p> | 2 |
| 7.1.9 Encouraging discussions with the ethics adviser which shall be treated as routine and normal, with frequent informal contact between the ethics adviser and Members. | This benchmark does not readily lend itself to objective assessment. However, the Adviser's annual reports do provide an insight into the number of advices that are sought and the kinds of ethical issues that are being discussed. | 2 |
| 7.1.10 Requiring every Member to participate in activities to enhance their ethical competence on a regular basis. These activities could be online, if resources permit. | The Assembly has no such requirements. | 0 |
| 7.1.11 Requiring Members to provide evidence on a regular basis that they have read and understood the provisions of the Code. | The Assembly does not seek to do this. However, it is implied that in re-affirming the code each Assembly each members has read and understood its provisions. | 1 |

| Benchmark | Comment/Reference | Rating |
|---|---|---------------|
| 7.1.12 Endeavouring to adapt the code to changing expectations of society with regard to ethical conduct. | The code is reviewed with each Assembly to reflect contemporary standards and expectations and to attend to specific issues which may not have been addressed in a previous iteration of the code or have arisen from a report made by the Commissioner of Standards. | 2 |