



# **Code of Conduct for Members of Parliament**

(Adopted by Parliament – 23 March 2021)

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# 1 PREAMBLE

1.1 Parliament is the highest legislative authority in the Cook Islands. Its major functions are:

- a) legislating (examining, debating and approving new or amended laws);
- b) budget-making (approving the collection of taxes and other revenue and authorising spending by the government);
- c) representation of the citizens; and
- d) oversight (monitoring the work of government).

1.2 Members of Parliament are public officers. They:

- a) must act in the best interest of the nation;
- b) have a fiduciary relationship with the people on whose behalf they act;
- c) are entrusted with the responsibility to protect and uphold the common interests of the people; and
- d) must always put the public interest above all others.

1.3 Members of Parliament have complimentary obligations to Parliament.

- a) Their own behaviour should reflect favourably on the reputation and integrity of the institution of Parliament; and
- b) They should protect, strengthen and promote Parliament.

1.4 In the Oath of Allegiance taken by all those elected to Parliament, members swear to 'justly and faithfully carry out my duties as a member of Parliament of the Cook Islands.'

1.5 Members of Parliament accordingly acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of the Cook Islands.

1.6 It is the personal responsibility of every Member to maintain the highest standards of ethical behaviour to protect and maintain the integrity of Parliament and to make every endeavour to uphold the principles of the Constitution.

1.7 The new Code of Conduct for Members of Parliament was adopted by Parliament on 23 March 2021 and is included as Annex B to the new Standing Orders of Parliament. It is also published as a separate document.

1.8 Section 18(1) of the Civil List Act 2005 further obliges the Speaker and all Members to make an annual declaration of financial or other interests held in a company; and Section 19 places a duty of propriety on Members:

- To avoid private pecuniary interests in conflict with their public duty
- Not to use official information for private interests
- Not to use official influence for private purposes
- Not to use their official position in support of a candidate for employment or promotion in the Public Service
- Not to accept any favor from those in or seeking a contractual, proprietary, or pecuniary relationship with government.

## 2 THE CODE

### 2.1 Purpose of this Code

This code is intended to provide guidance to, and standards against which each Member, individually and collectively should perform their duties, obligations and responsibilities to Parliament, their constituents and the public at large.

### 2.2 Responsibilities of Members

- (1) Members must accept that their prime responsibilities are to:
  - (a) perform their public duty in an objective manner and without consideration of personal or financial interests, including a duty to declare any relevant private interests;
  - (b) represent the interests of their own electorate and their constituents; and
  - (c) represent the interests of the public at large.
- (2) Members of Parliament have individual responsibility as contributors to the efficient functioning of the Parliament institution.
- (3) Members of Parliament must respect the roles, independence, rights and responsibilities of parliamentary staff.
- (4) Every Member of Parliament has a responsibility to ensure that the Executive Government is accountable to the Parliament.
- (5) Members of Parliament must:
  - a) Act in good conscience
  - b) Act so as to earn the trust and respect of the community
  - c) Hold themselves accountable for conduct for which they are responsible
  - d) Exercise the privileges and discharge the duties of public office diligently and with civility, dignity, care and honour.

## 3 PRINCIPLES

A Member of Parliament must behave according to the following principles to:

### 3.1 Loyalty to the nation and its people

Uphold the contents of the Oath of Allegiance at all times and maintain the dignity and integrity of the Cook Islands; its institution and its people.

### 3.2 Respect for the Law

Uphold the laws of the Cook Islands and safeguard the principles contained in the Constitution. They shall give effect to the ideals of democratic government and abide by the letter and spirit of the Constitution and uphold the separation of powers and the rule of law.

### 3.3 Respect for all Persons

Treat other members, the public and officials with respect and dignity, honestly, fairly, and acting with integrity at all times.

### 3.4 Selflessness

Act solely in terms of the public interest. They must exercise the privileges and perform the duties of public office diligently and with civility, dignity, care and honour.

### 3.5 Integrity

Avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They must not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### 3.6 Objectivity

Take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### 3.7 Accountability

Be accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this. Any breaches of a personal nature can be addressed and explained through personal statements in Parliament in accordance with Standing Orders 49 (1) (l) and 232.

### 3.8 Openness

Act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons as set out in the Official Information Act 2008, for so doing.

### 3.9 Honesty

Be truthful and act so as to merit the trust and respect of the community.

### 3.10 Leadership

Exhibit these principles in their own behaviour. They must actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## 4 EXERCISE OF POWER

### 4.1 Influence and authority

Every Member shall arrange their affairs, use any and all information obtained from their public office, and exercise any influence or authority obtained from Public Office only to advance the public interest.

### 4.2 Disclosure and Publication of Interests

(1) Where any potential and actual conflict of interest arises whether in the Member's private, financial, pecuniary or any interest the Member must be required to declare that interest and take any steps to remove the conflict or withdraw from the particular process or transaction.

(2) A conflict of interest exists where a member participates in or makes a decision in the execution of their office knowing that it will improperly and dishonestly further the Member's private interest or another person's private interest directly or indirectly.

(3) A conflict of interest also exists where the member executes, or fails to execute, any function or duty knowing that it will improperly and dishonestly benefit their or another person's private interests directly or indirectly.

(4) Members are individually responsible for preventing conflicts of interest and must carry out their official functions and duties and arrange their private affairs to the best of their endeavours to prevent such conflicts of interest arising.

(5) Members must take steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office in accordance with Sections 18 and 19 of the Civil List Act 2005. This may be done through the following process:

a) Declaring their business and financial interests prior to being sworn in as a Member of Parliament at the commencement of each Parliamentary Session by way of completion and signing of a Declaration of Interests Form administered by the Clerk of Parliament in the presence of the Speaker of Parliament;

b) Declaring their interest when speaking on issues raised in Parliament or a Committee, or in any other public and appropriate manner.

(6) Declarations made under this section must be updated annually (prior to 31<sup>st</sup> January) and published as soon as possible in the most accessible means available, including the Parliament website. Members may voluntarily add further disclosures at any other time as required.

(7) These provisions also apply to interests held by the member's spouse or close family members.

### 4.3 Inducements

(1) In accordance with the Crimes Act 1969 and any subsequent amendments, members must not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for bribes, payments or any other personal financial benefit.

(2) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests in Section 4.2 (1) of this code.

(3) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the member in the exercise of his or her duties.

(4) Members may accept and account for political contributions only in accordance with regulations that may be prescribed under Part 10 of the Electoral Act 2004 and any subsequent amendments.

(5) Members must not engage in paid lobbying, paid parliamentary advice or paid advocacy.

### 4.4 Use of public resources

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

## 4.5 Use of confidential information

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.

## 4.6 Proper relations with Ministers and the public service

(1) Members must not approach Ministers, public servants or public bodies on a matter connected with a private interest without appropriate disclosure.

(2) Members must not improperly use their influence in order to obtain appointment, promotion, advancement, transfer or any other advantage within the public sector on behalf of themselves or another or to affect the proper outcome of any procedure established under the legislation for the management of the public sector.

## 4.7 Misleading the Parliament or the Public

Members must not knowingly mislead the Parliament or the public in statements they make and are obliged to correct the Parliamentary record as soon as possible when incorrect statements are made unintentionally.

## 4.8 Participation in Political Parties

It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.

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### *Constitution of the Cook Islands, Article 36.*

*Privileges of Parliament and of its members -*

*(1) The validity of any proceedings in Parliament or in any committee thereof shall not be questioned in any Court.*

*(2) No officer or member or Speaker of Parliament in whom powers are vested for the regulation of procedure or the conduct of business or the maintenance of order shall in relation to the exercise by him of any of those powers be subject to the jurisdiction of any Court.*

*(3) No member or Speaker of Parliament and no person entitled to speak therein shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or in any committee thereof.*

*(4) No person shall be liable to any proceedings in any Court in respect of the publication by or under the authority of Parliament of any report, paper, vote or proceeding.*

*(5) Subject to the provisions of this Article, the privileges of Parliament and of the committees thereof, and the privileges of members and the Speaker of Parliament and of the persons entitled to speak therein may be determined by Act; Provided that no such privilege of Parliament or of any committee thereof may extend to the imposition of a fine or to committal to prison for contempt or otherwise, unless provision is made by enactment for the trial and punishment of the person concerned by the High Court.*

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## 5 PARLIAMENTARY PRIVILEGES

### 5.1 Immunity from prosecution

Provisions are made for Privileges of Parliament and of its Members under Article 36 of the Constitution of the Cook Islands, the Legislative Assembly Powers and Privileges Act 1967, the Legislative Assembly Powers and Privileges Amendment Act 1986 and Parliament Standing Order 5.1. Under Article 36 of the Constitution and Parts 1 and 4 of the Legislative Assembly Powers and Privileges Act 1967, parliamentary immunity (i.e. parliamentary privilege) protects the right of Members of Parliament to speak in parliament without fear of prosecution or suit for defamation under the Defamation Act 1993.

### 5.2 Freedom of Speech

Members must be mindful of the privileges conferred when speaking in the Parliament and should consciously avoid causing undeserved harm to any individual who does not enjoy the same privileges.

### 5.3 Civility and Tolerance

(1) It is recognised that a balanced and diversity-respecting Parliament benefits the society it reflects and represents. A sense of tolerance and respect of different political positions should direct the working environment in the Parliament.

(2) Members must apply high standards of behaviour and consciously avoid personal abuse and denigration of Parliamentary colleagues.

### 5.4 Attendance

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.

## 6 ENFORCEMENT OF THE CODE

### 6.1 Complaints and Investigations.

(1) A complaint alleging breach of the Code by a Member must be made by any eligible voter in the Cook Islands to the Clerk of Parliament who, after consulting with the Speaker, must forthwith refer it to an independent investigator for investigation of the facts and preparation of a report with recommendations.

(2) The investigator must be selected by a non-partisan process or other method designed to secure multiparty support, and appointed by the Clerk of Parliament.

(3) An investigator shall be independent of Parliament, any Member of the Parliament, the Government, or a political party or grouping, and is appointed for a fixed term.

(4) An investigator must have knowledge, investigative skills, experience, personal qualities and standing within the community suitable to the office.

(5) The investigator is protected from removal except for proven misbehaviour or other reasonable grounds.

(6) The investigator may determine whether a complaint is frivolous or vexatious and decline to investigate it.

- (7) A Member and the complainant must treat any complaint as if sub judice meaning the complaint is subject to investigation and can't be discussed elsewhere.
- (8) Any Member of Parliament must cooperate with and assist an investigator in the investigation of any complaint under this Code.
- (9) If there is evidence of a breach of criminal law, the Clerk of Parliament, after consulting with the Speaker, must forthwith refer the case to the police.
- (10) After investigation, the investigator must present a report to the Speaker of the House (or Deputy if concerning the Speaker) 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.
- (11) If a complaint has become known publicly and has not been upheld, this outcome must be made public.

## 6.2 Appeal or Review

- (1) A Member against whom a complaint has been upheld, has rights to appeal or review the decision.
- (2) Appeals shall be dealt with by a Case Review Committee (CRC) consisting of the Speaker of Parliament, Clerk of Parliament and the Chairperson of the Privileges Committee.
- (3) The decisions of the CRC are final and no further appeals are permitted.

# 7 SANCTIONS AND PENALTIES FOR BREACHES OF THE CODE

## 7.1 Breaches

Breaches of this Code must be dealt with by the Privileges Committee.

## 7.2 Sanctions

The Privileges Committee is responsible for developing, adopting and imposing 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.

## 7.3 Exclusion from holding Public Office

The provision of the Electoral Act 2004 and any amendments in relation to eligibility for candidacy and for tenure of office applies to each member.

# 8 UPDATING THE CODE

## 8.1 Ongoing Reviews

The Code must be subject to continuous and regular review.

## 8.2 Managing Reviews and reporting to Parliament

The Privileges Committee is charged with the responsibility of managing the review process and reporting to Parliament on its findings and recommendations immediately following each

general election, and in response to requests by the Speaker and at such other times as it deems necessary.

## 9 GLOSSARY

**Civility** - *politeness and courtesy in behaviour or speech.*

**Close family member** - *is limited to a parent, a spouse or de facto partner, sibling or a child.*

**Conflict of interest** - *when a member's personal interests are contrary to his/her loyalty to public business.*

**Graduated sanctions** - *a set of intervention strategies designed to operate in unison to enhance the accountability by Members of Parliament under the Code of Conduct aimed at preventing criminal behaviour.*

**Immunity** - *being protected or exempted from penalty or punishment.*

**Inducements** - *personal benefits that lead someone to do something for another person.*

**Non-partisan** - *not biased towards any particular political group.*

**Parliamentary Privilege** - *legal immunities granted to Members of Parliament to allow them to perform their duties without interference from outside Parliament.*

**Pecuniary** - *relating to or consisting of money.*

**Privileges Committee** - *a Parliamentary Committee responsible for the oversight of processes dealing with the rights and privileges of Members of Parliament.*

**Proprietary** - *a person's ownership right to property.*

**Sub judice** - *prohibition of public discussion of a matter under judicial consideration.*