

Protocols for the ACT Public Service when interacting with non-Executive Members

PURPOSE

1. To assist a Minister with briefing a non-Executive member on an ACT Government matter and to assist members of the ACT Public Service (ACTPS) if there is contact with a non-Executive member of the ACT Legislative Assembly.

BACKGROUND

2. The *Public Sector Management Act 1994* (the Act) regulates the administration of the public sector of the Territory.
3. Section 5 Objects of the Act provides that the Act establishes and maintains an apolitical public sector that assist the Executive to meet the needs of the community and serves the community on behalf of the Executive.

PRINCIPLES

4. The ACTPS assists Ministers in undertaking their ministerial duties. This assistance may include the provision of briefings to a non-Executive member – with the Minister’s agreement on ACT Government matters.
5. It is appropriate for a Minister to seek a briefing to a non-Executive member provided that the information relates to the responsibilities of the respective Ministerial portfolio.
6. Requests for briefings can vary considerably depending on portfolio responsibilities and the priorities of Ministers.

PROTOCOL

7. It is not appropriate for the ACTPS to provide briefings directly to a non-Executive member (or a staff member of a non-Executive member), without the request and approval of the respective Minister’s Office.
8. Should the ACTPS receive a direct request for a briefing or an invitation to a meeting or event from a non-Executive member (or a staff member of a non-Executive member), the request should be referred to the relevant Minister.
9. Except at the behest of the Minister:
 - i. if the provision of a briefing is by means of a verbal briefing, the respective Minister’s Office Chief of Staff or Portfolio Policy Advisor must be in attendance, usually with a high level member of the ACTPS; and
 - ii. a briefing will only proceed when the non-Executive member is present.
10. Any briefing provided by the ACTPS will not include political commentary.
11. The ACTPS will provide briefing notes for ministers to brief caucus on Bills.

12. The Chief Minister may request the ACTPS brief all Members of the Legislative Assembly (MLAs) about extraordinary events such as natural disasters, emergency management or terrorist incidents.
13. The ACTPS should be aware of MLAs' obligations under the Code of Conduct for MLAs, specifically that where they are in receipt of information which is either confidential or unavailable to the general public, MLAs are privileged to receive this information. It is provided to assist them in their decision making for the benefit of the Territory. The status of this information should not be compromised. The Code of Conduct for MLAs requires that MLAs are not to misuse any confidential information received, particularly for personal gain or in the personal gain of others. MLAs should make only proper use of those public resources to which they have access.
14. Under the MLA Code of Conduct, Members are required to act with integrity, honesty and diligence. In their dealings with staff of the Assembly and members of the ACTPS, MLAs are required to extend professional courtesy and respect and recognise the unique position of impartiality and the obligations of ACTPS officials.
15. The ACTPS will assess requests for briefings in line with Caretaker Guidelines during a Caretaker period. The Guidelines are at <https://www.cmtedd.act.gov.au/functions/2016-election>.
16. This protocol does not apply to standard briefings required under the *Electoral Act 1992* or the *Australian Capital Territory (Self-Government) Act 1988* (Clth) such as where ACT Treasury Officials brief non government MLAs on the state of the Territory's finances in the lead up to an election. Any other direct briefing (not requested by a minister) of a non executive MLA must be approved by the Head of Service as provided in section 3 (e) of the Caretaker Guidelines.

DEFINITIONS

17. A **non-Executive Member** is a Member of the Legislative Assembly of the Australian Capital Territory (MLA) who holds any office in that Assembly that is not an executive office.
 - I. Following the 2016 general election, the Leader of the Australian Labor Party, ACT Branch (Mr Andrew Barr MLA), the ACT Greens Member for Kurrajong (Mr Shane Rattenbury MLA) and the ACT Greens Member for Murrumbidgee (Ms Caroline LeCouteur MLA) signed the *Parliamentary Agreement for the 9th Legislative Assembly for the Australian Capital Territory*.
 - II. Under the Agreement, the ACT Greens Member for Kurrajong (Mr Shane Rattenbury MLA) was appointed as a Minister. The Cabinet Handbook provides that Cabinet confidentiality may be waived only by the express, written agreement of the Chief Minister, to allow appropriate information sharing within the ACT Greens, particularly between Minister Rattenbury and Ms LeCouteur MLA, who is a backbencher. It also specifies that the Greens Minister will remain solely responsible for maintaining Cabinet confidentiality when consultation with the Greens MLA occurs.
18. For the purpose of these protocols, and in line with the Agreement, a member of the ACT Greens who is not a government minister is a **non-Executive Member**.
19. The *Australian Capital Territory (Self-Government) Act 1988* provides in Part V The Executive of the Australian Capital Territory with responsibility for governing the Territory. An MLA who holds an executive office is defined as a **Minister**.
20. The members of the **ACT Public Service (ACTPS)** are defined in section 12 (3) of the Act. The members of the ACT Public Service comprise the Senior Executive Service, officers and employees. Officers and employees of the ACT Public Service may be administrative officers, teachers, nurses, doctors, technical officers and others employed by the Territory.

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