

 All Members

# Speaking up and Speaking out



## As State Service Employees, you have the same right to make public comments as everyone else.

You do not need permission to make speak up and speak out.

**Except that you have to continue to comply with the State Service Code of Conduct (the Code) and complying with this can impact on what you can say, when you can say it, and/or how you say it.**

In this fact sheet we will provide you with guidelines and will go over what you should think about to enable you to avoid breaching the Code when you speak up and speak out about issues of concern to you individually and as a member of your AEU.

We also below comment on other issues that can arise and provide some golden rules/cheat guide to minimise any risk of breaching the Code.

**If you have any doubt or concerns about what you can say call us before you make comment.**

Your AEU has a Campaign and Media team who can provide comment and help and three lawyers in our member support team who can also provide focused assistance.

## Code of Conduct

**We assume** that you will of course comment honestly and with integrity and treat everyone with respect. And that you will not provide false or misleading information in connection with your State Service Employment.

The parts the Code that the Department/Government is most likely to use to limit your free speech are:

- An employee must maintain **appropriate confidentiality** about dealings of, and information acquired by, the employee in the course of that employee's State Service employment
- An employee must use Tasmanian Government **resources in a proper manner.**
- An employee must at all times behave in a way that **does not adversely affect the integrity and good reputation of the State Service.**

We will look at each and make some comments about what they actually and practically mean.

Always consider the context of what you are speaking out about about.

**An employee must use Tasmanian Government resources in a proper manner.**

An obvious impact of this is do not make comments or draft them when you are working. In a break is fine but our view is it is safer to comment after or before your working day.

If you are making a video or being filmed there is no rule that you cannot do it on school premises. In our view it is a reasonable use of the facility as a backdrop for your video. However, if you want to be 100% confident that you are not using Government resources then video it outside the school with the school as a backdrop. And obviously do not use school video making resources.

An employee must maintain **appropriate confidentiality** about dealings of, and information acquired by, the employee in the course of that employee's State Service employment (our bold)

This part of the Code is **not designed to prevent you giving your opinion** but to ensure you do not put confidential information into the public arena.

The phrase in the code is "appropriate confidentiality", not complete. Some information you have acquired in the course of your employment that can be shared.

An obvious target of this part of the Code is that you should not name students or reveal personal information about them or others.

Another target of the Code is commercial information, and the departments intellectual property such as detailed information on courses.

Regarding other information and data think about where it came from and whether it is publicly available, is it commercially sensitive or valuable. Clearly if any information is publicly available it can be used. If there is other information you want to use that is not public speak with your AEU first.

To minimise the risk of using information that it is appropriate to keep confidential, we suggest commenting in broader terms about education issues to avoid using specific information.

***“An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service”***

It is important to be clear that the Government of the day is not the State Service.

**The State Service is defined as consisting of “Heads of Agencies, holders of prescribed offices, senior executives and employees”.**

The integrity and good reputation of the public service is based on Public Servants working fairly, impartially and honestly to implement the policies of the government of the day regardless of whether they agree with the policies or government; and their being responsive to Government priorities and doing their best to deliver quality services in line with those policies.

Any public comment made must not create the impression that you or the Service are unable to fairly, impartially and honestly serve whoever happens to be in Government. This applies whether you agree with their policies or not and whether you voted for them or not.

This is a balancing act for employees that requires the exercise of common sense.

In your private capacity you can express criticism of a particular policy provided you do not say you refuse to implement it or anything that could raise reasonable doubt about your willingness to perform your work duties consistently with government policy.

Another a target of this element of the code, in relation to speaking out, is to prevent employees saying that the State Service or those working in it are above are corrupt, incompetent, or are acting corruptly, or incompetently or the like. Talk to us if you have concerns in this regard or the Integrity Commission.

### What can DoE do?

Even if you do all the right things and do not breach the Code of Conduct and do not misrepresent your views as those of your employer, DoE may still push back against your public comment.

If they do contact us immediately and get our advice **before** responding.

### INITIAL PUSH BACK

Your Principal may be instructed, or choose, to challenge your comments or this may be done via learning services or workplace relations. Our experience is that this is likely to occur, even if you have not breached the Code. Contact us immediately before responding.

Our experience is that often there has been no breach of the Code or that there is only part of your comment that is being challenged. Our lawyers will assist you to deal with this push back. In most cases following an AEU supported response no further action occurs.

### SUBSEQUENT ACTION BY DOE

They can consider imposing a lawful and reasonable direction(LRD).

If you get receive such a direction, contact us without delay. We can assist you to challenge it if appropriate, we often persuade the Department to revise their LRD's.

LRD's should only be issued in appropriate situations and the Industrial Commission will strike them down if there is no reasonable basis for the direction.

If you share something that may amount to a breach of the Code of Conduct, then you employer may commence and investigation into an alleged breach of the Code of Conduct under Employment Direction 5.

If they do contact us immediately and get our advice before responding. We note that any penalty for breach has to be appropriate in all the circumstances.

We are not aware of any member being terminated for a comment. There have been reprimands and directions.

### Golden Rules and Cheat Sheet

#### RESPECT AND INTEGRITY AT ALL TIMES

When making any comments in any forum (or participating in any type of campaign action) always behave with integrity, respect and be mindful of others. Angry, aggressive or disrespectful behaviour is not only wrong, and could land you in trouble, it is ineffective in persuading others to your viewpoint. We win arguments by maintaining the high moral ground and displaying the highest standards of professionalism and integrity.

#### ALWAYS COMMENT IN A PRIVATE CAPACITY

The comments must be clearly seen to be made in a private capacity. You are not a representative of DoE.

#### Tips:

- If emailing do not use your DoE/TAFE email address or signature.
- Put a disclaimer on any written communications you make; for example: “I am writing this in my capacity as a private citizen and not as a representative of the Department.” This can be used on social media (e.g. many people put “views are my own and not that of my employer” on their social media profiles), letters to the editor, emails etc. If you are talking on the radio, or at a public forum, we advise you also say this before you start speaking.

#### The comments must not raise *reasonable doubt* about your capacity to perform your work duties

As explained above, you can disagree with Government policy or initiatives so long as you don't bring into question your ability or willingness to perform your duties as required by your employer.

If you do make a comment that is critical of a policy or process, **always follow it or precede it** with a comment that makes it clear that “I **will obviously** follow that policy or process and perform my duties as a public servant regardless of my personal view”.

Example:

For example, in 2014, when school pathway planners were cut from schools (in your capacity as a private citizen or AEU Rep) you could talk about your belief that the decision is detrimental to career planning for students because...its a disaster as they receive less person-to-person tailored support, for example.

However, if in addition to the above statement you then went on to say something like “the My Education program that replaces pathways planners is a disaster and I refuse to use it” then it is a problematic statement! This kind of statement raises reasonable doubt about your capacity to perform your work and we **strongly advise you not to make such statements**.

### **BE ACCURATE AND FACTUAL**

*You must not knowingly misrepresent the facts concerning Government or departmental policy or misrepresent what is going on at your workplace.* Don't quote facts or figures (e.g. number of jobs across education in Tasmania) that you are unsure of – just talk about what you know and have experienced.

### **MAKING IT CLEAR YOU ARE COMMENTING IN A PERSONAL CAPACITY**

Our view is that it is sufficient to make sure in any oral or written comment that you are commenting in a personal capacity and not as a representative of your school or department.

There are some simple additional ways to minimize the risk of action against you, as they help distinguish your comments from those of the Department.

- comment without making it clear which school you work at;
- comment without making it clear if you work in the public sector.

This can be done by referring to yourself as a teacher or saying that you work in education, rather than referring to your specific workplace.

### **NAMING A SCHOOL**

The Code does not prevent you naming a school.

### **SPEAKING OUT AS A WORKPLACE DELEGATE**

Always be clear as to the role in which you are making a public comment e.g. as a Union delegate, as a parent, as a private citizen.

Endorsed Workplace Delegates have some protections and rights under the Agreement which include the right to promote union issues.

If you are an endorsed Workplace Delegate (AEU Rep) and we have asked you to make public comment in your capacity as an endorsed delegate, make it clear that you are speaking in your role within the Union rather than your role as a State Service Employee.

### **SOCIAL MEDIA**

The same protocols apply to speaking out in social media as with other forms of media.

Warning: due to the instantaneous and casual nature of social media there is a general tendency to be more inflammatory than in a considered letter. Please consider... before posting.

Below is a link to the departments social media policy.

<https://publicdocumentcentre.education.tas.gov.au/library/Document%20Centre/Social-Media-Policy.pdf>

### **DURING AN ELECTION/ CARETAKER PERIOD**

During a State election period the Caretaker Convention will come into action. Some of this convention aims to limit what state service employees can say, however, it is important to note that the convention is not law and any protections contained in your Award or Agreement will trump the Convention.

**If you have any doubt about whether your post may be appropriate, please contact our Legal and Industrial Team on 6234 9500 or [support@aeutas.org.au](mailto:support@aeutas.org.au)**

**Need Support? Your union is here to help**

**Email:** [support@aeutas.org.au](mailto:support@aeutas.org.au) **Phone:** (03) 6234 9500

**Visit the members area for resources and further information :** [aeutas.org.au/help](https://aeutas.org.au/help)



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