

Enhancing accountability
mechanisms for members of
parliament and ministerial staff

December 2015

A progress update

INTEGRITY
COMMISSION



The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

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This report and further information about the Commission can be found on the website

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Contents

CONTENTS	1
Acronyms, abbreviations and key terms	2
PREAMBLE	3
1: INTRODUCTION	4
<i>Codes of conduct</i>	6
<i>Parliamentary registers of interests</i>	7
<i>This report</i>	9
2: CODES OF CONDUCT FOR MEMBERS OF PARLIAMENT	10
3: CODES OF CONDUCT FOR MINISTERIAL STAFF	13
4: PARLIAMENTARY REGISTERS OF INTERESTS	17
5: CONCLUSION	21
APPENDIX: TABLE OF RELEVANT RECOMMENDATIONS FROM <i>PUBLIC OFFICE IS PUBLIC TRUST</i> AND THE 2011 INTEGRITY COMMISSION REPORT	22

Acronyms, abbreviations and key terms

Acronyms

HoRs:	House of Representatives
IC:	Integrity Commission
JSC:	Joint Standing Committee on Integrity
MP:	Member of parliament
PSC:	Parliamentary Standards Commissioner, whose office is established pursuant to s 27 of the <i>Integrity Commission Act 2009</i> (Tas)

Committees

The Committee: Joint Select Committee on Ethical Conduct

A temporary Tasmanian parliamentary committee established in 2008 to 'inquire into and report upon the issue of ethical conduct, standards and integrity of elected Parliamentary representatives and servants of the State in performing their duties'.¹

JSC: Joint Standing Committee on Integrity

A permanent Tasmanian parliamentary oversight body established pursuant to s 23 of the *Integrity Commission Act 2009* (Tas).

Legislation

Disclosure Act: *Parliamentary (Disclosure of Interests) Act 1996* (Tas)

IC Act: *Integrity Commission Act 2009* (Tas)

¹ Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009) 2 [1.4].

Preamble

The Integrity Commission was established on the recommendation of the Tasmanian Parliament's Joint Select Committee on Ethical Conduct's report *Public Office is Public Trust*.² Aside from recommending the establishment of the Commission, that report made several recommendations and findings³ in relation to codes of conduct for members of parliament, ministerial staff, and the parliamentary registers of interests.⁴

One of the functions of the Commission under the *Integrity Commission Act 2009* (Tas) is to develop standards and codes of conduct to guide Tasmania's public officers in the conduct and performance of their duties.⁵ The Commission also has a role in monitoring the operations of any registers relating to the conduct of members of parliament, which includes the parliamentary registers of interest.⁶

In 2011, the Commission released a comprehensive report proposing a set of model codes of conduct for ministers, members of parliament, and ministerial staff.⁷ Since that time, a ministerial code of conduct based on the Commission's recommendations has been implemented in Tasmania.⁸

However, there has been no substantive progress made in regard to codes for members of parliament, or ministerial staff. Additionally, there has been no progress made in addressing the Joint Select Committee on Ethical Conduct's recommendations about the parliamentary registers of interests.

The aim of this report is to serve as a reminder of these important matters and a prompt for further action. It consists of a brief comparative review, across all Australian jurisdictions, of the currently applicable:

- codes of conduct for members of parliament;
- codes of conduct for ministerial staff; and
- parliamentary registers of interests.

Given that it has been six years since the release of *Public Office is Public Trust*, and four years since the Commission's 2011 report, this report concludes by urging both the government and the parliament to take action to address the accountability gaps that currently exist in Tasmania.

² Ibid.

³ To view a list of relevant recommendations, see the appendix of this report.

⁴ The Register of Interests of Members of the Legislative Council and the Register of Interests of Members of the House of Assembly, established under the *Parliamentary (Disclosure of Interests) Act 1996* (Tas).

⁵ *Integrity Commission Act 2009* (Tas) ('IC Act') s 8(1)(a).

⁶ Ibid s 30(a).

⁷ Integrity Commission, *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania* (2011).

⁸ Previous to this, ministers were subject to the *Code of Conduct Government Members of Parliament 2006*, see ibid 12-13.

1: Introduction

- [1] The Integrity Commission ('the Commission') was established in 2010 in response to recommendations made by the Tasmanian Parliament's Joint Select Committee on Ethical Conduct ('the Committee') in its report, *Public Office is Public Trust*.⁹ The Committee had been established to undertake a review of the ethical framework of Tasmanian public institutions, and as part of that role it also made a number of recommendations and comments about codes of conduct and the parliamentary 'registers of interests'.
- [2] A well-designed code of conduct is a positive and aspirational instrument that embodies and operationalises core values and principles. It provides those to whom it applies with a clear ethical landscape in which to exercise their professional judgement and perform their public role with confidence. For those working in the public interest, a code of conduct is a widely accepted accountability tool. In Tasmania, members of the Legislative Council and ministerial staff are not subject to a publicly available code of conduct, while the following groups of public officers¹⁰ are (or soon will be):
- local councillors;¹¹
 - state servants;¹²
 - police officers;¹³
 - government ministers;¹⁴ and
 - members of the House of Assembly, who are subject to the *Code of Ethical Conduct*, and the *Code of Race Ethics*.¹⁵
- [3] A parliamentary register of interests is a register in which the interests of members of parliament (MPs) are listed. The definition of 'interests' varies between jurisdictions, but it generally includes things such as income, bank accounts, and property. The purpose of such a register is to inform members of the public of any personal interests which may reasonably be seen to influence the member in the performance of their public role. Like all other Australian jurisdictions, Tasmania has registers of interests for its MPs – the Register of Interests of Members of the Legislative Council, and the Register of Interests of Members of the House of Assembly. The registers were established by, and operate in accordance with, the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) ('*Disclosure Act*').

⁹ Primarily, Recommendation 29, see *Public Office is Public Trust*, above n 1, 160–1.

¹⁰ As defined in *IC Act* s 4 (definition of 'public officer').

¹¹ Recent amendments to the *Local Government Act 1993* (Tas) have stipulated that Tasmanian councils are to adopt a model code of conduct for councillors (with some permitted variations), which is to be made publicly available, see *Local Government Amendment (Code Of Conduct) Act 2015* (Tas) s 7. The amendments are yet to come into force (as of 2 December 2015).

¹² *State Service Act 2000* (Tas) s 9.

¹³ *Police Service Act 2003* (Tas) s 42.

¹⁴ Tasmanian Government, *Code of Conduct for Ministers*, April 2014 <http://www.dpac.tas.gov.au/data/assets/pdf_file/0016/53503/Code_of_Conduct_for_Ministers.PDF>.

¹⁵ Tasmania, House of Assembly, *Standing and Sessional Orders and Rules*, May 2014 rr 3–4 <<http://www.parliament.tas.gov.au/ha/SO&Sessionals.pdf>>; members of parliament may also be subject to their own party's code of conduct.

- [4] Recommendations in *Public Office is Public Trust* that related to codes of conduct and the registers of interests included that the:
- Tasmanian registers of interests include the interests of persons related to MPs, and that the registers be published on the internet;
 - *Disclosure Act* be amended to specify that complaints of breaches may be made to the Commission; and
 - Legislative Council adopt a code of ethical conduct and a code of race ethics (as already adopted by the House of Assembly).
- [5] In response, the stated intentions of the then government were that:¹⁶
- it would act on the later recommendations of the Commission (after its establishment) in regard to listing the interests of related persons on the registers of MPs interests;
 - the registers would be available online through the Commission’s website; and
 - it would support the implementation of codes in the Legislative Council.
- [6] After its establishment, in June 2011 the Integrity Commission tabled a report in parliament titled *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania*.¹⁷ Among other things, the report recommended that the:
- State Government adopt codes provided for ministers and for ministerial staff in the report, and that such codes be tabled in parliament;
 - House of Assembly and Legislative Council adopt a revised code of conduct for the members of each chamber of parliament; and
 - House of Assembly retains but reviews the current *Code of Race Ethics*, while the Legislative Council give consideration to adopting a reviewed code of race ethics.
- [7] That report made a number of other recommendations, including that it be referred to the Commission’s oversight body, the Joint Standing Committee on Integrity (JSC),¹⁸ for timely consideration and reporting. Other recommendations related to: regular reviewing of the codes; training in the codes and ethical conduct for MPs, ministers and ministerial staff; the adoption of guidelines on gifts and benefits; and making relevant codes publicly available.¹⁹ The report did not cover the registers of MPs interests in great detail, although the issue was canvassed to some extent as part of the requirements of MPs to declare interests under codes of conduct.²⁰
- [8] Despite the passage of six years since the release of *Public Office is Public Trust*, and four years since the Commission’s report, few of the above recommendations have yet been implemented. There is still no code of conduct applicable to the Legislative Council, nor are Tasmanian MPs required to disclose the interests of related persons.

¹⁶ Tasmania, Department of Justice, *Tasmanian Government Response to Recommendations in the Final Report of the Joint Select Committee on Ethical Conduct* (4 November 2009).

¹⁷ *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania*, above n 7.

¹⁸ The JSC is not the same body as the Joint Select Committee on Ethical Conduct, and is established pursuant to s 23 the *IC Act*.

¹⁹ *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania*, above n 7, 157.

²⁰ *Ibid* 13, 39.

- [9] The aim of this report is to serve as both as a reminder and a further call to action regarding matters that were identified in *Public Office is Public Trust*. It consists of a review of the applicable codes in all Australian jurisdictions to see what, if anything, has changed since the Commission's 2011 report. It also includes a comparison of MP disclosure requirements throughout Australia as they relate to family members of parliamentarians, in order to address the recommendations of the Committee. This report does not seek to update the models proposed by the Commission in 2011.

Codes of conduct

- [10] When a code of conduct exists, it is significantly more straightforward to define and enforce the standards of conduct expected by the community of those who work in the service of the public, and whose salaries are usually derived from taxpayer funds. Under the *Integrity Commission Act 2009* (Tas) ('*IC Act*'), 'misconduct' is defined as, among other things, a 'breach of a code of conduct'.²¹ Without a code of conduct, it can be difficult to determine exactly why obviously inappropriate behaviour is in fact inappropriate, or why it may amount to 'misconduct'.
- [11] As part of its role under the *IC Act*, the Commission has jurisdiction in regard to the development of codes of conduct, and MP breaches of codes of conduct.²² The *IC Act* also provides for the Commission to:

review, develop and monitor the operation of any codes of conduct and guidelines that apply to Members of Parliament; and... where appropriate, propose to a Parliamentary integrity entity²³ possible modifications of any code of conduct or guidelines.²⁴

- [12] Accordingly, the Commission's 2011 report proposed codes of conduct for MPs, ministers and their staff to respond to:

increasing community expectations about the need for clearly delineated standards of conduct that will inspire the confidence and trust of Tasmanians through strengthening the accountability of parliamentarians, ministers and those who work for them.²⁵

- [13] Subsequent to the publication of the Commission's report, a code of conduct for ministers was issued by the then premier in 2012.²⁶ The code reflected the model provisions proposed by the Commission, together with an associated policy on the giving and receiving of gifts and detailed guidance notes. In 2014, the current Premier re-issued the code, the policy on gifts, and the guidance notes.

Members of parliament

- [14] Despite the existence of a one page aspirational code for members of the House of Assembly (the *Code of Ethical Conduct*), there is no code of conduct for members of the Tasmanian Legislative Council. It is an anomaly that members of parliament – who

²¹ *IC Act* s 4 (definition of 'misconduct').

²² *Ibid* ss 4 (definitions of 'misconduct', 'public officer'), 8(1)(a).

²³ Under *IC Act* s 4 (definition of 'Parliamentary integrity entity'), 'Parliamentary integrity entity' means either the President of the Legislative Council, or the Speaker of the House of Assembly.

²⁴ *IC Act* ss 30(c)–(d).

²⁵ *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania*, above n 7, 2.

²⁶ Previous to this, ministers were subject to the *Code of Conduct Government Members of Parliament 2006*, see *ibid* 12–13.

arguably have a greater degree of responsibility to the public than some of the other public officers listed above – are not all expected to adhere to a consistent standard of publicly enforceable conduct.

- [15] While the Commission’s 2011 report has been considered by the JSC, progress has been slow. The JSC has previously asked the Commission to provide responses to comments it had provided on the model code proposed in its report. The Commission’s view – as expressed to the JSC – was that the Commission had provided both a model code and further advice on members’ suggestions, however, it was a matter for the JSC and each House of parliament to make decisions about the content. While this will require grappling with some difficult issues, it will also help to ensure ownership of the outcome by all members.

Ministerial staff²⁷

- [16] There is no publicly available code of conduct for ministerial staff in Tasmania. However, they are subject to a code which is contained in their instrument of appointment. The *Public Office is Public Trust* report made no recommendations on the code of conduct for ministerial staff, although the issue was mentioned and two relevant findings were made. In abbreviated form, they were that:

*on the evidence presented, ... Instruments of Appointment of Ministerial Staff ... provide appropriate prescriptions for the conduct of the targeted office holders. ... [but] there is a significant need for the legislative prescription of appropriate penalties for any breach of the [instrument].*²⁸

- [17] A member of parliament’s duty to serve the public is obvious, and they are directly accountable to the community for their actions. Yet ministerial staff are neither elected, and nor are they state servants employed under the *State Service Act 2000* (Tas).²⁹ Ministerial staff are, however, appointed to serve the interests of ministers, who in turn are appointed to serve the interests of the public. As their pay is derived from public monies, it is therefore reasonable for the public to expect advisors to adhere to a certain (known) standard of conduct. Moreover, in acting as a conduit between ministers and the State Service, ministerial staff also perform an increasingly prevalent role³⁰ in government. If ministerial staff are not able to be measured against an ethical framework, an accountability gap is left in the structure of government.³¹

Parliamentary registers of interests

- [18] The Commission considers that the parliamentary registers of interests are a key – albeit somewhat neglected – method of achieving accountability and trust. Along with a code of conduct, they are central integrity mechanisms for elected members.

²⁷ Ministerial staff (also known as ministerial advisers or staffers) form part of an executive support service that lies outside the State Service, and may perform a number of roles; see Ian Holland, ‘Accountability of Ministerial Staff?’ (Research Paper No. 19, Parliamentary Library, Parliament of Australia, 2002) 1–5.

²⁸ *Public Office is Public Trust*, above n 1, 56.

²⁹ Although they may be seconded from the State Service; see *Public Office is Public Trust*, above n 1, 54 [6.5], quoting Tasmanian Government, Submission No 25A to Joint Select Committee on Ethical Conduct, August 2008, 37.

³⁰ Holland, above n 27, 5–11; Yee-Fui Ng, ‘Ministerial Advisers: Democracy and Accountability’ in Glenn Patmore and Kim Rubenstein (eds), *Law and Democracy: Contemporary Questions* (ANU Press, 2014) 65, 65; *Public Office is Public Trust*, above n 1, 54 [6.4].

³¹ For examples of, and discussions about, the risks, see: *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania*, above n 7, 24; Ng, above n 30, 65; Holland, above n 27.

- [19] Following the release of *Public Office is Public Trust* in 2009, the then government intended to seek amendment of the *Disclosure Act* to move responsibility for the registers of interests to a separate statutory office holder established under the *IC Act*, the Parliamentary Standards Commissioner (PSC).³² As a result of that, the government undertook to implement amendments to disclosure requirements in a form to be recommended by the Commission, and indicated that the register would be published on the Commission's website.
- [20] As it transpired, the *IC Act* did not transfer the responsibility for the register from the clerks of each House to the PSC. As the Commission is not responsible for the registers, it is not able to publish them on its website.³³
- [21] While its responsibilities are not as extensive as first proposed, the Commission does have a role to play in monitoring the registers of interests. Pursuant to s 30(a) of the *IC Act*, the Commission is to 'monitor the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament'.
- [22] Separate to the Commission's role, one of the PSC's roles is to
- provide advice to Members of Parliament and the Integrity Commission ... relating to the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament.*³⁴
- [23] The actual registers consist of the returns (both primary and ordinary) lodged by members within the previous eight years, filed in alphabetical order. Effectively, the Commission's obligation under the *IC Act* is to monitor the primary and ordinary returns of members and the actual declarations of interest. However, 'monitor' is not defined in the *IC Act*. The Commission's practice has been to inspect each member's annual return and note if the information disclosed complies with the *Disclosure Act*. Thus far, the Commission's monitoring has not sought to verify the accuracy of the information provided, nor whether it constitutes a full disclosure.
- [24] The Commission has provided feedback to the clerks of both houses and the former Premier on its monitoring of the disclosure of interests registers. This has included reporting of errors in the forms observed through these inspections, and suggestions for amendments to the forms. This approach recognised the need to first establish the Commission and its various functions and roles, resulting in a narrow interpretation of 'monitor the operation', and the restriction of this – for the most part – to the parliamentary disclosure of interests register. However, as noted above, the *IC Act* provides for the Commission to monitor the declarations of conflicts of interest, and any other register, and also for the Commission to publicly report on the exercise of its functions.³⁵

³² *Tasmanian Government Response to Recommendations in the Final Report of the Joint Select Committee on Ethical Conduct*, above n 16, 3.

³³ The registers are also not published on parliament's website, but are available for viewing in hard copy.

³⁴ *IC Act* s 28(1)(b).

³⁵ *Ibid* s 11(3).

This report

[25] The remainder of this report is a review and comparison of the applicable registers and MP and ministerial staff codes in all Australian jurisdictions. The report does not update the good practice models that were first proposed by the Commission in 2011. The Commission considers that this work would be best performed when the government and the parliament give clear indications that they are ready to remedy the current accountability gaps. It is hoped that the publication of this report will act a catalyst for the progression of these important issues.

2: Codes of conduct for members of parliament

- [26] In Tasmania, only one House of parliament has any type of code of conduct for members. The Tasmanian House of Assembly has both a *Code of Ethical Conduct* (a one page aspirational declaration of principles), and a *Code of Race Ethics*. There is no code for members of the Legislative Council.
- [27] The Joint Select Committee on Ethical Conduct, in its report *Public Office is Public Trust*, recommended that the Legislative Council adopt a code of ethical conduct and a code of race ethics. Despite the lack of progress on implementing such a code, the need for a code of conduct for those holding public office has been recognised by Tasmanian parliamentarians. For example, the following statement was made (about councillors) in the second reading speech for the Local Government Amendment (Code of Conduct) Bill 2015:
- The vast majority of Tasmanian councillors uphold the highest levels of probity that the community expects of them. Nonetheless, it is vital that there is an effective and enforceable system in place to address the instances in which a councillor disregards the standard of behaviour that the community expects of them, and that they have agreed to uphold in performing their role.*³⁶
- [28] Queensland, the Northern Territory, and the Australian Capital Territory all have codes of conduct which cover their single houses of parliament. Victoria and New South Wales have codes that cover both houses. The ACT is the only jurisdiction in Australia that has reviewed and amended its code since the release of the Commission's report in 2011. Although the most recent version of the ACT code is similar to the original, the 2013 changes could more accurately be described as revisions, rather than amendments.
- [29] Members of Tasmania's Legislative Council are not the only MPs in Australia that do not have to adhere to a specific code of conduct. As was the case in 2011, neither South Australia nor the Commonwealth have introduced formal codes of conduct for their parliamentary members. However, the South Australian Government is currently considering the introduction of a 'statement of principles'.³⁷ The situation in Western Australia is similar to that in Tasmania, with only one House of parliament having a code of conduct (the Legislative Assembly).

³⁶ Tasmania, *Parliamentary Debates*, Legislative Council, 25 June 2015 (Vanessa Goodwin); Tasmania, *Parliamentary Debates*, House of Assembly, 26 May 2015 (Peter Gutwein).

³⁷ The amount of time this statement has been under consideration, with no apparent substantive progress, has been the subject of comment by the South Australian anti-corruption commissioner, see Independent Commissioner Against Corruption, *Annual Report 2014–2015* (September 2015) 51.

CODES OF CONDUCT FOR MEMBERS OF PARLIAMENT³⁸

ACT	NSW	NT	Qld	Tas	Vic	WA
Title						
<i>Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory</i>	<i>Code of Conduct for Members</i>	<i>Members' Code of Conduct and Ethical Standards</i>	<i>Code of Ethical Standards</i>	<i>Code of Ethical Conduct for Members of the House of Assembly; Code of Race Ethics for Members of the House of Assembly</i>	<i>Code of conduct for Members</i>	<i>Code of Conduct for Members of the Legislative Assembly</i>
Code applies to						
All members of the House (unicameral parliament)	All members of both houses	All members of the House (unicameral parliament)	All members of the House (unicameral parliament)	Members of the House of Assembly only	All members of both houses	Members of the Legislative Assembly only
Date first introduced						
25 August 2005	5 May 1998 (Assembly); 26 May 1999 (Council)	9 October 2009	September 2004	22 May 1996	1978	28 August 2003
Last amended						
24 October 2013	June 2007	Nil	11 May 2009	Nil	Nil	Nil
Last reviewed						
July 2012	2014 (review required every four years)	Nil	2010	Nil	2009	Nil

³⁸ The Commonwealth and South Australia are excluded from this table, as they do not have a code for either of their houses of parliament.

CODES OF CONDUCT FOR MEMBERS OF PARLIAMENT³⁸

ACT	NSW	NT	Qld	Tas	Vic	WA
Established/enacted by						
Standing orders ³⁹	Resolution of each House ⁴⁰	Legislation – <i>Legislative Assembly (Members’ Code of Conduct and Ethical Standards) Act 2008</i> (NT)	Parliamentary policy ⁴¹	Standing orders ⁴²	Legislation – <i>Members of Parliament (Register of Interest) Act 1978</i> (Vic)	Resolution of the House ⁴³

³⁹ Australian Capital Territory, Legislative Assembly, *Standing Orders and Continuing Resolutions of the Assembly*, November 2015, 74 <http://www.parliament.act.gov.au/in-the-assembly/standing_orders>.

⁴⁰ New South Wales, Legislative Assembly, *Sessional Order (551) - Code of Conduct for Members*, 3 May 2011 <<http://www.parliament.nsw.gov.au/prod/LA/precedent.nsf/0/17D6715BD9124FFACA25788B001A1537>>; New South Wales, Legislative Council, *Code of Conduct for Members*, 21 June 2007 <<http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/LCCodeOfConduct>>.

⁴¹ Queensland, Legislative Assembly, *51st Parliament Code of Ethical Standards*, September 2004 <<https://www.parliament.qld.gov.au/work-of-assembly/procedures>>.

⁴² Tasmania, House of Assembly, *Standing and Sessional Orders and Rules*, May 2014 rr 3–4 <<http://www.parliament.tas.gov.au/ha/SO&Sessionals.pdf>>.

⁴³ Western Australian, Legislative Assembly, *Code of Conduct for Members of the Legislative Assembly*, 28 August 2003 <[http://www.parliament.wa.gov.au/webcms/webcms.nsf/resources/file-code-of-conduct-for-members/\\$file/Code+of+Conduct+for+Members.pdf](http://www.parliament.wa.gov.au/webcms/webcms.nsf/resources/file-code-of-conduct-for-members/$file/Code+of+Conduct+for+Members.pdf)>.

3: Codes of conduct for ministerial staff

- [30] As was the case in 2011, instruments of appointment for Tasmanian ministerial staff refer to a 'standard of conduct' and contain comprehensive requirements that reflect the wording of the *State Service Code of Conduct*.⁴⁴ On the election of the current government, a new code for ministerial staff was presented by the Department of Premier and Cabinet for consideration. However, the government has continued to use the existing standard contained within the instruments of appointment. The instruments are administered by the Premier's Chief of Staff; they are not publicly available.
- [31] The Commission considers that a system in which the form of the code is unknown to the public, and in which the administration of such a code is largely invisible, is not transparent. A publicly available, stand-alone, code of conduct would facilitate oversight by the Commission and other relevant bodies, and also the general public.
- [32] Of the five jurisdictions that do have publicly available codes for ministerial staff, both Western Australia and South Australia include ministerial staff under their state service codes. Queensland, New South Wales and the Commonwealth all have codes that apply specifically to ministerial staff.
- [33] Both the Commonwealth and the South Australian governments have updated their codes since the Commission's 2011 report. The amendment to the Commonwealth's *Statement of Standards for Ministerial Staff* was minor.⁴⁵ However, in South Australia, the government has completely revised the *Code of Ethics for the South Australian Public Sector*.
- [34] Beside Tasmania, there are three Australian jurisdictions that do not have publicly available codes for ministerial staff. The Victorian ministerial staff code of conduct mentioned in the Commission's 2011 report appears to have become void with the election of subsequent state governments. Victorian ministerial staff are therefore no longer obliged to comply with a code of conduct.⁴⁶
- [35] There is no published ministerial staff code of conduct for the Northern Territory. However, the February 2015 Northern Territory Government *Cabinet Handbook* makes two references⁴⁷ to such a document. Both of these references suggest that, if a code does exist, it is substantially similar to – or indeed, is – the Commonwealth Government's *Statement of Standards for Ministerial Staff*.
- [36] In the Australian Capital Territory, a 2012 chief minister press release stated that a code for ministerial staff was in draft form and would be enacted after consultation with

⁴⁴ See *State Service Act 2000* (Tas) s 9.

⁴⁵ Addition of: 'Other than in the course of their professional duties, not post personal online commentary or other material or publish books or articles expressing personal views which relate to either their Minister's portfolio area or the general work of the Australian Government. The Prime Minister's Chief of Staff should be consulted for further guidance.' See James Massola, 'Twitter, Facebook out of bounds for Coalition staff under strict controls', *The Sydney Morning Herald* (online), 10 February 2014 <<http://www.smh.com.au/federal-politics/political-news/twitter-facebook-out-of-bounds-for-coalition-staff-under-strict-controls-20140210-32b4n.html>>.

⁴⁶ Victorian Public Sector Commission, *Serving Government: A Guide to the Victorian Public Sector for Ministerial Officers* (2015) 7.

⁴⁷ Northern Territory, Department of the Chief Minister, *Cabinet Handbook*, February 2015, 15 [3.6.4], 30 [8.5].

the staff and their union.⁴⁸ The ACT *Ministerial Code of Conduct* states that, 'Ministers must make their staff aware of their ethical and administrative obligations, including providing them with a copy of the *Ministerial Staff Code of Conduct*'.⁴⁹ It is, however, unclear if the ministerial staff code was ever enacted in the ACT.

⁴⁸ Australian Capital Territory Chief Minister Katy Gallagher, 'New bar set for ethical government in the ACT' (Media release, 16 April 2012) <http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/gallagher/2012/new_bar_set_for_ethical_government_in_the_act>.

⁴⁹ Australian Capital Territory, *Ministerial Code of Conduct*, 2012, r 5(f).

CODES OF CONDUCT FOR MINISTERIAL STAFF ⁵⁰				
Cth	NSW	Qld	SA	WA
Title				
<i>Statement of Standards for Ministerial Staff</i>	<i>NSW Office Holder's Staff Code of Conduct</i>	<i>Code of Conduct: Ministerial Staff Members</i>	<i>Code of Ethics for the South Australian Public Sector</i> (it appears that certain sections of the Ministerial Code of Conduct also apply to ministerial staff) ⁵¹	<i>Code of Ethics</i>
Code applies to				
Ministerial staff, consultants and electorate officers employed under the <i>Members of Parliament (Staff) Act 1984</i> (Cth)	Staff employed by ministers under Part 2 of the <i>Members of Parliament Staff Act 2013</i> (NSW) (' <i>MOPS Act</i> '); government sector employees seconded to work in the office of an Office Holder (except Department Liaison Officers); consultants engaged by ministers to provide services in connection with their official duties; and staff employed by the Opposition Leader in the Legislative Assembly under Part 2 of the <i>MOPS Act</i>	All people employed within a ministerial office (excluding the minister), including voluntary workers and consultants	All 'public sector' employees ⁵²	All public sector employees, including chief executive officers, chief employees and ministerial staff, and public sector bodies covered by the <i>Public Sector Management Act 1994</i> (WA)
Date first introduced				
26 June 2008	June 2014 ⁵³	2002	Possibly prior to March	1996

⁵⁰ The Australian Capital Territory, Tasmania, Northern Territory and Victoria have been excluded from this table as they either do not have a code of conduct for ministerial staff, or it is not publicly available.

⁵¹ South Australia, *Ministerial Code of Conduct*, May 2002 <http://www.dpc.sa.gov.au/sites/default/files/pubimages/documents/Ministerial_CodeOfConduct.pdf>.

⁵² A 'public sector agency' includes a minister, see *Public Sector Act 2009* (SA) s 3(1) (definition of 'public sector agency').

CODES OF CONDUCT FOR MINISTERIAL STAFF ⁵⁰				
Cth	NSW	Qld	SA	WA
			2005 ⁵⁴	
Last amended				
2013 ⁵⁵	Nil	Post-2010	13 July 2015	2012
Last reviewed				
Nil	Nil	2010	2015	2012
Established/enacted by				
Guideline managed by the Prime Minister's office ⁵⁶	Within the 'Ministers' Office Handbook', issued by the Department of Premier and Cabinet NSW in accordance with its responsibilities under the <i>MOPS Act</i> ⁵⁷	Guideline issued by the Premier ⁵⁸	Guideline issued by the Commissioner for Public Sector Employment in accordance with the <i>Public Sector Act 2009</i> (SA) ⁵⁹	State service policy, with which all state servants (including ministerial staffers) must comply ⁶⁰

⁵³ Prior to the introduction of this code, it appears that ministerial staff were required to comply with the New South Wales Department of Premier and Cabinet *Code of Conduct*, see New South Wales, Department of Premier and Cabinet, Ministerial and Parliamentary Services, *Ministers' Office Administration Handbook*, December 2010, 59 <http://s3.amazonaws.com/zanran_storage/www.dpc.nsw.gov.au/ContentPages/971178498.pdf>.

⁵⁴ The *Code of Conduct for South Australian Public Sector Employees* dated March 2005 was applicable to ministerial staff, see Government of South Australia, *Code of Conduct for South Australian Public Sector Employees*, March 2005, 1 <http://www.wch.sa.gov.au/research/committees/humanethics/documents/code_of_conduct.pdf>.

⁵⁵ Addition of: 'Other than in the course of their professional duties, not post personal online commentary or other material or publish books or articles expressing personal views which relate to either their Minister's portfolio area or the general work of the Australian Government. The Prime Minister's Chief of Staff should be consulted for further guidance.' See Massola, above n 45.

⁵⁶ Commonwealth, *Statement of Standards for Ministerial Staff* <http://www.maps.finance.gov.au/entitlements_handbooks/ministers-of-state/Part_Five_Staff_Matters_-_5.1_Appointment_Procedures.asp>.

⁵⁷ New South Wales Government, *Ministers' Office Handbook*, November 2015, 69–71 <http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0009/97245/Ministers_Office_Handbook.pdf>.

⁵⁸ Queensland Government, *Code of Conduct Ministerial Staff Members*, 23 February 2015 <<http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/ministerial-handbook/ethics/min-staff-code.aspx>>.

⁵⁹ South Australian Government, *Code of Ethics for the South Australian Public Sector*, 13 July 2015 <<http://publicsector.sa.gov.au/policies-standards/code-of-ethics/>>.

⁶⁰ Government of Western Australia, *Commissioner's Instruction No. 7 – Code of Ethics*, 3 July 2012 <<https://publicsector.wa.gov.au/document/commissioners-instruction-no-7-%E2%80%93-code-ethics>>.

4: Parliamentary registers of interests

- [37] As with every other jurisdiction in Australia, Tasmanian parliamentarians are required to disclose their 'interests' on a regular basis (under the *Disclosure Act*). These interests are compiled into publicly available registers which are, in most jurisdictions, tabled in parliament.
- [38] Some of the recommendations of the *Public Office is Public Trust* report concerned the Tasmanian registers of MPs interests. Specifically, it recommended inclusion of the interests of persons related to MPs on the list of required disclosures, and publishing the registers on the internet. The government of the day indicated that these recommendations would be dealt with through the establishment of the Integrity Commission. However, the eventual form of the *IC Act* did not specifically address these recommendations.
- [39] The justification for requiring MPs to disclose the interests of immediate family members is that members may be just as influenced by the interests of their partner or children, as they would be their own personal interests. Currently, Tasmania is one of only three jurisdictions in Australia in which MPs do not have to disclose the interests of immediate family members.⁶¹
- [40] New South Wales and Western Australia are the other two jurisdictions in which parliamentarians are not required to disclose the interests of immediate family members. A 2014 review in NSW recommended that the requirement be introduced there, but as of November 2015 this had not yet occurred.
- [41] In regard to publication of the registers on the internet, the registers of the Australian Capital Territory, Queensland and both houses of the Western Australian and Commonwealth parliaments are published online. Detailed summaries of the registers of both houses of the Victorian, and one House of the South Australian, parliaments are also published online. Tasmania is one of only three jurisdictions – the others being New South Wales and the Northern Territory – in which no parliamentary registers are available online in any form.
- [42] The Commission also notes that Tasmania is one of only three jurisdictions in which an MP's obligation to disclose a conflict of interest on the register is discretionary.

⁶¹ The requirements about whose interests MPs are required to disclose vary between jurisdictions.

PARLIAMENTARY REGISTERS OF INTERESTS									
ACT	Cth (HoRs)	Cth (Senate)	NSW	NT	Qld	SA	Tas	Vic	WA
Title									
Declaration of Private Interests of Members	Register of Members' Interests	Register of Senators' Interests	Register of Disclosures by Members of the Legislative Council; Register of Disclosures by Members of the Legislative Assembly	Register of Members' Interests	Register of Members' Interests	Register of Members' Interests	Register of Interests of Members of the Legislative Council; Register of Interests of Members of the House of Assembly	Register of Members' Interests	Register of Members' Financial Interests
Applies to									
All members of the House (unicameral parliament)	All members of the House	All members of the House	All members of both houses	All members of the House (unicameral parliament)	All members of the House (unicameral parliament)	All members of both houses	All members of both houses	All members of both houses	All members of both houses
Do members have to disclose the interests of family members?									
Yes – registrable interests (of which the member is aware) of spouse and persons who are mainly/wholly dependent on	Yes – registrable interests (of which the member is aware) of spouse and mainly/wholly dependent children	Yes – registrable interests (of which the member is aware) of partner and mainly/wholly dependent children	No ⁶²	Yes – registrable interests (of which the member is aware) of spouse/de facto and mainly/wholly dependent children ⁶³	Yes – registrable interests (of which the member is aware) of spouse and totally /substantially dependent children and	Yes – registrable interests (of which the member is aware) of 'related persons', which is defined as: a family	No	Yes – the interests of family (spouse and children under 18 that normally reside with the member) of which the member is	No

⁶² The 2014 review recommended introducing this requirement, but as of November 2015 it had not been introduced.

⁶³ The Act notes in s 3 that it 'is closely modelled on resolutions of the [Commonwealth] House of Representatives for disclosure and registration of interests. However, a significant difference between this Act and the Commonwealth resolutions is that, in this Act, a de facto partner (including a same sex partner) is treated in the same way as a spouse.'

PARLIAMENTARY REGISTERS OF INTERESTS									
ACT	Cth (HoRs)	Cth (Senate)	NSW	NT	Qld	SA	Tas	Vic	WA
the member					persons so closely connected that a benefit derived by the person, or a substantial part of it, could pass to the member ⁶⁴	member (spouse/ domestic partner, and children under 18 that normally reside with the member), a family company, and a trustee of a family trust ⁶⁵		aware and which the member considers might appear to raise a conflict between private interest and public duty	
Is it publicly available, and is it available online?									
Yes – online (and in hardcopy via clerk) ⁶⁶	Yes – online ⁶⁷	Yes – online (apart from registrable interests of partners and dependents ⁶⁸)	Yes – by appointment with the clerk of the House. Not available online	Yes – by appointment with the Office of the Clerk. Not available online ⁶⁹	Yes – online (apart from interests of related persons) ⁷⁰	Yes – in hardcopy. The House of Assembly registrar’s compilation statement is	Yes – in the offices of the clerks or in the Parliamentary Library. Not available	Yes – online (summary of returns) ⁷²	Yes – online as a tabled paper

⁶⁴ The register of related persons is maintained separately and is not publicly available or tabled.

⁶⁵ In South Australia, the interests of partners and dependent children may be disclosed in such a way that does not distinguish between those interests and the interests of the member.

⁶⁶ Australian Capital Territory Legislative Assembly, *Declarations of interest* <<http://www.parliament.act.gov.au/members/declarations-of-interest>>.

⁶⁷ Parliament of Australia, *Register of Members’ Interests* <http://www.aph.gov.au/Senators_and_Members/Members/Register>.

⁶⁸ Parliament of Australia, *Register of Senators’ Interests* <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/Register_4_August>.

⁶⁹ Legislative Assembly of the Northern Territory, *Members of the Northern Territory Parliament* <<http://www.nt.gov.au/lant/members-of-parliament/members-of-parliament.shtml#interests>>.

⁷⁰ Queensland Parliament, *Register of Members’ Interests* <<https://www.parliament.qld.gov.au/members/current/register-members-interests>>.

PARLIAMENTARY REGISTERS OF INTERESTS									
ACT	Cth (HoRs)	Cth (Senate)	NSW	NT	Qld	SA	Tas	Vic	WA
						also available online ⁷¹	online		
Established/enacted by									
Resolution of the House ⁷³	Resolution of the House ⁷⁴	Resolution of the House ⁷⁵	Legislation – Constitution Act 1902 (NSW) s 14A; Constitution (Disclosure by Members) Regulation 1983 (NSW) ⁷⁶	Legislation – Legislative Assembly (Disclosure of Interests) Act 2008 (NT) ⁷⁷	Legislation – Parliament of Queensland Act 2001 (Qld) ss 69A–69C, which is supported by more detailed regulations in the Standing Rules and Orders ⁷⁸	Legislation – Members of Parliament (Register of Interests) Act 1983 (SA); Members of Parliament (Register of Interests) Regulations 2008 (SA)	Legislation – Parliamentary (Disclosure of Interests) Act 1996 (Tas)	Legislation – Members of Parliament (Register of Interests) Act 1978 (Vic); Members of Parliament (Register of Interests) Regulations 2013 (Vic) ⁷⁹	Legislation – Members of Parliament (Financial Interests) Act 1992 (WA); Members of Parliament (Financial Interests) Regulations 1992 (WA)

⁷² Parliament of Victoria, *Register of Members' Interests* <<http://www.parliament.vic.gov.au/publications/register-of-interests>>.

⁷¹ Parliament of South Australia, *Register of Member's Interests* <<http://www.parliament.sa.gov.au/HOUSEOFASSEMBLY/OTHER/PUBLICATIONS/Pages/RegisterofMembersInterests.aspx>>.

⁷³ Australian Capital Territory, Legislative Assembly, *Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory*, April 2009, 405 <<http://www.parliament.act.gov.au/in-the-assembly/companion>>.

⁷⁴ Commonwealth, House of Representatives, *Standing Orders*, 26 March 2015, 114 <http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/House_of_Representatives_Standing_Orders>.

⁷⁵ Senate, Parliament of Australia, *Guidelines and Resolutions*, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/Guidelines_and_Resolutions>.

⁷⁶ See also Parliament of New South Wales, *Members' ethics*, <<http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/Membersethics>>.

⁷⁷ See also Legislative Assembly of the Northern Territory, *Committees - Members' Interests* <<http://www.nt.gov.au/lant/parliamentary-business/committees/members%20interests/terms-of-reference.shtml>>.

⁷⁸ Queensland, Legislative Assembly, *Standing Rules and Orders of the Legislative Assembly*, 17 July 2015, 74 <<https://www.parliament.qld.gov.au/documents/assembly/procedures/StandingRules&Orders.pdf>>.

⁷⁹ See also Parliament of Victoria, *Register of Members' Interests* <<http://www.parliament.vic.gov.au/publications/register-of-interests>>.

5: Conclusion

- [43] It has now been six years since the release of the landmark report of the Joint Select Committee on Ethical Conduct, *Public Office is Public Trust*. It has been four years since the release of the Commission's report recommending the adoption of appropriate and modern codes of conduct. Since that report, the Commission's view about the need for a modern and robust ethical framework applicable to those elected to high office – or assisting those in high office – in Tasmania has not altered.
- [44] While it is pleasing that Tasmanian ministers now have a more robust and specific ethical framework to work with and be held accountable to, there remains an accountability gap in terms of members of parliament and ministerial staff. The existing system of requiring ministerial staff to adhere to conduct requirements contained within instruments of appointment lacks transparency and may be applied inconsistently; meanwhile, members of the Legislative Council lack a formal, and publicly accountable, code.
- [45] In addition, there has been no progress in implementing the Joint Select Committee on Ethical Conduct's recommendations about the parliamentary registers of interests. To date, the Commission has taken a narrow approach to its register monitoring role, however it is considered that the *IC Act* provides for a broader interpretation of this function.
- [46] The Commission therefore highlights these outstanding issues for the attention of the Joint Standing Committee on Integrity, the Tasmanian Parliament and the Tasmanian Government. The Commission looks forward to working together with the JSC and the parliament to address the current gaps, and to the implementation in Tasmania of a suite of accountability mechanisms that will establish the state as a leader among Australian jurisdictions on this issue.

Appendix: Table of relevant recommendations from *Public Office is Public Trust* and the 2011 Integrity Commission report

#	Recommendation from <i>Public Office is Public Trust</i> (2009) ⁸⁰	Response of the Government (2009) ⁸¹	Relevant recommendations from <i>Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania</i> (2011) ⁸²
Register of interests			
1	<p>The Committee recommends that the <i>Parliamentary (Disclosure of Interests) Act 1996</i> be strengthened by amendments to provide for the following:</p> <p>(1) The definition of 'related person' to be added. Such definition to mean –</p> <ul style="list-style-type: none"> (a) the spouse of a Member; (b) a child of a Member who is wholly or substantially dependent on the Member; or (c) any other person – <ul style="list-style-type: none"> (i) who is wholly or substantially dependent on the Member; and (ii) whose affairs are so closely connected with the affairs of the member that a benefit derived by the person, or a substantial part of it, could pass to the Member. <p>(2) Consequential amendments to require the declaration of a related person's interests in the Registers of Interests.</p>	<p>Accepted in principle:</p> <p><i>In the Integrity Commission Bill 2009 the Government is seeking amendment to the Parliamentary (Disclosure of interests) Act 1996 to move responsibility for the Register of Interest from the Clerk of each House of Parliament to a Parliamentary Standards Commissioner, who is to be appointed by the Integrity Commission.</i></p> <p><i>As a consequence the Government believes that this recommendation and its implementation are best explored in more detail by the Integrity Commission once established.</i></p> <p><i>The Government will implement amendments in the form to be recommended by the Integrity Commission.</i></p>	-

⁸⁰ *Public Office is Public Trust*, above n 1.

⁸¹ *Tasmanian Government Response to Recommendations in the Final Report of the Joint Select Committee on Ethical Conduct*, above n 16.

⁸² *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania*, above n 7.

#	Recommendation from <i>Public Office is Public Trust</i> (2009) ⁸⁰	Response of the Government (2009) ⁸¹	Relevant recommendations from <i>Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania</i> (2011) ⁸²
3	The Committee recommends that, with the exception of the detail of each Member's residential address, the Register of Interest of Members of the Legislative Council and the Register of Interests of Members of the House of Assembly be published on the internet site of the Parliament of Tasmania.	Accepted: <i>Given the changes to responsibility for the Register with the establishment of the Parliamentary Standards Commissioner and the Integrity Commission, the publishing of the Register will be through the Integrity Commission website although this does not preclude the Legislative Council or House of Assembly deciding to publish in advance of the establishment of the Integrity Commission.</i>	-
4	The Committee recommends that, in order to provide a further level of public accountability, the <i>Parliamentary (Disclosure of Interests) Act</i> be amended to provide that complaints regarding alleged breaches of the Act may be made to the Tasmanian Integrity Commission (vide Recommendation 29).	<i>The Integrity Commission Bill 2009 will be introduced to the Parliament in the current sitting of Parliament and constitutes the Government's response to recommendations 4, 6, 7, 16, 17, 24, 29, 30 and 31.</i>	-
Code of conduct for members of parliament			
5	The Committee recommends that the Legislative Council adopts a Code of Ethical Conduct and a Code of Race Ethics.	Supported: <i>The implementation of this recommendation sits with the Legislative Council, but Government members will support the introduction of these Codes in the Council.</i>	<p>Recommendation 1: The House of Assembly and Legislative Council adopt a code of conduct for the members of each chamber of Parliament.</p> <p>Recommendation 3: The House of Assembly retains but reviews the current Code of Race Ethics.</p> <p>The Legislative Council gives consideration to adopting a reviewed Code of Race Ethics.</p> <p>Recommendation 8: The operation of a code of conduct for Members of Parliament should be reviewed by the Parliamentary</p>

#	Recommendation from <i>Public Office is Public Trust</i> (2009) ⁸⁰	Response of the Government (2009) ⁸¹	Relevant recommendations from <i>Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania</i> (2011) ⁸²
			<p>Joint Standing Committee on Integrity on a regular basis, such as every three to four years.</p> <p>Recommendation 10: The codes of conduct for Members of Parliament, Ministers and ministerial staff should be made available on Government and Parliament websites.</p> <p>Recommendation 11: Members of Parliament, Ministers and ministerial staff should receive information about the relevant code and training in ethical conduct through induction processes or through other training.</p>
7	<p>The Committee recommends that, in order to provide a further level of public accountability, complaints regarding alleged breaches of the Code of Ethical Conduct and Code of Race Ethics of the Assembly and any similar code/s of the Council may be made to the Tasmanian Integrity Commission (vide Recommendation 29).</p>	<p><i>The Integrity Commission Bill 2009 will be introduced to the Parliament in the current sitting of Parliament and constitutes the Government's response to recommendations 4, 6, 7, 16, 17, 24, 29, 30 and 31.</i></p>	<p>Recommendation 6: A breach of the Parliamentary Code of Conduct should be considered and dealt with by Parliament itself.</p> <p>Recommendation 7: Current procedures and penalties for dealing with contempt of Parliament should be reviewed, with consideration given to implementing a range of actions to deal with a breach, including remedial actions.</p>
Code of conduct for ministerial staff			
	-	-	<p>Recommendation 4: State Government adopts codes provided for Ministers and for ministerial staff, and that such codes be tabled in Parliament.</p> <p>Recommendation 9: The operation of codes of conduct for Ministers and ministerial staff should be reviewed by</p>

#	Recommendation from <i>Public Office is Public Trust</i> (2009) ⁸⁰	Response of the Government (2009) ⁸¹	Relevant recommendations from <i>Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania</i> (2011) ⁸²
			<p>Government on a regular basis, such as every three to four years.</p> <p>Recommendation 10: The codes of conduct for Members of Parliament, Ministers and ministerial staff should be made available on Government and Parliament websites.</p> <p>Recommendation 11: Members of Parliament, Ministers and ministerial staff should receive information about the relevant code and training in ethical conduct through induction processes or through other training.</p>
Codes of conduct			
6	<p>The Committee recommends that one of the principal roles of the Tasmanian Integrity Commission (vide Recommendation 29) will be to encourage ethical behaviour by developing, in consultation with external bodies such as the Centre for Applied Philosophy and Ethics and the Tasmanian Institute for Law Enforcement at the University of Tasmania:</p> <ul style="list-style-type: none"> - guidelines and codes of conduct; - training courses; - resources for Government; and - civic education to schools, interest groups and the public. 	<p><i>The Integrity Commission Bill 2009 will be introduced to the Parliament in the current sitting of Parliament and constitutes the Government's response to recommendations 4, 6, 7, 16, 17, 24, 29, 30 and 31.</i></p>	-

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