



# REPORT OF THE INTEGRITY COMMISSION

NO. 2 OF 2023 / 21 March 2023

Tasmania's Parliamentary Register of Interests:  
An audit and review of issues



INTEGRITY  
COMMISSION  

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TASMANIA



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.

We acknowledge and pay our respects to Tasmanian Aboriginal people as the traditional owners of the Land upon which we work. We recognise and value Aboriginal histories, knowledge and lived experiences, and commit to being culturally inclusive and respectful in our working relationships with all Aboriginal people.

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This report and further information about the Commission can be found on the website [www.integrity.tas.gov.au](http://www.integrity.tas.gov.au)

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INTEGRITY  
COMMISSION  
TASMANIA

21 March 2023

President  
Legislative Council  
Parliament House  
HOBART TAS 7000

Speaker  
House of Assembly  
Parliament House  
HOBART TAS 7000

Dear Mr President

Dear Mr Speaker

In accordance with section 11(3) of the *Integrity Commission Act 2009*, the Integrity Commission presents *Report 2 of 2023* to Parliament - Tasmania's Parliamentary Register of Interests: An audit and review of issues.

Yours sincerely

**Aziz Gregory Melick, AO RFD SC**  
Chief Commissioner  
On behalf of the Board

**Michael Easton**  
Chief Executive Officer

# **TASMANIA'S PARLIAMENTARY REGISTER OF INTERESTS**

**An audit and review of issues**



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## EXECUTIVE SUMMARY

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Under section 30(a) of the *Integrity Commission Act 2009* (Tas), the Integrity Commission is required to monitor the operation of the Parliamentary Disclosure of Interests Register. This is the register of personal interests of members of the House of Assembly and Legislative Council.

This is a report about:

- ▼ an audit of a random sample of member disclosures, and
- ▼ identified issues in Tasmania's system of parliamentary disclosures of interest.

We found that the audited members did not have substantial personal pecuniary interests and generally they declared all interests required by law. Two of the audited members were found to have failed to declare an interest of their spouse; both members explained that this was the result of an error.

We have identified 3 key issues with the current system:

- ▼ the discretionary requirement to disclose conflicts of interest
- ▼ the complexity of the legislation, particularly as it relates to trusts, and
- ▼ inadequate requirements for ongoing declarations.

These issues hamper members who genuinely try to declare interests in compliance with the law. They also create potential loopholes that could be exploited. We have made 3 recommendations to resolve these issues.

### Recommendation 1

**That the Government amends the *Parliamentary (Disclosure of Interests) Act 1996* to require members to disclose in their returns any direct or indirect benefits, or advantages or liabilities, whether pecuniary or not, that may raise a conflict between a member's private interests and their duties as a member.**

### Recommendation 2

**That the Government simplifies the *Parliamentary (Disclosure of Interests) Act 1996* disclosure requirements. At a minimum, disclosure requirements should encompass the assets of dependent children, and should be broader and simpler for trusts. In respect of trusts, we recommend adopting requirements similar to those applying in the Australian Capital Territory.**

### Recommendation 3

**That the Government amends the *Parliamentary (Disclosure of Interests) Act 1996* to require notification of any alteration of disclosed interests within 28 days of the change.**

### 1. About the Integrity Commission

The Integrity Commission ('the Commission') is an independent statutory authority established by the *Integrity Commission Act 2009* (Tas) (IC Act).

The Commission's objectives 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.

Our educative, preventative and advisory functions are outlined in the *IC Act* and are a core part of our work. These functions include a responsibility to:

- ▼ review and make recommendations about practices, procedures and standards in relation to conduct, propriety and ethics in public authorities and to evaluate their application within those authorities
- ▼ provide advice to public officers and the public about standards of conduct, propriety and ethics in public authorities, and
- ▼ evaluate the adequacy of systems and procedures in public authorities for ensuring compliance with relevant codes of conduct.

Specifically in relation to members of parliament, the Commission's Chief Executive Officer (CEO) 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, and
- ▼ prepare guidance and provide training for members of parliament and persons employed in the offices of members of parliament on matters of conduct, integrity and ethics.

The Parliamentary Disclosure of Interests Register is a register of personal interests declared by members of the House of Assembly and Legislative Council. It is established by the *Parliamentary (Disclosure of Interests) Act 1996* (Disclosure Act). The declarations are kept in 2 registers, one for each House (collectively, 'the Register').

## 2. About this report

By virtue of their position as elected officials, members of parliament have significant decision-making authority and influence. As such, their personal interests are, and should be, subject to a higher level of scrutiny than other public officers.<sup>1</sup>

In past years, we foreshadowed an increased focus on members' interests to meet more fully our objectives and responsibilities under the *IC Act*.<sup>2</sup> In undertaking this work, we aimed to monitor compliance with the Register, encourage more active disclosures of interests and gain insight and intelligence as to the requirement of, and value in, investing greater resources in this area.

In this report, we consider whether the Register is achieving its intended purpose of facilitating the proper declaration and management of conflicts of interest by members of parliament.

In the first part of this report, we report on an audit of a random sample of 5 disclosures from members of both Houses, which we undertook to see whether they are declaring all relevant interests.

In the second part of this report, we consider good practice around parliamentary registers of interest and analyse how Tasmania compares with other jurisdictions.

## 3. The Register

Members of parliament have a responsibility to demonstrate that they make decisions in the public interest. Courts have repeatedly upheld the obligation of members 'to serve and act with fidelity and with a single-mindedness for the welfare of the community'.<sup>3</sup> However, 'public interest' can be a subjective, unwieldy concept. It is perhaps more easily defined by what it is not, rather than what it is: it is not about enacting policy or legislation, or allocating funds, for personal benefit.<sup>4</sup>

The Register is part of Tasmania's Parliamentary Integrity Framework; it is one of a suite of measures to encourage properly motivated decision-making and deter improper conduct.

All Australian jurisdictions, whether Commonwealth or state – as well as a vast majority of local government authorities – require elected officials to detail their interests in a register of some form.

In addition to the obligations in the *Disclosure Act*, members must comply with the Code of Conduct – Members of Parliament Tasmania, which states:

*A Member protects and upholds the public interest by taking all reasonable steps to avoid, disclose and manage any conflict of interest that arises, or is likely to arise, between their personal interest and their official duties.*

Government ministers also have obligations under the Code of Conduct for Ministers and the Cabinet Handbook.



### 3.1. Disclosure Act requirements

Under the *Disclosure Act*, all members are required to publicly disclose their interests. Since 2017, members have also been required to disclose the interests of their spouses.

A member completes their first disclosure form – called a 'primary return' – when they become a member of parliament. If they remain a member of parliament, they then make an 'annual return' each year.

The Clerks of each House are responsible for the form and compilation of the Register. They keep all returns lodged by members in the Register. Under the *Disclosure Act*, the Register is to be available for inspection, tabled in the Houses of Parliament, and published both as a parliamentary paper and online.

#### Primary Return

A primary return is the first return new members lodge within 3 months of being sworn in. A primary return must disclose the following information about both the member and their spouse:

- ▼ each and any source of income, and whom it was received from and why
- ▼ any interest in real property, including the address
- ▼ any interest or position – paid or unpaid – in any corporation, including the address
- ▼ any position in a trade union, or professional or business association – paid or unpaid, and
- ▼ the details of any debts owing and to who the debt is owing.

There are several exceptions to these mandatory disclosures, such as annual income under \$500, small debts and minimal travel costs.

#### Annual return

After lodging their initial primary return, members are required to lodge an annual return on or before 1 October each year. Annual returns must disclose the same information as a primary return as well as (about both the member and their spouse):

- ▼ dispositions of property for a benefit, whether financial or otherwise
- ▼ financial and non-financial benefits (for example, upgraded travel or hospitality arrangements), and who provided the benefit, and
- ▼ gifts received, including a description of the gift and who gave the gift.

#### Discretionary disclosures – other conflicts of interest

Any benefit, advantage or liability held or obtained by a member not captured by the mandatory disclosures can also be disclosed. This includes where the benefit, advantage or liability could cause a conflict between a member's private interests and their duties as a member.

This means it is discretionary whether members declare conflicts of interest that are not otherwise captured under the *Disclosure Act*.

## PART B AUDIT OF DECLARATIONS

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### 4. Scope and nature of the audit

As foreshadowed in previous Commission reports, we have audited a sample of members' disclosures made in 2020–21 to test compliance with the Register.

We chose 5 members from the 40 members of the House of Assembly and Legislative Council. The members were randomly chosen, although we had controls in place to ensure an even spread across political parties and independents. We chose only 5 members with the intention of expanding the audit to other members if we found a significant level of noncompliance. The expansion of the audit was not necessary.

Our audit reviewed whether each of the 5 members' known personal interests and their disclosures aligned, and whether their disclosure met the requirements of the Register.

We were limited in the checks we could perform to ensure members were fully disclosing their interests. As this was not an investigation conducted under the *IC Act*, we could not obtain information coercively. This meant we were reliant on open sources, as well as other sources such as Australian Securities and Investments Commission records (ASIC) and the Land Information System Tasmania (LIST). It is possible the audit did not identify some of the interests of audited members.

### 5. Audit findings

Overall, we found that audited members did not have substantial personal pecuniary interests and that they generally declared all interests required under the *Disclosure Act*.

In 2 instances, we found information was not disclosed as required under the *Disclosure Act*. In both instances, it was information about a member's spouse:

- ▼ a spouse's position as director of a company was not disclosed, and
- ▼ a spouse's employment was not disclosed.

Disclosure of spousal interests is important because their interests overlap so greatly with that of their spouses who are members of parliament. However, in both instances referred to above, the failure to disclose the information appears to have been an error. In the second case, the interest had been disclosed on previous returns.

Administrative issues with the completion of disclosure forms identified by us in previous reports appear to have largely been resolved.

## 5.1. Summary of individual audits

### Member 1

Member 1 disclosed that they were the joint owner of one property and that they had numerous shareholdings. We did not identify any undisclosed interests that they were required to disclose under the *Disclosure Act*.

Member 1 disclosed that their spouse was the joint owner of one property and had numerous shareholdings. They did not disclose that the spouse was a director of a company, which we identified by an ASIC search.

When this failure to disclose was raised by the Commission, Member 1 said they were unaware that the spouse held the positions of Director and Secretary of a company as the spouse had not advised them of this when seeking information of the spouse's financial interests. The member said the company was a self-managed superfund, and that the bulk of the shares held by the fund were sold in 2010. The remaining shares in the company were transferred to the financial adviser who set up the fund in October 2019.

After the issue was raised by the Commission the company was deregistered.

### Member 2

Member 2 disclosed that they were the joint owner of one property. We did not identify any undisclosed interests that they were required to disclose under the *Disclosure Act*.

Member 2 disclosed that their spouse was the joint owner of one property and their spouse's employment income. We did not identify any undisclosed interests that they were required to disclose under the *Disclosure Act*.

### Member 3

Member 3 disclosed that they were the joint owner of more than one property, had numerous shareholdings and had another source of income. We did not identify any undisclosed interests that they were required to disclose under the *Disclosure Act*.

Member 3 disclosed that their spouse was the joint owner of more than one property and had numerous shareholdings, and their spouse's employment situation. We did not identify any undisclosed interests that they were required to disclose under the *Disclosure Act*.

### Member 4

Member 4 disclosed that they were the joint owner of more than one property. We did not identify any undisclosed interests that they were required to disclose under the *Disclosure Act*.

Member 4 disclosed that their spouse was the joint owner of one property and their spouse's employment income. We did not identify any undisclosed interests that they were required to disclose under the *Disclosure Act*.

## Member 5

Member 5 disclosed that they were the joint owner of more than one property. We did not identify any undisclosed interests that they were required to disclose under the *Disclosure Act*.

Member 5 disclosed that their spouse was the owner of more than one property. They also disclosed one of their spouse's employers but did not disclose a second employer of their spouse over the return period. The Commission identified this second employer through open-source checks.

Member 5 had disclosed this second employer in previous returns.

When the discrepancy was queried by the Commission, Member 5 confirmed that the failure to include their spouse's second employer was 'an inadvertent mistake', based upon the incorrect view that the income was non-taxable and therefore did not need to be disclosed. The member said they disclosed the income in their 2019-20 return but then elected not to in later returns because they had formed the view that it was not necessary to do so.

The member said they would correct their 2020-21 and 2021-22 Annual Returns.

## 6. Conclusion

Inherent in the Register system, transparency gives the community confidence that elected representatives are acting in the best interests of the community when making decisions.

The success of a disclosure register depends on the comprehensiveness and accuracy of the information disclosed. Therefore, public confidence may be qualified by the fact that we could not use coercive powers as part of our audit. Publicly available information may also be incomplete – for example, ASIC information about shareholdings is incomplete.

The audit showed that, based on the sample of 5 disclosures, members appear to be complying with the requirement to declare all interests required under the *Disclosure Act*.

Omissions were identified in 2 members' disclosures, both relating to the interests of the members' spouses. The Commission considers these were errors and not attempts to mislead, and that they do not impact upon the credibility of the respective members' declarations. This view is not intended to influence any actions of Parliament in relation to this issue.

## PART C ISSUES IN THE TASMANIAN SYSTEM

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### 7. Conflicts of interest

A conflict of interest is a conflict between the private or personal interests of a public officer and their public role. Conflicts can be potential, perceived or actual:

- ▼ A **potential** conflict of interest is when a public officer is in a position where they may be influenced in the future by their private interests when doing their job.
- ▼ A **perceived** conflict of interest is when a public officer may appear – to a reasonable person familiar with the facts of the situation – to be influenced by their private interests when doing their job.
- ▼ An **actual** conflict of interest occurs when there is an immediate and tangible conflict between a public officer's official duty or responsibility in serving the public interest and their personal interests.

#### 7.1. Using the Register to manage conflicts

The Register is a transparent tool for addressing potential conflicts of interest. Currently, it requires members of parliament to declare a specific range of interests that ultimately may or may not conflict with their public duties.

By requiring members to identify private interests that may conflict with their public duties, the Register reminds members of the need to avoid or manage conflicts.<sup>5</sup> The Register creates transparency and accountability around members' private interests by giving the public the information it needs to make informed judgments about their elected representatives.<sup>6</sup> It does not however replace the need for Members to declare actual conflicts of interest when they arise.

The effectiveness of a Register as a tool for managing conflicts of interests depends on the quality and accuracy of the information it contains.<sup>7</sup> The Commonwealth, Victoria, Queensland, South Australia, the ACT and the Northern Territory require members of parliament to disclose foreseeable conflicts. However, in Tasmania the disclosure of known individual conflicts of interest to the Register is discretionary.

Without mandated disclosure of conflicts, members may not disclose them. This would not necessarily be because of ill motive or purpose. It is more likely to be because they have rationalised that a conflict does not exist or that it will not affect their decision.<sup>8</sup> Even of the mandatory disclosures, the detail required to be disclosed may not be sufficient to reveal there is conflict.

For example, while rental income and owning a property may be disclosed, it will not be clear on the Register whether this income is from a 'sharing economy' income (e.g. Airbnb) or a traditional residential lease. This could cause a conflict for a member involved in decision-making on sharing economy policy, which was raised in Tasmania in 2021.<sup>9</sup> While the member concerned had declared their interests as required under the *Disclosure Act*, it was not clear from the Register that the property was an Airbnb rental.

Another example could be ownership of a racehorse that does not produce income. This would not be required to be disclosed by the member. However, ownership itself may influence (or be seen to influence) a member's approach to a range of policies – for example, animal welfare, gaming or taxation.

## 7.2. Active disclosures – beyond the Register

A conflict of interest can arise at any point and consideration must be given to how such conflicts are managed at critical decision points. Registers are useful for capturing static interests held by members, such as property interests and interests connected to their personal relationships. However, it is unrealistic to expect members to anticipate how their interests may intersect with every decision they are required to make in public office. For example, interests such as the school attended by a member's children may give rise to an actual or perceived conflict in the future, yet it is not reasonable to require disclosure of this information on the Register.

The Register is a valuable tool, but a disclosure of interest is most crucial when the conflict arises. How conflicts of interest in all contexts are managed should be subject to oversight. That framework – if not the management of decisions themselves – should be public knowledge. Without a framework for managing declared interests, and making use of it, simply making a declaration is an incomplete exercise.

Active disclosures may be made in parliament itself. However, for government ministers, such disclosures must be made in Cabinet meetings, given that decisions made in Cabinet may be carried forward in parliament by the government majority.

### Cabinet meetings

The [Cabinet Handbook](#), at subsection 1.2.4 (p. 4), provides guidance on, and requirements for, the declaration and management of conflicts of interest:

*A member of Cabinet who has a material interest in a matter to be discussed in Cabinet must declare the interest at the commencement of the meeting and may be required to absent themselves from discussion on that matter. The fact of the declaration and/or absencing will be recorded in any resulting Cabinet Decision about the item in question.*

Additionally, the [Code of Conduct for Ministers](#) states:

- 2.3.1 *A Minister who has a material interest in a matter to be discussed in Cabinet must declare the interest to the Premier (or other Minister who is presiding at the meeting) at the commencement of the meeting.*
- 2.3.2 *The Premier, possibly after discussion with other members of the Cabinet, may agree that the Minister has a material conflict of interest in the matter.*
- 2.3.3 *If it is determined that the Minister has a material conflict of interest in the matter, he or she will not be able to take part in the discussion or decision-making on that matter.*
- 2.3.4 *The Minister may be asked to absent him or herself from Cabinet for the purposes of discussing whether there is a material conflict of interest in relation to that matter and the matter itself.*
- 2.3.5 *The fact of any declaration of interest, a determination that it is material and any absence from the Cabinet discussion on a matter is to be recorded in any resulting Cabinet Decision about that matter.*

The Secretary of the Department of Premier and Cabinet and Head of the State Service advised that this works in practice as follows:

*[A] forecast agenda is provided to Cabinet members weekly, to enable identification of any matters that might give rise to a material conflict for the following Cabinet meeting. At the beginning of each Cabinet meeting the first agenda item is discussion on any conflicts of interest which need to be declared.*

*The Premier writes to all Ministers on appointment seeking advice on any interests which could give rise to a potential, perceived or actual conflict of interest in circumstances under their portfolio responsibilities and on receipt of that advice sets out his expectations as to how these will be managed in Cabinet.*

The above provides a good process for ministers declaring and managing interests in Cabinet. It is noted, however, that any declarations made in Cabinet are confidential – there is no ability for the public to compare declarations made in parliament with those made in Cabinet.

### 7.3. Conclusion

Members will often need to declare interests beyond those declared on the Register. This must be done to meet their transparency obligations to the public, and to properly manage potential, perceived and actual conflicts of interest. However, the Register is also a key tool in managing members' interests. Disclosure of foreseeable potential, perceived and actual conflicts should be mandated.

#### Recommendation 1

**That the Government amends the *Parliamentary (Disclosure of Interests) Act 1996* to require members to disclose in their returns any direct or indirect benefits, or advantages or liabilities, whether pecuniary or not, that may raise a conflict between a member's private interests and their duties as a member.**

## 8. Complexity of Disclosure Act requirements

Unlike members of the federal parliament and the parliaments of Victoria, Queensland, South Australia, the ACT and the Northern Territory, members of the Tasmanian Parliament are not generally required to disclose their assets.

However, the requirements of the *Disclosure Act* are legalistic and complex to the extent that they impede proper disclosure and oversight.

These complexities also create loopholes in disclosure requirements, and a requirement to declare the same interest at multiple points – although it may not be evident to the reader that the information at each point relates to the same interest. For example, certain declared interests in corporations may also be required to be disclosed as income. Income earned from a trust may also trigger a declaration of an interest in real property or in a corporation. Similarly, the complex trail of definitions in respect of interests in corporations could be avoided if members simply had to declare holdings in any funds, debentures, shares or similar investments.

Conversely, an example of a loophole is that corporations partially formed for 'charitable purposes' and which devote 'any' of their profit for charitable purposes are exempted from disclosure.

The complexity of the disclosure requirements is most evident in the rarely, if ever, used disclosure provision at section 7(f) of the *Disclosure Act*. This section relates to dispositions of property, which strangely includes the creation of trusts and leases in real property. Given trusts and leases are created by existing members from time to time, the lack of disclosures suggests that the provision may not be understood. The case study below illustrates the issues with the provision.

## 8.1. Trusts

### Disclosure requirements

The details that members of parliament must disclose about trusts are not clear. The *Disclosure Act* says only that members should disclose a trust if income is earned and if the trust owns property.

The primary difficulty is that the *Disclosure Act* refers to 'disposition of property', giving the impression a disclosure needs to be made only when property is disposed of, generally by selling it. The word 'property' is not defined, so whether it applies to 'real property' or all property is unclear. Even if a member were to create a trust 'in respect of money', it may be argued they would not need to disclose that creation, unless they retained the use or benefit of something else altogether – namely, property.

None of the member returns lodged in 2020–21 included a declaration of 'disposition(s) of property'. Although no dispositions of property were declared, multiple members did declare a trust.

Two examples are noteworthy, given that in each case, the member appears to have fully met their disclosure requirements while not declaring the source of their income via the trust. One member received income from a proprietary company that is trustee for a family trust. The other member made a discretionary disclosure that they are a beneficiary of a business trust. However, neither member is obliged to disclose the source of their trust's income, unless it is real property.

There is no suggestion that either member failed to complete their declaration form appropriately. However, if members were subject to the *Members of Parliament (Standards) Act 1978* (Vic), they would be required to disclose the 'activities of the trust' of which they are a beneficiary.

### Blind trusts

On 13 September 2021, former federal minister Christian Porter made a disclosure to the Parliament of Australia House of Representatives Register of Members' Interests under the 'Other interests' category. At that time, Mr Porter was engaged in defamation proceedings with the media. His disclosure was that, in respect of the defamation proceedings:

*Part contribution to the payment of my fees [was made] by a blind trust known as the Legal Services Trust. As a potential beneficiary I have no access to information about the conduct and funding of the trust.*<sup>10</sup>

A blind trust is a type of trust in which the grantor and beneficiary have no control over, or knowledge of, the assets or how they are being managed. A third party trustee, who can be an



individual or an institution, has full control of the trust assets; they do not communicate with the grantor or beneficiary about what is being bought and sold within the trust.<sup>11</sup>

Blind trusts are regarded as a conflict avoidance measure. They seek to strike a balance between 2 competing public interests: first, by encouraging qualified individuals to participate in government service; and, second, by ensuring government decisions are not tainted by a policymaker's own interests. Valuing the latter concern can impair the former and vice versa.<sup>12</sup>

However, blind trusts are problematic if the trust is not truly blind to the member. If they are not truly blind, they may 'tend to disguise actual or apparent conflicts of interests from public oversight. In this sense, blind trusts undermine the transparency essential to democratic governance'.<sup>13</sup>

The newly elected Albanese Government has entirely banned blind trusts for ministers.<sup>14</sup> In the ACT, members must disclose blind trusts. Similarly, in Victoria beneficial interests in a blind trust must be disclosed in primary returns.<sup>15</sup>

Our analysis of the *Disclosure Act* suggests that Tasmanian members of parliament would have to make a disclosure in the year the blind trust is created, if they were to retain 'the use or benefit of the property' of the trust.<sup>16</sup> However, beyond that initial disclosure, ongoing disclosure may not be required.

For example, if a rental property were held under a blind trust, it appears it would need to be disclosed.<sup>17</sup> However, if the member were not aware of the source of income earned by the blind trust, they would not be able to disclose it properly.

The Tasmanian parliamentary disclosure system would be simpler and more effective if it were to replicate the disclosure requirements of the ACT.

## Assets of dependent children

The *Disclosure Act* does not require disclosures regarding income, holdings in real property or dispositions of property of dependent children. Trusts are commonly established for the benefit of dependent children. The combined failure of the *Disclosure Act* to require clear disclosure regarding interests in trusts, as well as the interests of dependent children in real property or income, appears to be a loophole.

Good practice regarding trust disclosures would see disclosures made regarding 'any person' subject to the member's direction or control:

*Provisions should be sufficiently encompassing to catch the astute. For example, it is appropriate that interests declared relate not only to spousal and family members, but to any interest over which the member has control. For example, the obligation of disclosure should be broad enough to include property or assets held on behalf of a member by any person subject to his or her direction or control.*<sup>18</sup>

## 8.2. Conclusion

Rather than a convoluted description of the creation of trusts as 'disposition of property,' other Australian jurisdictions simply mandate that members disclose a 'concise description of any trust (other than a testamentary trust) of which the member or a person related to the member is a beneficiary or trustee (including the name or address of each trustee)'.<sup>19</sup> Such a disclosure at least provides an annual account of a member's interest in trusts, independent of any income earned from it.

Additionally, other jurisdictions require members to provide relatively expansive disclosures regarding interests in trusts. Victoria requires members to provide a description of the 'activities of the trust'<sup>20</sup> and any 'substantial interest held or received by the trust whether pecuniary in nature or not'.<sup>21</sup> The Commonwealth, ACT and NT require declaration of the name of a trust, the nature of its operation and the beneficiary of the trust. This is replicated in Queensland, which also requires disclosure of the 'nature of interest of the member'.<sup>22</sup> Western Australia requires disclosure of the names of the trust's settlor.<sup>23</sup>

Using the above examples of family and business trusts, if either of the Members were subject to the Victorian *Members of Parliament (Standards) Act 1978*, they would have been required to disclose the 'activities of the trust' of which they are a beneficiary.

When it comes to understanding potential conflicts of interest, understanding the 'activities of the trust' is more important than simply having knowledge that income is earned from a trust. Declarations regarding the activities of the trust may include income, investments, land, gifts and travel contributions that are held or received by the trust.

## Recommendation 2

**That the Government simplify the *Parliamentary (Disclosure of Interests) Act 1996* disclosure requirements. At a minimum, disclosure requirements should encompass the assets of dependent children, and in relation to trusts should be broader and simpler. In relation to trusts, we recommend adopting requirements similar to those in the Australian Capital Territory.**

## 9. Ongoing disclosure

The Australia and New Zealand School of Government Institute of Governance described timely disclosure as 'central to the credibility of any scheme of disclosure'. It proposed that members should have to register changes within 30 days.<sup>24</sup>

The Tasmanian *Disclosure Act* requires only annual returns, with the discretionary option to 'vary a return' if the member considers it 'necessary'. In contrast, the House of Representatives and the parliaments of Queensland, the Northern Territory and the ACT mandate notification of any alteration of declared interests within 28 days of the change occurring. Victoria requires 'material changes' to be submitted 'as soon as practicable'.<sup>25</sup>

The *Disclosure Act* should require disclosure when new interests arise, rather than when members are completing their annual return.

## Recommendation 3

**That the Government amend the *Parliamentary (Disclosure of Interests) Act 1996* to require notification of any alteration of disclosed interests within 28 days of the change occurring.**

## PART D CONCLUSION

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Making public declarations on a register of interests is about encouraging transparent decision-making. Transparent decision-making provides Tasmanians with confidence that elected representatives are acting in the best interests of the community when making decisions and allocating funding.

Our audit suggests that, apart from not disclosing some spousal interests, Tasmanian members of parliament are meeting the disclosure requirements of the current system. The system itself is lacking, with significant gaps and complexities that impact the effectiveness of the Register and undermine its purpose. Gaps and complexities include:

- ▼ a discretionary conflict of interest disclosure requirement
- ▼ unclear and inadequate requirements in relation to interests in trusts, and
- ▼ inadequate ongoing disclosure requirements.

While these issues remain, the Register is not fully facilitating the proper declaration and management of conflicts of interest by members of parliament.

Finally, while noting the importance of the Register, it is only one part of the Parliamentary Integrity Framework. It must not be the sole mechanism available to members to meet their public office and transparency obligations.

## Appendix A: References

- <sup>1</sup> Organisation for Economic Cooperation and Development, *OECD Public Integrity Handbook*, *Oversight*, cl 12.2.
- <sup>2</sup> See the following reports: *Monitoring of the Parliamentary Disclosure of Interests Register: Report for the period 1 July 2016 to 30 June 2017* (Report No. 1 of 2018); *Monitoring Parliamentary Disclosure of Interests Register: Report for the period 1 July 2015 to 30 June 2016* (Report No 1 of 2017); and *Enhancing accountability mechanisms for members of parliament and ministerial staff* (2015).
- <sup>3</sup> *Re Day [No 2]* (2017) 263 CLR 201 [269] (Nettle and Gordon JJ), quoting from *R v Boston* (1923) 33 CLR 386, 400 (original emphasis). See also *Hocking v Director-General of the National Archives of Australia* [2020] HCA 19 [243] (Edelman J); *McCloy v New South Wales* (2015) 257 CLR 178 [171] (Gageler J).
- <sup>4</sup> *Re Day [No 2]* (2017) 263 CLR 201 [49] (Kiefel CJ, Bell and Edelman JJ); see also [183] (Keane J).
- <sup>5</sup> Parliament of Victoria, *Review of Members of Parliament (Register of Interests) Act 1978: Final report of the Victorian Parliament Law Reform Committee* (2009) 47.
- <sup>6</sup> Parliament of Victoria, *Review of Members of Parliament (Register of Interests) Act 1978: Final report of the Victorian Parliament Law Reform Committee* (2009) see footnote 160: ANZSOG Institute for Governance, Submission no. 21, 5; Howard Whitton, Visiting Fellow, ANZSOG Institute for Governance, Transcript of evidence, Melbourne, 21 July 2009, 2; Gerard Carney, *Members of parliament: Law and ethics*, Prospect Media (2000), 358–359.
- <sup>7</sup> Parliament of Victoria, *Review of Members of Parliament (Register of Interests) Act 1978: Final report of the Victorian Parliament Law Reform Committee* (2009) 79.
- <sup>8</sup> For example, see Sunita Sah, '*Conflicts of Interest and Disclosure*', research paper produced for the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2018) 6.
- <sup>9</sup> Kenji Sato, 'Ella Haddad slams Michael Ferguson for owning Airbnb', *Mercury* (10 December 2021).
- <sup>10</sup> Christian Porter, Register of Members' Interests, Statement of Registrable Interests, 46<sup>th</sup> Parliament (31 July 2019).
- <sup>11</sup> The Quinn Group, 'All trust structures'.
- <sup>12</sup> Megan J Ballard, '*The Shortsightedness of Blind Trusts*' (2007) 56(43) *Kansas Law Review* 46.
- <sup>13</sup> *Ibid* 48.
- <sup>14</sup> Amy Remeikis and Paul Karp, '*Labor's new ministerial code of conduct bans blind trusts like Christian Porter used*' *The Guardian* (7 July 2022).
- <sup>15</sup> *Members of Parliament (Standards) Act 1978* (Vic) s 19(2).
- <sup>16</sup> Disclosure Act s 7(f).
- <sup>17</sup> Disclosure Act s 7(b).
- <sup>18</sup> Parliament of Victoria, *Review of Members of Parliament (Register of Interests) Act 1978: Final report of the Victorian Parliament Law Reform Committee* (2009) 70.
- <sup>19</sup> *Members of Parliament (Register of Interests) Act 1983* (SA) s 4(3)(c).
- <sup>20</sup> *Members of Parliament (Standards) Act 1978* (Vic) s 16(g).
- <sup>21</sup> *Members of Parliament (Standards) Act 1978* (Vic) s 16(h).
- <sup>22</sup> Queensland Legislative Assembly, *Standing Rules and Orders of the Legislative Assembly* (2004) Schedule 2, Part 2, cl 7(5)(b)(ii).
- <sup>23</sup> *Members of Parliament (Financial Interests) Act 1992* (WA) s 8.
- <sup>24</sup> Parliament of Victoria, *Review of Members of Parliament (Register of Interests) Act 1978: Final report of the Victorian Parliament Law Reform Committee* (2009) citing ANZSOG Institute of Governance Submission No. 21, 3.
- <sup>25</sup> *Members of Parliament (Standards) Act 1978* (Vic) s 21.

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