

REPORT OF THE INTEGRITY COMMISSION

No. 1 of 2018

Monitoring R I W K H Parliamen
Disclosure of Interests Register:
Report for the period 1 July 2016 to
30 June 2017

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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President
Legislative Council
Parliament House
HOBART 7000

Speaker
House of Assembly
Parliament House
HOBART 7000

Dear Mr President

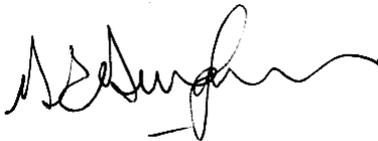
Dear Mr Speaker

Pursuant to section 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents a report to Parliament arising from a review of the Parliamentary disclosure of interests register for the period 1 July 2016 to 30 June 2017, undertaken in accordance with s 30(a) of the Act.

Yours sincerely,



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



Richard Bingham
Chief Executive Officer

March 2018

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Monitoring of the Parliamentary Disclosure of Interests Register

**Report for the period 1 July 2016 to
30 June 2017**

13 February 2018

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1. Introduction

- [1] This is a report prepared in accordance with the Integrity Commission's (the Commission) function of monitoring the operation of the Parliamentary disclosure of interests register, pursuant to section 30(a) of the *Integrity Commission Act 2009* ('*Integrity Commission Act*'). The review period for this report is from 1 July 2016 to 30 June 2017.
- [2] The Parliamentary disclosure of interests register is in fact two registers (collectively, 'the Register'),¹ with one register being kept by the clerk of each House of Parliament in accordance with the *Parliamentary (Disclosure of Interests) Act 1996* ('*Disclosure Act*').²
- [3] The purpose of the Register is to provide a mechanism for Members of Parliament ('Members') to disclose interests that may affect, or may be perceived to affect, the objectivity of their decision making. Disclosure of interests is the first step in the management of such interests, and enhances the confidence of the Tasmanian public in the transparency of parliamentary processes. It is an important component of parliamentary integrity.
- [4] Our previous reports on the Register have been superficial, reviewing only whether Members were complying with form requirements. This report is more forensic in nature, and has verified some of the interests that have been disclosed.
- [5] Direct feedback has been given to each Member, via the relevant Clerk, about their compliance with *Disclosure Act* requirements.

1.1. The role of the Commission

- [6] The Commission is established by the *Integrity Commission Act* to, among other things, improve the standard of conduct, propriety and ethics in Tasmania's public sector.
- [7] In accordance with section 30 of the *Integrity Commission Act*, one of the Commission's functions is to involve itself in the development and operation of guidelines, codes of conduct, registers, and training relating to the conduct of Members. Part of that function is to monitor the operation of the Register.
- [8] 'Monitor the operation' is not defined in the Act and to date the Commission has taken a conservative view of the scope of this function. Our reviews have involved checking whether Members have completed the return form correctly, and have not involved any further inquiry into the accuracy or comprehensiveness of the information contained within. Aspects of our review this year are, however, more forensic in nature. We have continued to apply a strict standard in assessing whether the returns submitted by Members comply with the requirements of the *Disclosure Act*. However the report differentiates between what we perceive to be 'administrative' non-compliance (an

¹ Previous reports prepared by the Integrity Commission have also referred to the registers as the 'parliamentary registers of interest'.

² References to the *Disclosure Act* in this report are to the version of the Act that was in force as of 1 October 2017.

apparent genuine error in filling out a form correctly) and a failure to properly disclose an interest.

- [9] Members may seek advice on the operation of the Register from the Parliamentary Standards Commissioner.³ Such advice is confidential and this report does not comment on the frequency or nature of any such advice.

1.2. Amendments to the *Disclosure Act* and forms

- [10] In 2017, we were invited to make a submission on proposed amendments to the *Disclosure Act*. The *Parliamentary (Disclosure of Interests) Amendment Act 2017* was subsequently passed by both Houses of Parliament and came into force on 1 December 2017.

- [11] The main changes to the *Disclosure Act* as a result of the amendments were:

- a requirement that Members disclose the interests of spouses;
- requiring the Register to be made available online;⁴
- the expansion of the definition of gifts to include financial or other benefits; and
- indexation of dollar values for threshold reporting requirements.

A previous Commission report raised the need for changes similar to the first two amendments listed above;⁵ it is pleasing to see progress in this area.

- [12] As the amendments came into force on 1 December 2017, they had no impact on the disclosure requirements subject to review in this report. References to the *Disclosure Act* in this report are to the version of that Act that was in force as of 1 October 2017.

- [13] We have previously commented on the usability of the form provided to Members to meet their disclosure requirements. The Commission re-drafted the form⁶ and the Department of Premier and Cabinet has advised that the Commission's form – with some changes to match the final version of the amended *Disclosure Act* – will be in place for the next reporting round.

- [14] It is anticipated that a more user-friendly form will reduce the number of non-compliant disclosures.

1.3. Key terms

- [15] Terms used in this report include the below.

Primary returns must be lodged by a person who becomes a Member of Parliament ('Member') within three months of the day on which the person takes the oath of

³ *Integrity Commission Act* s 28(1)(b). The office of the Parliamentary Standards Commissioner is established by s 27(1) of the *Integrity Commission Act*. The Commissioner operates independently of the Integrity Commission.

⁴ The Register has previously only been available to inspect during office hours at Parliament House.

⁵ Integrity Commission, *Enhancing accountability mechanisms for members of parliament and ministerial staff: a progress update* (2015) 17; see also Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009) Recommendation 1, Recommendation 3.

⁶ Integrity Commission, *Monitoring Parliamentary Disclosure of Interests Register: Report for the period 1 July 2015 to 30 June 2016*, Report No. 1 (2017) 9–11.

allegiance for office.⁷ The *Disclosure Act* sets out the information to be disclosed by a Member in a primary return,⁸ subject to exceptions contained in that Act.⁹

Ordinary returns are lodged by all Members by 1 October of each year for the preceding financial year to 30 June, unless the date of a Member's primary return is after 30 April of that year.¹⁰ The *Disclosure Act* sets out the information to be disclosed by a Member in an ordinary return,¹¹ subject to exceptions contained in that Act.¹²

The **Register** is to comprise the returns lodged by Members in the previous eight years. They are to be in a loose-leaf form, and divided into two parts (one containing primary returns, and one containing ordinary returns), with the returns filed in alphabetical order according to the Members' surnames.¹³

2. Analysis of returns

[16] As noted above, the Commission applies a strict standard to its assessment of returns. Members are elected by the people of Tasmania to represent their interests, and it is essential that the responsibilities of this role be taken seriously.

[17] Our strict assessment of the returns does mean that, in some cases, Members may have made an honest attempt to disclose but failed to do so correctly.

2.1. Summary

[18] The Commission received 25 forms to assess for the House of Assembly, and 14 forms for the Legislative Council.¹⁴

[19] As in previous years, there continues to be a significant number of non-compliant responses,¹⁵ with only one Member returning a fully compliant form. Types of non-compliance varied from 'administrative' issues in not using the correct terminology as required by the form, to a failure to complete all parts of the form, to a failure to disclose an interest which was required to be disclosed.

[20] Some forms are completed with little attention to the requested information, rendering the responses illegible or incomplete. For instance, Members are at times required to supply the address of a donor or company, but often no address or only a partial address was given.

[21] The most common type of 'administrative' non-compliance was not answering a question correctly by leaving the response blank, writing 'n/a', or putting a dash

⁷ *Disclosure Act* s 4.

⁸ *Disclosure Act* s 6.

⁹ *Disclosure Act* ss 10–14.

¹⁰ *Disclosure Act* s 5.

¹¹ *Disclosure Act* s 7.

¹² *Disclosure Act* ss 10–14.

¹³ *Disclosure Act* s 17.

¹⁴ Due to circumstances beyond anybody's control, the Hon Vanessa Goodwin MP's form for the 2016-17 financial year was unable to be submitted and tabled.

¹⁵ Variable compliance with disclosure requirements is not limited to the Tasmanian Parliament, see Gareth Hutchens and Katharine Murphy, 'John Alexander on back foot in Bennelong over rental income declaration', *The Guardian (Australia edition)* (online), 14 December 2017 <<https://www.theguardian.com/australia-news/2017/dec/14/kristina-keneally-refuses-to-rule-out-taking-sam-dastyaris-senate-spot>>.

through it. Under the *Disclosure Act*, Members are required to write 'nil' if they have no relevant interest to disclose. Unlike other responses, 'nil' makes it clear that the Member has no relevant interest to disclose. If a response is left blank, it is not possible to assess if this is because the member has chosen not, or forgotten, to disclose an interest, or if they have simply not filled in the form correctly.

- [22] A number of Members disclosed interests in the wrong part of the form. Of most concern was the 'discretionary' disclosure of an interest that was a required disclosure in another part of the form. For instance, some members disclosed gifts and shares as discretionary disclosures. These are not discretionary disclosures; they are interests that are required to be disclosed in other sections of the form.
- [23] There were a number of forms in which information was disclosed that was not required to be disclosed, although we did not mark these responses as 'non-compliant'. For instance, it is not necessary for Members to disclose their parliamentary salary as 'income'.

2.2. Specific observations

- [24] Please note that we have not analysed all of the information in the returns against original sources, and so cannot comment fully on their accuracy.

Return date

- [25] Under the *Disclosure Act*, ordinary returns must be lodged with the relevant Clerk by 1 October every year. Two forms from the House of Assembly and one form from the Legislative Council were signed – and therefore lodged – after 1 October. One of the forms was over two weeks late.

Return period

- [26] The return period for ordinary returns runs for the financial year, from 1 July to 30 June.
- [27] There were seven forms in which the Member either did not state the return period, or stated the wrong return period.
- [28] Most commonly, presumably because the forms are due by 1 October, some Members wrote that the return period ran from the beginning of October to the end of the following September.
- [29] A form that covers the wrong return period is more likely to lack required disclosures, especially for items such as gifts and contributions to travel.

Sources of income (Part A)

- [30] Members are required to disclose sources of income exceeding \$500 that the Member received, or reasonably expects to receive, during the return period.¹⁶ Types of income are divided into sources from an occupation, a trust, and 'other'.

¹⁶ *Disclosure Act* ss 6(a), 7(a), 8.

House of Assembly

- [31] Four (16%) forms were non-compliant in regard to sources of income from an occupation. In all cases, this was because the Member left this part of the form blank.
- [32] Eight (32%) forms were non-compliant in regard to sources of income from a trust. In six cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part, and one Member did not supply the address of the trustee or the settlor as required under the *Disclosure Act*.¹⁷
- [33] Six (24%) forms were non-compliant in regard to other sources of income. In five cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part.

Legislative Council

- [34] Six (43%) forms were non-compliant in regard to sources of income from an occupation. In three cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part, and two Members either did not supply an address or supplied a partial address only in relation to their disclosed sources of income.
- [35] Five (36%) forms were non-compliant in regard to sources of income from a trust. In three cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part, and one Member put a dash through the part.
- [36] Seven (50%) forms were non-compliant in regard to other sources of income. In five cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part, and one Member did not sufficiently describe their interest as required under the *Disclosure Act*.¹⁸

Real property (Part B)

- [37] Members are required to disclose the address of, and nature of interest they hold in, any real property.¹⁹
- [38] Very few Members correctly described the nature of their interest in their real property, with this being the case for at least one property for 20 (80%) Members of the House of Assembly and 12 (86%) Members of the Legislative Council. A number of Members of both Houses also failed to supply the address of one or more properties.
- [39] One Member stated that they had 'nil' interest in real property in the reporting period. The Member disclosed an interest in real property for the 2015–16 return period. Our review indicates that the particular property was sold by the Member in November 2017, which means it should have been disclosed in their 2016-17 return.
- [40] The nature of the interest held by a Member in real property must be described using accurate legal terminology, as is required when buying and selling property. For example, the Member's interest might legally be described as 'joint tenant' or 'tenant in

¹⁷ *Disclosure Act* s 8(b).

¹⁸ That is, they did not include 'a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received', see *Disclosure Act* s 8(c).

¹⁹ *Disclosure Act* ss 6(b)–(c), 7(b)–(c), 10.

common'. Common forms of non-compliant descriptions of this interest were 'owner' and 'joint owner'. We anticipate that the new form will largely resolve this issue.

Interests and positions in corporations (Part C)

[41] Members are required to disclose 'the nature of any interest, or description of any position, whether remunerated or not, the Member held in any corporation', which must include 'a description of the principal objects' and the name and address of any relevant corporation.²⁰

[42] Fourteen (56%) House of Assembly returns were non-compliant with this requirement. This was because:

- seven Members failed to include the address of one or more relevant disclosed corporations;
- three Members failed to include both the address and the principal object of one or more relevant disclosed corporations;
- one Member failed to include the address of one or more relevant disclosed corporations, and to disclose an interest that was included in another part of their form;
- one Member failed to include both the address and the principal object of one or more relevant disclosed corporation, and to disclose an interest that was included in another part of their form;
- one Member put a dash through the part; and
- one Member left this part of the form blank.

[43] Eight (57%) Legislative Council returns were non-compliant with this requirement. This was because:

- four Members failed to include the address of one or more relevant disclosed corporations;
- two Members failed to disclose an interest that was included in another part of their form;
- one Member failed to include both the address and the principal object of one or more relevant disclosed corporations; and
- one Member put a dash through the part.

[44] As can be seen from the above, four Members disclosed shareholdings as discretionary disclosures (Part I of the form) instead of as required at Part C of the form. Aside from failing to disclose the interest as required, this also meant that Members did not supply sufficient detail about the interest, as would have been required had it been disclosed at Part C.

²⁰ *Disclosure Act* ss 6(d)–(f), 7(d)–(f), 11.

Positions in trade unions and professional or business associations (Part D)

- [45] Members are required to provide a description of any position they hold in any 'trade union or professional or business association, whether remunerated or not', as well as the name of the trade union or association.²¹
- [46] Five (20%) House of Assembly returns were not compliant with this requirement. In three cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part, and one Member put a dash through the part.
- [47] Two (14%) Legislative Council returns were not compliant with this requirement. In both cases, this was because the Member put a dash through the part.
- [48] A number of Members disclosed memberships or positions in sporting or community associations that are not required to be disclosed.²² We anticipate that the new form will resolve this issue.

Debts (Part E)

- [49] With some exceptions, Members are required to disclose the name and address of any person to whom the Member is liable to pay any debt.²³
- [50] Five (20%) House of Assembly returns were not compliant with this requirement. In three cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part, and one Member put a dash through the part.
- [51] Three (21%) Legislative Council returns were not compliant with this requirement. In two cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part.

Dispositions of property (Part F)

- [52] In ordinary returns,²⁴ Members are required to disclose the:
- 'particulars of any disposition of property made by a person during the ordinary return period to another person under an arrangement made by the Member whereby, either wholly or in part, the Member obtained the use and benefit of the property'; and
 - 'particulars of any disposition of property made by a person during the ordinary return period to another person under an arrangement made by the Member whereby, either wholly or in part, the Member obtained the use and benefit of the property'.²⁵
- [53] Seven (29%) House of Assembly²⁶ returns were not compliant with this requirement. In five cases, this was because the Member left this part of the form blank; additionally, two Members responded 'n/a' to this part.

²¹ *Disclosure Act* ss 6(g)–(h), 7(g)–(h).

²² We did not mark these responses 'non-compliant'.

²³ *Disclosure Act* ss 6(i), 7(i), 12.

²⁴ There is no requirement to disclose dispositions of property in primary returns.

²⁵ *Disclosure Act* s 7(j)–(k).

²⁶ As primary returns are not included, the total number of returns assessable against this requirement was 24 for the House of Assembly.

[54] Four (31%) Legislative Council²⁷ returns were not compliant with this requirement. In one case, this was because the Member left this part of the form blank; additionally, two Members responded 'n/a' to this part, and one Member put a dash through the part.

Contributions to travel (Part G)

[55] With some exceptions, in ordinary returns²⁸ Members are required to disclose any contributions to travel worth over \$250, along with particular details of the travel.²⁹

[56] 'Travel' includes 'accommodation incidental to a journey'. Also, there is no distinction in the *Disclosure Act* between upgrades received as part of a Member's public duties and their private life.

[57] Eight (33%) House of Assembly³⁰ returns were not compliant with this requirement. In four cases, this was because the Member left this part of the form blank; additionally, two Members responded 'n/a' to this part, and two Members failed to include sufficient detail of the interest disclosed.

[58] Four (31%) Legislative Council³¹ returns were not compliant with this requirement. In three cases, this was because the Member left this part of the form blank; additionally, one Member responded 'n/a' to this part.

[59] Only two Members disclosed a contribution to travel.

[60] As discussed below, a number of Members declared airline memberships. If, as part of those memberships, Members were given any travel upgrades worth over \$250, it appears that they should also have been disclosed as contributions to travel. This creates an onus on Members to determine the relative value of the upgrades, and effectively to report them twice. It may be considered more practical to ensure that airline memberships are declared as a gift and that disclosure of any travel associated with the membership not be required.

Gifts or discounts (Part H)

[61] With some exceptions, in ordinary returns³² Members are required to disclose gifts valued at \$500 or more.³³ For the period to which this report relates, the definition of gift was as follows:

'gift' means any disposition of property other than any financial or other contribution to travel –

(a) passing without consideration in money or money's worth; or

(b) passing with consideration that is not fully adequate;

²⁷ As primary returns are not included, the total number of returns assessable against this requirement was 13 for the Legislative Council.

²⁸ There is no requirement to disclose contribution to travel in primary returns.

²⁹ *Disclosure Act* ss 7(l)–(n), 13.

³⁰ As primary returns are not included, the total number of returns assessable against this requirement was 24 for the House of Assembly.

³¹ As primary returns are not included, the total number of returns assessable against this requirement was 13 for the Legislative Council.

³² There is no requirement to disclose gifts in primary returns.

³³ *Disclosure Act* ss 7(o)–(p), 14.

- [62] The 2017 amendment extended the definition to include other types of gifts. We expect that this will assist in overcoming an issue identified in the period under review, namely that several Members disclosed gifts as discretionary disclosures (Part I of the Form). In these situations, Members did not supply as much detail about the interest as would have been required if it were disclosed at Part H.
- [63] Although in the period under review more gifts were disclosed than travel contributions, fewer gifts were disclosed than we would have expected.
- [64] For members of the Tasmanian Government, the Commission was able to compare gifts declared on the 'official' gifts register with gifts disclosed on the *Disclosure Act* Register.³⁴ There does not appear to be a similar register in existence for non-government Members.
- [65] Gifts appearing on the Tasmanian Government official gift register that were not disclosed on the Register included:
- shirts and polo tops with an estimated value of \$820 from the Royal Yacht Club of Australia;
 - framed signed shirts with an estimated value of \$1,000 from Cricket Australia;
 - tickets with an estimated value of \$600 from Cricket Tasmania, which were returned; and
 - tickets and passes with an estimated value of \$726 from MONA.
- [66] A total of 11 Members disclosed, as either a gift or a discretionary disclosure, an airline membership of some kind. Despite the different descriptions given on disclosures, it seems apparent that many – if not all – of these memberships were for the invitation-only Qantas Chairman's Lounge and/or Virgin's The Club.³⁵ This brings benefits to the cardholder such as flight upgrades and baggage allowance benefits, as well as use of exclusive airport lounges.
- [67] Nine of the 11 Members who disclosed such memberships were either current or former members of Cabinet. It is unclear if Members who did not disclose were not offered the exclusive memberships, if they were offered but refused, or if they received them but failed to disclose them. All but one of the Members that did disclose these kinds of gifts were from the House of Assembly.

Discretionary disclosures (Part I)

- [68] Members are at liberty to make discretionary disclosures that are not required to be disclosed but that 'may raise a conflict between the Member's private interests and his or her duties as a Member'.³⁶
- [69] Seven forms (18%) contained discretionary disclosures – either gifts or shares – that might have been disclosed under another part of the form.

³⁴ Tasmania, *Official Gifts Received Register 2017*, House of Assembly Tabled Papers, 30 November 2017 <http://www.parliament.tas.gov.au/ha/tpapers/2017/p2017/HATP2_30_11_2017.pdf>.

³⁵ For information about these lounges, see Uma Patel, 'Access to exclusive Qantas, Virgin lounges tops parliamentary gift register', *ABC News* (online), 8 October 2016 <<http://www.abc.net.au/news/2016-10-08/qantas,-virgin-lounges-top-parliamentary-gift-register/7914412>>.

³⁶ *Disclosure Act* s 9.

3. Concluding remarks

- [70] This review has been undertaken to monitor the operation of the Parliamentary disclosure of interests register. Our independent verification of Members' disclosures, along with increased public access to and scrutiny of the Register, contributes to public confidence in the transparency of parliamentary processes, and are important components of parliamentary integrity.
- [71] We note the instances of non-compliance identified in Members' returns over the review period, and that 'administrative' non-compliance (whether the member has used the correct terminology) continues as a significant factor in the number of non-compliant returns. The Commission is hopeful that the new form will assist in reducing the number of such non-compliant responses.
- [72] Tasmania will soon be undergoing state elections, which will see a new House of Assembly and the election of Members to certain seats in the Legislative Council. The Commission will be offering training to all Members after the election, to assist them in meeting their requirements under the *Disclosure Act*. It is also anticipated that feedback we have given to Members this year will assist returning Members in fulfilling their responsibilities under the *Disclosure Act*.

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