



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE ASSEMBLY

STANDING ETHICS COMMITTEE

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Report on

Interstate Study Tour  
February 2000

April 2000



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SECRETARIAT: PARLIAMENT HOUSE, MACQUARIE STREET, SYDNEY NSW 2000  
TELEPHONE: (02) 9230 2355 FACSIMILE: (02) 9230 2828

# COMMITTEE MEMBERSHIP

## Legislative Assembly

Mr John Price MP (Chairman)  
Mr Matthew Brown MP (Vice-Chairman)  
Mr Andrew Fraser MP  
Mr Kerry Hickey MP  
Dr Liz Kernohan MP  
Mr Gerard Martin MP  
Ms Alison Megarrity MP  
Mr Michael Richardson MP

## Community Members

Mr Rod Caldwell  
Dr Fran Flavel  
Mr Shane Godbee

## Secretariat

Ms Ronda Miller, Clerk to the Committee  
Ms Stephanie Hesford, Parliamentary Officer

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## Chairman's foreword

As part of the Committee's ongoing work regarding legislative ethics the Committee sent a delegation interstate to examine legislative ethics in Australian jurisdictions. The delegation visited the Queensland, Victorian and Tasmanian Parliaments to examine codes of conduct and accountability mechanisms for members of parliament. The delegation was also interested in examining how members receive advice and education on ethical issues, and the effectiveness of ethics regimes in Australia.

The delegation was fortunate in being able to meet with the Clerks of the various parliaments and senior members of parliament as well as bodies who influence legislative ethics. The delegation benefited from first hand discussions regarding ethics issues and the development of ethics in Australian jurisdictions. The delegation also discussed the newly established statutory office of the Queensland Integrity Commissioner.

The delegation found that on the whole New South Wales is at the forefront of legislative ethics in Australia, in that a Code of Conduct has been adopted by the House and a Parliamentary Ethics Adviser has been appointed to assist and advise Members of Parliament in resolving ethical issues and problems. During the coming year, as part of its ongoing task of implementing a continuing educative process for Members of Parliament and its statutory requirement to review the Code of Conduct, the Committee will further examine developments in other jurisdictions.

John Price MP  
Chairman.

## **Background**

The Legislative Assembly Standing Ethics Committee is established under Part 7A, Division 2 of the *Independent Commission Against Corruption Act 1988*. The Committee has three main functions:

- (1) To prepare for consideration by the Legislative Assembly draft codes of conduct for members of the Legislative Assembly and draft amendments to codes of conduct already adopted;
- (2) To carry out educative work relating to ethical standards applying to members of the Legislative Assembly; and
- (3) To give advice in relation to such ethical standards in response to requests for advice by the Legislative Assembly, but not in relation to actual or alleged conduct of any particular person.

The Legislative Assembly adopted a code of conduct for the first time on 5 May 1998. This Parliament (1999-2003) the Committee has two main functions. First, to implement a continuing educative process for Members of the Legislative Assembly on ethical issues, and second, to review the Code of Conduct adopted by the House to ensure that the ethics regime in New South Wales is sensible and effective.

## **Purpose of trip**

The Committee resolved at its meeting on 19 January 2000 to send a delegation interstate to meet with the Queensland Members' Ethics and Parliamentary Privileges Committee, the Queensland Public Service Commissioner and with the Clerks and Presiding Officers of the Victorian and Tasmanian Parliaments. The Committee sought information on codes of conduct and accountability mechanisms for members of parliament, how members receive advice and education on ethical issues, and the effectiveness of ethics regimes in Australian jurisdictions.

The trip was a valuable experience as it provided new Members of the Committee with an opportunity to exchange experiences and information on legislative ethics. The trip will also prove valuable for the Committee as the issues raised are directly relevant to the Committee's task to implement an educative program on ethics and its statutory requirement to review the Code of Conduct adopted by the House.

## **Record of Meetings**

### ***Queensland***

#### *Office of the Public Service Commissioner*

Dr Brian Head, Public Service Commissioner

Mr Merv Lawrence, Executive Director, Workforce Practices

Mr Howard Whitton

#### *Members' Ethics and Parliamentary Privileges Committee*

Mr John Mickel MLA, Chairman

Mrs Joan Sheldon MLA, Deputy Chairman

Mrs Julie Attwood MLA

Mr Phil Reeves MLA

Mr Neil Laurie, Deputy Clerk

Ms Meg Hoban, Acting Research Director

### ***Victoria***

#### *Victorian Parliament*

The Hon. Alex Andrianopoulos MP, Speaker

Mr Raymond Purdey, Clerk of the Parliaments and Clerk of the Legislative Assembly

Mr Wayne Tunnecliffe, Clerk of the Legislative Council

### ***Tasmania***

#### *Tasmanian Parliament*

The Hon. Michael Polley MHA, Speaker

Mr Peter Alcock, Clerk of the House of Assembly

## **Findings and conclusions**

### ***Codes of conduct and development in ethics***

The Parliament of Victoria and the Parliament of Tasmania have codes of conduct, which apply to their members. The Victorian Code of Conduct is enacted in legislation, and the Tasmanian Code of Ethical Conduct requires members to subscribe to the code of conduct upon election to Parliament. Neither jurisdiction has experienced any breaches of the codes or any issues relating to it.

The Code of Conduct applying to Members of the Victorian Parliament has never been reviewed or amended in the twenty-two years since the legislation was passed. The recently elected Bracks Government has proposed a new code of conduct for members of parliament. It is envisaged that any new code will adopt the principles which currently apply. In Tasmania a Joint Select Committee that has a Chair from both Houses of Parliament may review the Code of Ethical Conduct.

In Queensland the Members' Ethics and Parliamentary Privileges Committee have tabled a draft code of ethical principles which should be discussed in parliament this session. The draft code embodies the ethical principles and laws that currently apply to Members of the Queensland Parliament.

### ***Register of Members' Interests***

The main accountability mechanism for ensuring that members of parliament do not have conflicts of interest is a pecuniary interest register. Codes of Conduct that apply to Members of Parliament generally incorporate the general principles of registers of interest. The Registers of Interest are compiled on an annual basis and the Register or a summary is available as a public document. In Queensland and Victoria Members are required to submit the interests of their spouse and any dependent children.

In Queensland the Members' Ethics and Parliamentary Privileges Committee has a function to monitor the operation of the interest registers. The Legislative Assembly Standing Ethics Committee does not have any direct monitoring role of the pecuniary interest register in New South Wales. However, the Code of Conduct adopted by the Legislative Assembly requires Members to adhere to the requirements of the pecuniary interest register and as such the issue is of concern to the Committee.

### ***Advice and education on ethics and related issues***

In all jurisdictions the Clerks are primarily responsible for providing Members of Parliament with advice regarding ethics and related matters. In Queensland legislation has been passed recently establishing an Integrity Commissioner. The Integrity Commissioner will have the main role of advising "designated persons" on conflicts of interest matters. However, of note is the fact that the only members of parliament who can receive advice are government members in that only the Premier, Ministers and



Parliamentary Secretaries have been defined in the legislation as “designated persons”. The Legislative Assembly Standing Committee as part of its watching brief has an interest in the role of Ethics Advisers or any similar body and will be examining the role of the New South Wales Parliamentary Ethics Adviser as part of the review of the ethics regime in New South Wales.

The Clerks are generally responsible for running educative and induction programs for members of parliament and these can include an ethics component. Such induction programs will necessarily deal with the issue of entitlements and allowances. However, in Tasmania the induction and educative programs are run by the major political parties with the Clerk of each House providing advice based on precedents for specific concerns.

## Queensland

### *Developments in ethics*

The 1989 *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (The Fitzgerald Inquiry) initially recommended the need for a code of ethics for public officials. The Electoral and Administrative Review Commission (EARC) reviewed the matter and agreed with the recommendation and made further recommendations regarding a code of conduct for elected officials. A parliamentary committee examined the EARC's recommendations, which included a code of conduct, and concluded that public sector ethics legislation should be enacted in Queensland and that a parliamentary committee should be established to draft a code of conduct for members of the Queensland Parliament.<sup>1</sup>

The Queensland Members' Ethics and Parliamentary Privileges Committee tabled a draft code of ethical conduct for members of the Queensland Legislative Assembly and a report detailing the inquiry process in May 1998. The draft code of ethical conduct is comprised of three parts:

- 1 A statement of ethical principles and an outline of the obligations imposed on members. This is to provide an aspirational framework of reference for members in the discharge of their responsibilities. The Committee recommended that members should subscribe to the statement of commitment immediately after taking their Oath of Office. The Statement of Ethical Principles is aspirational in nature and is not in itself enforceable.
- 2 The second part of the code provides an overview of the restrictions and obligations placed upon members. Whilst this overview is not exhaustive it contains such matters as the conduct of members in the House, the Register of Members Interests, bribery and advocacy, conflicts of interest, dealing with Executive Government, authorised use of allowances, misuse of confidential information and general qualifications, disqualifications and the requirements of the electoral laws.
- 3 The third part of the code outlines procedures for the handling of complaints concerning matters contained within the code.

The Committee's draft code of ethical conduct presents relevant information concerning the obligations on members, together with specific guidelines for members, in one document. Further, the code incorporates the current obligations and requirements on members which are presently dispersed in a number of documents into a single document. As such, the ethics regime proposed by the Members' Ethics and Parliamentary Privileges Committee does not in itself create any new obligations.

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<sup>1</sup> Queensland Members Ethics and Parliamentary Privileges Committee, *Report on a Draft Code of Conduct for Members of the Queensland Legislative Assembly*, May 1998, pages1-2.

The code of ethical conduct is yet to be adopted by the Queensland Legislative Assembly. However, the Committee envisages that the code will be put before the House this sitting. Over recent months the Committee has been busy with a number of legal questions dealing with contempt and privilege. There is currently no review mechanism in place to review any adopted code. However, the Members' Ethics and Parliamentary Privileges Committee is of the opinion that such a mechanism will be decided upon once the code is adopted by the House.

### ***Register of Interests***

The Members' Ethics and Parliamentary Privileges Committee has responsibility for examining arrangements relating to the *Register of Members' Interests* and the *Register of the Interests of Persons Related to a Member*. The Committee is also responsible for monitoring the operation of the register.

Each member is required to provide a statement of their pecuniary interests to the Clerk of the Parliament within one month of making an oath or affirmation as a member of the Legislative Assembly and annually thereafter. A member is also required to register the interests of their spouse or any dependent children. The Clerk compiles the Register of Members' Interests from these statements and the register is tabled in Parliament.

The Register of Members' Interests is publicly available through the Office of the Clerk of the Parliament. The Register of Related Persons is available only to a limited number of persons, namely, the Speaker, the Premier, the Leader of the Opposition and the Members' Ethics and Parliamentary Privileges Committee.

There is currently some debate in Queensland regarding the Register of Members' Interests. There are some that propose that not only the name of the company a member holds shares in needs to be disclosed but also the amount of shares and their value. The Members' Ethics and Parliamentary Privileges Committee is currently considering the issue of whether such a Register should be available to a limited number of people in the same way as the Register of Related Persons for privacy reasons.

### ***The Integrity Commissioner***

#### ***Background and objectives***

In November 1999 the Queensland Parliament passed an amendment to the *Public Sector Ethics Act 1994* which provided for the establishment of a Queensland Integrity Commissioner. The appointment process for the position is currently in its preliminary stages. Like the code of ethical conduct the proposal for a statutory office to provide advice to public officials on ethical matters was recommended by EARC following the Fitzgerald Inquiry. The Office of the Integrity Commissioner was canvassed as part of the Labor Government's "Good Government" policy.

The purpose of the measure is to provide for a source of confidential advice on conflicts of interest and related ethics and integrity matters, upon request by Ministers, Parliamentary Secretaries, Chief Executives, and a small range of other “designated persons”. Bodies that have been corporatised are not included in the definition of “designated persons”. However, those with public service roles to play are included with regards to their “public behaviour”.

In providing advice the Integrity Commissioner will be required to have regard to established ethical standards, including any standards expressed in legislation or a formal Code of Conduct enacted by the Premier or the Parliament as relevant to the case. The Integrity Commissioner will not be in a position to formulate or make up standards. Rather, the Commissioner will be providing a point of view that could be considered privileged specialised advice.

The role of the Integrity Commissioner is primarily about giving advice about conflicts of interest. The Commissioner can highlight the way conflicts of interest issues have occurred in the past and how they can be dealt with. The legislation also provides scope for the Premier or a Minister to ask questions regarding the behaviour of other “designated persons”. Further, the Integrity Commissioner is obliged to inform the Premier of any matters relevant to the Premier’s position. For example, if there is a genuine conflict of interest within the Senior Executive Service any information regarding this conflict of interest must be passed on to the Premier. It was noted by the delegation that this obligation to inform the Premier of any pertinent matters may act as a deterrent to “designated persons” seeking advice from the Integrity Commissioner.

#### *Confidentiality and secrecy*

Confidentiality and secrecy are important as it is felt that the Integrity Commissioner will only be a successful measure if the information provided to them and received from them is done so under confidence. The Integrity Commissioner must report to the Parliament annually on the broad nature of ethics issues raised and any issues which need clarification. The Commissioner is prohibited from discussing individual cases. However, the member who receives the advice can disclose that advice if they choose to do so.

Protection is afforded to the Integrity Commissioner under section 36 of the *Public Sector Ethics Amendment Act 1999*. The Commissioner is only responsible for the giving of advice. It is not their role to ensure the taking out or implementation of advice. Protection will also be afforded to a person who comes before the Integrity Commissioner and discloses a conflict of interest which is already in place but not known.

#### *Other issues*

The Integrity Commissioner is not a regulatory body and will provide advice only in relation to conflicts of interest issues, and only by way of a response to a specific request by a “designated person”. The functions of the Integrity Commissioner do not empower them to conduct any independent investigation, decision-making or enforcement, as this

is role of the Criminal Justice Commission. The Commissioner will hold office for a term of not longer than five years, and is to be appointed and if need be discharged by the Governor in Council.

As noted, the Integrity Commissioner can only advise “designated persons”. The people who can receive advice are confined to government members in that Ministers and Parliamentary Secretaries are the only members of parliament which have been defined as “designated persons”. The legislation is about government objectivity not parliamentary objectivity which is a matter for the Members’ Ethics and Parliamentary Privileges Committee. The delegation were informed that section 27(1)(k) of the *Public Sector Ethics Amendment Act 1999* provides for a person nominated by a Minister or Parliamentary Secretary to be a “designated person”. For example, if an independent member holds the balance of power in the House the Premier can nominate them as a “designated person”.

The Members’ Ethics and Parliamentary Privileges Committee expressed concern regarding the definition of conflicts of interest contained in the *Public Sector Ethics Amendment Act 1999*. The Committee is of the opinion that the definition may be too narrow and is keen to see how the Integrity Commissioner will work in practice. Further, in the past the Clerk of the House has provided advice to members on conflicts of interest matters, allowances and entitlements. The Committee is concerned that the Clerk’s advice may come into conflict with the advice given by the Integrity Commissioner due to the different parties gaining differing perspectives on the same issues.

### ***Advice and education on ethical matters and entitlements***

#### *Parliamentary advice and education*

The Queensland Parliament presents induction seminars to newly elected members regarding their responsibilities and obligations and the Clerk of the Parliaments provides advice in writing to members in answer to general queries regarding pecuniary interest matters. In recent years the Members’ Ethics and Parliamentary Privileges Committee has played a more active role in reminding members of their obligations regarding the members’ interests registers.

Members also receive guidelines regarding their entitlements and allowances. The Select Committee on Parliamentary Entitlements reviewed the members’ salaries and allowances handbook 1998. Two new handbooks were adopted. The Members’ Entitlements Handbook and The Members’ Office Support Handbook. The new handbooks outline the allowances and entitlements of members and provide for the manner in which such allowances and entitlements may be claimed. Guidelines and determinations to clarify specific matters or assist members in interpreting their allowances and entitlements may be issued from time to time by the Clerk of the Parliament and the Speaker.

As noted the Integrity Commissioner is another measure which can provide advice to members of parliament. However, only those members defined as “designated person” by the legislation may seek advice. Despite this limitation the Integrity Commissioner will still play a role in educating members of parliament about conflicts of interest matters in general.

The Integrity Commissioner will be supported by the Office of the Public Service Commissioner. This support will give the Commissioner the opportunity to participate in forums on public sector ethics matters, and to address various groups of people as well as performing their main role of giving advice.

## Victoria

### *Developments in ethics*

Victoria has had a Code of Conduct for Members of Parliament and Ministers in place since 1978. The Code of Conduct is contained in the *Members of Parliament (Register of Interests) Act 1978* and covers a limited range of matters including: public duty and conflicts of interest; the use of confidential information; and disclosure of pecuniary and other interests. It also covers the use by Members of their position to accrue beneficial interests. The legislation was enacted following a recommendation by the Joint Select Committee on Qualifications. The legislation, including the Code of Conduct has never been reviewed or amended since its inception.

As part of its election platform the Bracks Government proposed a new code of conduct for members of Parliament. This new code is currently in its preliminary stages. The delegation was advised that the Bracks code of conduct will require members to act honestly by declaring their pecuniary interests and avoiding conflicts of interest and the intention is to “restore the integrity and effectiveness of Parliament”. Such reforms will include:

- An increase in the number of sitting days;
- A longer question time;
- More time for private members bills and other debates;
- “Family friendly” hours of sitting;
- Behaviour standards and a “sin bin” for disruptive MPs;
- Petitioning procedures that allow selected petitioners to directly address the parliament;
- Televised sittings; and
- Access to proceedings via the Internet.<sup>2</sup>

Members of the Victorian Parliament are currently required to declare their pecuniary interests and Standing and Sessional Orders will provide an avenue for many of the reforms the Bracks Government has proposed. As such, it will be interesting to see what if any amendments are made to the current Code of Conduct.

### *Register of Members’ Interests*

It was observed that many Parliamentarians were not aware of the Code of Conduct for Members and in general they were more concerned with the provisions in the legislation regarding the Register of Members’ Interests. Members are required to submit their returns to the Clerk of the Parliaments annually and a summary of the returns is tabled in the House. The actual return is only available to the Clerk and the Member concerned. The *Members of Parliament (Register of Interests) Act 1978* states that Members are

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<sup>2</sup> See the Australian Labor Party paper on *Integrity in Public Life: Labor’s plan for Proper Standards*.

required to submit a Primary Return within 30 days of taking and subscribing to the oath or affirmation, and an Ordinary Return on the 30<sup>th</sup> June each year or within 60 days thereafter.

It was noted that the non-compliance rate for submitting returns was currently higher now than ever before. This could be due to the recent election and new members being unsure of their requirements. The Clerk of the Parliaments is not required to remind members of their obligations under the Act as it is the members' obligation to submit their return. In addition to the summary of returns a casual variation is tabled in the Parliament that indicates any changes members have made to their returns as well as indicating those members who are yet to submit their returns. A breach of the legislation could be considered a contempt of Parliament. However, such a motion has never been moved.

### ***Entitlements and allowances***

As with Members of the New South Wales Parliament the salaries for Members of the Victorian Parliament are indexed to those of Members of the Commonwealth Parliament. Other allowances and entitlements are determined by regulation following submissions to the Government by political parties. There is no remuneration tribunal in Victoria.

The current regulations regarding allowances for both members of parliament and parliamentary committees are in need of review. The delegation was advised that there is a need for a new set of regulations which embody fair principles which will enable members of parliament to be reimbursed for expenses they necessarily incur as part of their parliamentary duties. Any issues in relation to members' entitlements and allowances are the responsibility of the Clerks of the respective Houses. This is a significant difference to New South Wales where the Parliamentary Remuneration Tribunal is responsible for determining the allowances and entitlements for Members of Parliament. It was interesting to note that Victoria has not had the same media attention drawn to members' use or rather misuse of entitlements or allowances as there has been in New South Wales and the Federal Parliament.

### ***Advice and education on ethics matters***

The idea of an ethics adviser or commissioner is novel to the Victorian Parliament. Such a measure has never been raised as an issue in public debate or in the Parliament. The Clerks are responsible for providing members with advice regarding ethics matters. In providing advice the Clerks may informally discuss issues with Officers of the Parliament such as the Auditor General.

The Clerks run a formal induction program for members of parliament which include informing members of their rights, requirements, entitlements and related issues. The Clerks also run induction seminars for electorate office staff which focus on how the Parliament is organised.



## Tasmania

### *Developments in ethics*

The House of Assembly Select Committee on Reform of Parliament recommended in its June 1994 report that a *Code of Ethical Conduct for Members of the House of Assembly* be adopted. A code was adopted by amendment to the Standing Orders of the House of Assembly by a vote of the House on 22 May 1996.

The amendment included a requirement that Members of the Assembly subscribe to the Code of Ethical Conduct upon election to Parliament. When a member makes the oath or affirmation upon appointment he or she is also required to recite the brief preamble to the *Code of Ethical Conduct for Members of the House of Assembly*.

The Code of Ethical Principles includes a Preamble, Statement of Commitment, and Declaration of Principles. The Statement of Commitment covers areas such as honesty; accountability; loyalty to shared principles; integrity; and rejection of political corruption. The Declaration of Principles covers areas such as, protecting the public interest and enhancing public confidence.

Members of the House of Assembly are also required to subscribe to the *Code of Race Ethics*. This code was initiated by the Tasmanian Greens without input from the major political parties or the Clerks. The Code of Race Ethics requires members to uphold the principles of multiculturalism and the Universal Declaration of Human Rights, to provide assistance without discrimination and to promote reconciliation with indigenous Australians. There have been no breaches of either the Code of Ethical Conduct or the Code of Race Ethics.

Since 1998 there has been a Joint Select Committee which may as part of its functions review the Code of Ethical Conduct adopted by the House. The Committee has a Chair from both Houses. The Committee is yet to embark on any review of the code.

It was expressed to the delegation that the Tasmanian electoral system in itself provides a very effective mechanism for ensuring members of parliament behave ethically. The electoral system is one of proportional representation and prohibits “how to vote” cards from being distributed at polling booths. Further, there is a rotating ballot paper which helps eliminate the impact of the donkey vote.

### *Register of Interests of Members*

Like the pecuniary interests register in New South Wales the Register of Interests of Members’ of the House of Assembly in Tasmania is a public document. Members have a legal requirement to submit their returns on an annual basis. Unlike the Victorian Parliament the Tasmanian Parliament has a 100% compliance rate. However, it should be noted that the Tasmanian Parliament only passed legislation requiring Members to

declare their pecuniary interests in 1996.<sup>3</sup> Members are not required to declare the interests of their spouse, although this was an issue open to debate when the Register was first established.

***Advice and education on ethics and related matters***

There is no formal education process for Members of the Tasmanian Parliament on ethics and related matters. The major political parties run their own induction programs for their members and make it known that the Clerk of the House will discuss any specific concerns regarding entitlements and ethics matters. However, the Clerk does not provide members with legal advice.

The Greens have proposed the idea of initiating an education program for members on ethics and related issues. However, the major political parties do not support such a move as they have their own induction process. The education program is no longer a major item on the Greens agenda. The Parliament provides members with information and education regarding the institution of parliament itself.

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<sup>3</sup> See the *Parliamentary (Disclosure of Interests) Act 1996, No. 22*

# Appendix

## Documents gathered



## Documents gathered

The following documents were obtained during the course of the study tour. The publications are available from the Committee Secretariat on request.

### Queensland

*Public Sector Ethics Amendment Act 1999* and explanatory notes.

Queensland Members' Ethics and Parliamentary Privileges Committee, *Report on a Draft Code of Conduct for Members of the Queensland Legislative Assembly*, 1998.

Draft Code of Ethical Conduct for Members of the Queensland Legislative Assembly.

Notice of Motion regarding the Register of Members' and Related Persons' Interests – Legislative Assembly of Queensland Votes and Proceedings No. 38, First Session of the Forty-Ninth Parliament, Tuesday 25 May 1999.

Queensland Audit Office, *Audit of Certain Matters Associated with the Issue of an Interactive Gambling Licence*, Auditor-General's Report to Parliament: Audit Report No. 1 1999-2000.

### Victoria

*Members of Parliament (Register of Interests) Act 1978*

Australian Labor Party (Vic.), *Integrity in Public Life: Labor's plan for proper standards*.

Victorian Members Guide: *Chapter 3 – Salaries and allowances* and *Chapter 4 – Electorate Office Entitlements*.

Parliament of Victoria Register of Members' Interests – Primary Return

### Tasmania

Code of Ethical Conduct for Members of the House of Assembly and the Code of Race Ethics for Members of the House of Assembly.

Oath and Affirmation taken by Members of the House of Assembly following election to Parliament.

House of Assembly Select Committee on Reform of Parliament – recommendation for a Code of Conduct.

