



Submission No. MP/24  
Received 03/07/2009  
Law Reform Committee

Mr Johan Scheffer, MLA  
Chair  
Law Reform Committee  
Parliament of Victoria  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

Dear Mr Scheffer

I refer to your letter dated 17 April 2009 inviting me to make a submission to your inquiry into Victoria's *Members of Parliament (Register of Interests) Act 1978*.

At the outset can I apologise for the delay in replying, and hope that this letter is not too late to be considered by your committee.

I offer the following comments in relation to your review.

#### Background

The Legislative Assembly has adopted a requirement under continuing resolution 6 (see attachment 1) for its Members to make, within 28 days of making and subscribing an oath or affirmation as a Member of the Legislative Assembly a declaration of interests in a form (see attachment 2) and shall also notify any alteration of those interests to the Clerk within 28 days of that alteration occurring.

In addition, the Assembly adopted a continuing resolution in 2005 for a Code of Conduct for Members (see attachment 3). It also adopted as a continuing resolution in 2008 the establishment of an Ethics and Integrity Adviser to be appointed by the Speaker. I understand the Adviser has also made a submission to your inquiry.

#### Whether, and how, members of parliament can seek advice about the arrangements and their application dealing with codes of conduct and declarations of interest

Members seek advice from the Clerk of the Legislative Assembly (or in his absence the Deputy Clerk and other senior officers of the Secretariat) on the application of the code of conduct and the requirements for them to make declarations of interest. Since 2008, they have also been able to contact the Ethics and Integrity Adviser for advice on these matters.

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Whether, and how, training or guidance is provided to Members of Parliament about the arrangements, for example through induction programs for new Members of Parliament

We have recently published a *Companion to the Standing Orders of the Legislative Assembly* (available on the Assembly's website [www.parliament.act.gov.au](http://www.parliament.act.gov.au) – the Clerks of the Victorian Parliament have hard copies) which has some information about the code of conduct and the declaration of members interests.

In addition we have induction programs Members where the Clerk, senior officers of the Secretariat, and the Ethics and Integrity Officer brief newly elected MLAs and their staff on these matters. These matters are also contained in the *Members Guide*.

Current arrangements for making complaints about investigating and investigating alleged breaches

As can be seen from the Code of Conduct, it is very much an aspirational code and there is no mechanism in it to deal with complaints, no provisions dealing with how a breach is determined or upheld and nor are there any sanctions for a breach.

However, there have been some occasions when the Speaker has taken action where he felt there were breaches of the code. For example, in 2007, the Speaker was asked several questions when he appeared before a Select Committee on Estimates about the behaviour of certain members of a Standing Committee and the interaction between those members and the Secretariat staff. As a consequence, the Speaker wrote to all members of that committee, and reminded them of the provisions of the code of conduct, emphasising the section which deals with conduct toward Assembly staff.

This year the Speaker also wrote to two Members following the use of party banners as a backdrop to a media conference that was being held in the Assembly precincts reminding them of the provision in the code that stipulates that use of resources provided to them at public expense are only to be used for legitimate parliamentary and electorate purposes.

In the last Assembly (the Sixth Assembly 2004-2008) the former Speaker became aware that one of the Members of the Assembly appeared not to be abiding by one of the provisions of the code of conduct, namely that "Members should not appoint close relatives to positions in their own offices or any other place of employment where the Member's approval is required". The Committee of which the Speaker is Chair, the Standing Committee on Administration and Procedure, whilst undertaking a long foreshadowed review of the code in 2008, recommended that the provision relating to the prohibition on employing close relatives be removed from the code of conduct. The then Speaker, dissented from the report, and recommended that legislation be enacted to prevent Members from employing close family members.

Subsequently the former Speaker introduced a private Members Bill into the Assembly (Legislative Assembly Members' Staff Amendment Bill 2008) to prevent a Member from employing a close family member. The Bill set out that a family **member**, of a person, was:

(a) a domestic partner of the person; or

- (b) a parent or step-parent of the person; or
- (c) a parent or step-parent of the person's domestic partner; or
- (d) a child or step-child of the person; or
- (e) a child or step-child of the person's domestic partner; or
- (f) a brother, sister, half-brother or half-sister of the person; or
- (g) a grandparent of the person; or
- (h) an uncle, aunt or cousin of the person..

The Bill subsequently passed the Assembly in 2008. When Members employ staff, they must now declare to the Clerk that the proposed employee is not a close family member as set out in the relevant Act.

The number and types of occasions, if any, on which alleged breaches have been investigated and the nature and outcome of those investigations

See details above.

I trust this information is useful to the committee. If I can provide any further information please let me know.

Yours sincerely



Tom Duncan  
Clerk of the Legislative Assembly

3 July 2009



*Continuing resolution 6***DECLARATION OF PRIVATE INTERESTS OF MEMBERS**

This resolution provides that Members shall, within 28 days of taking their seats, declare their private interests. The resolution also sets out how those interests may be accessed.

**Resolution agreed by the Assembly**


**7 April 1992 (amended 27 August 1998, 17 March 2005 and 6 March 2008)**

That—

- (1) within 28 days of the making and subscribing of an oath or affirmation as a Member of the Legislative Assembly for the Australian Capital Territory each Member of the Legislative Assembly shall provide to the Clerk of the Legislative Assembly a declaration of the private interests of themselves and their immediate family in the form as presented to the Assembly on 17 March 2005<sup>15</sup> and shall notify any alteration of those interests to the Clerk within 28 days of that alteration occurring;
- (2) under the general direction of the Speaker, the Clerk shall store the declarations of private interests made by each Member in a secure manner and shall include all declarations made by each Member. When a Member vacates his or her seat and is not re-elected at the next general election for the Assembly, the Clerk shall destroy all declarations made by that Member in his/her custody;
- (3) any declaration stored by the Clerk be made available for perusal to any person on request subject to the Member concerned being advised by the Speaker of the name of the person to whom the information is made available and the reasons why it has been requested, in each case; and
- (4) that this resolution has effect from the commencement of the Second Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.

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<sup>15</sup> Form is contained in the *Members' Guide*.


**LEGISLATIVE ASSEMBLY  
RECORD**  
**SIXTH ASSEMBLY**  
 17 MAR 2005  
 MOP No. 13  
 Paper No. 19 M. Khemraj Clerk



**Legislative Assembly for the Australian Capital Territory  
Register of Members' Interests**

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# Statement of Registrable Interests

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Particulars of my private interests and those of my immediate family of which I am aware are set out below.

This information is supplied subject to my being advised by the Speaker of the ACT Legislative Assembly of the name of all persons to whom the information is made available and the reasons why it was requested in each case.

Signature: .....

Name: .....

Date: .....

**It is suggested that the *Explanatory Notes* accompanying each section be read before completing.**

*Revised 17 March 2005*

Legislative Assembly for the Australian Capital Territory  
Register of Members' Interests

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# Explanatory Note

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## General

The purpose of the Statement of Registrable Interests form is to place on the public record Members' and Ministers' Interests which may conflict, or may be seen to conflict, with their public duty.

No form can cover all possible circumstances and Members and Ministers should consequently bear in mind the purpose and spirit of the return in deciding which matters should be registered.

Ministers should complete a Statement in their capacity as a Minister and another Statement in their capacity as a Member of the ACT Legislative Assembly. These guidelines apply to both documents, and references made to the "Member" should be read as applying also to the Minister.

Note: There is the need to include under all headings interests to the extent to which the Member is aware of them, of the Member's spouse (including de facto spouse), and any who are wholly or mainly dependent on the Member for support.

When interests are held jointly with a spouse or dependants, the interests need to be included only as interests of the Member with an appropriate notation such as "*jointly owned with spouse*".

Where interests could be included under more than one heading, it is suggested they need be included only under the most specific heading unless two aspects need to be disclosed (e.g. real estate, plus a mortgage liability on that real estate).

# Statement of Registrable Interests

**1. Shareholdings in public and private companies (including holding companies) indicating the name of the company or companies**

	Name of company (including holding and subsidiary companies if applicable)
Self	
Spouse	
Dependants	

**Explanatory Notes:**

- Notify any relevant interest in any shares (as defined in Corporations Law) including equitable as well as legal interest, whether held directly or indirectly, which enables a Member, the Member's spouse or dependants to exercise control over the right to vote or dispose of those shares.
- Where interests are held in a private holding company (i.e. a proprietary company formed for the purpose of investing in subsidiary companies) all such subsidiary companies, and any subsidiary companies held by those subsidiary companies, should be named.

**2. Family and business trust and nominee companies**

**i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest**

	Name of Trust / nominee company	Nature of Operation	Beneficial interest
Self			
Spouse			
Dependants			

**ii) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest.**

	Name of Trust / Nominee company	Nature of operation	Beneficial interest
Self			
Spouse			
Dependants			

**Explanatory Notes:**

Family and business trust and nominee companies

- (i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and
- (ii) in which the Member, the Member's spouse, or dependant is a trustee (but not including a trustee of an estate where no beneficial interest is held by the Member, the Member's spouse or dependant), indicating the name of the trust, the nature of its operation and the beneficiary of the trust.

Note: That both beneficial interest and trustee responsibilities (except as trustee of a deceased estate where neither the Member, the Member's spouse nor dependants are beneficiaries of the estate) should be specified.

**3. Real estate, including the location and the purpose for which it is owned**

	Location	Purpose for which owned
Self		
Spouse		
Dependants		

**Explanatory Note:**

- Members should specify the precise location of the property and purpose for which the property is owned (members are not required to list the address of their principal place of residence).



**4. Registered directorships of companies**

	Name of company	Activities of company
Self		
Spouse		
Dependants		

**Explanatory Note:**

- Indicate the name of the Company and the activities of the Company.

**5. Partnerships, indicating the nature of the interests and the activities of the partnerships**

	Name	Nature of Interests	Activities of Partnership
Self			
Spouse			
Dependants			

**Explanatory Notes:**

- Under "*nature of the interests*" specify level of current involvement in partnerships (e.g. "financial (non-working partner), consultant", etc).
- Specify the purpose or operations of the partnerships (e.g. investment, consultancy, etc).

**6. Liabilities, indicating the nature of the liability and the creditor concerned**

	Nature of Liability	Creditor
Self		
Spouse		
Dependants		

**Explanatory Notes:**

- Include all liabilities (e.g. mortgages, hire-purchase arrangements, personal loans and overdrafts).
- Liabilities incurred on a department store account need not be disclosed.
- Liabilities incurred on a credit card need not be disclosed unless the credit card has been used to obtain a cash advance in excess of \$5,000 and the advance is outstanding for a period in excess of 60 days.

**7. The nature of any bonds, debentures and like investments**

	Type of investment	Body in which investment is held
Self		
Spouse		
Dependants		

**Explanatory Note:**

- "Investments" mean all investments including placement of monies, which attract interest or other benefits.

**8. Savings or investment accounts, including their nature and the name of the bank or other institutions concerned**

	Nature of Account	Name of bank / institution
Self		
Spouse		
Dependants		

**Explanatory Note:**

- Ordinary, non-interest-bearing cheque accounts should not be included, but savings accounts and investment accounts should be included.

**9. The nature of other assets (excluding household and personal effects) each valued at over \$5,000**

	Nature of other assets
Self	
Spouse	
Dependants	

**Explanatory Notes:**

- List all personal possessions of value other than ordinary household or personal effects.
- Motor vehicles for personal use need not be included.
- Collections should be included.
- Items which might be listed under more specific headings (e.g. investments gifts received, etc) need not be included here.
- Private life assurance policies should be included but Assembly superannuation entitlements need not be included.
- As a general rule of thumb, items of under \$5,000 value may not require inclusion under this heading unless they are of a nature which might be sensitive to implications of conflict of interest.

**10. The nature of other substantial sources of income**

	Nature of income
Self	
Spouse	
Dependants	

**Explanatory Notes:**

- The Member's own salary and allowances as a Member of the Assembly need not be included.
- Include a spouse's income from employment or a business undertaking and any income received by the Member, the Member's spouse or dependants from investments, annuity arrangements, pensions or under governmental assistance schemes (but not including family allowances). There is no need to show the actual amount received. A simple reference to "*income for investments set out above*" is sufficient for investment income.

Note: No minimum income is specified as notifiable and Members will need to use their discretion in this regard. As a general rule of thumb, income over \$1,000 per annum might be notifiable but smaller amounts from sources which might, in the judgement of the Member, involve sensitivity or be capable of misconstruction should be included.

**11. Gifts valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources provided that a gift received by a Member, the Member's spouse or dependants from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interest may be seen to exist.**

	Details of gifts
Self	
Spouse	
Dependants	

**Explanatory Note:**

- Gifts received by Members and their families from family members or personal friends in a purely personal capacity need not be disclosed unless the Member judges an appearance of conflict of interest may be seen to exist.

**12. Any sponsored travel or hospitality received**

	Details of travel / hospitality
Self	
Spouse	
Dependants	

**Explanatory Notes:**

- *"Sponsored travel"* means any free or concessional travel undertaken by the Member, the Member's spouse or dependants sponsored wholly or partly by a person, organisation, business or interest group or foreign Government or its representative. It does not include the travel entitlements received by a Member, the Member's spouse or dependants under any determination by the Remuneration Tribunal nor travel undertaken as a Member of an official Assembly delegation. The purpose for which the travel was undertaken should be shown.
- *"Hospitality"* refers to free or concessional accommodation provided to the Members, the Member's spouse or dependants wholly or partly by any person, organisation, business or interest group or foreign Government or its representative. It includes the provision of free or concessional meals provided as part of an accommodation arrangement but does not include hospitality provided in a purely social way by friends or colleagues. Entertainment received from concerned constituents and interest groups legitimately exercising their powers of political persuasion, explanation, or argument on the merits of an issue to further a particular cause or concern need not be included. There is also no need to include entertainment received in common with significant numbers of other Members or persons such as a reception or dinner hosted by a High Commissioner or Ambassador.

In all cases in deciding whether travel or hospitality should be included in a return, a Member should exercise his or her judgement having regard to any appearance of conflict of interest that may arise.

**13. Membership of any organisation**

	Names of Organisations
Self	
Spouse	
Dependants	

**Explanatory Note:**

Membership of all organisations should be disclosed. Examples might include unions, political organisations, business groups, community organisations, lobby groups and sporting or other clubs.

**14.** Any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

	Nature of Interest
Self	
Spouse	
Dependants	

**Explanatory Note:**

- List any other interest that, in the opinion of the Member, holds the potential for a real or apparent conflict of interest with a Member's public duties to arise.

**NOTIFICATION OF ALTERATION(S) OF INTERESTS  
SINCE MOST RECENT DECLARATION**

The following alteration(s) of interests have occurred since my most recent declaration (Members can also indicate Assembly accrued Frequent Flier points earned using this form).

**ADDITION**

<b><u>Item</u></b>	<b><u>Details</u></b>

**DELETION**

<b><u>Item</u></b>	<b><u>Details</u></b>

**Signature** ..... **Date** .....

**Continuing resolution 5**

**CODE OF CONDUCT**  
**FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY**  
**FOR THE AUSTRALIAN CAPITAL TERRITORY**

This resolution provides for a code of conduct for Members of the Legislative Assembly.
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**Resolution agreed by the Assembly**

**25 August 2005 (as amended 16 August 2006)**

That—

**(1) Preamble**

Members of the Legislative Assembly acknowledge their diversity of background and personal beliefs and that of Australian society, and maintain their loyalty to the Commonwealth of Australia and to the people of the Australian Capital Territory.

In so doing, Members agree to respect and uphold the law, not to discredit the institution of Parliament, and to maintain their commitment to the public good through personal honesty and integrity in all their dealings.

**(2) Duties as Members of the Assembly**

Members should avoid any decision or action which may depreciate the reputation of the Assembly and endeavour to reasonably adhere to the Assembly's code of conduct to ensure that their personal conduct meets generally accepted standards and does not discredit or call into question their office or the Assembly.

Members acknowledge that they have an obligation to electors to make decisions on their behalf and as such place emphasis on their dedication to this obligation. As elected representatives, Members will act honestly in all their dealings to maintain the public trust placed in them.

**Code of Conduct**

**(3) Conflict of interest**

Members have an obligation to use the influence conferred upon them in the public's interest and not for personal gain.

Notwithstanding the provisions set out in section 15 of the *Australian Capital Territory (Self-Government) Act 1988* and standing order 156 of the Legislative Assembly, Members are individually responsible for preventing personal conflicts of interest or the perception of a conflict of interest, and must endeavour to arrange their private affairs to prevent such conflicts arising or take all reasonable steps to resolve any conflict that does arise.

- (a) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private interest or will improperly and dishonestly further the private interest of another person.
- (b) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or as a broad class of persons.



**(4) Disclosure of pecuniary interests**

The actions and decisions taken by Members are accountable through the Assembly to the people of the Australian Capital Territory. Members' actions and decisions should be transparent and bolster public confidence in the Assembly and the legislative process. In accordance with this transparency, Members are required to disclose their pecuniary interests pursuant to the resolution of the Assembly "Declaration of Private Interests of Members" agreed to on 7 April 1992 (as amended 27 August 1998 and 17 March 2005).

**(5) Receipt of any gifts, payments, fees or rewards**

Members must register all gifts, payments, fees or rewards valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources. This does not include gifts, payments, fees or rewards received by Members, the Member's spouse, immediate family or personal friends in a purely personal capacity, unless it may pose a conflict of interest. Registration should be made in accordance with the Member's Statement of Registrable Interests.

**(6) Advocacy/bribery**

In accordance with the provisions of section 14 of the *Australian Capital Territory (Self-Government) Act 1988*, Members must not solicit, accept or receive any remuneration, benefit or profit in exchange for services rendered in the Assembly or one of its committees other than the remuneration and allowances provided for pursuant to section 73 of the Act.

**(7) Use of confidential information**

Members are reminded of their obligations pursuant to the standing orders concerning the publication of confidential information.

Members in the course of their duties often are also the recipients of information which is either confidential or unavailable to the general public. Members are privileged to receive this information. It is provided to assist them in their decision making for the benefit of the Territory. The status of this information should not be compromised.

Members are not to misuse any confidential information received, particularly for personal gain or the personal gain of others.

**(8) Conduct as employers**

Members will observe the obligations placed on them as employers with respect to the terms and conditions of those who work for them. Members should extend these obligations to contractors and consultants (however employed or recruited). Members need to be aware of the requirements of the following policies: occupational health and safety; discrimination, harassment and bullying; equal employment opportunity; acceptable use of information technology and any other relevant policies and legislation.

Members should not appoint close relatives to positions in their own offices or any other place of employment where the Member's approval is required.

Members must ensure that their staff are aware of and abide by the relevant codes of conduct applicable to Members' staff.

Members must ensure that, where relevant, their staff also comply with the Members' Code of Conduct and that they are aware that they are obliged to support the Member's compliance with the code.

(9) **Conduct toward Assembly staff**

It is expected that Members and their staff will extend professional courtesy and respect to all staff of the Assembly. Members should ensure that through their own conduct and that of their staff, reasonable employment conditions for all building occupants are maintained.

If problems or concerns with the performance or conduct of an Assembly staff member arise, these should be dealt with through appropriate policies and procedures.

(10) **Use of entitlements**

Members have a personal duty to ensure that entitlements and allowances of office pursuant to Remuneration Tribunal Determinations and as summarised in the Members' Guide are used appropriately in the service of the people of the Australian Capital Territory and not for personal gain.

Members should familiarise themselves with the entitlements available and must ensure the accuracy of all claims made in accordance with the guidelines outlined in the Members' Guide. Members should be aware that items purchased using a Member's allowance remain the property of the Assembly.

(11) **Use of public resources/property or services**

Members must ensure that the resources provided to them at public expense as Members of the Legislative Assembly for the Australian Capital Territory, are only used for legitimate parliamentary and electorate purposes. Members must not misuse or permit the misuse by any other person or body of these resources.

Members shall not misuse funds allocated for official purposes.

(12) **Continuing support**

This code of conduct has been established to assist Members as they serve and represent the people of the Australian Capital Territory. The Legislative Assembly respectfully requests that former Members support the spirit of this code as private citizens.

This resolution has effect from the date of its passage in the Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.

## *Continuing resolution 6A*

### **ETHICS AND INTEGRITY ADVISER**

This resolution allows the Speaker to appoint an Ethics and Integrity Adviser.

#### **Resolution agreed by the Assembly**

**10 April 2008**

That this Assembly requests the Speaker to appoint an Ethics and Integrity Adviser for Members of the Legislative Assembly for the Australian Capital Territory with the following functions:

#### **Provision of advice**

- (1) Advise Members of the Legislative Assembly, when asked to do so by that Member, on ethical issues concerning the exercise of his or her role as a Member (including the use of entitlements and potential conflicts of interest).
- (2) Giving advice that is consistent with any code of conduct or other guidelines adopted by the Assembly, but does not include the provision of any legal advice.

#### **Records**

- (1) The Ethics and Integrity Adviser shall be required to keep records of advice given and the factual information upon which it is based.
- (2) The Ethics and Integrity Adviser shall be under a duty to maintain the confidentiality of information provided to him/her in exercising the function and any advice given, but may make public any advice if the person who requested the advice gives permission for it to be made public.
- (3) The Assembly shall only call for the production of records of the Ethics and Integrity Adviser if the person to which the records relate has sought to rely on the advice given in relation to paragraph (1) or given permission for the records to be produced to the Assembly.
- (4) The Ethics and Integrity Adviser is to meet at least annually with the Standing Committee on Administration and Procedure for a discussion on matters raised and possible proposals to address them.
- (5) The Ethics and Integrity Adviser shall report to the Assembly on an annual basis detailing the number of ethical matters raised with him/her and the number of Members who sought advice on any issues concerning Members' entitlements that have given rise to requests for ethics advice and suggest proposals to address these issues.
- (6) The Speaker shall, after each Assembly is elected or whenever the office becomes vacant, appoint an Ethics and Integrity Adviser for the life of that Assembly.
- (7) Before appointing an Adviser, the Speaker shall consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.

- (8) The Ethics and Integrity Adviser may resign in writing to the Speaker, or may be removed from office for proved misbehaviour or mental incapacity on a resolution agreed to by the Assembly.

This resolution has effect from the date of its agreement by the Legislative Assembly and continues in force unless amended or repealed by this or a subsequent Assembly.