

1976-77-78

PARLIAMENT OF NEW SOUTH WALES

REPORT
FROM THE
JOINT COMMITTEE
OF THE
LEGISLATIVE COUNCIL
AND
LEGISLATIVE ASSEMBLY
UPON
PECUNIARY INTERESTS

together with the Minutes of Proceedings and Evidence

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MEMBERS OF THE COMMITTEE

Keith O'Connell, M.P. (Chairman)

Legislative Council

The Hon. Cyril Joseph Cahill, M.L.C.*
The Hon. Stanley Louis Mowbray Eskell, E.D., M.L.C.
The Hon. Sir Asher Joel, K.B.E., M.L.C.
The Hon. William Lloyd Lange, M.L.C.
The Hon. Herbert John McPherson, M.L.C.
The Hon. Robert Gavin Melville, M.L.C.
The Hon. Joe Slater Thompson, M.L.C.

Legislative Assembly

John Robert Arthur Dowd, LL.B., M.P.
The Hon. George Francis Freudenstein, M.P.
Maurice Francis Keane, M.P.
Nicholas Joseph Kearns, M.P.
Ernest Neville Quinn, M.P.
Terence William Sheahan, B.A., LL.B., M.P.
Arthur Edward Allanby Viney, M.P.

* Deceased 18th April, 1977.

**JOINT COMMITTEE
UPON
PECUNIARY INTERESTS**

TERMS OF REFERENCE

(1) That a Joint Committee be set up to inquire into and report whether arrangements should be made relative to the disclosure of members' interests and the registration thereof, and in particular—

- (a) what classes of pecuniary interest or other benefit are to be so disclosed;
- (b) how the register should be compiled and maintained and what arrangements should be made for public access thereto; and
- (c) what classes of person (if any) other than members of Parliament ought to be required to register—

and to make recommendations upon these and any other matters which are relevant thereto.

(2) That such committee consist of eight members of the Legislative Assembly and three members of the Legislative Council.

(3) That Mr Dowd, Mr Freudenstein, Mr Keane, Mr Kearns, Mr O'Connell, Mr Quinn, Mr Sheahan and Mr Viney be the members of the Legislative Assembly.

(4) That the committee have leave to sit during the sittings or any adjournment of either of both Houses and to make visits of inspection within the State of New South Wales, other States of Australia, and the Australian Capital Territory.

On 29th September, 1976, the Legislative Council appointed the following seven of its Members to the Committee, to which appointments the Legislative Assembly agreed on 30th September, 1976—

The Hon. C. J. Cahill
The Hon. S. L. M. Eskell
The Hon. Sir Asher Joel
The Hon. W. L. Lange
The Hon. H. J. McPherson
The Hon. R. G. Melville
The Hon. J. S. Thompson

Your Committee has agreed to the following Report, which it begs to submit to your Honourable House.

FOREWORD

Controversial events of recent times have, in themselves, justified the stringent recommendations brought down by the Committee in this Report.

To predict that a system of the registration of continuing pecuniary interests would have influenced those involved to reconsider their position and associated responsibilities is a matter of conjecture. However, the Committee is confident that the recommendations contained in this Report and which it is hoped the Government sees fit to adopt and implement, will ensure that not only is the institution of Parliament, the Public Service, and Local Government, upheld in the highest traditions, but those who are entrusted with the administration of the public domain will be capable of being seen by the electorate at large to maintain conduct of an unimpeachable order.

One could not expect that members of a committee such as this would be unanimous in their attitudes. Indeed, some members challenged the need for any form of registration. Some also disagreed with the proposals for access to the registers. Nevertheless, in the bulk of the report, there was general agreement.

To my Parliamentary colleagues on the Committee whose judgment, experience and co-operation assisted me greatly in my role as Chairman, go my heartfelt thanks. To chair a fourteen-member Committee entrusted with the task of reaching important decisions on a subject such as this with all its ramifications, I must admit, did hold some trepidation for me, but the capable and unbiased manner in which all members accepted their responsibilities is a true reflection on the vital role in which Joint and Select Committees play in a democratic system of government.

The Committee was sorry to lose the services of the late Cyril Cahill, M.L.C., who passed away in the early stages of the preparation of the Report.

The Committee was encouraged by the response of all those organizations and individuals who made valuable submissions or appeared as witnesses, and although reference is made in the Report to them, it bears repeating that we are grateful and indebted for the information and opinions which combined to facilitate compilation of the Report.

Of course, without the excellent services provided by *Hansard*, the Report would not have been possible, and to Mr Weightman and his efficient staff, the Committee's gratitude is extended.

Finally, I must express my sincere thanks to Mr R. J. Cartwright, the Secretary to the Committee, and Miss C. M. Hill, the Committee Stenographer, for their continued zeal and dedication. Some quite onerous demands were made upon them which were always met willingly and cheerfully.

INTRODUCTION

0.1 The Committee held its first meeting on 5th October, 1976, and Mr K. O'Connell, M.P., was elected Chairman. Procedures were formulated for the conduct of the inquiry and the Committee met on 21 occasions.

0.2 The Committee presented a Progress Report to Parliament on 29th November, 1977, which only dealt with that part of the terms of reference concerning Members of Parliament.

0.3 The membership of the Committee remained the same throughout its course, apart from the death of the Hon. C. J. Cahill, M.L.C. A replacement was not appointed.

0.4 The first step taken by the Committee was to obtain a copy of the Report of the Joint Committee of Pecuniary Interests of Members of the Federal Parliament (1975), together with a Report from the Select Committee on Members' Interests (Declaration) tabled in the House of Commons (1974).

0.5 Questionnaires were circulated to all members of Parliament in the Legislative Council and the Legislative Assembly seeking an opinion as to whether or not a register of the pecuniary interests of members should be instituted, and also their views upon Terms of Reference (a), (b) and (c).

0.6 Submissions were invited from the forty-eight permanent heads and chairmen of the statutory authorities throughout the New South Wales Public Service, and valuable information was forthcoming from forty-one of those officers. Seven officers did not take up the Committee's invitation.

0.7 Submissions were also invited from the following individuals/organizations.

- * Privacy Committee.
- * The Ombudsman.
- * Liberal Party of Australia (N.S.W. Division).
- Australian Labor Party (N.S.W. Branch).
- * Australian Country Party (N.S.W. Branch).
- * Public Service Association of New South Wales.
- * Local Government and Shires Associations.
- * Australian Journalists Association (N.S.W. Branch).
- Council for Civil Liberties.
- * Australian Law Reform Commission.
- * Professor Aitken of School of History, Philosophy and Politics, Macquarie University.
- * John Fairfax and Sons Pty Ltd.
- News Limited.
- Financial Review.
- * Private Secretaries and Assistant Private Secretaries Association.
- * Local Government Electricity Association of N.S.W.
- * Town Clerks' Society of N.S.W.
- Royal Australian Planning Institute.
- * Local Government Engineers Association.
- * Health Inspectors, Health Surveyors and Building Inspectors' Associations.
- * Electricity Supply Engineers Association.
- * Local Government Town Planners Association.
- * Feros, Mr J., Corporate Planner.

0.8 The organizations and individuals that responded to the Committee's invitation are indicated with an asterisk.

0.9 Letters were sent to each Party Whip inviting them to nominate a spokesman to appear before the Committee and this invitation was taken up by the three (3) parties. The independent member acknowledged a similar invitation but declined to appear.

0.10 In April, 1977, the Committee advertised its Terms of Reference widely in the news media which resulted in a somewhat disappointing response of only five submissions from the general public.

0.11 The Committee had the benefit of studying a volume of reference material relating to not only the Parliaments of Australia but Parliaments in the United Kingdom, United States of America, Canada, New Zealand and New Guinea.

0.12 Twenty witnesses who made detailed submissions appeared before the Committee during its inquiry.

0.13 Terms of Reference (c) imposed on the Committee the obligation to make recommendations as to what other classes of persons should be required to register and in this regard the Committee has included the following classes of persons who might be required to observe registration requirements:

Public servants and employees of statutory authorities.

Local government—elected members and council staff.

Members of the media—who report upon the political proceedings of both Houses and who possess press passes in conformity with Standing Order 62 (a) of the Legislative Assembly.

Members of Ministers' personal staffs.

0.14 The sections dealing with these classes of persons have been considered separately in Parts 3, 4, 5 and 6 of this Report.

0.15 A wide range of views on the Terms of Reference were put before the Committee for consideration. Such views comprised thoughtful suggestions and constructive criticisms which were of valuable assistance to the Committee.

0.16 It was the task of your Committee to evaluate and weigh up the arguments put forward and formulate recommendations which would serve to protect and uphold the dignity of Parliament and the standing of the public official in the eyes of the community. The Committee's aims were to ensure that its recommendations enhanced the status and effectiveness of the institution of Parliament.

0.17 The Committee wishes to place on record its appreciation to all those organizations and individuals who made valuable submissions or appeared as witnesses. The task of the Committee was greatly facilitated by such contributions.

0.18 Perhaps the most difficult task confronting the Committee was to attempt to define "pecuniary interests" and "other benefit" and, in agreeing that these two factors should be merged together arrived at the following definition:

"any interest capable of producing a benefit of a financial or material nature and any such benefit however received directly or indirectly by the person concerned which could influence that person in the discharge of his duties or responsibilities".

PART 1—THE CONCEPT OF A REGISTER

1.1 In considering "whether arrangements should be made relative to the disclosure of members' interests and the registration thereof" the Committee was obliged to balance the arguments put forward by those in favour of a registration system and those against. Was there a public demand or should the public be given a right to see that parliamentarians and public officials acted with honesty and propriety in making decisions which affect their way of life?

Is public confidence in the institution of government at a low ebb?

Is the general public suspicious and cynical about elected officials and their conduct?

Does the law relating to conflict of interest for members of Parliament and government officials need strengthening?

1.2 The Committee has attempted to answer these questions and many more of a complex nature in the following paragraphs.

1.3 The arguments both for and against the concept of a register which were put forward in evidence have been collated and are listed hereunder.

Summary of submissions against a registration system

1.4 Unjustified invasion of privacy of registrants and those who may be associated with them, either by family, business or other ties.

1.5 A register would not give any degree of protection to members but the converse would be the case.

1.6 The interests contained in a register should not be made available for someone else to see. The Standing Orders are perfectly clear on the action which a member is to take if he holds a direct pecuniary interest in a matter before Parliament.

1.7 There is adequate alternative to registration in that members have to face the close scrutiny of their constituents every 3 years and it is preferable for constituents to judge whether a man is of integrity or not without his having to disclose in public his pecuniary interests. There did not appear to be any general public demand that a register be established.

1.8 The administrative complexities involved in having a register would not justify its existence.

1.9 A recommendation for a register would be doing a disservice to members—the honest member will do what is required of him and accept the disadvantage; the dishonest member will remain dishonest.

1.10 History of the New South Wales Parliament has shown that a register is unjustified. A register would neither ensure the honesty of a member nor increase the honesty of a member.

1.11 If a register were introduced and was open to public access the information contained therein may be further used to denigrate Parliament.

1.12 The whole matter of declaration of interests is best left to members' good sense for to do otherwise indicates some suspicion as to their probity and integrity.

1.13 A register would not promote a better public image of parliamentarians.

1.14 If registration by public servants were necessary it would be most likely that the interchange programme between public servants and top executives of large private companies would falter as those executives would not relish the thought of having to disclose their interests.

1.15 There appears to be inadequate justification for any further fetter on the right to vote which thereby disenfranchises the electorate. Parliament can be protected only through public criticism and public pressure and not by statutory requirements.

1.16 The vigilance of the powers of a member of Parliament for the protection of the House and the corporate image of the House provides the best safeguard for the ethical behaviour of all members by the threat of exposure on the floor of the House, either by direct question or alternatively by direct participation in the debate.

1.17 There would be no way of ascertaining the registrable interests of a member if he wished to deliberately omit them. In such cases a register would therefore be incomplete and ineffective.

Summary of submissions in favour of a registration system

1.18 With the democratic system being under such significant attack and it being eroded somewhat in the public mind it is essential that there should be a restoration of public confidence in the institution of Parliament.

1.19 If no evidence was produced to illustrate any conflicts of interests in the past, how would anyone find out if there were or not because there would be no way of determining the shareholding, no practical way of ascertaining the particular pecuniary interests of members unless there was such a register which an interested person could search, having justifiable reason for so doing.

1.20 A register would show to the public that not only are members honourable but that they can be shown to be honourable.

1.21 In the situation where a conflict of interest is disclosable and ascertainable it was as much in the interests of the person required to disclose as it was in the community interest—the community has a right to know.

1.22 A register would provide protection for a member and it would relieve any fear of innuendoes and cynicisms.

1.23 A register would support the premise that the functioning of Parliament and members of Parliament should be open to public knowledge.

1.24 The argument that the dishonest member would not disclose has no merit because the fear of being found out, the apprehension about being in disgrace with one's fellow-members of Parliament would be sufficient to deter anybody from misstating or failing to disclose relevant information.

1.25 Essential that members of Parliament and other persons having some influence or capable of exerting some influence on the making of public policy should declare interests.

1.26 By registration the electorate would be in an informed position to properly adjudicate and give proper weight to any view a member may advance in debate or a decision he may support.

1.27 A register would elevate the public status and image of members by showing that they are not trying to hide anything.

1.28 A register would be in many ways a protection for a member rather than an intrusion into his privacy.

1.29 A register could have a possible effect of doing away with the restrictions now existing on business people—the restrictions on dealing with government or local government instrumentalities—a system should be formulated whereby the matter is “on the table” and is dealt with in an ordinary commercial way.

1.30 One could argue the merits of the opinions expressed above at some length, however, the Committee deems it desirable to make specific reference to the main and most persuasive arguments put forward against the concept of a register.

Invasion of Privacy

1.31 One witness¹ summed up thus—

“any alternative involving a register of interests direct or indirect, public or otherwise, would, in the Privacy Committee’s opinion, provide only spasmodic and uneven benefits. Because of its ineffectiveness and its intrusion into the democratic process it would be an unjustified invasion of privacy.”

On the other hand, another witness² maintained that—

“there is no doubt that a member is entitled to whatever privacy is commensurate with his taking on public office and that applies to his family as well; but, as I have pointed out, if he puts himself in a fish bowl as it were he must accept some loss of that privacy in the same way as a director who takes on an office which is representative of shareholders and is one of at least a fiduciary position acting on behalf of those shareholders, he should expect to be in the spotlight. He has to balance some loss of his privacy against the requirement that he should appear to be unbiased in his dealings on behalf, in the case of a director, his shareholders, as against the company, and in relation to the member, his own personal interests as against the interests of the electorate at large.”

Existing Provisions within Parliamentary System Adequate

1.32 In this regard one witness³ argued in part that—

“there appears inadequate justification for any further fetter of the right to vote, which thereby disenfranchises an electorate. There are effective forums in Parliament, and the media, and through public debate, by which the public, and in particular individual members of an electorate can be informed of relevant interests. The appropriate sanctions of public criticism and the democratic vote at the poll then follow.”

1.33 Here, the statement that there are effective forums in Parliament relating to declaration of pecuniary interest can be readily argued for, as pointed out later in this report, previous rulings given by Speakers in the Legislative Assembly means that there is virtually no matter coming before Parliament in the normal manner of which a member would have to disclose an interest and refrain from voting.

Register easily evaded

1.34 Evidence was given by a number of witnesses who argued that those members who desire to evade registration for dishonest purposes could easily do so by simply not declaring. It was in this context that the Committee was obliged to decide whether the purpose of a register was meant to cover this situation or to have as its main purpose the facility for informing the public so as to enable it to form an opinion as to the weight that should be given to the views and decisions of parliamentarians and others.

¹ See page 69 in evidence.

² See page 29 in evidence.

³ See page 69 in evidence.

1.35 Such an observation prompted one witness¹ to say:

"It is possible in almost every conceivable case to mask, conceal or distort the ultimate and beneficial ownership of interests such as shares in corporations, other company interests and probably partnership interests. The ease of avoiding disclosure, even under severe subsequent scrutiny was amply illustrated and referred to by The Report on the Australian Securities Markets and Their Regulation (The Rae Report) of 1974."

1.36 In amplification of such an opinion the witness² said in part:

"The securities industry and especially certain parts of it, for example stock-brokers and various stock exchanges, suffered a large reduction in credibility following the collapse of the mining boom in 1970 and the publicity of the proceedings before the Rae Committee. The image of the securities industry and of sharebrokers and stock exchanges has somewhat improved in the past six years and that improvement seems to me to be directly due to two main factors. First, the introduction of two different sets of statutory provisions, the 1971 amendments to the Companies Act, 1961, and the Securities Industry Act, 1975, and, second, evolutionary changes to the Official Listing Requirements of the Australian Associated Stock Exchanges, called the "Listing Requirements". Significantly it seems to me that these two sets of changes produced three effects: first, more disclosure than was ever required before; second, a corresponding increase in the public entitlement to examination of company information and, third, increased and better definition of what was to be disclosed in the future."

1.37 In illustrating the difficulty of ensuring disclosure for somebody who does not wish to disclose, reference was made to interests in shareholdings or corporations. One of the witnesses experience in this regard has been that he pays little heed to what he sees in the Register of Members as disclosed to the Commissioner for Corporate Affairs or the Registrar of Companies. The register of shareholders in a company may or may not show the ultimate position in regard to beneficiaries. If anybody wished to mask the beneficial ownership of shares, he could do so. If it is required to mask the ultimate ownership far enough back, then it can be done. This has been illustrated by the Report of the Rae Committee and has been referred to in discussions in regard to the Foreign Take-Overs Act and is also of general knowledge in the commercial arena.

1.38 In support of such a statement the witness³ went on to say in part:

"Utilizing for example nominees either as individuals or corporations, which may or may not incorporate use of the legal fiction of a trustee, is a worldwide means of masking ownership, in particular, of corporate shareholdings. To illustrate this, right now in the 1970's a large problem is developing with some of the world's large corporations. The simple fact is that there are large shareholders in some of these corporations who have pledged or mortgaged their shareholdings on some large-scale international consortium funding. The scrip is there for mortgage, but who is entitled to the scrip at any point of time is really not known, even to the corporation concerned. For example, one is not to know that there is some sort of subsidiary funding arrangement whereby the original funder in one country has actually subpledged or sub-mortgaged the same sets of securities to another corporation or groups of corporations elsewhere in the world. It is becoming a major problem for some of the world's larger corporations."

1.39 In the final analysis the ease of invasion was summed up by a witness⁴ in answer to the following question:

"Q. As well as marking a member's own personal financial interests, do I understand you to say that it is quite easy for a member who has no beneficial interest—such as where his assets have been transferred to his wife, his parents, his child or what-have-you—for him to be able to say that he has no beneficial interest, and therefore it makes any register a farce?—Yes. Again it would be quite possible for a person to walk in this door and to say, "I literally own nothing, I legally have no means of control over anything."

1.40 In practical terms he may be able to actually control a large-scale commercial empire, being able to tell the family what to do and to tell his advisers what to do, whether those advisers appear to be shareholders in their own right, or having options or interests over shareholdings which are not disclosed or disclosable; and having merely the right to pick up the telephone and to say, "Tomorrow, Mr Smith, you will vote as follows on this particular proposed motion at the meeting."

¹ See page 123 in evidence.

² See pages 123 and 124 in evidence.

³ See page 126 in evidence.

⁴ See page 126 in evidence.

A Codified List of Definitions as against a Broad Definition of Pecuniary Interests or Other Benefits

1.41 After having wrestled for some considerable time to adequately define "pecuniary interest" or "other benefit" as set out in paragraph 0.18, the Committee sees merit in suggestions made that a codified list of definitions be established for the assistance of registrants.

1.42 A witness considers that it would be possible for the Committee to arrive at early codification of a list which would contain definitions of the two items "any interest capable of producing a benefit of a financial or material nature", and, "any benefit however received." Such a list would naturally contain "gaps". In due course the definitions would be extended, telescoped or deleted altogether, however, the position in this respect could be expected to be kept under regular review by a Joint Standing Committee upon Pecuniary Interests such as was recommended in the Committee's Progress Report (paragraph 3).

1.43 In the absence of a codified list of definitions it was emphasized to the Committee that a Member would be placed in a difficult position in being required to say at any given time that he or she has had the opportunity of responding to the Registrar in respect of whatever interests he or she may have.

1.44 To attempt to have a wide-ranging and fully covering set of definitions would be a futile exercise and one could not hope to establish a set of definitions that would encompass every conceivable case of a benefit or an interest.

1.45 A witness agreed that if definitions were developed in regard to the interests of a member's immediate family this would not only assist in providing disclosure guidelines for members but at the same time and perhaps more importantly would enable it to be understood by the general public.

1.46 A codified list of definitions would, of course, lead to much more difficulty in recording, checking or up-dating interests than would be expected to arise from the Committee's initial broad definition. However, the witness said that if he were confronted simply with generic terms of this definition he would frankly not know where the limit was of what he should disclose. Whilst acknowledging the Committee's recommendation for the establishment of a code of conduct he felt that the advantages of a codified list kept in conjunction with the broad definition would be the most appropriate and effective course of action to follow.

1.47 At the request of the Chairman the witness undertook to prepare a list of the classes of pecuniary interest or other benefits which might be disclosed in a Register. These are shown hereunder:

1.47.1 Every directorship of any company (whether public or not) and of any co-operative society, whether remunerated or not.

1.47.2 All employments, offices, agencies (whether held in profit-making or non-profit-making corporations, co-operative societies, associations or organizations), whether remunerated or not.

1.47.3 Every trade, profession or vocation, whether remunerated or not and whether a partner or not.

1.47.4 Every holding of an asset as trustee or as nominee.

1.47.5 Land and property of substantial value or from which substantial income was derived in the preceding financial year. ("Substantial" in relation to value shall mean any amount which is equal to not less than 50 per cent of the sum being the aggregate of the Member's Parliamentary salary and allowances in the said preceding year. "Substantial" in relation to income shall mean any amount which is equal to not less than 20 per cent of the aggregate of the Member's Parliamentary salary and allowances in the said preceding year.)

1.47.6 The name of every company, co-operative society and unincorporated body in which the Member or the Member's spouse has a "relevant interest" as is definable, mutatis mutandis, under the provisions of section 6A of the Companies Act, 1961, where the said relevant interest is not less than 10 per centum of the nominal value of the issued capital of the said company or co-operative society or not less than 10 per centum of the total ownership interests of the said unincorporated body, as the case may be.

1.47.7 All financial sponsorships received:

- (a) as a Parliamentary candidate where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses; and
- (b) as a Member, from any person or organization, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage, whether direct or indirect.

1.47.8 All overseas visits relating to or arising out of or connected with membership of the House where the costs of any such visit has not been borne wholly by the Member or by public funds.

1.47.9 All payments and all material benefits or advantages received directly or indirectly from or on behalf of any foreign Government, organization, company or person.

1.47.10 All gifts received by or on behalf of the Member in excess of the sum of \$100.

1.47.11 All business transactions or arrangements which the Member and/or the Member's spouse and/or any person definable as an "associate" (of the Member or the Member's spouse) under the provisions of section 6A of the Companies Act, 1961, entered into with any Government department or body or with any semi-Government or other statutory body.

1.47.12 Names of clients or customers of the Member when the interests referred to in paragraphs 1.47.1 to 1.47.4 above include personal services by the Member which arose out of or are related to or relatable in any manner to his Membership of the House.

Unique Record of New South Wales Parliament

1.48 Some witnesses argued strongly that the unique record of this Parliament in not having experienced any major acts of dishonesty or malpractice negate the need for establishing a register. Attention was drawn to the Parliaments in Great Britain and the United States of America which established registers following scandals of some magnitude. To this assertion it can be claimed that a register would not attempt to discover such malpractices and because the New South Wales Parliament happens to have such an enviable record there is no reason to believe that a "Watergate" situation could not occur in the future.

1.49 Turning now to the main reasons advanced in support of a register, one witness¹ summed up thus—

"I believe that it is essential that members of Parliament and other persons having some influence or capable of exerting influence on the making of public policy should declare pecuniary interests . . . We reached the conclusion that with the democratic system under such significant attack and it being eroded somewhat in the public mind with the growth of cynicism about political leaders, it was essential that there should be a restoration of public confidence in the institution of Parliament."

1.50 Another² said that—

"The elected member holds his position as somewhat short of one of trust, if not a full position of trust, on behalf of the community or certainly his section of the community. By way of corollary to that any private interests he has which may impinge upon or influence in some way the decision in which he is taking part in the Parliament, should I feel be made public."

Question of Access to Register

1.51 A witness had certain views on the questions of access to a register. He was strongly of the opinion that the Committee's recommendation in paragraph 4 of the progress report—permitting access only after establishing to the satisfaction of the Register and the Joint Standing Committee that a bona fide reason exists for such access—far too controlling and restrictive.

1.52 It was suggested that possibly the arbiter on dealing with requests for access to the register should be taken out of the hands of Parliament or somebody directly connected with Parliament by vesting it in say, the Ombudsman in order to clothe the whole matter with the mantle of overt honesty. Such an approach, it was contended would perhaps give the public a more independent view of the ultimate aims of a register.

1.53 In suggesting the Ombudsman as a possible means of controlling access the witness stated quite firmly that his suggestion was merely an alternative for the Committee to consider but this example was used to emphasise that an outsider would be able to see that a complete state of independence was being maintained.

¹ See pages 1 and 2 in evidence.

² See page 29 in evidence.

1.54 Within the power of the New South Wales constitution, Parliament is the ultimate master of every servant including public servants, however, when this situation was brought to the attention of the witness he was not convinced that there would be more honesty in the maintenance of access to a register when controlled in the hands of a Joint Standing Committee of both Houses of Parliament compared with such control in the hands of somebody who is under the control of Parliament, even though indirectly.

1.55 In making such an assertion the witness favoured the concept recommended by this Committee of a register being maintained under the control of a Joint Standing Committee provided that responsibility for access was placed in the hands of an independent arbiter.

Sanctions for Non-Compliance with Disclosure Requirements

1.56 In recommendation 11 of the Committee's Progress Report it was indicated that members would be expected to comply with disclosure requirements or face the prospect of disciplinary action by their respective Houses.

1.57 This approach was similar to that adopted by the Federal Joint Committee on Pecuniary Interests in its Report of 1975 and also by the Select Committee on Members' Interests (Declaration) which was tabled in the House of Commons in 1974. The opinion expressed by the House of Commons Committee which had the support of the Federal Joint Committee in respect of sanctions for non disclosure was as follows:

"Under no circumstances should the Registrar and his staff be seen as enforcement officers, with powers to inquire into the circumstances of Members. The underlying principle behind the register is that Members are responsible for their entries; the House will trust them in this respect, but at the same time such trust involves obligations. As the Clerk of the House pointed out, 'The ultimate sanction behind the obligation upon Members to register would be the fact that it was imposed by Resolution of the House . . .

There can be no doubt that the House might consider either a refusal to register as required by its Resolutions or the wilful furnishing of misleading or false information to be a contempt'. The sanction of possible penal jurisdiction by the House should be sufficient."

1.58 The Committee now recognizes the importance of divorcing responsibility for the imposition of penal jurisdiction from the Houses of Parliament and disagrees with the course adopted by the abovementioned Committees.

1.59 If the operation and effectiveness of the register is to be viewed by the public as being seen to be completely above reproach the sanctions for non disclosure should be taken out of the political arena. If either House were to consider either a refusal to register as required by its resolutions or the wilful furnishing of misleading or false information to be a contempt, the penalties, including possible suspension from the House is obviously governed by the majority numbers in those Houses.

1.60 The problem then arises as to what alternative or alternatives should be adopted to overcome the question of sanctions.

1.61 Although respecting the member's reasonable rights to privacy it bears repeating once again that it is essential that those who are entrusted with the administration of public domain should be capable of being seen by the electorate at large to maintain conduct of an unimpeachable order.

1.62 The obvious alternative and an avenue open to the Committee would be to recommend that the Register be available for inspection by the public in a similar manner to that adopted by the House of Commons where the register is published periodically as a House of Commons paper available through the Stationery Office. Such an approach would then enable the electorate to be the final arbiter on the actions of the Member, the ultimate sanctions for failure to comply with disclosure requirements being through the ballot box.

1.63 Were this course of action to be taken by the Committee certain rules would need to be adopted which would be designed not to take away the legitimate rights of the public to know the interests of members but would simply be needed for administrative convenience.

Parliamentary Candidates

1.64 Were a register for Members of Parliament to be made available for public access it then follows that some action would need to be taken to require all parliamentary candidates to be included. It would be unfair to require a candidate who happens to have been a Member of Parliament to record his pecuniary interests or other benefits and the details being readily available to the electorate, while other candidates are under no obligation to disclose anything.

1.65 The House of Commons Select Committee envisaged this problem developing but accepted the advice of the Clerk of the House that under electoral law in existence at that time it was impracticable for all candidates to be included on a register since the final list was not known until 9 days before an election. The United Kingdom Committee accordingly recommended that legislation in this area should be considered by the next Speakers' Conference on Electoral Law.

1.66 In New South Wales the closing time for nominations for seats in the Legislative Assembly is approximately 16–23 days in advance of polling day and were candidates to be required to declare their pecuniary interests or other benefits consideration would have to be given to amending section 79 of the Parliamentary Electorates and Elections Act, 1912, to make it mandatory for candidates to declare upon nomination.

PART 2—MEMBERS OF PARLIAMENT

Existing Provisions Relative to Disclosure of Interests

2.1 Present provisions relating to pecuniary interests—Legislative Council and Legislative Assembly:

2.1.1 *Standing Order No. 126 in the Legislative Council—*

“No member shall be entitled to vote in any Division upon a Question in which he has a direct pecuniary interest not in common with the rest of Her Majesty's subjects and on a matter of State Policy, and the vote of any member so interested shall be disallowed.”

2.1.2 *Standing Order No. 204 in the Legislative Assembly—*

“No member shall be entitled to vote in any division upon a Question in which he has a direct pecuniary interest, and the vote of any member so interested shall be disallowed.”

2.1.3 *Section 13, 17B and 26D of the Constitution Act No. 32 of 1902*

2.2 In so far as the Legislative Council is concerned, Standing Order No. 126 was adopted by the Council in 1895 and evidence was heard that since that time the following instances are the only two on record:

2.2.1 On 16 June, 1931, just prior to the House resolving itself into a Committee of the Whole to consider B.A.W.R.A. Income Tax (Declaratory) Bill, which was to make subject to State income tax certain payments made by the British—Australian Wool Realisation Association Limited to growers of wool resident in New South Wales, and also subject certain share certificates, etc., to income tax, the President, Sir John Peden, was asked whether, according to parliamentary procedure, members who had a direct pecuniary interest in the measure, not in common with the rest of His Majesty's subjects, were entitled in the terms of the Standing Order, to vote, also if he would distinguish between this and ordinary methods of taxation. The President stated that in the first place it was an abstract question. In the second place the matter was not a point of order and could only be raised by substantive motion.

2.2.2 On 18 March, 1964, during the debate on the Dentists (Amendment) Bill, a member of the Council, Sir Asher Joel stated—

“For the past 18 years I have had a professional association with the Australian Dental Association. Therefore, it might be said that I have some personal interest in this matter. Despite this, I believe that my remarks may not be altogether palatable either to the executive of the association or to some honourable members of this House. However, I believe that I should state my views and, as I have a personal interest in the matter, I do not propose to vote on this important measure.”

2.3 The Clerk of the Parliaments gave evidence that on the one occasion in his experience where personal or pecuniary interest had been involved in the question before the Chair, the member, of his own volition, left the Chamber when the vote was taken.

2.4 In so far as Standing Order No. 204 in the Legislative Assembly is concerned, this Standing Order was adopted in 1894, although the question of pecuniary interests was then not a new problem for the Assembly.

2.5 In 1862, claims had been made that votes of certain members should be disallowed in Divisions on matters then before the House. In 1876, when the House relied solely on the law of Parliament, Mr Speaker Allen said—

“The question submitted to him was of a mixed nature involving law and fact. On the former only would it be proper for him to speak. A personal interest in a question disqualified a member from voting, but this must be a direct pecuniary interest, separately belonging to the person whose votes are questioned, and not in common with the public, or on a matter of government policy.”

2.6 Mr Speaker's statement expresses the principle followed in the House of Commons, and that same principle has been followed in the Legislative Assembly up to the present. In the last Session of the Parliament it was claimed that the votes of five members in a division should be disallowed on the grounds of personal interest. The Speaker was of the opinion, based on the ruling given by Speaker Abbott in the House of Commons in 1811, that the personal interest in question was not—

“a direct pecuniary interest and separately belonging to the persons whose votes were questioned, but a matter of State policy”

clearly within the meaning of Speaker Abbott's ruling.

2.7 The Committee found that the provisions of section 13, 17B and 26D of the Constitution Act of 1902 were inadequate, and did not overcome the problem of declaration of interests, which interestingly enough corresponds with the view taken by the Federal Joint Committee when examining the provisions of section 44 (v) of the Commonwealth Constitution.

The Position as Regards a Registration System in Other Parliaments

Federal Parliament of Australia

2.8 A register was recommended by the Joint Committee on Pecuniary Interests of Members in 1975. No steps have been taken by the Australian Parliament to implement the recommendations.

House of Commons

2.9 On 22nd May, 1974, the House agreed to two resolutions, namely:

- (a) That, in any debate or proceeding of the House or its committees or transactions or communications which a member may have with other members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have.
- (b) That every member of the House of Commons shall furnish to a Registrar of Members' Interests such particulars of his registrable interests as shall be required, and shall notify to the Registrar any alterations which may occur therein, and the Registrar shall cause these particulars to be entered in a Register of Members' Interests which shall be available for inspection by the public.

2.10 At the same time the House agreed to the appointment of a Select Committee with Terms of Reference almost identical to this Committee's.

2.11 A Register was duly published on 28th November, 1975, and is still being maintained. It is published from time to time as a House of Commons Paper available through the Stationery Office.

United States of America

2.12 Strict new provisions were introduced in 1977 relating to financial disclosure, outside income, acceptance of gifts, unofficial office accounts, certain aspects of the franking privilege and travel for members of the House of Representatives and the Senate. Members are required to file financial disclosure statements with the respective Houses.

Legislative Assembly of Saskatchewan, Canada

2.13 Members are required to file a statement under oath within 2 months of election to the Clerk of the Assembly showing details of any involvements with government contracts and company memberships in respect of both himself or his spouse.

New Zealand House of Representatives

2.14 No register in operation, however, on 25th October, 1956, the Ministers Private Interests Committee recommended the acceptance of certain basic principles which should be observed by Holders of Ministerial Office Under the Crown in the Reconciliation of Their Public Duties and Private Interests (see Annexure 2).

Parliament of New Guinea

2.15 The Constitutional Planning Committee made certain recommendations relative to a Leadership Code which were generally adopted by the House in 1974. Basically, Members are required to complete an exhaustive statement of their interests for transmission to the Ombudsman Commission (under section 4 of the Organic Law on the Duties and Responsibility). The statement covers the spouse and all children who are under the age of 18 years.

Victorian Parliament

2.16 In 1974, a recommendation for a Code of Conduct was made in a Progress Report of a Select Committee on Conflicts of Interests of members of Parliament. The Committee agreed to four basic principles for members and the adoption of the principles established in Annexure 2 relative to New Zealand Ministers of the Crown. At the same time the Committee concluded its Progress Report by stating that the question of a register of members' private interests required further examination. No action has been taken in Victoria by either the adoption of the Code of Conduct or re-establishing the Committee which became defunct because of prorogation.

Parliaments of Western Australia, South Australia, Tasmania and Queensland

2.17 No registers are in existence in respect of the abovementioned Parliaments.

Members' Views

2.18 The Committee considered it necessary to obtain the views of members of both Houses of Parliament and 159 questionnaires were circulated to members in the initial stages of the inquiry. The Committee members refrained from completing a questionnaire. One hundred and three questionnaires were returned and details of the answers given by members who favoured a registration system and who completed all the questionnaire are shown in Annexure 1 to the Progress Report attached.

Administrative Requirements

2.19 Evidence was put before the Committee that there would be certain administrative problems connected with the establishment of a register for members. But, given the necessary staff these problems could be overcome provided that separate registers in respect of the Legislative Council and Legislative Assembly were to be established.

2.20 If a register were introduced it would be imperative for the responsible authority in charge of the register to be made aware in clear terms of the criteria for granting access to the information contained in the register so as to ensure that a person had a justifiable claim to view the register.

2.21 Considerable argument on the question of access to a register was advanced and the Committee could not deny the merits of those, who although in the minority, favoured an "open-register" along the lines of the House of Commons register which is published periodically and is available as a House of Commons Paper through the Stationery Office. However, extensive views to the contrary were expressed, particularly on two main grounds:

Invasion of privacy.

2.22 It would need to be continually updated and should not be accessible merely to someone with malicious intent who wanted access merely for the sake of access.

2.23 It was of interest to the Committee to ascertain from the House of Commons how its register was functioning. In this regard advice was received, and it is of particular importance to the Committee, that one member of the House of Commons refused to register. When this report went to print the matter had not been finalized and there appeared to be some problem as to how the member would be finally dealt with.

Widening the Scope of a Register to Encompass Member's Family and others

2.24 One of the barriers to a register is the question of the desirability of members' spouses and relatives being required to register also and here one witness¹ said—

“To require disclosure by members and not spouses and dependants would be unrealistic and perhaps self-defeating. If a member accepts the glare of public life he should be expected to reveal the pecuniary interests of his family as a unit because of the general and acceptable practice of disseminating wealth and income through a spouse and dependants for taxation and probate purposes.”

2.25 It could easily be supposed on the other hand, that a member might not necessarily be aware of his spouse's interests such as investments and no doubt critics of a register would say that women, merely because they are married to members of Parliament, should not have their privacy invaded unjustly.

2.26 The House of Commons Committee considered this question very closely and decided that where a member has knowledge about shareholdings of his spouse or infant children in a company where he himself has a holding, he should register them as his own for they come within the proposed definition of a registrable interest. This provision, however, is exceptional and it only concerns the member's own relationship to the company and he is not required to register his relatives' interests as such. The House of Commons Committee regarded the disclosure of interests of spouses and children as an unnecessary invasion of privacy.

Conclusions

2.27 The lapse of time between tabling of the Committee's Progress Report and the completion of this the final Report has provided the Committee with new evidence and the opportunity of assessing the merit of the views expressed, both critical and favourable of the initial recommendations made by the Committee in respect of Members of Parliament.

2.28 Recent evidence put to the Committee reinforces its opinion that the dishonest person can, should he or she so desire, avoid disclosure by many ways and means and not necessarily by illegal methods. However, it is again emphasized that the principal reason in establishing a register is to have as its main purpose the facility of enabling the public to attach due weight to the decisions taken by the Members in the light of their pecuniary interests or other benefits whilst at the same time safeguarding the Member's own character and reputation. In the end, responsibility must rest with the Member himself to disclose those interests that might affect his actions in Parliament. He is, however, at all times answerable to the vigilance of his fellow Members and the public and a Register would serve him and them in the discharge of his duties and responsibilities.

2.29 Whilst initially recommending a broad “all embracing” definition of “pecuniary interest or other benefit” with the onus being placed on the Member to declare the Committee does see merit in the suggestion that adequate definitions be drawn up to serve as guidelines as to what Members should declare.

2.30 The Committee in its recommendations has set out certain types of pecuniary interest or other benefit which it sees as providing sufficient declaration guidelines for the assistance of Members. Such guidelines the Committee considers do not require further amplification as to their intent. Suffice it to say that having the benefit of guidelines recommended by similar Committees in other countries and the Federal Joint Committee on Pecuniary Interests of Members of Parliament, a balance has been struck which it is expected will enable Members and candidates to proceed to register with good sense and responsibility.

¹ See page 28 in evidence.

2.31 The Committee does not consider that the existing safeguards within the Parliamentary institution are adequate as regards the declaration of pecuniary interest or other benefit. (A full explanation of the provisions of Standing Orders Nos 126 in the Legislative Council and 204 in the Legislative Assembly was set out under the subheading of "Existing Provisions Relative to Disclosure of Interests" earlier in the Report.)

2.32 It is considered that a flexible and well-drawn up code of conduct, when allied with an effective registration system would reflect the Committee's desire to instigate proposals that would safeguard and enhance the public standing of members without making unjustified inroads into their existing rights of privacy.

2.33 Certain administrative arrangements would need to be established upon the Register being available for public access. Such arrangements which would include the physical aspects of compiling and maintaining the Register, access times and procedure to be followed following complaints by Members and members of the public would, it is envisaged, most suitably be carried out by a Joint Standing Committee Upon Pecuniary Interests, acting no doubt on the advice of the Registrars.

Recommendations

1. That "pecuniary interest" and "other benefit" be defined as "any interest capable of producing a benefit of a financial or material nature and any such benefit however received directly or indirectly by the person concerned which could influence that person in the discharge of his duties or responsibilities".

2. Each Member of Parliament should fully disclose in a Register details of the pecuniary interests held or other benefits received in respect of themselves, their spouses and their infant children. In particular Members should disclose:

- (a) details of shareholdings, debentures, charges and interests as defined in the Companies Act in bodies corporate (including guarantee companies) no matter where incorporated or carrying on business, whether held as an individual, partnership or trust;
- (b) all sources of income (but not amounts) from corporations, partnerships, businesses, professions, trusts and employment;
- (c) details of all positions held (whether remunerated or not) in or in relation to bodies corporate, trusts and partnerships;
- (d) all benefits under Trusts;
- (e) all interests in real property and the location of that property;
- (f) all individual gifts exceeding \$500 in value, together with gifts from the same source which, in aggregate, exceed \$500 in value in any one year made to a Member or his spouse or his infant children from sources outside the family;
- (g) sponsored travel arising out of membership of Parliament including accommodation expenses and other benefits;
- (h) all payments and all material benefits received directly or indirectly from or on behalf of any foreign government, organization, company or person;
- (i) all business transactions or arrangements which the Member and/or the Member's spouse directly or through a company entered into with any government department or body or with any semi-government or other statutory body.

3. That separate Registers be maintained in respect of the Members of the Legislative Council and the Legislative Assembly.

4. Members should furnish the information in the form of a statutory declaration within three months of the passage of the House resolution or assent or promulgation of legislation establishing the Register. A declaration shall be submitted to the Registrar by all Members within three months of taking their seat in each Parliament.

5. That the Register be kept in loose leaf form and Members be required to notify the Registrar within one month of any changes required to made to the declaration.

6. That the Clerk of the Parliaments and the Clerk of the Legislative Assembly should be the Registrar of the respective registers and should have the responsibility of compiling and maintaining them.

7. That the information contained in the registers be freely available to Members and be printed annually as a Parliamentary paper.

8. The matter of whether or not a Member should register the actual value of any interest, shareholding, debenture or charge be left to the discretion of the individual Member.

9. Obviously difficulties over the interpretation of interests will arise in the initial stages of the operation of the register and for this reason a Joint Standing Committee Upon Pecuniary Interests should be appointed not only to deal with the problems as they arise but to generally supervise the operation of the register. The Joint Standing Committee should be entrusted with the responsibility of drafting a suitable and meaningful code of conduct.

10. The Joint Standing Committee be entrusted also with the responsibility of making such recommendations to the Standing Orders Committee in respect of Standing Orders 204 in the Legislative Assembly and 126 in the Legislative Council which will ensure that interpretation of these Orders takes cognizance of relevant factors contained in this Report.

11. That candidates for election to seats in the Legislative Assembly and Legislative Council be required to disclose in the form of a statutory declaration details of pecuniary interests or other benefits in a manner similarly required of Members of Parliament.

12. That consequential amendments be made to the relevant provisions of the Parliamentary Electorates and Elections Act to make it mandatory upon a candidate to lodge the declaration with the Returning Officer when nomination for the seat is made. That the declaration of pecuniary interests be dealt with in the same manner as is the nomination form.

PART 3—PUBLIC SERVANTS AND EMPLOYEES OF STATUTORY AUTHORITIES

3.1 At the introductory stage of the Progress Report the Committee posed several questions relating not only to the standing of the parliamentarian, but also the public servant in the eyes of the general community. Accepting that there is a tide of cynicism in today's society against the bureaucracy, if we are going to regain lost ground, a start has to be made somewhere. It therefore becomes necessary to reaffirm the requirements of highest morality in public officials. For one to speak about civil liberties is very hollow indeed if these liberties are not founded on the rock of absolute unimpeachable conduct on the part of those officials who have been entrusted with the administration of the public domain. Just as priority must be given to upholding the honour and integrity of Members of Parliament and the respect for the institution of Parliament, the same applies with equal force to the public service which is required to observe the ultimate in the standards of conduct and efficiency, always remembering that a public servant may be subject to prosecution under various statutes of the Crimes Act for improper conduct.

3.2 The accelerated growth of governmental activities in this State together with the vast amount of finance being made available for the various programmes and undertakings has led to a far greater awareness in the area of conflict of interest than has hitherto existed.

3.3 It therefore becomes increasingly desirable that a close examination of the existing rules and regulations which impose certain obligations of employment on appointed public officials be undertaken, and if these are considered to be inadequate, then they should be strengthened in such a manner that public officials will be made fully aware of their responsibilities and obligations and the public will be in a position to see that violation of these obligations will not be tolerated.

3.4 The Committee is fully aware of the avenue open to the general public in taking complaints about the conduct of public authorities to the Ombudsman and regards this as an example of the attempts being made to restore confidence in the institution of government.

3.5 The Committee in the first instance deemed it necessary to obtain the views of each Permanent Head and the Chairmen of the statutory authorities in the New South Wales Public Service and the great majority responded to the invitation (see Annexure "W").

3.6 Well documented submissions were received from 41 of the 47 of these officers and the views expressed, although differing widely, provided the Committee with information upon which to form an opinion as to whether public servants and members of statutory authorities ought to be required to register.

3.7 The Committee considered that it was also necessary to have the views of the Public Service Association of New South Wales and that Association made a submission. The Assistant General Secretary also appeared as a witness before the Committee.

3.8 The Committee also considered it essential that a representative of the Public Service Board of New South Wales appear as a witness to expand upon the submission lodged by the Board and accordingly it heard evidence on two separate occasions from the Deputy Chairman of the Public Service Board.

3.9 Although Ministers' personal staffs are public servants, the question of whether these classes of persons should be required to register or otherwise has been separately considered by the Committee at a later stage in this report.

Some Opinions

3.10 It was of particular relevance to the Committee to note the evidence given by Sir Frederick Wheeler, C.B.E., Secretary to the Treasury, Canberra, to the Federal Joint Parliamentary Committee on Pecuniary Interests—

"If it is decided that members of Parliament should disclose their pecuniary interests, it would be no less appropriate that similar rules apply to those who provide advice to Ministers, including Permanent Heads, senior policy advisers, and ministerial staff and, indeed, even less senior officers . . . If disclosure of conflicting interests is found desirable, it would probably be adequate for public servants to disclose their pecuniary interests in a "register" held within each Department. Access to the information could well be restricted to the responsible Minister and his Permanent Head. There would appear to be no real requirement to breach individual privacy further by making the information public, unless circumstances, in the opinion of the Minister, warranted such action."

3.11 The above statement correlates with the views expressed by the witness who appeared on behalf of the Public Service Board of New South Wales who stated quite categorically that if Members of Parliament were required to register then public servants who advise Ministers, and who are in a position to influence their decisions, should be under no less an obligation. In amplification of this view the Board went on to say that all those people in the Public Service who have direct contact, and an advisory role with Ministers of the Crown, should have the same sort of requirement placed upon them. Ministers of the Crown cannot check every case and must rely on advice from other people who also play a substantial part in the making of decisions affecting the community.

3.12 In support of the case for the introduction of a suitable method of disclosure of pecuniary interests one Permanent Head said in part¹—

"As with every other institution the Public Service is being continually subjected to questioning about its purpose, its organization, about the validity of the services it provides and the relevance of its objectives. Its goals and structure are no longer fixed, but must be flexible and adaptive to supply the service which society requires it to supply and not the one which it thinks society wants. The bureaucracy can no longer exist in isolation but must encourage interaction and exchange between itself and the community, lobby groups, trade unions and other organizations. The separation of public and private enterprise is becoming less marked as the resources of private industry are and will be used more extensively not only in the traditional areas of construction, supply and catering, but also in new fields such as planning, organization, administrative and operational evaluation. This growing involvement of outside enterprises in the activities of the bureaucracy makes it even more imperative that impartiality and ethical standards within the service can be seen to be maintained . . . To summarize, I consider a register of pecuniary interests to include the categories of persons outlined earlier, would serve the dual purpose of protecting the well-being of the people, while at the same time, helping to maintain confidence in the probity of those whose decisions will dictate the quality of our social, economic and physical environment."

¹ See page 136 of annexures.

3.13 On the other hand, a Chairman of one of the statutory authorities said in part¹—

“There is no evidence known so far as the State Public Service is concerned which would support a similar finding in its case to that by the Federal Committee about the Federal Public Service, namely, that it is impugned and denigrated by epithets which suggest that it defaults in its duty, and is pampered, over-privileged, and motivated by self-interest. It is certainly not common-place to hear those disparaging remarks throughout the community or in the Parliament itself so far as the State Public Service is concerned. Certainly, there are criticisms of the State Public Service from time to time, but these are at a very low level considering the enormous extent of activities.

However, it must be said that these criticisms invariably allege that public servants showed a lack of efficiency, or understanding, in dealing with a particular matter. They do not discredit the status of the Public Service on the grounds of cupidity or misuse of office for self-interest. Disclosure of pecuniary interests would certainly not raise the level of efficiency. It is considered the existing sanctions are sufficiently deterrent, and provide adequate safeguards to cope with any situation arising from outside pecuniary interests, or other benefit, in the case of public servants and staff of statutory offices, and that an arrangement to compel disclosure by every officer of all such interest or benefit would be cumbersome, largely ineffective, and without need or justification.”

3.14 It was not to be unexpected that such contrasting views would be placed before the Committee and the views quoted in the preceding two paragraphs serve to illustrate the difficulty which the Committee had in evaluating the merits of the respective arguments. It was succinctly expressed by the Federal Joint Committee on Pecuniary Interests, who found a similar diversity of opinion expressed by Commonwealth Departmental Heads, that that Committee’s aim was not to develop new penal provisions or to embark on a solitary programme of persecution but to provide a means of demonstrating positively to the community that the Public Service is in fact a public service.

3. Existing Safeguards

3.15 Within the framework of the New South Wales Public Service the principle “having no financial or personal interest which is incompatible with the proper discharge of one’s duties” has gained general acceptance, whereas Britain, the United States and South Australia, have gone a step further, in that public servants are required by Act or Regulation to declare any conflict of interest, financial or otherwise, which may arise in the course of their duties. Similar legislation in respect of Victorian public servants is in the course of preparation.

3.16 Section 10 of the Public Service Board Procedure Handbook Staff and Personnel Matters sets out in detail the following guidelines for public servants:

N.S.W. PUBLIC SERVICE BOARD PROCEDURE HANDBOOK

STAFF AND PERSONNEL MATTERS

Section 10

PRIVATE EMPLOYMENT AND EXTRA-OFFICIAL ACTIVITIES OF PUBLIC SERVANTS

1. Section 68 of the Public Service Act provides:

- (1) Except with the express permission of the Governor signified by notice published in the Gazette, which permission may be at any time withdrawn, no officer shall—
 - (a) accept or continue to hold or discharge the duties of or be employed in any paid office in connection with any banking, insurance, mining, mercantile, or other commercial business, whether the same be carried on by any corporation, company, firm or individual; nor
 - (b) engage in or undertake any such business whether as principal or agent; nor
 - (c) engage in or continue in the private practice of any profession.

¹ See page 70 of annexures.

- (2) If any officer is the holder of any office, or is engaged in any employment whatsoever other than in connection with the duties of his office under the Crown, he shall at once notify the fact to the Board, who may require such officer to resign such office or abstain from engaging in such employment.
- (3) * * * * *
- (4) Any officer failing to comply with the requirement of the Board shall be deemed guilty of misconduct within the meaning of section fifty-six hereof.
- (5) Nothing herein contained shall prevent any officer from accepting and continuing to hold any office in any society founded under the law relating to Friendly Societies for the benefit of public servants only.

2. Regulation 16 provides that similar conditions to (1) and (2) above shall apply to temporary employees.

3. Other Regulations which have a particular bearing on officers or employees engaging in private employment or extra-official activities are:

(1) *Regulation 15—Civic Offices*

No officer shall accept or hold the office of treasurer, clerk or auditor of a shire or municipality. An officer may accept and hold the office of president of a shire or mayor of a municipality, but shall resign such office, if in the opinion of the Minister administering the Department in which he is employed, the holding of such office is incompatible with the proper discharge of his departmental duties.

(2) *Regulation 17—Officers Not to Publicly Comment on Administration, etc.*

An officer shall not—

- (a) Publicly comment upon the administration of any Department of the State; or
- (b) Use for any purpose other than for the discharge of his official duties, information gained by or conveyed to him through his connection with the Public Service.

(3) *Regulation 24—Rewards and Gratuities*

No officer shall demand or receive for his own use from any person, company, or corporation, any present or other remuneration of any kind whatsoever for services performed by him, either in or out of office hours, in connection with his official position.

4. *Private Employment—Policy*

- (1) Officers seeking approval to engage in private employment must submit full particulars of the work proposed, the name and address of the employer, the hours of duty, and the remuneration proposed.
- (2) The Board will not hesitate to deal severely with officers who engage in private employment without first obtaining permission.
- (3) The following guiding principles, which it is emphasized are intended to be neither binding nor exhaustive, must be met prior to Board approval being given to any officer to engage in private employment:
- (a) Officers must not engage in competition with other persons who rely on such employment for their livelihood.
- (b) Officers must not engage in private employment which is incompatible with their position in the Service or interferes with the proper and efficient performance of their official duties.
- (4) When other considerations are acceptable, the Board may give favourable consideration to an application for permission to engage in private employment where permission will make it possible for technical teachers to keep in touch with outside requirements.
- (5) Other factors which the Board may take into account are the applicant's age, whether he is permanent or temporary, whether he has some form of security for his retirement, etc.

5. Return of Fees and Commissions

- (1) Regulation 32 provides, inter alia, that the Permanent Head of each Department shall submit to the Board, annually, a report covering—

The amount of remuneration received by officers and employees of his Department by way of fees, commissions or salary, for all services other than those in respect of which their salary is determined. This return should be based on written information which shall be supplied by such officers and employees.

The written information supplied should be verified by the Department.

- (2) The report is to be furnished by Departments as at 30th June each year, except for the Education and Technical Education Departments, who report as at 31st December each year.
- (3) Arrangements should be made for officers to furnish the required information direct and confidentially to the Department Head or his nominee—lists are not to circulate from officer to officer.
- (4) Returns need not include royalties, etc., on books, or other publications, but are to include details of all other remuneration received by officers other than those in respect of which their salary is determined.

6. Television and Broadcasting Activities

- (1) The approval of the Permanent Head is required before an officer makes a broadcast or television appearance, except where the officer is carrying out the work as part of his normal duties where payment of a fee is not involved.

(2) *Subject matter related to duties:*

(a) Where the broadcast or television appearance is made *in the officer's own time* and the Permanent Head is satisfied that the State has not been at a loss nor put to additional expense owing to the officer undertaking the work, the whole of the fee may be retained by the officer.

(b) If the broadcast or television appearance is made in *departmental time*, the provisions of 7 below apply.

(c) The Board is completely opposed in principle to officers paid from public funds appearing on sponsored commercial radio or television sessions. If a situation arises where it is necessary to seek Board's approval to expenditure for such a purpose, in no circumstances is such approval to be anticipated.

(3) *Subject matter not related to duties:*

(a) Where officers with musical or other particular talent occasionally accept fees for broadcasting or television appearances *in their own time*, the Board will raise no objection, provided there is no interference with their official duties.

(b) Any proposal to take part in any radio or television session to advertise particular goods, services or firms, etc., must be submitted to the Board.

- (4) A broadcast or television appearance which is recorded for subsequent use shall be deemed to be made at the time of recording.

7. Work Performed for Outside Bodies during Office Hours

The following conditions apply from 1st January, 1963:

- (1) An officer (other than one specifically exempted by the Board) who has authority to lecture, give radio broadcasts or television appearances *during working hours* on matters which are considered by the Permanent Head as being outside the requirements of the officer's official duties, *shall take leave without pay* to cover the time lost or alternatively make up such lost time. Time lost shall include any official time devoted to preparation.

Revised July, 1967

Recreation leave should not be granted in such circumstances, as it is considered an officer should not receive payment from the Crown whilst also receiving payment from outside bodies for approved extra-official work.

Any fees received for these extra-official activities may be retained in full by the officer concerned.

- (2) An officer who is authorized to give radio broadcasts, lecture or make television appearances on matters which are considered by the Permanent Head to be within the requirements of his duties shall not be required to take leave or make up any time lost but must pay all such moneys received in full to his Department.
- (3) Where any officer considers that the activities that he is undertaking are over and above those normally required of the position which he holds and that he should be permitted to retain portion of fees paid by outside bodies, then the Board will consider the question of the payment of an appropriate allowance to cover such cases.

Revised July, 1967

- (4) The provisions (1) to (3) above, are *not to apply* to lecturing and/or demonstrating by officers in respect of:
 - (a) Universities and Department of Technical Education.
 - (b) Training Courses attended solely by departmental officers.

8. *Conditions under which officers are to be granted approval to carry out Lecturing, Tutoring and/or Demonstration work for outside bodies.*

A. Duties performed outside normal office hours:

Departmental Heads have been delegated authority to approve of applications from officers and employees seeking to undertake work outside normal office hours which falls within the following categories:

- (1) Tutorials and Lectures, Workers' Education Association of N.S.W. and Commonwealth Office of Education;
- (2) Part-time Teaching, Department of Education;
- (3) Part-time Teaching, Tutoring or Demonstration at N.S.W. Department of Technical Education and Universities;

Revised December, 1968

- (4) Lectures given on behalf of the N.S.W. Branch of the Library Association of Australia, the N.S.W. College of Nursing and recognized training organizations of similar status, the Metropolitan Water Sewerage and Drainage Board and other statutory authorities.

subject to:

- (a) the officer or employee not undertaking any other employment extraneous to the duties of his office or position;
- (b) the aggregate period of work involved not exceeding—
 - (i) 4 hours per week for lecturing and/or tutoring in degree or diploma courses;
 - (ii) 6 hours per week in other cases.

Any fees received from these duties may be retained in full by the officer concerned.

B. Duties performed during normal office hours:

These duties fall into two categories:

- (1) Lectures (other than at University and Department of Technical Education, which are dealt with in (2) below) radio broadcasts and/or television appearances.
- (2) Lectures, Tutorials and/or Demonstration Work in respect of courses at Universities and/or the Department of Technical Education.

Concerning applications to undertake lecturing, etc., within this category, the Board's attitude is as follows:

- (a) Officers are expected to be available full-time for their ordinary duties and permission will be granted for them to undertake lecturing work to degree or diploma students only where exceptional circumstances exist and the University or Department of Technical Education certifies that it is unable to obtain other suitable persons for lecturing in the particular subjects or course.
- (b) Generally such expert knowledge should not be unrelated to an officer's departmental position (i.e., possession of special knowledge on matters unrelated to his work would not normally justify granting of leave).
- (c) The extent to which an officer may lecture during office hours will be strictly limited and should not exceed 15 hours per annum actual lecturing. In reckoning the time lost from the department, account must be taken not only of the actual time spent in lecturing but also of the travelling time both ways. Total absence should not exceed 30 hours per annum.
- (d) Preparation, marking and any other incidental work associated with the lecturing must be performed outside office hours;

The following conditions apply to officers who seek permission to undertake lecturing, etc., for degree or diploma courses during working hours:

- (i) Officers may be granted up to 30 hours per annum to undertake not more than 15 hours actual teaching, etc., and may retain any fees received. No debit will be made against the officer's leave.
- (ii) Only in exceptional circumstances will permission be given for absence during working hours in excess of 30 hours per annum, and such leave, if permitted, will be on the basis of leave without pay. The total absence of the officer from the Department in excess of 30 hours, including travelling time, will be treated as leave without pay.

Heads of Departments have been delegated authority to approve of cases under (i). Cases under (ii) should be submitted to the Board.

9. *Examiners or Members of Examining Committees*

Heads of Departments have been delegated authority to approve retention of fees by officers of the Department who have been appointed as examiners or members of Examining Committees under statutory authority, *where the examination fees are laid down under the provisions of the appropriate Act or Regulation promulgated thereunder.*

Particulars of fees received for such work must be included in the annual report of fees and commissions received—see 5 above.

10. *Directorships of companies*

The policy of the Board is not to approve requests for permission to accept directorship of companies, whether or not payment is involved.

11. *Lectures, etc., without fee*

- (1) Applications for permission to deliver lectures, etc., without fee, on matters relating to departmental activities are decided by the Permanent Head, having due regard to the provisions of Regulation 17—see 3 (2) above.
- (2) Officers may give talks on matters of general interest, without fee, subject to the consent of the Permanent Head.

12. *Publication of books, etc., by officers*

- (1) The Board, of course, raises no objection to officers writing books, articles for magazines, etc., provided there is no interference with their official duties.

The approval of the Board, however, must be obtained in all cases prior to any proposed publications.

- (2) *Subject not related to official duties*

Where the subject matter of the book, article for magazine, etc., is not related to the officer's duty, the Board may permit the officer to arrange private publication.

(3) *Subject related to official duties*

- (a) Generally, the results of research undertaken by officers in the course of their official duties should be published by the Government Printer under the direction of the Department concerned.

Where publication is effected by the Government Printer, the amount of royalty to be allowed an officer will be determined by the Board.

- (b) Where the work, although related to an officer's duties is not the result of research in an official capacity, the Board, on the recommendation of the Permanent Head, may permit the officer to arrange private publication.

13. *Press work*

Officers wishing to enter upon or continue with press work for payment must apply for permission.

14. *Patents*

Officers should submit matters relating to patent rights through the Permanent Head of their Department to the Board for transmission to the Chairman of the Patents Committee, established to review patents submitted by officers and employees of Government or quasi-Government activities.

15. *Payments for services rendered by officers of other departments*

Before any payments are made by a Department to an officer of another Department the matter should be referred for the Board's approval except payments made in accordance with 8 and 9 above.

3.17 Various Acts and Regulations, for example the Mining Act and the State Planning Authority (Amendment) Act (see Annexure "X") make provisions relating to the prohibition of certain kinds of dealings by officers in the respective departments and regulations under the Public Service Act have established a number of guidelines for the ethical behaviour of public servants. Public servants are also subject to various statutory restraints including certain provisions of the Public Service Act and the Crimes Act in the discharge of their duties.

However, the fact is that there is no Regulation as such which specifically requires the disclosure of conflict of interest.

3.18. It will be noted from paragraph 5 of the Procedure Handbook that under Regulation 32 of the Public Service Act the Permanent Head is entrusted with the responsibility of ensuring that each officer under his control advises the amount of fees and commissions he or she receives at the end of each financial year. This practice does, of course, give some measure of protection, however, it does not obviously go far enough in conflict of interests situations.

3.19 Generally, a decision on whether a conflict exists, whether it is "substantial", and if so, what action should be taken, is made by the Head of the Department, or the central personnel authority concerned.

Views Expressed by Public Service Board

3.20 The Committee heard in evidence that the Public Service Board of New South Wales supports the idea of legislation which would specifically require a public servant to declare any actual conflict of interest but considers that provisions which would require registration by public servants of all their continuing pecuniary interests, irrespective of whether they might be in actual conflict with official duties would lead to complaints that registration provisions constitute an invasion of privacy, difficulties in defining registrable interests, and time consuming procedures to establish and up-date an appropriate register.

3.21 It was of general interest to the Committee to note the guidelines which were prescribed in 1973 for observance by Federal Public Servants in Canada (see Annexure "Y"). Such guidelines were to have been supplemented within individual Departments by more specific provisions relating to the particular operations of the Department concerned.

3.22 The Committee recognized that if registration requirements were to be extended to all public servants, irrespective of position or grading, the administrative complexities and inherent problems in continually up-dating individual registers for the many Government Departments and Statutory Authorities would be counter-productive to the real purpose in establishing a Register. The Public Service Board was of the opinion that if a Register for public servants was recommended, it would be necessary

for a Register to include officers occupying positions of Grade 8 and upwards, or the equivalent thereto, who, in normal events would be expected to make recommendations, and be in a position of advising Ministers on what could be termed policy matters. Grade 8 in the Administrative and Clerical Division carries a minimum salary of \$17,345 per annum.

3.23 Thus is created a problem in that certain officers below this level of grading, because of the nature of their duties (e.g., field officers with local knowledge) formulate and make initial recommendations which are subsequently examined by the departmental executive before transmission to the Minister, if applicable. It follows then that the occupier of such a position could, if he wished, colour his recommendation in such a way that would benefit him, and it would not necessarily be discovered by his superiors. It would, therefore, be necessary to include such positions, even though they may be Grade 7 or less, within a registration system.

3.24 It is not the practice in the British Civil Service, the United States Federal Civil Service, or in any Australian Public Service, to require the registration of *continuing* interests of public servants—that is pecuniary or fiduciary interests—which do not constitute an actual conflict of interest with official duties.

3.25 The Royal Commission on Australian Government Administration did see merit in such a proposal, and recommended that this course be adopted. Further, the Commission recommended that a Register be kept by the Public Service Board to record pecuniary interests of Heads of Departments and Statutory Authorities, and that access to the register be restricted to the relevant Ministers.

3.26 Basically, the Public Service Board's main objection to a registration system was that a Register would probably catch up with the honest public servant only, in that he would disclose his pecuniary interests, whereas the dishonest person would not declare. The Board however, did indicate that the workload or responsibility of Department Heads would not be unworkable if a system was introduced of simply declaring an actual conflict of interests, similar to the disclosure requirement contained in section 30A of the Local Government Act, 1919.

3.27 Such a system would appear to have considerable merit. However, whether this approach would be sufficient to stem the tide of public opinion, and minimizing the important factor in the general atmosphere of distrust in the institution of government, would be questionable.

Are the Existing Guidelines Adequate?

3.28 The Committee considered that the following three important questions required close attention:

3.28.1 Was the public servant as a general rule sufficiently apprised of his obligations under the Regulations and section 68 of the Public Service Act, and the sanctions encompassed in section 56 of that Act?

3.28.2 Do the provisions contained in section 68 of the Act adequately cover conflict of interest situations and do they provide clear guidelines for the rules of conduct of the public servant?

3.28.3 Do not such provisions precipitate disciplinary action *after* breaches have taken place, and in what manner should the public be given the opportunity of observing that only the highest standards are applicable in potentially conflict of interest situations?

Dealing with Question 3.28.1, at the recruitment stage, and at some time during the induction process, it is normal practice for the supervising officer, or the Personnel Officer, to point out to the new employee his obligations under the Public Service Act. The question of how effective this procedure is, and whether steps should be taken to magnify in the public servant's mind an awareness in such matters, is dealt with in the conclusions section of this Report.

Turning to Question 3.28.2, it will be seen from the wording of section 68 of the Act that conflict of interest situations are not specifically covered, and the Public Service Board supports the idea of legislation which would precisely require a public servant to declare any actual conflicting interest. Such legislation, as suggested by the Board, might be in the form of regulations under the Public Service Act, and regulations under Acts establishing auxiliaries outside the Public Service.

With regard to Question 3.28.3 the provisions contained in section 68 refer specifically to the rules governing private employment and extra official duties, and they do not appear to have the capacity of demonstrating to the public that the highest standards are being observed by public servants in potential conflict of interest situations. Ideally, such regulation should cover this aspect, and at the time, provide the vehicle for the satisfactory conclusion of potential conflict of interest situations *before* they arise.

A particular public servant who approves or recommends a course of action may be at a very junior level of the Service and any approving senior officer may not be aware of any personal interest involved.

Views Expressed by the Public Service Association

3.29 The foregoing paragraphs have incorporated much of the evidence heard from the Public Service Board. However, it is important to take cognizance of the opinions expressed, in the submission made by the Public Service Association of New South Wales, which has a membership of some 40 000 drawn from Crown employment and, in specific terms, from the Public Service of New South Wales. This covers persons employed under the Public Service Act, and people otherwise employed by the government or in quasi-government instrumentalities, and authorities.

The Association¹ views can be summed up thus:

“ . . . We felt it might aid the Committee to know that there are already within the public service structure very specific regulations and provisions to protect the public interest and to protect anyone employed by the Government. We have taken the liberty of suggesting, in a general way, that in terms of looking at Members of Parliament and other persons, it might assist the Committee to refer to the public service principles that already exist, so that the Committee in its deliberations might decide whether this is some foundation that would provide groundwork for the association's contention that the public interest would be very well served if certain senior people in Parliamentary or Governmental office were required to keep a register of interest. This is not meant to be in a vexatious way. By that I mean that it does not have to be a system so bound down with rules that it makes life for a parliamentarian or anyone else impossible. We felt that we should express the view that there should be a register of pecuniary interests in particular, with some other types of interest which may be valid, to be included. In the American parliamentary system there is all sorts of pressure brought to bear on parliamentarians. However, such a register should be kept as a very confidential State document, and people who claim access to it should do so only with the permission of a senior governmental authority, and on condition that the person who has information registered had every opportunity to object to any access sought.”

Other Public Employment

3.30 The Committee recognizes the implications involved in the increasing tendency for departments to employ on a contractual basis outside consultants in fields such as planning, engineering and the like. Such consultants who advise departments on a State-wide level could have either individually or collectively significant pecuniary interests. Such interests can be either direct or indirect.

Question of Access

3.31 The Public Service Board in evidence stated that if the Committee saw fit to recommend that a Register be maintained for public servants then access to such a Register should be restricted to the Minister, and the Head of the Department or Authority concerned.

3.32 In the hypothetical case of say the Department of Education with a number of officers at the executive level of Grade 8 and above, it follows that quite an onerous task would be involved if the Departmental Head were to be required to check the register each and every time a submission was made to him or to those officers with such delegated authority.

3.33 Such a time consuming exercise prompted the Board to suggest that the problem could be met by a simple legislative measure imposing on the public servant the requirement to declare at the time of actually dealing with a particular case to say that he or she has an interest in something, and that person then should not be dealing with the particular case.

3.34 If legislation were to be enacted along such lines an officer would, in a conflict of interest situation, need to declare that interest in writing, and draw the matter to the attention of his senior officer, who would decide whether that officer should or should not continue to deal with the case.

¹ See page 83 in evidence.

3.35 The Public Service Association in its formal submission suggested that access to declaration lists should be available to all those persons whose names and interests are listed, subject only to proof of identity, and secondly, to any person able to satisfy say, the Premier, Attorney-General or Minister of Justice, that they have a specific interest in a particular matter, and that the person involved has been made aware of the inquiry and has been given the opportunity to lodge a formal objection to the granting of access.

3.36 The abovementioned authorities were quoted by the Public Service Association as suggestions only, and were used to merely illustrate the importance of maintaining the strictest confidentiality in the contents of a register.

3.37 It is recognized that from time to time requests will be made for access to the register on matters which are not directly concerned with the reasons for its compilation.

3.38 It is also recognized that in court proceedings involving a particular public servant or his family attempts could be made to have the register admitted as evidence or that it be made available for access under a subpoena.

Conclusions

3.39 The evidence demonstrates the need for the requirement that public servants and employees of statutory authorities who are responsible for providing advice and guidance to Ministers should be under no less an obligation than Members to disclose details of any pecuniary interest or other benefit which could influence an officer in the proper discharge of his duties and responsibilities.

3.40 The various functions of departments and the responsibilities of those within them can be quite diverse and it would defeat the purpose of a register if it were to encompass all public servants and employees of statutory authorities. Having borne this in mind the committee sees no reason in extending registration requirements below the level of Grade 8 on the administrative and clerical range, however, it is appreciated that there are certain officers below this level of grading who provide technical advice and would be in a position to influence a decision.

3.41 Sight has not been lost of the administrative complexities involved in the establishment of a register but the Committee makes no excuses in its endeavour to uphold the honour and integrity of the bureaucracy and in requiring the officers within it to observe the ultimate in standards of conduct and efficiency.

3.42 The Committee has endeavoured to show the degree of confusion which appears to exist regarding the significance and implications of the provisions of certain sections of the Public Service Act and Regulations relating to conditions of employment. In the absence of a single consolidated document and the possible lack of vigilance on the part of departments to draw the attention of officers to the importance of avoiding conflict of interest situations the Committee concludes that action is required in this vital area to rectify the position.

3.43 The Committee sees the ultimate answer as the formulation and establishment of a suitable and meaningful code of conduct for public servants and employees of statutory authorities, which, when allied with registration requirements will demonstrate to the community that the ultimate in standards of conduct and efficiency is being observed.

3.44 In making such an assertion the Committee still sees a requirement that, public servants who are obliged to declare their interests in a register should declare in writing to their supervisor on any occasion where a particular subject which he or she is dealing any interest which has led or may lead to a conflict of interest situation.

3.45 The sanction for failure to register or the penalties for failure to disclose certain information will be for ultimate determination by the Public Service Board having regard to the disciplinary provisions contained in the relevant Acts and regulations.

Recommendations

1. That Permanent Heads and Chairmen of statutory authorities within the New South Wales Public Service be required to register those types of pecuniary interests or other benefits which it is recommended should be registered by Members of Parliament. The register should be held in the custody of the Minister in charge of their respective departments.

2. That officers who are in receipt of a salary equivalent to or above Grade 8 on the Administrative and Clerical range be also required to register.

3. That the custody, maintenance and compilation of the register be the responsibility of the Permanent Heads in respect of officers employed within their departments and sub-departments. The Chairmen of the statutory authorities to have similar responsibilities in respect of the departments which come under their administration.

4. Bearing in mind that recommendations are made by certain personnel occupying positions below Grade 8 it should be the responsibility of the Permanent Heads or Chairmen of the statutory authorities which officers below that grade within their administration should be required to register.

5. In view of the degree of confusion that exists within the framework of the New South Wales Public Service relating to the disclosure of interests action might be taken by the Public Service Board of New South Wales to formulate and establish a Code of Conduct for public servants and employees of statutory authorities and which emphasizes the necessity of avoiding actual or potential conflict of interest situations.

6. That outside consultants engaged on a contractual basis on particular governmental projects be required to register both in the form of a company statement together with an individual declaration by the employee or employees physically performing the work.

7. That the obligation to register be regarded as additional to a requirement to declare in writing the officer's involvement in a conflict of interest situation.

8. The material contained in the register cannot be admissible in proceedings other than criminal proceedings arising out of breaches of the provisions of the Act under which he is employed.

PART 4—LOCAL GOVERNMENT—ELECTED MEMBERS AND COUNCIL STAFF

Introduction

4.1 In view of the widespread ramifications involved in the possible extension of registration requirements to Local Government the following Local Government bodies were invited and made a submission to the Committee. In addition a representative of each body gave verbal evidence.

4.1.1 Local Government Engineers Association of N.S.W.

4.1.2 State Council of Local Government Officers of N.S.W. (incorporating Health Inspectors, Health Surveyors, Building Inspectors and Electricity Supply Engineers Associations).

4.1.3 Local Government Town Planners Association of N.S.W.

4.1.4 Local Government Electricity Association of N.S.W.

4.1.5 Town Clerks Society of N.S.W.

4.1.6 Local Government Association of N.S.W. and Shires Association of N.S.W.

4.2 The Committee also received a well documented submission from the Department of Local Government which greatly assisted the Committee in its deliberations.

Existing Provisions Relating to Declaration of Pecuniary Interests by Elected Members of Councils

4.3 Section 30A of the Local Government Act, 1919, and Ordinance 1 under that Act (see Annexure "Z") already impose high standards of conduct (indeed higher standards than apply to the Federal and State Legislatures) in relation to pecuniary interests of members of local government authorities and such provisions are similar in character to legislation existing in the United Kingdom.

4.4 These requirements involve a member in making public disclosure in relation to council matters in which he or a member of his family may have pecuniary interests.

4.5 Each council is required to keep a register in which are recorded all declarations of interest, and this register is available for public inspection.

4.6 A member is not permitted to take part in the debate, or vote on any matter before the Council in which he has a pecuniary interest and the council has the power to require the member to withdraw from the Council Chamber during discussion on such matters.

4.7 On election to Council, the member is advised by the Town or Shire Clerk of their new responsibilities under the Local Government Act and the member usually responds by declaring any possible conflict of interest occurring in the course of his position. The onus is then placed upon the member to draw to the attention of the Chairman of the meeting the fact that he or she will be abstaining from taking part in the proceedings of the council on that particular matter.

The Report of the Prime Minister's Committee on Local Government rules of Conduct in the United Kingdom

4.8 In May, 1974, a Report of the Prime Minister's Committee on Local Government Rules of Conduct under the Chairmanship of Lord Radcliffe Maud was presented to the British Parliament which dealt comprehensively with the conflicts of interest of elected council members and all council employees and the need for a national code of local government conduct in the United Kingdom.

4.9 The objections heard by that Committee against a register were similar to those heard by this Committee, namely that it would not stop the deliberate wrongdoer, it would not give an up-to-date picture of the interests of a councillor whose holdings and securities or land change frequently, it would create a presumption of suspicion about their affairs which would amount to requiring them to prove their own innocence and would to a degree be an intrusion of their privacy. It would be of value mainly as a public relations exercise and could possibly deter potentially valuable people from serving.

4.10 That Committee after giving due consideration to these objections felt that they were outweighed by the substantial contribution to public confidence which a carefully designed register could make and recommend that there should be a statutory register of certain pecuniary interests of councillors to be made available for inspection by any elector of the Council

4.11 The Prime Minister's Committee considered the responsibility for maintaining the register should rest with the council but each Member should be responsible for making his own entry, as he is for disclosing pecuniary interests at meetings. The register was to be additional to disclosure at meetings.

4.12 It was the British Committee's view that the interests to be recorded should be defined having regard to the need for openness but also to the Member's reasonable right to privacy. Bearing these points in mind a short list confined to important interests which indicated their existence rather than detail their nature was recommended. These definitions are:

4.12.1 All paid employments and occupations, including directorships, consultancies, and any sponsorship of the member by any organization or person. The amount of the income involved need not be stated except that from sponsorship, which can be distinguished from other sources of income because it is directly related to the member's contribution to the business of the authority. Professional men would be required to indicate the name and business of their firm but not the names of clients.

4.12.2 All land or other real property in the area of the authority, owned freehold, or held on a lease granted for one year or more, or in respect of which an option to purchase is held; the location to be described generally rather than precisely (i.e., by parish, postal district, or electoral area as appropriate).

4.12.3 Companies or other bodies where the member has a beneficial interest in securities of a nominal value greater than £1,000 or one-hundredth of the issued share capital, whichever is the less. The amount of the holding need not be stated. Investment trusts and unit trusts should be excluded.

4.12.4 Any tenancy of premises owned by the authority.

4.13 Annual revision of the register was also recommended as intervening changes during the year would still be caught up by the requirement for council members to disclose their pecuniary interests orally.

4.14 The report also drew a distinction between the elected councillor who is responsible to the electorate and the employee who is responsible to the council. The employee was to ensure that there was no abuse of power by any conflict of interest on the employee's part and the Committee did not in general regard a register of employees' interests necessary as a statutory requirement although the Committee considered that the employee should be under a comparable obligation to disclose orally at a meeting any pecuniary interest he may have.

4.15 Certain employees were however regarded as holding positions justifying an additional degree of openness. The Committee felt that officers occupying "sensitive" positions such as Chief and Deputy Chief Officers and others exercising delegated powers and some specialist positions as for example, planning and estate management officers should record their pecuniary interests for inspection by council members but not by electors.

4.16 Associated matters considered by the United Kingdom Committee were penalties for failure to disclose a pecuniary interest and the time within which prosecutions might be launched. Substantial increases in penalties were considered appropriate, to be dealt with summarily or on indictment at the discretion of the prosecution. If the former, the maximum fine recommended was £400 or six months' imprisonment or both; if tried on indictment the maximum penalty to be two years' imprisonment and an unlimited fine. The time within which proceedings could be initiated was recommended to be extended for summary proceedings to 12 months from the time the offence came to notice and five years from the date of commission.

4.17 This Committee has gone to some length in drawing attention to matters contained in the United Kingdom Committee's Report but was of the opinion that its observations on matters of principle are pertinent to the issues which command the attention of this Committee.

Views of Local Government Association and Shires Association of N.S.W.

4.18 In a joint submission, the Local Government Association and Shires Association of New South Wales, apart from drawing the Committee's attention to the existing provisions contained in the Local Government Act, 1919, relative to the declaration of pecuniary interests went on to say that it considered that such provisions are wide enough to satisfy the need for protection of the public interest.

4.19 From time to time there have been isolated instances of alleged misuse of the authority of elected members of a council in discussing and voting upon building and development proposals which require a council's approval, and the Government has had to take drastic action in some instances. The Associations added that each year many thousands of such matters are processed without any suggestion of council members' interests being paramount to those of the residents in their areas.

4.20 The Associations did point out that aldermen and councillors are not full-time legislators, but most commonly spend the majority of their working days operating their own private businesses or working for a wage or salary and it was important that Local Government should have the services of the best citizens available as its elected members. The Associations considered that this is most common among people who are very active in the day to day life of their areas.

4.21 The Associations were of the view that much good material could be lost to Local Government if there were undue legal requirement for publicizing the private interests of individuals who seek civic office.

4.22 In summary, the Associations consider that since the introduction of section 30 of the Local Government Act, 1919, the whole provisions relating to interests have been rationalized and proved in that elected representatives are required to disclose their interests in a public fashion, so that members of the public and members of the Local Government body understand what pecuniary involvement that individual may have.

4.23 Since the requirement to register was introduced two problems have arisen to the detriment of Local Government. A witness¹ for the Association summed up thus—

"The first is that under the current legislation membership of a club is defined as a pecuniary interest. This can create problems in a country town where maybe a majority of members of the council belong to the only club in the town. Under the law they would be required to declare their interest and to abstain from voting on any matter connected with that club. Therefore, there could be a lack of a quorum when the council dealt with a matter affecting an application by the club. The previous legislation had a provision

¹ See page 94 in evidence.

that covered this problem, and provided that only the elected directors of the club would be required to declare their interest and to abstain. We have suggested to the Government that it reintroduce that provision. The present legislation envisages this sort of difficulty, by enabling the Minister to waive the requirements of the Act where the majority of councillors, or so many of them as to affect the administration of the council, are affected. But that is a fairly cumbersome procedure and I am not aware of its having been availed of."

4.24 The other difficulty referred to by the Associations raised in point 9 of its summary—"Some protection is also needed for members acting in good faith in matters such as confirmation of Committee minutes where they may have been involved in routine issues such as payment of accounts". The witness¹ went on to say that this difficulty is as follows—

"This involves a small country town with a population of about 5 000. A member of the council was a non-active partner in an old-established business which had a continuing contract with the council for the supply of minor goods and materials. The council's finance committee made a decision in relation to goods being bought from his company. He was not at the finance committee, but he was at the council meeting and voted for the adoption of the minutes of the finance committee. The climate in the town was unfortunate, and a ratepayer laid an information against the alderman and was successful. The magistrate recorded that an offence had been committed, but he also used his discretion under the Act and decided that there should be no disqualification. It would have been technically possible for that man to be disqualified from civic office for up to seven years."

From a technical point of view the member of the council should have refrained from voting.

4.25 The Committee noted that the submission made by the Associations reflected its attitude to registration requirements in respect of elected members of councils only. However, in evidence the Associations stated that similar views would be held on the question of whether senior staff of councils should also be required to register their pecuniary interests.

The Possible Use of Undue Influence

4.26 During the course of its deliberations the Committee was concerned to gauge the degree of influence which a senior servant of a council had with council members and with the opportunities afforded to those officers to influence unduly the member to vote in a certain way. Indeed, it is within the realm of possibility for the reverse situation to apply.

4.27 In reply to such propositions the Association stated that even though there was a register and a requirement to declare it would not be possible for a law to be so precise as to stop someone setting out with a deliberate attempt to abuse his position. In that situation the members' colleagues around the table and ultimately the electors would find out and make a verdict through the ballot box.

4.28 To take the matter of possible undue influence a step further, one can imagine the hypothetical example of a junior servant in the Town Planning Department of the council attempting to influence his superior to make a recommendation in a certain manner. In such a case if the junior servant went against planning principles the senior servants would be expected to discover it. The inbuilt organizational structures which, in conjunction with checks, balances, controls and audits, would operate to minimize any impropriety in the processes leading to the approval of certain courses of action.

4.29 Thus is raised the question of whether in fact a council servant in a borderline case has far greater power than an alderman or councillor who would perhaps in a party council tend to vote along party lines. In answer to this assertion the Associations were of the opinion that with so relatively few party councils in existence and the council tabling of matters of this sort they are subject to very close scrutiny. It is a Local Government area and the council is an executive body with quite clear responsibilities to make decisions, give approvals and so on, and besides there are appeal procedures as well.

¹ See page 94 in evidence.

The Attitude of Local Government Bodies to Council Servants if Required to Register

4.30 The Committee did not consider it necessary to canvass individually the opinions expressed by the Local Government bodies. Suffice it to say that the Associations did take advantage of the invitation to make submissions and those submissions are incorporated in the evidence section of this Report.

4.31 The common approach taken by the various bodies listed in paragraph was that the provisions of the Local Government Act, 1919, and relevant ordinances under that Act provide sufficient deterrent and safeguards in conflict of interest situations and were wide enough to satisfy the need for protection of the public interest.

4.32 Having expressed such a view it was the general feeling that if legislation were to be introduced requiring registration of continuing pecuniary interests or other benefits the Associations would not oppose such a measure but at the same time would not actively support it. The common thread running through the Association's fabric of evidence was that disclosure should be made on a voluntary basis.

4.33 No specific example of a servant having gained advantage from a conflict of interest situation was placed before the Committee. It is hardly conceivable that the normally accepted Christmas generousities and hospitality would be sufficient to greatly influence the actions of a council servant.

4.34 Common views were held on the question of access to a register and the authority responsible for compiling and maintaining a register. In the former, access should not be made available to the public but limited only to elected members of the respective council. The Shire Clerk or Town Clerk should have the responsibility for compiling and maintaining the register.

Outside Consultants

4.35 The Committee recognizes the implications involved in the increasing tendency for council to employ on a contractual basis outside consultants in fields such as planning, engineering and the like. Such consultants who advise Local Government on a State-wide level could have either individually or collectively significant pecuniary interests. Such interests can be either direct or indirect.

4.36 At the present time there is no check whatsoever made of the interests of consultant companies supplying services to Local Government such as land development advisings. Were the system adopted by councils in calling for tenders from consultants to advise on product purchases, etc., the same as for the supply of services the demand for disclosure would not be so great.

4.37 In using a council planner as an example there is no doubt that that servant would be in a better protected position if it were the practice to call tenders for consultants in the specialist planning field so neither he, nor the council with limited knowledge, would be in a position of selecting a company when there may be others equally as proficient. In effect, the calling of tenders would be a protection for both the council and planners apart from serving as a protection for the general public.

Conclusions

4.38 There has been remarkable growth in the scale of operations in local government over the past decade or so as has been evidenced by the magnitude and scope of the services provided.

4.39 Three specific developments which are of paramount relevance in the consideration of standards of conduct that have taken places in this growth are firstly, the growth in the value of contracts placed by local government authorities for the supply of needs and services and the execution of works, secondly, the increasing financial significance of decisions on land use planning in a period of escalating inflation and, thirdly, the entry of local government authorities into the business of comprehensive re-development.

4.40 It then follows that those individuals, both members and employees of councils who control the deployment of such large resources bear a heavy responsibility to the community and are at permanent risk from less scrupulous elements in the community.

4.41 In a local government authority the standards of the individual both influence and are influenced by those of his colleagues; and for their maintenance they need support from generally accepted rules of conduct. The Committee considers that the high standards of conduct in local government will be maintained only so long as enough people of integrity devote time and effort to its service, those who have dealings with it, whether as contractors, suppliers or consumers themselves observe comparable standards and there is an informed and active public opinion among its electors.

4.42 There is no doubt that from an elector's point of view a register would provide a more assessable picture of a council member's general background than a record of specific disclosure at meetings.

4.43 The more the proceedings of the local government authority are open to public scrutiny, the more obvious will be their probity, thus making it more difficult for any irregularity to remain hidden.

4.44 Earlier in this Report it was emphasized that those who are responsible for providing advice should be under no less an obligation than their masters to disclose their pecuniary interests and the Committee sees this professional relationship as existing between the elected council member and the servant of the council. The councillor is responsible to the electorate and serves only so long as his term of office lasts; the employee is responsible to the local government authority and the period of his employment is not determined by the electorate. The council member may owe allegiance to a political party whereas the servant's duty is to the authority itself. Elected members settle the authorities' policies and employees contribute to their formulation and, once decided implement them.

4.45 Thus the roles of an elected member and servant of council are separate but at the same time complementary. A sound relationship between them is vital to the successful running of the authority.

4.46 Disquiet about conduct in local government has been frequently expressed in the press, in casual conversation and in letters received from members of the public. Allegations of malpractice in local government are frequently made but on the evidence placed before it the Committee's opinion is that the standards of conduct in local government are generally of a high order.

4.47 Be that as it may, this Committee shares this public concern and considers that the only course to follow to obtain an acceptable standard of conduct is to aim for complete honesty in local government. The honesty of the individual must be visible if it is to win public confidence, therefore a maximum degree of openness is required.

4.48 In emphasising the necessity for openness in local government it is not considered that servants of councils should have details of their pecuniary interests made available to the electorate but such information should be accessible to the elected members only.

4.49 Elected members of councils do take executive decisions, in the majority of cases, often with immediate impact, unlike the member of Parliament. Continuing registration of a councillor's pecuniary interests would achieve a far more satisfactory situation than exists at the present time when disclosure is made when a particular matter comes up before a council meeting.

Recommendations

1. That elected members of local government should fully disclose in a register details of the pecuniary interests held or other benefits received in respect of themselves, their spouses and their infant children, in the same manner as is recommended for Members of Parliament.

2. That senior servants employed by council and those servants who occupy positions of authority analogous to the public servants referred to in the recommendations of this Report be required to register likewise.

Note Recommendations 1 and 2, if adopted, will require appropriate amendments to the Local Government Act, 1919. Allied with these amendments questions such as the maintenance and accessibility of the registers will need to be examined. In this regard the Committee wishes to express some general views which it considers are worthy of attention and these are set forth hereunder:

- (a) Overwhelming evidence placed before the Committee indicates that the Town or Shire Clerks should have the responsibility for compiling and maintaining the registers both for elected members and council servants.
- (b) Access to the information contained in the declarations made by elected members be restricted to electors of the council.

- (c) In so far as declarations made by council servants are concerned access should be limited to elected members of the particular council.
- (d) The requirement to register to be seen as an additional precaution and not as an alternative to disclosure at meetings in the normal manner.
- (e) The register should be kept up to date in a manner similar to that suggested for parliamentarians and public servants whichever is appropriate.
- (f) It will be necessary to make specific provisions as to the admissibility of the register in court proceedings.
- (g) That consultants in local government should be required to register in a manner similar to that suggested for consultants to government departments.

PART 5—MEMBERS OF THE MEDIA

5.1 The Committee deemed it desirable within its Terms of Reference to restrict consideration of registration requirements for members of the media to those members who have admission to the Parliamentary Press Gallery during sittings of the House, including those who are in possession of a Roundsman's Pass, provided under the authority of the Serjeant-at-Arms.

5.2 The New South Wales Branch of the Australian Journalists Association argued in evidence against the concept of a Register for its members who report upon the proceedings of Parliament, adding at the same time that it would not urge a registration system upon other classes of persons which the Association could not accept itself.¹ The basic objections were that it would constitute an invasion of privacy of its members and that there has never been an instance to the President's knowledge that the work of the members had been affected in any way.

5.3 The spirit in which the Association put its case¹ can be summed up thus—

"It is the view of the New South Wales Branch of the Australian Journalists Association that disclosure by members of my Association of their pecuniary or private interests is not necessary. My Branch is opposed to such disclosure or to the keeping of the register of their pecuniary interests. The Branch acknowledges that for one section of our industry covering finance journalists in some areas, provision is made for such disclosure, but this is a special interest area and does not cover the general reporting of Parliament, or reporting of a general nature at all. To my knowledge, and to the knowledge of officers of the Branch, no allegation or suggestion has been made that journalists, because of their private or pecuniary interests, have not performed their job according to the ethics of our Association. In the Association's constitution and rules there is a code of ethics which is enforceable and by which every member of the Association is bound."

5.4 The Association in evidence emphasized the value and effectiveness of its Code of Ethics which, allied to the function of the Press Council, provided adequate safeguards against any of its members who, because of their private or pecuniary interests had not performed their duties according to the ethics of the Association.

5.5 The Association is satisfied with the operation of the Press Council which is now in its second year. The Council acknowledges and to a certain extent works with the Australian Journalists Association's Code of Ethics. Periodically there is, in each branch of the Association, a Judiciary Committee established which is freely elected and which stands by itself. It has powers ranging from rebuke to expulsion which, if the latter decision is taken by the Committee, virtually means that a journalist's working life in that profession has ended.

5.6 The Press Council, which includes citizen members, and members of the public, sits with the proprietors and representatives of the Australian Journalists Association, and the procedure, if a member of the public complains about the behaviour or writings of a particular journalist, is that a copy of the Code of Ethics is sent to the complainant together with the rules outlining the procedure necessary to take the next step in the matter if he or she wishes to do so.

5.7 The judiciary committee of the Association, which is elected by the membership of the Branch, consists of journalists with at least five (5) years' financial membership, who are currently in practice or in the past have been senior journalists, and are well known and respected in the profession.

¹ See page 63 of evidence.

5.8 Some would argue that this is an unsatisfactory situation in that journalists are sitting in judgment on journalists, but the Association's experience has been that it is in their own interests to rule with a heavy hand against any member flagrantly breaching the Code.

5.9 Of particular importance to the Committee was to gauge the Association's opinions on whether or not it would object to those of its members who carry out reporting of a political nature declaring that they were not receiving any payment from political parties or other organizations when they work from the Press Gallery. Following a subsequent meeting of the Association it was the unanimous view that since there was no suggestion, nor ever had been, of any member having been involved in the acceptance of fees from any political party because of the implications involved of such action, the members considered there was no necessity for such a declaration. The Association was adamant that its Code of Ethics, when properly used by its members and the community, adequately protected the public at large from breaches of the Code.

The Role of the Media

5.10 In recognizing the principle that a vigilant press is a fundamental and necessary mechanism in the checks and balances of a healthy parliamentary democracy it could be argued that it would be inequitable if members of Parliament involved in the decision making process of the laws of the land were required to register and the body responsible for forming opinions within the democratic process were not.

5.11 If there is a tide of cynicism currently aimed at politicians and the bureaucracy it follows then that the same would apply with equal force to the media and it becomes necessary therefore to take such measures as will ensure a responsible and respected communications industry.

5.12 It is essential that the media be seen by the community to be above reproach and immune from accusations of undue influence by outside forces, particularly at the political level.

5.13 The Committee recognizes the problem that if registration is required for those representatives of the media who work within the confines of Parliament, if such a system is to be workable and meaningful it would be necessary at the same time to consider whether editors and proprietors should be included in such a scheme.

5.14 The Committee did raise the possibility of leader writers and special writers creating in their articles a climate in which a pecuniary interest could be involved. The Association pointed out that leader writers operated an area which is the prerogative of the proprietor and that is where he expressed his opinion. In expressing such opinions the leader writer would come out of a conference with his editor as to the news of the day. The leader writer himself is the instrument that puts into clear English the views of the paper, that is, of the proprietor through his paper. The Association asserted it did not see the leader writer himself would have any difficulty or conflict of interest.

5.15 The Committee was not unmindful of the possibility of an editor or a proprietor of a newspaper having a pecuniary or other interest which, through what might be termed a policy or pressure, requiring the journalists to write in such a way that would engender a certain trend in public opinion. Journalists must make decisions on their own account as to news values, selection of facts, choice and credibility of sources and interpretation but the overall final presentation and emphasis in a newspaper, news bulletin or current affairs programme is usually beyond his control.

5.16 Depending on the particular media, it becomes a difficult exercise indeed to qualify the degree of influence over which a particular proprietor or editor might have over the journalists employed with that company as in some cases the "dilation" or "filtering" of news is carried out at the executive level and in other cases at the proprietorial level.

5.17 Once again, the Committee desires to point out that a register will not stop the deliberate wrong-doer but the community will be able to see what is happening in a "free sense".

5.18 It was of interest to the Committee to note the hypothetical case quoted by the Federal Joint Committee on Pecuniary Interests during examination of a witness.

"Supposing a newspaper proprietor was a large shareholder or the newspaper company itself was a large shareholder in say, an organization supplying the motor industry and let us say sections of the motor industry were very heavy advertisers in a particular newspaper or publication. Would it not be reasonable that the extent of that influence should be known by the general public

when they were evaluating editorials on the basis of competition from overseas or protection of the local market. Would not that be a reasonable thing for the Australian public to know.”

Conclusions

5.19 The weight of the evidence put before the Committee by the one and only representative Association of the journalists profession to appear before it placed strong emphasis on the effectiveness of its Code of Ethics, which, when allied to the function of the Press Council provided adequate safeguards against any question of biased reporting arising out of or leading to a pecuniary interest or other benefit.

5.20 The Committee is not convinced that adequate reliance can be placed upon the above safeguards and having regard to its recommendations that Members of Parliament should be required to register, sees, as a matter of prime importance that the media which plays such a vital role in promoting a healthy parliamentary democracy by the formulation of opinions within that democratic process should be under no less an obligation to register.

5.21 It would be unwise to take such a step in respect of only those media members who report upon the political proceedings of both Houses and who possess press passes in conformity with Standing Order 62A of the Legislative Assembly without extending similar requirements to include directors, executives and editors of the media responsible in the final analysis for such reporting.

Recommendations

1. That representatives of the media who report upon the political proceedings of both Houses and who possess press passes issued in conformity with Standing Order 62A of the Legislative Assembly be required to register those types of pecuniary interest or other benefit which it is recommended should be registered by Members of Parliament.

2. That directors, executives and editors of those media organizations responsible for employing the media members mentioned above be required to similarly register.

Committee Opinion

The Committee in making the above recommendations has not seen fit to make specific recommendations in respect of the mechanics for the maintenance and compilation of a register, particularly with regard to recommendation 2 and sees that this matter is one not coming within the purview of the Committee's Terms of Reference. In making such an assertion the Committee wishes to place on record the desirability of these classes of persons being required to register but any legislation that may be enacted towards this end might be the subject of a detailed investigation by the Government.

PART 6—MEMBERS OF MINISTERS' PERSONAL STAFFS

6.1 Members of a Minister's Personal staff normally comprise the following classes of officers or employees:

- Private Secretary
- Assistant Private Secretary
- Press Secretary
- Service Officer
- Stenographers

6.2 In addition to the above classes of persons the growing practice has developed of Ministers appointing persons to fill such positions as Research Officers, Advisors, Administrative Officers, Executive Officers and Parliamentary Liaison Officers. Such appointments are made on similar terms to staff employed at the Federal level with one important difference. The Federal Public Service does not attempt to enforce any of the regulations concerning improper conduct, outside employment, and the like, with respect to Ministerial staff, whether they are employed from outside the Public Service or whether they are appointed on a secondment basis from within the Service, whereas the reverse is the case in New South Wales where such officers come within the ambit of the Public Service Act, and are subject to the legislation under that Act in the same manner as State Public Servants generally.

6.3 Staff brought in from outside the Federal Public Service are employed under section 8 (a) of the Public Service Act which allows the Governor-General, on the recommendation of the Public Service Board, to exempt a class of employee from the provisions of the Act. In practice, Ministerial staff of a Federal Minister who come from outside the Public Service are subject to the Minister's right to hire and fire, and the Commonwealth Public Service Board adopts the attitude that it is for the Minister to decide if the conduct of a person on his staff is such that he wishes to remove that person from his position.

6.4 It was at this stage that the Committee deemed it necessary to draw an analogy between the tasks performed by senior members of the staff of a Federal Minister compared to their counterparts in the State Public Service.

6.5 There is no doubt that both classes of persons do have access to information contained in Cabinet Minutes and the like, however, the Federal Private Secretary in the normal course of events is expected in his position to play a significant role in the decision making process, by actively participating in Departmental discussions at senior level, and advising his Minister on the political implications surrounding the portfolio. It then follows that such officers are well qualified—as a general rule by the holding of degrees and similar qualifications.

6.6 The personal staff of State Ministers obviously do, on occasions, discuss with their Minister recommendations which are put forward by the Departmental executive. However, the overall decision in contentious matters is ultimately made by Ministers after full and confidential discussion between the Minister, his Under Secretary, or his senior officers, without members of his personal staff being present.

6.7 Strict guidelines are laid down by the Premier with regard to the officers who can have access to Cabinet material. The general rule is that the Private Secretary is the only officer who, according to his or her particular Minister's wishes, collates the Cabinet Minutes and sets them up for the Minister's information. Any departure from the strict guidelines laid down is viewed most seriously.

6.8 There would appear to be little justification in extending registration requirements to other members of the personal staff, namely—shorthand writers/typists, and service officers who, by the very nature of their positions, would not be remotely involved in the decision making process, or be in a position to directly influence a Minister.

6.9 No evidence was placed before the Committee to indicate that any member of the present or past Ministerial staff had used for his or her private gain confidential information obtained during the course of their employment.

Procedure for Recruitment of an Officer to the Personal Staff of a Minister from within the Public Service

6.10 At periodic intervals an advertisement is placed in the Public Service Board Notices which, on a weekly basis, is circulated throughout the Service, and invites applications from those persons interested in joining the personal staff of Ministers of the Crown as Private Secretaries or Assistant Private Secretaries.

6.11 A Selection Committee is then established by the Board, which culls the applications, and places those officers who would appear to be the more suitably qualified for appointment on an eligibility list.

6.12 Upon a vacancy, and subject to the particular Minister having no prior preference for an appointee, the 2 or 3 officers who head the list are invited to be interviewed by the Minister, shortly after which the Minister in consultation with his Private Secretary, makes a selection.

6.13 From the evidence placed before the Committee, at no time, commencing from the completed application form up to the actual interview situation, is an applicant asked about his private or financial affairs, or is an assurance sought that such interests will not conflict with the position which they aspire to occupy.

Persons Recruited from outside the Public Service

6.14 Normal practice in respect of appointments of this nature is for the Minister to nominate to the Public Service Board who he intends appointing to his personal staff, and the administrative machinery for such appointment including salary determination is put in train, by the Board. No evidence was produced to the Committee that information relating to financial interests, or otherwise, is sought on such occasions.

6.15 Obviously the personal staff of the Leader of the Opposition in the Legislative Assembly would have lesser opportunity to obtain and use confidential information, or in any way influence the Leader to take a course of action that might in some way provide a pecuniary interest, or other benefit. The Federal Committee did recommend registration requirements for staff of the Leader of the Opposition in the Senate because of the power held in that Chamber by the Opposition at that time.

6.16 It was pointed out in paragraph 3.18 of Part 3 "Public Servants and Employees of Statutory Authorities" that the Permanent Head of every Department at the end of each financial year in accordance with Regulation 32 of the Public Service Act circulates a memorandum which asks for details of the amount of fees and commissions he or she received during that period. Such a procedure does not appear to have been strictly adhered to in respect of the personal staffs of Ministers, which, no doubt, has been caused by such appointments being by way of secondment. This apparent oversight would appear to warrant closer attention by Permanent Heads.

6.17 It was clearly put to the Committee that irrespective of whether a person was appointed to a Minister's personal staff from within the Service or under Section 44 of the Act, no check is made on his or her pecuniary interests. Being permanent public servants the Board is naturally in a better position to gauge his character from his work record and staff reports whereas a Section 44 employee's record is not usually known to the Board. It would be expected of course that the latter class of employee would have been known to the Minister for some time and he would have the full confidence of the Minister.

6.18 When this report went to print there was approximately 126 Permanent Officers on Ministers' personal staffs and 72 temporary employees (section 44).

6.19 The Public Service Board indicated to the Committee that if legislation was enacted to require senior public servants to register then the senior officers employed on Minister's personal staffs should be required to do likewise.

Conclusions

6.20 There appears to be no justification in the light of the nature of duties performed by shorthand writer/typists and service officers in including these classes of persons within a registration system.

6.21 The Committee believes that it has established that the selection processes for appointment of private secretaries, assistant private secretaries, research officers, press secretaries, advisers and similar appointments is in need of review, in that at no stage during the interview situation is information sought from applicants of any interests they may have, pecuniary or otherwise which could result in conflict of interests.

6.22 The occupiers of the positions referred to in paragraph two, be they Section 44 employees or permanent public servants are nevertheless employed under the provisions of the Public Service Act. Therefore, registration requirements for these classes of persons should be similarly adopted as for senior public servants who advise Ministers on policy matters.

Recommendations

1. That all ministerial staff apart from shorthand writer/typists, typists, service officers and employees who carry out purely routine office functions, be required to register those types of pecuniary interests or other benefits which it is recommended should be registered by Members of Parliament.

2. Such declarations to be kept in a register maintained in the custody of the Permanent Head of the particular department for which the Minister is responsible.

3. That declarations be made within three months of legislation being enacted to establish a register and in the case of new appointees within three months of commencement of duty and such register to be kept up to date as changes occur as required for Members of Parliament.

BOARD OF FIRE COMMISSIONERS OF NEW SOUTH WALES

213 Castlereagh Street, Sydney, N.S.W.,
Box A. 249, P.O. Sydney South 2000.

7th December, 1976.

The Clerk of the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney 2000.

Dear Sir,

I have read your Chairman's letter of 29th November.

I have no submissions to make relative to the Committee's terms of reference (a) and (b).

In relation to clause (c) of the terms of reference, I entirely disagree with the necessity for the implementation of any register or procedures as outlined, at least for classes of person other than Members of Parliament. It seems to me that this is a further example of today's tendency to set up complicated and costly procedures to overcome problems which have not been shown at all to exist, or certainly not to exist with sufficient incidence as to justify the proposed remedy.

Yours faithfully,

L. G. VERRILLS, President.

TOTALIZATOR AGENCY BOARD OF N.S.W.

495 Harris Street, Ultimo 2007
Telephone 211 0188. Telegrams: "TABSYP"
Address all mail to:
Box 4168, G.P.O., Sydney 2001
Our Reference 303/6C

14th December, 1976.

Dear Sir,

1. I have been invited by the Chairman of your Joint Committee, Mr K. O'Connell, M.L.A., to lodge written submissions relative to the terms of reference outlined in his letter of 29th November, 1976.

Introduction

2. The Totalizator Agency Board was constituted under Section 3 of the Totalizator (Off-course Betting) Act 1964 as amended, and attached as Appendix 1 is an extract of subsections (2) and (2A) of that section outlining the composition of the Board.

3. Under section 12 (1) of the Act (as amended) the Board is empowered to "conduct off-course totalizator betting upon any event or contingency scheduled to be held on any racecourse within the State or outside the State but within the Commonwealth, or, with the approval of the Minister given in a particular case, on any racecourse outside the Commonwealth". From investments made with the Board, a

commission is deducted pursuant to the Totalizator Act, 1916 (as amended), and after payment of that portion due to the Treasurer to the Consolidated Revenue Fund, the remainder (currently seven and a half percent) is applied by the Board in terms of section 14 (3) of the Totalizator (Off-course Betting) Act, as amended. This provides that after meeting operating expenses and expenses associated with the establishment of offices, branches and agencies, the balance is distributed to racing, trotting and greyhound clubs, and the Racecourse Development Fund in accordance with a Distribution Scheme approved by the Minister (section 11 (3)). The allocation to each of the three forms of racing is governed by the amounts wagered through the Board on horse racing, trotting and greyhound racing respectively.

4. The Board is empowered to establish offices, branches and agencies in accordance with the terms of section 10 of the Act, and "for that purpose may purchase or take on lease or license any lands, buildings or premises, and may erect buildings and may equip, fit and furnish any buildings or premises and may enter into any agency contracts or other contracts or arrangements whatsoever and may carry the same into effect".

5. Under the terms of section 10 of the Soccer Football Pools Act, 1975, the Board was appointed as an approved representative of Australian Soccer Pools Pty Ltd, for the purpose of accepting Soccer Pool entries for transmission to that Company.

Obligations of Membership

6. The position of Chairman is a part-time one. In addition to chairing the regular monthly meetings of the Board and any Sub-Committee of Board Members, the Chairman exercises certain delegations entrusted by the Board in respect of capital and operating expenditure and the determination of conditions and remuneration of staff and agents. This requires part-time attendance outside of Board Meetings for the purpose of conferring with the Board's senior executive staff and of examining submissions and recommendations made by that staff. The Chairman is also by reason of his office, a member of the Racecourse Development Committee established under section 19A of the Totalizator Act, 1916 as amended.

7. Members of the Board other than the Chairman, are normally only called upon to attend regular Board Meetings and the meetings of any Sub-Committee to which they may be appointed. Occasionally a Member may be requested by the Board or the Chairman to undertake duties of a representational nature.

8. Because of the composition of the Board comprising a number of persons nominated by various groups and such groups having a keen interest in the outcome of the Board's operations, all Board Members on being appointed have their attention drawn to the Judgment of Mr Justice Street in the Equity Jurisdiction of the Supreme Court of N.S.W. of Friday, 8th September, 1967, in the case of *Bennetts v. The Board of Fire Commissioners of New South Wales and Others*. In this Judgment, Mr Justice Street stated what was considered to be the duty of a Member of a Board where such a member owed his membership to a particular interested group. An extract of the relevant portion of that Judgment is attached as Appendix 2. The Members of the Totalizator Agency Board in the past have accepted the relevance of Mr Justice Street's comments.

9. The Board is required to recommend to the Minister a financial scheme covering the distribution of any surplus arising out of the Board's operations, the recipients being the various racing, trotting and greyhound clubs in the State. It is in the context of determining their recommendations that the Judgment in the case of *Fire Commissioners* is relevant. Apart from this particular aspect, Board Members are called upon in Board Meetings to decide collectively matters concerning normal business transactions such as the purchase of property and the letting of major contracts for goods and services. It would be expected that should an occasion arise in respect of matters of a contractual nature where a Member has a pecuniary interest, then that Member would be expected to declare such interest and abstain from the decision-making process.

10. Having regard to the part-time nature of the Board and the present conventions of the Board, it is not thought necessary that Members ought to be required to disclose, for the purpose of registration, their various interests.

Executive Staff

11. Under Section 7 of the Totalizator (Off-courses Betting) Act, the Board may "delegate all or any of its powers, authorities, duties and functions (except the power of delegation) to . . . any officer or employee of the Board". From time to time the Board has made such delegations which are contained in a Schedule of Delegations. These delegations range from the approval of expenditure to the employment of staff and agents and the determination of various aspects of work, including overtime, leave and the like.

12. The degree of delegation is related to the status of the position. For example, the General Manager of the Board has wide-ranging delegations in respect of both capital and operational expenditures whereas some officers only have limited authority such as to approve of petty cash payments.

13. Without exception the staff of the Board are salary earners and in the majority of cases of persons holding delegations it would be unlikely that they would have any interest in organizations having dealings with the Board. In the event that such a position should arise the officer concerned would be expected to declare his pecuniary interest to the General Manager or in the case of the General Manager to the Chairman.

14. By reason of the nature of the Board's operations, both the Board's staff and agents are required to have no part in the racing activities of a horse or of a greyhound, although there is no bar to the breeding of an animal.

15. It is not thought that the Board's present arrangements in respect of its staff should be changed.

Yours faithfully,

R. W. AUSWILD, Chairman.

The Clerk of the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney 2000.

**EXTRACT FROM TOTALIZATOR (OFF-COURSE BETTING) ACT, 1964,
AS AMENDED**

Section 3

(2) Subject to subsection (2A), the Board shall consist of ten members appointed by the Governor, of whom—

- (a) one shall be nominated by the Minister and shall, in and by the instrument of his appointment, or in and by another instrument, be appointed by the Governor as Chairman of the Board;
- (b) one shall be nominated by the Australian Jockey Club;
- (c) one shall be nominated by the Sydney Turf Club;
- (d) one shall be nominated by the New South Wales Trotting Club Limited;
- (e) one shall be a member of the Greyhound Racing Control Board nominated by that Board;
- (f) one shall be nominated jointly by the Hawkesbury Race Club, Wollongong Racing & Trotting Club and the Newcastle Racing Registration Board;
- (g) one shall be nominated jointly by the Central and Lower Coast Racing Association, the Northern and North-Western Districts Racing Association, the Northern Rivers Racing Association and the Central Western District Racing Association;
- (h) one shall be nominated jointly by the Broken Hill and Far-west Racing Registration Board, the Western District Racing Association, the Southern Tablelands and South Coast Racing Association and the Southern District Racing Association;
- (i) one shall be nominated by the Minister from persons recommended to him by the several racing bodies that conduct greyhound racing within the State; and
- (j) one shall be nominated by the Minister from persons recommended to him by the several racing bodies, other than the New South Wales Trotting Club Limited, that conduct trotting racing within the State.

(2A) The Minister may, if he sees fit, nominate a person, and the Governor may appoint that person, to be an additional member of the Board.

EXTRACT FROM JUDGMENT OF Mr JUSTICE STREET IN THE EQUITY JURISDICTION OF THE SUPREME COURT OF NEW SOUTH WALES ON FRIDAY, 8 SEPTEMBER, 1967, IN THE CASE OF BENNETTS v. THE BOARD OF FIRE COMMISSIONERS OF NEW SOUTH WALES AND OTHERS

A great many public undertakings are controlled by Boards or Commissioners set up in a manner consistent with the manner in which the present Board is set up. By the terms of their statutes, Boards such as this comprise a number of persons nominated or chosen by various groups, each of which nominating or choosing groups has a direct interest in the public undertaking controlled by the Board. Each of the persons on such a Board owes his membership to a particular interested group; but a member will be derelict in his duty if he uses his membership as a means to promote the particular interests of the group which chose him.

The object of providing for interested groups to nominate the members of such a Board as this might be said to be threefold; first, one can be confident that an interested group will select a man whose personal qualities and competence equip him for membership; second, it promotes the confidence of that particular group in the Board, and provides a means of liaison between that group and the Board; and third, it ensures that the Board as a single entity, has available in its deliberations the views of all the interested groups. The presence of the second and third elements necessitates in a Board member the highest standards of integrity, both in his thinking and in his actions. The consideration which must in Board affairs govern each individual member is the advancement of the public purpose for which Parliament has set up the Board. A member must never lose sight of this governing consideration. His position as a Board member is not to be used as a mere opportunity to serve the group which elected him. In accepting election by a group to membership of the Board he accepts the burdens and obligations of serving the community through the Board. This demands constant vigilance on his part to ensure that he does not in the smallest degree compromise or surrender the integrity and independence that he must bring to bear in Board affairs.

Undoubtedly there will be differences of opinion between Board members. Indeed, it is well that this should be so: sound and wise decisions by the Board can only be based upon a full and informed discussion of varying and conflicting views and considerations. Nomination of the individual members and their election to membership by interested groups ensures that the Board as a whole has access to a wide range of views, and it is to be expected within this wide range of views that inevitably there will be differences in the opinions, approaches and philosophies of the Board members. But the predominating element which each individual must constantly bear in mind is the promotion of the interests of the Board itself. In particular a Board member must not allow himself to be compromised by looking to the interests of the group which appointed him rather than to the interests for which the Board exists. He is most certainly not a mere channel of communication or listening post on behalf of the group which elected him. There is cast upon him the ordinary obligation of respecting the confidential nature of Board affairs where the interests of the Board itself so require.

THE COMMISSIONER FOR MAIN ROADS

Postal Address

P.O. Box 198

Haymarket, N.S.W. 2000

Please quote C: 76/M.1902.

309 Castlereagh Street,

Sydney, N.S.W. 2000.

20th December, 1976.

Mr K. O'Connell, M.L.A., Chairman, Joint Committee of the Legislative Council and Legislative Assembly Upon Pecuniary Interests, Parliament House, Sydney, N.S.W. 2000.

Dear Mr O'Connell,

I refer to your letter dated 29th November, 1976, and would like to preface my comments by saying that I will have a lukewarm approach to the proposal generally in respect of Government servants, mainly because I believe the revelation of pecuniary interest will in no way improve the service those people presently provide for the community. Most officers in high places are professionals of various kinds to whom proper professional conduct is little short of a religion.

My comments under therefore are coloured by this approach.

- (1) I believe no benefits will accrue to the people or to the Government servants involved.
- (2) Strong policies evolved over many years ensure financial dealings are strictly impartial. Indeed it may well be that the more senior a person is the less likely it is he would be in a position to influence contracting or purchasing operations.
- (3) Other types of interests (social and political pressures for instance) would be more likely to result in preferential treatments. In such cases the only bulwark against malpractice is the integrity of the people concerned.
- (4) On the other hand it may well be some system is required to allay any public suspicion and more importantly to protect the good name of the officer concerned.
- (5) Any register compiled should be simple and involve minimal administrative procedures. It should be kept as a security document.
- (6) Registers should not be available to the public or indeed to anyone at all unless a serious interest in a specific issue can be demonstrated to the satisfaction of the Registrar.

Yours sincerely,

A. F. SCHMIDT, Commissioner.

THE METROPOLITAN MEAT INDUSTRY BOARD

State Abattoir & Meat Works,
Homebush Bay, N.S.W.
Office of the Chairman
22nd December, 1976.

The Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney 2000.

Dear Sir,

I refer to letter dated the 29th ultimo addressed to me by the Chairman of the Committee and in reply thereto advise that the position relative to pecuniary interests of officers and members of The Metropolitan Meat Industry Board is adequately covered by the provisions of the statute under which the Board is constituted. Particulars of the appropriate provisions are set out hereunder.

1. The constitution and powers of The Metropolitan Meat Industry Board are provided by the Meat Industry Act, 1915, as amended.
2. The functions of the Board are limited to the meat industry.
3. Subclause (3) of section 8 in Part II of the said Act provides:

“(3) A person who—

- (a) carries on the business of a carcass butcher or a retail seller of meat or a meat exporter; or
- (b) is a member of any firm or a director or officer of any company, society, association or corporation directly or indirectly carrying on the business of or having for its objects the sale of meat (whether as a carcass butcher or as a retail seller) or the export of meat, or who receives any remuneration or fee or any benefit (otherwise than as a share-holder in a company consisting of more than twenty-five persons) from any such firm, company, society, association or corporation,

shall not be eligible to be appointed as a member of the Board and shall be disqualified from holding any such office.”

4. Section 9 in Part II of the said Act provides, inter alia:

“A person who—

- (a) carries on the business of a carcass butcher or a retail seller of meat or a meat exporter; or
- (b) is a member of any firm or a director or officer of any company, society, association, or corporation directly or indirectly carrying on the business of or having for its objects the sale of meat (whether as a carcass butcher or as a retail seller) or the export of meat, or who receives any remuneration or fee or any benefit (otherwise than as a share-holder in a company consisting of more than twenty-five persons) from any such firm, company, society, association or corporation.

shall not be eligible to be appointed as an officer or servant and shall be disqualified from holding any such position.”

5. Within the sphere that the Board's operations encompass these provisions have proved adequate.
6. Statutory restrictions on persons holding positions of service to the nation, the State and the people having pecuniary interests in businesses, transactions or property in relation to which they could be called upon to make or participate in decisions or submissions which could have an effect on such interests, must be in the best interests of the people they serve.

Yours faithfully,

P. S. HILL, Chairman.

Submission by Commissioner for Motor Transport relative to the disclosure of interests of Members of Parliament and registration thereof

1. On the question of general principle, there are some grounds to support the concept that Members disclose their pecuniary interests. They are representatives of the people elected to high office to govern the State in the best interests of the community; and it is vital that they at all times maintain public confidence in their integrity. Any possibility or impression that the important decisions made in the Parliament might conceivably promote the self-interest of Members or their families and friends should obviously be avoided.

2. A Member could furnish a written statement of assets, investments, shares, bonds, debentures, etc., showing the nature and identity, but perhaps not the extent, of his interest; together with details of his involvement in a professional activity or as a proprietor or director or officer of a commercial or business enterprise.

3. A register could be kept by the Speaker of each House of those statements furnished, say, annually, and to ensure that no improper use is made of the information, access could be restricted to the elected representatives of the public, that is, to Members of Parliament.

4. It is appreciated that disclosure by Members would be an indication that decisions made by them—which affect the social and economic welfare of the community as a whole—are not influenced by their own pecuniary interests; and also that the publicity attached to failure to disclose would be a grave sanction.

5. Members are inevitably and constantly in the public spotlight, and their professional or business interests generally become known to much of the community. The establishment in their case of a register of pecuniary interests would therefore formalize what is for the most part fairly common public knowledge already. It is pertinent to consider that Members of the Lower House are required to face the electorate at intervals of not more than three years, and Members of the Upper House are elected for twelve years. This impermanence of office means that they, quite properly, can (and many do) have outside professional or business interests in which they may personally participate and from which they certainly do enjoy financial returns.

7. The same set of circumstances may be said to apply to elected representatives in Local Government. One difference is that in the case of Local Government representatives there is an even greater degree of involvement in a profession or business than in matters of government.

8. This is not to imply that there may exist in any way at all a need for disclosure of pecuniary interests in the case of Members of Parliament, Aldermen or Councillors. The foregoing comments are addressed merely to the general principle of disclosure by such persons as expressed in the terms of reference.

9. Public servants and staff of statutory officers on the other hand are career officers dedicated usually for the full term of their working life to the service of the people. They are generally restricted or prohibited by legislation from engaging in any outside employment, holding directorships, accepting fees or rewards, or being in any way personally concerned or interested in any contract or agreement made by or on behalf of their organisation.

10. Such sanctions (with punitive provisions) are clearly and unequivocally expressed in the Transport Act 1930—the legislation covering the terms and conditions of employment in the Department of Motor Transport. Relevant extracts from this legislation are attached.

11. Officers of the Department are fully aware of the sanctions which regulate their conduct in this regard. It is considered that they provide adequate safeguards against officers using their office, or any knowledge gained therefrom, to exploit their position or to promote personal gain.

12. The conditions of their employment and particularly the existing sanctions covering outside interests or conflict of interests place Departmental (and similar) officers in an altogether different category to persons who are not subject to similar conditions and sanctions.

13. For these reasons, it is considered that grounds for applying the general principle of disclosing pecuniary interests are very much less in the case of public servants and staff of statutory officers than in the case of representatives who are elected to office for a term only.

14. To contend that rules requiring disclosure of pecuniary interests should be superimposed on the existing sanctions relating to general conduct is to over-emphasise a need for regulatory provisions; especially when it is known that disclosure would have no practical benefit (effective enforcement is not possible) if an officer did have the opportunity and decided to be unscrupulous.

15. It is surprising to note those statements in Chapter V of the Report of the Joint Committee on Pecuniary Interests of Members of the Federal Parliament which seek to establish that there is actually a serious problem in the case of the Federal Public Service and to justify some form of disclosure which would be seen to be a contribution towards the achievement of impeccable conduct on the part of officers.

16. There is no evidence known so far as the State Public Service is concerned which would support a similar finding in its case to that by the Federal Committee (page 2) about the Federal Public Service, namely, that it is impugned and denigrated by epithets which suggest that it defaults in its duty and is pampered, over-privileged and motivated by self-interest. It is certainly not common-place to hear those disparaging remarks throughout the community or in the Parliament itself so far as the State Public Service is concerned.

17. Certainly, there are criticisms of the State Public Service from time to time, but these are at a very low level considering the enormous extent of activities. However, it must be said that these criticisms invariably allege that public servants showed a lack of efficiency or understanding in dealing with a particular matter. They do not discredit the status of the Public Service on the grounds of cupidity or misuse of office for self-interest. Disclosure of pecuniary interests would certainly not raise the level of efficiency.

18. It is considered the existing sanctions are sufficiently deterrent and provide adequate safeguards to cope with any situation arising from outside pecuniary interests or other benefit in the case of public servants and staff of statutory offices, and that an arrangement to compel disclosure by every officer of all such interest or benefit would be cumbersome, largely ineffective and without need or justification.

19. It is acknowledged, of course, as is traditional that the ethics of proper conduct require the voluntary disclosure by Permanent Heads to their Ministers and by senior officers to their Permanent Heads wherever there is a possibility that any degree of conflict might arise between the public interest and their own.

Extract from Transport Act, 1930

Section 33 (5)

The Commissioner or a member of the Board shall be deemed to have vacated his office if he—

- (a) engages during his term of office in any paid employment outside the duties of his office;
- (b) becomes bankrupt, compounds with his creditors, or makes an assignment of his salary or estate for their benefit;
- (c) absents himself from duty for a period of fourteen consecutive days except on leave granted by the Governor (which leave he is authorized to grant), or becomes incapable of performing his duties;
- (d) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act, 1898;
- (e) resigns his office by writing under his hand addressed to the Governor;
- (f) if he becomes in any way concerned or interested in any contract or agreement made by or on behalf of any Trust; or in anywise participates or claims to be entitled to participate in the profit thereof, or in any benefit or emolument arising therefrom.

Extract from Transport Act, 1930*Section 100 (3)*

An officer appointed under this Act shall not unless the Commissioner otherwise approves be the holder of any office in respect of which any fee or reward is payable, engage in any paid employment, carry on any business or engage in the exercise of a profession outside the duties of his office. Any such approval may be withdrawn at any time.

Employment shall for the purposes of this section be deemed to be paid employment if the officer though entitled to payment therefor does not accept such payment or if any honorarium or allowance is payable for the services of the officer in respect of that employment.

Any officer who contravenes any provision of this subsection shall be deemed guilty of misconduct under section one hundred and nine of this Act.

Extract from Transport Act, 1930*Section 106*

If any person employed by the Board—

- (a) exacts, or takes, or accepts, on account of any thing done by virtue of his office or in relation to the functions of the Trust, any fee or reward whatsoever other than the salary, rewards, or allowances allowed or sanctioned by the Board; or
- (b) is in anywise concerned or interested in any bargain or contract made by or on behalf of the Board, otherwise than as a member only, but not as a director or officer, of any registered, incorporated, or joint stock company with whom any such bargain or contract may be made,

he shall be removed from office, and shall be incapable of being afterwards employed by the Trust, and shall also be guilty of a misdemeanour.

GRAIN ELEVATORS BOARD OF N.S.W.

Head Office:

210 Pitt Street, Sydney 2000.

Telegraphic Address:

"Grainvator" Sydney

Telex: AA26163

Postal Address:

Box 4972, G.P.O., Sydney 2001.

N.S.W., Australia

Telephone: (02) 61 6454

January 13, 1977.

Subject: Disclosure and Registration of Pecuniary and other Interests
by Members of New South Wales Statutory Authorities

Reference: Letter dated November 29, 1976, from Chairman,
Joint Committee of the Legislative Council and Legislative Assembly
upon Pecuniary Interests

(1) I can see no reason why the Chairman and members of the Grain Elevators Board should not be required to disclose to the Minister for Primary Industries, who is the Minister to whom the Board is responsible, any pecuniary or other interest which they may have which may conflict in any way with Board interests or which might influence their decisions or judgments in respect to the business and activities of the Board generally. For instance, in my view, any member having an interest in a construction company which tendered for construction jobs for the Board, should certainly disclose his interest to the Board and it would not be unreasonable to have such interest included in a register available to the Minister.

(2) However, I can see no reason why members' pecuniary interests which do not and cannot relate in any way to Board activities should be required to be disclosed and registered.

(3) It should be pointed out that the four members of the Grain Elevators Board of New South Wales who are elected by wheatgrowers have, to date, themselves been wheatgrowers although they need not necessarily be so. I can see no reason why the details or particular magnitudes of their wheatgrowing or other rural interests should require to be disclosed. On the other hand, the legislation under which the Board is constituted provides that any person "who is directly interested (other than as a wheatgrower) in the business of selling, purchasing or dealing in wheat shall not be eligible to be appointed a member of the Board and shall be disqualified from holding any such office".

(4) In so far as any register of pecuniary or other interests which may be compiled is concerned, I do not consider that this should be available for public inspection but should be available only at the discretion of the Minister for Primary Industries. Any person, whether a grain grower or not, wishing to inspect the register should be required to provide valid reasons as to why he requires to make such inspection.

P. C. DRUCE, Chairman.

Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney 2000.

SYDNEY COVE REDEVELOPMENT AUTHORITY

80 George Street,
Sydney, N.S.W. 2000
Address mail to the secretary
P.O. Box N408
Grosvenor Street, N.S.W.
Australia 2000.
Telephone: 241 3462

In reply quote: A.1452 DOM:SMM

14th January, 1977.

Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney, N.S.W. 2000.
Dear Sir,

1. I refer to the memorandum from your Chairman relating to the disclosure of pecuniary interests, dated 29th November, 1976. My comments follow:

2. "What classes of pecuniary interest or other benefit are to be so disclosed."

In the case of my particular appointment, the Sydney Cove Redevelopment Authority Act specifically prohibits me from any alternative paid employment. However, the provisions of the Secret Commissions Act quoted in your reference give clear guidelines to Departmental heads, other public servants and those in private business, for that matter. It would seem that this Act indeed makes declarations necessary for a large number of people apart from Members.

3. The classes of pecuniary interest that appear to warrant attention would have to be those which have the effect of increasing income, such as share holdings, directorships, partnerships, ownerships or gifts, either in money or kind. Whilst in this latter category I would dismiss trivial items such as calendars or similar seasonal gifts, the question of gifts needs close scrutiny. Recent Federal directives in this regard may warrant attention.

4. "How the register should be compiled and maintained and what arrangements should be made for public access thereto."

It seems that a balance must be established between reasonable demands for privacy and disclosure. Mechanically, disclosures could be compiled on sheets duly signed and dated. The onus would be upon the individual to keep the record up to date.

5. The register could be kept secure by an authorized person, e.g., the Departmental head. That person would be empowered to show the record to inquirers at his discretion, bearing in mind that some could be frivolous or vexatious. Should a difference arise in which an inquirer was denied opportunity to see the document, it might be made possible for such a person upon due explanation to obtain an order to view from, say, a Magistrate.

6. "What classes of person (if any) other than Members of Parliament ought to be required to register."

It would seem that not only such persons as members of statutory bodies but also those whose advice is directly involved in the selection of suppliers of goods or services, or the placing of orders for such items, should properly be required to register. Apart from other considerations Section 6 of the Secret Commissions Act seems to make this necessary.

Yours faithfully,

D. O. MAGEE, Director.

THE MARITIME SERVICES BOARD OF N.S.W.

President's Office

Box 32, G.P.O., Sydney, Australia 2001.
3rd February, 1977.

The Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney, N.S.W. 2000.

Submissions by The Maritime Services Board of N.S.W. to the Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Interests.

1. Term of Reference (a)

What classes of pecuniary interest or other benefit are to be disclosed?

- (i) No comment in so far as Members of Parliament are concerned.
- (ii) Nil in relation to Full-time and Part-time Commissioners and Officers—see answer to Term of Reference (c) below.

2. Term of Reference (b)

How the register should be compiled and maintained and what arrangements should be made for public access thereto?

- (i) No comment in so far as Members of Parliament are concerned.
- (ii) Not applicable in relation to Full-time and Part-time Commissioners and Officers—see answer to Term of Reference (c) below.

3. Term of Reference (c)

What classes of person (if any) other than Members of Parliament ought to be required to register?

None. In regard to the permanent and part-time Commissioners of the Board, there are the statutory safeguards contained in section 3 (10) of the Maritime Services Act, 1935 (as amended), which, in effect, gives the Minister a discretion to declare vacant the office of a Commissioner who

exercises his functions in, or takes part in discussions in, a matter in respect of which he has a direct or indirect pecuniary interest. In practice the Commissioners are at all times conscious of that high standard of integrity and independence which they are required to exercise as Board members and of the strict duty imposed on them to disclose an interest in any matter submitted to them for decision.

4. In so far as Officers of the Board are concerned, the Board is satisfied that all of such officers, whether exercising delegated authority or engaged in the reporting and recommending processes, are conscious of and exercise continually that high degree of impartiality and integrity which is required. No case is known in the Board's experience where there has been any departure from these standards and, in the Board's opinion, the likelihood of such occurring is extremely remote.

J. M. WALLACE, President.

RURAL BANK OF NEW SOUTH WALES

Telephone: 230 0666

Telex: AA 21550

Martin Place, Sydney 2000.

14th February, 1977.

The Chairman,
Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary
Interests,
Parliament House,
Macquarie Street,
Sydney, N.S.W. 2000.

Dear Sir,

1. The contents of your letter of 29th November, 1976, together with the accompanying extract of Chapter V of the Report of the Joint Committee on Pecuniary Interests of Members of the Federal Parliament have been carefully studied—at first with interest and finally with concern.

2. This concern stems from the objectionable trend in popular thinking that those in public office, whether they be Parliamentarians or public servants, senior or otherwise, must invariably have some special axe to grind. An interest in the public good; or years of training in the requirements of an impartial public service; or simply the existence of a high standard of ethics in individuals; and in the tried and tested election and selection procedures of our present systems are seemingly insufficient barriers to ensure that only those of high integrity and ethics attain the status of the "class of person" which is now the subject of your committee's deliberations.

3. It is my experience that an individual's "pecuniary" interest is very rarely a factor involved in the decisions of Government Ministers and senior public servants and that should any such interest exist, it is disclosed to whoever may be the relevant authority at the time.

4. Of much more importance in my view is the need for the declaration of political, religious, parochial, environmental or other types of bias, as these can have a much more significant and insidious effect on policy decisions affecting the whole community than the more easily discernable question of "pecuniary" interest.

5. Disclosure of "pecuniary" interest is undoubtedly desirable if an individual in the position of making a *final* decision or recommendation is also in the position to gain therefrom. But this is not in my view sufficient to debar him from participation. For example, should a Member of Parliament or a public servant who is a farmer or who has an interest in farming, perhaps through family connections, be debarred from participation in an enquiry to make recommendations about that industry? Surely his experience and knowledge would be regarded as an advantage. Examples such as this could be multiplied many times.

6. With several hundred thousands of public servants in New South Wales, there will be a proportion having financial interests in almost every sphere of activity, arising from their own efforts, family connections and in later life no doubt from legacies and bequests. Many public servants buy and sell shares and this, too, raises important questions of the *degree* to which pecuniary interest is involved. A holder of 1 000 shares in BHP or CSR undoubtedly has a pecuniary interest but absolutely no influence on the policies of those companies. If he worked in the Child Welfare Department he would usually have no influence on public decisions affecting them but could have, if he were in the Mines Department, the Electricity Commission or the Maritime Services Board.

7. But the buying and selling of shares would undoubtedly create an enormous volume of registrations if it were decided that a selected group of people were to be disqualified from holding office unless full details of their financial activities are disclosed by them. On the other hand, the ownership of shares in a private family company could well have different connotations and as these could be held in the name of wife, children (perhaps for themselves alone), or nominees, this opens up the question of how far should an individual be required to disclose details of *another* individual's interests.

8. In this regard, I would observe that the "purpose" of your Committee seems to be in direct conflict with those of the "Privacy" Committee and I have been specially interested to note that, in a report on the "Law of Privacy" by Professor W. L. Morrison, it is stated that "Privacy may be regarded as the condition of an individual when he is free from interference with his intimate personal interests by others."

9. In considering this matter, I am sure your Committee will already have taken cognizance of the points I make above, as well as many others of a similar nature. I would hope, too, that they will also give due weight to the importance of avoiding any action which will preclude well qualified and experienced people from seeking or taking public office simply because of what they might regard as onerous registration provisions which operate as an intrusion of their privacy. Often, it is the successful person to whom a Government looks for special assistance on Boards and Commissions and the very experience which is required is derived from that person's pecuniary interest over a period of time. Individuals with special skills, whether in private or public occupation, seldom limit their activities to their particular occupation but are in demand in many areas because of their ability to operate in a broader environment.

10. In so far as the Bank is concerned, it will be appreciated that our staff are drawn from a wide variety of family backgrounds, many from country areas. The problem of "pecuniary interest" is therefore not a new one and, indeed, it would make it very difficult for many of our good customers who, if being related to a member of the Bank's staff who may have a current or anticipated benefit from rural or commercial activities, were to act as a bar to normal commercial dealings. Our procedures allow for this and, in particular, there is a requirement within the Bank that all persons holding office or directorships with companies, clubs, charities or service organizations, shall indicate accordingly. In this regard, you will no doubt be aware that Bank staff are ever active in local charities, clubs or service organizations throughout the State.

11. Dealing specifically with the terms of reference set out in your letter, I would express views as follows:

12. (a) "What classes of pecuniary interest or other benefit are to be so disclosed".

The classes of pecuniary interest should be only such as are required of directors under the Companies Act or where the interest is such and of sufficient dimensions as to be likely or capable of having some bearing on the decisions to be taken by the individual in the course of the responsibilities imposed upon him.

13. (b) "How the register should be compiled and maintained and what arrangements should be made for public access thereto".

In my opinion, there should be no such register nor, (if some register is finally upon), should the public have access to any information collected from individuals. Such records as are required should, in my view, be in the form of a declaration to a Minister, Departmental Head or to the Auditor-General, and should be kept and retained by the latter only, with no right of public access except by consent of the individual concerned.

14. (c) "What classes of person (if any) other than Members of Parliament ought to be required to register".

As indicated earlier, I do not see why any person should be required to "register" and this includes Members of Parliament.

15. In my opinion, it would be sufficient to provide—by special legislation or by tightening up of present legislation—for any person, (irrespective of position or seniority), to have a legal responsibility to declare his interest as proposed in my comments on (b), should he find himself at some time during his official duties having a “pecuniary interest” in some matter which comes before him or in which he finds it necessary to take an interest for official purposes.

16. In other words, I feel that the placing of the *onus on the person at the time the “interest” becomes conflicting* is all that should be required and that to do otherwise would create a massive code of administrative arrangements which could provide little effective benefit but would create considerable illwill and an harrassment of busy people.

17. While I have noted the views of the “quoted” senior people in the report attached to your letter, in general I find them theoretical rather than practical and would prefer to support, (in general principle), the views of the various staff associations. I would readily accept, however, that not all public service staff are as aware as they should be of the need to ensure that any conflict of interest which may arise is declared to proper authority. This, I feel, must be a matter for internal training and administrative procedure rather than a matter of “public declaration” to an outside body.

18. In conclusion, I would trust that the Committee will accept these somewhat forthright views as being made only after careful consideration of the various factors involved as I see them. While I am fully aware of the need for declaration where a conflict of interest *does* or *might* occur, I cannot see that this is justification for any person to be called upon to have his privacy destroyed by being required to reveal to the public at large all his personal financial interests and presumably those of his family as well.

19. I would add that I, myself, have no financial interests other than a small number of shares in major public companies which—and this is by deliberate choice on my part, to avoid any possible conflict of interests—have much of their operations in other States.

Yours faithfully,

A. OLIVER, President.

METROPOLITAN WASTE DISPOSAL AUTHORITY

7 Help Street (P.O. Box 699)
Chatswood 2067
N.S.W., Australia.
Phone: 412 1388

The Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House (Room T.30)
Macquarie Street,
Sydney, N.S.W. 2000.

15th February, 1977.

Dear Sir,

I refer to our recent discussion in regard to the matters raised in the Chairman's letter of 29th November last and submit the undermentioned comments:

- (1) At the risk of repeating the obvious, it is clear that the question of disclosure of members' interests and the registration thereof is a matter fraught with difficulties from many aspects.

For a comprehensive register of all interests to have a value and guard against misconstruction of facts relating to assets acquired after a given declaration date, it would be essential also to register the members' liabilities. For example, a member might purchase a parcel of real estate and, should the register not indicate that he already possessed the funds (or other means) to finance this purchase or, alternatively, had subsequently raised loan funds and thus created a liability, it could well be suggested by parties of malintent that the acquisition of the real estate (in this case) was the consequence of, say, repayment for a favour—or that the member had been otherwise compromised.

I question the need for such a register as the recording of *all interests* could well result in the establishment of recording procedures involving cost and inconvenience far beyond its worth. Additionally, the avenues open for a person nominally to divest himself of assets could, in any case, significantly reduce the value of such a register.

- (2) While there is evidence that certain public companies require a declaration of specific pecuniary interests, it would appear generally that persons serving in public office are subject to invasion of privacy to a much greater extent than are their counterparts in the private sector.
- (3) The vast majority of members and senior public servants are dedicated to their respective tasks and serve their constituents and the public in a totally selfless way; I feel that any declaration of pecuniary interest should be restricted to matters where the member is directly involved in debate or in decision making processes which could have a bearing on such interest. The interest so disclosed would, of course, relate only to the matter under debate and not to the members' other interests.
- (4) To register the pecuniary interest disclosed in circumstances outlined in 3. above, it is suggested that a formal entry be made in a register (and/or in minutes if it be such an occasion) by an appointed person at the time of the member's disclosure. In the case of members the register could be made available for sighting, upon application, between specified hours in the presence of a person appointed by the Parliament.
- (5) It is suggested that if a proposal along the lines outlined herein were adopted the classes of persons other than members of Parliament which should be bound by similar policy should be members of statutory authorities and perhaps heads of government departments (recording procedures would, of course, need to be modified in the latter instance).

To summarize, my comments on (a), (b) and (c) in the Chairman's letter are set out above in points 3, 4 and 5.

In respect of members the Committee will, no doubt, consider whether or not the position could, in some instances, be covered adequately by a verbal disclosure which would be recorded in *Hansard* and form part of a register.

In dealing with this complex matter, the Committee may also find value in examining that section of the Local Government Act dealing with the "disability of members of councils for voting on account of interest in contracts, etc.". This aspect is covered by Section 30A of the Local Government Act, 1919 (as amended).

If further elaboration of my submission is required, I should be pleased to comply with any request from the Committee.

Yours faithfully,

R. CONOLLY, Director and Chairman.

THE HUNTER DISTRICT WATER BOARD

Newcastle, N.S.W.
 President and Chairman of Board
 Professor A. J. Carmichael

Box 5171B Post Office,
 Newcastle West 2302.
 Telephone: 2 0461
 16th February, 1977.

The Chairman,
 Joint Committee of the Legislative Council
 and Legislative Assembly upon Pecuniary Interests,
 Parliament House,
 Sydney 2000.

Dear Sir,

Would you please accept my apology for this late response to your letter of 29th November, 1976.

In responding to your letter I have taken the liberty of replying to your questions (a), (b) and (c) in the reverse order as, from my point of view, they appear to be more logically answered in this way—

- (c) What classes of person (if any) other than Members of Parliament ought to be required to register?

As the President of this Board for the last 2½ years and as a public servant of 2½ years standing, I have gained the impression that public servants generally, are a privileged group, particularly with respect to permanency of employment. No doubt this situation has been developed because of the special requirements imposed upon public servants. As public servants, for the most part, comprise the administrative arm of Government with special responsibilities, clearly their actions and attitudes should be above reproach. Consequently, I am convinced that at least all Heads of Government organizations, such as myself, should be required to disclose their pecuniary interests.

Further to this I am also convinced that other classes of persons in such organizations should become prescribed persons for the purpose of registration of pecuniary interests, for example:

- (a) Members of Boards of Statutory Authorities such as the Hunter District Water Board.
- (b) Executive officers of Statutory Bodies who exercise significant administrative control.
- (c) Accounting officers within the meaning of the Audit Act, 1902.
- (d) Officers administering contracts including those associated with the tendering process.
- (e) Purchasing officers and Comptrollers of stores.

There would also appear to be a need for a general type of code for such organizations which, among other things, outlines the responsibilities of all officers, particularly with regard to unauthorized other employment.

- (b) How the register should be compiled and maintained and what arrangements should be made for public access thereto

The machinery for compilation and registration will obviously be difficult because of the desire for public disclosure on the one hand and the problems associated with the intrusion of privacy on the other. It would seem to me that compilation of registers might best be arranged at the direction of Government by the Head of the authority concerned.

After compilation of the register involving an original and one copy, I suggest that the original be transmitted to the Ombudsman whose duties and staff could be changed and extended to take over the administration of such registers. This arrangement, I feel, would satisfy most requirements.

It should also be pointed out that Parliamentarians are elected to office after some declaration of interests is made and they are in effect an instrument of the public responsible to the Government. On the other hand officers of the Crown are appointed after some form of competitive selection has been entered into. In this case it does appear that there is a possibility for public access to be different in the two cases, nevertheless, ultimately it would appear that the Ombudsman situation could satisfy both groups.

(a) What classes of pecuniary interest or other benefit are to be so disclosed

The simplest approach here would be to say all pecuniary interests, but this will obviously create unfair and unjust situations so that in my case it would appear reasonable to limit the pecuniary interests to fields which either directly or indirectly impinge on my responsibilities, for example:

- (1) engineering construction generally;
- (2) mining;
- (3) logging and timber processing;
- (4) land development, surveying and land sales;
- (5) haulage;
- (6) manufacture and retailing of—
 - (i) machinery including electrical equipment;
 - (ii) technical instruments and metering devices;
 - (iii) building materials including structural steel;
 - (iv) pipes, valves, and the like;
 - (v) computers, filing systems, copying and photographic equipment, typewriters, drawing equipment, office equipment, stationery;
 - (vi) furniture, floor coverings, etc.;
- (7) sale of motor vehicles, fuels and oils, spare parts.

In summary I repeat that in my opinion the responsibilities and obligations of Heads of Government organizations and other critically placed Government employees are such that a declaration of certain pecuniary interests is essential.

I trust that these few comments are of some value to you.

Yours faithfully,

A. J. CARMICHAEL, President.

ELECTRICITY COMMISSION OF N.S.W.

Telegrams and Cables:

"Electricom," Sydney

Telex: 2 0454

Telephone: 239 0311

Pearl House, 1 Castlereagh Street, Sydney.

Address all Mail to:

Box 5257, G.P.O., Sydney 2001.

2nd March, 1977.

The Clerk to the Committee,

Joint Committee of the Legislative Council and Legislative Assembly, upon Pecuniary Interests,

Parliament House, Sydney 2000.

Dear Sir,

I refer to the letter dated 29th November, 1976, from the Chairman of the Joint Committee of the Legislative Council and Legislative Assembly Upon Pecuniary Interests, in which comments were requested in respect of the matters covered by the terms of reference of the Committee. It is not proposed that comments be submitted in regard to the basic question of whether arrangements should be made relative to the disclosure of pecuniary interests of Members of Parliament and my comments, which are set out below, are accordingly directed, in the main, to the question of disclosure of the interests of persons in the employ of Statutory Authorities—

- (1) If it were to be decided that a policy of disclosure of pecuniary interests had sufficient merit to warrant its adoption insofar as Parliamentarians were concerned, then pressure might arise for similar obligations to be imposed upon those holding elective office in the local government sphere, since such persons are also responsible to the electorate.
- (2) In the Electricity Commission functions and areas of responsibility are specifically defined and organizational structures exist which, in conjunction with checks, balances, controls and audits (both internal and external) operate to prevent or minimise the possibility of impropriety in the processes leading to the approval of courses of action and in these circumstances, the need for the disclosure of interests is considered to be, at least, doubtful.
- (3) Nevertheless in the event that it might be the intention of the Committee to consider the possible introduction of a scheme of disclosure for employees in such organizations as the Commission, the following comments are submitted for the Committee's consideration:
 - (a) It is considered that in large undertakings with employees engaged in a wide variety of duties and functions and with movements of officers from one area of responsibility to another, the adoption of a rigid code relating to disclosure of interests could border on being an invasion of privacy in some circumstances without any good purpose being served. For instance, a shareholding in a construction or supply company might well be construed as being in conflict or potential conflict with the duties of an officer involved in awarding contracts—and therefore a matter calling for disclosure—but be of little relevance in the case of an officer engaged in the purchase of land. Conversely, the ownership of land in the latter case may well be significant, yet have little or no relevance in the case of the contracts officer.
 - (b) It is accordingly considered that any requirements relative to the disclosure of interests should have due regard to the many types of circumstances illustrated by the example in 3 (a) above and that this could only be achieved by establishing a set of principles, the violation of which would constitute a situation of conflict of interests, rather than a set of rules which had a uniform application without due regard to individual circumstances. In this regard, it may be of interest to your Committee to consider the guidelines which were prescribed in 1973 for observance by Federal Public Servants in Canada. A copy of those guidelines is attached. It is understood that these guidelines were to have been supplemented within individual Departments by more specific provisions relating to the particular operations of the Department concerned.

- (4) In the light of the above comments, it is not proposed that any specific comments be furnished in respect of the matters contained in paragraphs (a) and (c) of the Committee's Terms of Reference. However, in the event that a decision were to be taken that a register of pecuniary interests of certain classes of persons were to be established, the comments contained in Notes 5 and 6 are offered in respect of the question contained in paragraph (b).
- (5) In order to enable a register of pecuniary interests to provide a consolidated up to date record of all declarable interests, it is suggested that it would require to be in loose leaf form so as to lend itself readily to addition and amendment and also to facilitate complete removal of the record from the register once a person was no longer subject to the requirement to declare his pecuniary interests.

(Note: Such a loose leaf system would require effective controls to be established so that all folios which at any time had formed part of the register could be properly accounted for.)

- (6) In order to attach responsibility for the accuracy and completeness of the record to the person to which it relates, it is suggested that the register would consist of statutory declarations (in a standard form) furnished by the persons concerned and channelled as directly as possible to the persons charged with responsibility for maintaining the register.

To ensure that the record represented a sufficiently up to date statement, fresh declarations or, where appropriate, declarations confirming the absence of any change, would be required to be submitted at, say, six monthly intervals.

Yours faithfully,

J. J. HURLEY, Chairman.

ANNEX "A"

P.C. 1973-4065—18th December, 1973

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Treasury Board, is pleased hereby to approve the issue of the annexed guidelines to be observed by public servants concerning conflict of interest situations.

Certified to be a true copy

R. G. ROBERTSON,

Clerk of the Privy Council.

GUIDELINES TO BE OBSERVED BY PUBLIC SERVANTS CONCERNING CONFLICT OF INTEREST SITUATIONS

Short Title

1. These guidelines may be cited as the Public Servants Conflict of Interest Guidelines.

Guidelines

2. It is by no means sufficient for a person in a position of responsibility in the public service to act within the law. There is an obligation not simply to obey the law but to act in a manner so scrupulous that it will bear the closest public scrutiny. In order that honesty and impartiality may be beyond doubt, public servants should not place themselves in a position where they are under obligation to any person who might benefit from special consideration or favour on their part or seek in any way to gain special treatment from them. Equally, a public servant should not have a pecuniary interest that could conflict in any manner with the discharge of his official duties.

3. No conflict should exist or appear to exist between the private interests of public servants and their official duties. Upon appointment to office, public servants are expected to arrange their private affairs in a manner that will prevent conflicts of interest from arising.

4. Public servants should exercise care in the management of their private affairs so as not to benefit, or appear to benefit, from the use of information acquired during the course of their official duties, which information is not generally available to the public.

5. Public servants should not place themselves in a position where they could derive any direct or indirect benefit or interest from any government contracts over which they can influence decisions.

6. All public servants are expected to disclose to their superiors, in a manner to be notified, all business, commercial or financial interest where such interest might conceivably be construed as being in actual or potential conflict with their official duties.

7. Public servants should hold no outside office or employment that could place on them demands inconsistent with their official duties or call into question their capacity to perform those duties in an objective manner.

8. Public servants should not accord, in the performance of their official duties, preferential treatment to relatives or friends or to organizations in which they or their relatives or friends have an interest, financial or otherwise.

DEPARTMENT OF LANDS, SYDNEY

The Clerk to the Committee,

8th December, 1976.

Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney.

Dear Sir,

In response to letter dated 29th November, 1976, from the Chairman of the Committee, I offer the following comments:

- (1) Any person who, either by accident or design, involves himself in the consideration of issues the knowledge of which, if used improperly could result to his advantage, automatically imposes upon himself an obligation to reveal any associated interest. That disclosure, to be of value, must be made before the event occurs.
- (2) There is thus imposed a need for such persons to anticipate the issues in which they may become involved and disclose their interests accordingly.
- (3) It follows from the above that as Parliamentarians operate in a very wide area of public activity, the limits to which it is difficult to foresee, then full disclosure is the obvious course.
- (4) On the other hand Public Servants usually operate within a limited field and disclosure of related interests should be all that is required. However it would be a wise approach to operate on the basis of a broad rather than narrow disclosure being desirable.
- (5) It should be sufficient in the case of Parliamentarians if interests were disclosed on election (and any necessary amendments made from time to time) and the record maintained on the order of the Speaker and the President by House Staff. This should be a confidential record and I see no reason why any member of the public should be allowed access to it as this would be an invasion of privacy.

- (6) In respect of public servants (and this includes statutory office holders) confidential disclosure to the Minister, in written form, would suffice. Public access should be denied.
- (7) In addition to the above two categories, persons occupying positions as Judges and the like should be required to make similar disclosures on the basis indicated.

Yours faithfully,

J. H. WATSON, Under Secretary.

HEALTH COMMISSION OF N.S.W.

9-13 Young Street,
Sydney 2000.

6th December, 1976.

Clerk to the Committee
Joint Committee upon Pecuniary Interests
Parliament House
Sydney, N.S.W. 2000.

Dear Sir,

I refer to the letter dated 29th November, 1976, under the signature of the Chairman of the Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Interests, and would like to make the following comments:

- (1) As far as the Health Commission is concerned, I do not believe there is a need for senior officers of the Health Commission to disclose their pecuniary interests, because section 10 of the Health Commission Act, 1972, I believe, sufficiently protects the public interest.
- (2) For example, under section 10 (1) (b) of the Health Commission Act, 1972, a Commissioner is deemed to have vacated his office if he engages in any paid employment outside the duties of his office.
- (3) Again, under section 10 (1) (h) and (i), a Commissioner is deemed to have vacated his office if he fails at any meeting of Commission to declare any direct or indirect pecuniary interest he has in any matter which comes under discussion; if he has any direct or indirect interest in any agreement with a public or private hospital or nursing home within the meaning of the Public Hospitals Act; if he is a member of the Governing Body of any such hospital; or if by virtue of his office as a Commissioner, accepts or acquires any personal profit or advantage under the Health Commission Act, 1972, or any other Act.
- (4) Furthermore, under section 10 (2) of the Health Commission Act, 1972, the Governor may remove any Commissioner from office if he is a member of the governing body of, or is a substantial shareholder in a company deemed to have a direct or indirect pecuniary interest in any agreement or proposed agreement which is the subject of consideration by a meeting of the Commission.
- (5) In summary: I believe that section 10 of the Health Commission Act, 1972, obviates the need for senior officers of the Health Commission of N.S.W. to declare their pecuniary interests, as this section sufficiently protects the public interest. A photocopy of section 10 is attached.

Yours sincerely,

RODERICK McEWIN, Chairman.

*Health Commission.*Casual
vacancy.

10. (1) A member shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if he engages in any paid employment outside the duties of his office;
- (c) if he absents himself from duty for a period exceeding fourteen consecutive days, except on leave granted by the Minister (which leave the Minister is hereby authorised to grant);
- (d) if he becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his salary or allowances as a member, or of his estate, for their benefit;
- (e) if he becomes a temporary patient or a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention, under Part VII of that Act;
- (f) if he is convicted in New South Wales of a felony or of a misdemeanour punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- (g) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation;
- * (h) if, at any meeting of the Commission at which he is present and at which any agreement or proposed agreement in which he has a direct or indirect pecuniary interest, or any other matter in which he has such an interest, is the subject of consideration or is included on the agenda for consideration—
 - (i) he fails, as soon as practicable after the commencement of the meeting, to disclose to the meeting his interest in; or
 - (ii) he takes part in the consideration or discussion of, or votes on any question with respect to, the agreement, proposed agreement or other matter;
- (i) if—
 - (i) he has any direct or indirect pecuniary interest in any agreement with a hospital, within the meaning of the Public Hospitals Act, 1929, a private hospital or nursing home within the meaning of the Private Hospitals Act, 1908, or an authorised hospital within the meaning of the Mental Health Act, 1958, or in any other matter in which such a hospital, private hospital, nursing home or authorised hospital is concerned, other

Act No. 63, 1972.

Health Commission.

than an agreement for, or other matter relating to, the care or treatment of any person by the hospital, private hospital, nursing home or authorised hospital;

(ii) he is a member of the governing body of any such hospital, private hospital, nursing home or authorised hospital or holds any position concerned in the administration of any such hospital, private hospital, nursing home or authorised hospital other than his position as a member; or

(iii) by virtue of his office as a member, he accepts or acquires any personal profit or advantage other than under this or any other Act;

(j) if he is removed from office by the Governor; or

(k) on the day on which he attains the age of sixty-five years.

(2) The Governor may, for any cause which to him seems sufficient, remove any member from office.

(3) If—

(a) a company has a direct or indirect pecuniary interest in any agreement or proposed agreement or in any other matter the subject of consideration at a meeting of the Commission; or

(b) a company has a direct or indirect pecuniary interest in any agreement with a hospital, private hospital, nursing home or authorised hospital referred to in subsection (1) (i) or in any other matter in which a hospital, private hospital, nursing home or authorised hospital so referred to is concerned,

a member who—

(c) is a member of the governing body of, or is a substantial shareholder within the meaning of section 69C of the Companies Act, 1961, in, that company shall, for the purposes of subsection (1) (h) and (i), be deemed to have a direct or indirect pecuniary interest in that agreement, proposed agreement or other matter; or

(d) has a relevant interest, within the meaning of section 6A of that Act, in any share of the company shall for the purposes of subsection (1) (h) (i) be deemed to have a direct pecuniary interest in that agreement, proposed agreement or other matter.

(4) A member who, at any time during the period commencing on the day appointed and notified under section 2 (b) and ending on the appointed day, is a member of The Hospitals Commission of New South Wales or the Board of Health or is an officer under the Public Service Act, 1902, shall not be deemed to have vacated his office as a member of the Commission by reason only of his engaging, during that period, in paid employment as a member of The Hospitals Commission of New South Wales or that Board, as an officer under the Public Service Act, 1902, as the case may be.

DEPARTMENT OF EDUCATION N.S.W.

Ref. No. 76/28875

Sydney.

10th December, 1976.

Clerk to the Committee,
 Joint Committee upon Pecuniary Interests,
 Parliament House,
 Macquarie Street,
 Sydney 2000.

Dear Sir,

1. In a letter dated 29th November, 1976, the Chairman of your Committee invited my comment relating to the issues being considered in the course of its inquiry.

2. The classes of pecuniary interest or other benefit which should be disclosed are those involving "a conflict of interest" namely, when a person's pecuniary interest in (or benefit from) an activity external to the Department could be interpreted to be in conflict with the interests of the Department.

3. The element of "conflict of interest" must be present, otherwise some quite unrealistic situations could emerge (and, implicitly, should not be allowed to emerge).

4. (i) By way of elaborating 2 and 3 above, I do not think that disclosure should be required solely on a literal acceptance of "when a person involved in a decision as part of his Departmental duties has an 'outside-his-employment' pecuniary interest or benefit in the outcomes of his decision."

(ii) for instance, an officer who specifies the use of steel as a component of some structure, in a circumstance where it would be commonly recognized that there was no alternative to steel, should not be required to disclose his holding of shares in Broken Hill Proprietary.

(iii) however, I could take a contrary view if an officer in a position to recommend the use of a book had a pecuniary interest in the firm publishing the book.

5. In my opinion, existing procedures are adequate for the disclosing by officers of their income other than that derived from employment within this Department: I assume that your Committee is familiar with these provisions.

6. It follows from 5 above that I do not support the concept of a register in the context of your Committee's term of reference (b).

7. The view expressed in 6 above makes term of reference (c) not applicable.

8. Other issues reinforce my view relating to the non-maintenance of a register.

(i) The concept of a register presumes that it is possible to prescribe criteria that, when met, would make it mandatory for an individual to register: I believe that this, in itself, is not practicable; and, further, that it would not be practicable to police it.

(ii) The establishment of a register would pave the way to an invasion of privacy which, to my knowledge, has never been previously attempted. For instance, if I, as Permanent Head, were in possession of such information, I would have no choice but to reveal it through the Minister to the Parliament if a related question were asked in the House.

(iii) Complementing (ii) above, what would be my position at law in exercising a discretion to divulge or not divulge information? (i.e. to other than the Minister).

9. Notwithstanding the above comments, I believe that there is a need, from time to time, to bring to the attention of employees the provisions that already exist relating to pecuniary interests attending income derived from other than employment by this Department. In short, I believe that officers of this Department should be aware of potential risks and be asked to inform a senior officer whenever they may be involved in some decision which impinges upon their "outside interest".

Yours faithfully,

J. BUGGIE, Director-General of Education.

DEPARTMENT OF SPORT AND RECREATION

Clerk to the Committee,
 Joint Committee Upon Pecuniary Interests,
 Parliament House,
 Macquarie Street,
 SYDNEY. N.S.W. 2000

Dear Sir,

M.L.C. Building,
 105-153 Miller Street,
 North Sydney,
 P.O. Box 422, North
 Sydney 2060.

10th December, 1976.

Telegrams: "Sportrec"

Telephone: 922 3800

I refer to your letter of 29th November, 1976, in relation to pecuniary interests and in response to your invitation I offer the following comments:

- (1) It would seem appropriate for a register to be established, containing details of the pecuniary interests and assets generally of Members of Parliament. Such a register could be compiled as a result of compulsory declaration by all persons seeking election to Parliament and the register should be a public record freely available for all to see.
- (2) It is suggested that similar but separate registers be maintained by each Government Department and Statutory Authority showing details of the financial interests and those assets over and above normally accepted household requirements of all senior officers in those organizations. The Permanent Head and the Minister responsible for the Department or Statutory Authority should have access to each such register but it should not be available to the public except if the Minister deems fit in exceptional circumstances.
- (3) Whilst such a system would allow electors to be aware of the interests and possible motivation of those who are standing for election in Parliament, it would also have the benefit of increasing and ensuring public confidence in the impartiality of the public service, whilst maintaining the traditional anonymity and privacy of individual public servants. To declare the pecuniary interests of public servants publicly might place the public service into the public political arena and this in itself would be a major factor working against the impartiality of the public service.
- (4) It is suggested that a similar system could operate at the Local Government level, where applicants for election to Councils could have their pecuniary interests available for public scrutiny whilst senior staff officers could declare pecuniary interests but not have them open generally to public scrutiny.
- (5) In regard to the classes of pecuniary interest or other benefit which should be disclosed, I believe that members of Parliament, senior public servants and members of Boards, Commissioners, etc., should declare all pecuniary interests other than those of a minor nature. Actual as well as expected interests should be declared so that the nature and extent of "promised" rewards can be documented.
- (6) It is of course essential that the legislation which will need to be introduced to enable the establishment of Registers of Pecuniary Interests as mentioned in paragraphs 1, 2 and 4 above, will need to ensure that it is made compulsory for such interests to be declared as and when they arise. It will thus be the responsibility of each individual involved to have his or her actual interests shown on the register at any time during the period that his or her name is shown on such register.

Yours faithfully,

C. L. BAYLISS, Director.

DEPARTMENT OF AGRICULTURE, NEW SOUTH WALES

Sydney

15th December, 1976.

Clerk to the Committee,
 Joint Committee Upon Pecuniary Interests,
 Parliament House,
 Macquarie Street,
 Sydney, N.S.W. 2000.

Dear Sir,

I refer to the letter dated 29th November, 1976, from the Chairman of the Joint Committee Upon Pecuniary Interests inviting me to lodge with you a written submission relative to the Committee's terms of reference.

Comments and observations in response to that invitation are as follows:

1. I believe it to be important that the Public Service as a whole (statutory bodies included) and those employed therein should be above suspicion in the matter of pecuniary interests; and that there be community confidence in the integrity and impartiality of the Service and its administrators.

2. All concerned should ensure that neither personal nor family interest or involvement are allowed to colour or otherwise influence their decisions, judgments or actions in respect of either issues or individuals; nor should they accept favours, the effects of which could be seen by others as influencing them in discharging their public duties.

3. Quite apart from not accepting favours, public administrators should see to it that they divest themselves of any challengeable or questionable financial interests and associations.

4. I see three obvious approaches to the matter under consideration viz.:

- (i) the introduction of a "register of interests" system;
- (ii) a requirement to disclose information as and when this is deemed necessary; and
- (iii) no action on the grounds that invasion of privacy is involved.

5. To take no action at all is to beg entirely the issue under reference.

6. The introduction of a "register" calling for the compulsory completion on the part of all concerned of some form of declaration of pecuniary interests is not favoured since I regard this as an unnecessary and unwarranted invasion of privacy and an approach that would pose administrative and other difficulties.

7. This leaves the second possibility listed above as the preferred and more logical one for adoption, in my opinion, if any system of documenting pecuniary interests is to be introduced at all.

8. Should the ultimate decision be to establish a "register" of interests, however, it is my view that, in so far as the Department of Agriculture is concerned the "classes of person . . . required to register" should be the Departmental Executive and the Chiefs of Divisions. The latter category of officers is included because involvement on the part of these officers with the administration of various Acts could be seen by others to place them in a vulnerable position from a pecuniary interests viewpoint.

9. In the event of legislation being enacted relative to the disclosure of "pecuniary interest or other benefit", it is considered desirable that an independent and impartial authority such as the Attorney-General be the "decision-maker" in respect of any declarations and disclosures to be made.

10. Relative to the "classes of pecuniary interest or other benefit" to be disclosed I believe it should be sufficient for any such "register", as may be decided upon, to detail merely finances and other assets and their relationship if any to the issues under review or in question.

11. The final point I would make is that I know of no single instance in which an officer of my Department has been influenced in his/her decision, judgment or action by pecuniary interests or considerations.

Yours faithfully,

R. M. WATTS, Director-General.

PUBLIC SERVICE BOARD, SYDNEY, N.S.W.

Submission to Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Interests

1. The New South Wales Public Service Board, in this submission, addresses itself to the following section of the Joint Committee's terms of reference:

"... what classes of person (if any) other than Members of Parliament ought to be required to register;"

General Principle

2. With regard to members of the Public Service, the following principle has gained general acceptance:

"The public servant will have no financial or personal interest which is incompatible with the proper discharge of his duties."¹

Disclosure of conflict of interest

3. In Britain,² the United States,³ and South Australia,⁴ public servants are required, by Act or regulation, to declare any conflict of interest, financial or otherwise, which may arise in the course of their duties.

4. Generally, a decision on whether a conflict exists, whether it is "substantial", and if so, what action should be taken, is made by the head of the department, or the central personnel authority concerned.

5. Following the report of a Parliamentary Committee of Inquiry in Victoria,⁵ consideration is now being given, in that State, to the introduction of legislation which would require "public officers" to declare in writing any pecuniary interest likely to conflict with their official duties.

6. In New South Wales, regulations under the Public Service Act have established a number of guidelines for the ethical behaviour of public servants,⁶ but there is no regulation which specifically covers the disclosure of a conflict of interest.

Disclosure of continuing interest

7. So far as the Board is aware, it is not the practice in the British Civil Service, the United States Federal Civil Service, or in any Australasian Public Service, to require the registration of continuing interests of public servants—that is, pecuniary or fiduciary interests which do not constitute an actual conflict of interest with official duties.

8. However, on 13th March, 1975, Sir Frederick Wheeler informed the Commonwealth Joint Parliamentary Committee on Pecuniary Interests of Members of Parliament that if parliamentarians were required to disclose their pecuniary interest then . . . "it would be no less appropriate that similar rules apply to those who provide advice to Ministers—including Permanent Heads, senior policy advisers and Ministerial staff and, indeed, even less senior officers". Sir Frederick suggested that these interests could be recorded in a register held in each department, with access to the register being restricted to the Minister and his permanent Head.⁷

9. The Royal Commission on Australian Government Administration saw merit in this proposal, and recommended that it be adopted. The Commission also recommended that a register be kept by the Public Service Board to record pecuniary interests of heads of departments and statutory authorities, and that access to the register be restricted to the relevant Ministers.⁸

Conclusions and Recommendations

10. The Board supports the idea of legislation which would specifically require a public servant to declare any actual conflict of interest.

11. Such legislation might be in the form of regulations under the Public Service Act, and regulations under Acts establishing statutory authorities outside the Public Service.

12. The Board considers that provisions which would require registration by public servants of all their continuing pecuniary interests, irrespective of whether they might be in actual conflict with official duties, would have the following consequences:

12.1 Complaints that registration provisions constitute an invasion of privacy.

12.2 Difficulties in defining registrable interests, and

12.3 Time consuming procedures to establish and up-date an appropriate register.

13. Nevertheless, if Parliamentarians are required by law to register their pecuniary interests, the Board agrees that similar rules should apply to those who provide advice to Ministers (as defined in paragraph 8).

14. In any event, if registration of pecuniary interests by public servants is to be required, then a register might be kept in each department or major statutory authority to record pecuniary interests of the relevant members of that department or authority. Access to such a register should be restricted to the Minister and the head of the department or authority concerned.

References

¹ Clause 11 of draft code of ethics for public servants, prepared by the A.C.T. Regional Group of the Royal Institute of Public Administration. See *Public Administration* (Sydney), vol. XXIV, No. 3, September, 1965, p. 196.

² Clauses 3, 67, 68, 69, of Section K of "Estacode". Reproduced in Appendix E to *Report of the Public Servants Ethical Conduct Committee*, Government Printer, Melbourne, 1976 (D-No. 5-5109/76). Recommendations for a rewriting of the ethical code in the United Kingdom are contained in the report of the Royal Commission on Standards of Conduct in Public Life, London, July, 1976.

³ *Ibid* p. 10.

⁴ South Australia; *Public Service Act*, sec. 121.

⁵ Victoria; *Report of the Public Servants Ethical Conduct Committee*, Melbourne, 1976 (D-No. 5-5109/76).

⁶ New South Wales, *Regulations under the Public Service Act*, Regs. 15 to 28. See, however, particular Acts. For example, the Mining Act prohibits certain kinds of dealings by officers of a particular department.

⁷ Letter from Sir Frederick Wheeler to Chairman of Joint Parliamentary Committee on Pecuniary Interests of Members of Parliament, 13th March, 1975.

⁸ Royal Commission on Australian Government Administration, *Report*, Australian Government Publishing Service, Canberra, 1976, pp. 234-235.

DEPARTMENT OF MINES

Sydney

23rd December, 1976.

Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Sydney 2000.

Dear Sir,

I refer to letter dated 29th November, 1976, from Mr K. O'Connell, M.L.A., Chairman, Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Interests, who has asked that I lodge a written submission with you on certain of the Committee's terms of reference.

Accordingly, I am enclosing herewith, in duplicate, and numerically paraphrased, a submission as requested.

Yours faithfully,

G. M. MAXWELL, Under Secretary.

1. In Hamlet, Polonius says:

"This above all; to thine own self be true and it must follow, as the night the day, thou canst not then be false to any man."

Whilst the ethical code of behaviour implied by Polonius cannot be challenged, it is not the case that the questioning public of present times would accept this by itself as evidence of the public servant's divorcement from associations which could be thought, in the mind of the public, to influence his judgment in the consideration of matters coming before him.

The first point which I should like to make is that no justifiable defence can be advanced to a refusal to the disclosure of individual interests and the registration thereof; what, however, can be the subject of objection are the nature and extent of the interests to be disclosed, the custodian of interests so disclosed, and whether such disclosures should be open to public inspection and, if so, under what conditions.

2. As to the classes of pecuniary interest or other benefit which should be disclosed it is suggested that they should include any which associate directly with any individual or organization having business with that department of which the public servant is a member; in such a case the interest or benefit should be fully identified and the circumstances given under which the public servant acquired it.

What would pose a difficulty is deciding whether indirect interests should also be disclosed and, if so, how far such an indirect line should extend, i.e. whether an indirect interest could be linked back to a direct interest. Whilst this possibility is advanced I consider that the private interests of a public servant should not be subject to examination of such close detail.

3. A second point which I would like to advance for consideration is how far "down the line" disclosure of individual interests and registration thereof should extend. If the basis of justification for disclosure rests on the assumption that a Permanent Head (or his equivalent) is in a position to influence the Minister so as to advance his (the Permanent Head's) private interests it is equally the case that the views of the Permanent Head could be influenced by recommendations coming before him from "down the line".

4. On the question of the maintenance of an appropriate register I would agree that this could be held within each Department with access to the information contained therein being restricted to the responsible Minister and his Permanent Head. I am not however persuaded that the Minister should have the right, should he deem that circumstances so warrant, to make public information contained in the registrar: rather I consider that it should only be open to public view after argument, in private, before an appropriate authority and after the individual concerned has been given the right, if he so elects, to oppose public disclosure of his personal interests.

5. I would like to say finally that I am not persuaded that the arguments in favour of disclosure outweigh the arguments against invasion of privacy as a total concept. Rather I feel that, despite the uniqueness of his position, the public servant must be accorded the right of privacy and, though I concede that his ethical conduct must be above that of the private citizen, disclosure of interest should be such as to result in the minimal invasion of privacy.

WATER RESOURCES COMMISSION NEW SOUTH WALES

Ibis House,
201 Miller Street,
North Sydney 2060.
23rd December, 1976.

The Clerk to the Committee,
Joint Committee Upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney, N.S.W. 2000.

Dear Sir,

1. I refer to your Chairman's letter of 29th November, 1976, inviting me to lodge a written submission relative to the terms of reference of the Joint Committee.

2. Commenting on the three specific terms of reference I would submit:

- (a) All share, note or debenture holding in companies, directorships of companies and interests in partnerships or firms with which the Statutory Authorities might either directly or indirectly transact business, or be otherwise involved.
- (b) The register should record the name, office, nature of any direct or indirect pecuniary interest or other benefit of the office holder in such companies.

The register should be revised from time to time and kept strictly confidential. It should not be available for public scrutiny. Information from the register should only be supplied with the express approval of the responsible Minister. The office holder should be informed of the source and nature of any enquiry. I see the existence of the register more as a deterrent to any impropriety in government administration.

- (c) Holders of statutory offices and possibly some of the more senior officers who have been delegated authority for the expenditure of substantial sums of money on works and services or who exercise powers and perform functions of an Authority which have significant effect on the public at large.

Yours faithfully,

T. A. MACKINTOSH, Chief Commissioner.

DAIRY INDUSTRY AUTHORITY OF NEW SOUTH WALES

Telephone 69 5241.

71-75 Regent Street, Sydney,
P.O. Box 48, Broadway, N.S.W.
30th December, 1976.

Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney, N.S.W. 2000.

Dear Sir,

I refer to the request contained in the letter of 29th November, 1976, from the Chairman of your Committee.

Members of the Authority have carefully considered the material forwarded under cover of the above letter and have considered also the questions raised in the letter.

- (1) Members of the Authority have formed the opinion that it may be desirable for a register to be maintained by the Secretary of the Authority detailing pecuniary interests of members of the Authority in organizations in or associated with the industry and of actual ownership of property used in the industry.
- (2) In the opinion of members of the Authority no similar register would appear to be necessary or desirable in respect of officers of the Authority.
- (3) The attention of the Committee is drawn to the provisions of section 10 of the Act which is in the following form:

“A person who is a member of any firm or a director or officer of any company, society, association, or incorporation directly or indirectly carrying on the business of or having for its objects the supply, treatment, distribution, or sale of milk, or who receives any remuneration or fee, or any benefit (otherwise than as a shareholder) from any such firm, company, society, association, or corporation shall not be eligible for appointment as a member of the Authority and is disqualified from holding office as a member of the Authority.”

Yours faithfully,

D. W. CROWFOOT, Chairman.

LOCAL GOVERNMENT DEPARTMENT

Submission to Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Matters

1. This Department's concern in the disclosure of pecuniary interest has been in relation to the local government field and the Local Government Act since its inception has contained provision concerning the disclosure of pecuniary interest, direct or indirect, of a council member in any contract or proposed contract with his council or in any other matter in which the council is concerned. These provisions have been amended from time to time and section 30A in which they are contained are similar in character to the provisions of the legislation in the United Kingdom.

2. The Department was accordingly interested to receive through the Agent General's Office in London a copy of Volume 1 of the Report of the Prime Minister's Committee on Local Government Rules of Conduct; under the chairmanship of Lord Redcliffe-Maud, presented to the British Parliament in May, 1974. This report deals comprehensively with, inter alia, the conflicts of interest of elected council members and of council employees and the need for a national code of local government conduct in that country. Its comments on disclosure of pecuniary interest and a register of interests may be of interest to the Joint Committee which may be advantaged in procuring a copy of that report for the purpose of its current investigations.

3. In dealing with the question of a register of interests to record what might be called the continuing interests of councillors, the report refers to objections which conceivably may be taken to a statutory compulsory register. These may be that it would not stop the deliberate wrongdoer. It would not give an up-to-date picture of the interests of a councillor whose holdings in securities or land change frequently. It could create a presumption of suspicion about their affairs which would amount to requiring them to prove their own innocence and would to a degree be an intrusion on their privacy. It would be of value mainly as a public relations exercise and, perhaps most important, it could deter potentially valuable people from serving.

4. While not dismissing these objections lightly the Prime Minister's Committee expressed its satisfaction that they were outweighed by the substantial contribution to public confidence which a carefully designed register could make. From the elector's point of view the register would provide a more accessible picture of the member's general background than the record of specific disclosure at meetings and would for that reason be a more convincing demonstration of openness.

5. That Committee accordingly recommended that there should be a statutory register of certain pecuniary interests of councillors to be available for inspection by any elector of the council. It considered the responsibility for maintaining the register should rest with the council but that each member should be responsible for making his own entry, as he is for disclosing pecuniary interest at meetings. The register should be additional to disclosure at meetings.

6. In the Committee's view the interests to be recorded should be defined having regard to the need for openness but also to the member's reasonable right to privacy. They should therefore be confined to a short list of important interests and the entry should indicate their existence rather than detail their nature. They should include the interests of the member's spouse where these are known to the member but not those of any other relative, due to difficulties of definition involved in any wider coverage.

7. The Committee recommended:

- (i) All paid employments and occupations, including directorships, consultancies, and any sponsorship of the member by any organization or person. The amount of the income involved need not be stated except that from sponsorship, which can be distinguished from other sources of income because it is directly related to the member's contribution to the business of the authority. Professional men would be required to indicate the name and business of their firm but not the names of clients.
- (ii) All land or other real property in the area of the authority, owned freehold, or held on a lease granted for one year or more, or in respect of which an option to purchase is held; the location to be described generally rather than precisely (i.e. by parish, postal district, or electoral areas as appropriate).
- (iii) Companies or other bodies where the member has a beneficial interest in securities of a nominal value greater than £1,000 or one-hundredth of the issued share capital, whichever is the less. The amount of the holding need not be stated. Investment trusts and unit trusts should be excluded.
- (iv) Any tenancy of premises owned by the authority.

8. Revision of the register at annual intervals is recommended in the report—intervening changes would still be caught by the requirement for oral disclosure.

9. Suggestions that the member should be informed of the identity of any elector asking to see his entry in the register was not regarded as necessary or desirable, nor was the administrative complication involved deemed worthwhile.

10. The report draws a distinction between the elected councillor who is responsible to the electorate and the employee who is responsible to the council. The latter should ensure that there is no abuse of power by any conflict of interest on the employee's part and the report does not, in general, regard a register of employee interest necessary as a statutory requirement, although it considers he should be under a comparable obligation to disclose orally at a meeting any pecuniary interest he may have.

11. Certain employees were, however, regarded as holding positions justifying an additional measure of openness. Chief and deputy chief officers, others exercising delegated powers and some specialized positions as, for example, planning and estate management officers, occupy sensitive positions. In these cases the Committee felt that a record of pecuniary interests should be maintained for inspection by council members, not by electors.

12. Associated matters considered by the United Kingdom Committee were penalties for failure to disclose a pecuniary interest and the time within which prosecutions might be launched. Substantial increases in penalties were considered appropriate, to be dealt with summarily or on indictment at the discretion of the prosecution. If the former, the maximum fine recommended was £400 or six months imprisonment or both; if tried on indictment the maximum penalty to be two years imprisonment and an unlimited fine. The time within which proceedings could be initiated was recommended to be extended for summary proceedings to 12 months from the time the offence came to notice and five years from the date of commission.

13. While the local government situation is not entirely analogous to the position of members of Parliament, Statutory office holders and senior public servants which is now the area of interest of the Joint Committee, it is thought that much of the ground covered by the Prime Minister's Committee in the United Kingdom and its observations on matters of principle could well be pertinent to the issues which will command the attention of the former Committee. Its recommendations would seem to be worthy of close scrutiny.

14. Some aspects, such as the position of persons engaged in town planning activities for councils or for Government instrumentalities who for personal advantage use privileged information, are already covered by provisions in the New South Wales Planning and Environment Commission Acts and no doubt the Planning and Environment Commission will be making direct reference to these issues. Other instrumentalities are administering legislation which may contain specific sanctions or penalties for breaches of conduct in areas relevant to the Joint Committee's deliberations which undoubtedly will be brought to attention by these authorities.

15. As to how the register should be compiled and maintained, in the case of members of Parliament there would seem to be little alternative to this being effected by a Parliamentary official. In the case of Statutory office holders and public servants, this would seem to depend upon the decision on what form disclosure should take and to whom it might be made. Alternatives would seem to be the Department (or the Minister) employing the person making a disclosure, the Premier's Department (if a central registration bureau for all officers is desired) or perhaps the Registrar General if public access to officers' disclosures should be decided upon. Any contemplation of the latter course would, it is suggested, require careful consideration as it would seem to open up undesirable consequences of public servants becoming involved in an area of public controversy, when the alternative of disclosure to their employing authority would seem to meet the position adequately.

DEPARTMENT OF PUBLIC WORKS, NEW SOUTH WALES

State Office Block,
Phillip Street, Sydney 2000.
7th January, 1977.

Dear Mr O'Connell,

1. I refer to your letter of 29th November, 1976, in which you invited Permanent Heads to lodge written submissions relative to your enquiry into the disclosure of members' interests and the registration thereof.

2. The factors relating to the benefits and disadvantages to the public, the Government system and the individual of disclosure of members' interests are canvassed in the section of the Report of the Joint Committee on Pecuniary Interests of Members of the Federal Parliament which you included with your letter and also in the Report of the Royal Commission on Australian Government Administration, 1976.

3. In its simplest terms, it is a question of whether the credibility of a public office holder and hence the confidence of the public in him and in the system within which he operates, more than compensates for the intrusion on the privacy of the individual.

4. The weighting of these factors will change with time. It is my opinion that at the present time, and subject to adequate safeguards, it would be reasonable to require members to disclose for registration, interests which may produce conflicts in the exercise of that person's duties.

5. Any such register should be compiled and maintained on a confidential basis with restricted access so that any wider breach of an individual's privacy would be limited to special cases warranting such disclosure.

If such a register is established for members of Parliament it would be appropriate for a similar register to be established for Permanent Heads and other very senior officers with significant delegated powers of decision making.

Yours faithfully,

W. K. PILZ,

Director of Public Works.

Mr K. O'Connell, M.L.A., Chairman,
Joint Committee of the Legislative Council and Legislative Assembly Upon
Pecuniary Interests,
Parliament House,
Sydney, N.S.W. 2000.

Submission to the Joint Committee upon Pecuniary Interests. By E. J. Coffey, Director of the State Pollution Control Commission

1. This submission, which is made in my capacity as a Permanent Head of a N.S.W. Government instrumentality, is restricted to a consideration of those factors pertinent to the question of whether public officials ought to be required to register their pecuniary interests. While some of my comments might also be relevant to Members of Parliament, it appears that other considerations are also relevant to such members and that it would not be proper or necessary for me to comment thereon.

2. I agree with the commonly held belief that public officials should observe high standards of conduct so as to promote public confidence in their integrity. They should not allow their office to be used to advance the private interests of themselves and others. Moreover, I believe they should refrain from financial and business dealings that may tend to interfere with the proper performance of their duties and be required to disqualify themselves in matters in which they have a financial interest or in which their impartiality might be reasonably questioned. However, the restrictions to be placed upon public officials should be no greater than those applicable to other members of the community.

3. It is suggested that if any disclosure is to be required of public officials a requirement modelled on the need for the director of a public company to disclose his interests by section 123 of the Companies Act, 1961, would be sufficient. Under such a provision, a public official could be required to disclose to his Minister any interest which is likely to interfere with the proper performance of his duties or, if he prefers, he could be allowed to withdraw from any involvement in a particular matter. Such a system would not require the registration of interests.

4. The only other matter upon which I desire to comment is the question of public access to any register should it be decided that public officials should be required to register their interests. I would submit that public officials are in a different category than Members of Parliament who are elected by and directly responsible to the people. There may be cogent argument for public access to a register in the case of Members of Parliament. However, I do not consider that details of interests of public officials should be generally available and believe that access should be restricted to the Minister concerned, who, because of the principle of ministerial responsibility, must ultimately accept responsibility for administrative actions.

E. J. COFFEY, Director,
State Pollution Control Commission.

New South Wales Planning and Environment Commission

139 Macquarie Street, Sydney.
241 2671

All mail to be addressed to:
Box 3927, G.P.O. Sydney 2001.

Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Macquarie Street,
Sydney, N.S.W. 2000

19th January, 1977.

Dear Sir,

The Chairman of the Committee wrote on the 29th November, 1976, asking for written submissions relative to the Committee's terms of reference.

2. I have not only had the opportunity of considering the content of the annexures attached to the Chairman's letter, but have also had the benefit of considering the Lord Redcliffe-Maud Committee's Report on Conduct of Local Government in the U.K. of May, 1974, which deals with quite a wide range of relevant issues involved in the matter of disclosure of pecuniary interests by elected members and public officials.

3. It would seem, from all publications on the matter and commitment to policy statements, there is general agreement:

- (i) That elected members should disclose certain interests and such disclosures should be recorded in a register which shall be available for public inspection.

- (ii) That certain public officials (employees)—those with significant involvement in the making or influencing of decisions—should disclose pecuniary interests which could bring those officials in conflict with their public duty or their responsibility for public interest.

4. I see no reason to disagree with these broad conclusions, however, within their general context, a number of points require consideration, namely:

4.1 Disclosure of What?

There are many and varied situations where conflict of interest could arise. The degree of potential conflict could vary markedly from the insignificant to the irrespressible. Quite clearly, it is not possible to legislate to achieve honesty, probity and responsibility, nor is it possible to legislate so as to avoid decision makers participating in decisions where there is some degree of conflict between private and public interest. However, it is possible to reduce or control conflict of interest in significant cases where the nature of that interest is a pecuniary one. Perhaps it is appropriate, then, to consider:

- (a) legislation in relation to certain land and pecuniary interests; and
- (b) a statement of general principles—ethics—in relation to those other possible conflicts beyond the capacity of legislative or administrative action.

4.2 Disclosure to Whom?

Elected Members

In the case of elected members, disclosure might appropriately be in standard form, to a senior parliamentary official who shall be responsible to enter the content of such disclosures in a register to be available for public inspection. The extent of information required to be disclosed would need to be considered and incorporated in the form.

Officials (Employees)

In the case of officials, disclosure should be to the Permanent Head, and in the case of the Permanent Head, to the responsible Minister and should be in a prescribed form, the content of which should be entered in a register accessible to the Minister and the Permanent Head. The extent of information required to be disclosed would need to be considered and incorporated in the form.

4.3 Which Public Officials should be required to disclose information?

In all cases, the Permanent Head, Deputy or Assistant Permanent Heads and members of statutory bodies should be required to disclose land and pecuniary interests. In addition, such other officials as are required by the Permanent Head or Minister to disclose pecuniary interest because, in the opinion of the Permanent Head or Minister, there is a possibility of conflict in the area of administration in which such officer is involved.

4.4 What Pecuniary Interest should be disclosed?

The following are considered as necessary—there may be others:

- (i) Any part or whole ownership of land or any lease of land in excess of two years.
- (ii) Any share holding in any company with a face value of \$1,000 or more.
- (iii) Any proprietary right in any sole trading or partnership arrangement.
- (iv) Any investments in public loans, stocks or bonds in excess of \$1,000.

Such officer should also be required to disclose such pecuniary interests in respect of his spouse.

4.5 When should a Pecuniary Interest be disclosed?

Such interest should be required to be disclosed within three months of its acquisition.

4.6 Sanctions for failure or breach by way of disqualification of elected members or dismissal of employees or prosecution in terms of the law, or both, could be appropriate in certain circumstances and seem necessary to ensure the best possible compliance with the provisions of any such laws.

5. I am attaching extracts of provisions of present Acts administered by the Planning and Environment Commission, dealing with:

- (a) improper use of confidential information; and
- (b) disclosure of certain interests.

Those provisions will, no doubt, be of interest to the Committee.

Yours faithfully,
L. L. POWNALL, Chairman.

Act No. 40, 1972.

State Planning Authority (Amendment).

9A. (1) Where, through his association with the Authority, a person has knowledge of specific information relating to proposals in respect of the use of land and that information is not generally known but, if generally known, might reasonably be expected to affect materially the market price of that land, he is guilty of an offence against this Act if he—

Persons not to use information obtained through association with the Authority for the purpose of personal advantage.

- (a) deals, directly or indirectly, in that land, for the purpose of gaining an advantage for himself by the use of that information; or
- (b) divulges that information for the purposes of enabling another person to gain an advantage by using that information to deal directly or indirectly, in that land.

Penalty : Two thousand dollars.

(2) Where, through his association with the Authority, a person is in a position to influence any proposals made, or to be made, by the Authority in respect of the use and development of lands and does influence the proposals by securing the inclusion or alteration of any matter in, or the exclusion or omission of any matter from, the proposals, he is guilty of an offence against this Act if he—

- (a) does so for the purpose of gaining an advantage for himself; or
- (b) does so for the purpose of enabling another person to gain an advantage.

Penalty : Two thousand dollars.

(3) Where—

- (a) an offence under subsection one of this section is committed and an advantage referred to in that subsection is gained from any dealing in land to which the offence relates; or
- (b) an offence under subsection two of this section is committed and an advantage referred to in that subsection is gained from any dealing in land which would not have been gained if the proposals concerned had not been influenced,

any person who gained that advantage is, whether or not any person has been prosecuted for or convicted of an offence under subsection one or subsection two, as the case may be, of this section, liable to another person for the amount of any loss incurred by that other person by reason of the gaining of that advantage.

(4) Where a loss referred to in subsection three of this section is incurred by reason of an advantage gained from a dealing in land, the amount of the loss is

State Planning Authority (Amendment).

the difference between the price at which the dealing was effected and—

- (a) in the case of any dealing to which subsection one of this section relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the specific information used to gain that advantage had been generally known at that time; or
- (b) in any case to which subsection two of this section relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the proposals concerned had not been influenced.

(5) An action to recover a loss or profit referred to in subsection three of this section may not be brought after the expiration of five years next succeeding the dealing in land to which the transaction relates.

(6) For the purposes of this section, a person is associated with the Authority—

- (a) if he is a member or servant of the Authority or a person appointed to a committee or a sub-committee of the Authority established under section fifteen of this Act, or to a regional planning committee;
- (b) if he is an officer or servant of a council;
- (c) if he acts or has acted as banker, solicitor, auditor or professional advisor or in any other capacity for the Authority or a council;
- (d) where the person, so associated by virtue of paragraph (c) of this subsection, is a corporation, if he is a director, manager or secretary of that corporation.

9B. (1) If a member of the Authority or a member of a committee or a sub-committee established under section fifteen of this Act, or a member of a regional planning committee appointed under section twenty-three of this Act, has an interest directly or indirectly in land, proposals in respect of the development and use of which are to be considered by the Authority, the committee, sub-committee or regional planning committee, as the case may be, and is present at a meeting of the Authority, the committee, sub-committee or regional planning committee, as the case may be, at

Disclosure
of interest.

State Planning Authority (Amendment).

which such proposals are the subject of consideration, he shall, at the meeting, as soon as practicable after the commencement thereof, disclose his interest and shall not take part in the consideration or discussion of or vote on any question with respect to such proposals.

(2) For the purposes of this section a person shall (subject as hereafter in this subsection provided) be treated as having indirectly an interest in land if—

- (a) he, or any nominee of his, is a member of a company or other body which has an interest in the land;
- (b) he is a partner, or is in the employment, of a person who has an interest in the land :

Provided that—

- (i) this subsection shall not apply to membership of or employment under any council or statutory body within the meaning of the Local Government Act, 1919;
- (ii) a member of a company or other body shall not, by reason of his membership, be treated as being so interested, if he has no beneficial interest in any shares of that company or other body;
- (iii) a member of a company having not less than twenty-five members shall not be treated as having an interest in land by reason only that that company has an interest in the land.

(3) In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed, for the purpose of this section, to be also an interest of that other spouse.

(4) A general notice given in writing to the secretary of the Authority by any member referred to in subsection one of this section to the effect that he or his spouse is a member, or in the employment, of a specified company or other body, or that he or his spouse is a partner or in the employment, of a specific person, shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any land in which that company or other body has an interest which may be the subject of consideration after the date of the notice.

(5) The secretary of the Authority shall record in a book to be kept for the purpose particulars of any disclosure made under subsection one of this section and

State Planning Authority (Amendment).

of any notice given under subsection four thereof and the book shall be open at all reasonable hours to the inspection of any person on payment of such fees as may be determined by the Authority, from time to time.

(6) Subject to subsection seven of this section, if any person fails to comply with the provisions of subsection one of this section he shall be guilty of an offence unless he proves that he did not know that proposals in respect of the development and use of the land in which he had an interest was the subject of consideration at the meeting.

Penalty : Four hundred dollars.

(7) The Minister may, subject to such conditions as he thinks fit to impose, remove any disability imposed by subsection one of this section in any case in which the number of members referred to in subsection one of this section so disabled at any one time would be so great a proportion of the whole of the members of the Authority, or a committee, sub-committee or regional planning committee, as the case may be, as to impede the transaction of business, or in any other case in which it appears to the Minister that it is in the public interest that the disability should be removed.

(8) The Authority, or a committee, sub-committee or regional planning committee, may, by resolution, provide for the exclusion of any member thereof from a meeting of the Authority, committee, sub-committee or regional planning committee, as the case may be, while proposals, in respect of any lands in which that person has such an interest as aforesaid, are under consideration.

(9) In this section "shares" includes stock.

(10) The provisions of this section apply to a member of a council in relation to an interest in land held by him, directly or indirectly, proposals in respect of the development and use of which are to be considered by the council at a meeting of the council, as they apply to a member of the Authority having an interest, directly or indirectly, in land, proposals in respect of the development and use of which are to be considered by the Authority at a meeting of the Authority.

9c. No person shall, unless the Authority otherwise determines, disclose any information with regard to the business discussed at any meeting of the Authority, of a committee, including a committee appointed under Part IV of this Act, or of sub-committee of the Authority.

Proceedings
at meetings
confidential.

Penalty : Four hundred dollars.

AUDITOR-GENERAL'S DEPARTMENT

Goodsell Building,
8-12 Chifley Square, Sydney.
Box 12, G.P.O., Sydney, N.S.W. 2001.
Our reference: 8302.
Telephone: 238 0555
Extension: 7072
19th January, 1977.

Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Sydney.

Chairman's Letter of 29th November, 1976

1. The classes of pecuniary interest most commonly thought of are those relating to business activities, for example, as a sole trader, agent, partner or shareholder. In addition, it may be necessary to consider whether positions involving substantial control of activities which are occupied by relatives of an office holder, could also produce the reality or appearance of conflict of interest.

2. As the objective is to prevent the effect on the decision making process of any conflict of interest, the problem appears to be what action could or should be taken to prevent a declared interest recorded in a register being or appearing to be an influence. Perhaps the most reliable factor would be the knowledge by the officer concerned that all others participating in the process would be aware of his interest and alert to the possibilities.

3. Following on paragraph 2 above, the most important aspect would be to ensure that all interests were disclosed and available for reference by the parties entitled to access thereto. For this purpose, a register available at least to those concerned parties, combined with pecuniary or other penalties for intentional failure to disclose, would be the most useful.

4. Section 10 (1) of the Audit Act, 1902, provides, *inter alia*, that the Governor may suspend the Auditor-General from his office "if he directly or indirectly engages in any paid employment outside the duties of his office, or in any trade or business except as a member of a registered company." Having regard to these restrictions and like restrictions which apply to the staff of the department appointed under the Public Service Act, it is likely that the only pecuniary interest to be declared would be that of a shareholder. I might add that while officers of the Auditor-General's Department are not required to take an oath not to divulge or use for their personal benefit information gained in the course of their duties, it is generally understood that any breaches in this regard will be viewed most seriously and dealt with accordingly.

D. FAIRLIE, Auditor-General.

SOIL CONSERVATION SERVICE, SYDNEY

20th January, 1977.

The Clerk to the Committee,
Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Interests,
Parliament House,
Sydney 2000.

Dear Sir,

1. Reference is made to the Chairman's letter of 29th November, 1976, inviting submissions relative to the Joint Committee's terms of reference.

2. This matter has been examined, particularly in terms of the extract of the Report of a similar Committee in regard to Members of the Federal Parliament.

3. In respect of question (a) of the above letter, I consider the Committee might examine whether the classes of pecuniary interest or other benefit to be disclosed should include shares, gifts above a certain value, investments or office holding in any company or firm with which the organization engages or has engaged in business within a specified period. It is not considered that investments or interests in major public companies, banks, etc., should be included.

4. Regarding question (b), the Committee could consider whether a register of interests or benefits should be maintained by annual declarations of persons required to make disclosures. It would appear desirable for the register in respect of Members and other senior government officials to be treated as confidential and kept under close security, say within Parliament House or the Premier's Department. If the Committee decides that Departmental officers should be required to make disclosures, a register of these could be maintained by the Permanent Head.

5. The question of public access is one of government policy, but the Committee may feel that such access on good and valid reasons should be allowed. Access should only be permitted through the Premier. If an internal Departmental Register is maintained in respect of employees generally, access to this should only be permitted for good reason through the Minister or Permanent Head.

6. In any question of public access, the Committee may have to recommend a policy of producing the Register to a court or tribunal if called for on subpoena duces tecum or whether a claim of privilege might be contemplated.

7. So far as question (c) is concerned, the classes of persons other than Members who might be required to register their interests could be Permanent Heads and Statutory Office Holders and could even extend to Departmental officers, who are engaged in contracting on behalf of the relevant government department or body with "outside" organizations. Again, the Committee might consider whether the classes of persons required to register should be progressively extended.

Yours faithfully,

G. H. KNOWLES, Commissioner.

MINISTRY OF EDUCATION, N.S.W.

28th January, 1977.

Mr K. O'Connell, M.L.A.,
Chairman,
Joint Committee of the Legislative Council
and Legislative Assembly upon Pecuniary Interests,
Parliament House,
Sydney, N.S.W. 2000.

Dear Mr O'Connell,

1. Thank you for your letter of 29th November, 1976, concerning matters associated with the disclosure of pecuniary interests by public servants. I am glad of the opportunity to express a view on this important matter.

2. It seems clear to me that Permanent Heads and other senior public servants who are in a position to advise Ministers of the Crown on policy and other matters have an obligation to disclose their pecuniary interests.

3. There are obvious difficulties in answering the question relating to the classes of pecuniary interest or other benefit to be disclosed, for here are involved matters of privacy and from the administrative point of view, the accumulation of a mass of inconsequential information.

4. To be avoided is the situation where an officer is, in effect, supplying no more than a list of assets.

5. I would envisage that interests to be disclosed would include shareholdings representing a significant degree of influence in the activities of the firm (perhaps determined as a percentage of the total issue), mortgagor/mortgagee principals, real estate, especially where the owner stands to benefit considerably by a foreshadowed re-zoning, but excluding the home residence or a "weekend" holding unless the re-zoning situation applies, outside offices held whether honorary or otherwise and membership of statutory bodies.

6. With a view to achieving economy in compilation and maintenance of a register, an uncomplicated system of folio(s) per officer is envisaged with annual up-dating.

7. Responsibility for maintenance and security of the register is seen to be a task for other than the Public Service if the system is to establish its credibility. If it were decided that all or a majority engaged in the affairs of Government may be required or have an option to declare their interests, then there is obviously the need for a centralized system.

8. Public confidence in Government at all levels is the point at issue and for this reason I favour the establishment of a registry under the direct supervision of the Parliament of New South Wales.

9. Access to the wealth of confidential information supplied by officers and others would require sound justification and strict supervision, for just as public confidence in the impartiality of Government is the issue which has resulted in Parliament appointing the Joint Committee and determining the terms of enquiry, so will those who are supplying details of personal interest need to be satisfied as to the integrity in supervision of the register if it is to receive the wholehearted support from all who might submit information for inclusion.

10. To prescribe circumstances justifying access to the register would almost certainly prove to be unsatisfactory. Were it agreed that the register be the responsibility of Parliament, consideration might be given the suggestion that the President of the Legislative Council and/or the Clerk of the Parliaments be authorized to approve access to a particular folio by a citizen demonstrating "good cause".

11. As stated earlier, I support the principle of the disclosure of pecuniary interest and other benefit by public administrators. I would also include the whole of the judiciary.

12. The level of seniority or other criterion applicable to Crown employees required to disclose their interest is difficult to determine, but I would suggest:

Permanent Heads of Departments.

Officers of Assistant Under Secretary status.

Senior personnel of Ministers' Personal Staffs.

Officers nominated by Ministers and Permanent Heads.

Chairmen, Members and Secretaries or their equivalent of statutory authorities.

Officers nominated by Chairmen.

13. In the area of public administration there may be many who, although fairly junior in status, will find themselves in a situation where there could appear to be a conflict of interest, even though the circumstances were more apparent than real. Provision should be made for such officers to submit details for registration should they see the need.

14. My reply to your invitation to assist the Joint Committee has been brief and largely an expression of opinion rather than a treatise on the several matters covered in your letter. Should additional material be sought or assistance required in some other way, I would be only too pleased to co-operate.

Yours faithfully,

R. E. PARRY, Under Secretary.

DEPARTMENT OF LABOUR AND INDUSTRY, N.S.W.

Address All Mail to G.P.O. Box 21, Sydney, N.S.W. 2001.

Telegraphic Address: "Labind," Sydney.

A.P.A. Chambers,

53 Martin Place, Sydney.

The Clerk to the Committee,
 Joint Committee upon Pecuniary Interests,
 Parliament House,
 Macquarie Street,
 Sydney.

28th January, 1977.

Telephone 238 0444, ext. 301.

Dear Sir,

1. I refer to an invitation from the Chairman of your Committee dated 29th November, 1976, for the lodging of a written submission as Permanent Head of the Department of Labour and Industry relative to the terms of reference of the Joint Committee.

2. At the outset let me say that I have not personally come across any situation in a career spanning 43 years in the N.S.W. Public Service in which any suggestion has been heard that an officer has been influenced in an official decision by virtue of a pecuniary or beneficial interest of his own. Nevertheless I agree that in today's conditions officers whose official duties expose them to imputations of that kind should enjoy a means of refutation, should such be required. Likewise there should be a means whereby the public, the media and Ministers should be able to reassure themselves of the integrity of officials in this regard.

3. The subject of registers of the kind under discussion is one of which I cannot claim any particular knowledge. I have, however, considered the terms of reference and, in the following paragraphs, I have set out my personal views on the matters mentioned.

4. Item (a) asks what classes of pecuniary interest or other benefit should be disclosed in the register, but I doubt if it is possible to categorize these due to the differing circumstances in which each registrant is likely to be placed. I feel that all that is practicable is to ensure that every officer in the classes of persons required to register is informed on appointment, and preferably reminded from time to time, of the need to have placed in the register details of any pecuniary or beneficial interest he may have which could affect or could be construed as possible of affecting his impartiality in any official matter on which he has power to make or to influence significantly a decision. A document clearly setting out the conventions to be observed compiled by, say, the Public Service Board would assist.

5. Item (b) asks how the register should be compiled and maintained and what arrangements should be made for public access to it. I feel that it would be appropriate for the Public Service Board to compile the register in relation to Permanent Heads of departments, etc., within its administration. For heads of statutory authorities the register could be compiled by, say, the Under Secretary, Premier's Department. For those classes of persons other than heads of departments and statutory authorities the registers should be compiled by the head of the department or authority. Each of these would decide the classes of officers within his organization who would be requested to register, but others who wished to do so would be permitted to register also. The request would be a normal part of the induction process on appointment and the officers would be required to register any significant changes. Annually a request for advice that the information remained accurate would issue.

6. So far as public access to the register is concerned, I do not believe this should be given directly. In my view the register should be treated as highly confidential and kept under conditions of tight security. If circumstances arise in which the public or Ministers may question whether an officer on the register may have a pecuniary or beneficial interest in a matter it should be possible to formally state the facts to the authority in charge of the register and seek a report or certificate. The authority (e.g., Public Service Board, Under Secretary, Premier's Department, Permanent Head, etc.), would thereupon search the register and give a written report, indicating whether in his opinion, the officer has or has not a pecuniary or beneficial interest such as would be likely to prejudice his impartiality in the circumstances of the particular matter.

7. Item (c) asks what classes of persons other than M.P.'s ought to be required to register. These should certainly include the heads of all government departments and statutory authorities. Beyond that I feel each of those heads should be responsible for determining the classes of persons within his organization who should be required to register. In determining these classes each head would have regard to the powers and duties of establishment positions and the degree of effective influence over decisions of significance affecting the interests of clients which these place in the hands of the occupants. It is possible that in some Divisions there would be few, if any, officers required to register, e.g., those engaged in a purely service function such as our Division of Vocational Guidance whereas in others there may be many, e.g., those engaged in a regulatory role such as our Division of Inspection Services. The salary or status of a position may have little relevance in some cases.

I trust that these comments will be of assistance to your Committee.

Yours faithfully,

J. A. NEWBIGGING, Under Secretary.

MINISTRY OF TRANSPORT AND HIGHWAYS, N.S.W.

117 Macquarie Street, Sydney 2000.

The Under Secretary,
Box 1620, G.P.O., Sydney 2001.
Telephone: 270 6511
7th February, 1977.

Mr K. O'Connell, M.L.A.,
Chairman,
Joint Committee of the Legislative Council
and Legislative Assembly Upon Pecuniary Interests,
Parliament House,
Sydney 2000.

Dear Mr O'Connell,

Thank you for inviting me to present a submission to the Committee, I appreciate the opportunity of being able to put forward my views.

(a) What classes of pecuniary interest or other benefit should be disclosed

It should be necessary to disclose those cases of pecuniary interest where it is possible that a Member's personal involvement could conflict with carrying out his public responsibilities to the best advantage of the community e.g., directorates and shareholdings, both in Australia and abroad, land or property and sponsorships (if known) such as contributions in excess of say 20 per cent to election campaign funds. In the case of shareholdings, land and property, it should only be necessary to declare these when income exceeds a prescribed amount.

(b) How the register should be compiled and maintained and what arrangements should be made for public access

1. The register should be under the control of a Joint Parliamentary Committee which could handle any complaints or detailed inquiries. A small administrative staff would also be required to compile and maintain information to ensure the data was up-to-date. To minimize complications as far as collation is concerned, a stereo type form could be issued annually for members to complete.

2. As the elected representatives of the people in the case of Members of the Legislative Assembly and monitors and representatives of the people's interests in the case of Members of the Legislative Council, politicians are responsible to the people for the decisions which they take and accountable to them for the effectiveness or otherwise of the actions which they initiate or undertake. In these circumstances it is appropriate that a register of pecuniary interests should be available for public inspection.

3. It is unlikely that there would be large numbers of people wanting to look at the register and it would probably be sufficient for it to be kept at Parliament House and made available to the public during certain hours. An additional copy could be held at the Department of Attorney-General and of Justice if this suited administrative convenience.

(c) What classes of persons (if any) other than Members of Parliament, ought to be required to register.

1. As with every other institution the public service is being continually subjected to questioning about its purpose, its organization, about the validity of the services it provides and the relevance of its objectives. Its goals and structure are no longer fixed, but must be flexible and adaptive to supply the service which society requires it to supply and not the one which it thinks society wants. The bureaucracy can no longer exist in isolation but must encourage interaction and exchange between itself and the community, lobby groups, trade union and other organizations. The separation of public and private enterprise is becoming less marked as the resources of private industry are and will be used more extensively not only in the traditional areas of construction, supply and catering, but also in new fields such as planning, organization, administrative and operational evaluation. This growing involvement of outside enterprises in the activities of the bureaucracy makes it even more imperative that impartiality and ethical standards within the service can be seen to be maintained. For this reason I consider Permanent Heads and senior public servants receiving salaries at or the equivalent of Grade 12, Administrative and Clerical Division, should be required to disclose their pecuniary interests, as set out under (a).

2. The arguments which apply to making a register of members' pecuniary interests public are not equally valid for public servants. Although the object of an officer's work and the public good are integral, a public servant is not in essence a 'public' personality and the assessor of his efficacy and integrity is the relevant Minister or Permanent Head as the case may be. It would, in this instance be sufficient for the register to be available to Ministers, Permanent Heads, senior public servants, and the Public Service Board.

3. Section 68 of the Public Service Act No. 31 (1902) acts as a disincentive to public servants to become involved in remunerative employment outside their normal work. It is designed as a guardian of community interests to discourage public servants from involvement in other areas of employment which may impinge on their ability to carry out their own duties satisfactorily. While this section of the Act serves as a blanket restriction on all public servants to circumscribe active participation in other employment, a register of pecuniary interests for specified senior public servants has become necessary because of their wide-ranging powers to formulate and control the implementation and administration of policies which dictate the direction the State and its people will follow. This power is a subtle one but it exists and because of this it is vital that efforts to ensure it is not abused or misinterpreted are followed through.

4. Another facet of this argument is the increasing interdependence of Government departments upon each other in order to plan cogently and utilize their resources in a cost-effective way. Providing public services brings with it a network of inter-related systems which cannot be planned or function in isolation. Transportation is a perfect example. This development is a constructive move, but as the spheres of influence of public officials expand, the need to protect integrity grows in concert.

5. The other aspect of this question is the growth of the public sector in areas such as consumerism, the environment, ethnic affairs, conservation and welfare. There may be staff ceilings and limits to growth at the present time but most evidence seems to point to an expanding bureaucracy, particularly in relation to "quality of life" issues. This is being brought about by technological change, prosperity, the reduced need for "blue collar" workers and partly by the wishes of the community itself which sees the Government as the only authority capable of handling these issues in their best interests.

6. As I see it, the Judiciary forms another category of public officials which should be required to disclose their pecuniary interests. The rationale behind this is of course the same as for Members and public servants in that their office brings with it the power to influence and even arbitrate upon the social and economic well-being of the community. The Judiciary have so far managed to elude any real criticism of publicity about the effects of their decisions on the fiscal prosperity of our system of Government, and while I do not have any ready statistics to back up my argument, I should not be surprised if litigation involving companies, trade unions, consumer complaints and the like was taking up as much time in court as social and criminal cases. These few reasons provide sufficient incentive to introduce an additional preventive measure to eliminate bias from court judgments.

7. The summarize, I consider a register of pecuniary interests to include the categories of persons outlined earlier, would serve the dual purpose of protecting the well-being of the people while at the same time helping to maintain confidence in the probity of those whose decisions will dictate the quality of our social, economic and physical environment.

Yours faithfully,

K. J. TROTH, Under Secretary.

**JOINT COMMITTEE OF THE LEGISLATIVE COUNCIL AND LEGISLATIVE
ASSEMBLY UPON PECUNIARY INTERESTS**

Submission on behalf of Public Transport Commission of New South Wales

1. The Public Transport Commission of New South Wales (the Commission) is a corporation constituted by the Public Transport Commission Act, 1972 (the Act).

2. The Act provides that the Commission shall consist of five commissioners, one of whom is to be appointed Chief Commissioner and another of whom may be appointed Deputy Chief Commissioner.

3. Section 9 of the Act provides that a commissioner shall be deemed to have vacated his office inter alia if, at any meeting of the Commission at which he is present and at which any agreement or proposed agreement in which he has a direct or indirect pecuniary interest, or any other matter in which he has such an interest, is the subject of consideration or is included in the agenda for consideration, he fails as soon as practicable after the commencement of the meeting to disclose to the meeting his interest in the agreement, proposed agreement or other matter, or he takes part in the consideration or discussion of or votes on any question with respect to the agreement, proposed agreement or other matter.

4. In view of the provisions of section 9 of the Act it is considered that there is no need for any other provisions requiring registration of pecuniary interests of commissioners.

5. It is provided in section 18 of the Act that all persons employed by the Commission under the Act shall be subject to the sole control and governance of the Commission. Persons employed by the Commission under other Acts are in fact so subject.

6. Under section 23 of the Act, a power, authority, duty or function of the Commission may only be exercised by an officer of the Commission if his office has been prescribed and if the Commission has delegated such power, authority, duty or function to him by instrument in writing, and notwithstanding such delegation the power, authority, duty or function delegated may continue to be exercised by the Commission.

7. It is accordingly considered that there is no need for officers of the Commission to be required to register their pecuniary interests.

8. In view of the foregoing paragraphs of this submission, no views are expressed as to what classes of pecuniary interest or other benefit should be disclosed or as to how the proposed register should be maintained and what arrangements should be made for public access thereto.

DEPARTMENT OF THE ATTORNEY-GENERAL AND OF JUSTICE

Goodsell Building,
8-12 Chifley Square, Sydney.
Box 6 G.P.O., Sydney 2001
Telegrams: "Crownlaw"
Telephone: 238 7313
Reference LKD:SGW 77/4461
12th April, 1977.

Clerk to the Committee,
Joint Committee upon Pecuniary Interests,
Parliament House,
Sydney. L.D.B.

Dear Sir,

1. In response to the request of the Chairman of the Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Interests, as Permanent Head of the Department of the Attorney-General and of Justice, I forward the following comments and submissions relative to the terms of reference to the Joint Committee.

2. The submissions are made under the following broad headings—

- (a) The need for disclosure of pecuniary interests.
- (b) What classes of pecuniary interest or other benefit should be disclosed.
- (c) How the register should be compiled and maintained and who should control it.
- (d) What persons should have access to the register and in what circumstances.
- (e) What classes of persons (if any) other than Members of Parliament ought to be required to disclose pecuniary interests.

3. The submissions in some cases express a point of view made in the light of many years experience in the Public Service. In other cases they raise significant and fundamental questions which I feel I am not competent to answer and in respect of which some research may be necessary. In other instances they identify problems and difficulties upon which forum discussions may be desirable before reaching a consensus or balanced judgment.

The need for disclosure of pecuniary interests

4. Much has been written on the need or otherwise for disclosure of pecuniary interests and there are many substantial arguments for and against disclosure. I have an open mind on this question but the following matters seem very relevant to the issue:

- (a) What is the purpose of disclosure?
- (b) What is hoped to be achieved by disclosure?
- (c) How frequently should disclosure be made?
- (d) When may disclosure cease?
- (e) What should be done with the information when disclosure is no longer required?
- (f) Do the public aspects of disclosure outweigh the personal aspects of invasion of privacy?
- (g) Are the present safeguards regulating disclosure satisfactory?
- (h) Can the problem be met by increasing the present safeguards?
- (i) What sanctions, if any, are necessary to compel disclosure?
- (j) What are the consequences of failure to disclose?

What classes of pecuniary interest or other benefit should be disclosed

5. There should be disclosure of all interests. What are appropriate and proper interests to disclose is a matter of definition.

6. In case of doubt, the question of whether or not disclosure should be made should not be left to the discretion of the individual. There should be an authority to determine in a summary manner, or order, in case of doubt, whether or not particular interests or particular types of interests should be disclosed.

How the register should be compiled and maintained and who should control it

7. The register should be compiled from a uniform and standard form of notification.

8. For the sake of consistency, if more than one class of person is required to register, then the register should be maintained by an independent person, e.g., the Registrar General, or the Ombudsman.

What persons should have access to the register and in what circumstances

9. I would not think that information on the register should be made available to the public at large, without showing some substantial reason. Sufficient cause would have to be shown to an appropriate body and on production of an order, the information would be made available by the registrar or custodian, upon payment of an appropriate fee. Payment of an appropriate fee would discourage frivolous applications.

10. The appropriate body might be—

In the case of Members of Parliament—A Committee of Parliament.

In the case of Public Servants—the Public Service Board, or the Ministerial Head of the Department.

In the case of Statutory Authorities—the head of the Authority, or Ministerial Head.

In the case of Members of Local Government—the Minister for Local Government or the Premier.

11. It may be desirable to notify each person in respect of whom information on the register is sought, to give him an opportunity within a limited time of showing cause why the information should not be made available to the applicant.

12. Stringent secrecy provisions supported by penalty provisions should be provided by Statute against unauthorized disclosure.

What classes of persons (if any) other than Members of Parliament ought to be required to disclose pecuniary interests

13. I am not opposed to public servants being required to make disclosure. There is a real difficulty however in determining which public servants should be involved.

14. With the increasing volume and complexity of matters being determined by Ministers of the Crown, they are, in fact, advised by a number of departmental officers of various levels of seniority. Sometimes this is done on a continuing basis and sometimes on an ad hoc basis.

15. Because their services are honorary, it seems to me that a very strong case can be made out for requiring aldermen and councillors in Local Government, to make disclosure on the same basis as members of Parliament. Senior officers in Local Government should also be made liable to the same extent as Public Servants and officers of Statutory Authorities.

Yours faithfully,

L. K. DOWNS, Under Secretary of Justice.

DEPARTMENT OF DECENTRALISATION AND DEVELOPMENT

127-131 Macquarie Street
Sydney, N.S.W. 2000.

Telephone 27 2741, 27 4836

Mail Address: Box 4169,

G.P.O. Sydney, N.S.W. 2001.

Telegraphic Address: DIDO, Sydney.

The Chairman,
Joint Committee of the Legislative Council
and Legislative Assembly Upon Pecuniary Interests,
Parliament House,
Sydney 2000.

12th April, 1977.

Dear Sir,

I refer to your letter dated 29th November, 1976, and apologize for the delay in my reply.

I wish to make the following points:

- (1) I agree wholeheartedly with the Governor-General's comments as set out on page 33 of the Report on the Joint Committee on Pecuniary Interests of Members of the Federal Parliament.
- (2) The British Civil Service's tradition which demands the highest standards of honesty and integrity together with undivided loyalty of public servants to their Ministers, has fortunately been inherited intact by the Australian public service at both Federal and State levels.
- (3) This regrettably is not always understood or appreciated by the general public. It is therefore important that steps are seen to be taken to establish certain controls and procedures to ensure there are no conflicts of interest.
- (4) When I joined the Public Service as Permanent Head of the Department of Decentralisation and Development in April, 1974, no specific mention was made of any code of conduct and, although this may be laid down in certain Acts, Regulations or conventions, it is of such importance that I believe it should be explicitly spelt out.
- (5) There is no justification for permanent heads having any less responsibility for disclosure than Ministers or Members of Parliament.
- (6) The situation is complicated on two main scores:
 - (a) It is not only permanent heads who are involved; and
 - (b) it is not only pecuniary interests which cause problems.

To put it bluntly, conflicts which may arise due to pecuniary interests are undoubtedly the easiest to control by a record of declaration; but a much more insidious influence which can undermine the integrity and reputation of public servants is the offering of considerations of cash or kind which can occur in certain fields and at relatively junior levels. The letting of contracts, housing allocation, planning decisions spring to mind as areas where officers of no great seniority must be exposed to temptation from time to time. Officers who are responsible for enforcing regulations must also have their personal honesty put to the test on occasions.

It is appreciated that this aspect is outside the strict ambit of pecuniary interests but it should be recognized as another facet of the same problem of moral conduct.

- (7) As there could be considerable resistance to registering pecuniary interests by officers other than permanent heads, it is suggested that more junior officers not be obliged to conform.
- (8) All declarations by permanent heads should be submitted to their Ministers and consolidated in a central register in the Premier's Department.
- (9) The general public should be made aware of this requirement by a press announcement by the Premier.

I trust that the above comments will assist you and your Committee in its deliberations.

Yours faithfully,

T. N. CAPPIE-WOOD, Director.

DEPARTMENT OF SERVICES, NEW SOUTH WALES

Under Secretary

121 Macquarie Street,
Sydney, N.S.W. 2001.
3rd May, 1977.

JOINT COMMITTEE OF THE
LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY
UPON PECUNIARY INTERESTS

1. This submission is made at the invitation of the Chairman of the Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Interests. The matters raised have been discussed by a small committee of senior officers within the Department of Services and myself. Our discussions and the comments now offered relate mainly to the need for disclosure of interests by public servants because that was thought to be the main purpose of the reference by the Committee to Permanent Heads. However, we offer some comment on the issue as it relates to interests of Members.

2. *Members of Parliament*

The issue is thought to extend beyond pecuniary interests alone as a Member could well be more influenced by other interests which conflict with his responsibility to a particular issue. Some general provision requiring disclosure of any particular conflicting interest to the House could well be desirable and failure to do so should be in breach of his office. Any Member who contravened this provision would run the risk of exposure either in the House or by the Press. This should be an effective deterrent and a safeguard against possible misfeasance. Such a provision would be more far-reaching than the present provision contained in Standing Order 204 of the Legislative Assembly which relates to pecuniary interests only and requires a Member not to vote in a division.

The establishment of a register of pecuniary interests is not favoured because we do not think it would be effective in a practical sense. Quite apart from the matter, mentioned above, of interests other than pecuniary ones being covered in a register there are many major problems in establishing and maintaining a register that would be practically effective—problems such as the extent of the interest to be disclosed, e.g., spouse's, children's interests, etc., dishonesty or non-disclosure, keeping the register up to date, confidentiality of the information, general privacy issues and possibly more.

It seems to us that a register could create a false sense that all was well, while it might be only a register of those pecuniary interests Members were prepared to disclose. In fact, it would not be the very thing it was supposed to do, that is, prevent malpractice arising from a conflict of interest.

It poses great questions of privacy and contrary to the more general view that it is those with the greatest pecuniary interests who are more likely to have conflict of interest, the register could well serve to identify the "poor" Member who those seeking to influence might consider would be more amenable to the temptation of pecuniary or other favours.

3. *Public Servants*

Generally conflicts of interest which can arise between a public servant and his responsibility of office tend to be more specific because of the nature of that responsibility than in the case of a Member of Parliament who may be involved in any matter affecting the Government and the community. However, the likelihood of conflict is not related to status in the public service but to duties and responsibilities of the position held. The problems inherent in establishing and maintaining a register are very similar in both the case of Members and public servants.

4. *Disclosure of Interests*

(a) Section 68 of the Public Service Act requires a public servant to obtain approval from the Public Service Board before undertaking any outside employment.

(b) As public officials, members of the public service have an ethical and conventional responsibility to declare any interest which may influence or conflict with the performance of their public duties. A better awareness in the public service and a more public manifestation of the existence of this principle would be achieved by its promulgation in an appropriate regulation. Any breach of this regulation should be dealt with under the provisions of the Act related to misconduct, etc.

5. *Nature and Extent of Disclosure*

(a) All public servants should be required to disclose any pecuniary interest or any other interest conflicting with or influencing consideration of any matter dealt with in an official capacity. An example of an interest other than a pecuniary interest might arise in the case of an officer of the Lands Department, who is also an honorary official of, say, a club or other organization interested in and competing with other organizations for the lease of Crown lands.

(b) The scope of a public servant's influence is usually limited to the work of his own Department or to any committee to which he may be appointed. This contrasts with the wider sphere of responsibility and influence of a Member of Parliament, who may be involved in any matter affecting the Government and the community. The position of a Member of Parliament also differs in that, irrespective of the fact that he may refrain from participation in debate on a matter in which it could be claimed he has a pecuniary interest, he is under some obligation to his constituents and to the party to which he adheres, to record a vote on the issue.

(c) A public servant, therefore, need not be required to disclose any interest beyond that which is directly related to his actual work situation. To require complete disclosure of his financial situation and all his pecuniary interests seems an unwarranted intrusion upon his privacy.

6. *When and How Disclosure should be made*

(a) The establishment of a Register, either in each Department or in a centralized location such as the Public Service Board, is neither warranted nor practicable. Occasions will arise when a private interest which should be disclosed will not become apparent until the officer becomes involved in or is about to become involved in a conflicting work situation.

(b) Pecuniary and other interests will change with resultant administrative problems in updating a register. Its effectiveness would be doubtful.

(c) Disclosure of the interest should therefore be made in the form of a report made at the time when a work situation arises which will conflict with that interest.

7. *What should be disclosed*

Disclosure should be made by a public servant of any interest in his own right or as trustee for his spouse or children. Problems arise in requiring the disclosure of a spouse's privately owned interests—for example, there may be a separation. De facto relationships would also need to be considered, with consequent difficulties of definition.

8. *To whom should disclosure be made*

(a) In the case of a Permanent Head or Head of a statutory authority, disclosure should be made to the Minister.

(b) In the case of all other public servants and employees of statutory bodies, the disclosure should be made to the Permanent Head or Head of the statutory body. Officers should not be required to route the report through intervening supervisors.

9. *To whom should disclosure information be available*

(a) Any disclosure made should be available to the Minister.

(b) Disclosures to the Permanent Head should be made available to the Public Service Board at the discretion of the Permanent Head or when required by the Public Service Board to do so.

(c) Disclosures should be made available to other persons only with the approval of the Minister in exceptional circumstances.

While these comments relate more specifically to Departments under the Public Service Act, the principles apply equally to statutory office holders and the employees of statutory bodies.

The foregoing submission has been kept as brief as possible in the interests of clarity. I should be pleased, however, to discuss it in greater detail if the Committee so desires.

J. B. HOLLIDAY, Under Secretary.

PREMIER'S DEPARTMENT

State Office Block,
Macquarie Street,
Sydney, N.S.W. 2000.

Dear Sir,

1. I refer to the invitation by the Chairman, Joint Committee of the Legislative Council and Legislative Assembly upon Pecuniary Interests, for Permanent Heads of Government Departments to make submissions relative to the Terms of Reference to the Committee's inquiry.

2. I have given careful consideration to all aspects of this matter, including the general issues involved and the breadth of meaning to be accorded the phrase "pecuniary interests". However, rather than encroach upon matters which seem more appropriate for consideration by the Joint Committee itself, I think it proper that I restrict my official comments to paragraph (c) of the terms of reference—

"what classes of persons (if any) other than Members of Parliament ought to be required to register;"

3. I am of the opinion that an essential facet of a satisfactory relationship between a Minister and the Permanent Head is for the Permanent Head to declare to his Minister details of his pecuniary interests. This should not only engender in the Minister a confidence in the Permanent Head and his Department, but also allows the Permanent Head to express a view and to proffer advice freely and openly. I see no reason why this action should not be formalized in a prescribed code of conduct.

4. So far as I am aware, there is little evidence that public servants generally conduct themselves improperly by reason of personal financial interests. I am confident that public servants are well aware of their duties in circumstances where a conflict of interests arises, although in my Department I am equally confident that such situations would arise extremely rarely, if at all.

5. In some circumstances there are specific provisions contained in statutes or statutory instruments which regulate disclosure of interests, for example, the Land Commission Act, 1976, section 27. However, there is no such provision which relates to public servants generally, and it may be that such a disclosure of interest should be made mandatory where a public servant is called upon to perform a duty where a conflict of interest could exist. I would therefore suggest that the Committee give consideration to the implementation of the following requirements—

- (i) the Permanent Head of any Ministerial Department or Statutory Authority should declare in writing to his Minister his pecuniary interests upon that Minister assuming office. That declaration should be renewed at each change in Ministerial responsibility, and when the declarant's pecuniary interests alter materially;
- (ii) a public servant should declare to his Permanent Head his pecuniary interests whenever the performance of his duties requires him to deal with a matter in which a conflict of interest arises, or could be seen to arise;
- (iii) the information revealed in such declarations should be maintained in strict confidence.

6. It would appear appropriate that these requirements in so far as they relate to Public Servants, should be included in the Regulations made under the Public Service Act, 1902.

Yours faithfully,
G. GLEESON, Under Secretary.

The Clerk to the Committee,
Joint Committee on Pecuniary Interests,
Parliament House, Sydney.

State Planning Authority (Amendment).

9A. (1) Where, through his association with the Authority, a person has knowledge of specific information relating to proposals in respect of the use of land and that information is not generally known but, if generally known, might reasonably be expected to affect materially the market price of that land, he is guilty of an offence against this Act if he—

Persons not to use information obtained through association with the Authority for the purpose of personal advantage.

- (a) deals, directly or indirectly, in that land for the purpose of gaining an advantage for himself by the use of that information; or
- (b) divulges that information for the purpose of enabling another person to gain an advantage by using that information to deal, directly or indirectly, in that land.

Penalty : Two thousand dollars.

(2) Where, through his association with the Authority, a person is in a position to influence any proposals made, or to be made, by the Authority in respect of the use and development of lands and does influence the proposals by securing the inclusion or alteration of any matter in, or the exclusion or omission of any matter from, the proposals, he is guilty of an offence against this Act if he—

- (a) does so for the purpose of gaining an advantage for himself; or
- (b) does so for the purpose of enabling another person to gain an advantage.

Penalty: Two thousand dollars.

(3) Where—

- (a) an offence under subsection one of this section is committed and an advantage referred to in that subsection is gained from any dealing in land to which the offence relates; or
- (b) an offence under subsection two of this section is committed and an advantage referred to in that subsection is gained from any dealing in land which would not have been gained if the proposals concerned had not been influenced,

any person who gained that advantage is, whether or not any person has been prosecuted for or convicted of an offence under subsection one or subsection two, as the case may be, of this section, liable to another person for the amount of any loss incurred by that other person by reason of the gaining of that advantage.

(4) Where a loss referred to in subsection three of this section is incurred by reason of an advantage gained from a dealing in land, the amount of the loss is the difference between the price at which the dealing was effected and—

- (a) in the case of any dealing to which subsection one of this section relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been

State Planning Authority (Amendment).

the market price of the land at the time of the dealing if the specific information used to gain that advantage had been generally known at that time; or

- (b) in any case to which subsection two of this section relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the proposals concerned had not been influenced.

(5) An action to recover a loss or profit referred to in subsection three of this section may not be brought after the expiration of five years next succeeding the dealing in land to which the transaction relates.

(6) For the purposes of this section, a person is associated with the Authority—

- (a) if he is a member or servant of the Authority or a person appointed to a committee or a sub-committee of the Authority established under section fifteen of this Act, or to a regional planning committee;
- (b) if he is an officer or servant of a council;
- (c) if he acts or has acted as banker, solicitor, auditor or professional advisor or in any other capacity for the Authority or a council;
- (d) where the person, so associated by virtue of paragraph (c) of this subsection, is a corporation, if he is a director, manager or secretary of that corporation.

**Disclosure
of interest.**

9B. (1) If a member of the Authority or a member of a committee or a sub-committee established under section fifteen of this Act, or a member of a regional planning committee appointed under section twenty-three of this Act, has an interest directly or indirectly in land, proposals in respect of the development and use of which are to be considered by the Authority, the committee, sub-committee or regional planning committee, as the case may be, and is present at a meeting of the Authority, the committee, sub-committee or regional planning committee, as the case may be, at which such proposals are the subject of consideration, he shall, at the meeting, as soon as practicable after the commencement thereof, disclose his interest and shall not take part in the consideration or discussion of or vote on any question with respect to such proposals.

(2) For the purposes of this section a person shall (subject as hereafter in this subsection provided) be treated as having indirectly an interest in land if—

- (a) he, or any nominee of his, is a member of a company or other body which has an interest in the land;

State Planning Authority (Amendment).

- (b) he is a partner, or is in the employment, of a person who has an interest in the land :

Provided that—

- (i) this subsection shall not apply to membership of or employment under any council or statutory body within the meaning of the Local Government Act, 1919;
 - (ii) a member of a company or other body shall not, by reason of his membership, be treated as being so interested, if he has no beneficial interest in any shares of that company or other body;
 - (iii) a member of a company having not less than twenty-five members shall not be treated as having an interest in land by reason only that that company has an interest in the land.
- (3) In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed, for the purpose of this section, to be also an interest of that other spouse.

(4) A general notice given in writing to the secretary of the Authority by any member referred to in subsection one of this section to the effect that he or his spouse is a member, or in the employment, of a specified company or other body, or that he or his spouse is a partner or in the employment, of a specific person, shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any land in which that company or other body has an interest which may be the subject of consideration after the date of the notice.

(5) The secretary of the Authority shall record in a book to be kept for the purpose particulars of any disclosure made under subsection one of this section and of any notice given under subsection four thereof and the book shall be open at all reasonable hours to the inspection of any person on payment of such fees as may be determined by the Authority, from time to time.

(6) Subject to subsection seven of this section, if any person fails to comply with the provisions of subsection one of this section he shall be guilty of an offence unless he proves that he did not know that proposals in respect of the development and use of the land in which he had an interest was the subject of consideration at the meeting.

Penalty : Four hundred dollars.

State Planning Authority (Amendment).

(7) The Minister may, subject to such conditions as he thinks fit to impose, remove any disability imposed by subsection one of this section in any case in which the number of members referred to in subsection one of this section so disabled at any one time would be so great a proportion of the whole of the members of the Authority, or a committee, sub-committee or regional planning committee, as the case may be, as to impede the transaction of business, or in any other case in which it appears to the Minister that it is in the public interest that the disability should be removed.

(8) The Authority, or a committee, sub-committee or regional planning committee, may by resolution, provide for the exclusion of any member thereof from a meeting of the Authority, committee, sub-committee or regional planning committee, as the case may be, while proposals, in respect of any lands in which that person has such an interest as aforesaid, are under consideration.

(9) In this section "shares" includes stock.

(10) The provisions of this section apply to a member of a council in relation to an interest in land held by him, directly or indirectly, proposals in respect of the development and use of which are to be considered by the council at a meeting of the council, as they apply to a member of the Authority having an interest, directly or indirectly, in land, proposals in respect of the development and use of which are to be considered by the Authority at a meeting of the Authority.

9c. No person shall, unless the Authority otherwise determines, disclose any information with regard to the business discussed at any meeting of the Authority, of a committee, including a committee appointed under Part IV of this Act, or of sub-committee of the Authority.

Penalty : Four hundred dollars.

Act No. 42, 1973.

Mining.

21. Neither the Minister nor a person employed in the Department shall be the registered holder of a claim or an authority.

"authority" means an exploration licence, a prospecting licence, a mining lease or a mining purposes lease;

Act No. 81, 1973.

Coal Mining.

18. Neither the Minister nor a person employed in the Department (other than the Under Secretary on behalf of the Department) shall be the registered holder of an authorisation or a concession.

"authority" means an exploration licence, a prospecting licence, a mining lease or a mining purposes lease, granted under the Mining Act, 1973;

Proceedings
at meetings
confidential.

Minister,
etc., not
to be the
registered
holder of
a claim or
an authority.

Minister,
etc., not
to be
registered
holder of a
concession,
etc.

18 December, 1973

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Treasury Board, is pleased hereby to approve the issue of the annexed guidelines to be observed by public servants concerning conflict of interest situations.

Certified to be a true copy
R. G. Robertson
Clerk of the Privy Council

GUIDELINES TO BE OBSERVED BY PUBLIC SERVANTS
CONCERNING CONFLICT OF INTEREST SITUATIONS
SHORT TITLE

1. These guidelines may be cited as the Public Servants Conflict of Interest Guidelines.

GUIDELINES

2. It is by no means sufficient for a person in a position of responsibility in the public service to act within the law. There is an obligation not simply to obey the law but to act in a manner so scrupulous that it will bear the closest public scrutiny. In order that honesty and impartiality may be beyond doubt, public servants should not place themselves in a position where they are under obligation to any person who might benefit from special consideration or favour on their part or seek in any way to gain special treatment from them. Equally, a public servant should not have a pecuniary interest that could conflict in any manner with the discharge of his official duties.

3. No conflict should exist or appear to exist between the private interests of public servants and their official duties. Upon appointment to office, public servants are expected to arrange their private affairs in a manner that will prevent conflicts of interest from arising.

4. Public servants should exercise care in the management of their private affairs so as not to benefit, or appear to benefit, from the use of information acquired during the course of their official duties, which information is not generally available to the public.

5. Public servants should not place themselves in a position where they could derive any direct or indirect benefit or interest from any government contracts over which they can influence decisions.

6. All public servants are expected to disclose to their superiors, in a manner to be notified, all business, commercial or financial interest where such interest might conceivably be construed as being in actual or potential conflict with their official duties.

7. Public servants should hold no outside office or employment that could place on them demands inconsistent with their official duties or call into question their capacity to perform those duties in an objective manner.

8. Public servants should not accord, in the performance of their official duties, preferential treatment to relatives or friends or to organizations in which they or their relatives or friends have an interest, financial or otherwise.

Act No. 41, 1919.

Local Government.

Disability of members of councils for voting on account of interest in contracts, etc. cf. 23 & 24 Geo. 5 c. 51, s. 76; 11 & 12 Geo. 6 c. 26, s. 131 (1)-(3); 1 & 2 Eliz. 2 c. 26, s. 15.
New section added, *ibid.*, s. 2 (b).

30A. (1) If a member of a council has any pecuniary interest, direct or indirect, in any contract or proposed contract with the Council or in any other matter in which the council is concerned, and is present at a meeting of the council at which the contract, proposed contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose his interest, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter :

Provided that this section shall not apply to an interest in a contract, proposed contract or other matter which a member may have as a ratepayer or elector of the area, or as a consumer of gas, electricity or water supplied to him by the council in like manner and subject to the like conditions as are applicable in the case of persons who are not members of the council, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

(2) For the purposes of this section a person shall (subject as hereafter in this subsection provided) be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if—

- (a) he or any nominee of his is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct or indirect pecuniary interest in the other matter under consideration; or
- (b) he is a partner, or is in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct or indirect pecuniary interest in the other matter under consideration :

Provided that—

- (i) this subsection shall not apply to membership of, or employment under, any council or statutory body;
- (ii) a member of a company or other body shall not, by reason only of his membership, be treated as being so interested if he has no beneficial interest in any shares of that company or other body.

Amended, Act No. 33, 1965, s. 4 (2).-

(3) Where a member of a council has indirectly a pecuniary interest in a contract, proposed contract or other matter and would not fall to be treated as having such an interest but for the fact that he has a beneficial interest in shares of a company or other body, then, if the total nominal value of those shares does not exceed one thousand dollars or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, so much of subsection (1) as prohibits him from taking part in the consideration or discussion of, and from voting on any question with respect to, the contract, proposed contract or other matter shall not apply to him, without prejudice, however, to the duty of disclosure imposed by the said subsection (1) :

Act No. 41, 1919.

Local Government.

Provided that where the share capital of the company or other body is of more than one class, this subsection shall not apply if the total nominal value of all the shares of any one class in which he has a beneficial interest exceeds one hundredth part of the total issued share capital of that class of the company or other body.

(4) In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this section to be also an interest of that other spouse.

(5) A general notice given in writing to the clerk of the council by a member thereof to the effect that he or his spouse is a member or in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specific person, shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body or to that person which may be the subject of consideration after the date of the notice.

(6) The clerk of the council shall record in a book to be kept for the purpose particulars of any disclosure made under subsection (1) of this section, and of any notice given under subsection (5) thereof, and the book shall be open at all reasonable hours to the inspection of any elector.

(7) (a) If any person fails to comply with the provisions of subsection (1), he shall for each offence be liable to a penalty not exceeding two hundred dollars unless he proves that he did not know that a contract, proposed contract, or other matter in which he had a pecuniary interest was the subject of consideration at the meeting.

Amended,
Act No. 33,
1965, s. 4
(2).

(b) Where a person is convicted of an offence against this section he shall be disqualified for a civic office for a period of seven years unless the court by which he is convicted sees fit in the circumstances of the case to reduce the period of disqualification to a shorter period or to declare that such person shall not by virtue of his conviction be disqualified for a civic office.

(8) The Minister may, subject to such conditions as he may think fit to impose, remove any disability imposed by subsection (1) in any case in which the number of members of the council so disabled at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the Minister that it is in the interests of the electors of the area that the disability should be removed.

(9) The council may by resolution provide for the exclusion of a member of the council from a meeting of the council whilst any contract, proposed contract or other matter in which he has such an interest as aforesaid is under consideration.

(10) In this section, the expression "shares" includes stock and the expression "share capital" shall be construed accordingly.

ORDINANCE No. 1.

under the
LOCAL GOVERNMENT ACT, 1919.

Reprinted under the Acts Reprinting Act, 1972.

[Certified 4th February, 1976.]

NEW SOUTH WALES.



[Published in Gazette of 25th June, 1920, and amended in Gazettes of 15th October, 1920, 11th August, 1922, 31st October, 1924, 2nd September, 1927, 9th August, 1929, 1st August, 1930, 25th November, 1932, 18th September, 1936, 24th February, 1939, 27th August and 29th October, 1943, 26th October, 1945, 29th March, 1946, 31st October, 1947, 31st May, 1957, 28th April, 1961, 28th September, 1962, 11th February, 1966, 6th and 20th December, 1968, 24th April, 1970, 23rd February, 1973, and 30th May, 1975.]

ORDINANCE No. 1.**COUNCIL MEETINGS AND GENERAL BUSINESS.**

Amended,
28/9/62.

(Vide s. 47-49, 87, 530A, 575-579, Local Government Act, 1919.)

INTRODUCTORY.*Application of Ordinance.*

Subclause
amended,
28/9/62 and
30/5/75.

1. (a) This Ordinance shall apply to all areas.

(b) In this Ordinance (unless inconsistent with the context or subject matter)—

“Chairman” includes Mayor or President or his deputy.

“Member” means member of a Council—Alderman or Councillor.

“Present” (at a meeting or discussion) means being within the Council Chamber during the meeting or discussion, as the case may be.

Substituted
definition,
11/8/22 and
2/9/27.

“Relation” means a member’s wife or husband, and any person within the third degree of consanguinity in the whole or half blood with the member, or with the member’s wife or husband, and includes the cousin of a member and of a member’s wife or husband.*

“The Act” means the Local Government Act, 1919.

MEETINGS.*Ordinary Meetings.*

2. (a) The Council shall hold ordinary meetings during each year on such regular days and at such regular hour as the Council may appoint.

Special Meetings.

(b) The Mayor or President may call a special meeting; and, if he refuse or delay to call a special meeting after receiving a requisition signed by at least three members in a municipality or two members in a shire, such members may in writing request the Clerk to call such meeting, and shall at the same time state the object thereof. The Clerk shall thereupon call such meeting.

Substituted
footnote,
11/8/22 and
2/9/27.

* The following persons are included in the above definition:—

- (a) A member’s wife or husband;
- (b) the father or mother of a member, or of a member’s wife or husband;
- (c) the grandfather or grandmother of a member, or of a member’s wife or husband;
- (d) the son, daughter, grandson, granddaughter, brother, sister, half-brother, half-sister nephew, niece, uncle, or aunt of a member’s wife or husband;
- (e) the cousin of a member or of a member’s wife or husband.

A woman is eligible for office as Alderman or Councillor.

Notice of meetings.

3. The Council may by resolution fix the time and manner of giving notice of ordinary and special meetings.

Want of service of notice.

4. Failure to receive a notice on the part of any member shall not affect the validity of any ordinary or adjourned or special meeting of the Council.

When a quorum is not present.

5. (a) If at the expiration of half an hour after the time at which any meeting of the Council is appointed to be held a quorum shall not be present, the meeting shall not be held, but shall stand adjourned until such time later in the day or until such day and time as shall be fixed by the Mayor or President, or, in his absence, by the majority of the members present, or, failing that, by the Clerk.

(b) At all meetings of the Council when there is not a quorum of the members present, such circumstances, together with the names of the members then present, shall be recorded in the Minute-book.

(c) If at any time during the sitting of the Council the attention of the Chairman be called by a member or by the Clerk to the fact that there is not a quorum present, the Chairman shall thereupon suspend the proceedings for a period of three minutes, and if a quorum be not present then, the names of those who are present shall be recorded upon the minutes, and the Chairman shall adjourn the sitting to some hour later in the day or to some future day, and the meeting shall stand adjourned accordingly.

Call of the Council.

6. (a) The Mayor or President, or any three or more members, may make a call of the whole Council to attend any ordinary or special meeting of the Council.

(b) Any member—

(i) who does not attend the meeting in compliance with such call; or

(ii) who, being present at the meeting, leaves the same without the permission of the chairman before all the business has been concluded,

Substituted
Subclause,
29/3/46.

Subclause
amended,
11/2/66.

shall be liable to a penalty not exceeding one hundred dollars:

Provided that it shall be a sufficient defence in any proceedings for a breach of paragraph (i) of this subclause if the person charged proves that his failure to attend the meeting was occasioned by illness or other sufficient cause and an excuse on these grounds was tendered to and accepted by resolution of the council passed at such meeting or, in any case where a quorum of the council is not present at the meeting owing to the failure of any members to attend in compliance with such call, if his excuse on the aforesaid grounds was tendered to and accepted by the mayor or president.

(c) Notice of such call shall be sent to each member in the manner and time fixed by the Council for the giving of notices for special meetings.

Minister to convene meetings in certain cases.

7. The Minister shall, as soon as possible after the reconstitution of any area, convene the first meeting of the Council of such area, and shall nominate the business to be transacted at such meeting, and shall give such notice as he may determine to the members. If there be no quorum at any such meeting, the Minister may convene a meeting on any later day, and may in like manner convene meetings until a quorum is present at any such meeting. At any such meeting the business so nominated may be transacted.

Presence of members.

8. A member shall not be deemed to be present at any meeting of the Council unless he is within the Council Chamber.

CHAIRMAN.

Election of member to preside.

9. If the Mayor or President be absent from any meeting, and if there be no Deputy Mayor or Deputy President, or if he also be absent, the first business of every such meeting shall be to elect a Deputy Mayor or Deputy President to be Chairman, who shall, until the Mayor or President or his deputy arrive, preside over such meeting, and for the purpose of so presiding shall have the powers of the Mayor or President.

Precedence of Chairman.

10. When the Chairman rises in his place during the progress of a debate, any member then speaking or offering to speak shall immediately resume his seat, and every member present shall preserve strict silence, so that the Chairman may be heard without interruption.

Chairman's duty re motions.

11. It shall be the duty of the Chairman to receive and to put to the meeting any motion which is brought before the meeting in accordance with the Act or Ordinances (and has not been ruled out of order in like accordance).

BUSINESS.

Order of business.

12. At all ordinary meetings of the Council the general order of business shall (except as hereinafter provided) be such as the Council may have fixed by resolution passed at any previous meeting.

Confirmation of minutes.

13. The correctness of the minutes of every preceding meeting, ordinary or special, not previously confirmed shall be taken into consideration as the first business (after the election of a Chairman, where necessary) at every ordinary meeting of the Council, in order that such minutes may be confirmed, and a motion or discussion shall not be in order with respect to such minutes except with regard to their accuracy as a record of the proceedings. Minutes may be confirmed at any special meeting.

Business-paper.

14. The business-paper shall state all matters to be dealt with arising out of the proceedings of former meetings of the Council, any business which the Mayor or President may think fit to bring under consideration without notice, and any business of which due notice has been given.

Notice of business to be given.

15. Except as by the Ordinances is otherwise provided, any business other than business arising out of matters already before the Council shall not be taken into consideration at any meeting of the Council unless notice thereof in writing, signed by a member, has been given within such time before the meeting as the Council may by resolution fix, and business shall not be brought before the Council unless notice of such business has been posted or given to the members within the time prescribed by the Council.

Business without notice.

16. Notwithstanding any provision to the contrary, business of which due notice has not been given may be brought forward at any meeting of the Council if a motion which may be moved without notice to grant permission to bring it forward be carried, and—

- (a) if all the members of the Council (disregarding any extraordinary vacancies) be present; or
- (b) if the business proposed to be brought forward be ruled by the Chairman to be of great urgency.

Business of special meeting.

17. The business-paper for each special meeting shall contain only such matters as have been stated in the notice thereof.

Official minutes.

18. (a) The Mayor or President shall have the right of directing attention at any meeting to any matter or subject within the jurisdiction or official cognisance of the Council by a minute signed by himself, and such minute shall, when introduced, take precedence of all business before or to come before the Council, and the adoption thereof may be put by him from the chair as a motion, without being seconded.

(b) The recommendations made in the minutes of Mayor or President, or in reports of the Council's servants, shall, so far as adopted by the Council, be resolutions of the Council.

Unopposed notices of motion.

19. The Chairman may call over the Notices of Motion on the business-paper, in the order in which they appear thereon; and if objection be not taken to a motion being taken as a formal motion may, without discussion, put the motion to the vote.

Correspondence.

20. (a) Correspondence with the Council shall be addressed to the Mayor or President or Clerk.

(b) Letters shall not be presented or read by members at meetings of the Council.

(c) The Council may decide whether or not correspondence shall be read—provided that the report of the Auditor or of an Inspector of Local Government Accounts, whether read or not, shall be laid on the table and be made available at any reasonable time for the information of members.

(d) Outward correspondence shall be signed by the Mayor or President or Clerk: Provided that the Clerk may authorise other servants of the Council to sign correspondence in his name. New subclause. 31/5/57.

MOTIONS.*Notice of motion; absence of mover.*

21. In the absence of a member who has placed a notice of motion on the business-paper for any meeting, any other member may at such meeting move the same, or such motion may be deferred till the next ordinary meeting of the Council.

Motions to be seconded.

22. Subject to clause 18 (a) above a motion or amendment shall not be debated unless or until it has been seconded.

How subsequent Amendments may be moved.

23. If an amendment has been negatived, then a further amendment may be moved to the question to which such first-mentioned amendment was moved, and so on, provided that not more than one question and one proposed amendment thereof shall be before the Council at any one time.

Motion of Dissent.

24. (a) A member may, without notice, move to dissent from the ruling of the Chairman on a point of order; and thereupon the business before the meeting shall be suspended pending decision on the question of dissent.

(b) Where a motion of dissent has been carried, the suspended business shall proceed as though the ruling dissented from had not been given (and if upon such ruling any motion or business was discharged as out of order, it shall be restored to the business-paper and proceeded with in due course).

Rescinding or altering Resolutions.

25. (a) A resolution which has been passed by the Council shall not be altered or rescinded except by a motion to that effect of which notice has been duly given; Provided that where notice of motion to rescind a resolution is given at the meeting at which the resolution is carried such resolution shall not be carried into effect until such motion of rescission has been dealt with.

New proviso,
31/10/24.

(b) Where a motion has been negated by the Council, a motion having the same effect shall not be considered except notice thereof be duly given.

Subclause
amended,
31/10/47.

(c) A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negated by the Council, shall not be in order unless it is signed by three members, or in the case of a County Council where the number of members composing the County Council is less than six, by two members: Provided that this shall not apply where three months have elapsed since the resolution was passed, or the motion negated, as the case may be.

New
subclause,
18/9/36.
Subclause
omitted,
31/10/47.

(cl) * * * * *

(d) Where a motion to alter or rescind a resolution has been negated, or where a motion which has the same effect as a previously negated motion, is negated, no similar motion shall be brought forward within three months thereafter; and the effect of this provision shall not be evaded by substituting any motion differently worded, but in principle the same.

(e) Provided that any such motion as aforesaid may be moved upon the report of a Committee of the Council, and such report shall be specially mentioned on the Minutes.

(f) The provisions of this clause respecting negated motions shall not apply to motions of adjournment.

Motions of adjournment of Council.

26. Discussion shall not be permitted upon any motion for adjournment of the Council. If upon the question being put on any such motion the same is negated, the subject then under consideration, or next on the business-paper, shall be discussed; and it shall not be competent for any member again to move a motion for adjournment of the Council until half an hour has elapsed from the time of moving the one that has been negated.

QUESTIONS.

27. (a) Sufficient notice of every question shall be given to the member expected to reply thereto to permit of consideration of such reply and, if necessary, reference to other persons or to documents.

(b) Every such question shall be put categorically, and without any argument.

(c) Discussion shall not be permitted respecting any reply or refusal to reply to any question.

DISCUSSION.*Mode of addressing Council, &c.*

28. A member shall on all occasions when in the Council, address and speak of other members by their official designations, as Mayor, President, Chairman, Alderman, or Councillor, as the case may be; and, with the exception of the Chairman, shall (except when prevented by bodily infirmity) rise in his place and stand while speaking.

Limitation as to number of speeches.

29. (a) The mover of an original motion shall have the right of general reply to all observations which have been made in reference to such motion and to any amendment moved thereon, as well as the right to speak upon every such amendment.

(b) Every member, other than the mover of an original motion, shall have the right to speak once upon such motion and once upon every amendment moved thereon.

(c) A member shall not, without the consent of the Council, speak more than once upon any one question, or for longer than five minutes at any one time, unless when misrepresented or misunderstood, in which case he may be permitted to explain, without adding any further observations than may be necessary for the purpose of such explanation. **Subclause amended, 6/12/68.**

Imputations.

30. A member shall not make personal reflections on or impute improper motives to any other member.

All Members to vote.

31. (a) Upon a vote being taken, all members who are present within the Council Chamber and are entitled to vote shall, and the Chairman if entitled to vote may, upon the question being put, record their respective votes in the affirmative or negative, as each shall deem desirable; but if any such member, other than the Chairman, neglects or refuses to vote, his vote shall be counted for the negative. **Subclause amended, 29/10/43. Substituted subclause, 28/4/61.**

(b) Any dissentient may request that his name be recorded in the minutes as opposed to the motion, and it shall be so recorded.

(c) The decision of the Chairman as to the result of a vote shall be final and conclusive unless such decision be immediately challenged and two members rise and demand a division.

(d) If a division be duly demanded it shall be taken: the Chairman if entitled to vote and all members present who are entitled to vote shall vote; and the names of the members voting aye and no shall respectively be recorded in the minutes. **Subclause amended, 29/10/43 and 28/4/61.**

Members not to be present, &c.

Substituted heading, 29/10/43.

32. (a) A member shall not (except as hereinafter specifically provided) at meetings of the Council or any Committee of the Council vote in, or take part in the discussion of, cases in which any relation of his, other than his spouse,* has, by himself or by his partner, any pecuniary interest. **Substituted subclause, 29/10/43 and 28/4/61.**

(b) The Council may by resolution provide for the exclusion of a member of the Council from a meeting of the Council whilst any case, in which any relation of his, other than his spouse,* has such an interest as aforesaid, is under consideration. **Substituted subclause, 29/10/43 and 28/4/61.**

(c) **Subclause amended, 29/10/43. Subclause and heading omitted, 28/4/61.**

Penalty.

(d) Any member knowingly offending against the provisions of this clause shall be liable to a penalty of not less than ten and not exceeding one hundred dollars. **Subclause amended, 11/2/66.**

Cases in which members may be present, &c.

Substituted heading, 29/10/43.

33. Notwithstanding anything contained in this Ordinance a member shall not be debarred from voting or being present or taking part in the discussion— **Clause amended, 29/10/43.**

(i) at any election to fill the office of Mayor or President, at which any relation of his, other than his spouse, is a candidate, by reason only of the fact that an allowance for the ensuing year has been decided upon in respect of such office; or **Paragraph amended, 28/4/61.**

* For the case of a member or his spouse with direct or indirect pecuniary interest, see section 30A of the Act. **Footnote inserted, 28/4/61.**

Paragraph amended, 27/8/43 and 28/4/61.

- (ii) at any meeting of the Council or of any committee thereof in favour of or against the making of a contract or agreement between the Council and any incorporated company, association, or partnership where such company, association, or partnership consists of more than twenty-five members, because any relation of his, other than his spouse, is a shareholder, other than a director, therein; or

Paragraph amended, 28/4/61.

- (iii) at any meeting of the Council or of any committee thereof in favour of or against the making of any contract or agreement with any relation of his, other than his spouse, for or in relation to—

Subparagraph amended, 28/4/61.

- (a) the supply to his relation, other than his spouse, by the Council of any service product or commodity in like manner and subject to the like conditions applicable in the case of persons who are not members;

Sub-paragraph amended, 28/4/61.

- (b) the performance by the Council at the expense of his relation, other than his spouse, of any work or service in connection with roads or sanitation;

- (c) any permission granted by the Council to occupy footways during the erection of buildings;

- (d) security for damage to footways or roadways;

Sub-paragraph amended, 29/10/43.

- (e) any service or act to be rendered or done by the Council under any statute with the administration of which the Council is charged, or under any Ordinances, By-laws, or Regulations made thereunder; or

New paragraph, 29/10/43.

- (iv) at any meeting of the Council or of any committee thereof for or in relation to:—

- (a) the making or levying of a rate;

Sub-paragraph amended, 28/4/61.

- (b) the fixing or levying of a charge or fee in respect of the supply to his relation, other than his spouse, by the Council of any service product or commodity in like manner and subject to the like conditions applicable in the case of persons who are not members; or

New paragraph, 29/10/43.

- (v) at any meeting of the Council or of any committee thereof for or in relation to the passing for payment of any regular account for wages or salary of any servant who may be a relation of the member.

Provided that in any of the cases mentioned in paragraph (iii) of this clause, the contract or agreement proposed to be made is similar in terms and conditions to such contracts or agreements as have been made or as the Council proposes to make in respect of similar matters with other residents of the area.

ORDER AND DISORDER.

Question of order.

34. (a) The Chairman, without the intervention of any other member, may call any member to order whenever, in the opinion of the Chairman, the necessity arises for so doing.

Subclause amended, 11/8/22.

(b) Any member who considers that any other member is guilty of any act of disorder as hereinafter defined, or is out of order, may call the attention of the Chairman thereto.

(c) After the question of order has been stated to the Chairman by the member raising the question of order, the Chairman shall give his ruling thereon, but may first invite the opinion of the Council.

(d) The Chairman's ruling shall be obeyed, except where a motion of dissent therefrom is carried.

Subclause amended, 11/2/66.

(e) Any member who, having been called to order by the Chairman, shall commit wilfully a further breach of order, shall be liable to a penalty not exceeding ten dollars.

Motions out of order to be rejected.

35. Whenever it has been decided that any motion, amendment, or other matter is out of order, the same shall be rejected.

Acts of disorder.

36. (a) Any member who at any meeting of the Council or of any Committee commits a breach of the Act or any Ordinance, or who moves or attempts to move any motion or amendment embodying any matter beyond the legal jurisdiction of the Council or Committee, or who in any other way raises or attempts to raise any question, or addresses or attempts to address the Council or Committee upon any subject which the Council or Committee has no legal right to entertain or to discuss, or who uses any language which, according to the common usage of gentlemen, would be held disorderly, or makes use of any expression inconsistent with good order and decorum, or who says or does anything calculated to bring the Council or Committee into contempt, shall be guilty of an act of disorder.

(b) In any such case the Chairman may call upon the offender to withdraw and apologise without reservation. If the offender do not so withdraw and apologise, he shall (apart from any other provision made by or under the Act) be liable to a penalty not exceeding forty dollars. Subclause amended, 31/10/24 and 11/2/66.

Disorder.

37. If disorder arise at any meeting, the Chairman may adjourn the meeting for a period of fifteen minutes and quit the chair. The Council, on reassembling, shall, on question put from the chair, decide without debate whether the business shall be proceeded with or not.

MINUTE BOOK

Minutes of meetings.

38. (a) At every ordinary and special meeting of the Council the Clerk shall take minutes of the proceedings and shall record them in the minute book.

(b) The minutes of each meeting shall be signed after confirmation by the Chairman of the meeting at which they are confirmed.

(c) On each sheet of a minute book kept according to a loose-leaf system there shall be placed:— New subclause, 24/2/39.

- (i) a heading setting out the nature of the meeting and the date of the meeting to which the minutes refer;
- (ii) immediately after the conclusion of the last minute on the sheet, a certificate signed by the Chairman of the meeting at which the minutes are confirmed and by the Clerk. The certificate shall be in or to the following effect:—

This is page number of the minutes of the meeting of the Council held on

(d) The sheets of such minute book shall be kept in chronological order. New subclause, 24/2/39.

(e) Any elector of the area or the duly accredited representative of any newspaper shall, at any reasonable time in office hours, be allowed by the Mayor or President or Clerk to peruse the minutes of any meeting, in the presence of the Mayor or President or Clerk or of some responsible person deputed by him. Subclause re-lettered, 24/2/39.

COMMITTEES.

Committee of the whole.

39. (a) The Council may, for the consideration of any matter, resolve itself into a Committee of the Whole. All the provisions of this Ordinance relating to meetings of the Council, so far as they are applicable, shall be extended to and govern all proceedings in Committee of the Whole, except the provision limiting the number and duration of speeches.

(b) All reports of proceedings in Committee of the Whole shall be made to the Council by the Clerk.

(c) A report of such proceedings shall be made in every case, except when it is found, on counting the number of members during the sitting of any such Committee, that there is not a quorum present, and in the latter case the proceedings in Committee shall be considered to have lapsed: Provided that, in making any such report as aforesaid, it shall not be necessary to report any such proceedings in full, and it shall be sufficient to state the general effect of the proceedings.

(d) Such report shall be recorded in the Minute-book; but shall not be considered to be adopted by the Council until a motion has been made and passed for such adoption.

Standing and special committees.

40. (a) The Council shall annually appoint or elect two Standing Committees of the Council, viz.:—The Finance Committee and the Works Committee; and may appoint or elect such other Standing or Special Committees as it shall consider necessary. Standing Committees shall be appointed or elected annually as soon as practicable after the election of the Mayor or President.

Number of members.

(b) Each such Committee shall consist of such number of members as the Council shall decide.

Quorum.

Substituted
subclause,
9/8/29.

(c) The Council shall decide what number of members of each such Committee shall be competent to transact the business of that Committee: Provided that where the Council does not so fix a number, the number shall be a majority of the members.

Finance Committee.

Substituted
clause,
15/10/20.

41. The Finance Committee shall watch generally over the collection and expenditure of the Council's revenue and shall report from time to time upon the different funds of the Council and inform the Council whether the probable income of the fund will be sufficient to meet the probable expenditure during the year from that fund.

Powers and duties of committees.

42. The Council shall define the powers and duties of each Standing or Special Committee, subject to the specific provisions of this Ordinance as to the powers and duties of the Finance Committee.

Procedure in committee.

43. Each Committee, other than the Committee of the Whole, may regulate its own procedure.

Chairman of committees.

44. The Mayor or President, by virtue of his office, shall be a member and the Chairman of every Committee of the Council; and may, when present, preside thereat.

Absence from committee meetings.

45. Except in a case where the whole of the members of the Council are members of the Committee, if any Member of a Standing Committee, other than the Mayor or President, shall absent himself from three consecutive meetings thereof, without having obtained leave of absence from the Council or the Committee, his seat shall become vacant.

Reports of committees.

46. (a) If in a report of a Committee distinct recommendations are made, the decision of the Council may be taken separately on each recommendation.

(b) Any report of a Committee, or any portion thereof, may be amended by the Council in any manner it may think fit, or may be referred back to the Committee for further consideration.

(c) The recommendations of any Committee shall, so far as adopted by the Council, be resolutions of the Council.

Communications by committee.

47. A Committee shall not communicate with any outside person or authority except through the Clerk, as the servant of the Council duly authorised for the purpose.

Committee business confidential.

48.(a) All discussions of the Council in Committee, or of any Committee of the Council, shall, save as regards members, be strictly confidential, except in cases where the public have been present by permission of the Council; and no person shall, unless the Committee transacting the business or the Council on a reference by such Committee otherwise determines, disclose information with regard to such business otherwise than to the Council. **Substituted subclause, 25/11/32.**

(b) This provision shall not apply to the report of the Committee when presented to the Council nor to the disclosure of such information by a member or servant of the Council in the course of his duty under the provisions of any statute or in accordance with law. **Substituted subclause, 25/11/32.**

(c) Any person contravening this clause shall be liable to a penalty not exceeding two hundred dollars. **Subclause amended, 11/2/66 and 23/2/72.**

Powers of committees.

49. A Committee of the Council shall not have power to incur expenditure or to bind the Council. Recommendations or reports of Committees shall not have effect unless and until adopted by the Council. Provided that the Council may delegate to Committees functions of inspection and supervision, and any orders which a Committee may find it necessary to give in pursuance of any such delegation shall be given to or through the Clerk.

Disorder in committee.

49A. (a) The provisions of the Act and Ordinances relating to the maintenance of order in Council meetings shall, subject to the modifications hereinafter in this clause contained, apply to meetings of Committees of the Council. **New clause, 11/8/22.**

(b) The chairman of any Committee meeting may, at any meeting of the Committee, remove or cause the removal of any member of the Committee who, after warning, is guilty of disorder; and at the same or any subsequent meeting exclude or remove such member unless he apologise without reservation.

(c) If any member of a Committee, after warning, be guilty of disorder, he shall be liable to a penalty not exceeding four dollars. **Subclause amended, 11/2/66.**

PRESS AND PUBLIC.*The press and the public.*

50. (a) Every meeting of the Council, except in Committee, shall be open to the press for whom reasonable accommodation and facilities to report the proceedings shall be provided by the Council. A copy of the business paper shall be furnished to the press at or before the opening of the meeting; and during or at the close of the meeting the press shall be allowed reasonable access to the correspondence and reports laid on the table or

submitted to the meeting—provided that such access may be withheld in any case where the Council by resolution so decides on the ground that publication may prejudice the Council's interests in threatened or pending litigation.

(b) Part of the Council Chamber shall be made available for the accommodation of the public, and such number of the public as can reasonably be accommodated shall be permitted to attend at every meeting, except in Committee.

(c) Where the Council is sitting in Committee of the Whole it may decide by resolution whether the press, or the public, or both shall be excluded.

(d) The proceedings of any Standing or Special Committees may be open to the press, or the public, or both if the Council so decide, but otherwise shall be privately held.

Removal of strangers.

Clause amended, 11/2/66.

51. Any person, not being a member, who interrupts the orderly conduct of the business of the Council, and who does not immediately upon being called upon by the Chairman so to do, withdraw from the Council Chamber, may, by order of the Chairman, be removed forthwith, and such person shall be deemed guilty of an offence, and shall be liable to a penalty not exceeding ten dollars.

GENERAL.

Administration when meetings lapse.

52. Where any two successive ordinary meetings of a Council lapse through non-attendance of members, the business of the Council may (vide section 85 of the Act) until the next meeting be carried on by the Mayor or President.

Provided that, in such case, the Mayor or President shall carry on the ordinary and regular services of the Council and shall not institute any new service or incur any new kind of expenditure.

Mode of proceeding in cases not provided for.

53. Where at a Council meeting matters arise which are in all cases not provided for in this Ordinance, resort shall be had to the rules, forms, and usages of the Legislative Assembly of New South Wales in force for the time being, so far as the same are applicable to the proceedings of the Council.

Access to records.

54. (a) The Mayor or President may direct the Clerk to allow any member to inspect any record of the Council which such member desires to see.

(b) If the Mayor or President refuse the request of any member to give such direction as aforesaid, the member may give notice and move for the production of the document.

(c) Where the Council has carried a motion for the production of a document, the document shall be produced forthwith and laid upon the table for the perusal of members; and shall be made available for the perusal of any member on reasonable notice to the Mayor, President, or Clerk during office hours on any day within one month after the carriage of the motion.

Preservation of records.

Subclause amended, 26/10/45.

55. (a) The following records of the Council shall not be destroyed, viz., Minute Book, Register of Legal Documents, Register of Correspondence, Legal Documents, Register of Returning Officers' declarations of elections and of polls and those declarations.

(b) Any other records or papers of the Council may be destroyed, or otherwise disposed of if the Council so decide, after the expiration of six years from the last entry therein or transaction thereon:

Provided that any record or paper relating to accounts shall not be destroyed or disposed of unless, prior to the passing of the resolution to that end, the Auditor shall have reported that such record or paper is of no further value.

Provided also that tape recordings of the proceedings of meetings of the Council and of meetings of committees of the Council may be destroyed, or otherwise disposed of if the Council so decide, at the expiration of three months after the recordings have been made. New proviso,
24/4/70.

Records.

56. (a) All records of the Council (other than the mintue book and other books, and other than rolls and other records relating to elections, except Returning Officers' declarations of elections or of polls) shall be duly registered by the Clerk, and such documents shall, except where otherwise specifically provided, be in the custody of the Clerk. Substituted
subclause,
29/10/43.
Subclause
amended,
26/10/45.

(b) Except as otherwise provided by law, no member or servant of the Council shall be at liberty to show, lay open, or expose any record of the Council to any person other than a member, without the leave of the Council.

(c) Any member or person who removes any record or book of the Council from the Council Chambers, or the place where, by the direction of the Council, such record is usually kept, without authority for such removal having first been obtained from the Mayor, President, or Council, or without other lawful cause for such removal, shall be liable to a penalty not exceeding one hundred dollars. Subclause
amended,
11/2/66.

(d) Any person who, without lawful authority, destroys, defaces, or alters any record of the Council shall be liable to a penalty not exceeding \$100. Subclause
amended,
11/2/66.

Notices.

57. Any notices which, under any Ordinances, are to be given by a Council, may be given by the Clerk.

Provided that this clause shall not apply to notices which, under the Act, are to be given by a Council; but in any such case where the Council has passed a resolution directing the giving of any notice, such notice shall be sufficiently authenticated without the Common Seal of the Council if signed by the Clerk on behalf of the Council.

Permits, &c., to be in writing.

58. Whenever it is provided by or under the Act that any permit, authority, approval, consent, or certificate is to be, or may be, given or granted by the Council, or Mayor, or President, the same shall be in writing, signed by the Mayor, or President, or Clerk.

Common Seal.

59. (a) The Clerk shall have the custody of the Common Seal, and the same shall be kept in such place as the Council directs. The Common Seal and the press to which the same is attached shall be secured by a cover or box which, except when such seal and press are in use, shall be kept locked; or shall be otherwise securely locked.

When and how Common Seal may be used.

(b) Subject to this Ordinance the Common Seal shall not be attached to any contract document or plan without an express order of the Council. In every case where the seal has been attached to any contract, document,

or plan, such contract, document, or plan shall also be signed by the Mayor or President (or, in case of the absence or illness of the Mayor or President, by two members, except in the case of the sealing of the ratebook, *vide* subsection 2 of section 600 of the Act) and countersigned by the Clerk.

Impression of seal not to be taken without leave of Council.

Subclause amended, 11/2/66.

(c) Subject to this Ordinance an impression of the Common Seal shall not be taken by any person without the leave of the Council. Any person who contravenes this provision shall be liable to a penalty not exceeding one hundred dollars.

(d) The Mayor or President may, without resolution of the Council, approve of the Common Seal being affixed (for purposes of authentication or identification only) to a document not relating to the business of the Council; and the seal may be so attached by the Clerk.

PUBLIC NOTICES.

Application of clause.

New clause, 11/8/22.

60. (a) This clause shall apply to all cities, municipalities, shires, urban areas, and county councils.

Abbreviation of Newspaper Notice.

(b) Where an Ordinance directs the publication of any advertisement or notice both in the Gazette and in any newspaper, it shall be a sufficient compliance with such direction if, in addition to such publication in the Gazette, there is also published in a newspaper either a summary of such advertisement or notice, or a statement only that such advertisement or notice has been published in the Gazette: Provided that the date of the Gazette in which such advertisement or notice has been published shall be specified in such summary or statement.

FOOTNOTE.—See also the Publication of Statutory Advertisements and Notices Act, 1920.

Delegation of Powers.

New clause, 28/9/62.

Subclause omitted, 20/12/68.

Subclause amended, 20/12/68.

61. (a) * * * * *

(b) A Council or County Council shall not authorise any officer, servant, person or committee to exercise or perform on behalf of the Council or County Council any power, authority, duty, or function conferred or imposed on it by virtue of sections 342C, 342D, 342E, 342F, 342H or 342J of the Act with respect to the preparation of a planning scheme: Provided that this clause shall not operate to prevent the appointment of any officer, servant, person or committee to examine and report upon any matter associated with the preparation of a planning scheme, or to hear objectors desirous of appearing pursuant to subsection (6) of section 342F of the Act personally or by counsel, solicitor or agent before the Council or Councils or County Council in support of their objections, or the appointment or employment of a person, officer, employee or servant, as referred to in subsection (2) of section 342E of the Act, to assist in the preparation of a planning scheme.

(c) Any resolution of a Council or County Council made pursuant to section 530A of the Act prior to 28th September, 1962 effective for the purpose of authorising any officer, servant, person or Committee to exercise or perform on behalf of the Council or County Council any power, authority, duty or function with respect to the preparation of a planning scheme, other than a scheme to which the provisions of subsection (1) of section 6 of the Local Government (Town and Country Planning) Amendment Act, 1962, apply, shall cease to have effect as on and from 28th September, 1962.