



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

R E P O R T O N

**INQUIRY INTO PECUNIARY INTEREST PROVISIONS
FOR MEMBERS OF PARLIAMENT AND SENIOR EXECUTIVES**

AND

A CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

Together with Minutes of Proceedings

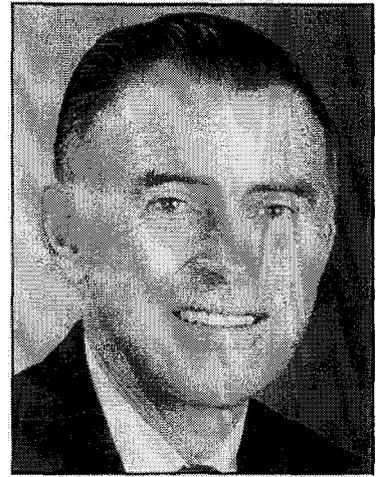
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M J Kerr MP
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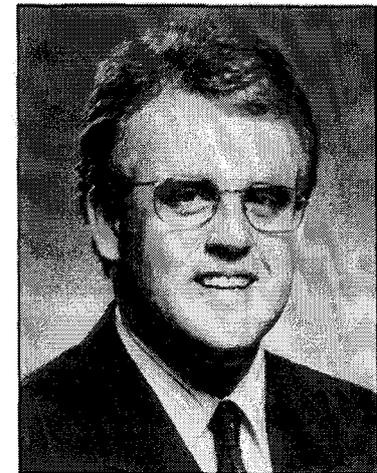
J H Turner MP



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(Vice-Chairman)



Hon S B Mutch MLC

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— *Mr D M Blunt*
— *Mr D R Wright*
— *Ms G C Penrose*

COMMITTEE FUNCTIONS

INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988

- "64 (1) The functions of the joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
 - (c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
 - (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission;
 - (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee -
- (a) to investigate a matter relating to particular conduct; or
 - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
 - (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint."

TERMS OF REFERENCE

That this House refers to the Committee on the Independent Commission Against Corruption the following matters for investigation and report:

- (i) A Review of the adequacy of the existing pecuniary interests provisions applying to Members of Parliament;
- (ii) A review of the adequacy of existing pecuniary interest provisions applying to senior executives;
- (iii) An examination of the need for and suggestions as to the content of a code of ethics for Members of Parliament. This might take into account the provisions already applying to Ministers and suggestions as to how these provisions might be streamlined and incorporated into a more general code which would apply to all Members of Parliament.

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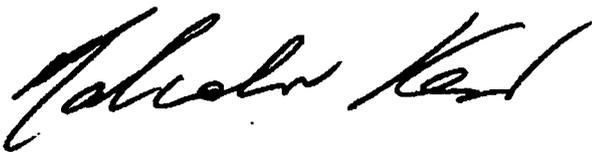
- 1 NSW Pecuniary Interest Register
- 2 House of Commons Pecuniary Interest Register - Proposed New Form
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CHAIRMAN'S FOREWORD

The purpose of this discussion paper is to identify and raise for discussion, especially amongst Members of the Parliament, complex areas involved in the question of whether a Code of Ethics should be adopted by the Parliament and what changes, if any, are needed to the pecuniary interest declarations made by Members.

The Committee welcomes submissions in relation to any matter arising out of the discussion paper. The closing date for submissions is **Friday 4 November 1994**.

It is my view that the release of this discussion marks a significant step forward for the New South Wales Parliament. Members will no doubt realise the importance of the issues discussed to their responsibilities for the peace, welfare and good government of New South Wales. At the heart of all the issues is the question: what is a Member of Parliament? As highlighted by this paper this is a question which has received little attention during the last 100 years in Parliaments around the world. Unless all Members and the public turn their minds to this fundamental question proper consideration can not be given to the question of whether a Code of Ethics is needed for NSW Parliamentarians.

A handwritten signature in black ink, appearing to read 'Malcolm Kerr', written in a cursive style.

Malcolm J Kerr MP
Chairman

SUMMARY OF ISSUES FOR DISCUSSION

Part One - Pecuniary Interests Provisions for Members of Parliament

5.1 Should the Register Continue

5.1.1 The extraordinary Referendum result in 1981 in which over 80% of NSW voters voted in favour of the introduction of a Pecuniary Interest Register for MP's demonstrates the level of public support for an effective pecuniary interests register.

5.1.2 Since the NSW register was established in 1983 comprehensive registers have been established in other Parliaments, most notably the House of Representatives and the Queensland Legislative Assembly. These developments suggest that there is continuing support for the concept of effective pecuniary interest registers for MP's and provide useful lessons for any reform of the Register.

5.2 Disclosures by the political media

5.2.1 Due to the importance of the media in modern politics the Committee suggests attention be given to requiring members of the media reporting on political proceedings to disclose certain pecuniary and non-pecuniary interests.

5.3 Improving the form for disclosure

5.3.1 The problem with the NSW Register appears to be that the form which Members are required to fill out is not clearly set out, is confusing and is not self explanatory. The Committee suggests that a new form be developed which clearly sets out what information is to be provided to make a proper disclosure.

5.3.2 As far as possible and appropriate the Committee suggests that the new form be modelled upon a form developed by the House of Commons Select Committee on Members' Interests. This form could be provided on computer disk as well as in written form. A simple pamphlet could accompany the form giving guidance to Members on how it is to be completed.

5.4 *Amendments to the categories of disclosure*

5.4.1 In addition to being more easily understood, the new form could also:

- (a) contain provisions of the disclosure of interests and positions in corporations based upon the relevant provisions in the Queensland register which are:

Members are required to disclose:

(i) *Shareholdings or controlling interests in shares in companies:*

- *name of company;*
- *shareholdings of company in other companies (where the shareholding or interests in company is a controlling interest);*
- *where the shareholding or interest is held in a private company:*
 - *investments of the holding company;*
 - *name of any subsidiary company.*

(ii) *Positions held as officer of a company:*

- *name of company;*
- *nature of office held;*
- *nature of activities of company.*

(iii) *Beneficial interests in (a) family or business trusts and (b) nominee companies:*

- *name (or description) of trust\name of company;*
- *nature of activities of trust\company;*
- *nature of interest held.*

(iv) *Trustee of family or business trusts:*

- *name (or description) of trust;*
- *nature of activities of trust;*

- *name of each person holding beneficial interests in trust.*
- (v) *Interests in partnerships:*
- *name (or description) of partnership;*
 - *nature of activities of partnership;*
 - *nature of interests held.*
- (b) include provisions for the disclosure of membership of trade unions, professional and business associations and political parties, rather than just positions held.
- (c) remove provisions in the current form relating to the disposition of property, which have no counterpart in any other Australian registers.
- (d) improve the definition of "gift" in the current form by adopting the definition in the Queensland Register which is:

"gift" means —

- (a) *the transfer of money or other property —*
- (i) *without recompense; or*
 - (ii) *for a consideration substantially less than full consideration; or*
- (b) *a loan of money or property made on a permanent, or indefinite, basis.*

The current definition could, however, retain the exemption for the dispositions by will; and clarify the definition of relative as it applies to this section by defining the term as: "any person related by blood or marriage" to the Member; and

- (e) introduce a specific section requiring the disclosure of the names of the clients for whom a Member has provided personal services which arise out of or are related in any manner to his/her role as a Member, based upon the relevant provision in the House of Commons register. This provision states:

Members are required to register the names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the House. These services include any action connected with any proceeding in the House or its Committees. In addition, they include the sponsoring of

functions in the Palace, making representations to Ministers, Civil Servants and other Members, accompanying delegations to Ministers and the like.

Of course, certain aspects of this provision are not relevant to the NSW Parliament.

5.5 *Disclosure of Family Interests*

- 5.5.1 The disclosure of family interests remains a controversial issue. However, the Committee has not received any evidence to show that this exemption is a source of abuse for avoiding disclosure of pecuniary interests. Member's families have not made a decision to enter public life and a disclosure where there is no evidentiary justification for it would be a significant invasion of privacy. On the whole, the Committee suggests that unless evidence can be brought forward to show an abuse of the system no benefit would result from the disclosure of the pecuniary interests of the family of a Member of Parliament.

Part Two - Pecuniary Interest Provisions for the Senior Executive Service

A New System of Disclosure?

- 6.4.1 The Committee suggests that the present provisions for the Senior Executive Service be modelled on the pecuniary provisions of the NSW Parliament. The Senior Executive Service provisions could require mandatory confidential registration of the significant and other material interests of senior executives on an annual basis. Registration could be through an administrative process appropriate to the officer involved, according to the arrangement that the senior executive register such interests with the Chief Executive or other appropriate senior officer.
- 6.4.2 A system of registration of interests could be supported by procedures for ad hoc disclosure when the senior executive becomes aware of a conflict of interest. The Committee notes that this is provided for in paragraph 7.1 of the Code which states:

Executives should disclose in writing to the Chief Executive Officer or other appropriate officer, any financial or other interests held by them immediately upon become aware that a potential conflict between personal interest and official duty, whether real or apparent, has arisen or is likely to arise.

Definitions

- 6.4.3 The Committee suggests that the term "personal interest" in paragraph 7.1 of the present Code could be clarified. It could be expressed in clearer and more precise terms. The definition could include a distinction between monetary and non-monetary interests.

Categories of Disclosure

- 6.4.4 The Committee suggests that the classes of interests to be disclosed by senior executives could be the same as those disclosed by NSW Parliamentarians.

Sanctions

- 6.4.5 The Committee is of the view that the present Code of Conduct for Senior Executives could, if amended, include provisions for sanctions to apply for a failure to disclose an interest. However, the Committee suggests sanctions need go no further than existing disciplinary procedures. All that maybe necessary is that a breach of the provisions relating to disclosure be a breach of the disciplinary provisions of the legislation under which the public official is appointed or employed. The Committee is aware that such disciplinary provisions are supported by the ICAC Act and the criminal law.

Part Three - Code of Conduct for Members of Parliament

13.1 *Support for a Code*

- 13.1.1 Some persons have suggested that there is support for the development of the Code of Ethics for MP's.

13.2 *Purpose of a Code*

- 13.2.1 It has been suggested that a Code could provide guidance for MP's in the resolution of conflicts of interest. A Code could assist to raise the standards in public life and improve the public perception of the institution of Parliament and parliamentarians generally.

13.3 *Development of a Code*

- 13.3.1 Evidence taken by the Committee strongly suggests that the process of developing a Code of Ethics is just as important as (if not more important than) the end result of the Code which is produced. This process could stimulate informed discussion on the nature of conflicts of interest, and could help foster greater consensus between MP's on these issues.

13.4 *Key Issues*

- 13.4.1 From Part 4 of this Report the following issues arise for consideration.
- (1) What are the legal and ethical responsibilities and duties of MP's?
 - (2) If a Code is need, whether a general Code or a specific code is more appropriate?

- (3) What categories of action should the Code cover?
- (4) What sanctions should apply for a breach of the Code?
- (5) How to ensure the Code is not subverted for party political purposes?
- (6) How to ensure that the Code does not preclude the electorate from being represented by a diverse range of MP's?
- (7) How to prevent a Code becoming an end in itself?
- (8) Will the Code be compatible with other existing accountability mechanisms?
- (9) Is there a need for induction programs for MP's?

-1- INTRODUCTION

1.1 *Background to the Inquiry*

1.1.1 This inquiry was referred to the Committee on the ICAC from both Houses of Parliament on 10 December 1991. The Committee's terms of reference are:

That this House refers to the Committee on the Independent Commission Against Corruption the following matters for investigation and report:

- (i) A review of the adequacy of the existing pecuniary interests provisions applying to Members of Parliament;*
- (ii) A review of the adequacy of existing pecuniary interest provisions applying to senior executives;*
- (iii) An examination of the need for and suggestions as to the content of a code of ethics for Members of Parliament. This might take into account the provisions already applying to Ministers and suggestions as to how these provisions might be streamlined and incorporated into a more general code which would apply to all Members of Parliament.*

1.1.2 The first two parts of the recommendation form part of the charter of reform of the non-aligned Independent Members of the Legislative Assembly. The third part of the recommendation though related to the first two has a different source. It arises out of a report of the Independent Commission Against Corruption. This is the *Report on Investigation Concerning Neal and Mochalski* (April 1991). In that Report the Commissioner, Mr Ian Temby QC, commented that there is little guidance for Members on how they should carry out "their distinct and competing roles." (ICAC,1991:33) The Commissioner concluded this report by suggesting that it would be worthy of Parliament's consideration to develop a Code of Conduct for its Members and perhaps also their staff.

1.2 *Conduct of the Inquiry*

1.2.1 Although this inquiry was referred to the Committee late in 1991 work was not begun in earnest until midway through 1992. This delay was due to the necessity for the Committee to complete a number of inquiries more directly related to the principal task of monitoring and reviewing the exercise by the ICAC of its functions. In July 1992 a

temporary project officer was appointed to assist with the conduct of the inquiry.

1.2.2 However, the Committee had not been inactive with this referral. On the 21 December 1991 the Committee publicly called for submissions on the terms of reference. The submission date was extended once by the Committee to a final date of 31 March 1992. Only twenty one (21) submissions were received from the public and interested bodies.

1.2.3 From these twenty one submissions six were called to give evidence before the Committee. Professor Paul Finn of The Australian National University was also called. Public hearings were held on 10 & 11 August 1992. A full list of those persons who appeared before the Committee appears at Appendix 5.

1.3 ***The Discussion Paper***

After the conclusion of the initial stages of its inquiry the Committee realised the matter at hand was of such importance and complexity that instead of presenting a report to Parliament a Discussion Paper should be prepared. This paper, the Committee decided, should be circulated to all Members of the Parliament for them to comment on. The Committee seeks to involve every Member of Parliament because of the nature of the issues involved. Of course, this paper will also be available for public comment. The Committee hopes the wider community takes an interest in these issues which involve the nature of the Parliament and its role as the forum for democratic representation.

All comments and submissions should be made to the Committee by :
Friday 4 November 1994.

Comments and submissions should be addressed to the following:

Chairman
Committee on the ICAC
Room 925
Parliament House
Macquarie Street
SYDNEY NSW 2000

PART ONE

**Pecuniary Interest Provisions
For Members of Parliament**

2.1 ***The Joint Committee***

2.1.1 The Register of Members' interests has an interesting history in New South Wales. On 15 September 1976 the Premier Mr Wran moved in the Legislative Assembly that a Joint Parliamentary Committee be established to inquire whether a system of registration of pecuniary interests should be set up. The establishment of the Committee was brought on, in part, by a political scandal at the time. However, as recognised by the Premier it was also in line with reforms in other Westminster Parliaments. (NSW Parliamentary Debates,431:885)

2.1.2 The Joint Committee handed down its final report on 4 April 1978. (Parliament of NSW,324) It made comprehensive recommendations for the setting up of a pecuniary interest register not just for Members of Parliament but also for public servants and employees of statutory authorities; local councillors and council staff; members of the media who report on political proceedings; and members of Ministers' personal staff. The list of interests to be declared were wide. It is worth listing these interests in full. Members were to 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 partnerships;
- (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, organisation, company or person; and
- (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. (Parliament of NSW,324:19)

2.1.3 The other groups of people considered by the Committee in its Report were recommended to be subject to the same disclosure requirements as Parliamentarians. The only significant difference for these groups was that the disclosures were not to be made publicly available.

2.2 *The Resolutions*

2.2.1 It was not until 6 November 1979 that the Premier Mr Wran moved in the Lower House a resolution to implement (with some modifications) the Committee's recommendations for establishing a Register for Members of Parliament. (NSW Parliamentary Debates,456:2522) An identical motion was moved in the Upper House. There was no proposal to implement the other recommendations of the Committee which related to persons other than Members. The Government sought to wait and see how the register worked in the Parliamentary realm before implementing the Committee's recommendations for disclosure for other groups.

2.2.2 The Resolution of 6 November 1979 provided that a wilful breach by any Member of Parliament was to be judged a contempt of the Parliament and was to be dealt with accordingly. The inclusion of this provision led to the rescission of the resolution by both Houses on 27 November 1980. (NSW Parliamentary Debates,465:3827) On the advice of the Crown Solicitor the Government advised both Houses that the Parliament could not vest the Legislative Council with powers to punish by contempt unless it be through a Bill submitted to a referendum of the people of NSW.

2.3 *The Bill*

2.3.1 The Government was not to be deterred and announced it would introduce legislation in the next session of Parliament to give effect to a pecuniary interests scheme.

2.3.2 On 13 April 1981 the Constitution (Disclosures by Members) Amendment Bill was read a second time by the Premier Mr Wran. (NSW Parliamentary Debates,469:5709) This Bill was to insert a new section into the Constitution Act. This section empowered the Governor to make regulations to give effect to a pecuniary interest

scheme. The new section gave the power to both the Assembly and the Council to declare a Members seat vacant if he or she wilfully contravened the regulations. The Bill was passed by the Assembly on 11 May 1981 and by the Council on 12 May 1981. The referendum was to be held in conjunction with the next election on 19 September 1981.

2.4 *The Referendum*

2.4.1 The referendum produced nothing less than a startling result. (NSW Government Gazette, 166:5591) Of all electors that voted (2 916 787 people) an astounding 2 389 981 persons voted for the introduction of the pecuniary interest register for Members of Parliament. Only 388 830 persons voted against the introduction of the register.

2.5 *The Register*

2.5.1 The Bill was assented to on 29 January 1982 inserting Section 14A in The NSW Constitution. However, it was not until 6 May 1983 that regulations were gazetted to establish the Register. This delay was due to the establishment of Committees in each House to consider the proposed Register.

2.5.2 The Register provides for the lodgement of an initial return and annual returns thereafter. The pecuniary interests to be disclosed were those held, made or received inside or outside New South Wales. The value of an interest was not required to be disclosed.

2.5.3 The interests to be disclosed are:

- (a) Real Property:- The address and nature of the interest to be disclosed (Reg. 8);
- (b) Sources of Income:- If greater than \$500, occupation, address of employment, description of office held, (if a partnership) the name of partnership, (if a trust) the name and address of the settler and the trustee, any other income a description of the provider of the income and the circumstances in which it was received (Reg. 9);
- (c) Gifts:- If greater than \$500 the name and address of the donor and a description of the gift to be disclosed (Reg. 10);
- (d) Contributions to Travel:- The name and address of each person who made any financial or other contribution to any travel undertaken by the Member, the dates travelled on, and the places travelled to. There are a number of exceptions. (Reg. 11);

- (e) Interests and Positions in Corporations:- The name and address of each corporation, the nature of the interest, a description of the position held and, except for a public company, the objects of each corporation to be disclosed (Reg. 12);
- (f) Positions in Trade Unions and Professional or Business Associations:- The name of each trade union and each professional and business association and description of position to be held to be disclosed (Reg. 13);
- (g) Debts:- If greater than \$500 the name and address of each creditor of the Member is to be disclosed (Reg. 14);
- (h) Dispositions of Property:- Where the Member retains use of the benefit of the property or a right to reacquire the property at a later time the disposition shall be disclosed (Reg.15).

2.5.4 Members may also disclose at their discretion any other interests which might raise a conflict of interest.

2.5.5 A Member shall before 1 October of each year lodge his or her return with the Clerk of the House to which he or she belongs. The Register is to be maintained by the Clerk of each House. The Register is to be published as a Parliamentary Paper. The Register is to be open for inspection between 10.00 am and 4.00 pm Monday to Friday.

2.5.6 The only penalty for a contravention of the regulation is that prescribed under s.14A of the Constitution Act. This section states that for a wilful contravention of the regulations the House may declare the Member's seat vacant.

2.6 *Amending the Regulations*

2.6.1 Amending the system of pecuniary interest disclosure for the Parliament in New South Wales is not a straightforward procedure. As section 14A(5) of the Constitution Act states:

The Governor shall, before making a regulation under subsection (1) —

- (a) *afford any committee of either House of Parliament established for the purpose an opportunity of considering and making representations with respect to the proposed regulation; and*
- (b) *take into account any such representations.*

Section 14A(1) of the Constitution Act gives the Governor the power to make regulations for or with respect to disclosure by Members of pecuniary interests, which are listed in the subsection, or other matters.

2.6.2 If the Regulations required amendment in any way, including the form in which the disclosure is made by Members, committees would have to be established in each House of the Parliament specifically for this purpose. The last time this type of committee was established by the Parliament was in 1982, when the regulations were first drawn up.

2.6.3 The Clerk of the Legislative Council Mr John Evans has advised this Committee, that the Presiding Officer or the Clerks of each House would take the matter up with the appropriate Minister, which is the Premier. The normal procedure from this point is for the Premier to draft amendments to the regulations. This would most likely be done by Parliamentary Counsel. Then the draft amendments would go before the committees appointed by each House for their consideration. These committees would then make representations to the Governor, who would take them into account in making new regulations.

2.6.4 It is important to note this procedure only applies for what could be called "a mere amendment" of the regulations. If the Parliament sought to amend section 14A of the Constitution Act itself this may involve more complex procedures. For instance, an amendment to section 14A(2) of the Constitution Act, which gives either House the power to declare a Member's seat vacant for wilful breach of the regulations, would involve an alteration of the powers of the Legislative Council. Under section 7A of the Constitution Act such a amendment can not be made without submitting the amendment to a referendum of the people. *Any* amendment which alters the power of the Legislative Council would require a referendum.

2.7 *Other Relevant Disclosure Provisions*

2.7.1 There are a number of other mechanisms for the regulation of conflicts of interest for Members. There are specific Parliamentary mechanisms in both Houses.

There are a number of standing orders that relate to conflicts of interest. These are in the Legislative Assembly:

Standing Order 204

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.

Standing Order 348

No Member shall sit on a Select Committee who shall be personally interested in the inquiry before such Committee.

Standing Order 391

A Member adjudged by the House guilty of conduct unworthy of a Member of Parliament may be expelled by vote of the House, and his seat shall, thereupon, be declared vacant.

And in the Legislative Council:

Standing Order 126

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.

Standing Order 238

No Member shall sit on a Select Committee who shall be pecuniary interested in the inquiry before such Committee.

-3- EVIDENCE TAKEN BY THE COMMITTEE

3.1 *Should there continue to be a register?*

3.1.1 On the continued existence of the Register the Committee believes that the voice of the referendum on this issue is still to be clearly heard and therefore the continuance of the Register is not a question for consideration. If a more detailed argument is needed on this point it need only be brought to mind that the current movement in Australian Parliaments is to strengthen Registers. This is also true of other Parliaments in the Commonwealth. (Commonwealth Parliamentary Association, 1990)

3.2 *Is the current form for disclosure adequate?*

3.2.1 One of the major problems with the NSW Register is that the form for disclosure is not self-explanatory or clearly set out. A quick glance through the completed Register will show that many Members have provided details which are not required. This fault can not be laid at the feet of these Members as the form itself does not state what is required and what is not. On the face of it the form is legalistic. The actual requirements of disclosure cannot be gained from the form itself without reference to the regulations; which, as will be discussed, require complex legal interpretations. The form can not be regarded as "user-friendly". There is even a lack of space provided, in some instances, for the insertion of the details required.

3.2.2 In its examination of the system operating in the U.K., the Committee discusses the new disclosure form recommended by the House of Commons Select Committee on Members' Interests. The present form in the House of Commons is similar to the NSW form. The Committee finds the new form recommended by the Commons Select Committee to be simple, comprehensive, self-explanatory and therefore worthy of adoption in this Parliament. A copy of form is to be found at Appendix 2. The Committee further suggests that the form not only be available in written form but that it be provided on a computer disk. In this way constraints of size in the form, that is inadequate space for the provision of the required details, can be overcome. All forms could then be typed by Members. This would lead to uniformity within the register. Further, a Member would also have ready access to the form for considering whether interim amendments may be necessary during a particular year.

3.2.3 The Committee on the ICAC supports the further recommendation of the House of Commons Select Committee that an explanatory pamphlet be provided to supplement the form. This pamphlet should, of course, be in simple, plain English.

3.3 ***Which assets should be disclosed?***

3.3.1 It has been submitted to the Committee that the range of assets required to be disclosed by the NSW Register is too limited. It does not cover assets required to be disclosed under similar systems operating in the Commonwealth and Queensland Parliaments. These Parliaments require disclosure of assets worth over \$5000, excluding household effects, and the disclosure of investments, including savings and investment accounts. The assumption underlying these submissions is that such provisions do not infringe too far on the privacy of Parliamentarians. The Committee notes that it does not know of a Register which requires the value of a Member's assets to be disclosed. As was pointed out to the Committee the register is not meant to be a register of wealth.

3.4 ***Which debts should be disclosed?***

3.4.1 The disclosure of debts has also been suggested to be too limited. There are a number of exemptions under the NSW system. These are if:

- the debt is less than \$500;
- the creditor is a relative;
- the creditor is a bank, building society or like body;
- the debt arose from the supply of goods and services which was not related to a Members's duties.

It has been suggested that these exemptions make the disclosure for debts meaningless. It has been submitted to the Committee that liabilities like mortgages, overdrafts, personal loans and the like should be disclosed. It is to be noted that the Queensland requirements exclude the disclosure of department store and credit card accounts.

3.5 ***Interests and positions in corporations***

3.5.1 It has been submitted to the Committee that the present provision is insufficient and ambiguous. The provision requires each Member to give the following details:

- (i) the name and address of each corporation in which he or she had an interest or held any position (whether remunerated or not) on the primary return date or at any time during the ordinary return period;
- (ii) the nature of any such interest or position (e.g. shares, debentures, loans to the corporation, directorship);

- (iii) except in the case of a public company listed on the Sydney Stock Exchange — the principal objects of the corporation.

3.5.2 The regulations define an "interest" as a relevant interest within s.5 of the Securities Industry (NSW) Code in any securities issued or made available by the corporation. However, this provision is not provided in the Regulations as a reference to assist Members. One submission to the Committee commented that a Member may need legal advice to make a full and correct disclosure. (Carney, 1992:4) This in itself, the Committee believes, may justify amendment to the provision. The complexity of this provision is increased by the second requirement to disclose any position held in a corporation. It would obviously assist if this requirement be contained in a separate disclosure provision.

3.5.3 Associate Professor Carney recommended that the disclosure requirements in this area in the Queensland Register are simpler and more comprehensive. Under the Queensland Register the following have to be disclosed:

- (i) Shareholdings or controlling interests in shares in companies:

- name of company;
- shareholdings of company in other companies (where the shareholding or interests in company is a controlling interest);
- where the shareholding or interest is held in a private company:
 - investments of the holding company;
 - name of any subsidiary company.

- (ii) Positions held as officer of a company:

- name of company;
- nature of office held;
- nature of activities of company.

- (iii) Beneficial interests in (a) family or business trusts and (b) nominee companies:

- name (or description) of trust\name of company;
- nature of activities of trust\company;
- nature of interest held.

- (iv) Trustee of family or business trusts:
- name (or description) of trust;
 - nature of activities of trust;
 - name of each person holding beneficial interests in trust.
- (v) Interests in partnerships:
- name (or description) of partnership;
 - nature of activities of partnership;
 - nature of interests held.

This type of disclosure is simple and self-explanatory.

3.6 ***Positions in Trade Unions and Professional or Business Associations***

- 3.6.1 Under the existing regulations the name of such organisations are to be given along with a description of the position held. The Commonwealth, Queensland and Victorian Registers require disclosure where there is only ***membership*** of an organisation of this type. These Registers also require a much wider disclosure with respect to the type of organisations to which a Member may belong. For instance the Commonwealth Register requires disclosure of membership of ***any*** organisation. The Queensland Register requires disclosure of membership of any political party, body or association or trade or professional organisation.

3.7 ***Dispositions of Property***

- 3.7.1 This section has no counterpart in any other Register in Australia. Its origin can be found in the fact that the Register was created during the time of a massive land boom in NSW. Hence the particular concern with dispositions of property. However, again we find a technical legal provision which is not able to be understood on its face. This provision may be so wide as to be meaningless when the definition of "disposition of property" is consulted. In widest sense the definition encompasses ***any*** alienation of property. Therefore sections 15(1) and 7(1) read together could cover a situation where a Member, who is a farmer, lent his or her tractor to a neighbour. The Member would have the right to reacquire the property at a later time but at the moment it is not in his or her possession. It is alienated. As Professor Carney has noted in his submission to the Committee section 15(1) creates a contradiction in the regulations. Under section 14(3)(c) of the regulations a Member is exempted from disclosing a mortgage they may have with a bank or like institution. However, under

section 15(1) and section 7(1) the Member would have to disclose this mortgage.

3.8 *Gifts*

3.8.1 The NSW Register appears to be clear on the nature of the disclosure to be made. There is to be a description of the gift and the name and address of the donor is to be provided. The Queensland Register provides a helpful definition of what is to be considered a gift. This definition of gift is:

- (a) *the transfer of money or other property -*
 - (i) *without recompense; or*
 - (ii) *for a consideration substantially less than full consideration; or*
- (b) *a loan of money or property made on a permanent, or indefinite, basis.*

This is to be contrasted with the existing definition in the NSW Regulations, which contains some ambiguity. This definition of gift is:

any disposition of property made otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the donee to the donor, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or their contribution to travel. (Reg 10)

The exemption for dispositions by will appears to be justified and sensible, and one that is *not* contained in the Queensland Register. However, there are numerous problems with other aspects of this section.

3.8.2 As a "gift" is defined as a "disposition of property" we come across all the difficulties that were mentioned above with that section. One point is that this section would be considerably wider than the Queensland section which deals only with transfer of property. Secondly, the NSW section does contemplate a situation where property is transferred without monetary consideration. There is an obligation on a Member to declare a gift where the consideration given was not fully adequate. The meaning of the term "not fully adequate" can only be considered ambiguous and inadequate. The use of the term "substantially less than full consideration" appears superior.

3.8.3 There are a number of exemptions to this requirement for disclosure. One of the principal exemptions is if a gift is received from a relative of the Member. The term relative is defined in the Regulations. It was submitted to the Committee that those

who are considered relatives be extended to include first cousins. And it should be noted that the Queensland Register excludes disclosure where the gift is received from any person related by "blood or marriage".

3.9 ***Contributions to travel***

3.9.1 This a long regulation. There was only one submission that thought that there could an improvement to this section. Associate Professor Carney submitted that as required under the Queensland Register the purpose of the travel should be disclosed. The Committee, however, recognises that the travel entitlements system in NSW is different from that existing in Queensland.

3.10 ***Should family interests be disclosed?***

3.10.1 It was noted by some submissions that the family interests of Members are not disclosed. Associate Professor Carney in his submission to the Committee gave three reasons why family interests should be disclosed. These are:

- (i) That a conflict of interests can as easily arise when the interest in question is that of a Member's family or spouse;
- (ii) A Member may choose to transfer his or her assets to his or her family to avoid the provisions of the Register; and
- (iii) The Register may not have public confidence unless a Member's family interests are disclosed. (Carney, 1992:2)

3.10.2 The main argument against such a declaration is that it imposes an unjustified invasion of privacy on a Member's spouse and family. It is argued that it is the Member that is elected to public office and therefore only an invasion of his or her privacy can be in the public interest.

3.10.3 The ICAC supported the view that the interests of families should be disclosed on the same basis as Members of Parliament. The Commission gave the following reason for this disclosure.

The basis of making public and disclosing this information can be seen as preventing a conflict of interest arising, bringing to the attention of the Member or others that there are certain interests and recognising that there are interests which can influence a Member in the exercise of his or her public duties. It is thought that the interests of close associates — in the sense of family members — would be as capable of exercising that influence as if it were the Member's own interests. Therefore, the nexus is so close as to require disclosure. (Minutes of

Evidence,10 August:67)

- 3.10.4 The Commission believes that a Register can *prevent* conflicts of interest arising. This presupposition was not endorsed by all witnesses that appeared before the Committee. Professor Paul Finn of the Australian National University directly refuted this notion.

We all know that registers of interest are not conflict avoiding or conflict resolving mechanisms. They do not have their justification in stopping the conflict occurring or resolving it if it does occur. (Minutes of Evidence,11 August:43)

Professor Finn stressed that the justification for a Register is in the realm of appearances. The Register is an object upon which the public can fix their sight. It can create a perception where the reality can not. However, he cautioned:

We have to be very careful to not make appearances ends in themselves so that they acquire a life of their own. (Minutes of Evidence,11 August:43)

- 3.10.5 A further problem is with the meaning of the term "family". Who is to be included in this definition? Spouses? Children? De Facto's? Parents? A good example on the ambiguity of this concept was given by the Honourable Duncan Gay MLC during the course of the Committee's hearings when he asked if his sister's husband was to be considered "family".
- 3.10.6 This example raises the problem of the variable spectrum of conflicts. When does an interest stop being an interest that could influence that activities of a Member? How far removed from the Member does the interest have to be? Does the Member have to have full knowledge of the interests to be judged to be influenced by that interest? Simply put, where should the line be drawn? Should a line be drawn at all?
- 3.10.7 It was put to the Committee that one way of avoiding the invasion of privacy of Members is to adopt the South Australian system where the interests of a Member's family are recorded under the name of the Member alone. As clearly noted by the Privacy Committee this option breaches a general principle of data collection that data should be accurate and reflect a true picture of the data.
- 3.10.8 A second option would be that adopted in Queensland where a Member discloses his or her own interests and that disclosure is then made public. A second document is registered by the Member of those interests of the Member's family of which the Member is aware. This document is confidential, held by the registrar, and made available to a limited body of people; including the Criminal Justice Commission, the Premier and the leader of any other political party in the Legislative Assembly.

- 3.10.9 The Committee believes that there is another problem which should be considered. What happens to the disclosures of Members when they cease to be Members? Or what happens to the disclosures of "family" when they cease to be "family"? This question has not been previously considered at length. The Committee believes that this raises important issues about the public's "right" to know and the nature of the office of a parliamentarian.
- 3.10.10 Finally, one important point needs to be made. During the course of this inquiry the Committee received no evidence showing that the family interest exemption is being abused. Many comments were made by persons about the theoretical importance of disclosing the pecuniary interests of a Member's family. However none of these comments were supported by specific instances where the present system is being abused or had been abused in the past.
- 3.11 *Disclosures by non-parliamentarians*
- 3.11.1 The Joint Committee's recommendation in 1981 not only addressed disclosures by Members of Parliament, but called for disclosures from a number of other groups including public servants, local councillors and members of the media who report on political proceedings.
- 3.11.2 The Committee suggests the last category mentioned requires a fresh examination. The Committee considers that the political media cannot be divorced from the requirements of public accountability for those involved in Government. The political media, historically regarded as "the fourth estate" have a strong influence upon the activities of government. Political journalists, like Parliamentarians, the Committee suggests should be unswayed in their reporting of political events, by their pecuniary and non-pecuniary interests. The Committee, therefore, suggests that attention be given to this issue.

-4- OTHER PARLIAMENTS

The NSW Register was established in 1983. Since that time comprehensive registers have been established by the House of Representatives and the Queensland Parliament. The House of Commons register recently has been the subject of a comprehensive review. The developments in other Parliaments are briefly described in this chapter. They provide a useful guide for the reform of the NSW Register.

4.1 *Commonwealth*

4.1.1 The Commonwealth Parliament first appointed a Joint Parliamentary Committee in 1974 to consider whether a Pecuniary Interests Register should be adopted. After this Committee and two subsequent committees a resolution was passed by the House of Representatives on 9 October 1984 to establish a Register of Members' interests. There is still no existing Register for the Senate.

4.1.2 The principal provisions of the Register are:

- (a) Within 28 days of making an oath or affirmation, each Member is required to provide to the Registrar of Members' Interests a statement of the Member's registrable interests and the registrable interests of which the Member is aware of the Member's spouse and any children wholly or mainly dependant on the Member for support, in accordance with resolutions adopted by the House and in a form determined by the Committee of Members' Interests from time to time.
- (b) Members are required to notify any alterations to those interests to the Registrar within 28 days of the alteration occurring.
- (c) the registrable interests include:
 - shareholdings in public and private companies;
 - family and business trusts and nominee companies, subject to certain conditions;
 - real estate, including the location and the purpose for which it is owned;
 - registered directorships of companies;

- partnerships, including the nature of the interests and the activities of the partnerships;
 - liabilities, indicating the nature of the liability and the creditor concerned;
 - the nature of any bonds, debentures and like investments;
 - savings or investment accounts, indicating their nature and the name of the bank or other institution concerned;
 - the nature of any other assets, excluding household and personal effects, each valued at over \$5 000;
 - the nature of any other substantial sources of income;
 - gifts valued at more than \$250 from official sources or more than \$100 from other sources provided that a gift from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interests may be seen to exist;
 - sponsored travel or hospitality received;
 - membership of any organisation; and
 - any other interests where a conflict of interest with a Member's public duties could foreseeable arise or be seen to arise.
- (d) As soon as possible after the commencement of each Parliament, the Chairman of the Committee of Members' Interests is required to table a completed copy of the Register in Parliament.
- (e) The Register is required to be available for inspection by any person under the conditions established by the Committee on Members' Interests.
- (f) On 13 February 1986 the House resolved that any Member who:
- knowingly fails to provide a statement of registrable interests to the Registrar of Members' interests by the due date;
 - knowingly fails to notify any alteration of those interest to the Registrar of Members' Interests within 28 days of the change occurring, or

- knowingly, provides false or misleading information to the Registrar of Members' Interests —

shall be guilty of a serious contempt of the House of Representatives and shall be dealt with by the House accordingly.

4.1.3 The first Register was not tabled in the House of Representatives until 19 August 1986.

4.3 *Queensland*

4.3.1 The Queensland Legislative Assembly first established a Register of Members' Interests on 19 April 1989. On 21 August 1990 the Queensland Electoral and Administrative Review Commission presented a Report to the Queensland Parliament on a *Review of Guidelines for the Declaration of Registrable Interests of Elected Representatives of the Parliament of Queensland*. This report recommended further disclosure was required, the establishment of a Committee on Members' interests, and the adoption of a system of procedures based on the House of Commons Register to administer the Queensland Register. A resolution was put forward by the Commission and this was adopted by the Legislative Assembly on 27 November 1990.

4.2.2 Members are required to register their interests under 15 separate categories. These are:

- (a) Shareholdings or controlling interests in shares or companies (showing company name; shareholdings of company in other companies, where the shareholding or interest is a controlling one; where shareholding or interest is in a private company — the investments of holding company and the name of any subsidiary company).
- (b) Positions held as officer of company (showing name of company, nature of office held and nature of the activities of the company).
- (c) Beneficial interests in (a) family or business trusts (b) nominee companies (showing name/description of trust; nature of activities of trust and name of each person holding beneficial interests in trust).
- (d) Trustee of family or business trusts (showing name/description of trust; nature of activities of trust and name of each person holding beneficial interest in trust).
- (e) Interests in partnerships (showing name/description of partnership; nature of activities of partnership and nature of interest held).

- (f) Interests in Real Estate (showing location by suburb/area; approximate size; purpose for which property used and intended to be used and nature of interest held).
- (g) Liabilities (excluding department store and credit card accounts) (showing nature of liability and name of creditor).
- (h) Debentures and similar investments.
- (i) Savings and Investment accounts with banks, building societies, credit unions and other institutions (showing nature of account and name of institution).
- (j) Gifts over \$500 (excluding gifts received from related persons or other persons related by blood or marriage).
- (k) Sponsored hospitality benefits (showing source of contribution, purpose of travel, accommodation or other benefit).
- (l) Other substantial sources of income (including income of private companies and of trusts in which the Member has an interest)
- (m) Other assets over \$5 000 (excluding household and personal effects, private use motor vehicles and superannuation entitlements).
- (n) Memberships of political parties, bodies and associations, trade and professional organisations.
- (o) Other interests known to the Member which appear to raise, could foreseeably raise, or could be seen to raise a conflict between the Members private interest and duty as a Member.

4.3 **Victoria**

4.3.1 The first Register of Member's interests in Australia was established in Victoria by the passing of the *Members of Parliament (Register of Interests) Act 1978*. This contained not only requirements for the registration of certain interests of Members but also a Code of Conduct for Members.

4.3.2 The following are the kinds of interests to be declared by Members in Victoria:

- (a) a source of income which the Member has or expects to have;
- (b) the name of any company or other body in which the Member holds an office as director or otherwise;

- (c) the name of any political party, body or association or trade or professional organisation of which the Member is a member;
- (d) a concise description of any trust in which the Member holds a beneficial interest;
- (e) a concise description of any trust of which the Member is a trustee and in which a member of the Member's family holds a beneficial interest;
- (f) the address or description of any land in which the Member holds a beneficial interest other than by way of security for any debt;
- (g) the source of any significant contribution in cash or kind to travel beyond Victoria undertaken by the Member (with exceptions);
- (h) any gift exceeding \$500 received by the Member from any person other than a relative by blood or marriage; and
- (i) any other substantial interest whether of pecuniary nature or not held by the Member or a member of a Member's family of which the Member is aware and which might appear to the Member to raise a material conflict of interest.

4.3.3 Any wilful contraventions of the requirements of the Act are regarded as contempt of the Parliament. The Parliament also has the power to impose a fine of up to \$2000. In default of the payment of any fine the Member's seat can be declared vacant. The Register is not available for public inspection. However, a summary of the Register is required to be tabled in the Parliament and published as a Parliamentary Paper annually.

4.4 *House of Commons*

4.4.1 The history of the House of Commons disclosure of Members' interests begins in 1969 with the appointment by the House of a Select Committee on Members' Interests (Declaration). This Committee is more commonly known as the Strauss Committee. The Strauss Committee rejected the proposal to adopt a Register of Members' Interests. However, this Committee did recommend the adoption by the House of Commons two resolutions. These are:

- 1 That in any debate or proceeding of the House of Commons 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.*

2 *That it is contrary to the usage and derogatory to the dignity of this House that a Member should bring forward by speech or question, or advocate in this House or among his fellow Members any bill, motion, matter or cause for a fee, payment, retainer or reward, direct or indirect, which he has received, is receiving or expects to receive. (House of Commons 57,1969-70:xxxiii)*

4.4.2 However the first of these resolutions was not adopted by the House of Commons until 22 May 1974. At this time another resolution was passed as follows:

That every Member of the House of Commons shall furnish to the 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. (House of Commons 102,1974-75:v)

4.4.3 At the same time the House appointed a Select Committee to determine the form and content of a Register and to propose arrangements for its administration. This Committee was known as the Willey Committee. The Willey Committee published its report in December 1974.

4.4.4 The Willey Committee saw the purpose of the Register as being:

to provide information of any pecuniary interest or other material benefit which a Member of Parliament may receive which might be thought to affect his conduct as a Member of Parliament or influence his actions, speeches or vote in Parliament. (House of Commons 102,1974-74:vii)

The Willey Committee defined nine broad guidelines under which Members were to disclose their interests. Members were asked to proceed in their declarations with "good sense and responsibility." (House of Commons 102,1974-75:vii-viii)

4.4.5 The nine specific classes of pecuniary interests to be disclosed were:

- (a) remunerated directorships of companies, public or private;
- (b) remunerated employments or offices;
- (c) remunerated trades, professions or vocations;
- (d) the names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his

membership of the House;

- (e) financial sponsorships, (i) 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, or (ii) as a Member of Parliament by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage direct or indirect;
- (f) overseas visits relating to or arising out of membership of the House where the cost of any such visit has not been wholly borne by the Member or by public funds;
- (g) any payments or other material benefits or advantages received from or on behalf of foreign Governments, organisations or persons;
- (h) land and property of substantial value or from which a substantial income is derived;
- (i) the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interests in shareholdings of a nominal value greater than one-hundredth of the issued share capital.

4.4.6 The only unique provision in this set of recommendations for disclosure is the one relating to the disclosure of clients of a Member of the Commons. This declaration ensures, if a Member is in employment as a consultant or an office of like nature, where that consultancy depends upon or arises out of that person being a Member of Parliament, that the persons to whom the Member is providing the services are made known.

4.4.7 A further major change recommended by the Willey Committee was scrutiny of Members' declarations through a mechanism where other Members and the public could make complaints to the Registrar.

4.4.8 Until 1992 the Register as established under the Willey Report recommendations remained unamended except for some interpretation of the rules and categories laid down by successive Select Committees on Members Interests. In February 1990 this last mentioned Committee tabled its first Report on a complaint against a Member of the House of Commons. After this Report was debated by the House it was resolved that the Committee look at whether the Register required reform. This Committee tabled its report in the House of Commons on 4 March 1992.

- 4.4.9 The Committee had two primary objectives in recommending changes to the Register:
- (1) to make the Register a more informative, useful and respected document; and
 - (2) to give a clearer and more explicit guidance on their obligation with regard to registration.
- 4.4.10 The Committee recommended that the old registration form (which is very similar to current NSW form) be replaced with a clearer, more comprehensive, self-contained form. The Committee considered each category of disclosure in their report and provided supplementary interpretation where it was needed. The Committee recommended this new form and accompanying interpretation should constitute the House's new rules of registration. This form is reproduced in Appendix 2 for the reader's information and to offer a comparison, the old form is reproduced at Appendix 1.
- 4.4.11 The Committee on Members' Interests also recommended that a short guide or pamphlet be produced, explaining the rules of registration in a straightforward manner, at greater length than in the disclosure form. This short guide was also to contain information on the requirements for declaration of interests by Members.

-5- ISSUES FOR DISCUSSION

5.1 *Should the Register Continue*

5.1.1 The extraordinary Referendum result in 1981 in which over 80% of NSW voters voted in favour of the introduction of a Pecuniary Interest Register for MP's demonstrates the level of public support for an effective pecuniary interests register.

5.1.2 Since the NSW register was established in 1983 comprehensive registers have been established in other Parliaments, most notably the House of Representatives and the Queensland Legislative Assembly. These developments suggest that there is continuing support for the concept of effective pecuniary interest registers for MP's and provide useful lessons for any reform of the Register.

5.2 *Disclosures by the political media*

5.2.1 Due to the importance of the media in modern politics the Committee suggests attention be given to requiring members of the media reporting on political proceedings to disclose certain pecuniary and non-pecuniary interests.

5.3 *Improving the form for disclosure*

5.3.1 The problem with the NSW Register appears to be that the form which Members are required to fill out is not clearly set out, is confusing and is not self explanatory. The Committee suggests that a new form be developed which clearly sets out what information is to be provided to make a proper disclosure.

5.3.2 As far as possible and appropriate the Committee suggests that the new form be modelled upon a form developed by the House of Commons Select Committee on Members' Interests. This form could be provided on computer disk as well as in written form. A simple pamphlet could accompany the form giving guidance to Members on how it is to be completed.

5.4 *Amendments to the categories of disclosure*

5.4.1 In addition to being more easily understood, the new form could also:

- (a) contain provisions of the disclosure of interests and positions in corporations based upon the relevant provisions in the Queensland register which are:

Members are required to disclose:

(i) *Shareholdings or controlling interests in shares in companies:*

- *name of company;*
- *shareholdings of company in other companies (where the shareholding or interests in company is a controlling interest);*
- *where the shareholding or interest is held in a private company:*
 - *investments of the holding company;*
 - *name of any subsidiary company.*

(ii) *Positions held as officer of a company:*

- *name of company;*
- *nature of office held;*
- *nature of activities of company.*

(iii) *Beneficial interests in (a) family or business trusts and (b) nominee companies:*

- *name (or description) of trust\name of company;*
- *nature of activities of trust\company;*
- *nature of interest held.*

(iv) *Trustee of family or business trusts:*

- *name (or description) of trust;*
- *nature of activities of trust;*
- *name of each person holding beneficial interests in trust.*

(v) *Interests in partnerships:*

- *name (or description) of partnership;*
- *nature of activities of partnership;*
- *nature of interests held.*

- (b) include provisions for the disclosure of membership of trade unions, professional and business associations and political parties, rather than just positions held.
- (c) remove provisions in the current form relating to the disposition of property, which have no counterpart in any other Australian registers.
- (d) improve the definition of "gift" in the current form by adopting the definition in the Queensland Register which is:

"gift" means —

(a) *the transfer of money or other property —*

(i) *without recompense; or*

(ii) *for a consideration substantially less than full consideration; or*

(b) *a loan of money or property made on a permanent, or indefinite, basis.*

The current definition could, however, retain the exemption for the dispositions by will; and clarify the definition of relative as it applies to this section by defining the term as: "any person related by blood or marriage" to the Member; and

- (e) introduce a specific section requiring the disclosure of the names of the clients for whom a Member has provided personal services which arise out of or are related in any manner to his/her role as a Member, based upon the relevant provision in the House of Commons register. This provision states:

Members are required to register the names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the House. These services include any action connected with any proceeding in the House or its Committees. In addition, they include the sponsoring of functions in the Palace, making representations to Ministers, Civil Servants and other Members, accompanying delegations to Ministers and the like.

Of course, certain aspects of this provision are not relevant to the NSW Parliament.

5.5 *Disclosure of Family Interests*

- 5.5.1 The disclosure of family interests remains a controversial issue. However, the Committee has not received any evidence to show that this exemption is a source of abuse for avoiding disclosure of pecuniary interests. Member's families have not made a decision to enter public life and a disclosure where there is no evidentiary justification for it would be a significant invasion of privacy. On the whole, the Committee suggests that unless evidence can be brought forward to show an abuse of the system no benefit would result from the disclosure of the pecuniary interests of the family of a Member of Parliament.

PART TWO

Pecuniary Interest Provisions For the Senior Executive Service

-6- PECUNIARY INTEREST PROVISIONS FOR THE SENIOR EXECUTIVE SERVICE

6.1 *Existing Provisions*

- 6.1.1 The main existing provisions which cover pecuniary interest disclosure for senior executives are contained in the *Code of Conduct for Public Sector Executives*. (Office of Public Management, 1989) These provisions are not detailed but are couched in more general terms.
- 6.1.2 Under the Code a senior executive should upon becoming aware of a potential conflict between his or her personal interest and official duty immediately disclose in writing to the Chief Executive Officer or other appropriate senior officer any financial interests held by them. After disclosure a discussion should be held with the appropriate senior officer to determine the correct course of action to resolve or prevent the conflict of interest. The ultimate decision on the course of action is one for the Chief Executive Officer, the responsible Minister or the controlling body of the agency.
- 6.1.3 Finally there is provision for a type of "ad hoc" disclosure where a Chief Executive Officer, responsible Minister or controlling body of the agency can request from senior executives written statements of their private interests.

6.2 *Key Issues*

- 6.2.1 Is disclosure necessary for Senior Executives? It has already been noted that senior executives are under an obligation to make a disclosure when they become aware of a potential conflict between personal interest and official duty. Is some further disclosure required? Specifically, is a register of senior executives interests required?
- 6.2.2 It may be irrelevant today to consider at length the pros and cons of compulsory registration of interests. This was adequately done over 12 years ago in the Bowen Report. As a recent EARC Report states:

There are weaknesses in both sets of arguments. But public and political perceptions of the need to provide workable protection against abuse of

office have lead to regimes for the mandatory registration of the significant pecuniary and related interests of Federal Ministers and senior Commonwealth officials since 1985 in Australia. (EARC,1992:93)

It is important to recognise, as was done in both the Bowen Report and the EARC Report, that the making of an ad hoc declaration and maintaining a register of interests are not mutually exclusive mechanisms for the resolution and avoidance of conflicts of interest. Rather, they are complimentary. The more important issue is: what interests should be declared?

- 6.2.3 Interests to be declared In deciding which interests of senior executives should be disclosed a balance needs to be struck between the right to privacy of executives and their families and the public interest in persons holding a public office should not use or be seen to use this office for personal gain. With regard to public perception of misuse of public office it is essential to define the notion of "significant interest". Declaration of all interests of senior executives is unnecessary and also practically impossible.
- 6.2.4 However, where is the line to be drawn between a significant and non-significant interest? The drawing of this line will depend, of course, on the context in which the potential conflict may arise. In some circumstances an interest held by a senior executive may be perceived to have influenced their actions as a public officer. In other cases the interest will be regarded as perfectly legitimate. For instance an officeholder may own shares in a company. That executive may have to decide on new regulations for *all* companies in NSW. Would his or her owning shares in *a* company prevent the executive from acting? More importantly would it be perceived that there was a conflict in this situation between personal interest and public duty? But what if that executive granted a million dollar contract to the company in which he or she held shares? A different perception obviously would arise.
- 6.2.5 In striking a fair balance between privacy and public interest it is also important to consider the variety of personal interests that an individual may have. The most common distinction is between pecuniary (monetary) and non-pecuniary (non-monetary) interests. Monetary interests may include: real estate, shares, debts, gifts, business interests, and investments. Non-monetary interests may include: political ties, family relationships, and involvement in associations.
- 6.2.6 Access to disclosures A senior executive as a public servant has two primary duties. Firstly, to serve the government of the day. Secondly, to act in the public interest. These duties are not incompatible, although they may occasionally come into conflict. It is in the public interest for public servants to implement legislation enacted by the elected representatives of the people. However, in rare circumstances, for instance where a senior executive is directed to act contrary to existing law, a public servant will not obey a governmental direction and thereby act in the public interest.

- 6.2.7 Although this example may highlight the primacy of the duty to the public interest for a public servant, this does not mean that public servants are directly accountable to the public. There is a clear and important distinction to be drawn between the mechanisms of accountability for public servant and politician. A senior executive is accountable to his or her Chief Executive Officer or Minister; a politician primarily to the electorate. This simple difference throws light on the nature of each office. A senior executive holds a public office, but simply put, it is not as "public" as the office held by a politician. This difference could be quickly confirmed by glancing at the privileges that accrue to each office.
- 6.2.8 This background supports the proposition that the public does not have a right to know what are the pecuniary interests of a senior executive. The right to privacy of the individual in the office of a senior executive of the public service is not negated by the nature of that office. Disclosure should be confidential and to the responsible officer.
- 6.2.9 Sanctions An essential element in the avoidance and resolution of conflicts of interest is the sanctions that are to follow from a failure to disclose. Sanctions must be flexible.

There is an evident need to provide a graduated response for failure to declare an interest when required. This is because not all breaches are of the same order of seriousness, as many arise from ignorance or inexperience. (EARC,1992:104)

Further, conflicts of interest are not automatically deserving of sanction. Conflicts of interest are unavoidable in everyday life. An individual regularly will, for example, have to attempt to resolve competing loyalties between work, family, friends, and principles. It has been emphasised previously that it is essential that any code or register provide not only guidelines and mechanisms for recognising conflicts of interest but also provide options for the management and resolution of conflict situations.

- 6.2.10 The Committee acknowledges that the existing code has a number of alternative options for the management and resolution of a conflict. They are:
- the executive should be authorised to continue his or her duties in the area;
 - the executive should be requested to divest him or herself of the interest; or
 - a rearrangement of duties amongst staff, or a transfer to an equivalent position with duties involving no such actual or potential conflict should be organised. (Office of Public Management,1989:1.7)

Like declaration and registration these options for resolution are not mutually exclusive. All these options were discussed in the Bowen Report. One further option mentioned in that Report was prohibition. However, the Bowen Committee recognised such an option was, when expressed in absolute terms, inconveniently rigid.

6.3 *What Do The Submissions Say?*

6.3.1 Of the 21 submissions that the Committee received only 8 dealt in some substantial way with pecuniary interest disclosure for senior executives. There were a number of submissions which stated that the present system of disclosure for senior executives was generally adequate [St James Ethics Centre; Ombudsman; Hon Elisabeth Kirkby; and the Privacy Committee]. However, not all of the submissions believed that the disclosure was completely sufficient.

6.3.2 For instance the Auditor-General states:

There would appear to be scope for a more formalised system of disclosure of pecuniary interests. (Auditor-General, 1992:1)

From the Public Service Association of New South Wales:

[The] Code of Conduct for Senior Executives . . . does not appear to adequately, in a legal sense, enforce disclosure provisions as are required of ordinary, more junior public servants. (Public Service Association, 1992:1)

6.3.3 The Auditor-General noted that there are no statutory requirements for disclosure for senior executives. Associate Professor Carney recognised that there was only an obligation to disclose when a senior executive becomes *aware* of a conflict. There is also no obligation to make a disclosure at the start of employment.

6.3.4 It was also recognised that the disclosure requirements contained some ambiguity with the use of the words "personal interest" and "private interest" as defining the kinds of interests that should not come into conflict with a senior executive's public duty. Specifically, it is unclear whether a "personal" or "private" interest means only pecuniary interests or also includes non-pecuniary interests.

6.3.5 The ICAC made a number of suggestions for the improvement of the disclosure provisions:

(1) All Chief Executives and Senior Executive Officers should be required to submit annual returns disclosing interests in the same circumstances as Members of Parliament.

- (2) *Returns should remain confidential.*
- (3) *Interests should also be disclosed on an ad-hoc basis when they arise.*
- (4) *Any sanction for breach should be disciplinary in nature.*
(ICAC,1992a:10)

6.4 ***Issues for Discussion***

A New System of Disclosure?

- 6.4.1 The Committee suggests that the present provisions for the Senior Executive Service be modelled on the pecuniary provisions of the NSW Parliament. The Senior Executive Service provisions could require mandatory confidential registration of the significant and other material interests of senior executives on an annual basis. Registration could be through an administrative process appropriate to the officer involved, according to the arrangement that the senior executive register such interests with the Chief Executive or other appropriate senior officer.
- 6.4.2 A system of registration of interests could be supported by procedures for ad hoc disclosure when the senior executive becomes aware of a conflict of interest. The Committee notes that this is provided for in paragraph 7.1 of the Code which states:

Executives should disclose in writing to the Chief Executive Officer or other appropriate officer, any financial or other interests held by them immediately upon become aware that a potential conflict between personal interest and official duty, whether real or apparent, has arisen or is likely to arise.

Definitions

- 6.4.3 The Committee suggests that the term "personal interest" in paragraph 7.1 of the present Code could be clarified. It could be expressed in clearer and more precise terms. The definition could include a distinction between monetary and non-monetary interests.

Categories of Disclosure

- 6.4.4 The Committee suggests that the classes of interests to be disclosed by senior executives could be the same as those disclosed by NSW Parliamentarians.

Sanctions

6.4.5

The Committee is of the view that the present Code of Conduct for Senior Executives could, if amended, include provisions for sanctions to apply for a failure to disclose an interest. However, the Committee suggests sanctions need go no further than existing disciplinary procedures. All that maybe necessary is that a breach of the provisions relating to disclosure be a breach of the disciplinary provisions of the legislation under which the public official is appointed or employed. The Committee is aware that such disciplinary provisions are supported by the ICAC Act and the criminal law.

PART THREE

A Code of Conduct For Members of Parliament

-7- EVIDENCE TAKEN BY THE COMMITTEE

There was support from submissions received for the adoption of some type of Code for Members of Parliament. To deal effectively with the evidence received by the Committee it is necessary to consider a number of issues in turn looking at what the submissions said about each. These issues are:

- The purpose and benefits of a Code.
- How should a Code be developed?
- What areas should the Code cover?
- Should a Code be general or specific in content?
- Sanctions.
- Speaker Rozzoli's draft Code.
- Ministerial Code.

7.1 *The purpose and benefits of a Code.*

7.1.1 The Independent Commission Against Corruption put forward a view that the Code should serve the purpose of acting as guidance for Members. In the words of the Commission:

Our perception of the Code is that it is not rules of behaviour, it is guidance for decision-making in those areas that are difficult to make decisions about and that [at] present everybody experiences them with a dilemma, so we would not be looking at rules. In terms of enforcement, the supremacy of Parliament in the system of government means that it is really for the Parliament to decide on the means of enforcement. (Minutes of Evidence, 10 August:57)

The Commission stated that their role was to bring to mind some of these issues which should be discussed when the development of the Code is being considered by Members.

7.1.2 Ted Mack, the Federal Member for North Sydney, saw the merit of a Code in creating a perception in the public eye.

It is because justice has to be seen to be done. That is the problem. The public's fears are always worse than reality. A lot of governments at all levels get themselves into trouble, not because of what they have done, but because of what people fear they are doing. The more we can dispel those fears, the better. In the end, openness is the only defence against corruption or the public perception of corruption which may or may not exist. (Minutes of Evidence, 11 August:14)

7.1.3 The Honourable Elisabeth Kirkby MLC submitted to the Committee that there were two main benefits of a Code of Conduct. These are:

- (1) *A Code sets down standards of behaviour so that Members are aware of what exactly is required of them.*
- (2) *To ensure the integrity of Parliament and those entrusted with public office. (Kirkby, 1992:1)*

7.1.4 Associate Professor Michael Jackson of the University of Sydney submitted to the Committee that:

The process of debating and elaborating a code of ethics would stimulate reflection on the nature of corruption, and provide a means for raising standards and increasing consensus among parliamentarians. (Jackson, 1992:3)

7.2 ***How should a Code be developed?***

7.2.1 It was put to the Committee by many informed persons giving evidence that an effective Code can not be implemented from above. The ethical principles in the Code must be subscribed to by all those who are to be bound by the Code. This means that those to be bound must participate in the development of the Code.

7.2.2 The Independent Commission Against Corruption took a strong view on the development of the Code for Members. The Commission took the view that it was up to the Members of Parliament to work out the nature and the boundaries of any Code.

7.2.3 Dr Michael Jackson, Director of the Public Affairs Research Centre, University of Sydney put it unequivocally that from all his experience in this area Codes can not be developed from above. Dr Jackson believed a Code of Ethics could be more effectively implemented if it was preceded by an ethics audit. What is an ethics audit?

An ethics audit is a carefully structured survey of ethical attitudes among members of an organisation. For such an audit to have value, it must ask questions that are specific and, in some respects, hard questions about the trust and perception that govern the daily life of people working in a complex organisation like Parliament House, and must try to secure honest answers by organising the ethics audit in a way that invites those who are responding to the survey instrument to be honest and to be candid. (Minutes of Evidence, 10 August:2)

7.2.4 Dr Jackson described to the Committee work that had been previously conducted by the Public Affairs Research Centre in 1990. This work consisted of a survey of 109 Members of the NSW Parliament on their perception of conduct in ten case studies. Simply put, the Members were asked if they perceived each case to be corrupt or not. Dr Jackson informed the Committee there was not a consensus among MP's on whether a particular case was an example of corrupt conduct or not.

7.2.5 Dr Jackson concludes from these results that no forum exists in NSW for resolving honest disputes over ethical issues. He therefore supports the process of debating and elaborating a Code of Ethics by NSW Parliamentarians as a stimulant to the raising of their own ethical standards. The importance of Dr Jackson's point is that this process must occur *amongst* the Members *themselves*.

7.2.6 Commissioner Temby specifically brought to the Committee's attention the fact that :

The Commission has found that workshops, in which ethical scenarios are explored and discussed, are useful in focusing issues. What seem at first to be simple and general issues, when explored further [turned] into ethical dilemmas, [which] highlight the difficulties. (ICAC, 1992:1)

7.2.7 Professor Paul Finn of the Australian National University stated it was necessary to first understand the nature of the office to which the code was to apply, "but at the end of the day, there is a real need for positive guidance". (Minutes of Evidence, 11 August:32)

7.3 ***What areas should the Code cover?***

7.3.1 The ICAC submitted to the Committee the most comprehensive list of areas that should be dealt with in a Code. These are:

- How to balance the sometimes competing interests of the people of New South Wales, the people who reside in the electorate, and the party an individual represents.
- Preventing conflicts between private interests and public duty.

- Honesty and fairness in dealings with parliamentary colleagues, constituents, staff and public sector employees.
- Avoiding undue influence by others.
- Ensuring that influence obtained through the occupation of public position is not used for improper purposes.
- Use of information and contacts obtained through public duty.
- Use of public funds, material resources and staff able to be accessed through holding public office. (ICAC,1992a:13)

7.3.2 Associate Professor Gerard Carney of Bond University submitted that the Code should address the following issues:

- business interests and outside employment;
- the receipt of gifts and hospitality;
- contractual relationships with the government;
- ad hoc disclosure of personal interests both inside and outside Parliament;
- duty of confidentiality;
- relationship between Members and both the Ministry and the Public Service;
- campaign contributions;
- post-office standards; and
- civil and criminal liability. (Carney,1992:10-11)

7.3.3 Dr Simon Longstaff of the St James Ethics Centre also saw that the Code should be aspirational in character. The Code of Ethics should meet the following criteria:

- (a) *it should ensure the basis for securing the trust of the governed in those who govern,*
- (b) *it should stress that the responsibility of a Member is to represent his or her electorate and to look to preserve its interests before those of any other,*

- (c) *it should make explicit that conduct which demeans the institution of Parliament or the office of elected representative is not to be tolerated in those whose role it is to continue to be considered the government of the people,*
- (d) *the Code should be subject to regular review so that its provisions remain relevant to a society in which standards may change over time. (St James Ethics Centre, 1992:9-10)*

7.4 ***Should a Code be general or specific in content?***

- 7.4.1 A Code can either be a general statement of principles, broad enough to offer guidance over unforeseen circumstances that may arise or a specific Code which attempts to deal with situations that are likely to arise and provide a set mechanism for action in these circumstances. The Committee in the course of this inquiry had to investigate the merits of the two types of code.
- 7.4.2 Associate Professor Carney thought that specific standards should not be mixed in with general standards. General principles should be provided to be open to interpretation by each Member and if more specific principles were required these should be provided in a manual of some kind.
- 7.4.3 The ICAC in their oral submission to the Committee drew a distinction between a "set of general principles" and a "code of conduct". The Commission saw the latter as being *drawn from* the former.
- 7.4.4 Mr Ted Mack, the Federal Member for North Sydney, took the view that a statement that is of a general nature should be set out in great detail. Mr Mack saw these detailed "rules" as forming the basis of legislation. Mr Bryce Gaudry MP of the Committee sought to clarify Mr Mack's point when he stated:

Would not that be a separate thing? You have your code of conduct which . . . gives you a basis on which to work, and it sounds as though you would need a manual of parliamentary operation, which is a different thing altogether. (Minutes of Evidence, 11 August:6)

7.5 ***Sanctions***

- 7.5.1 Dr Simon Longstaff of the St James Ethics Centre stated that the Code should not be some kind of compulsory document. Dr Longstaff on this point argued:

I do not see how that could be the case, given the status of Members of Parliament. I think a slightly more significant reason is that if it is something which is merely imposed upon Members of Parliament,

irrespective of whether they subscribe to each point individually, then there is a risk that there is something inauthentic about the allegiance which might be given to these things. (Minutes of Evidence, 11 August:52)

- 7.5.2 Commissioner Temby of the ICAC thought that the Committee might consider an advisory body such as the US Senate Ethics Committee to provide advisory rulings. This kind of Committee was also recommended by a number of other persons.
- 7.5.3 The Privacy Committee specifically suggested "a committee structure capable of monitoring compliance with a code and acting on complaints" as appropriate.
- 7.5.4 Associate Professor Carney favoured, on balance, a select committee to have the jurisdiction to enforce a Code of Conduct. However, Carney believed the Committee should also perform an advisory role for Parliamentarians.
- 7.5.5 Ted Mack Federal Member for North Sydney argued that he would not like to see a Code as self-regulating but incorporated into legislation. He believed that history had shown that self-regulation did not work.

I think [the penalties for breach of the Code] should be spelt out in the legislation and should never be left to debate in Parliament because we all know what happens there. Members can be expelled now, but Parliament would virtually never expel a Member. Penalties have to be somehow separate from the political system. Otherwise too many other things intervene. (Minutes of Evidence, 11 August:9)

7.6 ***Speaker Rozzoli's draft Code***

- 7.6.1 The Committee received from the present Speaker of the Legislative Assembly the Hon Kevin Rozzoli a draft Code of Conduct that he had submitted to the Independent Commission Against Corruption. This Code appears as an appendix to the Commission's *Report on Investigation concerning Neal and Mochalski*. The Committee took careful notice of this Code as it emanates out of the office of the Presiding Officer of the Lower House of the Parliament of New South Wales. The Committee, however, does take note of the fact that the Speaker in a later document does not expressly advocate that a Code should be adopted but only puts forward a Code if it is deemed to be desirable in New South Wales. (Rozzoli, 1992:10)
- 7.6.2 A number of submissions specifically endorsed this Code. These included the St James Ethics Centre and the Honourable Elizabeth Kirkby MLC.
- 7.6.3 However, there were reservations expressed by a number of people on adopting Speaker Rozzoli's Code. Associate Professor Gerard Carney thought that he could

only endorse the proposed Code subject to a number of alterations. Professor Carney pointed out that this Code mixed together specific and general principles. He only saw a "need for a statement of general principle which is open to interpretation by each Member, to make a judgement upon". (Minutes of Evidence, 10 August:43)

7.6.4 To Speaker Rozzoli's proposed code of conduct the St James Ethics Centre suggested the following supplementary points:

- (a) *That Members of Parliament always be truthful and, at least, never knowingly tell a lie.*
- (b) *That Members of Parliament always vote according to their conscience, bearing in mind the need to further the interests of their electorate in a just and equitable manner. (It is recognised that Members may, in all good conscience, regard support of their Party in the House as being in the best interests of their electorate).*
- (c) *That Members of Parliament always be ready to provide reasons for any course of action proposed or supported as a Member of Parliament.*
- (d) *That Members of Parliament respect the inherent dignity of persons and institutions related to the Parliament of New South Wales. When opposing, to attack the arguments and not the people (unless of particular relevance).*
- (e) *That Members of Parliament be mindful of the privileges conferred when speaking in the House and that they seek to avoid causing harm to any individual who does not enjoy the same privileges when seeking to reply. (St James Ethics Centre, 1992:12)*

7.6.5 The Privacy Committee thought that the proposed Code could only be thought of as "an educational reminder". If it were to be a procedural document it would require a lot more detail.

7.6.6 A strong view was expressed by a Member of the Committee the Honourable Stephen Mutch MLC who stated:

I would not agree with most of the matters proposed by Kevin Rozzoli being in the Code. That is not to say I do not agree with the gist of some of the things he is recommending and in fact, some I do not agree with at all. I imagine that you would either have a nonsense Code or

the alternative, if it is going to be enforceable, is it not extremely dangerous and basically an affront to the democratic system if you are going to proscribe rules of behaviour for Member of Parliament that are going to be judged by a committee or even by other Members of Parliament who are out in some respects, to get them? (Minutes of Evidence, 10 August:57)

The Honourable Stephen Mutch MLC considered a Code could be a threat to the democratic system as it would deny the right to individual Members "to behave in a manner according to their consciences". (Minutes of Evidence, 10 August:28)

7.6.7 Professor Finn submitted to the Committee that the Speaker's Code in some areas did not go as far as the standards inherent in the existing law. Legal standards in a Code should be recognised as such, rather than being referred to as general ethical principles.

7.7 *Ministerial Code*

7.7.1 The Ministerial Code's aim is to preserve the integrity of Executive Government in New South Wales. The Code is based on the foundation of two general principles. These are:

- (1) Ministers will perform their duties impartially, disinterestedly and in the best interests of the people of New South Wales.
- (2) Ministers will be frank and honest in official dealings with their colleagues and will maintain the confidentiality of information committed to their secrecy.

7.7.2 The guidelines and procedural requirements for Ministers constitute some nine pages. These, however, are only meant to provide a "broad framework" to assist Ministers in resolving ethical issues that confront them. This Code in no way absolves the Minister from being responsible for the decisions that he or she makes.

7.7.3 There are five general obligations to which a Minister must conform.

- (1) Ministers will exercise their office honestly, impartially and in the public interest.
- (2) Ministers should avoid situations in which they have or might reasonably be thought to have a private interest which conflicts with their public duty.
- (3) In conformity with their Executive Councillor's oath and the requirement of confidentiality of Cabinet proceedings, Ministers will make no unauthorised use or disclosure of information committed to their secrecy.

- (4) A Minister shall be responsible for ensuring that Members of his or her staff are made aware of their ethical responsibilities and will require such disclosure or divestment of personal interests by staff members as seems appropriate to the Minister.
- (5) A Minister shall be frank and honest in official dealings with colleagues.

The Code then deals in particular with the following areas:

- registration of Ministers' interests;
- conflict of interest;
- confidentiality of information;
- misuse of public property and services;
- gifts and hospitality; and
- post-separation employment.

- 7.7.5 Of the submissions received by the Committee none directly dealt with the suggestion contained in the Committee's terms of reference that the Ministerial Code of Conduct be taken into account in formulating a Code of Ethics for Members of Parliament.
- 7.7.6 At the public hearings held by the Committee the Independent Commission Against Corruption suggested the Code for Ministers provided one reference or starting point in the development of a Code for Parliamentarians.
- 7.7.7 At the public hearings, the Honourable Stephen Mutch MLC, pointed out that any "streamlining" of the present Ministerial Code to apply to Parliament is not satisfactory. He states we must remember the:

ministerial Code is a party political instrument. The Labor Party might come in at some stage and say, "We will have our own Ministerial Code of Conduct". It is not something of the Parliament. I believe that is a fundamental distinction. You cannot really hold an incoming government to the Liberal Party's Ministerial Code of Conduct. (Minutes of Evidence, 10 August:66)

It was constantly put to the Committee by various witnesses that a Code must have the support of all those with an organisation. If a Code is reflective of the views or subscribed to by only approximately half an organisation it would be fundamentally flawed and would be unlikely to command the allegiance of all.

8.1 ***The Report***

8.1.1 In May 1992 the Queensland Electoral and Administrative Review Commission (EARC) brought down its Report on *The Review of Codes of Conduct for Public Officials*. This Report emanates out of one of the many recommendations of the Fitzgerald Report which was released on 3 July 1989. This recommendation charged EARC with the task of implementing and supervising the formulation of Codes of Conduct for public officials.

8.1.2 This comprehensive project was undertaken with rigour by EARC. A detailed Issues Paper was released in July 1991. EARC called for public comment on this paper. It held a two day public seminar with a wide range of informed persons appearing. EARC conducted an Ethics Survey amongst Queensland public sector employees. EARC consulted widely with organisations and individuals with experience and expertise in the development of Codes.

8.1.3 The central concern of this report is:

the ethical standards which the Queensland community is entitled to expect of public officials at all levels — including elected State and local government officials — when acting in their official capacity. The Report seeks to answer the following questions:

(a) *What ethical standards ought to be observed by public officials who make decisions affecting the rights and entitlements of others in a democratic, "Westminster" - based system of responsible government?*

(b) *Is it feasible to set down such standards in a Code or Codes of Conduct for appointed and elected officials, and if so what should such Codes contain, and how should they be administered?*
(EARC,1992:vi)

8.2 *Ethics*

8.2.1 EARC drew upon ideas from law and political theory to resolve these questions. EARC first made a distinction between personal ethics and public ethics. It was the latter with which the Commission was concerned. The Commission refers to the type of public ethics which they deal with as "administrative ethics". This term refers to:

socially-constructed standards in accordance with which elected and appointed officials are expected to use the powers, influence and resources of their official positions, and the duties and obligations characteristic of various categories of public official in the context of a democratic and responsible system of government. (EARC,1992:vii)

8.2.2 EARC argues that the administrative ethical standards come from three distinct sources:

- (a) functional and legal limitations and obligations arising from the individual's role/official capacity;
- (b) "professional ethics" aspects of an official's role (ie. in the discretionary exercise of powers arising from an official's privileged access to information, formal power, resources, or influence; accountability/responsibility); and
- (c) an official's "personal ethics", especially where these are in conflict with the norms or practices of the organisation but are consistent with the prevailing community standards. (EARC,1992:viii-ix)

As this report is concerned solely with the examination of the development of a Code of Conduct for Members of Parliament the summary of the EARC Report will be limited to that.

8.3 *Codes and Parliament*

8.3.1 Codes of Conduct in the Westminster system are a recent phenomenon having only arisen in the last 25 years. Previously Member's conduct was governed by such mechanisms as: Standing Orders, parliamentary privileges, criminal law, and parliamentary scrutiny. In Australia these mechanisms over the last 25 years have sometimes found to be wanting.

8.3.2 It is crucial to the legitimacy and authority of all levels of government and to responsible government itself that the integrity of those that govern is ensured. Consequently, it is inescapable that for government to work effectively the ethical standards of those elected should be declared publicly. Recourse to the ballot-box has been a largely ineffective mechanism for ensuring these standards.

- 8.3.3 It is also recognised the elected official serves in an office of a different nature than a non-elected official. Although this office is different in nature it is still an office of the same kind; a public office. This means there must be some general principles which underlie all offices which are public. Accordingly there may be a fundamental set of ethical standards that can be applied to *all* public offices.
- 8.3.4 The setting down of universal principles will not, however, constrain differing interpretations and adoptions of these fundamental universal principles to the varying contexts and circumstances of the individual offices. The purpose of stating a set of fundamental principles to which Members of Parliament are to adhere is not to "create" honesty in Members, but to provide a general framework under which their conduct can be assessed.
- 8.3.5 The Commission sets the minimum and basic standards to which all public offices should follow as:
- (1) Respect for the law and the system of government.
 - (2) Respect for persons.
 - (3) Integrity.
 - (4) Diligence.
 - (5) Economy and efficiency.
- 8.4 ***What type of Code?***
- 8.4.1 The next issue considered by EARC was: should these general principles be extrapolated through a Code of Conduct? The principle question for consideration is: should a Code be general in nature or provide more detailed and specific guidance.
- 8.4.2 A detailed Code is commonly referred to as a Justinian type of Code. This style of Code provides an exhaustive, fully articulated set of regulations and precedents for every possible eventuality in order to minimise the need for interpretation.
- 8.4.3 A general Code is referred to as a Ten Commandments type of Code. This style of Code sets down a limited number of general principles, with a degree of explanation to assist the decision-maker to apply those principles and to decide between competing or conflicting principles in particular cases.
- 8.4.4 Each of these styles of Code have their own deficiencies. Further, there a number of general problems that arise when setting down a Code:

- (i) *Complexity of the task — balancing of general principles against the need for specific advice;*
- (ii) *Conceptual confusion over such terms as: "community standards", "the public interest", "ethics", "moral obligation", "official duty", "responsibility", "accountability" and "professional ethics";*
- (iii) *the evident difficulty of "legislating for morality";*
- (iv) *the need to meet the conflicting and differing needs for users;*
- (v) *failure to recognise the distinction between the official capacity and the private capacity of an individual official;*
- (vi) *failure to recognise the difference between the normative and the regulative aspects of management. (EARC,1992:36)*

8.4.5 From the submissions that EARC received there was a clear acceptance of the need for a Code of Conduct which is a formally expressed uniform public document. Along with this there was a preference for a more general Code.

8.4.6 There was general agreement that Codes should be developed over time with a mutually reinforcing program of training and education.

8.5 *A Code — why?*

8.5.1 EARC recommends the adoption of Codes of Conduct for *all* public officials. The Commission believes that there are two main reasons why Codes are essential.

- (i) *Given increasing cultural pluralism and the pace of change in our society, if managements do not publish Codes of Conduct to guide and inform staff as to standards of acceptable conduct in their organisations, it is the management which will be held accountable when things go wrong; and*
- (ii) *while government has no business in regulating an individual's morality Codes of Conduct for public officials have a valuable role to play in restoring and maintaining community confidence in public management or, more pragmatically, if an organisation wishes to be seen as responsive to the community it serves, and to that end expects the conduct of its officers to reflect community standards, it is necessary for the organisation to spell out what those standards are. (EARC,1992:40)*

8.5.2 The objectives of a Code of Conduct are:

- (a) to identify and apply the ethical standards which are expected in the public sector generally; and
- (b) to recognise and deal with relevant ethics issues in accordance with those standards.

8.5.3 The Code of Conduct provides consistent, authoritative and relevant guidance expressed in terms of general principles, on the standards which are expected to govern the conduct of Members acting in, or in connection with, their official capacity.

8.6 *Implementation of a Code*

8.6.1 EARC adopted a four part strategy to achieve these objectives:

- (a) Public Sector Ethics Act
- (b) Codes of Conduct
- (c) Agency specific rules
- (d) Office of Public Sector Ethics. (EARC,1992:163-191)

8.6.2 Public Sector Ethics Act EARC noted that at present 22 Commonwealth countries have placed official conduct standards in legislation. The Commission took the view the purpose of the proposed legislation would be to declare the standards of acceptable official conduct rather than to impose them upon persons. The important functions of placing ethical obligations in legislation would be to establish an explicit framework and criteria for the implementation of policies and identify the values implicit in that policy. EARC hopes that the establishment of legislation can be approached in a bipartisan manner. If a party-political approach was to be taken to the implementation of this Code this would undermine the universal character of the ethical principles that are to bind all public officials.

8.6.3 Codes of Conduct The Codes of Conduct are to be established as regulations under the *Public Sector Management Act*. The Commission expressed concern that if a Code is to be effective then a number of criteria need to be met.

- (a) An *organisational context* must be provided in which values can be discussed meaningfully, and which encourages members of the organisation to develop skills in recognising and thinking about ethics issues. It is probable that if a Code is not understood by, and seen as relevant to, all staff they will ignore it.

- (b) **Effective adoption** must be achieved by the organisation in its practices and structures — this includes not only the practical expectation that an organisation must be seen to "practise what it preaches", but it also requires effective sanctions against gross failure to observe the principles of the organisation. This implies that the Code must have sufficient force attached to it to support effective disciplinary action. Legislation is usually the most effective way of providing this.
- (c) **Leadership** must be demonstrated by the organisation's executives at all levels — if the organisation's Code of Conduct is not observed by the senior executives of the organisation, it is unlikely that the other members will themselves comply.

8.6.4 Agency Specific Rules EARC recommends:

codes should be supported to the extent necessary, by the promulgation of agency-specific rules consistent with and expanding on the fundamental principles and general Codes of Conduct. Such rules should be issued by the Chief Executives after they have been developed using appropriate processes of consultation involving affected staff and the relevant union(s). They should take the form of formal adjuncts to the relevant general code and have the force of that code.
(EARC, 1992:45)

The development of agency-specific rules allows each organisation to have a sense of "ownership" with respect to the Code.

8.6.5 Office of Public Sector Ethics One of the most interesting recommendations in the EARC Report is for the establishment of an Office of Public Sector Ethics. (EARC, 1992:178-181) The Commission, because its Report encompassed all public sector officeholders, believed that it was necessary such an Office be established to ensure "leadership, commitment and ongoing development". EARC argued that not only was the creation of this Office necessary, it was supported by the submissions it had received. Further similar bodies existed in the United States, at both Federal and State level and Canada, at provincial and national level. The proposed role for the Office of Public Sector Ethics would be almost entirely advisory. The Office would not have an adjudicative role. The Office would have a power to investigate breaches of the Code or the Act. This power would only need to be exercised in exceptional circumstances. Some of the functions of the Office would be:

- (a) development of ethical training programs;
- (b) provision of advice to organisations;

- (c) co-ordination of a common approach to public sector ethics; and
- (d) report to Parliament on activity under the legislation.

-9- THE BOWEN REPORT

9.1 *The Committee*

9.1.1 The Commonwealth Government in 1978 established a Committee of Inquiry chaired by Sir Nigel Bowen Chief Judge of the Federal Court of Australia. The Committee, known as the Bowen Committee, was required to inquire into matters relating to public duty and private interest. The Committee's terms of reference included Ministers, Members of both Houses of Parliament, staff of the previous two classes, Members of the Australian Public Service and a number of other relevant classes.

9.1.2 The Committee first had to consider whether a general statement of principles could be drawn up on the nature of private interests, pecuniary or otherwise. The Committee generally characterised the public duty of officeholders as maintaining the independence of judgement unfettered by private interests. Private interests may be of a pecuniary or non-pecuniary nature. Non-pecuniary interests were seen to be nebulous in character. The Committee, however, did believe they could conflict with public duty. Consequently, the Committee believed it necessary to establish a mechanism to regulate non-pecuniary interests. The Committee saw that this would not be a simple task.

9.1.3 The Committee developed the following test for a conflict between public duty and a non-pecuniary interest:

the likelihood that the person possessing the interest could be influenced in the independent judgement which his public duty requires be applied to the matter in hand, or that a reasonable person would believe that he could be so influenced. (Committee of Inquiry, 1979:11)

9.1.4 Pecuniary interests, it was stated by the Committee, could be defined and dealt with more exactly. The Committee considered a number of types of pecuniary interests such as assets, liabilities, income, gifts, hospitality and sponsored travel. These types of pecuniary interests have been previously considered above (in Part Two of this Report).

9.1.5 The Bowen Committee concluded:

that it would not be possible to draw up a completely comprehensive and satisfactory statement of principles on the nature of private interests, pecuniary or otherwise, which could conflict with the public duty of any or all persons holding positions of public trust in relation to the Commonwealth. (Committee of Inquiry, 1979:15)

9.2 ***Registration of Conflicts of Interest***

9.2.1 This area has previously been covered in Part Two of this Report. However, it is worth noting again that the Bowen Committee sought to balance two general principles when coming to conclusions on this point. These were the principles of public accountability and a right to privacy.

9.3 ***A Code of Conduct***

9.3.1 Although the Bowen Committee did not think it possible to satisfactorily define the nature of private interests it did believe it was possible to recommend principles to resolve conflicts of interest. A statement of such principles would constitute a Code of Conduct. The Bowen Committee saw such a Code as embodying the minimum standards that should be adhered to by public officeholders. (Committee of Inquiry, 1979:29-33)

9.3.2 The Committee in recommending the adoption of a Code of Conduct relied upon Codes that had been adopted in other countries such as Britain, Canada, India, New Zealand, Papua New Guinea, the United States and West Germany. It relied, amongst others, specifically on Redcliffe-Maud Committee and the Salmon Royal Commission on Standards of Conduct in Public Life, both from Britain.

9.3.3 The Committee did not envisage that the Courts should become involved in the enforcement of the Code. Rather, the Committee believed that the Code should be incorporated into the existing disciplinary procedures. In the case of Members of Parliament this would be the Standing Orders of the Parliament.

9.4 ***Measures for buttressing the proposed Code of Conduct***

9.4.1 The Bowen Committee saw the fundamental recommendation of its report as being the Code of Conduct. However, it also sought to undertake an investigation of other methods that had been used in countries to avoid and resolve conflicts of interest.

9.4.2 The Committee grouped their research into six general ways that conflicts of interests can be avoided or resolved. These are:

- (a) Prohibition — the avoidance of conflict by forbidding an officeholder from holding a certain kind of interest or forbidding him or her acting in the position if such an interest is held;
- (b) Declaration — the written or oral disclosure of a relevant interest at the relevant time;
- (c) Registration — written disclosure of specified interests without regard to the immediate circumstances of the officeholder;
- (d) Authorisation — the consent of the superiors of the officeholder to act in a position or to continue to hold an interest where there is a conflict;
- (e) Divestment — disposal of the interest which is causing the conflict; and
- (f) Disqualification — removal from office where there is a conflict of interest.

9.5 *Registration of Interests*

- 9.5.1 This area has been discussed in detail in Part Two of this Report. It is interesting to note that the Bowen Committee did not recommend that a system of compulsory registration of interests be adopted.

9.6 *Application of the Code*

- 9.6.1 In the next three chapters the Bowen Committee sought to apply the Code to different classes of officeholders. The Committee recognised that due to the differing legal and constitutional nature of the offices the relevance of specific items of the Code will not be the same for all classes. Consequently, the Committee applied itself to offering an individual implementation program for each class, together with any supplementary measures that may be needed.

- 9.6.2 Of specific concern to the Committee on the ICAC is the recommendations on implementation and supplementary measures that the Bowen Committee made with respect to Members of Parliament. The Bowen Committee believed that the two most important features of the office of a Member of Parliament relevant to the implementation of the Code of Conduct were:

- *because of the role of Members of the House of Representatives as the elected representatives of a particular division, or, in the case of Senators, a particular State, disqualification of a Member of Parliament from voting or participating in a debate on a matter is rarely an option as this would effectively disenfranchise his electors on the matter;*

- *because backbenchers do not have executive power, and have limited access to confidential information, there is rarely any necessity for divestment. (Committee of Inquiry, 1979:57)*

9.6.3 With this in mind the Committee recommended that the Code should either be incorporated in the Standing Orders of each House, or that a resolution be passed by each House adopting the Code and providing that a breach of the Code be a breach of the privileges of the Parliament.

9.6.4 Other important recommendations made by the Bowen Committee in this area were:

- *strengthening the rules which apply to Members of Parliament in declaring interests when they are involved in matters in which they are interested;*
- *a reconsideration of the provisions in the Standing Orders that apply to members of Parliamentary Committees when they have a conflict of interest;*
- *increasing the restrictions upon the Presiding Officers of each House with respect to the "outside" offices that they may hold. (Committee of Inquiry, 1979:58-64)*

9.6.5 The Committee also made recommendations with respect to the staff of Members of Parliament. These were:

- responsibility for the proper conduct of the staff of Members of Parliament should remain with the Member they have been appointed to assist;*
- Members of Parliament should ensure that their staff are familiar with the Code of Conduct and conform to it;*
- such staff should disclose to their Members any interests which they have that are likely, or might reasonably appear likely, to cause conflicts of interest;*
- when dealing with officeholders the staff of Members of Parliament should declare personal interests according to the same rules as apply to their Members; and*
- a Member of Parliament instructing a member of his staff to make representations on his behalf to an officeholder should acquaint*

the member of staff with the substance of any declaration of interest he would have been required to make had he made the representation himself, and direct that the information be communicated to the officeholder when the representation is being made. (Committee of Inquiry, 1979:64-65)

9.7 ***Machinery for dealing with conflicts of interest cases***

9.7.1 The Bowen Committee generally believed the responsibility for resolving and avoiding conflicts of interest should rest with the persons and bodies already responsible for the conduct of particular categories of officeholders.

The Committee, consistently with the philosophy adopted throughout this report, believes that ordinary cases involving allegations of conflict between public duty and private interest should be resolved through the established machinery for dealing with misconduct or misbehaviour on the part of officeholders. It recognises, however, that such machinery may be inadequate or inappropriate in exceptional cases where a high degree of public concern is involved. It has concluded that special machinery should be established to deal with a very limited number of matters. (Committee of Inquiry, 1979:103)

9.7.2 The Committee stated that it was necessary to strengthen and formalise the existing Parliamentary machinery as there were no existing channels through which allegations of conflict of interest could be tested. The most appropriate mechanisms to achieve this aim the Committee believed would be a Standing Ethics Committee.

9.7.3 The Committee foresaw that there may be a problem with respect to exceptional cases where the public may not be satisfied with the investigation of the Ethics Committee. In such cases the Committee considered that an outside investigatory body would be needed. This situation would arise where there was a major breach of the Code of Conduct which brought into disrepute the integrity of public life. To this end the Committee recommended that a Public Integrity Commission be established.

-10- DIFFICULTIES

10.1 *Roles and Responsibilities of Members of Parliament*

10.1.1 During the course of the Committee's public hearings the complexity involved in developing a Code for Parliamentarians was soon realised. As Mr Andrew Tink MP put forward at the conclusion of the evidence given by the ICAC:

Could not the question really be: who is a Member of Parliament responsible to? Does not a lot flow from that? If there is no agreement on an answer to that question, where do you go? (Minutes of Evidence, 10 August:72)

The ICAC agreed that this was the fundamental question to be considered.

10.1.2 This problem was eloquently and lucidly highlighted by the evidence of Professor Paul Finn of the Australian National University. Professor Finn is the head of the Integrity in Government Project. This Project is nation wide and was set up initially to examine the standards of conduct to be expected of Members of Parliament, Ministers, ministerial staff, public servants and members and officers of statutory authorities. The aim of the Project is to come up with generalised statements of the standards of conduct expected of these different classes of officials.

10.1.3 To achieve this objective Professor Finn pointed out to the Committee that the first issues that arise for determination are: what is a Code? and what purposes can it serve? Professor Finn, however, stated to the Committee that these questions could not be answered without tackling a more fundamental issue.

The reason for that is that any systematic thinking about, first of all, what are the legal and constitutional obligations of these types of officials in our system for practical purposes died about 100 years ago. There is now a large hiatus in our thinking. There are instances where they have been modernised somewhat, but getting down to what constitutes corrupt conduct, we are really digging back in the early nineteenth century and earlier just to understand that. What is a Member of Parliament? People still trot out Edmund Burke, and political parties have in fact come along since Edmund Burke. We just

have not updated our thoughts, and much of the work changed very much from what I thought would be a relatively straightforward exercise to one which has become quite arcane, trying to figure out what the legal and constitutional norms are or should be, looking at the law and the constitutional ideas and setting a floor of what are appropriate standards of behaviour and then what we should expect of people beyond that. The aspirational side of it was the side which would be associated with Codes of Conduct. (Minutes of Evidence, 11 August:30)

More specifically Professor Finn restates the basic problem faced by the Committee which Mr Tink had already mentioned.

[B]efore one could talk about standards of conduct for [Parliamentarians], one had to understand what their role and responsibility was because the standards are the standards of role and they differ markedly from one form of official to another. (Minutes of Evidence, 11 August:32)

- 10.1.4 The concerns that were expressed by many Members of the Committee, over for instance the provisions of the Speaker's draft Code, can be traced back to the lack of any systematic study of the varying and essentially conflicting roles and responsibilities of a Parliamentarian.
- 10.1.5 The Committee received submissions that clearly saw a conflict between the different basic duties that fall upon a person when he or she is elected to Parliament.
- 10.1.6 The Speaker of the Legislative Assembly, Kevin Rozzoli, in *Legislative Studies* Volume 6 Number 2 Summer 1992, put forward three basic duties of a Parliamentarian:
- (1) A duty to the Member's electorate.
 - (2) A duty to any other person who seeks assistance from the Member.
 - (3) A duty to the Parliament itself.

The Speaker did not believe that "such a clearly identifiable duty exists towards a political party." (Rozzoli, 1992:9)

- 10.1.7 The ICAC recognised that a Member of Parliament is subjected to a number of differing and competing duties:

a responsibility to Parliament, a responsibility to his or her own constituents and a responsibility to the people of New South Wales more

generally. (Minutes of Evidence, 10 August:63)

- 10.1.8 Part Two of this report has examined the present mechanisms that relate to between interest and duty. The Committee in considering the proposal for a Code of Ethics for Parliament had to look again at this conflict. The Committee was influenced by the evidence of Professor Finn on this point.

The terminology "conflict between duty and interests" floats around all these discussions as though conflict between duty and interest is a bad thing. We have to realise that public office is based on a conflict between duty and interest. The moment we say that a public servant has to be impartial we are really saying that he or she has to subordinate something to the public interest. The fact that most members of Parliament are members of political parties in a sense creates a conflict between duty and interest. I could go on. There is nothing objectionable with conflicts between duty and interest. (Minutes of Evidence, 11 August:33) (emphasis added)

- 10.1.9 The Committee realises that the task of formulating a Code of Ethics that aims to resolve these conflicts is no simple matter. The Committee obviously recognises the complex nature of politics. As the Chairman of the Committee Malcolm Kerr put it:

Democracy, in its implementation, sets up a series of paradoxes. On the one hand our system rightly invites our suspicion and probing of those who govern us for the time being. On the other hand it seeks to establish community respect for the institution. Parliamentary debates involve a vigorous battle of words and ideas. Majority rule creates intense partisanship resulting in lively probing of individuals and arguments. That sometimes presents an image which is not wholly conducive to dignity. (Minutes of Evidence, 11 August:33)

- 10.1.10 Professor Finn put the point more bluntly:

We would be deluding ourselves if we did not start on the premise that politics is concerned about compromise, partiality and self-interested behaviour. The problematic question is: where on the spectrum does that become offensive? (Minutes of Evidence, 11 August:34)

The Committee clearly appreciates the difficulty of determining the boundaries of this spectrum. For instance, the Committee believe the following topics would have to be considered in a thorough examination of the roles and responsibilities of a Member of Parliament.

- role of the Speaker and the President

- role of Parliamentary Committees
- role of a backbench Member
- Premier and Cabinet versus the backbench Member
- role of the Opposition
- difference between a Member of the Council and a Member of the Assembly
- function of political parties
- parliamentary party room
- party whips
- role of lobbyists

The Committee does not believe this list exhausts the necessary topics of discussion.

10.2 ***Enforcement of Sanctions - risk of subversion for party political purposes***

10.2.1 A further problem arose during the course of the Committee's public hearings: the politicisation of a Code. Members of the Committee raised the issue that a Code could become an instrument of the dominant parties in the Parliament and it may be used against Independent Members. The major parties could seek to restrict the actions or independence of such Members.

10.2.2 The Honourable Stephen Mutch MLC of the Committee put it this way:

Is this [Code] an assault upon democracy? It is all very well to put people into Parliament but if you are going to tell them exactly how they should behave under a detailed Code of Conduct you are basically stifling their democratic right to act in the way they feel is in the interests of the people they represent. (Minutes of Evidence, 10 August:9)

10.2.3 Mr Mutch continued highlighting the particular affronts to democracy that could occur.

One can see the political parties jockeying with each other to try and find that someone else has breached the Code so they can get that person out of Parliament — particularly in a hung Parliament situation. (Minutes of Evidence, 10 August:10)

10.2.4 Dr Jackson added:

This is an important point. Those of us who have participated in the ethics movement for a number of years have cause for worry. I will now refer to the American experience and say that a lot of things about the ethics codes in the United States have become part of the political process, used to secure partisan advantage. That is not the best outcome of the situation. I think that is one thing that anybody who is thinking about an ethics code must consider, that there are incentives for this to occur and it will occur. (Minutes of Evidence, 10 August:10)

10.3 ***Need to ensure diversity of representation***

10.3.1 A similar issue that arose in the course of the Committee's hearings was: can a Code determine what sort of conduct a Member may involve him or herself in? For instance, one suggested provision of a Code was given by the Speaker Kevin Rozzoli as: "A Member should always act in a manner which upholds the dignity of public office." This provision could seek to constrain a Member from deviating from the conduct of the majority. What if a Member were to participate in a rally advocating a cause supported only by a minority of people, and he or she was arrested. If that Member had followed their conscience, would not a Parliament, under the auspices of the Code, say, "being arrested lowers the dignity of Parliament". Then the Parliament may seek to take action against that Member.

10.3.2 As the Honourable Stephen Mutch MLC put it:

[A]re you not really constraining the conduct of Members of Parliament? If you are a radical fringe politician who espouses all sorts of weird causes and you are elected to Parliament, are you basically saying that person should be made to conform with some common denominator that is set down by the major parties? (Minutes of Evidence, 10 August:29)

10.4 ***Moral Escalation***

10.4.1 One of the principle objectives of Code of Ethics is to ensure that the public has confidence in the institution of Parliament. The Code is aimed in many ways at influencing the perceptions of the public. This objective, however, can have negative consequences. The Honourable Duncan Gay succinctly pointed out the possible negative consequences.

My concern is that when a code of conduct as tight as this, if not tighter, is introduced it is there in part to lift the perception of integrity amongst Members of Parliament, and people will inadvertently step outside that Code, depending on their definition of the Code. Thus there is a real

risk of lowering the perception and hamstringing the ability of Members of Parliament to act properly. (Minutes of Evidence, 11 August:79)

10.4.2 Professor Paul Finn had previously mentioned this issue.

There is no doubt that so much of what [a Code] is concerned with is based on appearance ethics. It is very much a question of how the public perceive the process and the style and operation of the practitioner. We have to be very careful to not make appearances ends in themselves so that they acquire a life of their own. (Minutes of Evidence, 11 August:43)

10.4.3 This tendency to make appearance ends in themselves Professor Finn named "moral escalation". The Chairman of the Committee, Malcolm Kerr asked Professor Finn to elaborate on what he meant by moral escalation.

The rules become ends in themselves. The moment you find somebody who has not been caught by that rule and you want to pass judgment, bang, a new rule comes up. You end up with a coral reef of rules growing and with no-one saying, "What is this doing to the very purposes for which this institution exists?" (Minutes of Evidence, 11 August:44)

10.5 ***Other existing accountability mechanisms***

10.5.1 Having identified the potential problem of making rules ends in themselves it is necessary to briefly examine what other mechanisms of Parliamentary accountability exist. Members of Parliament are under scrutiny from various sources. These include:

- the normal civil and criminal processes;
- special bodies including Royal Commissions, anti-corruption agencies etc.;
- the media;
- parliamentary debate and ad hoc parliamentary committees;
- political party discipline and pre-selection processes;
- the ballot-box;
- the parliamentary privileges committee; and

- sanctions by Parliament.

10.5.2 From this list it can be seen that the conduct of parliamentarians is already probed and observed in a variety of ways. One question that the Committee sought to consider was were the current review mechanisms sufficient. The Committee, however, as expressed above, did not view a Code of Ethics merely as another mechanism of scrutiny. The value of a Code of Ethics was put to the Committee by many witnesses as something to aim for, an aspirational document rather than a mechanism of scrutiny.

10.6 *Mr Mutch's concerns*

10.6.1 The Hon Stephen Mutch MLC felt very strongly about the difficulties involved with adopting a code of conduct for Parliamentarians.

Mr Mutch believed there were insurmountable problems inherent in any attempt to formulate a code of conduct for MP's. The Committee recognised the sincerity of Mr Mutch's concerns and resolved to allow him to put these concerns in writing to the Committee. They are to be found at Appendix 6 of this report.

The Committee notes that much of what Mr Mutch has to say is covered in this chapter on the complex issues involved in developing a code of conduct for Members of Parliament.

-11- SOME OF THE LEGAL RESPONSIBILITIES OF A MEMBER OF PARLIAMENT

11.1 *The High Court Cases*

11.1.1 In the course of the *Report on Investigation into the Metherell Resignation and Appointment* the ICAC discussed some of the existing law that applies to Parliamentarians. The cases mentioned were those of *R v Boston* and *Horne v Barber*. However, it is important to begin with a decision that precedes the above and is not mentioned by the ICAC. This is the High Court case of *Wilkinson v Osborne*. The question before the Court in this case was: was a contract between a Mr Wilkinson and Messrs Osborne and Jones, Members of the NSW Legislature, void because it breached public policy? The agreement between the parties cast an obligation on Osborne and Jones to attempt to influence the Government of the day, of which they were Members, to purchase land. Wilkinson was an agent for the owners. The Court struck down the agreement as being against public policy because Osborne and Jones had placed their interest in conflict with their duty.

11.1.2 As to their duty as Parliamentarians the words of Issacs J are definitive.

[T]he duty of a member of the Legislature is unquestionable. As Lord Lyndhurst said in Egerton v. Brownlow: 'In the framing of laws it is his duty to act according to the deliberate result of his judgment and conscience, uninfluenced, as far as possible, by other considerations, and least of all by those of a pecuniary nature.'

And I may add that the same obligation exists in relation to his duty in watching on behalf of the public all the acts of the Executive. Without that, responsible government would be but a name. (Wilkinson v Osborne (1915) 21 CLR 89 at 98-99) (emphasis added)

11.1.3 In the next case of *Horne v Barber* the principle in *Wilkinson v Osborne* was expanded to encompass a situation where there was a *tendency* for a Parliamentarian's interest to conflict with his duty. The High Court held that the law will not uphold such a bargain. In this case a Mr Deany a Member of Parliament had entered into a bargain to receive a commission for the sale of land to the government. Deany attempted to influence the relevant Minister in his decision to purchase the land for the Government.

11.1.4 Justice Issacs expanded upon the principle he had set down in *Wilkinson*. This is the passage that the ICAC deemed necessary to quote in full. It is necessary again:

When a man becomes a member of Parliament, he undertakes high public duties. Those duties are inseparable from the position: he cannot retain the honour and divest himself of the duties. One of the duties is that of watching on behalf of the general community the conduct of the Executive, of criticising it, and, if necessary, of calling it into account in the constitutional way by censure from his place in Parliament — censure which, if sufficiently supported, means removal from office. That is the whole essence of responsible government, which is the keystone of our political system, and is the main constitutional safeguard the community possesses. The effective discharge of that duty is necessarily left to the member's conscience and the judgment of his electors, but the law will not sanction or support the creation of any position of a member of Parliament where his own personal interest may lead him to act prejudicially to the public interest by weakening (to say the least of it) his sense of obligation of due watchfulness, criticism and censure of the Administration. (Horne v Barber (1920) 27 CLR 494 at 500)

11.1.5 Again in *The King v Boston* Issacs J (with Rich J) asks the question, "What, then, is a member's duty?" The answer given is:

The fundamental obligation of a member in relation to the Parliament of which he is a constituent unit still subsists as essentially at any period of our history. That fundamental obligation, which is the key to this case, is the duty to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community. (The King v Boston (1923) 33 CLR 386 at 400)

11.1.6 The Court, in this case and the others before it, recognised that the actions, or specifically, the vote of a single Member is crucial. The holding of the office *in itself* was what was considered fundamental by the Court.

11.1.7 Of special relevance is the manner in which the Court imported an understanding of these duties onto the Parliamentarian in question. The Court took note of two basic propositions of law:

- To every person must be ascribed a knowledge of the law — more so where the law prescribes a standard of civil conduct.
- In a Court of law every person is taken to intend the natural or necessary consequences of his action.

11.1.8 By accepting money to secure the acquisition of land by the Government, the Member deliberately did that which he knew would necessarily and inevitably impede him in the discharge of high public duty he was bound by law to discharge. (*The King v Boston* (1923) 33 CLR 386 at 405)

11.2 *These principles today*

11.2.1 The Committee received evidence that related to the principles expounded in *The King v Boston* and earlier cases of the High Court.

11.2.2 The Committee received a submission from the St James Ethics Centre that saw a Member of Parliament as a *representative* rather than a delegate.

A delegate is required to communicate the views of those who have endorsed or elected the delegate to speak for them in a deliberative body. As such, the delegate is not the author of that which is said and must vote according to the wants of the electorate. (St James Ethics Centre, 1992:8)

11.2.3 A representative, in contrast, has the opportunity to be the author of his or her own actions. The representative is "one who will work to promote the general good of the electorate and also that of the wider community in which the electorate is situated." (St James Ethics Centre, 1992:8)

11.2.4 This characterisation of the nature of the office of Parliamentarian, the Committee believes is not in conflict with the principles set out by the High Court above. For the Court did not propagate the view that a Member of Parliament is a mere servant. The Member's duty to serve was envisaged to be of a complex nature.

Those duties are of a transcendent nature and involve the greatest responsibility, for they include the supreme power of moulding the laws to meet the necessities of the people, and the function of vigilantly controlling and faithfully guarding the public finances. (The King v Boston (1923) 33 CLR 386 at 401)

11.2.5 Before the Committee Professor Finn characterised a Member of Parliament as follows:

You are public trustees. That trusteeship, no matter what your shade of opinion, carries some obligations. The Code . . . depends . . . on the notion of trusteeship and grows out of it. It has a point of focus that is related to role. Why is conflict of interest a question if it is not that you are trustees? So one has to understand the concept. Why is abuse of power a question if you are not trustees? We look at your role and responsibility and it grows out of that and it seems to me that those

standards, even though they change over time, exist at least on a spectrum and it does not matter particularly what shade of political or other belief you have, there are minimum standards of conduct that should be adhered to. (Minutes of Evidence, 11 August:48)

- 11.2.6 The Committee was convinced of a close interrelationship between the characterisations of the High Court, the St James Ethics Centre, and Professor Finn. The Committee believes that this general principle of a person with a duty to serve or a trustee assists in understanding the nature of the office of a Parliamentarian. This concept could help to illuminate a number of the issues with respect to the roles and responsibilities of a Member of Parliament that the Committee believes require consideration.
- 11.2.7 The Committee, however, recognises that this conceptualising of a Parliamentarian as a trustee does not greatly assist the answering of the question: what is a Member of Parliament? Further complex issues arise: what is the nature of the trust that a Parliamentarian is trustee for? What duties fall upon this trustee? What powers does this trustee have? What discretions?

-12- ETHICAL EDUCATION FOR MEMBERS OF PARLIAMENT

12.1 Induction Programs

- 12.1.1 Strong comments from the Commissioner of the ICAC, Mr Ian Temby QC, arose out of the *Report on Investigation Concerning Neal and Mochalski* on the need for some education for new Members of Parliament. The Commissioner became aware during the course of this inquiry that little was done to advise new Members of the nature of the office they had been elected to and their competing duties and interests. The current education provided was simply based on the principle of "learn on the job". The Commissioner's response to this information was:

This cannot be good enough. There is hardly any organisation of substance in modern Australia which does not have an induction program for new entrants. The guiding principle behind such programs is that the newcomer needs to be inculcated with the aims and mores of the organisation, and also be introduced to the formal rules. The Parliament is such an important institution that surely more should be done by it to help ensure that new Members do the right thing, and generally discharge their multifarious functions in a manner which is proper, efficient and effective. That should rebound to the public good as well as help the individuals concerned. (ICAC,1991:33)

- 12.1.2 Since 1988 the Legislative Council has conducted induction seminars for new Members. These induction seminars outline to Members their obligations as Parliamentarians. The provisions in various Acts, such as the Constitution Act and the ICAC Act, are brought to the attention of Members. Since the ICAC Report on Neal and Mochalski the Commissioner's comments are also made known to new Members.

- 12.1.3 Many of the submissions and the witnesses appearing before the Committee supported the idea that an ethical education program for Members of Parliament would be beneficial. Associate Professor Jackson of the University of Sydney dealt at length with this issue when asked to elaborate by the Chairman of the Committee, Malcolm Kerr MP.

It would be productive over the short term, and hence into the longer term, if part of the induction process for new Members of Parliament alerted them to the kinds of ethical problems that might arise and offered

support and counselling for them to be able to identify those problems before they arise. There should be elaborate coping mechanisms — either personal or institutional — to enable them to identify and flag those problems and respond to them. The short point there is that we should put something into the induction process. Speaking from my point of view as an educator, I would have thought the most effective techniques would be short case studies that illustrated the kinds of problems well-intentioned people can get into if they are not looking for the flags that indicate ethical problems. Those problems should be worked through in workshop-type sessions where all participants could bring their experience to bear and where more senior members of the Legislative Assembly or the Legislative Council could emphasise the importance of looking at the ethical implications of what might be seem to be very simple matters. (Minutes of Evidence, 10 August:5-6)

12.2 ***The need for detailed information on the use of Parliamentary entitlements***

12.2.1 The issue of Parliamentary entitlements was first brought to the attention of the Committee by Mr Ted Mack, Federal Member for North Sydney.

We have to accept that, when we get elected as Members of Parliament, we have access to a vast number of public resources. The use of those resources is not really spelt out. [T]here is a lot to be done in establishing clear limits for the use of public resources to which we, as Members of Parliament, have access. If things are not spelt out someone somewhere will always go over the line and then we will all get tarred with the same brush. So it is in the interests of the community and in our own interests that we try to clarify these things as much as possible. (Minutes of Evidence, 11 August:3-4)

12.2.2 Mr Mack stated that he had faced this type of problem in his own experience as a Federal Member.

What can I really use the photocopying in my office for? There are a lot of grey areas. Community groups come in and want to run off 50 000 copies, do I use that? Using the office for election activities, there are a lot of grey areas involved in that type of thing. I think that it would be good to have something to refer to. (Minutes of Evidence, 11 August:5-6)

12.2.3 The Committee is convinced there is a need for the Parliament to address the issue of Members' entitlements in greater detail. The Committee favours that this issue be addressed in a Parliamentary handbook, rather than in a Code of Conduct. This view is based on the belief that a Code should be an aspirational document rather than a specific list of do's and don'ts.

-13- ISSUES FOR DISCUSSION

13.1 *Support for a Code*

13.1.1 Some persons have suggested that there is support for the development of the Code of Ethics for MP's.

13.2 *Purpose of a Code*

13.2.1 It has been suggested that a Code could provide guidance for MP's in the resolution of conflicts of interest. A Code could assist to raise the standards in public life and improve the public perception of the institution of Parliament and parliamentarians generally.

13.3 *Development of a Code*

13.3.1 Evidence taken by the Committee strongly suggests that the process of developing a Code of Ethics is just as important as (if not more important than) the end result of the Code which is produced. This process could stimulate informed discussion on the nature of conflicts of interest, and could help foster greater consensus between MP's on these issues.

13.4 *Key Issues*

13.4.1 From Part 4 of this Report the following issues arise for consideration.

- (1) What are the legal and ethical responsibilities and duties of MP's?
- (2) If a Code is need, whether a general Code or a specific code is more appropriate?
- (3) What categories of action should the Code cover?
- (4) What sanctions should apply for a breach of the Code?
- (5) How to ensure the Code is not subverted for party political purposes?
- (6) How to ensure that the Code does not preclude the electorate from being represented by a diverse range of MP's?

- (7) How to prevent a Code becoming an end in itself?
- (8) Will the Code be compatible with other existing accountability mechanisms?
- (9) Is there a need for induction programs for MP's?

APPENDIX ONE

NSW Pecuniary Interest Register

**Constitution (Disclosures by Members) Regulation 1983
including
Primary Return and Ordinary Return forms**

NEW SOUTH WALES.



REGULATION.

CONSTITUTION ACT, 1902

[Published in Government Gazette No. 68 of 6th May, 1983.]

WHEREAS it is provided by section 14A (5) of the Constitution Act, 1902, that the Governor shall, before making a regulation under section 14A (1) of that Act—

- (a) afford any committee of either House of Parliament established for the purpose an opportunity of considering and making representations with respect to the proposed regulation; and
- (b) take into account any such representations:

AND WHEREAS the provisions of section 14A (5) of that Act have been complied with in the making of the following Regulation:

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Constitution Act, 1902, has been pleased to make the Regulation set forth hereunder.

NEVILLE WRAN, Premier.

CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION,
1983.

PART I.

PRELIMINARY.

Citation.

1. This Regulation may be cited as the "Constitution (Disclosures by Members) Regulation, 1983".

Arrangement.

2. This Regulation is divided as follows:—

PART I.—PRELIMINARY—*cll.* 1-3.

PART II.—LODGMET OF RETURNS BY MEMBERS—*cll.* 4-6.

PART III.—PECUNIARY INTERESTS, ETC., TO BE DISCLOSED—*cll.* 7-16.

PART IV.—REGISTERS OF PECUNIARY INTERESTS, ETC., DISCLOSED—*cll.* 17-21.

PART V.—MISCELLANEOUS—*cll.* 22, 23.

SCHEDULE 1.—FORMS.

Interpretation.

3. (1) In this Regulation, except in so far as the context or subject-matter otherwise indicates or requires—

“Clerk” means—

- (a) in relation to a Member of the Legislative Council—the Clerk of the Legislative Council; or
- (b) in relation to a Member of the Legislative Assembly—the Clerk of the Legislative Assembly;

“general election” means—

- (a) in relation to a Member of the Legislative Council—a periodic Council election; or
- (b) in relation to a Member of the Legislative Assembly—a general election of Members of the Legislative Assembly;

“Member” means a Member of either House of Parliament;

“ordinary return” means a return in or to the effect of Form 2;

“ordinary return period”, in relation to an ordinary return required to be lodged by a Member in a particular year, means—

- (a) where the last return lodged by the Member was an ordinary return—the period of 12 months ending on 30th June in that particular year; or

- (b) where the last return lodged by the Member was a primary return—the period commencing on the first day after the primary return date in relation to the Member and ending on 30th June in that particular year;

“primary return” means a return in or to the effect of Form 1;

“primary return date” means—

- (a) in relation to a person who was a Member on 30th June, 1983, and who is not a person referred to in paragraph (b)—that date; or
- (b) in relation to a person who, after that date, becomes a Member (not being a re-elected Member)—the date on which he takes and subscribes the oath, or makes the affirmation, required under section 12 of the Act;

“re-elected Member” means a person who is returned as a Member at a general election and who had ceased to be a Member by reason of the termination, either by dissolution or expiry, of the Legislative Assembly immediately preceding that general election;

“register” means the Register of Disclosures by Members of the Legislative Council compiled and maintained under clause 17 or the Register of Disclosures by Members of the Legislative Assembly compiled and maintained under clause 18;

“return” means a primary return or an ordinary return;

“the Act” means the Constitution Act, 1902.

(2) In this Regulation, a reference to a form is a reference to a form in Schedule 1.

(3) A form shall be completed in accordance with such directions as are consistent with this Regulation and specified in that form.

PART II.

LODGMET OF RETURNS BY MEMBERS.

Primary returns—existing Members.

4. A person who is a Member on 30th June, 1983, shall, within 3 months after that date, lodge with the Clerk a primary return.

Primary returns—new Members.

5. A person who becomes a Member (not being a re-elected Member) after 30th June, 1983, shall, within 3 months after the date on which he takes and subscribes the oath, or makes the affirmation, required under section 12 of the Act, lodge with the Clerk a primary return.

Ordinary returns.

6. (1) A Member shall, before the prescribed date in each year, lodge with the Clerk an ordinary return unless the primary return date in relation to the Member is after 30th April in that year.

(2) For the purposes of subclause (1), the prescribed date in any year is—

- (a) except as provided in paragraph (b)—1st October in that year; or
- (b) where there are no Members of the Legislative Assembly on 1st October in that year by reason of the termination, either by dissolution or expiry, of the Legislative Assembly—the date on which the Legislative Assembly first meets after 1st October in that year.

PART III.
PECUNIARY INTERESTS, ETC., TO BE DISCLOSED.**Interpretation: Pt. III.**

7. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“address” means—

- (a) in relation to a person other than a corporation—the last residential or business address of the person known to the Member disclosing the address;
- (b) in relation to a corporation—the address of the registered office of the corporation in New South Wales or, where there is no such office, the address of the principal office of the corporation in the place in which it is incorporated; or
- (c) in relation to any real property—the postal address of the property or the particulars of title of the property;

“debt” means—

- (a) a debt arising from a loan of money; or
- (b) a debt arising from the supply of goods or services;

“disposition of property” means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

- (a) the allotment of shares in a company;
- (b) the creation of a trust in respect of property;
- (c) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property;
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in respect of property;
- (e) the exercise by a person of a general power of appointment over property in favour of any other person; and
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own property and to increase the value of the property of any other person;

“donor” means a person who makes a gift;

“gift” means any disposition of property made otherwise than by will (whether with or without an instrument in writing), without consideration in money or money’s worth passing from the disponent to the donee, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel;

“income” means assessable income within the meaning of the Income Tax Assessment Act 1936 of the Parliament of the Commonwealth, but does not include remuneration payable under the Parliamentary Remuneration Tribunal Act, 1975;

“interest” means—

- (a) in relation to any property—any estate, interest, right or power whatever, whether at law or in equity, in or over the property; or

- (b) in relation to any corporation—a relevant interest (within the meaning of section 5 of the Securities Industry (New South Wales) Code) in any securities issued or made available by the corporation;

“occupation” includes trade, profession and vocation;

“political party” means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of New South Wales of a candidate or candidates endorsed by it or by a body or organisation of which it forms part;

“professional or business association” means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the economic interests of its members in any occupation;

“property” includes money;

“public company” means a company whose shares are listed for quotation on the stock market of a stock exchange in New South Wales;

“relative”, in relation to any Member, means any of the following:—

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the Member or of the Member’s spouse; or
- (b) the spouse of the Member or of any other person specified in paragraph (a);

“securities” has the meaning ascribed to that expression in the Securities Industry (New South Wales) Code;

“travel” includes accommodation incidental to a journey.

(2) A reference in this Part to a disclosure concerning any real property, income, corporation or other thing, includes a reference to a disclosure concerning any real property situated, income derived, corporation incorporated, or other thing arising or received, outside New South Wales.

(3) For the purposes of this Part, gifts or contributions to travel given, loans made, or goods or services supplied, to a Member by 2 or more corporations which are deemed to be related to each other for the purposes of the Companies (New South Wales) Code shall be regarded as having been given, made or supplied by a single corporation.

Real property.

8. (1) A Member shall disclose in a primary return and an ordinary return—

- (a) the address of each parcel of real property in which the Member had an interest—
 - (i) in the case of a primary return—on the primary return date; or
 - (ii) in the case of an ordinary return—at any time during the ordinary return period; and
- (b) the nature of the interest in each such parcel of real property.

(2) An interest in a parcel of real property need not be disclosed by a Member in a primary return or an ordinary return if—

- (a) the Member had the interest only in his capacity as the executor or administrator of the estate of a deceased person and the Member was not a beneficiary under the will or intestacy; or
- (b) the Member had the interest only in his capacity as a trustee and the Member acquired the interest in the ordinary course of any occupation of the Member which is not related to his duties as a Member.

Sources of income.

9. (1) A Member shall disclose—

- (a) in a primary return—each source of income which the Member reasonably expects to receive in the period commencing on the first day after the primary return date and ending on the next succeeding 30th June; and
- (b) in an ordinary return—each source of income received by the Member at any time during the ordinary return period.

(2) A reference in subclause (1) to each source of income received, or reasonably expected to be received, by a Member is a reference to—

- (a) in relation to income from an occupation of the Member—
 - (i) a description of the occupation;

- (ii) where the Member is employed or the holder of an office—the name and address of his employer or a description of the office; and
 - (iii) where the Member has entered into a partnership with other persons—the name (if any) under which the partnership is conducted;
- (b) in relation to income from a trust—the name and address of the settlor and the trustee; or
 - (c) in relation to any other income—a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

(3) The source of any income need not be disclosed by a Member in a primary return or an ordinary return if the amount of the income received, or reasonably expected to be received, by the Member from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

Gifts.

10. (1) A Member shall disclose in an ordinary return—

- (a) the description of each gift received by the Member at any time during the ordinary return period; and
- (b) the name and address of the donor of each such gift.

(2) A gift received by a Member need not be disclosed in an ordinary return if—

- (a) the amount of the gift did not exceed \$500 unless—
 - (i) the gift was 1 of 2 or more gifts made by 1 person at any time during the ordinary return period; and
 - (ii) the amount of those 2 or more gifts exceeded, in the aggregate, \$500;
- (b) the gift was a political contribution disclosed, or required to be disclosed, under Part VI of the Election Funding Act, 1981; or
- (c) the donor was a relative of the Member.

(3) For the purposes of this clause, the amount of a gift comprising property other than money shall be deemed to be an amount equal to the value of the property.

Contributions to travel.

11. (1) A Member shall disclose in an ordinary return—

- (a) the name and address of each person who made any financial or other contribution to any travel undertaken by the Member at any time during the ordinary return period;
- (b) the dates on which the travel was undertaken; and
- (c) the names of the States, Territories of the Commonwealth and overseas countries in which the travel was undertaken.

(2) A financial or other contribution to any travel undertaken by a Member need not be disclosed in an ordinary return if—

- (a) the contribution was made from public funds (including a contribution arising from travel on free passes issued under any Act or from travel in government vehicles);
- (b) the contribution was made by a relative of the Member;
- (c) the contribution was made in the ordinary course of any occupation of the Member which is not related to his duties as a Member;
- (d) the amount of the contribution did not exceed \$250 unless—
 - (i) the contribution was 1 of 2 or more contributions made by 1 person at any time during the ordinary return period; and
 - (ii) the amount of those 2 or more contributions exceeded, in the aggregate, \$250;
- (e) the contribution was a political contribution disclosed, or required to be disclosed, under Part VI of the Election Funding Act, 1981; or
- (f) the contribution was made by a political party of which he was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable him to represent the party within Australia.

(3) For the purposes of this clause, the amount of a contribution (other than a financial contribution) shall be deemed to be an amount equal to the value of the contribution.

Interests and positions in corporations.

12. (1) A Member shall disclose in a primary return and an ordinary return—

- (a) the name and address of each corporation in which he had an interest or held any position (whether remunerated or not) on the primary return date or at any time during the ordinary return period, as the case may be;
- (b) the nature of the interest, or the description of the position held, in each such corporation; and
- (c) except in the case of a public company—a description of the principal objects of each such corporation.

(2) An interest, or position held, in a corporation need not be disclosed by a Member in a primary return or an ordinary return if the corporation is—

- (a) formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion or charity or for any other community purpose;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from paying any dividend to its members.

Positions in trade unions and professional or business associations.

13. A Member shall disclose in a primary return and an ordinary return—

- (a) the name of each trade union and each professional or business association in which he held any position (whether remunerated or not) on the primary return date or at any time during the ordinary return period, as the case may be; and
- (b) the description of the position held in each such union or association.

Debts.

14. (1) A Member shall disclose in a primary return and an ordinary return the name and address of each person to whom the Member was liable to pay any debt—

- (a) in the case of a primary return—on the primary return date; or
- (b) in the case of an ordinary return—at any time during the ordinary return period.

(2) A liability to pay a debt shall be disclosed by a Member in a primary return and an ordinary return whether or not the amount, or any part of the amount, to be paid was due and payable on the primary return date or at any time during the ordinary return period, as the case may be.

(3) A liability to pay a debt need not be disclosed by a Member in a primary return or an ordinary return if—

- (a) the amount to be paid did not exceed \$500 on the primary return date or at any time during the ordinary return period, as the case may be, unless—
 - (i) the debt was 1 of 2 or more debts which the Member was liable to pay to 1 person on the primary return date or at any time during the ordinary return period, as the case may be; and
 - (ii) the amounts to be paid exceeded, in the aggregate, \$500;
- (b) the Member was liable to pay the debt to a relative;
- (c) in the case of a debt arising from a loan of money—the Member was liable to pay the debt to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender; or
- (d) in the case of a debt arising from the supply of goods or services—
 - (i) the goods or services were supplied in the period of 12 months immediately preceding the primary return date or were supplied during the ordinary return period, as the case may be; or
 - (ii) the goods or services were supplied in the ordinary course of any occupation of the Member which is not related to his duties as a Member.

Dispositions of property.

15. (1) A Member shall disclose in an ordinary return particulars of each disposition of real property by the Member at any time during the ordinary return period whereby the Member retained, either wholly or in part, the use and benefit of the property or the right to reacquire the property at a later time.

(2) A Member shall disclose in an ordinary return particulars of each disposition of property to a person by any other person under arrangements made by the Member, being a disposition made at any time during the ordinary return period, whereby the Member obtained, either wholly or in part, the use and benefit of the property.

Discretionary disclosures generally.

16. A Member may, at his discretion, disclose in any return any direct or indirect benefits, advantages or liabilities, whether pecuniary or not—

- (a) which are not required to be disclosed by any other provision of this Part; and
- (b) which the Member considers might appear to raise a conflict between his private interests and his public duty as a Member or which he otherwise desires to disclose.

PART IV.

REGISTERS OF PECUNIARY INTERESTS, ETC., DISCLOSED.

Register of Disclosures by Members of the Legislative Council.

17. The Clerk of the Legislative Council shall compile and maintain a register to be called the "Register of Disclosures by Members of the Legislative Council" in respect of disclosures of pecuniary interests and other matters made by Members of the Legislative Council pursuant to this Regulation.

Register of Disclosures by Members of the Legislative Assembly.

18. The Clerk of the Legislative Assembly shall compile and maintain a register to be called the "Register of Disclosures by Members of the Legislative Assembly" in respect of disclosures of pecuniary interests and other matters made by Members of the Legislative Assembly pursuant to this Regulation.

Form of registers.

19. (1) A register shall be in loose-leaf form and shall, at any time, comprise the returns lodged by Members within the previous 8 years.

(2) A register shall be divided into parts as follows:—

- (a) There shall be a separate part of a register for the primary returns lodged under clause 4.
- (b) There shall be separate parts of a register for the ordinary returns lodged in respect of each ordinary return period, together with primary returns lodged under clause 5 in respect of primary return dates in that period.

(3) The returns filed in any part of a register shall be filed in alphabetical order according to the surnames of the Members concerned.

Inspection of registers.

20. (1) A register shall be open to public inspection at the office of the Clerk required to compile and maintain the register between the hours of 10.00 a.m. and 4.00 p.m. on any day except Saturday, Sunday or a day which is a public holiday throughout New South Wales.

(2) A register shall be open to inspection by Members at the office of the Clerk required to compile and maintain the register at any time the register is open for public inspection under subclause (1) and—

- (a) in the case of the Register of Disclosures by Members of the Legislative Council—at any time the Legislative Council is sitting; or
- (b) in the case of the Register of Disclosures by Members of the Legislative Assembly—at any time the Legislative Assembly is sitting.

Tabling and publication of registers.

21. (1) The Clerk of the Legislative Council shall—

- (a) within 21 sitting days of the Legislative Council after the last day for the lodgment of primary returns under clause 4—furnish to the President of the Legislative Council for tabling in the Legislative Council a copy of the Register of Disclosures by Members of the Legislative Council; and
- (b) within 21 sitting days of the Legislative Council after the last day for the lodgment of any ordinary returns under clause 6—furnish to the President of the Legislative Council for tabling in the Legislative Council a copy of that part of the Register of Disclosures by Members of the Legislative Council that has not been previously tabled in the Legislative Council.

(2) The Clerk of the Legislative Assembly shall—

- (a) within 21 sitting days of the Legislative Assembly after the last day for the lodgment of primary returns under clause 4—furnish to the Speaker of the Legislative Assembly for tabling in the Legislative Assembly a copy of the Register of Disclosures by Members of the Legislative Assembly; and
- (b) within 21 sitting days of the Legislative Assembly after the last day for the lodgment of any ordinary returns under clause 6—furnish to the Speaker of the Legislative Assembly for tabling in the Legislative Assembly a copy of that part of the Register of Disclosures by Members of the Legislative Assembly that has not been previously tabled in the Legislative Assembly.

(3) For the purposes of subclauses (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

(4) Unless a copy of a register or a copy of part of a register tabled in the Legislative Council or Legislative Assembly is ordered to be printed upon its being tabled, the Clerk of the Legislative Council or the Clerk of the Legislative Assembly, as the case may be, shall cause it to be published as a parliamentary paper by the Government Printer.

(5) The Clerk of the Legislative Council or the Clerk of the Legislative Assembly, as the case may require, may, for the purposes of the tabling or publication of a copy of a register, or of a part of a register, referred to in this clause, delete—

- (a) any notes or directions concerning the completion of a return;
- (b) where no disclosures are made under a particular main heading in a return—any matter under that heading apart from the word “NIL”; and
- (c) any page number or other matter that is not relevant to any disclosure in a return.

PART V.

MISCELLANEOUS.

Nil return.

22. Where no disclosures are included in a primary return or an ordinary return, the return shall nevertheless be lodged.

Contravention of Regulation.

23. A contravention of this Regulation shall not attract any criminal or civil liability, except to the extent expressly provided by section 14A of the Act.

SCHEDULE 1.

Form 1.

(Cl. 3.)

CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION, 1983.

PRIMARY RETURN.—LEGISLATIVE COUNCIL/ASSEMBLY.

DIRECTIONS:

- (1) The pecuniary interests and other matters required to be disclosed in this return are prescribed in clauses 8, 9, 12, 13 and 14 of the Constitution (Disclosures by Members) Regulation, 1983.
- (2) The particulars required to complete this form are to be written in block letters or typed.
- (3) If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- (4) Where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY

..... AS AT
(full name of Member) (primary return date)

.....
(Member's signature)

.....
(Date)

SCHEDULE 1.—*continued.*

Form 1.—*continued.*

A. REAL PROPERTY.

Address of each parcel of real property in which I had an interest on the primary return date.	Nature of interest.

SCHEDULE 1.—*continued.*Form 1.—*continued.*

B. SOURCES OF INCOME.

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the primary return date and ending on the next succeeding 30th June:—

Description of occupation.	Name and address of employer or description of office held (if applicable).	Name under which partnership conducted (if applicable).

2. Sources of income I reasonably expect to receive from a trust in that period:—

Name and address of settlor.	Name and address of trustee.

3. Sources of other income I reasonably expect to receive in that period:—

(Include description sufficient to identify the person from whom, or the circumstances in which, that income is expected to be received.)

SCHEDULE 1.—*continued.*Form 1.—*continued.*

C. INTERESTS AND POSITIONS IN CORPORATIONS.

Name and address of each corporation in which I had an interest or held a position on the primary return date.	Nature of interest (if any).	Description of position (if any).	Description of principal objects of corporation (except in case of public company).

SCHEDULE 1.—*continued.*

Form 1.—*continued.*

D. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS.

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) on the primary return date.	Description of position.

SCHEDULE 1.—*continued.*

Form 1.—*continued.*

E. DEBTS.

Name and address of each person to whom I was liable to pay any debt on the primary return date.

F. DISCRETIONARY DISCLOSURES.

SCHEDULE 1.—*continued.*

Form 2.

(Cl. 3.)

CONSTITUTION (DISCLOSURES BY MEMBERS) REGULATION, 1983.

ORDINARY RETURN.—LEGISLATIVE COUNCIL/ASSEMBLY.

DIRECTIONS:

- (1) The pecuniary interests and other matters required to be disclosed in this return are prescribed by clauses 8–15 of the Constitution (Disclosures by Members) Regulation, 1983.
- (2) The particulars required to complete this form are to be written in block letters or typed.
- (3) If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- (4) Where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY

..... IN RESPECT OF THE PERIOD FROM

(full name of Member)

..... TO

(ordinary return period)

.....

(Member's signature)

.....

(Date)

SCHEDULE 1.—*continued.*

Form 2.—*continued.*

A. REAL PROPERTY.

Address of each parcel of real property in which I had an interest at any time during the ordinary return period.	Nature of interest.

SCHEDULE 1.—*continued.*

Form 2.—*continued.*

B. SOURCES OF INCOME.

1. Sources of income I received from an occupation at any time during the ordinary return period:—

Description of occupation.	Name and address of employer or description of office held (if applicable).	Name under which partnership conducted (if applicable).

2. Sources of income I received from a trust at any time during the ordinary return period:—

Name and address of settlor.	Name and address of trustee.

3. Sources of other income I received at any time during the ordinary return period:—

(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received.)

SCHEDULE 1.—*continued.*

Form 2.—*continued.*

C. GIFTS.

Description of each gift I received at any time during the ordinary return period.	Name and address of donor.

SCHEDULE 1.—*continued.*Form 2.—*continued.*

D. CONTRIBUTIONS TO TRAVEL.

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the ordinary return period.	Dates on which travel was undertaken.	Names of States, Territories of the Commonwealth and overseas countries in which travel undertaken.

SCHEDULE 1.—*continued.*Form 2.—*continued.*

E. INTERESTS AND POSITIONS IN CORPORATIONS.

Name and address of each corporation in which I had an interest or held a position at any time during the ordinary return period.	Nature of interest (if any).	Description of position (if any).	Description of principal objects of corporation (except in case of public company).

SCHEDULE 1.—*continued.*Form 2.—*continued.*

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS.

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the ordinary return period.	Description of position.

SCHEDULE 1.—*continued.*

Form 2—*continued.*

G. DEBTS.

Name and address of each person to whom I was liable to pay any debt at any time during the ordinary return period.

H. DISPOSITIONS OF PROPERTY.

1. Particulars of each disposition of real property by me at any time during the ordinary return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to reacquire the property at a later time.

2. Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the ordinary return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

SCHEDULE 1.—*continued.*

Form 2.—*continued.*

I. DISCRETIONARY DISCLOSURES.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

APPENDIX TWO

House of Commons Pecuniary Interest Register

New Form

**proposed by Select Committee on Members' Interest
April 1992**

SELECT COMMITTEE ON
MEMBERS' INTERESTS

First Report

REGISTRATION AND DECLARATION
OF MEMBERS' FINANCIAL INTERESTS

Report with Annexes, together with the Proceedings of the
Committee relating to the Report, Minutes of Evidence
taken in Session 1990-91, and Appendices

*Ordered by The House of Commons to be printed
4 March 1992*

LONDON : HMSO

£19.40 net

ANNEX 1
PROPOSED REGISTRATION FORM

Registrable Interest	Details
<p>DIRECTORSHIPS</p> <p>1. Do you have any remunerated directorships in any public or private company? YES/NO <i>(Please delete as appropriate)</i></p> <p>If so, please list opposite (briefly stating the nature of the business of the company in each case).</p> <p>[Notes: (i) You should include directorships which are individually unremunerated but where remuneration is paid through another company in the same group. (ii) In this category and category 2 below, "remunerated" should be read as including taxable expenses, allowances or benefits.]</p>	
<p>REMUNERATED EMPLOYMENT, OFFICE, PROFESSION, ETC.</p> <p>2. Do you have any employment, office, trade, profession or vocation (apart from membership of the House or ministerial office) for which you are remunerated or in which you have any pecuniary interest? YES/NO</p> <p>If so, please list opposite. Where a firm is named, please briefly indicate the nature of the firm's business.</p> <p>[Note: Membership of Lloyd's should be registered under this category. If you register membership of Lloyd's, you should also list your syndicate numbers for the current year and your membership of any syndicates which remain unclosed.]</p>	
<p>CLIENTS</p> <p>3. Does any of the paid employment registered in categories 1 or 2 above entail the provision to clients of services which depend essentially upon or arise out of your position as a Member of Parliament (see Note (i) below)? YES/NO</p> <p>If so, please list opposite all clients to whom you personally provide such services. Please also state in each case the nature of the client's business.</p> <p>[Notes: (i) The services covered by this category include action connected with any parliamentary proceeding, sponsoring meetings or functions in the parliamentary buildings, making representations to Ministers, fellow Members or public servants, accompanying delegations to Ministers, and the provision of advice on parliamentary or public affairs. (ii) Where you receive remuneration from a company or partnership engaged in consultancy business which itself has clients, you should list any of those clients to whom you personally provide such services or advice, directly or indirectly.]</p>	

Registrable Interest	Details
<p>SPONSORSHIP (REGULAR OR CONTINUING SUPPORT IN MONEY OR KIND)</p> <p>4. (a) Did you benefit from any sponsorship before your election, where to your knowledge, the financial support in any case exceeded 25 per cent of your election expenses at that election? YES/NO</p> <p>If so, please give details opposite. Where a company is named as sponsor, please indicate briefly the nature of its business.</p> <p>(b) Do you benefit from any other form of sponsorship or financial or material support as a Member of Parliament? YES/NO</p> <p>If so, please give details opposite, including the name of the organisation or company providing the support. Where a company is named, please indicate briefly the nature of its business.</p> <p>(c) Do the arrangements registered under category 4(b) above involve any payment to you or any material benefit or advantage which you personally receive? YES/NO</p> <p>[Notes: (i) You should register under this section any source of regular or continuing support from which you receive any financial or material benefit, directly or indirectly; for example the provision of free or subsidised accommodation, or the provision of the services of a research assistant free or at a subsidised salary rate. (ii) You should not register sponsorship by your constituency party. But you should register, under category 4(b), any regular donations made by companies or organisations to your constituency party in excess of £500 per annum which are linked directly to your candidacy in the constituency or for which you yourself acted as an intermediary between the donor and the constituency party.]</p>	
<p>GIFTS, BENEFITS AND HOSPITALITY (UK)</p> <p>5. Have you, or your spouse received any gift of a value greater than £125, or any material advantage of a value greater than 0.5 per cent of the current parliamentary salary, from any company, organisation or person within the United Kingdom which in any way relates to your membership of the House? YES/NO</p> <p>If so, please give the details opposite.</p> <p>[Notes: (i) You should include any hospitality given and services or facilities offered <i>gratis</i> or at a price below that generally available to members of the public, except that where the advantage is known to be available to all Members of Parliament, it need not be registered. (ii) You should include not only gifts and material advantages received personally by you and your spouse, but also those received by any company or organisation in which you (or you and your spouse jointly) have a controlling interest.]</p>	

Registrable Interest	Details		
<p>OVERSEAS VISITS</p> <p>6. Have you or your spouse made any overseas visits relating to or in any way arising out of your membership of the House where the cost of the visit was not wholly borne by yourself or by United Kingdom public funds? YES/NO</p> <p>If so, please list opposite, in chronological order.</p> <p>[Note: You are not required to register visits undertaken on behalf of the Commonwealth Parliamentary Association, the Inter-Parliamentary Union, the Council of Europe, the Western European Union, the North Atlantic Assembly or the CSCE Parliamentary Assembly. Other categories of overseas visits which are exempt from the requirement to register are listed in the guidance pamphlet on Registration and Declaration of Members' Interests.]</p>	Countries Visited	Dates of Visit	Who Paid?
<p>OVERSEAS BENEFITS AND GIFTS</p> <p>7. Have you or your spouse received any gift of a value greater than £125, or any material advantage of a value greater than 0.5 per cent of the current parliamentary salary, from or on behalf of any foreign Government, organisation or person which in any way relates to your membership of the House? YES/NO</p> <p>If so, please give the details opposite.</p> <p>[Note: Overseas hospitality and travel facilities should be entered under category 6. Otherwise the notes under category 5 apply here also.]</p>			
<p>LAND AND PROPERTY</p> <p>8. Do you have any land or property, other than any home used solely for the personal residential purposes of you or your spouse, which has a substantial value or from which you derive a substantial income? YES/NO</p> <p>If so, please indicate opposite the nature of the property (eg Estate, Farm, Smallholding, Woodland, Residential rented/leasehold property, Commercial rented/leasehold property) and give the general location of the property in each case.</p>	Nature of Property	Location	
<p>SHAREHOLDINGS</p> <p>9. Do you have (either yourself or with or on behalf of your spouse or dependent children) interests in shareholdings in any public or private company or other body which have a nominal value (a) greater than £25,000, or (b) less than £25,000 but greater than 1 per cent of the issued share capital of the company or body? YES/NO</p> <p>If so, please list each company or body opposite, indicating in each case the nature of its business and whether your holding falls under sub-category (a) or (b) above.</p>			

Registrable Interest	Details
MISCELLANEOUS 10. If, bearing in mind the definition of purpose set out in the introduction to this Form ¹ , you have any relevant interests which you consider should be disclosed but which do not fall within the nine categories set out above, please list them opposite.	
Date:	Signature:

¹ See paragraphs 27 and 28 of Report.

APPENDIX THREE

Queensland Pecuniary Interest Register

**Resolution agreed to by Legislative Assembly
27 November 1990**

RESOLUTION AGREED TO BY THE PARLIAMENT OF QUEENSLAND ON 27 NOVEMBER 1990.

That -

- (a) The requirements and other provisions set out in the Attachment to this resolution relating to the disclosure and registration of Members' interests be adopted;
- (b) the provisions take effect from the passing of this resolution; and
- (c) the provisions continue in force unless and until amended or revoked by the Legislative Assembly in this or a subsequent Parliament.

Attachment to Resolution Relating to Members' Interests

Contents

Part 1 - Preliminary

1. *Definitions*
2. *Interpretation - terms relating to companies*
3. *Interpretation - forms*
4. *Registrar*

Part 2 - Statements of Interests

5. *Giving of statements*
6. *Form of statements and notice of change of details*
7. *Disclosure of interests*
8. *Questions concerning statements*

Part 3 - Registers

9. *Keeping of Registers*
10. *Custody of Registers*
11. *Tabling of Register of Members' Interests*
12. *Publishing of Register of Members' Interests*
13. *Inspection of Registers*

Part 4 - Complaints

14. *Allegations by members*
15. *Consideration of allegations*
16. *Complaints by public*
17. *Consideration of complaints*

Part 5 - Enforcement

18. *Effect of failure to comply with requirements*

Schedule

Form 1

Statement of the Interests of a Member

Form 2

Statement of the Interests of a Member's related persons

Form 3

Notice of Change of Details contained in Statement of Interests

Part 1 - Preliminary

Definitions

1. *In this resolution, unless the contrary intention appears -*

"calendar month" means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the end of the next month;

"child", in relation to a member, includes an adopted child, a step-child or an ex-nuptial child of the member;

"Clerk" means the Clerk of the Parliament;

"company" means a company, whether a private company or a public company;

"debenture" includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a company in respect of money that is deposited with or lent to the company;

"gift" means -

(a) *the transfer of money or other property -*

(i) *without recompense; or*

(ii) *for a consideration substantially less than full consideration; or*

(b) *a loan of money or property made on a permanent, or an indefinite, basis;*

"joint venture" means an undertaking carried on by 2 or more persons in common otherwise than as partners;

"member" means a member of the Legislative Assembly;

"month" means a calendar month;

"nominee company" means a company whose principal business is the business of holding marketable securities as a trustee or nominee;

"officer" in relation to a company, means -

(a) *a director or secretary of the company; or*

(b) *any other person who is concerned, or takes part, in the management of the company;*

"partnership" includes a joint venture;

"private company" means a proprietary company, whether incorporated in Queensland or elsewhere;

"public company" means a company, other than a private company, whether incorporated in Queensland or elsewhere;

"Register" means -

- (a) *the Register of Members' Interests; or*
- (b) *the Register of Related Persons' Interests;*

"Registrar" means the Registrar of Members' Interests;

"related person", in relation to a member, means -

- (a) *the spouse of the member;*
- (b) *a child of the member who is wholly or substantially dependent on the member; or*
- (c) *any other person -*
 - (i) *who is wholly or substantially dependent on the member; and*
 - (ii) *whose affairs are so closely connected with the affairs of the member that a benefit derived by the person, or a substantial part of it, could pass to the member;*

"Select Committee" means the Select Committee for Members' Interests;

"share" means -

- (a) *a share in the share capital of a company;*
- (b) *stock;*
- (c) *a convertible note; or*
- (d) *an option;*

"sitting day", in relation to the Parliament, means a day on which the Parliament meets;

"sponsored hospitality benefit", in relation to a member or a related person, means any travel undertaken, or accommodation or other hospitality benefit received, otherwise than in an official capacity, by the member or related person where a contribution (whether in cash or kind) in respect of the cost of the travel, accommodation or other benefit is made by a person other than -

- (a) *if the benefit is received by the member -*
 - (i) *the member; or*
 - (ii) *a related person; and*
- (b) *if the benefit is received by a related person -*
 - (i) *the related person; or*
 - (ii) *the member;*

"spouse", in relation to a member, includes a de facto spouse of the member;

"statement of interests" means -

- (a) *a statement of interests (member); or*
- (b) *a statement of interests (related persons);*

"statement of interests (member)" means the statement of a members' interests required to be given by the member to the Registrar under clause 5;

"statement of interests (related persons)" means the statement of the interests of a member's related persons required to be given by the member to the Registrar under clause 5;

"trade or professional organization" means a body (whether incorporated or unincorporated) of -

- (a) *employers or employees; or*

(b) persons engaged in a profession, trade or other occupation;

being a body the object, or an object, of which is the furtherance of its own professional, industrial or economic interests or those of any of its members'

"year" period of 12 months commencing on 1 January.

Interpretation - terms relating to companies

2. (1) A person is taken to have a controlling interest in shares in a company if the person is able -
 - (a) to dispose of, or to exercise control over the disposal of, the shares; or
 - (b) where the shares are voting shares - to exercise, or to control the exercise of, any voting powers attached to the shares.
- (2) The question whether a company is a subsidiary of another company is to be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the Companies (Queensland) Code.
- (3) A reference in this resolution to the holding company of another company is a reference to a company of which that other company is a subsidiary.

Interpretation - forms

3. (1) In this resolution, a reference to a form by number is a reference to the form so numbered in the Schedule.
- (2) Strict compliance with a form in the Schedule is not necessary and substantial compliance, or such compliance as the circumstances of a particular case allow, is sufficient.

Registrar

4. (1) There is to be a Registrar of Members' Interests.
- (2) The Clerk is to be the Registrar.

Part 2 - Statements of Interests

Giving of statements

5. (1) A person who is a member on the day on which this resolution is passed must, within one month after that day, give to the Registrar -
 - (a) a statement of the member's interests; and
 - (b) a statement of the interests of related persons.
- (2) Subject to subclause (4), a member must, within one month after the first sitting day of the Parliament in each year beginning in 1992, give to the Registrar -
 - (a) a statement of the member's interests; and
 - (b) a statement of the interests of related persons.
- (3) Subject to subclause (4), a member must, within one month after taking and subscribing the oath, or making and subscribing the affirmation, as a member, give to the Registrar -
 - (a) a statement of the members' interests; and
 - (b) a statement of the interests of related persons.
- (4) A member is not required to give, in any year -
 - (a) more than one statement of interests (member); or

- (b) *more than one statement of interests (related persons).*
- (5) *A member must notify the Registrar in writing of any change in the details contained in the last statement of interests given by the member within one month of becoming aware of the change.*
- (6) *A member is required to include in a statement of interests details relating to the interest of a related person only if the member is aware of the interest.*

Form of statements and notice of change of details

- 6. (1) *A statement of interests (member) -*
 - (a) *must be in accordance with Form 1; and*
 - (b) *is to relate only to interests held by the member -*
 - (i) *alone; and*
 - (ii) *jointly or in common with a related person.*
- (2) *A statement of interests (related persons) -*
 - (a) *must be in accordance with Form 2; and*
 - (b) *is to relate only to interests held by related persons otherwise than jointly or in common with the member.*
- (3) *A notice of change of the details contained in a statement of interests must be in accordance with Form 3.*

Disclosure of interests

- 7. *A statement of interests required to be given by a member must contain the following details:-*
 - (a) *in respect of any company in which the member or a related person is a shareholder or has a controlling interest in shares -*
 - (i) *the name of the company;*
 - (ii) *where the shareholding or interest constitutes a controlling interest in the company - details of the shareholdings of the company in any other company; and*
 - (iii) *where the shareholding or interest is held in a private company that is the holding company of another company -*
 - (A) *details of the investments of the holding company;*
 - (B) *the name of any company that is a subsidiary of the holding company; and*
 - (C) *the name of any company that is a subsidiary of any company that is the holding company's subsidiary;*
 - (b) *in respect of any company of which the member or a related person is an officer -*
 - (i) *the name of the company;*
 - (ii) *the nature of the office held; and*
 - (iii) *the nature of the activities of the company;*
 - (c) *in respect of any family or business trust or nominee company in which the member or a related person holds a beneficial interest -*
 - (i) *the name or a description of the trust, or the name of the company, as the case requires;*
 - (ii) *the nature of the activities of the trust or company; and*
 - (iii) *the nature of the interest;*
 - (d) *in respect of any family or business trust in which the member or a related person is a trustee -*

- (i) *the name or a description of the trust;*
- (ii) *the nature of the activities of the trust; and*
- (iii) *the name of each person by whom a beneficial interest in the trust is held;*
- (e) *in respect of any partnership in which the member or a related person has an interest -*
 - (i) *the name or a description of the partnership;*
 - (ii) *the nature of the activities of the partnership; and*
 - (iii) *the nature of the interest;*
- (f) *in respect of any real estate in which the member or a related person has an interest -*
 - (i) *the location of the relevant property (by reference to suburb or area);*
 - (ii) *the approximate size of the property;*
 - (iii) *the purpose for which the property is and is intended to be used; and*
 - (iv) *the nature of the interest;*
- (g) *in respect of any liability (excluding department store and credit card accounts) of the member or a related person -*
 - (i) *the nature of the liability; and*
 - (ii) *the name of the creditor concerned;*
- (h) *details of any debenture or similar investment held by the member or a related person;*
- (i) *in respect of any savings or investment account of the member or a related person held with a bank, building society, credit union or other institution -*
 - (i) *the nature of the account; and*
 - (ii) *the name of the institution concerned;*
- (j) *details of any gift, or gifts totalling, in excess of \$500 in amount or value received by the member or a related person from a person other than -*
 - (i) *where the gift is received by the member - a related person or any other person related by blood or marriage to the member; and*
 - (ii) *where the gift is received by a related person - the member or any other person related by blood or marriage to the related person;*
- (k) *in respect of any sponsored hospitality benefit received by the member or a related person -*
 - (i) *the source of the contribution concerned; and*
 - (ii) *the purpose of the travel, accommodation or other benefit concerned;*
- (l) *any other substantial source of income received by -*
 - (i) *the member or a related person; or*
 - (ii) *a private company, or a trust, in which the member or a related person holds an interest;*
- (m) *details of any other asset of the member or a related person the value of which exceeds \$5000, other than -*
 - (i) *household and personal effects;*
 - (ii) *a motor vehicle used only or mainly for personal use; and*
 - (iii) *superannuation entitlements;*
- (n) *the name of any political party, body or association or trade or professional organization of which*

- the member or a related person is a member;*
- (o) *any other interest (whether or not of a pecuniary nature) of the member or a related person -*
 - (i) *of which the member is aware; and*
 - (ii) *that raises, appears to raise, or could foreseeably raise, a conflict between the member's private interest and his or her duty as a member.*

Questions concerning statements

8. (1) *If a question relating to whether a matter should or should not be included in a statement of interests is raised by a member with the Registrar, the Registrar must -*
- (a) *subject to the terms of any resolution of the Legislative Assembly affecting the matter - attempt to resolve the matter without referring it to the Select Committee; and*
 - (b) *if the matter is not so resolved - refer the matter to the Select Committee.*
- (2) *A reference of a matter to the Select Committee -*
- (a) *must be made in general terms; and*
 - (b) *except with the consent of the member, must not disclose the name of the member.*
- (3) *The Select Committee must -*
- (a) *consider any matter referred to it; and*
 - (b) *if the name of the member has been disclosed to it - give the member the opportunity to be heard;*
- after which it must decide whether the matter should or should not be included by the member in the statement of interests concerned.*
- (4) *The Registrar must immediately notify the member of the decision of the Select Committee.*
- (5) *If the member informs the Select Committee in writing that he or she does not agree with the decision of the Committee, the Committee must -*
- (a) *make a report to the Legislative Assembly; and*
 - (b) *with the report, recommend the action that should be taken in relation to the matter.*
- (6) *A report under subclause (5) -*
- (a) *must be made in general terms; and*
 - (b) *must not disclose the name of the member.*

Part 3 - Registers

Keeping of Registers

9. (1) *The Registrar must keep, in such forms as the Registrar considers appropriate -*
- (a) *a Register of Members' Interests; and*
 - (b) *a Register of Related Persons' Interests.*
- (2) *As soon as practicable after receiving a statement of interests from a member, the Registrar must -*
- (a) *in the case of a statement of interests (member) - enter in the Register of Members' Interests the relevant details contained in the statement; and*
 - (b) *in the case of a statement of interests (related persons) - enter in the Register of*

Related Persons' Interests the relevant details contained in the statement.

- (3) *As soon as practicable after receiving a notice of change of details under subclause 5(5), the Registrar must make such alteration to the details entered in the relevant Register as is necessary to reflect the change.*

Custody of Registers

10. *The Registrar is to have the custody of -*
- (a) *each Register;*
 - (b) *each statement of interests received by the Registrar under clause 5; and*
 - (c) *any notice of change of details received by the Registrar under subclause 5(5).*

Tabling of Register of Members' Interests

11. *As soon as practicable after -*
- (a) *the first sitting day of each Parliament; and*
 - (b) *the 30th day of June in each subsequent year during the life of that Parliament;*
- the Speaker must cause a copy of the Register of Members' Interests to be laid before the Legislative Assembly.*

Publishing of Register of Members' Interests

12. *When a Register has been laid before the Legislative Assembly, the Clerk must immediately cause the Register to be published as a Parliamentary paper.*

Inspection of Registers

13. (1) *The Registrar must, at the request of a person, permit the person to inspect the Register of Members' Interests during normal business hours of the office of the Clerk.*
- (2) *The Registrar must, on request, make the Register of Related Persons' Interests available to -*
- (a) *the Speaker;*
 - (b) *the Premier;*
 - (c) *any other Leader in the Legislative Assembly of a political party;*
 - (d) *the Chairman and other members of the Select Committee;*
 - (e) *the Electoral and Administrative Review Commission; and*
 - (f) *the Criminal Justice Commission.*

Part 4 - Complaints

Allegations by members

14. (1) *A member may make an allegation against another member that the other member has failed to comply with the requirements relating to the disclosure of a matter under this resolution.*
- (2) *The allegation must be made, in writing, to the Registrar.*
- (3) *The Registrar must -*
- (a) *refer the allegation to the Select Committee; and*

- (b) give the details of the allegation to the member against whom the allegation is made.

Consideration of allegations

- 15. (1) The Select Committee must consider each allegation referred to it and, for that purpose, may -
 - (a) give each member concerned the opportunity to be heard; and
 - (b) obtain information from such other persons, and make such inquiries, as it thinks fit; after which it may -
 - (c) make a report to the Legislative Assembly; and
 - (d) with the report, recommend the action that should be taken in relation to the matter.
- (2) The Select Committee must not make a report unless -
 - (a) it has given the member against whom the allegation has been made the opportunity -
 - (i) to be heard; and
 - (ii) to make written submissions; and
 - (b) it has given the persons that the member nominates the opportunity to be heard.

Complaints by public

- 16. (1) A person may make a complaint alleging that a member has failed to comply with the requirements relating to the disclosure of a matter under this resolution.
- (2) The complaint must be made, in writing, to the Registrar.
- (3) The Registrar must, before taking any further action in relation to the complaint, inform the complainant in writing that Parliamentary privilege does not extend to any communication between the complainant and the Registrar.
- (4) The Registrar may require the complainant to give to the Registrar -
 - (a) details of the complainant's name and address;
 - (b) details, or further details, of the complaint; and
 - (c) copies of any documents or other material available to the complainant supporting the complaint.
- (5) The Registrar may refuse to take any further action in relation to the complaint if the complainant refuses or fails to comply with a requirement under subclause (4).
- (6) If the Registrar believes on reasonable grounds that there is evidence to support an allegation the subject of the complaint, the Registrar must -
 - (a) refer the matter to the Select Committee; and
 - (b) give the details of the complaint to the member concerned.

Consideration of complaints

- 17. (1) Where a complaint is referred to it, the Select Committee -
 - (a) may request the member concerned to provide an explanation of the allegation the subject of the complaint; and
 - (b) must, if the member disputes the allegation -
 - (i) give the member the opportunity to be heard;
 - (ii) give the persons that the member nominates the opportunity to be heard; and

- (iii) *obtain information from such other persons, and make such inquiries, as it thinks fit.*
- (2) *The Select Committee must make a report to the Legislative Assembly in respect of the complaint -*
 - (a) *if the member concerned disputes the allegation the subject of the complaint - on completion of its consideration of the complaint;*
 - (b) *if the member confirms the allegation - on receiving notice to that effect; and*
 - (c) *if the member does not, within a reasonable period, respond to a request given to him or her under paragraph (1)(a) - on the expiration of the period.*
- (3) *The Select Committee must, with the report, recommend the action that should be taken.*
- (4) *The Select Committee must not, in the report, make a finding that is adverse to the member concerned unless it has given the member -*
 - (a) *full particulars of the complaint; and*
 - (b) *the opportunity to be heard in relation to the complaint.*

Part 5 - Enforcement

Effect of failure to comply with requirements

- 18. *A member who knowingly -*
 - (a) *fails to give a statement of interests to the Registrar under subclause 5(1), (2) or (3);*
 - (b) *fails to notify the Registrar under subclause 5(5) of a change of details contained in a statement of interests; or*
 - (c) *gives to the Registrar a statement of interests, or gives information to the Registrar or Select Committee, that is false, incomplete or misleading in a material particular;**is guilty of a contempt of the Parliament and may be dealt with accordingly.*

APPENDIX FOUR

**article by the Hon K R Rozzoli, Speaker
of the NSW Legislative Assembly**

**entitled, "Conflict of Interests,
Codes of Conduct and the Responsibilities of
Members of Parliament"**

**published in, Legislative Studies, v.6, no.2, Summer 1992
including a Draft Code of Conduct for MPs**

Conflict of Interests, Codes of Conduct and the Responsibilities of Members of Parliament

Speaker K.R. Rozzoli

One of the more prevalent trends of this decade, social theorists tell us, is towards a restatement and confirmation of the moral basis of our society: a call for a 'new corporate morality' and a 'return to old standards of common sense and decency'.¹ Communities throughout the world are concerned that business, and government, be conducted with the highest integrity. Whereas it once may have been unthinkable to query the motivation or drive behind professional activities, the trend is such that even legal and medical interest groups are attempting to ensure that their members are aware of the need to avoid placing themselves in a position of conflict of interest, to fully disclose personal interests and to fulfil professional duties with care, diligence and impartiality.

Vital Public Trusts

In an Australian context community concern has arisen in the wake of Court examination of corporate failures, which has revealed the existence of fraudulent and dubious business practices. In several states Royal Commissions have uncovered conflicts of interest in the activities of senior Government officials and Members of Parliament.²

In New South Wales the establishment in 1988 of the Independent Commission Against Corruption has had the effect on society as a whole. In addition to an educative function, the Commission has now held a number of inquiries into allegations of corrupt activity by public officials, including Members of Parliament. The establishment of the Commission has undoubtedly influenced a change in the cultural climate of the public sector in New South Wales as all sections of the Government and administration have been required to reflect on their current practices and the principles under which they operate.

It goes without saying that Members of Parliament, as a class, are amongst those currently drawn into the debate on what constitutes appropriate conduct by public officials. As public figures,

members are already subject to a level of scrutiny by their fellows, and the media in its traditionally asserted role as protectors of the public interest. However, it is also evident that there is no clear or mutual understanding between these groups as to the duties and responsibilities of Members of Parliament, as opposed say, to the duties and responsibilities of ministers, or even of senior public officials.

As Speaker of the New South Wales Legislative Assembly, I have recently had referred to me for consideration a report by the Independent Commission Against Corruption concerning activities of a former Member of Parliament.³ The member had placed himself in an impossible situation in relation to a constituent who was seeking assistance to make representations to a Minister for supply of water to land which could then be rezoned and subdivided.

The most serious allegations, of conspiracy and bribery, were not made out. However, the Commissioner did conclude that the member, who was at various times while a Member of the Legislative Assembly working as a solicitor, barrister and land developer, did blur the roles between his duty to help a constituent and his desire to obtain benefits for himself. The member did obtain legal fees, and in pursuing his own interests, as well as those of his constituent, a conflict inevitably arose.

The Report concluded with a discussion about standards in public life, and an examination of the current position concerning Members of Parliament in Australia generally and in New South Wales especially. The suggestion was made that Parliament could do more by way of inducting members, providing them with guidance, and perhaps by developing a code of conduct.

Duties of Members

Before commenting on the Commissioner's proposals, it may be of benefit to review the general position of Members of Parliament with respect to

their constituents, in the context of parliamentary experience.

The basic duty of a Member of Parliament is to the people residing in the member's electorate, whether that person is an enrolled elector or not and whether it is known or suspected that the person seeking help voted for the member or not. This responsibility is almost a sacred trust. The responsibility is a duty to help, to help without pecuniary or beneficial reward, other than the benefit that may flow to the member in the form of electoral goodwill. To seek the latter benefit is both natural and appropriate.

There is a further responsibility to help any other person, that is, someone not residing within the electorate, should that person seek assistance. This duty is based on the premise that an individual electorate does not form an island but is part of a greater unit, be it a state, territory, or the nation. Traditionally this responsibility to help is tempered by the intrusion it may cause on a colleague's electorate and the wisdom of becoming involved in an issue with which the member may not be sufficiently or appropriately acquainted to be of practical assistance.

On the other hand there may be many reasons why a member becomes involved in an issue beyond that member's own electorate. It may fall, for example, within the role of a member as a Shadow Minister. It may be that the member has a publicly recognised expertise in the subject matter or personal associations or party political affiliations which influence a decision to become involved.

Yet another responsibility is to the parliament itself and to the public image of the parliament as a gathering place for persons elected by their peers to carry the responsibility of governing the lives of those who make up the greater community.

I do not believe that such a clearly identifiable duty exists towards a political party. Such a duty is a private rather than a public duty. In an ethically correct world a member's duty to constituent and state should always override any duty to a political party.

The public have a right to expect their Members of Parliament to conduct themselves in a manner worthy of their office and of the powers and responsibilities entrusted to them. It is unfortunate that the conduct of some Members is found wanting in this regard. Whilst Codes of Conduct are of some value, the importance of personal dignity, self-esteem, self-discipline, and professional integrity as a guiding influence cannot be underestimated. Members of Parliament do, in many ways, reflect the society that elects them. However leadership always brings with it a demand to raise conduct above the standard of those around, to set an example for others to follow.

The ICAC Report

When called upon by the Commission to comment on the member's conduct I was mindful of the need to judge his behaviour against this standard. Firstly, I believe a member must avoid any action that would conflict with the duties I have outlined. A person who is professionally qualified should not engage professionally with a person who makes an approach as a constituent. Thus in the first instance a member should not practice professionally within his constituency where the chances of a conflict of interest occurring are highest. That is not to say that a conflict will automatically arise or that circumstances may not occur where a professional action is not totally proper. The presumption is, however, in favour of a potential conflict.

The suggestion was made that Parliament could do more by way of inducting members, providing them with guidance, and perhaps by developing a code of conduct.

When dealing with a client from outside the electorate a member must weigh carefully the likelihood of a conflict arising and must either disqualify him or herself from acting in one or the other capacity, there being a discretionary element to either capacity. I would suggest that in respect of a person residing within a member's electorate there is no such discretionary capacity.

I therefore believe the member in question should have determined whether he would assist the person as a Member of Parliament or as a professional person charging for services rendered. I believe it is improper within the Australian context to do both. Having elected to offer his services in one way or the other he should then have disqualified himself from acting in the other capacity.

Whilst there is no bar to a Member of Parliament deriving income from a source other than that paid by the parliament, (indeed this is recognised by the existence of a pecuniary interests register) it is not envisaged that a member should create the possibility of direct benefit from the platform of a privileged position created by election to parliament.

In my submission I concluded that the member's behaviour would not amount to corrupt conduct but from the material included in the report appeared to have been improper and unbecoming of a member. Having been drawn into the matter as a Member of Parliament he should have kept his involvement within that context. Alternatively

he could have suggested that he could more fruitfully assist in another capacity for a fee and, in the event that his offer was accepted, turned his back on the avenues open to him as a Member of Parliament.

As a separate issue I believe the practice of referring business to a professional person in return for a commission is quite improper conduct for a Member of Parliament as it would almost certainly lead to a distortion of the member's attitude and conduct towards a person seeking assistance on a constituent basis.

A Member of Parliament, as distinct from a Minister of the Crown, generally does not act in the role of an individual decision-maker. The capacity therefore to act in a corrupt manner is largely restricted in that whilst a member may be bribed to push a particular matter that member cannot without conspiracy guarantee a pre-determined result. It is the decision-maker, minister or public servant, who is principally vulnerable to corrupt conduct. Not that complicity in a conspiracy to corrupt the course of public administration is any the less a crime because a person may be an ancillary player. It is just that a Member of Parliament acting alone offers little of substance to a person seeking to pervert the public process.

exponents of codes of conduct argue that the very statement and acknowledgment of a code assist in maintaining and strengthening the ethical environment in which Government takes place.

As indicated above the standards of conduct expected of a person in office are those standards that should be readily perceived and accepted by a mature, reasonably well-educated and publicly experienced person, that is, the type of person who normally gets elected to parliament.

Codes of Conduct

Is there a value then in setting down a code? Does the setting of a code require positive action for a perceived breach of that code? If so, who judges that a breach has occurred, the degree of gravity of the breach and the reprisal if any that should follow? The Ontario legislature has created a Conflict of Interest Commissioner, a position first filled by a former Chief Justice.⁴ The United States House Committee on Standards of Official Conduct (the Ethics Committee) has been subject to criticism,

and even with the tightening of disclosure legislation in 1989 there are still reports of 'hysteria about ethics and what constitutes a perception of impropriety'.⁵

It would thus appear that the difficulties of assessing degrees of conflict of interest, or even of identifying ethical issues, are substantial, even when tackled outside the hot-house and inherently factional environment of parliament politics. Alternatively, it could be argued that a Member of Parliament faces his or her judges at each election, and that reprehensible conduct will lead to defeat either at pre-selection or general election. Some members have been 'persuaded' to resign because of the potential electoral damage their conduct may generate. Is this not safe-guard enough? It may well be that this discipline is both sufficient and flexible enough to meet the changing standards of public ethics.

There is, however, an argument that there is a value in clear statement of a code of principles to govern conduct of public officials, in that a public statement of values and modes of behaviour assists to maintain public confidence in the institutions that make up our system of government. While most people in the community would agree that public officials act by, and are seen to act by, the highest ethical standards in carrying out their duties in the best interests of the people of the state, exponents of codes of conduct argue that the very statement and acknowledgment of a code assist in maintaining and strengthening the ethical environment in which government takes place.

In a way, the New South Wales Parliament has already made a clear statement of expected standard of behaviour by procedural guidelines and explicit legislation. Its Standing Orders provide for the declaration of a conflict of interest in terms of voting;⁶ a prohibition on a member sitting on a select committee who is personally interested in the inquiry before such committee;⁷ and a Register of Pecuniary and Other Interests.⁸

Parliament also has the right to expel a member for conduct unworthy of a Member of Parliament, upon which the member's seat is declared vacant.⁹ The Constitution itself provides that the seat of a member of either house of parliament shall become vacant if 'attainted of treason or convicted of felony or any infamous crime' (s13A(e) *Constitution Act 1902*).

Whether or not a code of conduct is strictly necessary, or of any great value to those it seeks to guide, it has become a present day practice in arenas of public-related activity to set down such codes. Given that it is deemed desirable to do so, what then might be suitable guidelines for conduct in respect of a Member of Parliament?

I submit the following for your consideration.

1. A Member has a primary role to carry out the duties and obligations devolving on that person as a Member of Parliament.

2. A Member should act in the public interest.
3. A Member should always act in a manner which upholds the dignity of public office and the Parliament.
4. A Member should treat all persons seeking assistance without discrimination.
5. A Member should make every endeavour to assist those who seek help, consistent with the need and urgency of the matter and its relevance to the jurisdiction within which the member operates.
6. A Member should avoid any situation in which a private interest may conflict with a public duty.
7. A Member should not act in any way which induces a financial benefit to the Member or creates a personal benefit in any other form which might in any way tend to influence the Member in the conduct of his or her parliamentary duties.
8. A Member should avoid any situation in which the appearance may be created of another person seeking to exercise undue influence over the Member in the carriage of parliamentary duties.
9. A Member should not advance a private interest by the use of confidential information gained in the course of public duty.
10. A Member should not receive any fee, payment, retainer, or reward or permit any compensation to accrue to his beneficial interest for, or on account of, or as a result of the use of, his or her position as a Member.
11. A Member shall comply fully and honestly with the requirements of the Register of Pecuniary Interests.
12. A person receiving benefit should publicly declare that benefit.

One of the real problems which has emerged in recent times has been the inter-relationship of members with professional lobbyists. It is obviously fundamental to the lobbyists role to have frequent contact with Members of Parliament. Lobbyists are paid on a fee for service basis, often with a generous budget. They deal primarily with salaried persons in a variety of public offices.

International Comparisons

In other countries the link between parliamentarian and lobbyists is not only clearly discernible it is accepted as part of an appropriate process provided sufficient disclosure is made in the Parliament's Register of Pecuniary Interests. In the United Kingdom for example the House of Commons through its Select Committee on Members' Interests 'has acknowledged the existence of firms of political consultants which advertise their ability to improve the access of private companies to the "corridors of power". The Select Committee on Procedure is considering how the tabling of parlia-

mentary questions placed on behalf of private firms may be regulated.'¹⁰

The recent suspension of a member from the House of Commons for failing to disclose monies received from lobbying activities on behalf of two foreign governments has focussed greater attention on the activities of such lobbyists. The public attention which this matter attracted revealed a considerable network of professional lobbying involving members from the three major parties. Up to fifteen companies ply the consultancy trade and there are many who argue that this is a legitimate means of communication between the law makers and those who are affected by the laws. The communication, however, extends beyond the realm of law making. Agencies in other countries are now turning to Members of Parliament as a source of inside knowledge for which they are ready to pay money and charge the end client accordingly. 'MPs in Select Committees know how to bend to their advantage the presence of witnesses who testify under oath. For example, a trade union can persuade a select committee member to secure information in the committee room from an industrialist witness who would not make the same available to a joint employer-employee negotiating committee'.¹¹

Clearly this trend will come to Australia. Indeed it is probably occurring already. However, the ethos of Members of Parliament openly acting as paid lobbyists for outside interests has no real acceptance. What then are the standards which should govern the field of political lobbying? Certainly there is the need for full and frank disclosure of members' pecuniary interests in the provision of information on a fee for service basis or other loose liaison with an outside agency. Perhaps consideration should be given to the establishment of a Register of Lobbyists and a code of conduct for lobbyists.

Clear identification of the lobbyists in such a manner may well protect member, lobbyist, client and public servant and, therefore, in the final analysis the public.

And yet can we really control the actions of those in office, or indeed in any profession or calling, simply by laying down a set of rules. The variations of situations in which conduct may be compromised by bad judgement are endless and in the final analysis it is the individuals judgement which provides a secure path or creates the pit into which that individual falls.

Parliamentarians are not highly thought of collectively, although they may be individually. This is because collectively they have abandoned those standards which attract respect from the community. Unseemly behaviour in the house, a lack of respect towards one another, a lack of ethical standards and personal dignity in the electorate, and too many public falls from grace have

done much to damage the image of our elected representatives.

Endnotes

1. 'Corporate Morality: the key to confidence' *Australian Financial Review* 17.5.91.
2. See for example the *Fitzgerald Report and the WA Parliamentary Committee on Parliamentary Privilege*.
3. Independent Commission on Corruption, *Report on Investigation concerning Neal and Mochalski*, April 1991.
4. 'Conflict and the Commissioner: the Ontario solution conflict of interest' *Parliamentarian* 1990 p240-243.
5. 'The Year of Living Carefully: '89 Scandals Color Reports' *Congressional Quarterly* June 1990 p1713-1716.
6. Standing Orders of the New South Wales Legislative Assembly, S.O. no.204.
7. S.O. 348.
8. s14A *New South Wales Constitution Act, 1902*.
9. S.O. 391.
10. M.J. Lee. 'Westminster and Professional Lobbying' *Legislative Studies* Vol.5 No.2 p11.
11. *Ibid.*, p12.

SENATE BRIEFS?

- No 1 Electing Australia's Senators?
- No 2 The Opening of Parliament?
- No 3 Women in the Senate — A History

All Senate Briefs are available from the Procedure Office, the Senate Department, Parliament House, Canberra ACT 2600
Telephone (06) 277 3068

APPENDIX FIVE

**List of Submissions
and Witnesses**

WITNESSES APPEARING
COMMITTEE ON THE ICAC
HEARINGS
10 & 11 AUGUST 1992

MONDAY 10 AUGUST

- Dr Michael Jackson
University of Sydney
- Mr Gerard Carney
Bond University
- Dr Jacqueline Morgan & Dr John Gaudin
Privacy Committee
- Ms Elizabeth Moore
Principal Corruption Prevention Officer ICAC
- Ms Gail Furness
Principal Lawyer ICAC

TUESDAY 11 AUGUST

- Mr Ted Mack MP
Federal Member for North Sydney
- Professor Paul Finn
Australian National University
- Dr Simon Longstaff
St James Ethics Centre
- The Hon Max Willis MLC
President of the Legislative Council
- Mr John Evans
Clerk of the Legislative Council

LIST OF SUBMISSIONS

1. Commissioner Temby QC, Independent Commission Against Corruption.
2. The Honourable John Jobling MLC.
3. E. Rudel, Secretary of PUSH.
4. Mr John Hatton MP.
5. Mr K J Robson, Auditor-General of NSW.
6. The St. James Ethics Centre.
7. Public Service Association of NSW.
8. Speaker of the NSW Legislative Assembly, K R Rozzoli.
9. Mr David Landa, Ombudsman of NSW.
10. The Honourable Elisabeth Kirkby MLC.
11. Dr M W Jackson, Associate Professor, Department of Government, University of Sydney.
12. The Honourable Michael Yabsley MP.
13. Associate Professor Gerard Carney, Bond University.
14. Privacy Committee of NSW.
15. Independent Commission Against Corruption.
16. Mr Ted Mack MP, Federal Member for North Sydney.
17. The Honourable Dr Brian Pezzutti MLC.

APPENDIX SIX

**Concerns of the
Hon Stephen Mutch MLC**



The Honourable Stephen B. Mutch
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Australia

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12 February 1993

Mr Malcolm Kerr MP
Chairman
Committee on the ICAC
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Kerr

I refer to the consideration of the Committee's draft report on Pecuniary Interest Provisions and a Code of Conduct for MPs at the deliberative meeting on 18 December 1992. I note that it was resolved that I should be given until 12 February 1993 to put my concerns about the draft report in writing. In accordance with that resolution my concerns are set out below.

It is my opinion that a code of conduct for parliamentarians is inappropriate in a system of representative democracy. It would inevitably result in an erosion of the fundamental principle that an elected member of parliament should feel absolutely free to pursue the interests of constituents in whatever manner he or she thinks fit, within the constraints of the law.

Codes of conduct are increasingly being used as an attempt to provide guidelines within which a category of people are expected to perform their duties or obligations. They are a fashionable response to concerns that people in many responsible positions breach their obligations because they are ignorant of them. They are meant to serve an educative function and as a disciplinary tool.

I support this endeavour in its proper place. Therefore, in the area of public administration it may be appropriate for a government to set out the standards under which it expects government employees to operate. It may also be appropriate for a government (indirectly through parliament) to require members of Cabinet, the executive arm of government, to abide by designated standards which may be deemed applicable to their executive role. This may be justified on the basis that the executive is answerable to the parliament.

However, members of parliament are in a unique position which is vital to the democratic process. While parliament may act under unusual circumstances to sanction the activities of individual members, the general rule must be that members are responsible ultimately to their constituents, and it is the people who should determine their fate at the ballot box. By its very nature any code of conduct for MPs would interfere with the basic relationship between an elected representative and his or her constituents.

Furthermore, the insurmountable problems inherent in any attempt to formulate a code for MPs became very apparent in the inquiry conducted by this Committee. The draft report of the Committee acknowledged general agreement that "the ethical principles in the Code must be subscribed to by all those who are to be bound by the Code". This is an insurmountable threshold.

The problems are obvious. A code reduced to the lowest common denominator would be effectively meaningless, or worse, incapable of consistent interpretation. It would either be window dressing, or dangerously ambiguous. This became only too apparent in comments on a draft code prepared by the Speaker of the Legislative Assembly for discussion purposes, where there was conflict between the general and varied interpretation of phrases and a narrower and more precise legalistic interpretation.

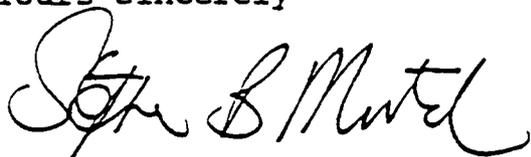
In the end it became apparent that what was generally acceptable was not really a code at all, which must be capable of reasonable interpretation and be enforceable, but rather a statement of aspirations. It was submitted that such a code would serve as an example, that politicians should be seen to be subject to the same type of restrictions that they might place on others, even though these others are not subject to the ultimate sanction imposed on politicians.

On the other hand, if the parliament were to adopt a code capable of precise interpretations and enforceable, it would be capable of subjective and mischievous interpretations. The question also arises - who is to be the judge? Would a parliamentary majority be able to impugn and expell a maverick independent on the basis that that member in the majority view breached the code? Would a non-elected official sit in judgement? Would the ICAC be able to add the code to its repertoire of benchmarks upon which it assesses the behaviour of politicians? The scenario becomes dangerously uncertain. While potential presently exists for parliamentary majorities to be abused, the rationale had better be based upon proper legal standards tested in the Courts, otherwise the majority would risk public censure.

It is my view that it is far better to let the people decide whether they approve the conduct of MPs. While some may say that the present system of representative democracy is imperfect, that there should be better ways of making politicians accountable to the people, the answer is to propose changes to the system of election.

In a democracy politicians come from all walks of life and contribute in quite different ways. This diversity should be encouraged rather than attempting to enforce conformity to enforceable group rules. By all means advise MPs of their obligations and responsibilities at law. Their parliamentary conduct might be restrained by the normal influences of their peers, but they should be judged by the people they represent.

Yours sincerely

A handwritten signature in black ink, appearing to read "Stephen B Mutch". The signature is written in a cursive style with a large initial 'S' and 'M'.

Hon Stephen B Mutch MLC

APPENDIX SEVEN

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