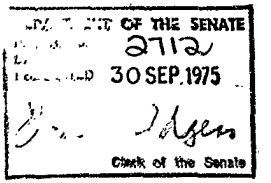

DECLARATION OF INTERESTS

Report of the Joint Committee on Pecuniary Interests of Members of Parliament

AUSTRALIAN GOVERNMENT PUBLISHING SERVICE 1975

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MEMBERS OF THE COMMITTEE

The Hon J. M. Riordan, M.P. (Chairman)
Senator the Hon J. E. Marriott (Deputy Chairman)
Senator G. Georges
Mr P. J. Keating, M.P.
Senator the Hon J. R. McClelland
Mr V. J. Martin, M.P.
The Hon P. J. Nixon, M.P.
Mr E. L. Robinson, M.P.
Senator G. Sheil (from 22 April 1975)

FORMER MEMBER

Senator J. J. Webster (from 31 October 1974 to 16 April 1975)

Secretary
M. C. B. Hills
The Senate

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TERMS OF REFERENCE

(1) That a Joint Committee be appointed to inquire into and report whether arrangements should be made relative to the declaration of the interests of the Members of Parliament and the registration thereof, and, in particular:

(a) what classes of pecuniary interest or other benefit are to be disclosed;

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

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

and to make recommendations upon these and any other matters which are relevant to the implementation of the said resolution.

(2) That the committee consist of three Members of the House of Representatives nominated by the Prime Minister, two Members of the House of Representatives nominated by the Leader of the Opposition in the House of Representatives, two Senators nominated by the Leader of the Government in the Senate, one Senator nominated by the Leader of the Opposition in the Senate and one Senator nominated by the Leader of the Australian Country Party in the Senate.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint committee until the House of Representatives expires by dissolution or effluxion of time.

(5) That the committee elect as Chairman of the committee one of the members nominated by the Prime Minister.

(6) That the Chairman of the committee may, from time to time, appoint another member of the committee to be the Deputy Chairman of the committee, and that the member so appointed act as Chairman of the committee at any time when the Chairman is not present at a meeting of the committee.

(7) That five members of the committee constitute a quorum of the committee.

(8) That the committee have power to send for persons, papers and records.

(9) That the committee have power to move from place to place, and to sit during any recess.

(10) That the committee have power to authorise publication of any evidence given before it and any document presented to it.

(11) That in matters of procedure the Chairman or Deputy Chairman presiding at a meeting have a deliberative vote, and in the event of an equality of voting, have a casting vote, and that, in other matters, the Chairman or Deputy Chairman have a deliberative vote only.

(12) That the committee report within the shortest reasonable period, not later than 30 September 1975, and that any member of the committee have power to add a protest or dissent to any report.

(13) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

(As amended by Parliament on 23 April and 22 May 1975)

INTRODUCTION

Since its formation on 31 October 1974 the Joint Committee on Pecuniary Interests of Members of Parliament has met on thirty-two occasions. Eighteen public meetings were held in Canberra and Sydney at which forty-four witnesses gave evidence. These included Members and officers of three Parliaments, officers of eight departments and statutory authorities, representatives of six media organisations and three unions, and a number of academics and other individual witnesses. A complete list of witnesses who appeared before the Committee is contained in the Appendix.

At the first meeting of the Committee, the Hon J. M. Riordan, M.P. was elected Chairman. The Committee commenced its inquiry by circulating a questionnaire to all Members of the Australian Parliament on such issues as whether or not a register of the pecuniary interests of Members of Parliament should be instituted; whether public access to a register should be restricted in some way; and whether Members of Parliament should disclose relevant pecuniary interests during parliamentary debates. One hundred and eighteen replies were received. The Committee wishes to place on record its appreciation of this encouraging response. The Committee then wrote to the permanent heads of all Australian Government departments, the Chairman of fifty-four statutory authorities, the national secretaries of political parties, the staff of Ministers and Leaders and Deputy Leaders of the Opposition Parties, the managing directors and editors of leading daily newspapers and a number of other bodies.

The membership of the Committee has remained the same throughout the course of its inquiry with the exception that Senator Webster requested that he be discharged from further attendance upon the Committee and was accordingly discharged by the Senate on 16 April 1975. On 22 April 1975 Senator Sheil was appointed as a member of the Committee.

Paragraph 12 of the Committee's terms of reference originally stated as follows:

> (12) That the committee report within the shortest reasonable period, not later than 90 days after the members of the committee are appointed, and that any member of the committee have power to add a protest or dissent to any report.

To comply with clause 12 would have involved the unrealistic task of reporting within a few weeks of the Committee's formation, as Parliament rose for the summer recess before the 90 days had expired. Consequently by resolution of the House of Representatives and the Senate on 27 and 28 November respectively, the Committee received an extension of time for bringing down its report until 29 May 1975. Evidence was received at a late stage in the Committee's inquiry relating to alleged breaches of the Constitution and their inter-relationship with the need for a register of pecuniary interests. The Committee felt bound to hear this evidence as it arose out of persistent questioning by members of numerous witnesses as to whether they knew of any instances of impropriety, fraud or breaches of Sections 44 and 45 of the Constitution which would warrant the institution of a register or whether the apparent absence of any such activity provided grounds for believing that a register was unnecessary. The Committee requested an extension of time until 30 September 1975 and on 23 April and 22 May 1975 the Houses of Parliament granted the extension of time sought by the Committee.

In declaring open the first public hearing of the Committee in Sydney on 30 January 1975 the Chairman made the following statement:

The subject for investigation and report of this Committee is complex and to some extent, controversial. There are obviously different views in the community. Some believe that all persons in public life and those who occupy positions which allow them to influence important economic decisions or public opinion should be required to disclose their pecuniary interests in order to establish and demonstrate that they have not been influenced in the execution of their responsibility by considerations of private personal gain. There are others who regard such disclosure as an intrusion into the privacy of the individual and even a potential reflection on their honesty and integrity. It is not the function of the Committee to be concerned about the degree or level of wealth of any person irrespective of that person's position. The Committee is concerned with interests held by the individual which may conflict with the execution of his or her public responsibility. We are not committed to any doctrinaire solution, but seek recommendations which will protect and uphold the dignity and honour of Parliamentarians and public officials.

The Committee believes that the solutions recommended in this Report will go a long way towards achieving those goals whilst at the same time reflecting an appreciation of the strongly held views which have been expressed by witnesses appearing before the Committee on the many sides of the central issues involved.

The term 'pecuniary interest' is not a commonly used expression and the Committee considers it necessary to attempt a definition. 'Pecuniary interest' can be defined as 'any direct or indirect financial concern, stake or right in, or title to, any real or personal property or anything entailing an actual or potential benefit'. It is clear that pecuniary interest is such an exhaustive term as to exclude very little from its parameters. Furthermore, the Committee's terms of reference refer not only to pecuniary interests but to 'what classes of pecuniary interest *or other benefit* are to be disclosed'. But the scope of the Committee's inquiry is not necessarily as wide. The Committee's task has been to devise means of ensuring that the execution of the public responsibilities of Members of Parliament and others are not influenced, or thought to be influenced, by considerations of private gain or benefit. As determined by the Committee's terms of reference this task can be divided into the following issues:

(a) Should arrangements be made with respect to the declaration of the interests of Members of the Parliament?

(b) If so, should the declaration be in the form of a register or in some other form?

(c) If in the form of a register, how should this register be compiled and maintained?

(d) What classes of pecuniary interest or other benefit should be disclosed?

(e) Should access be permitted to the information disclosed and, if so, what arrangements should be made to facilitate such access?

(f) What classes of person (if any) other than Members of the Parliament should be required to declare their pecuniary interests?

(g) If other classes of person are to be required to declare their pecuniary interests should the arrangements with respect to a register, the types of interests to be declared and access thereto be the same as is recommended with respect to Members of the Parliament?

In considering the last-mentioned issue the Committee recognises that many of the arguments for or against the institution of a register of pecuniary interests apply with equal force irrespective of which classes of person are being considered for potential registration. For example, the weight to be attached to the proposition that a

register is undesirable, because of the invasion of privacy, difficulties of definition, administrative complexity and ease of evasion does not really depend on which classes of person are being considered.

However, the representative responsibilities, degree of public exposure and nature of the work of Members of Parliament is such that conflicts of interests associated with Members of Parliament should be considered separately from other classes of person. For example, if a Member of Parliament abstains from participation in voting on a particular Bill because of conflicting public and private interests it could be said that his constituents are denied a voice on what may be a matter of considerable and continuing national importance. Obviously no one can substitute for him. This situation can be contrasted, for example, with that of a senior member of the public service. If he experiences a conflict of interests it would be much easier for him to delegate the particular decision to another officer or to inform his permanent head so as to enable other arrangements to be made.

Similarly, it can be argued that public knowledge of the pecuniary interests of a Member of Parliament allows some public appraisal of his motives and that the person concerned would think carefully before entering a transaction which he could not defend publicly. This can be contrasted with the relative anonymity of a senior public servant's role in the decision-making process. His particular part in day-to-day operations is, of course, generally not known publicly, and the opportunity for 'personal explanation' under Parliamentary process is not available.

Whilst the differences between the positions of Members of Parliament and senior public servants do not mean that conflicts of interest problems involving public servants and other classes of person should not be dealt with, these differences may call for different responses to the different conflicts of interest. For this reason the Committee's Report will be presented in two parts.

In Part II, separate Chapters are devoted to:

(a) The Public Service and employees of statutory authorities (Chapter V);

(b) Ministerial officers (Chapter VI); and

(c) Executives and employees of the media (Chapter VII).

Although the Committee received some persuasive evidence to the effect that members of the judiciary should be considered as a class of persons who might be required to register their pecuniary interests the Committee considered that it was more appropriate for the Parliament itself either to make recommendations in this area or for it to direct that this Committee or another Committee should determine the matter.

PART I–MEMBERS OF PARLIAMENT

CHAPTER I.
ARE THE EXISTING SAFEGUARDS ADEQUATE?

There are three relevant sources of authority which in some measure regulate the conduct of Members of Parliament.

(a) Sections 44 (v) and 45 (iii) of the Constitution are as follows:

> 44. Any person who—
>
> (i) . . . . . .
>
> (v) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:
>
> shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.
>
> 45. If a senator or member of the House of Representatives—
>
> (i) . . . . . .
>
> (iii) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth or for services rendered in the Parliament to any person or State:
>
> his place shall thereupon become vacant.

These provisions have been adapted from the provisions of the House of Commons Disqualification Act of 1782, which, in turn, had its genesis in legislation enacted as early as 1696. The comparable provision in the United Kingdom was repealed by the House of Commons Disqualification Act 1957.

At first glance, some of the most trifling associations with the Public Service would appear to be caught by the terms of Section 44 (v). Indeed, as long ago as 1869 Montague Smith J. in *Royse* v. *Birley* (1869) L.R. 4 C.P. 297 at 319 spoke of the 1782 Act in these terms:

> I cannot help thinking that it would be very desirable that this Act should be revised, because it certainly appears to me to be totally inapplicable to the present state of commerce, and that it really provides a pitfall into which men who wish to walk uprightly and according to law may unwittingly tumble.

However, the apparent prevention of conflict of interest situations to be derived from this section of the Constitution may prove to be illusory. His Honour, the Chief Justice of the High Court, Sir Garfield Barwick, sitting as the Court of Disputed Returns in the matter of James Joseph Webster handed down judgment on 24 June 1975 in which His Honour stated that the purpose of Section 44 (v) of the Constitution, like that of its statutory progenitors, was the protection of the independence of the Parliament and not the prevention of possible conflicts of interest and duty. His Honour stated that this interpretation of the purpose of the section necessarily meant that the section could not be construed in a similar manner to those provisions in local government acts which were designed to tackle conflict of interest situations. In this regard His Honour said:

Because of the evident purpose of the disqualification provision, it applies only to executory contracts, that is to say, to contracts under which at the relevant time something remains to be done by the contractor in performance of the contract . . .

It seems to me that upon the proper construction of the paragraph bearing in mind the purpose of its presence in the Constitution, the agreement to fall within the scope of s.44 (v) must have a currency for a substantial period of time, and must be one under which the Crown could conceivably influence the contractor in relation to Parliamentary affairs by the very existence of the agreement, or by something done or refrained from being done in relation to the contract or to its subject matter, whether or not that act or omission is within the terms of the contract. In the climate of the eighteenth century, the likelihood of such influence upon a government contractor could well be thought to be high. Accordingly, the mere existence of a supply contract justified the disqualification. But in modern business and departmental conditions the possibility of influence by the Crown is not so apparent: whilst it need not be certain, at least it must be conceivable, and in any case the possibility will arise from the continuing nature of the agreement. Further, it seems to me that the interest in the agreement of the person said to be disqualified must be pecuniary in the sense that through the possibility of financial gain by the existence or the performance of the agreement, that person could conceivably be influenced by the Crown in relation to Parliamentary affairs.

Whilst I am bound to say that I can point to no authoritative decision interpreting this section or its progenitors in this particular sense, I can say that, having carefully examined the decisions which have been given, I do not find any which would deny that interpretation. But, in my opinion, what I have said expresses the proper meaning and scope of s. 44 (v). No doubt a similar construction could not be placed upon a local government disqualification because of its different purpose.

Sir Garfield Barwick's *obiter* remarks concerning the interest which a Senator or Member has in the day-to-day transactions of a private company by virtue of his shareholding therein suggest that by merely being a shareholder one is unlikely to be in breach of Section 44 (v) of the Constitution. His Honour stated:

. . . If the Senator or Member be a shareholder in a 'private' company such as is described, which has a relevant agreement with the Government, there is a real question in my mind whether that fact of itself brings him within the disqualification. Consequently, it may be said that a person who is no more than a shareholder in a company does not, by reason of that circumstance alone, have a pecuniary interest in any agreement the company may have with the Public Service.

But, however that may be, it is in my opinion more than difficult to conclude that the shareholder does have a pecuniary interest in each and every of the day-to-day transactions of the company, whether they be strictly 'over the counter' transactions or arise out of orders given for the immediate supply of goods pursuant to a standing offer of supply. Under the general law, plainly he does not: in my opinion, there is good reason to conclude that the same is true in relation to s. 44 (v). . . .

It is thus clear from the guidance available to date that Section 44 (v) of the Constitution cannot be considered as a safeguard against conflicts of interest and duty.

Section 45 (iii) of the Constitution, with its prohibition on the acceptance of retainers by Members of Parliament, would appear to provide a sanction against the more obvious conflicts of interest. The meaning of the terms 'fee or honorarium', has not been the subject of any judicial interpretation in relation to Section 45 of the Constitution. They would seem to have their ordinary meaning. In relation to the word 'fee' this would mean a sum of money payable to the Senator or Member for his services, under any contract or arrangement. The word 'honorarium' would mean a voluntary payment made without any obligation to make it.

However, Section 45 (iii) does not appear to deal effectively with a number of situations which could arise such as when a Senator or Member with professional qualifications who continues to act in a professional capacity might conceivably be called upon to give advice without it being clear in which capacity the advice is being sought or given.

In these circumstances it is doubtful whether Section 45 (iii) of the Constitution affords any greater safeguards against conflicts of interest and duty than does Section 44 (v).

These sections constitute only the tip of the iceberg in attempting to deal comprehensively with the whole area of conflicts of interest. The concept of *avoidance of conflicts of interest inherent in Sections 44 and 45 of the Constitution* is based on the assumption that it is better to avoid the occurrence of a conflict than to extricate oneself from an embarrassing situation. This principle is commendable in limited situations, but to attempt to solve all potential conflicts of interest problems by means of avoidance would require Senators and Members to divest themselves of all pecuniary interests. Evidence was given that this would be incompatible with the representative responsibilities of a Member of the Parliament, who has been elected, at least in part, because he has personal interests which coincide with those of many of his constituents. It may be regarded as an over-reaction in an area where some compromise must be found between protecting the privacy of individual Members of Parliament and protecting the interest of the public in ensuring that decisions are not being made for improper motives.

A solution can best be achieved by coupling the *avoidance* of conflicts provisions of the Constitution with provisions which require not divestment of potentially conflicting pecuniary interests but *disclosure* of those interests. The desirable extent of disclosure, the form in which it should be made and the degree of access to such information is canvassed in Chapter IV.

(b) The second source of authority which has some bearing on the pecuniary interests of Members of the Parliament is Standing Order 196 of the House of Representatives. It states:

> *196.* No Member shall be entitled to vote in any division upon a question (not being a matter of public policy) in which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. The vote of a Member may not be challenged except on a substantive motion moved immediately after the division is completed, and the vote of a Member determined to be so interested shall be disallowed.

This Standing Order follows the rule of the House of Commons which was explained in the following terms by Speaker Abbott on 17 July 1811:

> This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of His Majesty's subjects, or on a matter of State policy.

There have been a number of challenges in the House of Representatives based on Standing Order 196, but in each case the motion has been negatived or ruled out of order. The disclosure requirement is so severely limited in its operation that it would be a rare occurrence in which the Standing Order could be applicable. In the House of Representatives in 1923, Speaker Watt, on a motion to disallow a Member's vote, drew attention to the vital distinction to be made between public and private bills, and quoted the opinion of a distinguished Speaker of the Victorian Legislative

Assembly that the practice was correctly stated that the rule governing a matter of pecuniary interest did not apply to questions of public policy, or to public questions at all. Therefore, it would seem highly unlikely that a Member could draw unto himself a disqualification of voting rights in the House of Representatives because the House, is primarily, if not solely, concerned with matters of public or State interest and rarely does it deal with private issues.

Futhermore, successive Speakers have made it clear that it is not their duty to rule on such matters, as the responsibility lies with the Members of the House. For example, in 1934 (*Hansard* of the House of Representatives, volume 145, page 1130) the Speaker the Honourable G. J. Bell was asked to rule whether certain Members were in order in recording a vote if they were directly interested as participants in the distribution of the money raised by means of the legislation. The Speaker stated that he could not have a knowledge of the private business of Members and therefore was not in a position to know 'whether certain Members have, or have not, a pecuniary interest in the Bill'.

The Senate does not have a comparable Standing Order but it would seem that the public interest would be no more adequately safeguarded even if such a Standing Order were in existence.

(c) The third source of authority which has been advanced as constituting some form of protection of the public interest is Section 211 of the Commonwealth Electoral Act. It states:

> Any person who—
>
> (a) is convicted of bribery or undue influence, or of attempted bribery or undue influence at an election;
>
> or
>
> (b) is found by the Court of Disputed Returns to have committed or attempted to commit bribery or undue influence when a candidate
>
> shall, during a period of two years from the date of the conviction or finding, be incapable of being chosen or of sitting as a Member of either House of the Parliament.

The Committee does not doubt that this is a worthwhile provision. However, it is only of any relevance to the question of the need for a register if it is assumed that a register is designed primarily to enable detection of fraud, bribery, undue influence or impropriety. Although this question will be discussed at greater length in the following Chapters it can be stated quite unequivocally that the Committee does not view the proposal for a register in this light. A more important argument in favour of a register of pecuniary interests is that it would enable the public to attach proper weight to the arguments put forward in debate by a Member of Parliament. However, the existence of Section 211 of the Commonwealth Electoral Act relating to bribery and undue influence would have no relevance in respect of the reasons for setting up a register.

It is the opinion of the Committee that neither Sections 44 and 45 of the Constitution, Standing Order 196 of the House of Representatives nor Section 211 of the Commonwealth Electoral Act can be said to give the necessary assurance that decisions affecting the public will be taken in the public interest.

It must be added that no safeguards exist at present in relation to the abuses which might be thought to flow from undisclosed political campaign contributions. A

number of other countries have considered this question in conjunction with the question of a register of pecuniary interests. However, the question of contributions to political campaigns is not within this Committee's terms of reference.

CHAPTER II.
CODE OF CONDUCT : GUIDELINES FOR THE FUTURE

The Committee has illustrated in the preceding Chapter that the existing provisions relating to conflicts of interest call for increased safeguards. In the context of providing these safeguards the term 'code of conduct' has frequently been expressed by witnesses appearing before the Committee. However, the phrase would appear to mean different things to different people. Some would argue that a code of conduct already operates in the Australian Parliament. In support of this proposition evidence was given that Members of Parliament are acutely aware that they should not attempt to advance their private interests by use of confidential information gained in the performance of their public duty. Similarly, even though Members of Parliament may subscribe to different views as to the extent, if any, to which it is proper to engage in outside activities the Committee is of the opinion that all Members of Parliament would agree that these outside interests should not be allowed to interfere with the proper execution of their public responsibilities.

The phrase 'code of conduct' has more frequently been used by those suggesting that it does not already exist and should be established, or that if it does exist it should be clearly documented. The Committee believes that a precise and meaningful code of conduct should exist. It would be an essential adjunct to recommendations made below with respect to a non-specific declaration of interests system. Such a code should be concerned with the elimination of conflict of interest situations. By specifying a set of basic principles which Members of Parliament should observe, Members would be reminded that their ethical obligations to the community do not cease merely by declaring their interests.

However, as the Committee's terms of reference require it to consider the *declaration* of the interests of Members of Parliament rather than the *avoidance* of potentially conflicting interests the detailed drafting of a code of conduct would be beyond its terms of reference. Consequently, *the Committee recommends that the proposed Joint Standing Committee referred to in Chapter IV should be entrusted with the task of drafting a code of conduct based on Standing Orders, conventions, practices and rulings of the Presiding Officers of the Australian and United Kingdom Parliaments and such other guidelines as may be considered appropriate.*

The Committee believes that the most promising solution to conflict of interest problems might be achieved by marrying the best features of a code of conduct with the best features of a register of pecuniary interests. As will be amply illustrated in the following two Chapters there are numerous factors which, although not requiring abandonment of the concept of a register, suggest that restraint should be exercised in defining with precision the interests to be registered and rigorously enforcing those requirements. Consequently the Committee has taken these factors into account in proposing a number of recommendations which make it clear that certain pecuniary interests *must* be declared (in general terms) whilst other interests *may* be declared at the discretion of individual Members of Parliament.

Such a combination of mandatory and directory provisions would appear to tailor the solutions to the problems in a much more satisfactory manner than would the setting of arbitrary limits on disclosure. The case of shareholdings provides a good illustration. As a means of requiring disclosure of only those shareholdings which are likely to influence a Member of Parliament in his public decision-making one could adopt an arbitrary limit beyond which a Member of the Parliament must disclose his interest. For example, the Member could be required to disclose the value of shareholdings and the names of companies in which he or she has a beneficial interest in shareholdings of a nominal value greater than, for example, one per cent of the issued share capital, as recommended by the Select Committee on Members' Interests (Declaration) of the House of Commons (HMSO, London 1974) page viii. However, this arbitrary limit does not differentiate between companies of various sizes. A one per cent shareholding in a very small company may be of such inconsequential value as to not even raise the appearance of a conflict of interest.

A solution which would combine the rigour of a register with the flexibility of a 'code of conduct' would be a requirement that disclosure be made merely of the *names* of all companies in which a Member of Parliament held shares; the decision as to whether or not the *value* of the shareholding should also be disclosed would be one which should be left to the discretion of the individual concerned.

Before canvassing the pros and cons of registering pecuniary interests the Committee must again refer to Sections 44 and 45 of the Constitution. In Chapter I these sections were adverted to as being potential safeguards of the public interest which by their existence avoided the necessity for a register. The Committee indicated there that the nature of the provisions and the uncertainty as to their meaning, meant that these sections could not be relied upon as the complete answer to all issues concerning conflicting interests. However, some witnesses have submitted that a register of pecuniary interests is necessary in order to enforce these sections of the Constitution. Evidence suggested that in addition to uncertainty as to its meaning, the lack of instances in the past involving alleged breaches of Section 44 (v) may be attributable to the lack of any means of discovering such breaches. If this reasoning is valid and a register of pecuniary interests is instituted (whether for this or any other reason), it follows that a number of alleged breaches of Section 44 (v) could be discovered.

If such claims are to be dealt with in a dispassionate atmosphere, and in such a way as not to jeopardise public confidence, it may be necessary to devise means of preventing trivial or vexatious claims from being referred to the High Court. One such means would be for each of the Houses of Parliament to devise guidelines which could be used by that House when an alleged breach arose, for deciding whether to deal with the matter itself (as it is empowered to do under Section 47 of the Constitution) or whether to refer the matter to the High Court (as it is empowered but not obliged to do, under Section 47 of the Constitution and Section 203 of the Commonwealth Electoral Act.)

There are two possible sources of guidelines. The first is the 'understood' common law limitations of Section 44 (v). For example, one such criterion for determining whether to refer matters to the High Court would be to determine if the agreement is fully executed by the person in question at the relevant time. A second source of guidelines could be the exceptions in the Constitution Acts and Constitution Amendment Acts of the various State Parliaments to the provisions therein which are analagous to Section 44 (v) of the Constitution. For example, a general rule might be adopted to the effect that agreements entered into by corporations of under twenty-five members where the person in question has no substantial interest

(measured for example, by control of less than one-fifth of the voting rights), should not be referred to the High Court. These guidelines would, of course, have no binding effect if the matter did, in fact, reach the High Court as it is for the High Court to determine for itself the meaning of Constitutional provisions. It is obviously a very difficult question as to how far these guidelines should ignore the explicit language of the Constitution in order to specify exceptions which are consistent with the spirit and intention of its provisions.

Although the Constitution Acts and Constitution Amendment Acts of the various States provide a source of many such guidelines the Committee does not attempt to recommend which, if any, should be adopted. But because more frequent claims of constitutional breach may arise as an incidental result of the creation of a register the Committee proposes that the concept of setting guidelines for dealing with such claims is worthy of serious consideration by the Government or perhaps by the proposed Royal Commission into the Pecuniary Interests of Members of Parliament.

Should such a proposal be implemented, the following are further examples of provisions which might provide a source of desirable guidelines:

(a) Agreements performed, goods supplied or services rendered of which the person in question had no knowledge, and of which he could not reasonably have been expected to know.

(b) Agreements with the Public Service to which the person in question is, or was, not a direct party.

(c) Agreements not originally made directly with the person in question, but the benefit of which he takes by way of assignment, devise or similar means, and of which he divests himself within a reasonable time.

(d) Agreements for the provision *by* the Crown of goods, services or other benefits on the same terms and conditions as they are made available to the public generally.

(e) Loans made to the Crown.

(f) Compensation settlements, including payments for property compulsorily acquired.

(g) Agreements performed or services rendered of a casual and transient kind where the value of the transaction or the amount of the fee involved is relatively small.

CHAPTER III.
A REGISTER : CONFLICTING VIEWS

Almost from the outset of the Committee's deliberations it has been manifestly apparent that there can be no perfect solution to the problems posed by its terms of reference. The variety of conceivable conflicting interests is matched only by the number of conflicting views as to their resolution. In this Chapter a number of the constructive criticisms which have been levelled at the concept of a register of pecuniary interests are discussed. To many of these assertions there can be no effective rebuttal. To others, the Committee believes that solutions can be found which negate, or at least considerably diminish, the force of the arguments. This discussion is followed by a summary of the reasons which have been advanced in favour of the concept of a register. Finally, the Committee makes its assessment as to the weight of the evidence and recommends solutions which it believes do justice to the sincerity of the views which have been submitted and which will effectively deal with conflicts of interest problems.

Invasion of Privacy. The most obvious and most persuasive consideration diametrically opposed to the concept of a register is the notion that Members of Parliament are entitled to as much privacy in their personal affairs as are all other members of the community. It is a natural and perfectly defensible reaction for a Member of Parliament to expect a degree of privacy relating to those of his affairs which could in no way affect or be seen to affect the execution of his public responsibilities. But the inherent difficulty in adopting this approach is that there are very few pecuniary interests which fall within this category. For example, the ownership of a house or land in a particular locality may be thought to influence the vote of a Member of Parliament on the siting of an airport or some other land use project. Similarly, the size of a shareholding in a company or an interest in a partnership is not a completely private matter if it might be thought to affect the exercise of the public responsibilities of a Member of Parliament. A corollary of this proposition, to which some weight must be attached, is that by standing for election, Members of Parliament place themselves 'in a glass bowl' and cannot, therefore, lay claim to the same degree of privacy as is enjoyed by other persons.

Ease of Evasion. The opinion that a register of pecuniary interests would not achieve its desired ends was most eloquently expressed to the Committee in the words of one witness who said:

> Where there is no instinct for honour you cannot cultivate it.

In amplification of this proposition another witness stated:

> If a person having an outside financial interest which would prejudice his ability to perform his duties wished to disclose his assets, there is no doubt that by divesting himself in some way of those assets, through either a company infrastructure or some other type of trust infrastructure, he would be quite able to do so.

However, the ease with which registration requirements could be evaded by a fraudulent Member of Parliament is relevant only if it is assumed that the purpose of a register is to seek out fraud amongst Members of the Parliament. The Committee cannot stress too forcibly that it does not see the discovery and elimination of dishonesty as the principal aim, if an aim at all, of any requirement that Members of Parliament register their pecuniary interests.

The principal justification for the suggestion that the Australian public ought to know of the pecuniary interests of persons who are either influencing public opinion or making decisions affecting the public is that it would enable the public to form an opinion as to the weight they should attach to those views or decisions. The fact that sanctions for non-compliance would not deter a fraudulent person does not render the concept ineffectual. The vast majority of people would base their ethical code on the existence or otherwise of law in a particular area. It is not the sanction that causes a person to be honest but the fact that there is a code laid down, the existence of which commands adherence. This rejoinder must apply with equal force to Members of Parliament who could be expected to comply with any registration requirements simply because it is incumbent upon them to do so.

Assumption of Integrity Impugned. A number of witnesses who appeared before the Committee submitted that the Australian Parliament has been so infrequently troubled by issues of pecuniary interest that there is small justification for the type of intrusion into Members' private affairs which would result from the establishment of a suitable register. An associated proposition is that to make provision for the compulsory registration of the interests of Members of Parliament is to presume that there may be some evidence of lack of integrity on their part. Again it must be stated that this is only a necessary presumption if the sole aim of any register is to discover malpractices.

Difficulties of Definition. A proposition which the Committee does not dispute is that it is very difficult to define accurately all those pecuniary interests or other benefits which may affect, or be thought to affect, a Member's parliamentary decisions. For example, where is the line to be drawn in deciding whether particular forms of hospitality extended to a Member of Parliament constitute benefits which might affect the exercise of his public responsibilities? But the fact that some instances of potential conflict may have to be excluded from the registration requirements does not completely destroy the function of the register.

Administrative Complexity. A number of witnesses submitted that it would be unfair to single out Members of Parliament when considering which classes of person should register their pecuniary interests. It was suggested that the only equitable solution would be to require registration of pecuniary interests by all persons who occupy influential positions in making Government policy decisions. Some witnesses considered this category might include any or all of the following: senior public servants and members of statutory authorities; ministerial staff; members of the judiciary; editors and executives of media organisations; journalists; company directors; and officials of trade unions and political parties. It was also suggested that as opportunities for conflicts of interest occur in relatively low levels of the Public Service all public servants should be required to register their pecuniary interests. Analagous arguments apply with equal force to a number of the other persons categorised above.

Following this line of reasoning the central submission put by a number of witnesses was to the effect that fairness demanded that all the above persons be required

to register their pecuniary interests, thus involving an extensive administrative structure out of all proportion to the purpose of the register or any probable benefit arising therefrom. It was also suggested that any facts elicited by means of a register would need to be verified by an investigatory organisation of considerable magnitude This might be achieved by employing additional staff within an existing organisation or creating a separate organisation charged with the task of administering the register.

The three steps involved in the administrative complexity submission can be most concisely summarised from the evidence as follows:

(a) It would be inequitable to single out Members of Parliament for special treatment.

(b) Therefore, all manner of persons should be brought within the dragnet.

(c) Therefore, the Committee should be discouraged from adopting the principle of disclosure of pecuniary interests at all because of the resultant problems of administration and legal enforcement.

The Committee in rejecting this approach is acutely aware of the need to make recommendations aimed at alleviating conflicts of interests which do not create, in turn, additional problems of greater magnitude. Consequently, the recommendations in Chapter IV will not require the creation of a large administrative structure but, instead, reflect the belief that any register should evolve from cautious beginnings If *this result is interpreted as a singling out of a small group of persons, the Committee* makes no apologies for its belief that this is a small price to pay when weighed against the right of the public to be assured that decisions affecting the public are made in the public interest.

Constitutional Power. A similar process of reasoning to that employed in the administrative complexity submission is to be found in the suggestion that no class of persons should be singled out for any registration requirements if the Parliament lacks power to require other equally influential classes of persons to register their pecuniary interests. The rejoinder must again be to the same effect: any unfairness which might result must be weighed against the positive improvements to the body politic which it is believed a register of pecuniary interests will produce. Nevertheless, the Committee sought legal advice from the Attorney-General's Department as to whether or not various classes of persons could be required to register their pecuniary interests. It is clear from the advice tendered that such legislation could be enacted with respect to the following classes:

(a) Ministerial staff;

(b) Members of the Australian Public Service, including members of the Parliamentary Departments referred to in Section 9 of the Public Service Act;

(c) Consultants employed by the Australian Government;

(d) Members of the Defence Forces;

(e) Members and staff of statutory bodies established by the Australian Parliament.

It would appear also that legislation could be validly enacted to require candidates for elections to either House of Parliament to declare their pecuniary interests at the time of nomination. Such a requirement would have a close relationship to the laws relating to the election and qualifications of Members of Parliament. Those laws are clearly within the competence of the Australian Parliament under Sections 10, 16, 31, 34 and 51 (xxxvi) of the Constitution, and by virtue of those provisions, together with the incidental power contained in Section 51 (xxxix) of the Constitution it would

be open to the Australian Parliament to legislate to impose a requirement that election candidates declare their pecuniary interests.

It was suggested by a considerable number of witnesses that various representatives of the media should be required to declare their pecuniary interests because of their potential to influence events in a way which advances their own interests. A separate Chapter is devoted to this question in Part II of the Report. At this juncture, the Committee merely points to possible sources of constitutional power to impose such requirements.

In the absence of any comprehensive testing of the matter the most likely sources of power would appear to be Sections 49, 51 (v) and/or 51 (xx) of the Constitution. To give but one example, by virtue of Section 49 of the Constitution, both Houses of the Australian Parliament possess similar powers to the House of Commons, one of which is to restrict and control access to the precincts of the House. Thus, Standing Orders could be amended or legislation enacted to provide that it would be unlawful for any journalist who had failed to comply with registration requirements to make use of the facilities of the Parliament. Section 51 (v) of the Constitution, which authorises the making of laws with respect to 'postal, telegrahic, telephonic and other like services' has been construed as giving power to impose conditions on the granting of licences for the use of communications facilities. Section 51 (xx) of the Constitution authorises legislation with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'. The full extent of this power has not yet been authoritatively tested.

One of the issues on which the Committee sought a legal opinion was whether the immediate family of a Member of Parliament could be required to disclose their interests. It appears that legislation to this effect would lack a proper constitutional basis.

The relevant constitutional power must be found, if at all, in Section 51 (xxxix) of the Constitution under which the Parliament may make laws with respect to matters incidental to the execution of any power vested by the Constitution in the Parliament or in either House thereof. This power thus authorises legislation incidental to the execution of the powers conferred on each of the Houses of Parliament by Section 50 (ii) to make rules with respect to the order and conduct of the business and proceedings of each House.

However, it is unlikely that a requirement imposed on wives and children of Members of Parliament to disclose their pecuniary interests could be said to be incidental to the execution either of the legislative power contained in Section 50 (ii) or of any Standing Order which required Members to disclose their own pecuniary interests. Because the spouses of a marriage enjoy, and have enjoyed for some time, more or less complete legal equality, such legislation would be more likely to be regarded as an infringement of the private rights of the person concerned for which there would be no constitutional justification. The position with respect to infant children is perhaps less clear, since parental rights are exercisable over them and their affairs But the connection would probably be too remote to support the imposition of a direct legal obligation on infant children to make a disclosure, even if such a scheme were administratively feasible having regard to their infancy.

For similar reasons it is unlikely that associates of Members of Parliament in partnerships or other joint ventures could be required by legislation to disclose their pecuniary interests. However, a Member of Parliament could, himself, probably be required by Standing Orders to disclose the pecuniary interests of the partnership or

joint venture of which he was aware. Similarly, where Members of Parliament have knowledge about shareholdings of their spouse or infant children in a company in which the Members themselves have a holding, they could most probably be required to disclose the interests held by their spouse or infant children.

Deterrence of Potential Candidates. One theme underlying all of the Committee's deliberations was that its recommendations must increase and not decrease the status and effectiveness of the Parliament. A number of witnesses submitted that to require Members of Parliament to disclose, in full, their assets would deter those persons who might make a most valuable contribution to the Parliament from submitting themselves as candidates. For example, one witness stated:

> In my mind the one category of persons who have not been attracted to enter our Federal Parliament–and I believe our Parliament is the poorer because of it–are those who have been successful in manufacturing industry or in private enterprise If there were to be a requirement of disclosure, I think it would be even less likely that they would enter Parliament.

However, it can be argued that if such persons have not been attracted to public office in the past when there has been no requirement to disclose their assets, the potential deterrent effect of a register is not likely to be a significant factor in any future decisions as to whether or not they should offer themselves as candidates for public office. This is a question which can only be resolved by instituting a disclosure system and attempting to gauge the effects. If the existence of a register of pecuniary interests is found to inhibit certain members of the public from attempting to enter Parliament this factor must be weighed against those factors mentioned in the next Chapter which appear to warrant such a register. However, the Committee is firmly of the opinion that the recommendations contained in Chapter IV relating to the generality of the identification of assets to be disclosed will considerably minimise any potential deterrent effect on candidacy.

The Committee turns now to a discussion of the reasons which have been advanced in support of a register of pecuniary interests. Perhaps the most concise formulation of some of the advantages of a register are contained in the following brief extract from the Report from the Select Committee on Members' Interests (Declaration), (HMSO, London 1969) page xvi:

> The institution of a register in which a Member states his outside interests has obvious attractions. A periodic disclosure would relieve him of anxiety about a possible conflict of personal and public commitments. He would have made a full and frank statement of his interest which his fellow members and the public would be in a position to take into account. The way would then be clear for a Member who can contribute special knowledge to a debate to do so without personal reservations.

The Committee has already mentioned the submission that a register would enable the public to attach proper weight to the arguments put forward in debate by a Member of Parliament. Even where a decision is made quite properly and in the national or community interest, the public generally ought to be aware of any particular interest the person influencing that decision has in the matter. By way of illustration, one witness submitted the example of a Minister in his State who made a decision to subdivide a region into small farms and to provide an access road to these farms through what had been a national park. Subsequent disclosure in a newspaper that the Minister and his family owned land in the area diverted public discussion away from the conservation issue which the decision had previously aroused and raised unnecessary doubts as to the reason for the decision. It was further submitted

that if the facts of the Minister's interest in the area had been disclosed at an earlier date, by means of a register, the issue could have been judged simply as an environmental one as to whether or not national parks should be subdivided for farming purposes.

In a very valuable submission, the Committee was told that a register may be needed not only to protect the public but also to protect the positions of Members of Parliament because of the unsatisfactory state of the common law regarding public offices. Members of Parliament occupy positions known to the law as offices of public trust and confidence or, simply, public offices. A public officer has been judicially defined as an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public. As such they are governed by a vague but highly significant body of law regulating how they, as fiduciaries, discharge their 'trusts'. The courts view the public as reposing trust and confidence in a public officer in the discharge of the duties of his office.

In order to protect the trust reposed in fiduciaries a harsh and inflexible rule has been adopted to the effect that once a conflict arises in a transaction the courts do not attempt to see if the fiduciary has actually been swayed by his interest. The possibility that he may have been swayed is sufficient. Any transaction infected by the conflict will be set aside. For example, in *Dimes* v. *Grand Junction Canal* (1852) 3 H.L.C. 759 a judgment of the Lord Chancellor of England was set aside because he held shares in the company involved in the litigation before him.

However, if a fiduciary makes a full disclosure to the persons for whom he is 'trustee' that he has an interest conflicting with his duty he can thereby immunise himself from the operation of the rule. The common law does not totally prohibit conflicts of duty and interest. It only objects to concealed conflicts. It insists on disclosure for otherwise a temptation exists—it may be real or remote in a given case—to sacrifice another's trust and confidence by following self interested action without that other even being aware of the fiduciary's interest and of the temptation confronting him.

Before it could be decided in what circumstances the conflict of duty and interest rule applies to any given public officer so as to determine if a breach has been committed it would be essential to ascertain precisely what is the ambit of that officer's duties. To define the duties of a Member of Parliament is not a simple task. A Member's duties would seem to cover all his dealings with the Executive no matter on whose account he is acting when he is so dealing. Beyond this it is impossible to state when he ceases to be a public officer and becomes a private individual. The courts will declare any private agreement to be illegal if it creates in a Member an interest which conflicts or which has a 'tendency to conflict' with the proper discharge of his duties as a Member of Parliament: *Horne* v. *Barber* (1920) 27 C.L.R. 494. But the difficulty lies in determining when an otherwise proper contract will have a tendency to interfere with a Member of Parliament's public duty.

This 'tendency to conflict' rule has been criticised by some judges in the High Court. For example, Starke J. in *Wood* v. *Little* (1921) C.L.R. at 576-77 said:

> The argument for the appellant was rested upon the proposition that any transaction is unlawful in which the personal or private interest of one of the parties to the transaction conflicted, or tends to conflict, with the due performance of any public duty. Apart from authority I should have felt considerable difficulty in assenting to so far reaching a proposition.

His Honour went on to say that he was satisfied that *Horne* v. *Barber* did, in fact, establish such a proposition. He commented further:

> It is not for me to canvass that decision but to accept it and apply the rule of law so laid down to the present case.

The Committee cannot alter this very wide conflict rule. But it has been submitted that the Committee can mitigate its effects by recommending the public registration of the general nature of the remunerated occupations, professions, directorships and partnership interests of Members of Parliament. If any conflict arises in their business with their public duties, their business interests having been publicly disclosed, it would be more difficult to say that they are acting contrary to the requirements of the conflict of duty and interest rule.

As we have seen, the courts have interfered in Members' business and financial arrangements with the public to prevent breaches of the public trust. They have been able to do this without running foul of the privileges of Parliament, because they attack only a Member's agreements with outsiders, and not his actual activities in Parliament itself. But the courts are largely precluded from supervising that sphere of a Member's public trust where he might on his own account attempt to serve his own property interests in his official capacity.

It has been submitted that Parliament itself should discharge its obligation to police a Member's position as a public trustee when the courts are barred from intervening. This could be achieved by the institution of a register which notifies a Member's property interests such as shareholdings and landholdings.

Additional reasons advanced in favour of a register of pecuniary interests are that such a register would:

(a) remove the innuendo surrounding political debate;

(b) give an assurance to the public that its interests were being advanced;

(c) encourage divestment of interests which, in the eyes of some, would constitute an undesirable degree of conflict with a Member's public responsibilities.

It was suggested that a register would help turn the tide of cynicism which is currently demeaning the holders of public office, and, in the course of time, re-establish Parliamentarians and other public office holders as respected and financially disinterested leaders of their community. At a time when democratic society, and its institutions are under challenge in so many directions any such restoration of faith in dedicated representatives of the people would be a wholly worthwhile achievement.

A democratic society by definition is an open society. The cornerstone of the parliamentary system of government is its essential right to be fully informed and to make its decisions in the light of that information. There are no grounds for declaring that certain facts are not relevant. If it is accepted that parliamentary democracy is in essence government of the people, by the people, for the people, who can infallibly maintain that Parliamentarians' interests are irrelevant to their activities? The nation. their constituents, expect them to be like Caesar's wife—above suspicion.

CHAPTER IV.
FORM OF DISCLOSURE : RECOMMENDATIONS

Suggested forms of disclosure

(a) *Income Tax Returns.* One means of declaring pecuniary interests would be to lodge a copy of an income tax return with an officer of the Parliament. The obvious advantage of this proposal is that it requires a negligible amount of preparation and administration. Furthermore, it avoids the necessity of determining which pecuniary interests might be seen as affecting the public responsibilities of a Member of Parliament and which interests might be considered of little relevance.

However, this proposal contains a number of unsatisfactory features. The most important consideration is that an income tax return does not contain all the salient details for the Committee's purposes. A person may have interests in property from which no income has been derived in a particular year. A disclosure of all income would not necessarily involve disclosure of the existence of particular property in the form of contracts, rights and options over shares or real estate, private loans and personal assets if that property had not yielded income to the person during a relevant period.

Another consideration is that much of the detailed information contained in income tax returns is of a personal nature and it would clearly not be of a kind that should be available for general scrutiny. For example, details of family responsibilities under the heading of concessional deductions and expenditures claimed for life insurance premiums and superannuation contributions might be regarded in this light. To open this kind of information to the public would appear to be an intrusion into Members' reasonable expectations of privacy and would serve no useful purpose.

A third reason for rejecting the income tax return as a means of declaration is that this may result in a lowering of the general public confidence in the observance of the secrecy requirements of the income tax legislation and hence make the task of administering the income tax laws considerably more difficult. The Income Tax Assessment Act contains specific provisions which require the Commissioner and his officers to observe secrecy in relation to any information disclosed to them in the course of their official duties. With certain exceptions (which it is not in the discretion of the Commissioner to vary) Section 16 of the Income Tax Assessment Act precludes the Commissioner and his officers from divulging or communicating information on the affairs of a taxpayer to another person. The advice of the Australian Taxation Office on this point was as follows:

> It is, among other things, the presence of an obligation to treat information as confidentual which assists the Commissioner to obtain information from various sources. For example, taxpayers can make a full and complete statement of their total income from all sources in and out of Australia without fear of prosecution should income be received from a source which may be illegal . . . It is clear that in Australia, as also in the United Kingdom and Canada, the general body of taxpayers have long regarded the confidentiality of their tax returns as sacrosanct and would undoubtedly see any proposal that would weaken that confidentiality as an invasion of privacy. It is the considered view of this office that the task of administering the income tax laws would be made more difficult if general public confidence in the secrecy requirements was to be lowered.
>
> Although, on its face, the proposal would place the responsibility for registering a copy of his return on the individual Member or Senator, it would seem to be implied that the information contained would require some form of official verification if the suggested system is to be effective. It would require an amendment to Section 16 of the Income Tax Assessment Act to be passed by Parliament before income tax records could be used for this purpose. However, for the reasons outlined, it may be strongly doubted that such a course would necessarily be in the public interest.

Consequently, *the Committee recommends that the filing of a copy of one's income tax return would constitute neither an adequate nor an appropriate form of registration of pecuniary interests.*

(b) *Value or Identity of Property to be Disclosed?* One of the most difficult issues confronting the Committee was whether disclosure of sources of income and the *identity* of assets would be sufficient or whether the *value* of any such property should also be disclosed. Clearly, the value of the interest is relevant to whether or not a Member of Parliament's decisions would be affected, or seen to be affected, by the ownership of that interest. For example, ownership of 10 shares in a large public company would not be such as to influence the voting behaviour of any Member of Parliament. Whether or not 1000 shares in a company would influence or be seen to influence that Member's voting behaviour may depend on:

(i) the size of that holding in relation to the amount of the company's issued share capital; and/or

(ii) the value of that holding in relation to the shareholder's total assets.

The first factor could be taken into account by requiring Members of Parliament to disclose the names of companies in which they have a beneficial interest in shareholdings of a nominal value greater than five per cent of the issued share capital. But the use of an arbitrary percentage figure makes no allowance for the size of the company. A Member of Parliament with a one per cent shareholding in a very large company may stand to gain a far greater pecuniary advantage from voting to assist that company by means of some legislation than would a Member of Parliament with a ten per cent shareholding in a far smaller company which was to be affected by a particular decision.

Any attempt to make recommendations which take into account the significance of shareholdings by measuring them in the context of the shareholder's total assets would be equally arbitrary and unsatisfactory. To require disclosure of shareholdings or other property only if they form a significant proportion of a person's assets would, in fact, penalise those with fewer assets. For example, if Members of Parliament were only required to declare shareholdings the value of which exceeded five per cent of their total assets, a Member of Parliament with a small total asset holding could be compelled to declare his 5000 shares in a particular company, whilst another Member of Parliament with 5000 shares in that same company would not be required to register his interest because he had a greater total asset holding and hence the particular interest would not constitute five per cent of that total.

Another valid criticism of any proposal to require actual values to be disclosed is that this would entail time consuming preparation on the part of the Member of Parliament. Furthermore, it would necessitate the continual alteration of the register to reflect changes in the size of the shareholding in a particular company.

A register in which only the names of companies need be recorded would provide a starting point for any person who felt that a Member was not acting in the public interest. Such a person could then search the share register of that company to ascertain the size of the shareholding of the particular Member of Parliament. However, it must be emphasised that in the case of companies not listed on any Australian stock exchange, unincorporated associations, partnerships and trusts a mere statement that a Member had a beneficial interest therein, would neither give any indication of the holdings of such association or trust nor enable this information to be discovered.

It would not be proper to invade the privacy of others by requiring disclosure of the names of members of a 'private' company or partnership, the clients of a professional partnership such as a firm of solicitors or beneficiaries under a trust. But it would seem proper that Members of Parliament who enter into such arrangements and have interests in such associations should be required to disclose these matters in a similar manner to the disclosure of shareholdings in public companies. These views can be summarised in the following recommendations:

The Committee recommends that Members of Parliament should disclose the names *of all companies in which they have a beneficial interest in shareholdings, no matter how insignificant, whether held as an individual, a member of another company or partnership, or through a trust. The Committee further recommends that it should be left to the discretion of individual Members of Parliament as to whether or not they should register the actual* value *of any shareholdings.*

Whilst this discussion has centred on shareholdings, similar principles apply with respect to landholdings. It is not the size or value of the landholdings which are important for the Committee's purposes but the location of the land. It would be an unnecessary waste of time and money to require Members of Parliament to have their property valued regularly so as to be able to make an accurate declaration of value.

Accordingly, the Committee recommends that Members of Parliament disclose the location of any realty in which they have a beneficial interest.

(c) *Directorships of Companies.* The only real issue for resolution in relation to directorships of companies appears to be whether snremsnerated as well as remunerated directorships should be disclosed. The Committee's terms of reference require it to consider 'what classes of pecuniary nterest or other benefit are to be disclosed'. It is thus within the Committee's duty to recommend that unremunerated directorships be disclosed. All directorships, whether directors' fees are payable or not, entail a close association with the aims and interests of the company, be it public or private. The actual amount of directors' fees payable would appear to be irrelevant to the issue of conflicting private and public interests.

The Committee, therefore, recommends that Members of Parliament declare the names of all companies of which they are directors.

(d) *Outside Employment.* One source of potential conflict between public and private interests may be latent in the existence of part-time occupations or offices in addition to parliamentary responsibilities. There are a number of divergent views as to whether or not Members of Parliament should engage in any form of outside employment.

It can be argued that a Member of Parliament should devote all of his time to his parliamentary responsibilities. Yet also it can be argued that a Member may better *fulfil his parliamentary duties as a result of the expertise and contacts developed from* his other associations. However, the Committee's terms of reference do not include this matter.

Whilst the area of outside occupations is one of potentially conflicting interests, it is also an area in which a solution can be arrived at without the necessity to declare such interests. In this regard it is to be noted that Section 45 (iii) of the Constitution prohibits a Member of Parliament from taking or agreeing to take 'any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State'. As this provision covers the grosser forms of possible abuse the Committee considers that it need only be supplemented by the inclusion in a Code of Conduct of a term to the effect that Members of Parliament should not engage in remunerated employment, offices, trades, professions or occupations which might give the appearance of a conflict of interest.

(e) *Should Liabilities be Disclosed?* The foregoing part of this Report has been concerned with disclosure of those *assets* which might be thought to influence the decisions of a Member of Parliament. The Committee is acutely aware that some *liabilities* might also be thought to contain the seeds of conflict between public and private interests. However, it is of fundamental importance that the declaration of interests system should not be regarded as a register of wealth or lack of wealth. Anything which might give this impression and hence blur the purposes of the register should be avoided. The large majority of liabilities owed could be expected to relate to mortgages on Members' principal residences, loans from members of the family circle or other liabilities which do not raise a conflict of interest.

In the light of the Committee's expressed intention not to invade Members' reasonable expectations of privacy to an unjustified degree, the Committee does not recommend disclosure of any liabilities.

(f) *The Immediate Family of Members of Parliament.* In Chapter III it was noted that whilst the immediate family of Members of Parliament could not be required to declare their pecuniary interests, Members of Parliament could themselves be required to disclose those interests of which they were aware were owned by the members of their immediate family. The question thus arises as to whether or not it would be desirable to impose such a requirement. On balance, the Committee is of the view that to require such disclosure would involve an invasion of privacy which is much more difficult to justify than with respect to Members of Parliament themselves

It could be argued that by not requiring such disclosure the spirit of the register might thereby be evaded. But the Committee has already stressed that no register could be incapable of evasion. Furthermore, to require Members of Parliament to disclose the interests of their spouses would be to ignore the fact that they might well hold extensive interests on their own account. Disclosure of this information might lead to unwarranted inferences being drawn that a Member had acted so as to advantage his interests when, in fact, the interests concerned were the sole property of the spouse.

A requirement that Members of Parliament declare those interests of their spouse and children of which they have knowledge would, in fact, penalise those Members who happened to be aware of the holdings of their family. Consequently, the Committee does not recommend that the interests of the family of Members of Parliament should be declared.

(g) *Sponsored Travel.* Sponsored travel, especially sponsored overseas travel, is a 'benefit' which may be made available to a Member of the Parliament with a view to subtly influencing his attitude towards the sponsor whether it be another country, an international airline or company. It is not suggested that such travel be refused but merely that it should be openly registered to avoid any unwarranted imputation of impropriety or undue influence being exerted.

Accordingly, the Committee recommends that sponsored travel be declared.

(h) *Public Access to the Register.* Of crucial importance to the effectiveness of a register is the degree to which the information to be registered is to be made available for inspection by the public. If the privacy of Members of Parliament is to be considered, the degree of public access to the information must vary inversely with the amount of detailed information required to be disclosed. To order Members of Parliament to disclose in minute detail their most intimate financial dealings and then permit unrestricted public access to this information would be to attach no weight at all to the very important principle that the privacy of a Member of Parliament should not be invaded without justification. Furthermore, such a proposal would readily lend itself to abuse. It would provide the means for any person so minded to print in toto the catalogue of relative wealth represented by the financial position of the 187 Members of Parliament. To allow the register to be so used would considerably detract from the purposes for which the Committee recommends its implementation.

The spectrum of possible configurations of disclosure of information and access thereto would thus appear to encompass the following options:

(i) a requirement that Members disclose in intricate detail their financial affairs and those of their family and associates but that this information should not be available for public inspection;

(ii) a requirement that Members of Parliament disclose their interests in less specific terms but that some form of public access should be permitted.

If the Committee construed its task as being to devise methods to eliminate fraud amongst Members of Parliament and to draft provisions incapable of evasion, the first option might have some merit. However, the Committee has already emphasised that it considers the real aim of any register is to be a means of assuring the people that public decisions are made in the public interest. If the people are to be so assured they must be permitted a degree of access to the information to be registered.

Consequently, the Committee favours the second option which can be implemented in the following manner:

The Committee recommends that Members of Parliament should provide the information required in the form of a statutory declaration to a Parliamentary Registrar who shall be directly responsible to the President of the Senate and the Speaker of the House of Representatives. It is reasonable and proper to allow the public to have access to the information disclosed on establishing to the satisfaction of the Registrar and with the approval of the President or Speaker that a bona fide reason exists for such access. These statutory declarations should be in loose-leaf form so as to enable members of the public to inspect any relevant details in the statutory declaration filed by a particular Senator or Member. Upon any request for access being received by the Registrar the Senator or Member concerned should be notified personally and acquainted with the nature of the request and informed of the details of the inquiry before such access is granted. The Senator or Member thus notified may, within seven days, submit a case to

the Registrar opposing the granting of access. On receipt of such submission, the Registrar, with the approval of the President or Speaker, shall make a decision from which no appeal will lie.

(i) *Ministers of the Crown.* During its hearings the Committee received evidence from a number of present and former Ministers of the Crown as to the practice of Prime Ministers requiring disclosure by Ministers to the Prime Minister of any pecuniary interests falling within the ambit of their portfolios. Having regard to the paramount importance of the Ministers of the Crown in the decision-making process, the Committee is of the opinion that this informal disclosure does not go far enough It is not sufficient that the Prime Minister of the day should be satisfied that Ministers are participating in decision-making without regard to their own interests The public must receive this same assurance.

Therefore, the Committee recommends that Ministers of the Crown, on assuming office, should resign any directorship and dispose of any shares in a public or private company which might be seen to be affected by decisions taken within the Minister's sphere of responsibility.

By way of a summary of the above recommendations, the following sample statutory declaration has been prepared. It is merely a guide to the types of interests to be declared and the amount of detail considered necessary for declarations to be made by Members of Parliament.

SAMPLE STATUTORY DECLARATION

I, ... (name and address) do solemnly and sincerely declare that to the best of my knowledge I have, or have had during the past six months:

1. A beneficial interest in shareholdings in the following companies:

   . . . . . .
   . . . . . .
   . . . . . .

   (*Members should declare the names of all companies in which they have a beneficial* interest in shareholdings, no matter how insignificant, whether held as an individual, a member of another company or partnership, or through a trust. Members need not declare the value of any shareholdings)

2. A beneficial interest in the following realty:

   . . . . . .
   . . . . . .
   . . . . . .

   (Members need only disclose the location of any land in which they have an interest)

3. A directorship/directorships in the following company/companies:

   . . . . . .
   . . . . . .
   . . . . . .

   (The actual amount of any directors' fees received, if any, need not be disclosed)

4. Sponsored travel:

   . . . . . .
   . . . . . .

5. The following interests not covered by categories 1 to 4 above which I consider should be declared:

   . . . . . .
   . . . . . .
   . . . . . .
   . . . . . .

   (Examples of interests which Senators and Members may consider should be disclosed are honoraria, bequests, gifts and other potentially conflicting benefits)

(Signature of Member)

Declared at the day of 19
Before me,

(*Signature of Witness*)

Throughout this Report the Committee has referred to the need to achieve some balance between the conflicting considerations relevant to the issue of whether there should be a system of declaration of interests and the form such declaration should take. In the introductory Chapter the Committee expressed its aim as being to make recommendations which would protect and uphold the dignity and honour of Parliamentarians and public officials, but which would not ignore the strongly held views expressed by the Committee's witnesses on the many facets involved in the inquiry. In Chapter III the Committee stated the obvious fact that it is impossible to give full weight to the argument that one's privacy should not be invaded whilst at the same

time attaching weight to the arguments submitted in favour of a register of pecuniary interests. Some balance must be achieved between these conflicting considerations.

Similarly, throughout this Report the Committee has sought to reconcile what might be termed the 'inequity' argument with the 'administrative complexity' argument. On the one hand it can be argued that it would be inequitable to single out one group of individuals for compulsory registration of their interests if another equally influential group of individuals is not to be subject to comparable requirements. Alternatively, it can be argued that some arbitrary limits must be devised with respect to the classes of persons required to register their interests in order to prevent the creation of an enormous bureaucracy to police the register.

The Committee's recommendations give a balance to these conflicting views appropriate to the time span in which the Committee has been in existence. But the balance will not remain constant. With the passage of time it is to be expected that one of two conflicting factors will be seen to be of over-riding importance. If the public acceptance of the value of declarations of interests grows or wanes there should be some means of adjusting the registration requirements to harmonise with this altered degree of public acceptance.

Furthermore, some means should exist for resolving doubts as to whether or not a particular type of interest not specifically adverted to by this Committee should be declared.

Finally, provision should be made for action to be taken in respect of breaches of disclosure requirements.

To this end *the Committee recommends that a Joint Standing Committee of the Australian Parliament should be established with power to supervise generally the operation of the register and modify, on the authority of the Parliament, the declaration requirements applicable to Members of Parliament. It is not envisaged that such a committee would sit frequently, but would merely be ready to function when a situation arises which calls for resolution.*

The Committee further recommends that the Parliamentary Registrar should be the Clerk of the Joint Standing Committee, and should be appointed by the President of the Senate and the Speaker of the House of Representatives.

In this regard, the Committee wholeheartedly endorses the view of the House of Commons Select Committee on Members' Interests (Declaration) when it stated in its Report (HMSO, London 1974) at page xii:

> Under no circumstances should the Registrar and his staff be seen as enforcement officers, with powers to inquire into the circumstances of Members. The underlying principle behind the register is that Members are responsible for their entries; the House will trust them in this respect, but at the same time such trust involves obligations. As the Clerk of the House pointed out, 'The ultimate sanction behind the obligation upon Members to register would be the fact that it was imposed by Resolution of the House . . .
>
> There can be no doubt that the House might consider either a refusal to register as required by its Resolutions or the wilful furnishing of misleading or false information to be a contempt'. The sanction of possible penal jurisdiction by the House should be sufficient.

PART II—NON-PARLIAMENTARIANS

CHAPTER V.
PUBLIC SERVANTS AND EMPLOYEES OF STATUTORY INSTRUMENTALITIES

In Chapter VII the observation is made that various parts of the interlocking components that constitute the fabric of our system of parliamentary democracy are increasingly subject to cynical denigration. The public servant is not exempted from this practice. Indeed, it appears that one staff organisation considers the public servant to be under seige fighting to gain 'the full rights of citizenship' which are enjoyed by employees in private enterprise.

It is clear and accepted that a dedicated and loyal Public Service (including in this regard, the statutory instrumentalities) is a vital element in a healthy parliamentary democracy. The ethos of the Public Service includes a belief that it should be of the highest integrity, a loyal agent of the Government of the day and devoted to the general welfare and service of the community. As it is in the service of the community as a whole, it is open to general observation across its entire spectrum, including access to intimate details of salary and terms and conditions of service.

It would seem pertinent at this point to reproduce an extract from the 1974 Robert Garran Oration by the Governor-General, Sir John Kerr, K.C.M.G., K.St.J., Q.C., who drew an analogy between public officials and the judiciary. These views it has been said, sum up in a broad way what the Australian community would expect from its public officials in the matter of conflicts of interest. It is hardly necessary to say that public confidence in the integrity and probity of the administration is crucial to the proper operation of Government. A conflict of interest, or the appearance of a conflict of interest, could jeopardise that confidence.

The Governor-General said:

> . . . *the ethical principles applicable to the judicial branch* can be to a considerable extent applicable to public officials generally and they have been traditionally applicable. Let me mention a few points. Like judges all public officials should participate in establishing, maintaining and enforcing, and should themselves observe high standards of conduct. They should conduct themselves at all times in a manner which promotes public confidence in their integrity. They should not lend the prestige of their office to advance the private interests of others. They should not convey, or allow the impression to be conveyed, that anyone is in a position to exercise improper influence on them . . .

He went on to say of public administrators:

> They should disqualify themselves in matters in which their impartiality might be reasonably questioned, including cases of personal bias or prejudice concerning a person or issue involved and matters in which the administrator has a financial interest or is personally involved in a way which could be substantially affected by his decision or action. They should *regulate their extra-administrative activities to minimise* the risk of conflict with their administrative duties. They should refrain from financial and business dealings that tend to reflect adversely on their impartiality,

interfere with the proper performance of their duties, exploit their position, or involve them in frequent transactions with persons outside the Public Service likely to be involved in their administrative decisions. As to shareholdings, they should, if a conflict of duty might arise, either divest themselves of their shares or disqualify themselves.

Like judges they should not accept gifts, bequests, favours or loans from anyone where these could affect, or be thought to affect, the exercise of their public duties. This would not prevent, however, acceptance of ordinary social hospitality, or loans from ordinary lending institutions on ordinary terms.

In these circumstances the Committee was disturbed that a Public Service which is required to observe such exemplary standards of conduct is impugned and denigrated by epithets which suggest that it defaults in its duty and is pampered, over-privileged and motivated by self-interest. It is commonplace to hear these disparaging remarks throughout the community and even in the Parliament itself. This crucial element of parliamentary democracy however, like all the others, has the capacity to 'self-destruct'. *It is essential that it neither be, nor appear to be, an insensitive bureaucratic* juggernaut unresponsive to community expectations. The Public Service has every right to guard against oppressive conditions of service but it must be ever conscious of its obligations to those for whom it exists.

During the Committee's hearings it became apparent that many of the eminent and highly respected public servants who appeared before the Committee were adamant that there should be no erosion of the Public Service's unique status as a disinterested but highly ethical body in the service of the nation. They were aware that to maintain this respect for the Public Service there would have to be ready recognition that the conduct of those in it was not only impeccable but was seen to be beyond reproach. Some form of declaration of pecuniary interests was suggested as a means of contributing towards this objective.

The evidence given by one permanent head in support of this case is reproduced in part below:

> In reaching a conclusion on the question of disclosure of pecuniary interests two important and opposing issues have to be weighed against each other—the desire for full disclosure on one hand and the invasion of privacy on the other. I believe the arguments in favour of some form of disclosure outweigh those against disclosure. I also believe it would be in the interests of the officer and the public alike if the machinery existed by which an officer could, voluntarily or otherwise, declare a pecuniary interest and thereby place himself beyond criticism of any conflict of interest . . .
>
> Despite my reservations regarding the efficacy of legislation on ethical conduct, I am aware that there could well be certain advantages. From time to time public officials will find themselves in a situation where there could be a conflict between the public interest and their own. This potential for conflict may not seem very real to the official who may hold the public interest foremost in his considerations but it may appear very real to an outside observer. For this reason, there could well be merit in the official declaring his pecuniary interests before engaging in any activity that might appear to compromise him. A host of activities in the Australian Public Service, such as tariff review, housing, land development and procurement which possess such a potential for conflict of interests, come readily to mind.
>
> Clearly, the opportunity for promoting self interest at the expense of public interest is not restricted to the highest levels of government. If it is decided that Members of Parliament should disclose their pecuniary interests, it would be no less appropriate that similar rules apply to those who provide advice to Ministers, including

> Permanent Heads, senior policy advisers and ministerial staff and, indeed, even less senior officers.
>
> Having regard to overseas experience, particularly that in Canada, the nature of disclosures of pecuniary interests by public servants may need to differ from any that might be applied to Members of Parliament. If disclosure of conflicting interests is found desirable, it would probably be adequate for public servants to disclose their pecuniary interests in a 'register' held within each Department. Access to the information could well be restricted to the responsible Minister and his Permanent Head There would appear to be no real requirement to breach individual privacy further by making the information public, unless circumstances, in the opinion of the Minister, warranted such action. Likewise, ministerial staff could well be required to disclose their pecuniary interests to their Minister.
>
> My comments apply equally to certain statutory office holders As you know, in certain Acts, provision is already made for the declaration of pecuniary interests In some cases, a simple disclosure of those potentially conflicting interests is required while in others the mere possession of conflicting pecuniary interests is sufficient grounds to cancel an officer's appointment or disqualify him from taking part in any deliberations relating to his interests . . .

Reflections in a similar vein were expressed by another permanent head as follows:

> Since I have become a Permanent Head I can see that the need for the public to be aware of the basis for personal bias in the top administration is tremendously important and increasingly so in our increasingly open society. In answer, therefore, to your specific questions as to classes of persons, I would certainly include the whole of the judiciary and at least the First Division of the Public Service.
>
> I can understand the reluctance to appear to extend any infringement of the liberties of government employees at the very time when the Government and the community is concerned with eliminating restrictions within the community at large.
>
> On the other hand, my feeling is that quite apart from events such as Watergate in America, we are in a run of history in which credibility will not be taken for granted. The public does need reassurance that all is well. If we are to continue to accept the competitive drive and accumulation of personal gain as the mainsprings of our economic life, then we must expect that temptations will increase rather than diminish as the world gets wealthier, and I see decreasing, rather than increasing, reason for expecting a general code of morality to protect the position. Consequently, I believe we will need to move in the direction of making provision to strengthen the community's confidence in public administration.
>
> My personal view is that persons holding positions of authority and power in relation to other members of the community should be brought equally with Members of Parliament within whatever arrangement is made to reveal pecuniary interests.
>
> Whilst it might be tempting to try to limit an area of activity so as to cover only those directly concerned with authorising expenditure, this, in my view, would leave out of account the many other officers who are involved in the investigation and other processes leading to final recommendation and authorisation.
>
> No doubt the assumption is made that members of a statutory board must accept responsibility for the integrity of persons employed by the board. In my view, this is not really good enough and is merely the same as saying a Minister should accept the responsibility for the integrity of all the members of his Department who really control the expenditure for which the Minister is nominally responsible.
>
> . . . the question of enforcement . . . I believe, is a 'red herring' . . . the important thing would be to lay down clearly the obligation to reveal so that both the individuals concerned and the public at large are aware of what is expected. The real sanction behind this obligation would lie in the risk of being found out. That would result in double discrediting of defaulters. The risk of being found out in this area would be too high to run with not only the media but also

business interests as well as opponents always on the alert. Fear of discovery would, in my view, be a more effective sanction than fear of fine or even imprisonment. It would seem to me unfortunate if your Committee were to be discouraged from accepting the principle of disclosure of pecuniary interests because of worrying about the matters of unnecessary policing and legal enforcement.

The following extract was another interesting contribution because it revealed that some sections of private industry, both at the national and international level, require their employees to comply with a rigorous declaration of interests procedure which they regard as essential for the robust health and integrity of the enterprise It is far in excess of anything required of public servants, a spokesman for whom claimed that 'public servants still do not have the full rights of citizenship as do the employees in private enterprise'. The evidence given as to the practice in at least one large private enterprise was as follows:

> As a senior executive of the world wide organisation of General Motors Corporation U.S.A. I was accustomed personally to declaring annually any pecuniary interest in companies with which General Motors might either directly or indirectly do business.
>
> I note that according to press reports the view of the Prime Minister is that top 'public servants' should declare financial interests. I do not know whether this term was intended to include Chairmen and Members of statutory corporations, but am of the opinion that it should and that there should be a register which in my view, would constitute an advantage to the individuals concerned as well as to the community at large.
>
> . . . a register covering finances and assets generally should present no embarrassment save to the dishonest . . .

By way of contrast, forceful evidence was advanced by public service staff organisations which suggested that 'existing sanctions are sufficient' with the *Crimes Act* 1914-73 being the ultimate sanction. It was made clear that there is a plethora of Acts, Regulations, conventions and practices which in various degrees impinge on and circumscribe the conduct of public servants and those in the employ of public instrumentalities. The view was expressed that these provisions encompassed machinery to deal with a conflict of interest situation should such arise.

This view was to some degree at variance with the evidence given by one head of a public service department who did not see existing provisions in the same light. He said:

> Strangely enough, there does not appear to be any legislative or regulatory provision affecting either public servants within departments or the staff of statutory offices in this area. A recent amendment of the Public Service Act will, I understand, enable the Public Service Board to grant permission to an officer to act as a director of a company or incorporated society where there is no conflict of interests and in circumstances subject to conditions to be prescribed.
>
> . . . this amendment will not really deal with the matter at issue. On the other hand, some Statutes setting up specific authorities do contain provisions bearing on the activities of members (though not staff) of the authority. For example, section 11 of the Commonwealth Bureau of Roads Act . . .

The reason for this diversity of opinion would appear to be a misinterpretation by the staff organisations of the Committee's aim which is not to develop new penal provisions or to embark on a subtle program of persecution but to provide a means of demonstrating positively to the community that the Public Service is what it purports to be. It is of fundamental importance that the Public Sevice should not only adhere

constantly to its high standards but should manifestly and undoubtedly be seen to be observing them. Public confidence in the Service should be unreserved.

It is true that there are various restrictions in existence in respect of an officer engaging in outside employment, holding directorships, accepting gifts or fees, and using official information, for which there are sanctions in the context of a career service. However, there are three principal reasons for not being satisfied that these provisions provide all the answers.

Firstly, it was not established to the Committee's satisfaction that all public servants are fully aware of all of the existing sanctions which regulate their conduct This is largely the result of the provisions being contained in various Acts, Regulations, and General Orders or not even appearing in written form at all. Only when these provisions appear in consolidated form available for ready reference by every public servant will one be able to say that public servants are aware of the rules of conduct applicable to them.

Secondly, these rules are, in fact, rules of general conduct and do not specifically relate to conflicts of interest. In this context the author of the latter of the contrasting quotes above appears to have been the more correct when he said that 'there does not appear to be any legislative or regulatory provision affecting either public servants or the staff of statutory offices in this area'. These provisions do not regulate conflicts of interest or their effect on public confidence in the integrity of the Public Service which, in turn, is so important to the proper functioning of Government.

Thirdly, the general conduct provisions are examples of attempts to take action after breaches have occurred. This is to be contrasted with the measures advocated with respect to conflicts of interest which the Committee believes should be designed to demonstrate to the public that in the area of potentially conflicting interests the highest standards are observed; a secondary function is also to ensure that the provisions prevent conflicts from arising or provide for their satisfactory resolution should they arise.

At the outset of the Committee's inquiry it was noted that the Royal Commission on Australian Government Administration was making a root and branch study of the administrative arms of government. It was clear that that body was armed with a broad charter, expertise and the time to give attention to detail. Not wishing to traverse unnecessarily the same ground as the Commission, the Committee wrote to the Chairman inquiring as to whether he anticipated that the Royal Commission would be examining the question of conflicts of interest in any detail. In reply the Committee was advised that the question of possible conflicts of interest in regard to public servants and other employees of the Crown was an area of some importance to the Commission.

Accordingly, detailed recommendations are not being proposed by the Committee on this aspect of the problem. However, some general views considered worthy of attention are set forth hereunder:

- It is proposed that as a general principle certain servants of the Crown be under no lesser obligation in respect of declarations of interest than are others located in other key constituent parts of the decision-making process of parliamentary democracy. It would be inappropriate for the public servant to claim greater immunity from some form of disclosure of his interests than his masters. In general, the public servant enjoys power, influence, and initiative far in excess of that enjoyed in reality by backbench Members of Parliament, and yet does not have the insecurity of tenure of the Parliamentarian.

- As there is some confusion surrounding the significance and implications of existing injunctions—whether they be Acts, Regulations, conventions or practices—dealing with conduct generally, it is proposed that they be explicitly consolidated into a single document by the Public Service Board so that these obligations are clearly visible not only to the public servant but to the Parliament and the public. Such a document should not be limited to a consolidation of existing sanctions and procedures but should incorporate any other guidance or rules considered necessary with respect to the whole area of the conduct of public servants. This consolidation of conduct provisions would appear to be a worthwhile project quite independent of the issue of conflicting interests. However, such a consolidated document should serve the additional function of explaining the manner in which these general conduct provisions could have particular application to the area of conflicts of interest.
- Some guidance in the formulation of a consolidated document of general conduct provisions might be obtained from the British 'Estacode' (administrative guide). Most of the rules of the British Civil Service are contained in 'Estacode' which aims to provide departments with a standing authority in a compact form. It is of passing interest to note that this code of conduct was indirectly the result of an inquiry which investigated the foreign currency transactions of three officials.
- It is appreciated that the functions of departments and the responsibilities of those within them can be quite diverse. Given these varying circumstances it does appear that procedures to deal with conflicts of interest would need to be deftly administered with an enlightened flexibility. To avoid inequity of application from department to department the Committee considers that the Public Service Board should assist departments to formulate simple, reasonable and appropriate procedures to ensure that the departmental head, as far as possible, is equipped with procedures which will avoid and, where necessary, assist in the resolution of conflicting interest situations within his department.
- It is acknowledged that a custom exists whereby a head of department makes some form of declaration of his interests to his Minister. It is proposed that this commendable custom, which appears to be usually oral in form, be formalised. An appropriate registrar for this register might be the Secretary to the Cabinet.
- Some regard should be had to the ambit of a relatively unknown Commonwealth statute which may have alarmingly large application to public servants who are at all involved in Government contracting and who are at the same time shareholders, if only in a modest way, in public companies dealing with the Government. Section 6 of the *Secret Commissions Act* 1905 provides:

  'Any agent [this term includes public servants] who, without the full knowledge and consent of the principal, buys from or sells to himself, or any firm of which he is a partner, or any company of which he is a director, manager, officer or employee, or in which he or any person for him or on his behalf is a shareholder, any goods for or on behalf of his principal, shall be guilty of an indictable offence.'

  It may well be in the interests of those public servants involved in Government contracting to keep at least a private register of their shareholdings to which permanent heads have access, if only to avoid the provisions of Section 6 of the Secret Commissions Act. By making this form of declaration, it would no longer be a case of an agent buying and selling 'without the full knowledge and consent of his principal' and thus no indictable offence would be committed.

The Committee is confident that the implementation of clearly visible procedures to deal with conflicts of interest along the above lines would reinforce the principles outlined at the beginning of this Chapter in the Governor-General's Garran Oration and regenerate the community's respect for those whose service is dedicated to the welfare of the nation.

CHAPTER VI.
MINISTERIAL OFFICERS

The recommendations made in respect of Members of Parliament in Chapter IV are designed to ensure that the execution of Members' public responsibilities are not influenced, or thought to be influenced, by considerations of private gain or benefit. When the position of Ministerial officers is considered the emphasis is not so much focused on the potential for influencing decisions for improper purposes *but on the potential for private gain through the use of confidential information.*

Ministerial staff who are not members of the Public Service are employed under Section 8A of the Public Service Act which allows the Governor-General, on the recommendation of the Public Service Board, to exempt a class of employees from provisions of this Act. Included in this Class Exemption Order are ministerial staff members who in effect, are employed directly by the Minister. While such persons are on a Minister's staff they are subject to the Public Service Regulations unless those Regulations have been included in the exemption order. The Committee understands that the Regulations concerning improper conduct, soliciting or accepting gifts, demanding or accepting fees without the approval of the Public Service Board, and comparable provisions are not included in the exemption order. Thus ministerial staff are, at least in theory, in a comparable position to other public servants in this regard.

However, in practice, ministerial staff who have come from outside the Public Service are subject to the Minister's right of hire and fire. The Public Service Board, therefore, adopts the attitude that it is for the Minister to decide if the conduct of a person on his staff is such that he wishes to remove that person from his position. The Board does not attempt to enforce any of the Regulations concerning improper conduct, outside employment and the like with respect to ministerial staff, whether they have come from outside the Public Service or whether they are on secondment from the Public Service.

The Committee is aware that submissions have been made by the Board to the Royal Commission on Australian Government Administration in relation to the different rights of tenure of public servants and ministerial staff and the different treatment accorded them. Therefore, the Committee believes that there is no set of provisions which, in fact, regulate conflicts of interest situations in ministerial offices even though such conflicts could be expected to arise with significant frequency.

There is no doubt that ministerial staff do have access to information by which they could personally gain if they were to use it improperly. Furthermore, they are, at times, in possession of information which, if disclosed to others, could be the cause of frustration of a particular policy or cause a benefit to a particular individual or group of individuals. *For the reasons advanced earlier with respect to Members of Parliament a system of declaration of interests would appear prima facie, to contribute to the resolution of conflicts of interest.*

While there is a need, however, for a declaration of interests the creation of a register of interests of ministerial officers freely available for public inspection would not be the appropriate form of declaration. Realising the fact that the right of hire and

fire of ministerial staff rests with the Minister who is automatically responsible for the conduct and ethical standards of his staff, the Committee considers it proper that he should make the decisions as to the propriety of actions taken by them. Ministerial staff are neither public figures responsible to the people in the same manner as Members of Parliament, nor are they servants of the public in the same manner as public servants. They are servants of the Minister.

However, to state that the ethical standards expected of ministerial staff should be determined by the Ministers employing them should not be interpreted as a licence to ignore the subject of conflicting interests. Not only does the discretion rest with the Minister but also the responsibility.

A proposal which would more effectively require each Minister to exercise that responsibility would be a requirement that ministerial staff, rather than publicly register their interests, should declare those interests directly to their Minister The onus is thus placed on the Minister to use this information in a way which prevents impropriety occurring. It enables the Minister to impose the standard which he considers necessary in the light of that information. For example, one Minister may decide that his staff should divest themselves of potentially embarrassing interests. Another may decide, on receipt of the declaration of interests of a particular staff member, that that person should be able to retain the interests but should not participate in any discussion affecting those interests.

Such a proposal would appear to give ample recognition to the fact that ministerial staff members might frequently experience conflicts of interests, whilst leaving the relevant decisions to the person in the best position to evaluate the extent and undesirability of that conflict. Accordingly, the *Committee recommends that all ministerial staff should make a written declaration to the Minister by whom they are employed of those types of pecuniary interests which it is recommended should be registered by Members of Parliament.* Lest this should give rise to fears that Ministers may not exercise the option thus provided to direct that staff not participate in matters involving a conflict of interests, *the Committee further recommends that a copy of the declaration made by each staff member should be given to the Prime Minister.*

Opposition Staff

In determining whether the staff of Opposition Leaders should be required to register their interests, weight was given to the fact that although there was a distinction between the functions of Government and Opposition it was not so great that the latter was devoid of influence. One need only contemplate the power of the Opposition parties in the Senate at the moment to realise that the staff of Opposition Leaders might be in a position to benefit from the deferral, amendment or rejection of legislation.

There further exists the convention whereby the Government may choose to brief Opposition Leaders on matters of national importance. More recently provision has been made for Opposition spokesmen to receive departmental briefings. Given the limited resources of parties in opposition and the inevitable propinquity and dependence that therefore develops between them and their staff, the latter, at the very least, would be well informed. It could be argued further that the staff, especially if they had had, in addition, experience as ministerial staff, would have a significant capacity to exercise influence.

Under these circumstances, *the Committee recommends that the staff of Opposition Leaders, and their appointed spokesmen, be required to register their pecuniary interests in a manner similar to that required of ministerial staff.*

CHAPTER VII.
THE MEDIA

The media, the press in particular, wears the mantle of the 'Fourth Estate'—a participating part of the body politic—or the 'fourth tier of government'. This function the responsible press guards jealously because a vigilant press is a fundamental and a necessary mechanism in the checks and balances of a healthy parliamentary democracy.

In recognition of this principle and realising that it would be inequitable to require of one tier of decision-making and opinion forming in the democratic process that which was not required of another, it is noteworthy that the overwhelming majority of media witnesses advocated a registration of pecuniary interests system not only for others but for themselves and other elements of the media as well.

It is apparent that to have done otherwise would have been tantamount to advocating a distinct imbalance in the system of checks and balances in the body politic which is designed to mitigate against undue influence or pressure and unbridled power.

The spirit of the contributions presented to the Committee in this sphere of the inquiry was succinctly expressed by a witness as follows:

> Your final point is an interesting one: should people such as newspaper editors be also required to disclose their private interests. Certainly, yes.
>
> It would seem to me inappropriate, unworkable, and an unwarranted invasion of privacy to apply the same disclosure provisions to senior people in private industry as I advocate for public officials and politicians.
>
> However, the news media are obviously in a special category. They are private businesses but their influence and responsibility is essentially a public function. The opportunities for abuse of this power are clear, even though one rarely encounters examples. As you probably know, the Victorian Securities Industry Act 1970 recognised this problem in one area, and now requires every finance journalist to make a declaration of his share dealings (if any). In view of some of the grosser instances of share-touting by some journalists during the mining boom, this provision is justified.
>
> This sort of requirement should be extended to others in positions of editorial power on newspapers. Having already advocated pretty draconian measures for others in public positions, I would have to accept the general principle, even if your Committee finds it difficult to reach a fair and workable formula.
>
> Who should be covered? Editors alone? All editorial executives? Every journalist? Should it apply only to the main newspaper, television and radio media? Or to every newspaper, newsletter and circular in the country? Should there be disclosure of only those private affairs which could conflict with the editorial duties of the media? Or should it cover every cent received from a savings bank account?
>
> I do not have all the answers, except to say that I would not advocate any system that I could not accept myself.

Having given careful consideration to the problem raised in the foregoing as to the extent and nature of any registration system that should be required of the media,

coupled with the equally difficult question of how a media register should be administered without undue infringement of the sovereignty of the fourth estate, *the Committee recommends that a Media Council should be established. This body should be representative of all the component parts of the media and, as in the case of the British Press Council, have an independent chairman. It should be equipped not only with power to devise and administer an appropriate and effective media register of pecuniary interests, but with all other necessary powers to ensure that it enjoys the respect of both the communications industry itself and the public.*

It is envisaged that those entrusted with the task of devising the fabric of the Media Council would give some consideration to the findings of British Royal Commissions on the press, and the evolutionary metamorphosis through which British Press Councils have gone over the years. It is anticipated, however, that the Australian Media Council will not be a pale imitation of another body but will be a uniquely Australian institution vigorously pursuing the interests and the standing of the communications industry in its entirety.

Although it is not within the Committee's purview to stipulate the charter of an Australian Media Council except in respect of declaration of interest matters it is envisaged that areas of interest which might be of concern to the Council would include:

- The effective administering of the media register of pecuniary interests.
- Devising a 'code of conduct' invoking the highest ethical standards amongst all elements of the media and buttressed by enforcement provisions commanding respect and observance.
- Acting as a tribunal in all matters relating to the standing of the media. (The British Royal Commission of 1961-62 advocated that such a tribunal would hear complaints from editors and journalists of undue influence by advertisers or advertising agents and of pressure by their superiors to distort the truth or otherwise engage in unprofessional conduct.)
- The general guardianship of the highest professional and commercial standards which would include the preservation of a free, varied and non-monopolistic media devoid of myopic and base propaganda.

No attempt is being made here to formulate an exhaustive charter for the Media Council, but it should have wide powers to exact standards of this near autonomous element of parliamentary democracy in keeping with the media's lofty traditions. These of necessity, must encompass the highest ethics to justify this exceptional status which includes within it vast power. The use of this power should always be tempered with a sober recognition that it is the legacy of a free and democratic society which expects that this bequest of trust will not be abused.

In making this recommendation the Committee was acutely conscious of evidence that was given which made it clear that the media, as a collective industry, did not have a formal 'code of ethics' and that while the Australian Journalists Association did have such a code it was generally agreed that it was almost impossible to enforce Furthermore, the Committee was aware of argument which advocated that there was a need to improve the stature of the nation's leaders and its institutions. It is appreciated that the media is currently regarded with a degree of cynicism. It is hoped that such a Council will ensure a responsible and respected communications industry.

Acknowledging that the creation of a Media Council will require some careful planning before it is established it is *recommended that as an interim measure the Parliament should require that those media organisations which are accredited to or use the facilities of Parliament House should be required to comply with the same registration requirements that are required of Members of Parliament. For the time being this Media Register should be administered by the Parliamentary Registrar.*

Consequently, those registering in the interim Media Register would include directors, executives, editors and journalists of those media organisations accredited to or using the facilities of the Parliament and all members of the media that have quarters in or work from Parliament House.

These recommendations have been designed in the light of the public function of the media referred to above and the distinctive flavour of the evidence given by the media representatives appearing before the Committee. They provide what is hoped will be an acceptable means of demonstrating clearly that those who have influence in this sphere exercise it with obvious integrity. Indeed, judging by the evidence, it can only be anticipated that such recommendations will be welcomed.

It will be perceived that the thread which has been running through the fabric of this Report is that of concern for the welfare and integrity of public life which is being demeaned by various forces, but particularly by that of insidious cynicism accompanied as it is by destructive denigration. While making proposals to redress this situation due care has been given to the delicate mechanisms of our society which is of necessity a complementary partnership. This partnership of the people is a partnership between responsive Government, a constructive Parliament, a loyal Opposition, a dedicated Public Service, a responsible media, a co-operative and innovative commercial and industrial sector and a confident and trusting community. In such an interdependent community that which is within the power of Parliament and its partners to do to promote this objective should be done with alacrity and with total disregard to self interest.

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The necessity for a declaration of interests system could only be established if existing provisions for avoiding or resolving conflicts of interest were found to be inadequate for the protection of both the individual public officeholder and the public at large. To this end, the Committee, in Chapter I, considered the Constitution, statutory provisions and Standing Orders which might have been thought to provide the necessary safeguards. These were as follows:

(a) Sections 44 (v) and 45 (iii) of the Constitution which deal with Members of Parliament contracting with the Public Service and accepting fees or honoraria for rendering services to the Commonwealth or in the Parliament respectively;

(b) Standing Order 196 of the House of Representatives which prohibits Members *from voting upon certain issues in which they have a pecuniary interest;* and

(c) Section 211 of the Commonwealth Electoral Act which deals with bribery and undue influence with respect to elections.

As a result of a recent judicial interpretation of Section 44 (v) of the Constitution, doubts as to the effectiveness of Section 45 (iii) of the Constitution, and a series of restrictive rulings of successive Speakers of the House of Representatives as to the meaning of Standing Order 196, none of these provisions could be regarded with any confidence as a safeguard against conflicts of interest. Section 211 of the Commonwealth Electoral Act was found to be not of direct relevance to the issue.

Having established in Chapter I that the existing safeguards were not adequate, the Committee, in Chapter II, considered two suggested means of remedying this situation. The first was that a code of conduct should be established. The Committee felt that a precise and meaningful code of conduct should exist. It would be an essential adjunct to recommendations made below with respect to a non-specific declaration of interests system. Such a code should be concerned with the elimination of conflict of interest situations. By specifying a set of basic principles which Members of Parliament should observe, Members would be reminded that their ethical obligations to the community do not cease merely by declaring their interests. However, as the Committee's terms of reference require it to consider the *declaration* of the interests of Members of Paliament rather than the *avoidance* of potentially conflicting interests the detailed drafting of a code of conduct would be beyond its terms of reference. Consequently, the Committee was of the view that the drafting of such a code should be entrusted to the proposed Joint Standing Committee referred to in Chapter IV.

The Committee's conclusion in this area was that an appropriate balance could be achieved between the flexible guidance of a code of conduct and the rigid requirements of a register by instituting a declaration of interests system in which it was compulsory that certain interests be declared whilst it was left to the discretion of the individual concerned as to whether or not other interests should be declared. An example of this approach was the recommendation that Members of Parliament be required to disclose the *names* of all companies in which they had a beneficial interest but that it should be left to the discretion of individual Members of Parliament as to whether or not they should register the actual *value* of such shareholdings.

A second proposal worthy of serious consideration, to which the Committee had regard in Chapter II, was that the Parliament should adopt guidelines for determining whether claims of alleged breaches of Section 44 (v) of the Constitution should be

dealt with by the relevant House of Parliament itself or whether it should be referred to the High Court sitting as the Court of Disputed Returns.

Chapter III might well be considered the most important Chapter in the Committee's Report in that the Committee canvassed there the differing views on the central issue as to whether or not a register of pecuniary interests should be instituted. If one thing was clear beyond doubt, it was that the variety of conceivable conflicting interests was matched only by the number of conflicting views as to their resolution.

Some of the reasons advanced for not instituting a register of pecuniary interests were as follows. that it would involve a considerable invasion of privacy; that it could easily be evaded; that it would assume that Members of Parliament were not persons of integrity; that there would be considerable problems in defining accurately all potentially conflicting interests; that it would require the creation of a large enforcement organisation; that it would be inequitable to require some classes of persons to register their interests whilst other persons were subject to no such requirement; and that it would deter potential candidates from seeking to enter Parliament.

The arguments relating to difficulties of definition, ease of evasion, administrative complexity and the assumption of integrity impugned lost much of their force if the register was considered not as a means of detecting fraud amongst Members of Parliament, but as a means of enabling the public to form an opinion as to the weight it should attach to the views or decisions of its elected representatives in the light of the interests which those representatives held. The invasion of privacy and potential deterrent effect on candidates would be minimised by only requiring disclosure of interests in non-specific terms and permitting access to the information in a manner designed to preclude its mischievous use.

Some of the reasons which were advanced in favour of a register of pecuniary interests were as follows: that a periodic disclosure would relieve a Member of Parliament of anxiety about a possible conflict of personal and public commitments; that it would remove the innuendo surrounding political debate; that it would give an assurance to the public that its interests were being advanced; and that it would encourage divestment of interests which, in the eyes of some, would constitute an undesirable degree of conflict with the public responsibilities of a Member of Parliament.

A further reason advanced for Members of Parliament to disclose their interests arises from the fact that they occupy positions known at common law as offices of public trust and confidence or, simply, 'public offices'. As such they are governed by a vague but highly significant body of law regulating how they, as fiduciaries, discharge their 'trusts'. The courts view the public as reposing trust and confidence in a public officer in the discharge of the duties of his office. In order to protect the trust reposed in fiduciaries a harsh and inflexible rule has been adopted to the effect that once a conflict arises in a transaction, the courts do not attempt to see if the fiduciary has actually been swayed by his interest. The possibility that he may have been swayed is sufficient. Any transaction infected by the conflict will be set aside.

However, if a fiduciary makes a full disclosure to the persons for whom he is 'trustee' that he has an interest conflicting with his duty he can thereby immunise himself from the operation of the rule. The common law does not totally prohibit conflicts of duty and interest. It only objects to concealed conflicts.

It was submitted that the Committee could mitigate the effects of this wide conflict rule by recommending the public registration, in general terms, of remunerated occupations, professions, directorships and partnership interests of Members of Parliament. Such registration would make it difficult to say that a Member was acting

contrary to the requirements of the conflict of duty and interest rule should any alleged conflict of interest arise. The Committee's resultant assessment of the various submissions relating to the central issue was *that a non-specific declaration of interests system should be instituted.*

In Chapter IV the Committee made a number of recommendations as to the desirable extent of disclosure, the form in which it should be made and the degree of access to such information. In that Chapter the Committee discussed the reasons why certain pecuniary interests should be declared and why certain other interests need not be declared. For example, the Committee considered whether or not Members should declare not only their assets but also their liabilities and whether or not they should declare the interests of their immediate family of which they were aware. The Committee concluded, for reasons stated in Chapter IV, that such requirements would not be appropriate. The categories of interests which the Committee considered should be declared are summarised below.

In Part II, Chapters V, VI and VII were devoted to recommendations with respect to the Public Service and statutory authorities; ministerial officers; and the media respectively.

The recommendations made throughout this Report reflected the Committee's desire to suggest workable proposals designed to safeguard and enhance the integrity of public officials without making unjustified inroads into their existing rights of privacy. This necessarily implied a willingness to temper the demands of a fully effective declaration of interests system with other conflicting demands. Furthermore, it involved a recognition that any balancing of these conflicting considerations could only be the Committee's assessment as to the weight which should be attached to such factors in 1975. It did not assume that this assessment of the relative weight of various arguments would remain constant with the passage of time. With this cautionary note, the Committee's recommendations are summarised as follows:

Members of Parliament

(i) the filing of a copy of one's income tax return would constitute neither an adequate nor an appropriate form of registration of pecuniary interests.

(ii) Members of Parliament should disclose the names of all companies in which they have a beneficial interest in shareholdings, no matter how insignificant, whether as an individual, member of another company, or partnership, or through a trust.

(iii) It should be left to the discretion of individual Members of Parliament as to whether or not they should register the actual value of any shareholdings.

(iv) Members of Parliament should disclose the location of any realty in which they have a beneficial interest.

(v) Members of Parliament should declare the names of all companies of which they are directors even if the directorship is unremunerated.

(vi) Members of Parliament should declare any sponsored travel.

(vii) Members of Parliament should provide the information required in the form of a statutory declaration to a Parliamentary Registrar who shall be directly responsible to the President of the Senate and the Speaker of the House of Representatives. It is reasonable and proper to allow the public to have access to the information disclosed on establishing to the satisfaction of the Registrar and with the approval of the President or Speaker that a bona fide

reason exists for such access. These statutory declarations should be in loose-leaf form so as to enable members of the public to inspect any relevant details in the statutory declaration filed by a particular Senator or Member. Upon any request for access being received by the Registrar, the Senator or Member concerned shall be notified personally and acquainted with the nature of the request and informed of the details of the inquiry before such access is granted. The Senator or Member thus notified may, within seven days, submit a case to the Registrar opposing the granting of access. On receipt of such submission the Registrar, with the approval of the President or Speaker, shall make a decision from which no appeal shall lie.

(viii) *On assuming office, a Minister of the Crown should resign any directorships* of public companies and dispose of any shares in a public or private company which might be seen to be effected by decisions taken within the Minister's *sphere of responsibility.*

(ix) A Joint Standing Committee of the Australian Parliament should be established with power to supervise generally the operation of the register and modify, on the authority of the Parliament, the declaration requirements applicable to Members of Parliament. It is not envisaged that such a Committee would sit frequently but would be ready to function when a situation arose which called for resolution.

(x) The Joint Committee should be entrusted with the task of drafting a code of conduct based on Standing Orders, conventions, practices and rulings of the Presiding Officers of the Australian and United Kingdom Parliaments and such other guidelines as may be considered appropriate.

(xi) The Parliamentary Registrar should be the Clerk of the Joint Standing Committee, and should be appointed by the President of the Senate and the Speaker of the House of Representatives.

Ministerial Officers

(xii) Ministerial Staff should make a written declaration to the Minister by whom they are employed of those types of pecuniary interests which it is recommended should be registered by Members of Parliament. A copy of the declaration made by each staff member should be given to the Prime Minister.

(xiii) The staff of Opposition Leaders and their appointed spokesmen should be required to declare their pecuniary interests in a manner similar to that required of ministerial staff.

The Media

(xiv) A Media Council should be established which is representative of all the component parts of the media and, as in the case of the British Press Council, have an independent chairman. It should be equipped not only with powers to devise and administer an appropriate and effective media register of pecuniary interests, but with all other necessary powers to ensure that it enjoys the respect of both the communications industry itself and the public.

(xv) Acknowledging that the creation of a Media Council will require some thoughtful planning before it is established, it is proposed that as an interim measure the Parliament should require that those media organisations which are accredited to or enjoy the facilities of Parliament House should be required to comply with the same registration requirements that are required of Members of Parliament. For the time being this media register should be

administered by the Parliamentary Registrar with the same conditions of access as recommended to apply to Members of Parliament.

Consequently, those registering in the interim media register would include directors, executives, editors and journalists of those media organisations accredited to or using the facilities of the Parliament and all members of the media who have quarters in or work from Parliament House.

Public servants and employees of statutory instrumentalities

Not wishing to traverse unnecessarily the same ground as the Royal Commission on Australian Government Administration which also has an interest in the question of possible conflicts of interest in regard to public servants and other employees of the Crown, detailed recommendations are not being proposed on this aspect of the problem. However, some general views considered worthy of attention are set forth hereunder:

(a) As a general principle certain servants of the Crown should be under no lesser obligation in respect of declarations of interest than are others located in other key constituent parts of the decision-making process of parliamentary democracy.

(b) As there is some confusion surrounding the significance and implications of *existing injunctions—whether they be Acts,* Regulations, conventions or practices—dealing with conduct generally, it is proposed that they be explicitly consolidated into a single document by the Public Service Board so that these *obligations are clearly visible not only* to the public servant but to the Parliament and the public alike. This view is expanded upon in Chapter V.

(c) The Public Service Board should assist departments to formulate simple, reasonable and appropriate procedures to ensure that the departmental head, as far as possible, is equipped with procedures which will avoid and, where necessary, assist in the resolution of conflicting interest situations within his department.

(d) The custom whereby a head of department makes some form of declaration of his interests to his Minister should be formalised.

(e) It may well be in the interests of those public servants involved in Government contracting to keep at least a private register of their shareholdings to which permanent heads have access, if only to avoid the provisions of the Secret Commissions Act. This point is expanded upon in Chapter V.

ACKNOWLEDGMENTS

The Committee wishes to express its sincere appreciation to all those who have in any way assisted in this inquiry. Those persons who have submitted evidence are listed in the Appendix.

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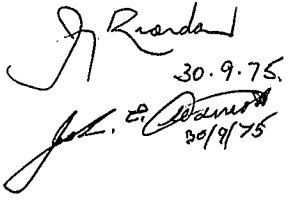
Finally, the Committee extends its thanks to its own staff—Mr Malcolm Hills, Mr Malcolm Starr, Mr James Livermore, Mrs Patricia Mayberry and Mrs Judith Davidson.

J. M. Riordan
Chairman

The Australian Parliament
Canberra
September 1975



APPENDIX

LIST OF WITNESSES*

Adermann, Mr A. E., M.P.	Member for Fisher
Atroshenko, Mr P.	Research Officer, Artists' Guild, Sydney
Black, Mr D. J.	Assistant Commissioner of Taxation (Income Tax Legislation) Taxation Office, Canberra
Brown, Mr P. C.	Retired
Cameron, The Hon. C. R., M.P.	Minister for Labor and Immigration
Campbell, Mr N. J.	Federal Secretary, Administrative and Clerical Officers Association
Combe, Mr H. D.	National Secretary, Australian Labor Party
Creswell, Mrs P.	Managing Director, Penny Creswell and Associates Pty Ltd, Public Relations Consultants
Daw, Mr P. M.	Inspector, Public Service Board, Canberra
Delaney, Mr M. F.	Private Secretary to the Prime Minister
Duncan, Mr P., M. H. A.	Member for Elizabeth, South Australian Parliament
Enderby, The Hon. K. E., Q.C., M.P.	Attorney-General and Minister for Customs and Excise
Evans, Mr G.	Senior Lecturer in Law, University of Melbourne
Finn, Dr P. D.	Senior Lecturer in Law, University of Queensland
Fitzgerald, Mr J. A.	Editor, *The Herald*, Melbourne
Gibbs, Mr A. G.	Chairman, The Overseas Telecommunications Commission (Australia), and The Victorian Railways Board
Gradwell, Mr R. L.	Federal Secretary, Council of Commonwealth Public Service Organisations
Hawker, Mr D. N.	Editor, *The Mercury*, Hobart, Tasmania
Hills, Mr B.	Editor, 'Insight', *The Age*, Melbourne
Holding, Mr A. C., M.L.A.	Leader of the Opposition, Victorian Parliament
Hurford, Mr C. J., M.P.	Member for Adelaide
Keeffe, Senator J. B.	Senator for Queensland
Kirby, Mr G. M.	Private Secretary to the Minister for Science
Killen, The Hon. D. J., M.P.	Member for Moreton
Lansdown, Mr R.B.	Secretary, Department of Urban and Regional Development
MacDonald, Mr H. B.	Secretary, Public Service Board, Canberra
McMahon, The Rt Hon. W., C.H., M.P.	Member for Lowe
Morgan, Mr J. T.	Editor *The Sun*, Melbourne
Mollison, Mr J.	Director Designate, Australian National Gallery, Canberra
Morris, Mr P. F., M.P.	Member for Shortland
Odgers, Mr J. R., C.B.E.	Clerk of the Senate, Parliament House, Canberra
Parkes, Mr N. J., O.B.E.	Clerk of the House of Representatives, Parliament House, Canberra

Perkin, Mr E. G.	Editor-in-Chief of David Syme and Co. Ltd, Melbourne; Editor of *The Age.*
Randall, Mr K. M.	President, Canberra District Branch of the Australian Journalists Association
Renouf, Mr A. P., O.B.E.	Secretary, Department of Foreign Affairs, Canberra
Robinson, Mr B. J.	Federal Industrial Officer, Administrative and Clerical Officers Association
Rouse, Mr E. A.	Chairman and Managing Director of Examiner-Northern T.V. Ltd, Launceston
Sharp, Dr I. G.	Secretary, Department of Labor and Immigration, Melbourne
Sinclair, The Hon. I. McC., M.P.	Deputy Leader of the Australian Country Party
Smith, Mr W. J.	Senior Research Officer, Council of Commonwealth Public Service Organisations
Street, The Hon. A. A., M.P.	Member for Corangamite
Suich, Mr M.	Editor, *The National Times*
Sweeney, Mr J. P.	Senior Partner, John Sweeney Blanshard and Company, Stockbrokers, Sydney
Wheeler, Sir Frederick H., C.B.E.	Secretary to the Treasury, Canberra
Whitlam, The Hon. E. G., Q.C.	Prime Minister

* Witnesses' positions are those occupied at the date of giving evidence.