

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMITTEE OF MEMBERS' INTERESTS

REPORT

RELATING TO THE

NEED FOR ORAL DECLARATIONS OF INTERESTS

BY MEMBERS

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA
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COMMITTEE OF MEMBES' INTERESTS

Membership

Dr R E Klugman, MP (Chairman)

Hon. A E Adermann, MP

Mr D M Cameron, MP

Mr L Kent, MP

Mr E J Lindsay, RFD, MP

Mr P M Ruddock, MP

Mr J L Scott, MP

Clerk to the Committee

Mr L M Barlin



REPORT

1. Standing order 28A by which the Committee of Members' Interests is established, provides, in part, that the committee is required -

- (i) to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a Register of Members' Interests;
- (ii) to consider any proposals made by Members and others as to the form and content of the register;
- (iii) to consider any specific complaints made in relation to the registering or declaring of interests;
- (iv) to consider what changes to any code of conduct adopted by the House are necessary or desirable;
- (v) to consider what classes of persons (if any) other than Members ought to be required to register and declare their interests; and
- (vi) to make recommendations upon these and any other matters which are relevant.

Whilst the Committee's activities have been largely confined to matters related to the compilation and maintenance of the Register of Members' Interests, its attention has been drawn to an issue raised in the course of proceedings in the House on 17 November 1987 which, while not specifically referred to the Committee by way of complaint, has now been considered by it. It is the Committee's view that its findings in relation to this matter should be reported to the House for necessary action.

2. There are two distinct aspects of the requirements of the House as set out in the resolutions adopted by it on 9 October 1984 a.m., as later amended. Under resolution (2), Members are required to provide to the Registrar of Members' Interests within 28 days of making an oath or affirmation as a Member, a written statement of registrable interests covering an extensive range of his or her interests and similar interests of which the Member is aware, of his or her spouse and dependent children. The Member is also required to notify any alterations of those interests within 28 days of the alteration occurring. This requirement for written notification of interests and alterations of interests may be referred to as the registration of interests. The second requirement is for an oral statement by a Member of relevant interests if he or she should participate in debate or proceedings in the House or committee. This requirement may be referred to as an oral declaration of interests. It is contained in resolution (4) which reads as follows:

(4) Declaration of interest in debate and other proceedings

That, notwithstanding the lodgment by a Member of a statement of the Member's registrable interests and the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and the incorporation of that statement in a Register of Members' Interests, a Member shall declare any relevant interest -

- (a) at the beginning of his or her speech if the Member should participate in debate in the House, committee of the whole House, or a committee of the House (or of the House and the Senate), and
- (b) as soon as practicable after a division is called for in the House, committee of the whole House, or a committee of the House (or of the House and the Senate) if the Member proposes to vote in that division, and the declaration shall be recorded and indexed in the Votes and Proceedings or minutes of proceedings (as applicable) and in any Hansard report of those proceedings or that division:

Provided that it shall not be necessary for a Member to declare an interest when directing a question seeking information in accordance with standing order 142 or 143.

(3) In the course of proceedings in the House on 17 November 1987 during debate on a motion to suspend standing orders to enable the Broadcasting Amendment Bill (No. 4) 1987 to be referred to the Standing Committee on Transport, Communications and Infrastructure for inquiry and report, Mr Scholes raised the following point of order:

"Mr Deputy Speaker, I raise a point of order. As the carriage of this motion would have significant financial benefit for certain persons, is it necessary for members supporting the suspension of Standing Orders to declare a financial interest if they have one?".

In response, the Deputy Speaker (Mr R F Edwards) stated -

"The honourable member for Corio has asked a question about financial interests. The requirements of the House are that members declare their interests in a statement to the House. It would be clear that members have made a general statement that is available to other honourable members on request. I am advised that if, at the conclusion of the division, any honourable members have a financial interest which this motion may impact upon, they ought to declare that financial interest.".

Following further points of order raised by Mr R J Brown, MP and the Rt Hon. I McC Sinclair, MP, the Deputy Speaker also stated -

"Order! I return to the previous point that I made. As a consequence of members tabling in this House their statements of interests, if any honourable members felt that the decisions they made in relation to this motion were contingent upon those statements, they may feel it necessary to declare that interest. In the absence of that I see no need to take any further action.".

(The full text of the relevant speeches from page 2192 of House of Representatives Hansard of 17 November 1987 is attached as Appendix I).

4. Because of the significance of the matter, the Committee obtained oral legal advice as to the interpretation of the words "any relevant interest" as set out in resolution (4) in respect of the requirement for the making of oral declarations of interests. This advice, whilst not necessarily accepted by some members of the Committee, indicated that the words should be read as "any registrable interest" as set out in paragraphs (a) to (n) of resolution (2). It was indicated also that to give the words any other meaning would have the effect of "writing down" the resolutions of the House.

5. Paragraphs (a) to (n) of resolution (2) list the following matters which need to be registered:

- (a) shareholdings in public and private companies (including holding companies) indicating the name of the company or companies;
- (b) family and business trusts and nominee companies -
 - (i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and
 - (ii) in which the Member, the Member's spouse, or a child who is wholly or mainly dependent on the Member for support, is a trustee (but not including a trustee of an estate where no beneficial interest is held by the Member, the Member's spouse or dependent children), indicating the name of the trust, the nature of its operation and the beneficiary of the trust;
- (c) real estate, including the location (suburb or area only) and the purpose for which it is owned;
- (d) registered directorships of companies;
- (e) partnerships indicating the nature of the interests and the activities of the partnership;

- (f) liabilities indicating the nature of the liability and the creditor concerned;
- (g) the nature of any bonds, debentures and like investments;
- (h) saving or investment accounts, indicating their nature and the name of the bank or other institutions concerned;
- (i) the nature of any other assets (excluding household and personal effects) each valued at over \$5,000;
- (j) the nature of any other substantial sources of income;
- (k) gifts valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources provided that a gift received by a Member, the Member's spouse or dependent children from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interest may be seen to exist;
- (l) any sponsored travel or hospitality received;
- (m) membership of any organisation, and
- (n) any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

6. The practical effect of the advice received by the Committee was that it would be necessary for all Members to orally declare any of a whole range of interests that may be applicable to them should they participate in debate in the House or committee or if they proposed to vote in a division in the House or committee. As will be seen from an examination of resolution (2), the interests covered by such a requirement include such diverse matters as shareholdings in a company, ownership of real estate, disclosure of assets or liabilities and being a member or patron of an organisation. Indeed, one member of this Committee felt obliged to orally declare during debate in the House the fact that he was a patron of a particular bowling club when questioning a decision by the Australian Broadcasting Corporation not to proceed with the production of a television series of the program "Jack High" from that particular bowling club!

7. The Committee does not believe that such an all-embracing requirement was intended by the House when it adopted the registration and declaration requirements. In fact, the Committee is of the opinion that with the requirement for Members to provide written statements of interests, and to notify alterations of those interests within 28 days of the alteration occurring, there may be little, if any, purpose in Members also orally declaring those interests when participating in proceedings. The Register of Members' Interests is a publicly available document able to be inspected in the office of the Registrar of Members' Interests. Furthermore, copies of the Register and of notifications of alterations of interests are tabled by the Chairman of this Committee as appropriate and are available for wide scrutiny.

8. However, in discussing this matter, consideration needs to be given also to the provisions of standing order 196. The standing order is in the following terms:

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.

Whilst the intention of the standing order is clear, its practical effect is limited.

9. House of Representatives Practice (pages 173-4) in referring to the standing order, has this to say in relation to it:

Standing Order 196 states that a Member may not vote in a division on a question in which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. However, the rule does not apply to a

question on a matter of public policy. A Member's vote can only be challenged by means of a substantive motion moved immediately following the completion of a division. If the motion is carried, the vote of the Member is disallowed.

Public policy can be defined as government policy, not identifying any particular person individually and immediately. All legislation which comes before the House deals with matters of public policy and there is no provision in the standing orders for private bills.

There have been a number of challenges in the House on the ground of pecuniary interest and in each case the motion was negatived or ruled out of order. May states:

... no Member who has a direct pecuniary interest in a question shall be allowed to vote upon it: but, in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote character. On 17 July 1811, the rule was thus explained by Mr. Speaker Abbot: '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'.

Therefore, it would seem highly unlikely that a Member could draw unto himself a disqualification of voting rights in the House because the House is primarily, if not solely, concerned with matters of public or State interest.

The Committee believes that the intention and effectiveness of this standing order needs to be taken into consideration in relation to the issue of oral declarations of interests.

10. Having regard to the Committee's previously stated belief that the requirement of resolution (4) goes beyond what was intended by the House in adopting the resolutions

for the registration and declaration of Members' Interests, there would appear to be two options available to correct the situation. The first and preferred option of the Committee is for the requirement for oral declarations of interests to be entirely removed by omitting resolution (4) from the standing resolutions of the House. The second option is for the resolution to be amended to require oral declarations to be made only when a Member, his or her spouse or dependent children, hold a pecuniary interest which could conceivably bring the Member into a potential conflict of interest situation. Adoption of the second option would reflect, to some extent, the intention of standing order 196.

Conclusion and recommendations

11. The Committee is satisfied that, given the interpretation which has been placed on resolution (4) of the requirements for the registration and declaration of Members' Interests, the effect of resolution (4) goes beyond what was intended by the House in adopting those resolutions. The Committee doubts if resolution (4) serves any useful purpose. Furthermore, it believes that it is a requirement that can be, and unwittingly has been, overlooked by Members. It is effectively little more than a duplication of the requirement for the registration of Members' Interests and places an unnecessary burden upon all Members.

12. Accordingly, the Committee recommends that -

- (a) resolution (4) requiring oral declarations of interests by Members be removed from the requirements of the House in respect of the registration and declaration of Members' Interests
or, alternatively,

(b) resolution (4) be amended to require an oral declaration to be made by a Member only when the Member, his or her spouse or dependent children, hold a pecuniary interest which could conceivably bring the Member into a potential conflict of interest situation in proceedings in the House or committee.

R E Klugman
Chairman
9 November 1988

NOES
Gear, G.
Gorman, R. N. J.
Grace, E. L.
Griffiths, A. G.
Hand, G. L.
Harvey, E. R.
Hayden, W. G.
Holding, A. C.
Hollis, C.
Howe, B. L.
Humphreys, B. C.
Hurford, C. J.

PAIRS
MacKellar, M. J. R.
Webster, A. P.

In division—

Mr Scholes—Mr Deputy Speaker, I raise a point of order. As the carriage of this motion would have significant financial benefit for certain persons, is it necessary for members supporting the suspension of Standing Orders to declare a financial interest if they have one?

Mr DEPUTY SPEAKER (Mr Ronald Edwards)—The honourable member for Corio has asked a question about financial interests. The requirements of the House are that members declare their interests in a statement to the House. It would be clear that members have made a general statement that is available to other honourable members on request. I am advised that if, at the conclusion of the division, any honourable members have a financial interest which this motion may impact upon, they ought to declare that financial interest.

Mr Robert Brown—Mr Deputy Speaker, I raise a point of order. My understanding of the application of that personal interest rule is that when the Parliament is considering matters of public policy there is no necessity for members to declare a personal interest. If, for example, the Parliament were now in the process of considering legislation which could affect a particular named and identified radio station anyone with an interest in it would be required to declare that interest. However, at the present time we are considering public policy. The Parliament is now in the process of considering whether this matter should be referred to a committee of the Parliament. There is no way in which this question could reasonably be interpreted as being one which would impinge directly on the pecuniary interest of any member of the Parliament.

Mr Sinclair—Mr Deputy Speaker, I raise a point of order. A procedural motion for the suspension of Standing Orders has been moved. Until such stage as the suspension of Standing Orders is dealt with, no question of public policy

arises nor is there any issue before this House on which any member can be seen as having a pecuniary interest. I suggest that we get on with the vote and that we all get back to our ordinary affairs.

Mr DEPUTY SPEAKER—Order! I return to the previous point that I made. As a consequence of members tabling in this House their statements of interests, if any honourable members felt that the decisions they made in relation to this motion were contingent upon those statements, they may feel it necessary to declare that interest. In the absence of that I see no need to take any further action.

Mr Hunt—Mr Deputy Speaker, I raise a point of order.

Mr DEPUTY SPEAKER—Order! I will accept no further points of order.

Question so resolved in the negative.

In Committee

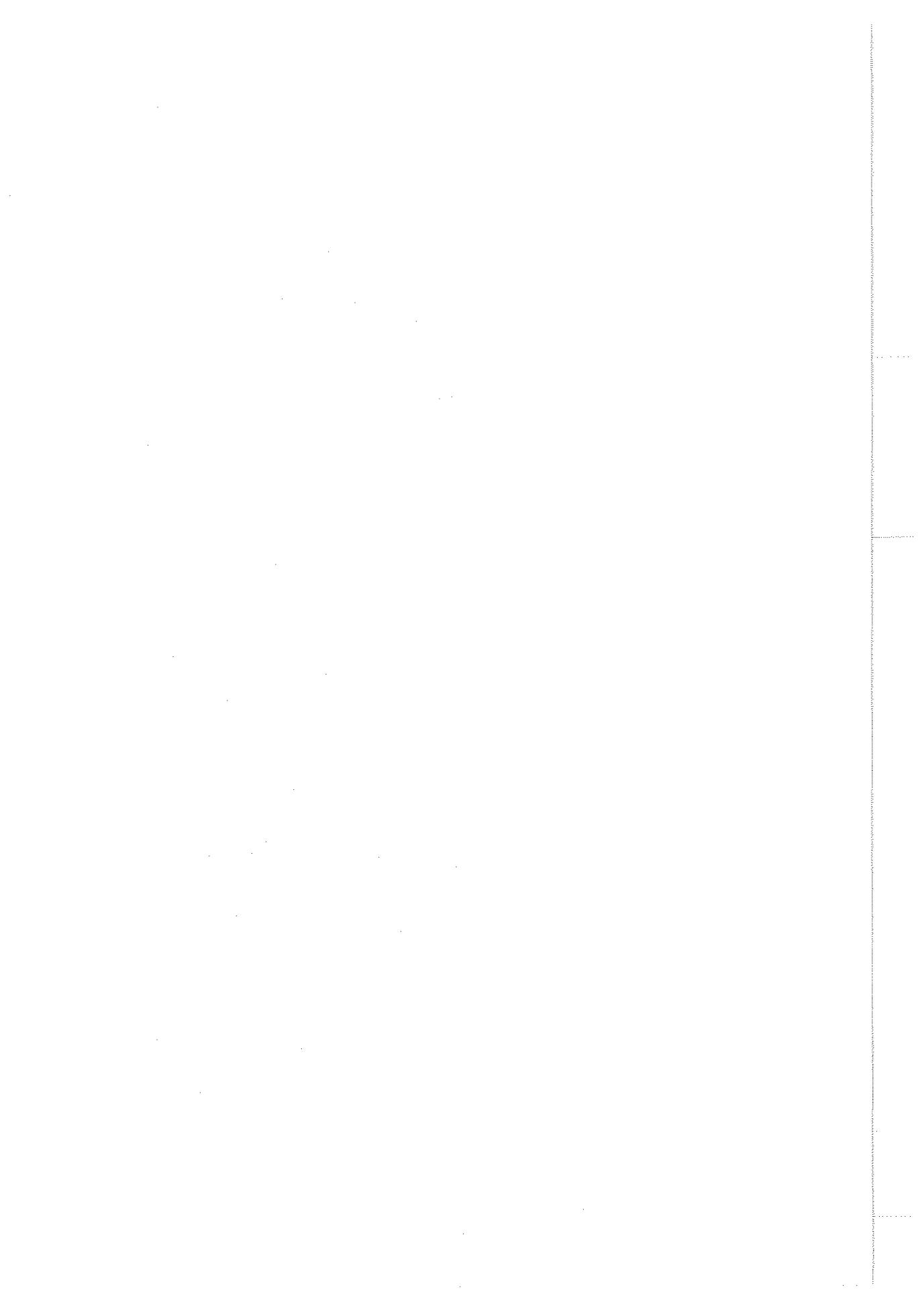
Clauses 1 and 2—by leave—taken together, and agreed to.

Clause 3 (Amount of fees).

Mr BLUNT (Richmond) (5.30)—I move:

Clause 3, page 1, line 12, proposed subsection 82AA(1), omit “1 March 1987”, substitute “28 October 1987”.

The Opposition’s amendment to clause 3 is to redress an injustice. The Government’s amendments to clause 4 are also to redress an injustice drawn to its attention by the Opposition, and I am pleased to see that the Government is moving on it. The Opposition’s amendment to clause 3 is to exempt those applicants for licences on the Gold Coast, Gosford, Shepparton and Geelong from the payment of licence fees. The Government has been in a state of total confusion over the way it would allocate new licences in this area. Before the Minister for Land Transport and Infrastructure Support (Mr Duncan) rises to plead that this is an economic good and a public good and that there is a need to extract some return from it, let me remind honourable members that it has been that sort of good for the entire period the Government has been in office. Suddenly, because someone sold a television licence in Perth, the Government decided something needed to be done about it. That is not good enough. The Government has been around for nearly five years. It does not say much for the mental capacity of the previous Ministers who have been responsible for this portfolio that it is only now that the Govern-



APPENDIX II

1985-86

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

REGISTRATION AND DECLARATION OF MEMBERS' INTERESTS

Requirements of the House of Representatives from 22 October 1986

Resolutions adopted by the House on 9 October 1984 a.m. as amended on 13 February 1986 and 22 October 1986

That the following resolutions relating to the registration and declaration of Members' interests be adopted, such resolutions to have effect from the commencement of the 34th Parliament and to continue in force unless and until amended or repealed by the House of Representatives in this or a subsequent Parliament:

(1) **Declaration of Members' interests**

That within 28 days of making and subscribing an oath or affirmation as a Member of the House of Representatives each Member shall provide to the Registrar of Members' Interests, a statement of—

- (1) the Member's registrable interests, and
- (2) the registrable interests of which the Member is aware (a) of the Member's spouse and (b) of any children who are wholly or mainly dependent on the Member for support,

in accordance with resolutions adopted by the House and in a form determined by the Committee of Members' Interests from time to time, and shall also notify any alteration of those interests to the Registrar within 28 days of that alteration occurring.

(2) **Registrable interests**

That the statement of a Member's registrable interests to be provided by a Member shall include the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and shall cover the following matters:

- (a) shareholdings in public and private companies (including holding companies) indicating the name of the company or companies;
- (b) family and business trusts and nominee companies—
 - (i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and
 - (ii) in which the Member, the Member's spouse, or a child who is wholly or mainly dependent on the Member for support, is a trustee (but not including a trustee of an estate where no beneficial interest is held by the Member, the Member's spouse or dependent children), indicating the name of the trust, the nature of its operation and the beneficiary of the trust;
- (c) real estate, including the location (suburb or area only) and the purpose for which it is owned;
- (d) registered directorships of companies;
- (e) partnerships indicating the nature of the interests and the activities of the partnership;
- (f) liabilities indicating the nature of the liability and the creditor concerned;
- (g) the nature of any bonds, debentures and like investments;

- (h) saving or investment accounts, indicating their nature and the name of the bank or other institutions concerned;
- (i) the nature of any other assets (excluding household and personal effects) each valued at over \$5,000;
- (j) the nature of any other substantial sources of income;
- (k) gifts valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources provided that a gift received by a Member, the Member's spouse or dependent children from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interest may be seen to exist;
- (l) any sponsored travel or hospitality received;
- (m) membership of any organisation, and
- (n) any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

(3) Register and Registrar of Members' Interests

That—

- (a) at the commencement of each Parliament, and at other times as necessary, Mr Speaker shall appoint an officer of the Department of the House of Representatives as the Registrar of Members' Interests and that officer shall also be clerk to the Committee of Members' Interests;
- (b) the Registrar of Members' Interests shall, in accordance with procedures determined by the Committee of Members' Interests, maintain a Register of Members' Interests in a form to be determined by that committee from time to time;
- (c) as soon as possible after the commencement of each Parliament the chairman of the Committee of Member's Interests shall table in the House a copy of the completed Register of Members' Interests and shall also table from time to time as required any notification by a Member of alteration of those interests, and
- (d) the Register of Members' Interests shall be available for inspection by any person under conditions to be laid down by the Committee of Members' Interests from time to time.

(4) Declaration of interest in debate and other proceedings

That, notwithstanding the lodgment by a Member of a statement of the Member's registrable interests and the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and the incorporation of that statement in a Register of Members' Interests, a Member shall declare any relevant interest—

- (a) at the beginning of his or her speech if the Member should participate in debate in the House, committee of the whole House, or a committee of the House (or of the House and the Senate), and
- (b) as soon as practicable after a division is called for in the House, committee of the whole House, or a committee of the House (or of the House and the Senate) if the Member proposes to vote in that division, and

the declaration shall be recorded and indexed in the *Votes and Proceedings* or minutes of proceedings (as applicable) and in any *Hansard* report of those proceedings or that division:

Provided that it shall not be necessary for a Member to declare an interest when directing a question seeking information in accordance with standing order 142 or 143.

Additional resolutions adopted by the House on 13 February 1986

That this House re-affirms the requirement for the registration and declaration of the interests of Members, their spouses and dependent children adopted by the House of Representatives on 9 October 1984 a.m.

That any Member of the House of Representatives who—

- (a) knowingly fails to provide a statement of registrable interests to the Registrar of Members' Interests by the due date,
- (b) knowingly fails to notify any alteration of those interests to the Registrar of Members' Interests within 28 days of the change occurring, or

(c) knowingly provides false or misleading information to the Registrar of Members' Interests,

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

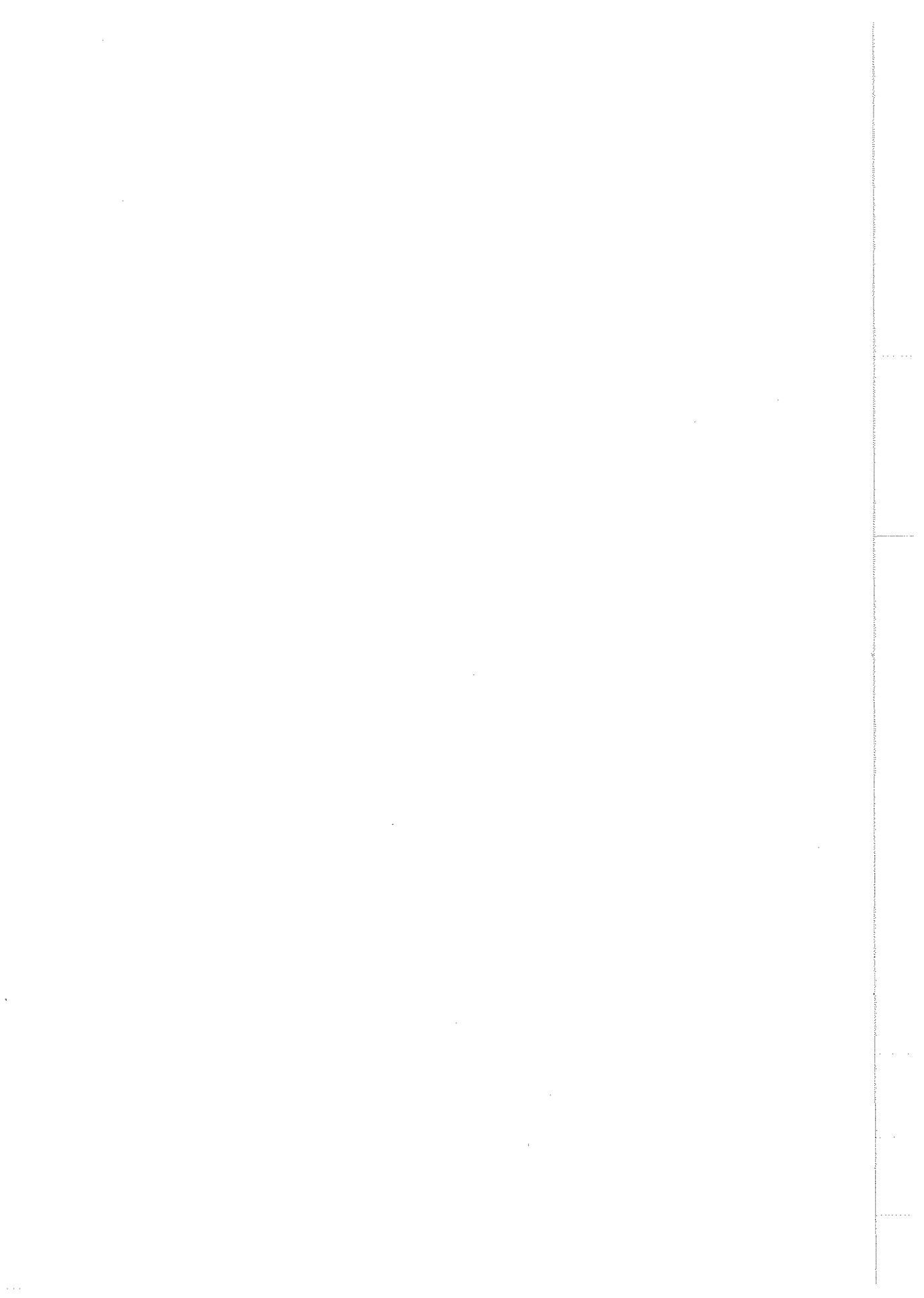
Note

The requirements set out above are those in force from 22 October 1986.

No reference has been made to—

(1) earlier registration requirements deleted on 13 February 1986, or 22 October 1986,
and

(2) resolutions of 21 March 1985 and 13 February 1986 which related to the lodgement of initial statements of interests by Members of the 34th Parliament.



HOUSE OF REPRESENTATIVES

COMMITTEE OF MEMBERS' INTERESTS

35th Parliament - 4th Meeting

Minutes of Proceedings of meeting held on
25 May 1988 at 3.45 p.m.

(1) Present:

Dr R.E. Klugman, MP (Chairman)
Hon. A.E. Adermann, MP
Mr D.M. Cameron, MP
Mr L. Kent, MP
Mr E.J. Lindsay, RFD, MP
Mr P.M. Ruddock, MP
Mr J.L. Scott, MP

(2) Minutes of Proceedings

The Minutes of Proceedings of the meeting
held on 17 February 1988 were confirmed.

(3) Tabling of notifications of alterations of
interests and statements of registrable interests

The Chairman informed the Committee of
his intention to table on 26 May 1988,
copies of notifications of alterations
of interests and statements of registrable
interests received during the period
10 December 1987 to 25 May 1988.

(4) Interpretation of aspects of the resolutions
of the House

The Committee deliberated in respect of
certain aspects of the resolutions of
the House for the registration and declaration
of Members' Interests.

Resolved - On the motion of Mr Scott -

- (1) That this Committee believes that the requirement for Members to notify relevant interests for the Register of Members' Interests is sufficient compliance with the intention of the House for the disclosure of Members' interests;
- (2) That the effective duplication of this requirement whereby Members are also required to make oral declaration of interests during proceedings in the House or committee is unnecessary and confusing, and
- (3) That the Clerk to the Committee should write to The Secretary, Attorney-General's Department to seek advice on amendments which should be made to the resolutions of the House to give effect to the Committee's view.

(5) Adjournment

At 4.33 pm the Committee adjourned until a date and hour to be determined by the Chairman.

Confirmed

CHAIRMAN

HOUSE OF REPRESENTATIVES

COMMITTEE OF MEMBERS' INTERESTS

35th Parliament - 5th Meeting

Minutes of Proceedings of meeting held on
27 September 1988 at 3.45 p.m.

(1) Present:

Dr R E Klugman, MP (Chairman)
Hon. A E Adermann, MP
Mr L Kent, MP
Mr E J Lindsay, RFD, MP
Mr P M Ruddock, MP
Mr J L Scott, MP

(2) Minutes of Proceedings

The Minutes of Proceedings of the meeting held on 25 May 1988 were confirmed.

(3) Advice from Attorney-General

The Chairman presented copies of

- a letter dated 3 June 1988 from the Clerk to the Committee to the Secretary, Attorney-General's Department, seeking advice in accordance with the resolution of the Committee of 25 May 1988; and
- a response on behalf of the Secretary, Attorney-General's Department, dated 9 June 1988.

(4) Requirement for oral declaration of interests

Mr Adermann moved - That a Draft Report to the House be prepared containing the Committee's view that

- the requirement for Members to notify relevant interests for the Register of Members' Interests is sufficient compliance with the intention of the House for the disclosure of Members' interests; and

the effective duplication of this requirement whereby Members are also required to make oral declarations of interests during proceedings in the House or committee is unnecessary and confusing.

The Committee deliberated.

Motion carried.

(5) Adjournment

At 4.33 p.m. the Committee adjourned until a date and hour to be determined by the Chairman.

Confirmed

CHAIRMAN

HOUSE OF REPRESENTATIVES

COMMITTEE OF MEMBERS' INTERESTS

35th Parliament - 6th Meeting

Minutes of Proceedings of meeting held on
9 November 1988 at 3.55 p.m.

(1) Present:

Dr R E Klugman, MP
Mr L Kent, MP
Mr E J Lindsay, RFD, MP
Mr P M Ruddock, MP
Mr J L Scott, MP

(2) Minutes of Proceedings

The Minutes of Proceedings of the meeting held on 27 September 1988 were confirmed.

(3) Requirement for oral declaration of interests

The Chairman brought up his draft report on the Need Oral Declarations of Interests by Members.

Report, by leave, taken as a whole, amended and agreed to.

Resolved - On the motion of Mr Scott -

That the draft report, as amended, be the report of the Committee to the House.

(4) Tabling of notifications of alterations of interests and a statement of registrable interests

The Chairman informed the Committee that it was his intention to table on Wednesday, 30 November or Thursday, 1 December 1988, copies of notifications of alterations of interests and any statement of registrable interests received on or after 26 May 1988.

(5) Adjournment

At 4.25 p.m. the Committee adjourned until a date and hour to be determined by the Chairman.

Confirmed

CHAIRMAN