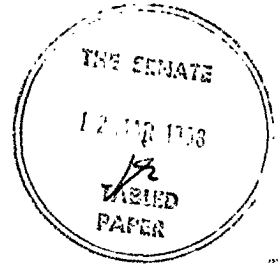


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THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF SENATORS' INTERESTS

Report 1/1998

ANNUAL REPORT — 1997

March 1998

**THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA**

THE SENATE

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COMMITTEE OF SENATORS' INTERESTS
Standing Order 22A

MEMBERS OF THE COMMITTEE — 38TH PARLIAMENT

Senator K Denman	(ALP)	TAS	Chair
Senator E Abetz	(LP)	TAS	Deputy Chair
Senator L Allison	(AD)	VIC	
Senator the Hon N Bolkus	(ALP)	SA	
Senator the Hon D Brownhill	(NPA)	NSW	
Senator the Hon Ian Macdonald	(LP)	QLD	
Senator S Mackay	(ALP)	TAS	
Senator the Hon N Sherry	(ALP)	TAS	

Committee Secretary:

Mr Peter O'Keeffe
Registrar of Senators' Interests
Department of the Senate
Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 3399
Fax: (02) 6277 3199

- 22A. (1) A Committee of Senators' Interests shall be appointed at the commencement of each Parliament:
- (a) to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a Register of Senators' Interests;
 - (b) to consider any proposals made by Senators and others as to the form and content of the Register;
 - (c) to consider any submissions made in relation to the registering or declaring of interests;
 - (d) to consider what classes of person, if any, other than Senators ought to be required to register and declare their interests; and
 - (e) to make recommendations upon these and any other matters which are relevant.
- (2) (a) The membership of the Committee shall as closely as possible reflect the composition of the Senate and, until modified by a subsequent resolution, shall consist of 8 Senators, 3 nominated by the Leader of the Government in the Senate, 4 nominated by the Leader of the Opposition in the Senate and 1 nominated by any minority groups or independent Senators.
- (b) The nominations of the minority groups or independent Senators shall be determined by agreement between the minority groups and independent Senators, and, in the absence of agreement duly notified to the President, the question of the representation on the Committee shall be determined by the Senate.
- (3) The Committee shall elect as its chair one of its members nominated by the Leader of the Opposition in the Senate.
- (4) The quorum of the Committee shall be 3 members.
- (5) The Chairman may from time to time appoint a member of the Committee to be Deputy Chairman, and the member so appointed shall act as Chairman of the Committee when there is no Chairman or the Chairman is not present at a meeting of the Committee.
- (6) Where votes on a question before the Committee are equally divided, the Chairman, or the Deputy Chairman when acting as Chairman, shall have a casting vote.

- (7) The Committee shall have power to send for persons or documents, but shall not exercise that power, nor undertake an investigation of the private interests of any person, except in accordance with a decision agreed to by not less than 3 members of the Committee other than the Chairman.
- (8) The Committee shall have power to confer with a similar committee of the House of Representatives.
- (9) The Committee shall, as soon as practicable after 31 December in each year, prepare and table in the Senate a report on its operations during that year, and shall also have power to report from time to time.

(Adopted 17 March 1994, amended 24 August 1994)

THE SENATE

REGISTRATION OF SENATORS' INTERESTS

Resolution of the Senate, adopted 17 March 1994, amended 21 June 1995

1. Registration of Senators' Interests

- (1) That, within 14 sitting days after the adoption of this resolution by the Senate and 28 days of making and subscribing an oath or affirmation of allegiance as a Senator, each Senator shall provide to the Registrar of Senators' Interests a statement of:
 - (a) the Senator's registrable interests; and
 - (b) the registrable interests of which the Senator is aware:
 - (i) of the Senator's spouse, and
 - (ii) of any children who are wholly or mainly dependent on the Senator for support;

in accordance with this resolution and in a form determined by the Committee of Senators' 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) That any Senator who:
 - (a) knowingly fails to provide a statement of registrable interests to the Registrar of Senators' Interests by the due date;
 - (b) knowingly fails to notify any alteration of those interests to the Registrar of Senators' Interests within 28 days of the change occurring; or
 - (c) knowingly provides false or misleading information to the Registrar of Senators' Interests;

shall be guilty of a serious contempt of the Senate and shall be dealt with by the Senate accordingly, but the question whether any senator has committed such a serious contempt shall first be referred to the Privileges Committee for inquiry and report and may not be considered by any other committee.

2. Registrable interests of spouses and dependants

That statements of the registrable interests of a Senator's spouse or of any dependent children submitted in accordance with paragraph (1) shall be maintained in a separate part of the Register and shall remain confidential to the Committee of Senators' Interests except where the Committee considers that a conflict of interest arises, at which time the Committee may table the declaration.

3. Registrable interests

That the statement of a Senator's registrable interests to be provided by a Senator shall include the registrable interests of which the Senator is aware of the Senator's spouse and of any children who are wholly or mainly dependent on the Senator 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 and the nature of its operation and beneficial interest, and
 - (ii) in which the Senator, the Senator's spouse, or a child who is wholly or mainly dependent on the Senator for support, is a trustee (but not including a trustee of an estate where no beneficial interest is held by the Senator, the Senator'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 more than \$5 000;

- (j) the nature of any other substantial sources of income;
- (k) gifts valued at more than \$500 received from official sources (such sources being an Australian or foreign national, State, provincial or local Government or a person holding an office in such a Government) or at more than \$200 where received from other than official sources, provided that a gift received by a Senator, the Senator's spouse or dependent children from family members or personal friends in a purely personal capacity need not be registered unless the Senator judges that an appearance of conflict of interest may be seen to exist;
- (l) any sponsored travel or hospitality received where the value of the sponsorship or hospitality exceeds \$200;
- (m) being an officeholder of or financial contributor donating over \$200 in any single calendar year to any organisation; and
- (n) any other interests where a conflict of interest with a Senator's public duties could foreseeably arise or be seen to arise.

4. Register and Registrar of Senators' Interests

That:

- (a) at the commencement of each Parliament, and at other times as necessary, the President shall appoint an officer of the Department of the Senate as the Registrar of Senators' Interests and that officer shall also be Secretary of the Committee of Senators' Interests;
- (b) the Registrar of Senators' Interests shall, in accordance with procedures determined by the Committee of Senators' Interests, maintain a Register of Senators' 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 Senators' Interests shall table in the Senate a copy of the completed Register of Senators' Interests and shall also table every six months any notification by a Senator of alteration of those interests;
- (d) the Register of Senators' Interests shall be available for inspection by any person under conditions to be laid down by the Committee of Senators' Interests from time to time; and
- (e) that part of the Register of Senators' Interests relating to spouses and dependent children shall remain confidential to the Committee of Senators' Interests as provided for in paragraph 2.

5. Declaration of interest in debate and other proceedings

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

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

and the declaration shall be recorded and indexed in the *Journals of the Senate* or minutes of proceedings of the committee and in any Hansard report of those proceedings or that division, but it shall not be necessary for a Senator to declare an interest when directing a question seeking information in accordance with standing order 72 or 74.

6. Interpretation

- (1) For the purposes of paragraphs 1 to 5 of this resolution "spouse" includes de facto spouse.
- (2) "De facto spouse" means a person who is living with another person of the opposite sex as the spouse of that other person on a *bona fide* domestic basis although not legally married to that other person.

REPORT

THE REGISTRATION OF SENATORS' INTERESTS

Introduction

- 1 Standing order 22A requires the Committee of Senators' Interests, as soon as practicable after 31 December each year, to prepare and table a report on its operations during the year. This report is the fourth annual report of the committee.
- 2 On 17 March 1994 the Senate adopted a resolution on the registration of senators' interests which requires that each senator provide a statement of registrable interests within 14 sitting days after the adoption of the resolution and within 28 days of making and subscribing an oath or affirmation of allegiance as a senator. The resolution also requires any alterations in those interests to be notified within 28 days of the alteration occurring. The statements of interests are to be kept on a Register of Senators' Interests.
- 3 The resolution provides that a senator's statement of registrable interests must accord with the resolution and must be in a form determined by the Committee of Senators' Interests. The resolution also provides that the Register of Senators' Interests shall be maintained by the Registrar of Senators' Interests in accordance with procedures determined by the committee and in a form determined by the committee, and that the register shall be available for inspection by any person under conditions laid down by the committee.
- 4 Also on 17 March 1994 the Senate adopted standing order 22A which established the Committee of Senators' Interests. The committee was given the responsibility of overseeing the registration requirements. The committee met twice in 1997, on 18 March and 19 June. Copies of the minutes of the meetings are appended as appendix 1.
- 5 The committee's terms of reference require it to report on a number of matters. The committee now reports on these matters as at 31 December 1997.

Arrangements for the compilation, maintenance and accessibility of the Register of Senators' Interests

- 6 The committee reported to the Senate on 9 June 1994 its determinations in relation to the form of senators' statements of interests, arrangements for the compilation and maintenance of the register and the conditions of access to the register and the Register continues to be maintained and accessed on this basis.
- 7 Since it was established in 1994 the committee has provided senators with some guidance on its approach to registration matters. A summary of this guidance is in appendix 2.

- 8 In its First Report (June 1994) the committee resolved that, to assist senators, the Registrar of Senators' Interests should write to each senator at least twice a year about the need to notify alterations. A sample of this correspondence is in addendum 3.
- 9 On 16 June 1997 the committee tabled the first of its regular six monthly Notifications of Alterations of Interests (7 December 1996 to 6 June 1997).
- 10 On 27 November 1997 the second of the regular six monthly Notifications of Alterations of Interests was tabled (7 June 1997 to 21 November 1997).
- 11 In the period from 1 January 1997 to 31 December 1997 there were 25 occasions when declarations of interests were made during the course of debate, or prior to a division, in the Senate.
- 12 There were 31 requests for access to the register and 46 pages of extracts were photocopied for those inspecting the Register.
- 13 During the year, the committee reissued its *Explanatory Notes* for senators making declarations (included as appendix 4). These contained one important change from earlier versions in that paragraph 1 clarified the position in relation to declarations of shareholdings.
- 14 The Senate resolution of 17 March 1994 requires a senator to declare his/her shareholdings. Where shares are held by a family or business trust in which the senator's (or spouse's or dependent child's) equitable interest entitles him/her to exercise control over share acquisitions and disposals, those actual trust shareholdings should also be declared.
- 15 Similar considerations apply to shares owned by a nominee company or partnership that is controlled by the senator (or spouse or dependent child).
- 16 There had previously been some misunderstanding that only the existence of the trust or company or partnership, rather than such shares held by them, need be declared.
- 17 On 20 March 1997, the chair made a statement to the Senate clarifying the obligation to declare such shares (a copy of the statement and advice to senators is at appendix 5).

Proposals by senators and others as to the form and content of the register
Submissions made in relation to the registering or declaring of interests

- 18 On 7 May 1997 there was an occasion when interests were orally declared prior to a division. After some debate about this the President agreed that the practice of making oral declarations during proceedings should be considered by the Procedure Committee.

- 19 The Procedure Committee sought the view of the Senators' Interests Committee on a possible change. The change would require oral declarations during proceedings only where the interest to be declared had not yet been included in a tabled copy of the Register or its periodic update.
- 20 At its meeting on 19 June 1997 the Senators' Interests Committee considered this matter and recommended that there should be no change to current obligations about making relevant declarations.
- 21 The paper at appendix 6 sets out the reasoning behind this decision, concentrating mainly on the committee's concern that high standards should be preserved in relation to declaring interests in order to better manage the risks and problems of conflicts of interest.
- 22 This recommendation was consistent with the committee's earlier opinion of March 1997 when, in response to a senator's query about the practice of oral declarations, the chair, on behalf of the committee, made a statement in the Senate about the practice (20 March 1997, see appendix 7).
- 23 In its Second Report of 1997 (November 1997) the Procedure Committee reported that, following consideration of the matter, the Procedure Committee had decided to make no recommendation about oral declarations but would keep the matter under review.

Registration of interests by other classes of persons

- 24 During the year under review, the committee made no recommendations about such registration, but continues to keep the question under review.

Other matters

25. On 26 August 1997, the Senate adopted new rules for the declaration by senators of gifts presented to them but actually intended or assumed to be for the Senate or the Parliament. The rules will apply to all senators but will mostly affect Senate office-holders and leaders of delegations travelling overseas.
26. The Senate resolution provides for the Registrar of Senators' Interests to record declarations in a public register in accordance with rules and procedures made by the committee. Appropriate forms, rules, procedures and explanatory notes are being finalised for circulation to senators.

(Kay Denman)
 Chair

March 1998

APPENDICIES

1	Minutes of meetings of the Committee of Senators' Interests, dated 18 March 1997 and 19 June 1997	5
2	A summary of committee guidance for senators making declarations	11
3	Letter (dated 10 November 1997) to all senators reminding them of the need to monitor and declare relevant alterations in their statements of interests	17
4	Explanatory Notes for making declarations of interest	18
5	Chair's statement to the Senate clarifying the obligation to declare shares held by entities under a senators' control; and summary advice on the matter (Parliamentary Debates, Vol. S. 183, 20 March 1997, page 1926)	25
6	Chair's letter and background paper to the Procedure Committee on the practice of making relevant oral declarations of interest during proceedings	29
7	Chair's statement to the Senate about the practice of making relevant oral declarations of interest during proceedings (Parliamentary Debates, Vol. S. 183, 20 March 1997, page 1925)	33

MINUTES OF PROCEEDINGS 1997/1

TUESDAY 18 MARCH 1997

1. MEETING

The committee met in private session at 5.00pm in Committee Room 1S6.

2. ATTENDANCE

Senator K Denman (Chair)
Senator E Abetz
Senator the Hon D Brownhill
Senator S Mackay
Senator the Hon N Sherry

3. APOLOGIES

Senator L Allison
Senator the Hon N Bolkus
Senator I Macdonald

4. MINUTES OF LAST MEETING ON 25 JUNE 1996

Senator Abetz moved and the committee agreed that the Minutes of the last meeting be confirmed.

5. BUSINESS ARISING

There was no business arising.

6. SENATOR SHORT'S QUERIES ABOUT THE REGISTER

The committee considered the written advice circulated by the Secretary.

Senator Mackay moved and the committee agreed that the chair write to Senator Short in terms of the draft letter circulated to the committee and report its views to the Senate.

7. HOUSE OF REPRESENTATIVES — LEGAL ADVICE ON DECLARATION OF SHAREHOLDINGS HELD BY FAMILY TRUSTS ETC

The committee considered the legal advices received from the House of Representatives Committee of Members' Interest on when actual shares held by family or business trusts, nominee companies or partnerships should be declared.

The committee also considered the suggested change to the Explanatory Notes to make explicit the obligation to declare actual trust etc share holdings where a senator, spouse or child, or two or more of them controlled the voting rights or disposal of such shares.

Senator Abetz moved and the committee agreed to so amend the Explanatory Notes and report the change to the Senate and senators.

8. COST-SHARING ARRANGEMENTS WITH THE HOUSE OF REPRESENTATIVES COMMITTEE OF MEMBERS' INTERESTS FOR OBTAINING LEGAL ADVICE

The committee considered a proposal to share the costs of obtaining any legal advice that would be useful to both committees.

Senator Mackay moved and the committee agreed in principle to such cost-sharing provided the committee had an opportunity to decide that the advice sought was useful and necessary.

9. DRAFT ANNUAL REPORT OF 1996

The committee considered the draft annual report for 1996.

Senator Abetz moved and the committee agreed to adopt the Report without amendment and table it in the Senate on 20 March 1997.

10. OTHER BUSINESS

There was no other business. §

11. NEXT MEETING

Date and time to be determined by the Chair.

12. ADJOURNMENT

The committee adjourned at 5.35pm.

Confirmed:

Kay Denman
Chair

MINUTES OF PROCEEDINGS 1997/2

THURSDAY 19 JUNE 1997

1. MEETING

The committee met in private session at 5.00pm in Committee Room 1S5.

2. ATTENDANCE

Senator K Denman (Chair)
Senator E Abetz
Senator L Allison
Senator the Hon D Brownhill
Senator the Hon N Bolkus
Senator the Hon I Macdonald
Senator S Mackay
Senator the Hon N Sherry

3. APOLOGIES

All members were present.

4. MINUTES OF LAST MEETING ON 18 MARCH 1997

Senator Sherry moved, and the committee agreed, that the minutes of the last meeting be confirmed.

5. BUSINESS ARISING

There was no business arising.

6. LETTER TO THE COMMITTEE FROM THE CHAIR OF THE PROCEDURE COMMITTEE

The committee considered the letter of 28 May 1997 from Senator West, Chair of the Procedure Committee.

The letter requested the committee to consider whether the Senate should amend the interests resolution to require senators to declare relevant interests during debates and divisions only where those interests have altered since the Register or its six monthly update was last tabled.

Senator I Macdonald moved: That the committee agrees that the interests resolution should be amended as suggested by the Procedure Committee

The committee divided:

Ayes	Noes
Senator Abetz	Senator Denman
Senator Brownhill	Senator Allison
Senator I Macdonald	Senator Bolkus
	Senator Mackay
	Senator Sherry

The question was resolved in the negative.

Senator Sherry moved: That the committee reaffirms its view, as stated by the chair to the Senate on 20 March 1997, that the Senate should not amend the interests resolution and should continue to require senators to declare relevant interests during debates and divisions.

The committee divided:

Ayes	Noes
Senator Denman	Senator Abetz
Senator Allison	Senator Brownhill
Senator Bolkus	Senator I Macdonald
Senator Mackay	
Senator Sherry	

The question was resolved in the affirmative.

Senator Brownhill asked that the minutes record his regret that the committee needed to divide on the issue.

Senator Ian Macdonald foreshadowed that he would move a further motion.

And the bells ringing —

The committee agreed to adjourn and reconvene next week to continue its consideration of the issue.

7. NEXT MEETING

Date and time to be determined by the Chair for next week.

8. ADJOURNMENT

The committee adjourned at 5.40pm.

Confirmed:

Kay Denman
Chair

**SOME GUIDANCE FOR SENATORS FROM THE
REPORTS OF THE COMMITTEE OF SENATORS' INTERESTS**

FIRST REPORT, JUNE 1994

Page 2

The committee advises that while it may, from time to time, provide guidance on the interpretation of particular matters set out in the resolution, final decisions on the appropriate interpretation of the resolution must be the responsibility of individual senators.

Appendix 2, Page 1

If a senator does not have a spouse or dependent children, Form B does not need to be completed or lodged.

Appendix 2, Page 2

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

The committee's views are for the guidance of senators. In the end, each senator must make his or her own decision as to interests which fall within the terms of the resolution.

Only the senator concerned, the committee and the Registrar of Senators' Interests will have access to the individual files for each senator.

Notification of alterations of interests declared on Form A will become public from the date of receipt.

The responsibility for notifying alterations to a statement of interests is, under the terms of the Senate's resolution, that of each senator. To assist senators, the Registrar of Senators' Interests will, at least twice a year, issue a reminder notice.

Appendix 2, Page 2-3

A new statement must be provided by senators who have been re-elected, and by all senators after a double dissolution. The new statement should include details of benefits received since the last notification of alterations of interests, and interests as at the date of making and subscribing an oath or affirmation of allegiance.

Appendix 2, Page 3

New senators should declare any benefits received which fall within the terms of the Senate's resolution from the date of their election or choice as a senator, and other interests from the date of making and subscribing an oath or affirmation of allegiance.

A senator's statement of interests will be removed from the register from the date that the senator ceases to be a senator. The public will, however, continue to have access to statements of past senators which have been tabled in the Senate through the Table Office.

Appendix 4, Minutes 1994/1, Page 3

It is not part of the role of the Registrar to advise senators on the interests to be registered. The intent of the Senate is to place on senators the responsibility to interpret the resolution and to determine which of their interests fall within its terms.

Minutes 1994/2, Page 2

Senators appointed to casual vacancies, and other new senators or senators-elect, are to be advised at the first available opportunity of their obligations under the resolution of the Senate.

In the case of a senator whose term continues in a new Parliament, the resolution of the Senate requires that the senator's statement of interests as at the date of the new Parliament should again be tabled. The senator is not obliged to submit a new statement of interests.

Newly-elected senators are to register any benefits received from the date of their election, and other interests from the date of making and subscribing an oath or affirmation of allegiance.

A copy of a statement of senator's interests must be collected in person or sent by post. The committee does not permit the Registrar to fax copies.

REPORT 1/1995, MARCH 1995

Page 2

The committee determined that notifications of alterations of interests would be tabled each year towards the end of the winter and summer sittings.

A photocopy of a senator's statement would be supplied if requested, but in all cases the photocopy would be of the senator's complete statement and not an extract. A photocopy of a statement would also be supplied in response to a written request. Details from the register would not be provided over the phone.

Page 3

In respect of the interpretation of the resolution the committee draws to the attention of senators that while it may provide guidance from time to time on the interpretation of particular provisions, in the final analysis decisions on an appropriate interpretation must remain the responsibility of individual senators.

Page 1

Travel or hospitality benefits received by a senator from an organisation or group which has invited the senator to speak at a gathering such as a function or a seminar, and for which travel or hospitality is necessary in order to fulfil the engagement, are registrable interests and should be declared in accordance with subparagraph 3(1) of the Senate's resolution.

Page 2

Being an officeholder of an organisation under subparagraph 3(m) does not include being a patron of an organisation.

A donation in excess of the threshold set by the resolution needs to be reported in respect of any organisation, regardless of whether the senator, a spouse or dependent children, are members.

A donation to an organisation under subparagraph 3(m) does not include membership subscriptions.

If a senator does not have a spouse or dependent children, that senator is not required to lodge a signed copy of Form B. The senator is not required to lodge a 'nil return'.

The names of a senator's spouse and dependent children need not be disclosed.

Joint interests with a former spouse which continue to be held, need be disclosed only on Form A, relating to a senator's interests. The interest could be declared as a joint interest, or half-share, or other appropriate description.

Page 4

It is necessary to notify additional travel undertaken by a senator, a senator's spouse or dependent children utilising frequent flyer points accrued from official travel.

Additional travel undertaken by a spouse or dependent children utilising a senator's frequent flyer points or points earned directly from entitlements granted by the Remuneration Tribunal to spouses and dependent children, need to be registered by the senator on Form A of the Register of Senators' Interests.

Senators should register each benefit received under a frequent flyer scheme within the 28 days required by the Senate resolution for the registration of interests and the notification of alterations of those interests.

Page 2

Travel resulting from the use of frequent flyer points constitutes sponsored travel and therefore should be registered.

Additional travel undertaken by a spouse or dependent children utilising a senator's frequent flyer points would need to be declared by the senator.

Minutes 1995/2, page 2

The following requirements apply to benefits received from frequent flyer schemes:

- a) it is necessary to notify additional travel undertaken by a senator, a senator's spouse or dependent children utilising frequent flyer points accrued from official travel by the senator;
- b) frequent flyer benefits received by a spouse or dependent children utilising a senator's frequent flyer points or points earned directly from entitlements granted by the Remuneration Tribunal to spouses and dependent children are to be registered by the senator on Form A of the Register of Senators' Interests; and
- c) additional travel undertaken utilising frequent flyer points accrued from official travel is to be registered within 28 days after each particular flight.

INFORMATION ABOUT THE REGISTER OF SENATORS' INTERESTS
FROM REPORTS OF THE COMMITTEE OF SENATORS' INTERESTS

10 November 1997
999

ALL SENATORS

Dear Senator

DECLARATIONS OF ALTERATIONS TO SENATORS' INTERESTS

In its First Report (June 1994), the Committee of Senators' Interests arranged for the Registrar of Senators' Interest to issue a twice yearly reminder notice to senators about the need to monitor and declare relevant alterations in their statements of interests.

I am, therefore, writing to remind you of the Senate resolution of 17 March 1994 that senators must notify alterations to their interests within 28 days of the alteration occurring.

Alterations should be recorded on Form A and/or Form B (for spouses and dependant children).

May I draw your particular attention to the paragraph in the committee's Explanatory Notes which states:

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

On 27 November 1997, and pursuant to the Senate resolution, it is proposed to table the second of the twice-yearly Registers of Alterations to Senators' Interests containing changes notified by senators between 7 June 1997 and 21 November 1997.

Please let me know if I can assist you in relation to the Register. Any matters raised with me would be on a confidential basis.

Yours sincerely

Peter O'Keeffe
Clerk Assistant (Corporate Management)
Registrar of Senators' Interests

(06) 277 3399
Fax: (06) 277 3199

First Report, June 1994

The Conditions of Public Access for the Register are as follows:

- (1) Public access to the register is by appointment, generally between the hours of 10.00 am and 12.00 noon and 2.00 pm and 4.00 pm, Monday to Friday (public holidays excepted). Access is to be supervised.
- (2) Access is to the whole register.
- (3) Inquirers can make notes. A photocopy of a Senator's statement may be supplied if requested. In all cases, a photocopy will be supplied only of a Senator's complete statement, and not extracts. A copy of a statement must be collected in person or can be sent by post in response to a written request.

Note: If the amount of photocopying involved becomes excessive, the committee reserves the right to levy a charge for the provision of photocopies.

- (4) The following access records will be maintained: name of inquirer (and organisation, if relevant), date and time of inspection, and total number of pages photocopied.
- (5) Details from the register (eg advice as to whether a particular Senator has or has not declared a particular interest or notified a particular alteration) will not be provided over the telephone.

Notifications of alterations of interests declared in Form A will become public from the date of receipt.

Notifications of alterations of interests declared on Form A will be tabled at least every six months (towards the end of the winter and summer sittings — Report 1/1995, March 1995).

Access to the Register available for public inspection will continue during and after an election until such time as a new register is tabled.

A Senator's statement of interests will be removed from the register from the date that the Senator ceases to be a Senator. The public will, however, continue to have access to statements of past Senators which have been tabled in the Senate through the Table Office.

A copy of a statement of a Senator's interests must be collected in person or sent by post, and the committee would not permit the registrar to fax copies.



1997

THE SENATE

Register of Senators' Interests

EXPLANATORY NOTES

for

Statement

of

Registrable Interests

STATEMENT OF REGISTRABLE INTERESTS EXPLANATORY NOTES

General

The purpose of the Statement of Registrable Interests form is to place on the public record Senators' interests which may conflict, or may be seen to conflict, with their public duty. Matters which Senators are required to register are set out in a resolution of the Senate of 17 March 1994, as amended on 21 June 1995.

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

The Register of Senators' Interests is kept in two parts. The registrable interests of a Senator are declared on Form A, and comprise that part of the Register available for public inspection. The registrable interests, of which the Senator is aware, of a Senator's spouse or dependent children, are declared on Form B, and comprise that part of the Register which is **NOT** available for public inspection and which shall remain confidential to the Committee of Senators' Interests unless the committee considers that a conflict of interest arises, at which time the committee may table the declaration.

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

For the purposes of the registration requirements 'dependent children' means dependent children under 16 years of age or dependent full-time students under 25 years of age. 'De facto' spouse means a person who is living with another person of the opposite sex as the spouse of that other person on a *bona fide* domestic basis although not legally married to that other person (paragraph 6(2), Senate resolution, 17 March 1994).

When interests are held jointly with a spouse, former spouse, or dependent children the interests need be included only as interests of the Senator with an appropriate notation such as 'jointly owned with (former) spouse'.

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

Note that any alteration to a Senator's registrable interests **MUST** be notified to the Registrar of Senators' Interests within 28 days of the change occurring (paragraph 1(2)(b)).

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

- Notify any relevant interest in any shares (as defined in the *Companies Act 1981*) including equitable as well as legal interests, whether held directly or indirectly, which enables a Senator, the Senator's spouse or dependent children to exercise control over the right to vote or dispose of those shares.
- This includes shares held by a family or business trust, a nominee company or a partnership where a Senator, the Senator's spouse or dependent children (or two or more of the Senator, the Senator's spouse, or a dependent child or dependent children acting together) are able to exercise control over the right to vote or dispose of those shares.
- The committee has determined that it is not necessary to notify shareholdings held as an executor or trustee of a deceased estate where the Senator, the Senator's spouse or dependent children are not beneficiaries of that estate.
- Where interests are held in a private holding company (i.e. a proprietary company formed for the purpose of investing in subsidiary companies) all such subsidiary companies, and any subsidiary companies held by those subsidiary companies, should be named.
- Where shareholdings held amount to a controlling interest in a company it is necessary to register any shareholdings held by that company in another company or other companies.

2. Family and business trusts and nominee companies:

- in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and**
 - in which the Senator, the Senator's spouse, or a child who is wholly or mainly dependent on the Senator for support, is a trustee (but not including a trustee of an estate where no beneficial interest is held by the Senator, the Senator's spouse or dependent children), indicating the name of the trust, the nature of its operation and the beneficiary of the trust.**
- Note that both beneficial interests and trustee responsibilities (except as trustee of a deceased estate where neither the Senator, the Senator's spouse nor dependent children are beneficiaries of the estate) should be specified.

- In respect of shareholdings held by a family or business trust or nominee company, see the note under '1. Shareholdings,' etc.

3. Real estate, including the location (suburb or area only) and the purpose for which it is owned.

- 'Location'—There is no need to specify street address—general location (e.g. suburb or area, and State or Territory) is adequate.
- 'Purpose for which owned'—Specify whether property is used as a residence, as a holiday home, as a farm, or is held for investment or other business purposes.
- It is not necessary to notify legal title to real estate held as an executor or trustee of a deceased estate where the Senator, the Senator's spouse or dependent children are not beneficiaries of that estate.

4. Registered directorships of companies.

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

5. Partnerships indicating the nature of the interests and the activities of the partnership.

- Under 'nature of the interests' specify level of current involvement in partnership (e.g. 'financial (sleeping partner)', 'consultant').
- Specify the purpose or operations of the partnership (e.g. investment, consultancy).

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

- Include all liabilities in excess of \$5 000 (e.g. mortgages, hire-purchase and lease arrangements, personal loans, overdrafts and contingent liabilities).
- Liabilities incurred on a department store account need not be disclosed.
- Liabilities incurred on a credit card need not be disclosed unless the credit card has been used to obtain a cash advance in excess of \$5000 and the advance is outstanding for a period in excess of 60 days.
- Include trading accounts of a nature which might be sensitive to implications of conflict of interest.

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

- 'Investments' means all investments, including placement of moneys, which attract interest or other benefits.

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

- Ordinary, non-interest-bearing cheque accounts should not be included, but savings accounts and investment accounts of the Senator, the Senator's spouse and dependent children should be included.

9. The nature of any other assets (excluding household and personal effects) each valued at more than \$5000.

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

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

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

- Note that no minimum income is specified as notifiable and Senators will need to use their discretion in this regard. As a general rule of thumb, income of less than \$5 000 per annum need not be notified unless, in the judgment of the Senator, it might be sensitive to implications of conflict of interest.

11. Gifts valued at more than \$500 received from official sources (such sources being an Australian or foreign national, State, provincial or local Government or a person holding an office in such a Government), or at \$200 or more where received from other than official sources, provided that a gift received by a Senator, the Senator's spouse or dependent children from family members or personal friends in a purely personal capacity need not be registered unless the Senator judges that an appearance of conflict of interest may be seen to exist.

- Note that gifts received by Senators and their families from family members or personal friends in a purely personal capacity need not be disclosed unless the Senator judges an appearance of a conflict of interest may be seen to exist.
- Senators, when first elected, should include any relevant gifts received from the date of their election. Senators re-elected should include any relevant gifts not previously notified to the Registrar.

12. Any sponsored travel or hospitality received where the value of the sponsorship or hospitality exceeds \$200.

- 'Sponsored travel' means any free, upgraded or concessional travel undertaken by the Senator, the Senator's spouse or dependent children sponsored wholly or partly by any person, organisation, business or interest group or foreign government or its representative. It does not include concessional travel entitlements generally available to the public. Nor does it include the travel entitlements received by a Senator, the Senator's spouse or dependent children under any determination of the Remuneration Tribunal or travel undertaken as a member of an official parliamentary delegation. The purpose for which the travel was undertaken should be shown.
- Benefits from frequent flyer points accrued from official travel should be notified. Frequent flyer benefits received by a spouse or dependent child from any official travel should be declared by the Senator on Form A.

- 'Hospitality' refers to free or concessional accommodation provided to the Senator, the Senator's spouse or dependent children wholly or partly by any person, organisation, business or interest group or foreign government or its representative. It includes the provision of free or concessional meals provided as part of an accommodation arrangement but does not include hospitality provided in a purely social way by friends or colleagues. There is no need to include entertainment received in common with significant numbers of other Senators or other persons, such as a reception or dinner hosted by a High Commissioner or Ambassador.
- In all cases in deciding whether travel or hospitality should be included in a return, a Senator should exercise his or her judgment having regard to any appearance of conflict of interest that may arise.
- Senators, when first elected, should include any relevant sponsored travel or hospitality received from the date of their election. Senators re-elected should include any relevant sponsored travel or hospitality not previously notified to the Registrar.

13 Being an officeholder of, or financial contributor donating \$200 or more in any single calendar year to, any organisation.

- Membership of organisations should be disclosed where the Senator, the Senator's spouse or a dependent child is an officeholder (excluding being a patron).
- The names of any organisations to which the Senator, the Senator's spouse or a dependent child contributes \$200 or more in any single calendar year (excluding membership subscriptions) should also be listed.

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

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

Last issued June 1995. Amended March 1997.

This document was produced from camera-ready copy prepared by the Committee of Senators' Interests, and printed by the Senate Printing Unit, Parliament House, Canberra.

The essential purpose of the Register, and the procedures for oral declarations during Senate and committee proceedings, is to enable the Senate and the public to be aware of private interests that senators and, so far as their interests are known, their spouses and dependent children have which might conflict with their official responsibilities, so that those interests can be properly taken into account by all concerned each time a potential conflict might arise.

In general terms, the Committee considers that where a senator (including a spouse or child) has a financial or other real, personal, interest in a company, body, activity or place, and that interest or that company, body, activity or place could reasonably be advantaged by the outcome of a debate, division or committee inquiry, the senator should declare that interest in debate, prior to the division, or during the committee's proceedings, if the senator participates or votes.

Where a senator holds financial interests in a company it would be expected that a responsible senator would know of, or seek to find out, the activities of that company and be in a position to declare an interest in proceedings that might reasonably affect that company's activities to the senator's advantage.

The Senate's procedures ensure that on each occasion of debate, voting or committee participation senators declare the fact that they have a private interest which might be advantaged by a Senate process in which they take part. That fact can then be taken into account by all concerned.

The interest does not, of course, necessarily preclude the senator from participating—though on some rare occasions it might, in the senator's judgement, require his or her abstention.

In any event, the declaration of the interest in the midst of debate, while not removing the possibility of conflict, protects a senator from any insinuation that they have not been open about the position they are in and from which they enter the debate or the vote. Under the Senate resolution it is a serious contempt to fail to disclose a relevant interest; it is not a contempt simply to have such an interest.

At the time of passing the resolution (17 March 1994) it was clearly the Senate's intention that senators should orally declare relevant interests on every relevant occasion. Most relevant interests can be clearly identified by senators and understood by the community from the terms of the Senate resolution and the Explanatory Notes. On the margins, identification of a relevant interest that should be declared is a matter for the senator concerned. In the past, the committee has stressed the personal responsibility of individual senators in

this regard. In its First Report (June 1994) the Committee stated:

"... the Committee advises that while it may, from time to time, provide guidance on the interpretation of particular matters set out in the resolution, final decisions on the appropriate interpretation of the resolution must be the responsibility of individual Senators."

In the same vein, the Explanatory Note accompanying declaration forms states:

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

The Committee takes the view that appropriate oral declarations should continue to be made in the Senate and in committees, as provided by the resolution. The committee also considers that, apart from the plain words of the resolution itself, the Explanatory Notes and any special guidance given in Committee reports, the question of the relevance of an interest is a matter for the senator's individual responsibility. Senators should err on the side of caution and make declarations if they wish to preserve "the purpose and spirit" of the procedure.

At the end of the day, senators must, at all times, be alive to the potential for conflict of interest between their private interests and their official responsibilities. When this potential manifests itself, the Senate and the public are entitled to be reminded of the senator's personal interests when that senator participates in Senate proceedings.

I hope this is helpful to you. The matter you have raised is important and I propose to table in the Senate a copy of this letter for the information of all senators.

Yours sincerely
KAY DENMAN
Chair

Senator DENMAN—The committee also considered whether the explanatory notes used by senators in making declarations should be amended in relation to shareholdings. This would clarify the requirements about declaring actual shareholdings held by family and business trusts, partnerships or nominee companies; thus, where a senator alone or with their family can exercise control over the voting rights or disposal of shareholdings, the actual shareholdings should be declared.

The committee has decided to amend the explanatory notes to remove the possibility of any misunderstandings about this. The House of Representatives has also decided to do this.

I seek leave to both table and incorporate in *Hansard* a brief background paper on this matter.

Leave granted.

The background paper read as follows—

Notification of shareholdings held by family or business trusts, nominee companies or partnerships controlled by a senator and/or their spouse and/or a dependent child, or a majority of these three

Where a senator, spouse or dependent child is a trustee of a family or business trust holding shares he/she has a legal interest in the shares and is (usually) entitled to exercise control over them.

Where a senator, spouse or dependent child is a beneficiary of the trust, he/she has an equitable interest in the shares and is often entitled to exercise control over them.

Similarly, a nominee company or partnership which holds shares is controlled by a senator, spouse or dependent child if one or more of them owns the company or controls the partnership.

Control means power to exercise voting rights attached to the shares or power to dispose of the shares.

Where the senator and/or their spouse and/or their dependent child (or a majority of the three) can exercise such control, the actual shareholdings held by the trust, nominee company or partnership should be declared.

By implication, the Senate resolution of 17 March 1994 currently requires a declaration of such actual shareholdings rather than merely a declaration of the name, activity and beneficiary of the trust, nominee company or partnership.

This obligation is to be made explicit by an amendment to the Explanatory Notes stating what actual shares are to be declared:

Shareholdings in public and private companies etc: This includes shares held by a family or business trust, a nominee company or a partnership where a senator, the senator's spouse or dependent children (or two or more of the senator, the senator's spouse, or a dependent child or dependent children acting together) are able to exercise control over the right to vote or dispose of those shares.

Selection of Bills Committee

Report

Senator CALVERT (Tasmania)—I present the fifth report of 1997 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator CALVERT—I seek leave to incorporate the report in *Hansard*.

Leave granted.

The report read as follows—

1. The Committee met on 19 March 1997.
2. The Committee resolved—That the following bills *not* be referred to committees:
 - Australian Animal Health Council (Live-stock Industries) Funding Amendment Bill 1997
 - Aviation Legislation Amendment Bill (No. 1) 1997
 - Dairy Produce Levy (No. 1) Amendment Bill 1997
 - Defence Cooperation Control Amendment Bill 1997
 - Excise Tariff Amendment Bill (No. 1) 1997.

The Committee recommends accordingly.

ORDER OF BUSINESS

Government Business

Motion (by Senator Campbell) agreed to:

That the following government business orders of the day be considered from 12.45 p.m. till not later than 2.00 p.m. today:

- No. 5— Corporations Law Amendment Bill 1996
- No. 6— Customs Amendment Bill (No. 2) 1996
- No. 7— Law and Justice Legislation Amendment Bill 1996
- No. 8— Financial Transaction Reports Amendment Bill 1996
- No. 3— Retirement Savings Accounts Bill 1997 and two related bills—second reading
- No. 4— Customs and Excise Legislation Amendment Bill (No. 2) 1996 (No. 2)—second reading.

Genetically Engineered Food

Motion (by Senator Neal) agreed to:

That general business notice of motion No. 508 standing in the name of Senator Neal for today, relating to genetically-engineered foods, be postponed till Tuesday, 25 March 1997.

Wetlands

Motion (by Senator Margetts) agreed to:

That general business notice of motion No. 509 standing in the name of Senator Margetts for today, relating to Ramsar-listed wetlands, be postponed till the next day of sitting.



AUSTRALIAN SENATE

CANBERRA, A.C.T.

REGISTRY OF SENATORS' INTERESTS

20 March 1997
527

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600
TEL: (06) 277 3399
FAX: (06) 277 3199

ALL SENATORS

DECLARING SHARES HELD BY FAMILY OR BUSINESS TRUSTS ETC

Dear Senator

The Committee of Senators' Interests has amended the Explanatory Notes used by senators in making declarations of interests. The change relates to the declaration of shares held by trusts and other entities.

Where shares are held by a family or business trust, a nominee company or a partnership and a senator, the senator's spouse or the senator's dependent child (or two or more of the senator, the spouse or the child or children, acting together) can exercise control over the voting rights of the shares or over the disposal of the shares, the actual shareholdings of the trust, company or partnership should be declared.

Where there is such control, it would not be sufficient to declare only the name, activity and beneficiary of the trust, company or partnership.

On 20 March 1997, a statement was made in the Senate on behalf of the Committee explaining this matter (see Senate Hansard, 20 March 1997, Senator Denman).

The matter having been clarified in this way, on this date, senators whose current declarations may be affected by the clarification should notify actual shares held by relevant family or business trusts, nominee companies or partnerships as at 20 March 1997. Such notifications should be made within 28 days ie on or before 17 April 1997. Subsequent acquisitions of shares by such trusts, companies or partnerships should be notified within 28 days of acquisition. Disposal of such shares should be notified within 28 days of such disposal.

Please do not hesitate to contact me if I can assist you further in relation to this. Any assistance would, of course, be on a confidential basis.

Yours sincerely

Peter O'Keefe
Registrar of Senators' Interests

(06) 277 3399
Fax: (06) 277 3199



THE SENATE
CANBERRA ACT 2600

Dear Senator

Declarations of Senators' Interests — Explanatory Notes, March 1997

The following may assist in relation to your recent query about my memo of 20 March.

The March 1997 Explanatory Notes reflect the decision of the Committee of Senators' Interests, reported to the Senate on 20 March 1997, that it be made explicit that the shareholdings of certain types of trusts, companies and partnerships should be declared.

The requirement now is as follows:

- (a) where family or business trusts, nominee companies or partnerships,
- (b) hold shares,
- (c) in public or private companies, and
- (d) a senator, or their spouse or their **dependent** child or children, or
- (e) two or more of the senator, the spouse or the dependent child or children acting together, .
- (f) control the right to vote or dispose of those shares,
- (g) the actual shares held by the trust, company or partnership, should be declared by the senator.
- (h) Paragraph (f) includes control over some other entity (eg a company) which itself has control over the right to vote or dispose of the shares held by the trust, company or partnership.

Please let me know if I can further assist you on this.

Peter O'Keeffe
Clerk Assistant (Corporate Management)

(06) 277 3399
Fax: (06) 277 3199



AUSTRALIAN SENATE
CANBERRA, A.C.T.

COMMITTEE OF SENATORS' INTERESTS

3 September 1997
844

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600
TEL: (06) 277 3399
FAX: (06) 277 3199

Senator Sue West
Chair
Senate Procedure Committee
Parliament House
CANBERRA ACT 2600

Dear Senator West

I refer to your letter of 28 May 1997. You sought the committee's views on whether the order for declaration of interests should be changed so that, if a conflict of interest had been declared in the Register, it would not need to be declared again during debates, divisions and committee proceedings.

The committee considered this matter at its meeting on 19 June 1997 and resolved again, as it had done on 18 March 1997, that there should be no change to current obligations about making relevant declarations.

For your committee's information I attach a background paper in relation to the matter which explains the committee's decision.

Yours sincerely

KAY DENMAN
Chair



THE SENATE

CANBERRA ACT 2600

**WHY DECLARATIONS OF INTERESTS DURING DEBATE
AND PRIOR TO DIVISIONS SHOULD CONTINUE**

1. Existing obligation to declare

The Senate resolution about oral declarations dates from 17 March 1994. There is, however, a pre-existing and long established practice whereby senators declared relevant interests during debate and these were recorded in the Journals. Thus, the 1994 resolution formalised an existing practice.

2. Avoiding conflicts of interest is a serious obligation

The Senate resolution on declarations of interests is relatively onerous because the implications of secretly pursuing private gain in public office are grave. Declarations of interest may help to expose, reduce or eliminate such pursuit through the obligation to reveal conflicts at critical times. The senator declaring invites the presumption of integrity and this enables the possible conflict of interest and the declaration to be taken into account by all concerned.

3. It is not too onerous

It is argued that the obligation to make oral declarations is too onerous, particularly in the matter of shareholdings. One does not always know whether the value of one's shares will rise because of some decision in which one is about to participate. The written notification of interests in the Register should be adequate to reveal the position of possible conflict from which one enters the debate or division. The oral declaration adds nothing. And because of the uncertainty, some politicians are unnecessarily exposed to controversy. Therefore, the obligation to declare orally should be abolished. This view overlooks a number of points.

First, the obligation is onerous because the implications of conflicts are serious.

Secondly, it ignores the long established Senate practice of making oral declarations of conflict of interest in the chamber.

Thirdly, it shifts the obligation of finding out if there is a potentially serious conflict of interest from the senator who owns the shares and is, *prima facie*, best placed to know their implications, to the Senate and senators caught up in proceedings.

Fourthly, that shift, while enabling a senator to avoid his/her personal obligation orally to declare an interest, leaves the Senate with no time to find out if there is a conflict. Divisions can occur at any time; there is no opportunity to examine a Register.

Fifthly, statistics on declarations show that the current procedure is less onerous or controversial than it might seem. In the 3½ years since the resolution was passed in the Senate (March 1994) there have been 642 divisions. Only ten (10) of these have been preceded by declarations of interest in accordance with the resolution.

Year	Senate — divisions and declarations of interest				Total
	1994	1995	1996	1997 (to 28 August)	
Number of divisions	146	115	197	184	642
Number of divisions preceded by oral declarations	0	1*	3	7	10

* On this occasion the declarations were made immediately after the division

5. It is not difficult to know declarable details

It is argued that busy senators often vote in a division without knowing the detailed implications of the vote. They trust the judgment of party colleagues with special carriage of the matter to choose where the public interest lies in a division. Their personal interests are, therefore, irrelevant to the way they vote. Hence, the obligation to declare should be abolished. This argument overlooks a number of points.

First, each senator has a personal responsibility for the way they vote. Knowing oneself to have a conflict of interest, it is not credible to remain silent and perhaps later defend an advantageous vote by saying "I did not declare because I was only voting as I was told".

Secondly, the remedy for the risk of unwitting failure to declare orally is not to abolish the obligation. It is to find out, in reasonable terms, the nature of one's share interests and the gist of the division one votes in. Senators have occasionally declared interests soon *after* divisions, explaining the omission as unwitting. The existence of the obligation is conducive to such corrections.

6. There are not numerous potential conflicts

It is sometimes argued that a senator with some property, shares, superannuation, insurance, memberships, interests, taxes, religion and a family has so many potential conflicts of interest in considering matters under debate or division that the obligation to make oral declarations is completely unworkable. This overlooks a number of points.

First, in 3½ years in the Senate (1994-97) only 10 out of 642 divisions have been preceded by oral declarations of relevant interests. The operative responsibility is to declare "relevant interests".

Secondly, it is accepted that common sense will dictate what is a relevant interest, when it may give rise to conflict with legislative responsibilities and when it should be declared. Most senators have no difficulty in recognising when the obligation arises.

7. Practice in the House of Representatives

It is argued that since the House of Representatives does not require oral declarations neither should the Senate. This overlooks a number of points.

First, the House required oral declarations between 1984 and 1988. During that period there were 677 divisions and no oral declarations of interest preceding them.

Secondly, the House of Representatives Committee of Members' Interests, in recommending abolition of the scheme in 1988, argued not that it was redundant but that the requirement was all-embracing, too onerous, unnecessary and gave rise to occasions of unwitting failure to declare. The absence of any oral declarations belies the argument.

Thirdly, the Senate's decision, in March 1994, to adopt the requirement for oral declarations was made in the full knowledge that the House of Representatives, for its own reasons, had abolished it 6 years earlier.

8. The time is not right to dilute obligations to the Senate and the public

It may be argued that now is the time to abolish the requirement in view of some senators' complaints about it.

However, in March 1997 the Senators' Interests Committee publicly stated its view that the Senate should continue to require oral declarations in debates and divisions. Between then and the reference of the issue to the Procedure Committee on 7 May 1997, there had been one incident concerning oral declarations — that giving rise to the reference. On 7 May, *in accordance with the resolution*, 6 senators made brief oral declarations. The procedure was then referred to the Procedure Committee for alteration.

Those circumstances do not justify a reversal of the committee's decision. A reversal without proper justification would bring the committee into disrepute.

In the current climate, abolition of the requirement to declare relevant private interests in debates and divisions would be seen as a backward step and would attract media attention and criticism.

COMMITTEES

Senators' Interests Committee

Declaration of Interests

Senator DENMAN (Tasmania) (9.37 a.m.)—by leave—I wish to report two matters concerning the committee. In the Senate on 13 February 1997 Senator Short raised issues about the operation of the resolution providing for the declaration of senators' interests: firstly, what does a senator do who holds shares in a company without detailed knowledge of the company; secondly, what is a relevant interest that should be declared during a debate or a division; and, thirdly, should not the fact of a written declaration preclude the need for an oral declaration again during the debates or votes? During debate yesterday Senator Gibson also raised the issue of what is a material interest that should be declared in debate.

The committee considered the issues raised by Senator Short and wrote to him about them. The committee took the view, firstly, that senators should make reasonable efforts to find out the activities of companies in which they hold shares. Secondly, we considered that what constitutes a relevant or material interest is usually not difficult to determine. At the margin it is a matter for each senator to think carefully about the consequences of too narrow or unreasonable a view of relevance. Thirdly, the rule about oral declarations during debate or before votes should not be changed. This rule enables the Senate and the public to be informed during proceedings of any conflict of interest so that the conflict can be taken into account by all concerned at the relevant time, otherwise potential conflict declared in the register would not appear in the relevant *Hansard* record.

The committee endorsed the view of its predecessor committee that, although it can give some guidance, decisions on the appropriate interpretation of the resolution must be the responsibility of individual senators. It is for each individual senator to consider their responsibility for declaring or not declaring some personal, financial or other interest that might constitute a conflict of interest in

relation to proceedings in which she or he participates in the Senate.

At the end of the day senators must be alive to the potential for conflicts of interest between their private interests and official responsibilities, and act in accordance with the spirit and intention of the Senate resolution. In such matters it may be best to err on the side of caution and make declarations. It is not a contempt of the Senate to have a conflict of interest. It could be a serious contempt to fail to declare one. I seek leave to table the letter and incorporate it in *Hansard* so that it is available for senators.

Leave granted.

The letter read as follows—

18 March 1997
Senator the Hon Jim Short
Senator for Victoria
Parliament House
CANBERRA ACT 2600

YOUR QUERY IN THE SENATE ABOUT ORAL DECLARATIONS OF INTERESTS

At its meeting on 18 March 1997 the Committee considered the remarks you made in the Senate on 13 February 1997 about aspects of the resolution concerning the declaration of senators' interests. You asked that the President refer the matter to the Committee. However, the Committee itself can respond to particular submissions and it decided it should do so to assist you and other senators.

You raised three specific points. First, what does a senator do who holds shares in a company without any detailed knowledge of its activities?

Secondly, the question of what is a "relevant" interest may be a difficult one: for example, in a debate or division on a company law bill or a superannuation bill does a senator holding shares have a "relevant" interest for the purposes of that debate or division?

Thirdly, in any event, should not a proper written declaration in the Register of Senators' Interests be sufficient for all future occasions where, currently, an oral declaration is required?

Against the background of these issues you invited the President to refer the operation of the resolution to the Committee for examination and report in light of the past three years of experience with the Register.

This broader question of a full review of the operation of the resolution is at this time perhaps more properly one for the Senate to consider. However, on the three specific issues you raise the Committee offers the following advice.

The essential purpose of the Register, and the procedures for oral declarations during Senate and committee proceedings, is to enable the Senate and the public to be aware of private interests that senators and, so far as their interests are known, their spouses and dependent children have which might conflict with their official responsibilities, so that those interests can be properly taken into account by all concerned each time a potential conflict might arise.

In general terms, the Committee considers that where a senator (including a spouse or child) has a financial or other real, personal, interest in a company, body, activity or place, and that interest or that company, body, activity or place could reasonably be advantaged by the outcome of a debate, division or committee inquiry, the senator should declare that interest in debate, prior to the division, or during the committee's proceedings, if the senator participates or votes.

Where a senator holds financial interests in a company it would be expected that a responsible senator would know of, or seek to find out, the activities of that company and be in a position to declare an interest in proceedings that might reasonably affect that company's activities to the senator's advantage.

The Senate's procedures ensure that on each occasion of debate, voting or committee participation senators declare the fact that they have a private interest which might be advantaged by a Senate process in which they take part. That fact can then be taken into account by all concerned.

The interest does not, of course, necessarily preclude the senator from participating—though on some rare occasions it might, in the senator's judgement, require his or her abstention.

In any event, the declaration of the interest in the midst of debate, while not removing the possibility of conflict, protects a senator from any insinuation that they have not been open about the position they are in and from which they enter the debate or the vote. Under the Senate resolution it is a serious contempt to fail to disclose a relevant interest; it is not a contempt simply to have such an interest.

At the time of passing the resolution (17 March 1994) it was clearly the Senate's intention that senators should orally declare relevant interests on every relevant occasion. Most relevant interests can be clearly identified by senators and understood by the community from the terms of the Senate resolution and the Explanatory Notes. On the margins, identification of a relevant interest that should be declared is a matter for the senator concerned. In the past, the committee has stressed the personal responsibility of individual senators in

this regard. In its First Report (June 1994) the Committee stated:

"... the Committee advises that while it may, from time to time, provide guidance on the interpretation of particular matters set out in the resolution, final decisions on the appropriate interpretation of the resolution must be the responsibility of individual Senators."

In the same vein, the Explanatory Note accompanying declaration forms states:

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

The Committee takes the view that appropriate oral declarations should continue to be made in the Senate and in committees, as provided by the resolution. The committee also considers that, apart from the plain words of the resolution itself, the Explanatory Notes and any special guidance given in Committee reports, the question of the relevance of an interest is a matter for the senator's individual responsibility. Senators should err on the side of caution and make declarations if they wish to preserve "the purpose and spirit" of the procedure.

At the end of the day, senators must, at all times, be alive to the potential for conflict of interest between their private interests and their official responsibilities. When this potential manifests itself, the Senate and the public are entitled to be reminded of the senator's personal interests when that senator participates in Senate proceedings.

I hope this is helpful to you. The matter you have raised is important and I propose to table in the Senate a copy of this letter for the information of all senators.

Yours sincerely

KAY DENMAN

Chair

Senator DENMAN—The committee also considered whether the explanatory notes used by senators in making declarations should be amended in relation to shareholdings. This would clarify the requirements about declaring actual shareholdings held by family and business trusts, partnerships or nominee companies; thus, where a senator alone or with their family can exercise control over the voting rights or disposal of shareholdings, the actual shareholdings should be declared.

The committee has decided to amend the explanatory notes to remove the possibility of any misunderstandings about this. The House of Representatives has also decided to do this.

I seek leave to both table and incorporate in *Hansard* a brief background paper on this matter.

Leave granted.

The background paper read as follows—

Notification of shareholdings held by family or business trusts, nominee companies or partnerships controlled by a senator and/or their spouse and/or a dependent child, or a majority of these three

Where a senator, spouse or dependent child is a trustee of a family or business trust holding shares he/she has a legal interest in the shares and is (usually) entitled to exercise control over them.

Where a senator, spouse or dependent child is a beneficiary of the trust, he/she has an equitable interest in the shares and is often entitled to exercise control over them.

Similarly, a nominee company or partnership which holds shares is controlled by a senator, spouse or dependent child if one or more of them owns the company or controls the partnership.

Control means power to exercise voting rights attached to the shares or power to dispose of the shares.

Where the senator and/or their spouse and/or their dependent child (or a majority of the three) can exercise such control, the actual shareholdings held by the trust, nominee company or partnership should be declared.

By implication, the Senate resolution of 17 March 1994 currently requires a declaration of such actual shareholdings rather than merely a declaration of the name, activity and beneficiary of the trust, nominee company or partnership.

This obligation is to be made explicit by an amendment to the Explanatory Notes stating what actual shares are to be declared:

Shareholdings in public and private companies etc: This includes shares held by a family or business trust, a nominee company or a partnership where a senator, the senator's spouse or dependent children (or two or more of the senator, the senator's spouse, or a dependent child or dependent children acting together) are able to exercise control over the right to vote or dispose of those shares.

Selection of Bills Committee

Report

Senator CALVERT (Tasmania)—I present the fifth report of 1997 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator CALVERT—I seek leave to incorporate the report in *Hansard*.

Leave granted.

The report read as follows—

1. The Committee met on 19 March 1997.
2. The Committee resolved—That the following bills *not* be referred to committees:

Australian Animal Health Council (Live-stock Industries) Funding Amendment Bill 1997

Aviation Legislation Amendment Bill (No. 1) 1997

Dairy Produce Levy (No. 1) Amendment Bill 1997

Defence Cooperation Control Amendment Bill 1997

Excise Tariff Amendment Bill (No. 1) 1997.

The Committee recommends accordingly.

ORDER OF BUSINESS

Government Business

Motion (by **Senator Campbell**) agreed to:

That the following government business orders of the day be considered from 12.45 p.m. till not later than 2.00 p.m. today:

No. 5—Corporations Law Amendment Bill 1996

No. 6—Customs Amendment Bill (No. 2) 1996

No. 7—Law and Justice Legislation Amendment Bill 1996

No. 8—Financial Transaction Reports Amendment Bill 1996

No. 3—Retirement Savings Accounts Bill 1997 and two related bills—second reading

No. 4—Customs and Excise Legislation Amendment Bill (No. 2) 1996 (No. 2)—second reading.

Genetically Engineered Food

Motion (by **Senator Neal**) agreed to:

That general business notice of motion No. 508 standing in the name of Senator Neal for today, relating to genetically-engineered foods, be postponed till Tuesday, 25 March 1997.

Wetlands

Motion (by **Senator Margetts**) agreed to:

That general business notice of motion No. 509 standing in the name of Senator Margetts for today, relating to Ramsar-listed wetlands, be postponed till the next day of sitting.