



THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF SENATORS' INTERESTS

Report 1/1999

ANNUAL REPORT — 1998

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CONTENTS

Committee membership	iv
Senate resolution establishing the committee	v
Senate resolution requiring declarations of interest	vii
Senate resolution for declarations of gifts	xi
Report for 1998	1
Appendices	4

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	

MEMBERS OF THE COMMITTEE — 39TH PARLIAMENT

Senator K Denman	(ALP)	TAS	Chair
Senator the Hon D Brownhill	(NPA)	NSW	Deputy Chair
Senator E Abetz	(LP)	TAS	
Senator L Allison	(AD)	VIC	
Senator J Collins	(ALP)	VIC	
Senator S Hutchins	(ALP)	NSW	
Senator the Hon Ian Macdonald	(LP)	QLD	
Senator S Mackay	(ALP)	TAS	

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THE SENATE

COMMITTEE OF SENATORS' INTERESTS **Standing Order 22A**

- 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

1. Registration of Senators' Interests

(1) 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) 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 dependents

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

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 \$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;

- (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 \$200 or more 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

- (1) 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.
- (2) 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.
- (3) 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 6 months any notification by a senator of alteration of those interests.
- (4) 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.
- (5) 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

- (1) 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.

- (2) For the purposes of subparagraph (1), in proceedings on a bill a declaration of a relevant interest shall be made:
 - (a) when a senator first speaks in debate on any stage of consideration of the bill; and
 - (b) when a senator first votes in a division at any stage of the consideration of the bill; and
 - (c) when a senator speaks or votes in a division on an amendment to the bill which raises an issue not included in an earlier declaration of interest during proceedings on the bill.

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.

(17 March 1994 J.1421, amended 21 June 1995 J.3473, 13 May 1998 J.3753)

THE SENATE

REGISTRATION OF GIFTS TO THE SENATE AND THE PARLIAMENT

The Senate resolves that the following procedures apply for the declaration by senators of their receipt of any gift intended by the donor to be a gift to the Senate or the Parliament:

- (1) (a) Any senator, including any Senate officer-holder and any senator who is a leader or a member of a parliamentary delegation, who in any capacity receives any gift which is intended by the donor to be a gift to the Senate or the Parliament must, as soon as practical, place the gift in the custody of the Registrar of Senators' Interests and declare receipt of the gift to the Registrar.
- (b) A gift is to be taken as intended to be a gift to the Senate or the Parliament where:
 - (i) the donor expressly states that the gift is to the Senate or to the Parliament; or
 - (ii) the identity of the donor, the nature of the occasion, or the intrinsic significance or value of the gift is such that it is reasonable to assume that the gift was intended for the Senate or the Parliament; or
 - (iii) the gift has a value in excess of:
 - (A) \$500 when given by an official government source, or
 - (B) \$200 when given by a private person or non-government body on any occasion when the senator is present in his or her capacity as a senator, Senate office-holder or delegation leader or member.
- (c) The Registrar of Senators' Interests is to maintain a public Register of Gifts to the Senate and the Parliament.
- (d) The Committee of Senators' Interests is to recommend to the President whether, and how, the gift is to be used or displayed in Parliament House, including in the office of any senator, or used or displayed on loan elsewhere, including in a museum, library, gallery, court building, government building, government office or other place.
- (e) Where a gift given to a senator is intended to be for the Parliament, the President is to consult with the Speaker prior to agreeing to a recommendation of the committee as to its use, display or loan.
- (f) Where the President disagrees with a recommendation of the committee, the President is to report the disagreement to the Senate, which may determine the use, display or loan of the gift in question.

- (g) In making recommendations the committee is to take into account the intention of the Senate that gifts are to be used, displayed or loaned in a way which:
 - (i) reflects proper respect for the intentions of the donor and the dignity of the Senate or the Parliament;
 - (ii) recognises the interest of the public in gifts to the Senate or the Parliament; and
 - (iii) takes account of practical issues including space, custody, preservation and propriety in the use, display or loan of such gifts.
 - (h) Where a senator is uncertain of the nature of a gift the senator may request advice from the committee.
 - (i) Where a senator disagrees with the advice of the committee the senator is to report the disagreement to the Senate, which may determine the nature of the gift and its use, display or loan, if any.
 - (j) In paragraph (1) a reference to a gift to the Parliament includes a gift given to a senator for the House of Representatives.
- (2) This resolution applies to a gift received by the spouse, family member or staff member of a senator on any occasion when the senator is present in his or her capacity as a senator, Senate office-holder or delegation leader or member, as if the gift had been received by the senator.
- (3) The committee:
- (a) is empowered to consider any matter placed before it pursuant to this resolution, and for the purposes of this resolution the committee has the powers provided in the resolution of 17 March 1994 establishing the committee; and
 - (b) may make, and must as soon as practicable thereafter table, procedural rules to facilitate the operation of this resolution.
- (4) Any senator who:
- (a) knowingly fails to tender and declare a gift that is taken to be a gift to the Senate or the Parliament as required by this resolution; or
 - (b) knowingly fails to return to the Registrar a gift which it was agreed or determined the senator might use or display; or
 - (c) knowingly provides false or misleading information to the Registrar or the committee,

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

(26 August 1997)

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 fifth 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 three times in 1998, on 10 March, 8 April and 7 December 1998. A copy of the minutes of each meeting is in 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 1998.

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 appendix 3.
- 9 On 1 July 1998 the committee tabled its regular six monthly update of Notifications of Alterations of Interests (21 November 1997 to 30 June 1998).
- 10 In accordance with paragraph 4(c) of the Senate resolution of 17 March 1994, following the general election on 3 October 1998, the committee tabled a copy of the completed Register of Senators' Interests (9 December 1998). This contained all declarations of interests then in place and included notifications of alterations of interest lodged between 1 July 1998 and 4 December 1998.
- 11 During the year, there were 32 requests for access to the register and 160 pages of extracts were photocopied for those inspecting the register.

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

- 12 On 25 March 1998, the President of the Senate, Senator the Hon Margaret Reid, invited the committee to consider the requirement in the Senate resolution for oral declarations of relevant interests during debates and divisions. The President pointed out that, as currently formulated, the resolution required oral declarations to be made and repeated at several different stages in the process of debating and voting on legislation. The President suggested that a single declaration at the first stage in the process of passage of a bill might suffice for all subsequent stages, unless particular amendments raised new issues requiring fresh declarations.
- 13 At its meeting on 8 April 1998 the committee considered this matter and agreed that the resolution of 17 March 1994 be modified to require an oral declaration of relevant interests when a senator first speaks on a bill, and when he or she first votes on a bill, but not otherwise unless he or she speaks or votes on an amendment raising a matter not covered by an earlier oral declaration. The Senate amended the resolution to this effect on 13 May 1998. The relevant interests to be declared are those of the senator him/herself, and of their spouse and dependent children (so far as the relevant interests are known to the senator).

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 of gifts in a public register in accordance with rules and procedures made by the committee. For ease of reference, appropriate forms, rules, procedures and explanatory notes, formulated during 1998, are included in the appendices to this report.
27. On 1 July 1998, the committee chair tabled the only declaration then received which constituted the Register of Gifts to the Senate and the Parliament.
28. During the year, advice was prepared on the meaning of conflicts of interest. A generic form of this is included in the appendix
29. During the year, advice was prepared on the meaning of relevant interests. This is included in the appendix.
30. On 9 December 1998, the committee chair tabled the Register of Senators' Interests and made a statement to the Senate about the complementary role of codes of conduct in the ethical framework within which parliamentarians work. This is included in the appendix.
31. In the first half of 1998, Mr Steve Colbert, University of Canberra, an undergraduate Parliamentary Intern, under the Australian National Internships Program, was attached to the committee secretariat to prepare an evaluation of the Register of Senators' Interests. This project was supervised by the Clerk Assistant (Corporate Management) as Registrar of Senators' Interests. On completion, the research paper was circulated to members of the committee for their information.

(Kay Denman)
Chair

May 1999

APPENDICIES

1	Minutes of meetings of the Committee of Senators' Interests, dated 10 March 1998, 8 April 1998 and 7 December 1998	5
2	A summary of committee guidance for senators making declarations	12
3	Letter (dated 1 June 1998) to all senators reminding them of the need to monitor and declare relevant alterations in their statements of interests	18
4	Explanatory Notes for making declarations of interest	19
5	Advice in relation to conflicts of interest	26
6	Advice in relation to the meaning of relevant interests	28
7	Chair's statement to the Senate about codes of conduct and ethics (9 December 1998)	35
8	Letter (dated 1 June 1998) to all senators reminding them of the need to monitor and declare gifts given to senators but intended or deemed to be gifts to the Senate as an institution	37
9	Procedural Rules for the Declaration and Presentation of Gifts Received by Senators for the Senate and the Parliament	38
10	Explanatory Notes for the Declaration of Gifts Received by Senators for the Senate and the Parliament	42

MINUTES OF PROCEEDINGS 1998/1

TUESDAY 10 MARCH 1998

1. MEETING

The committee met in private session at 5.15pm in Committee Room 1S6.

2. ATTENDANCE

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

3. APOLOGIES

Senator the Hon N Bolkus

4. MINUTES OF LAST MEETING ON 19 JUNE 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. DRAFT ANNUAL REPORT FOR 1997

The committee considered the draft report. Senator Sherry moved, and the committee **agreed**, that the draft report be agreed to.

7. DRAFT EXPLANATORY NOTES, FORMS AND PROCEDURAL RULES FOR DECLARATION OF GIFTS INTENDED FOR THE SENATE AND THE PARLIAMENT

The committee considered the draft procedural rules and related documents. Senator Mackay moved, and the committee **agreed**, that the draft procedural rules be agreed to.

8. DECLARATIONS OF INTERESTS DURING DEBATE

The committee noted the chair's letter of 3 September 1997 to the Procedure Committee conveying the committee's opinion that the requirement for oral declarations not be altered. Senator Abetz moved, and the committee **agreed**, that further consideration of the matter be deferred until the next meeting.

9. ANY OTHER BUSINESS

There was no other business.

9. ADJOURNMENT

The committee adjourned at 5.30pm.

Confirmed:

Kay Denman
Chair

MINUTES OF PROCEEDINGS 1998/2

WEDNESDAY 8 APRIL 1998

1. MEETING

The committee met in private session at 10.50am in the Senate chamber lobby.

2. ATTENDANCE

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

3. APOLOGIES

Senator the Hon N Bolkus

4. MINUTES OF LAST MEETING ON 10 MARCH 1998

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

5. BUSINESS ARISING

There was no business arising.

6. DECLARATIONS OF INTERESTS DURING DEBATE - PRESIDENT'S LETTER

The committee noted the President's letter of 25 March 1998 to the chair suggesting a modification of the senators' interests resolution in relation to the stages in the passage of legislation, and the Registrar's advice of 1 April 1998 to the chair on the letter.

Discussion ensued.

Senator I Macdonald moved: That the committee recommend to the Senate that disclosure of interests in the Register of Senators' Interests be sufficient disclosure for the purposes of standing orders and where interests are so disclosed there be no requirement for any further oral declarations of those interests during Senate proceedings.

The committee divided:

Ayes

Senator Abetz
Senator Brownhill
Senator I Macdonald

Noes

Senator Allison
Senator Denman
Senator Mackey
Senator Sherry

The question was not resolved.

Although a majority of members present opposed the motion, no decision was recorded since the Senate was sitting, not all members of the committee were present and the decision was not unanimous.

Senator Sherry moved, and the committee **agreed**, unanimously: That, in relation to the passage of legislation, the senators' interest resolution of 17 March 1998 be modified to require an oral declaration of relevant interests -

- (a) when first a senator speaks in debate on a bill; and
- (b) when first he or she votes in a division on a bill; and
- (c) not otherwise except when he or she speaks or votes on an amendment to the bill or on a motion during its passage which raises some matter not covered by an earlier oral declaration.

Senator Allison moved, and the committee **agreed**, unanimously: That the Registrar prepare a paper on the meaning of relevant interests for the purposes of paragraph 5 of the senators' interests resolution concerning oral declaration of interests during proceedings.

7. ANY OTHER BUSINESS

There was no other business.

8. ADJOURNMENT

The committee adjourned at 11.25am.

Confirmed:

Kay Denman
Chair

MINUTES OF PROCEEDINGS 1998/3

WEDNESDAY 7 DECEMBER 1998

1. MEETING

The committee met in private session at 12.20pm in the Senate chamber lobby.

2. ATTENDANCE

Senator K Denman
Senator the Hon D Brownhill
Senator S Hutchins

3. APOLOGIES

4. ELECTION OF CHAIR

The secretary drew the Committees attention to the resolution of the Senate of 24 November 1998 appointing the Committee. The secretary then called for nominations for chair. Senator Hutchins nominated Senator Denman. There being no other nominations, Senator Denman was declared elected and took the chair.

5. APPOINTMENT OF DEPUTY CHAIR

Under standing order 22A (5), Senator Denman appointed Senator Brownhill as Deputy chair

6. TABLING THE REGISTER OF SENATORS' INTERESTS

It was noted that the Secretary had made the necessary arrangements for tabling the Register of Senators' Interests on Wednesday 9 December 1998.

7. CODE OF CONDUCT FOR PARLIAMENTARIANS

The Committee noted the Parliament Library Research Paper No. 2 1998-99 “*A code of Conduct for Parliamentarians?*” by Dr Andrew Brian, Lecturer in Philosophy, Charles Sturt University, Visiting Fellow, Australian National University. It was noted that it was a useful background paper on the issue of parliamentary standards of which the Register of Senators’ Interests was an element. It was **agreed** that, when tabling the Register of Senators’ Interests on Wednesday 9 December 1998, the Chair would draw the attention of the Senate to the paper and commend it to Senators for examination.

8. ANY OTHER BUSINESS

There was no other business.

9. ADJOURNMENT

The committee adjourned at 12.25pm.

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

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 10.00am and 12.00 noon and 2.00pm and 4.00pm, 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 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.

1 June 1998
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 that under the Senate resolution of 17 March 1994 senators must notify alterations in 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 29 June 1998, 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 22 November 1997 and 26 June 1998.

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

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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:

- (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 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.

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24 March 1998

1186

CONFLICTS OF INTEREST AND SHAREHOLDINGS

Does a conflict of interest exist when a cabinet minister owns shares in a business while responsible for public policy and administration affecting all businesses of that kind?

Conflict of interest

A conflict of interest is a state of affairs in which one's concern for personal benefit co-exists with one's public duty in a relevant office to act in the public interest without regard to personal benefit.

An office is a relevant office where the normal conduct of it offers the opportunity to advance a personal interest.

This co-existence of personal interest and public duty gives rise to the risk that concern for one's personal interest may influence performance of one's public duty in that office.

The influence of personal interest over public duty may not arise, or if it arises, may be suppressed. However, for there to be a conflict of interest actual influence, let alone personal benefit, is not necessary, only the risk of such influence.

Actual influence, or even personal benefit, may be difficult to prove. However, risk of influence is universally assumed to be a characteristic of human nature.

In democratic politics, the consequences of this risk for public policy and administration are thought to be serious.

When the risk arises for cabinet ministers possessed of great formal and discretionary powers and with access to cabinet secrets and deliberations, the risk is thought to be, *ipso facto*, grave. So grave that both formal codes of conduct and practical modes of political accountability often require prior removal of the risk of influence.

Prior removal is achieved either by disposal of the personal interest before assuming the public office, or by declining the public office.

I believe the foregoing are standard principles whose clearest application is in cases where the personal interest is of a pecuniary nature.

For reasons peculiar to Australian history, these principles are seldom if ever applied in relation to ministers who, prior to assuming relevant office, were primary producers and remain so in office. Whether or not this constitutes a defensible exception to the principles, the issue has seldom arisen as a matter of political controversy.

The Senate resolution of 17 March 1994 for the declaration of senators' interests does not necessarily require senators with a conflict of interest to divest themselves of pecuniary or other interests. The resolution requires that the interest be declared in the public Register of Interests within 28 days of being acquired, and that it be orally redeclared during every debate and prior to every vote to which the interest is relevant. This enables the existence of the interest and any conflict to which it may give rise to be taken into account in proceedings by all concerned.

Minister's shareholdings

Applying the principles I have set out, ownership of shares in a business while one is a cabinet minister responsible for public policy affecting businesses of that kind, would constitute a conflict of interest.

The existence of such a conflict is not dependent on actual concern for personal benefit actually influencing performance of public duties. The conflict exists regardless of whether private interest has in fact been pursued in public office.

The conflict is a state of affairs which arises, or is assumed to arise, from a factual situation in which is universally present the risk that concern for personal benefit may influence the performance of public duty. That risk is inherent in the situation where a cabinet minister owns shares in a business while responsible for public policy and administration affecting all business of that kind.

The consequences of that risk for public policy and administration when it arises for a cabinet minister are thought to be so grave that prior removal of the risk is the principled remedy. Without it, public policy and administration are contaminated by the perception that their development or implementation may have been influenced by the pursuit of personal benefit.

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2003

ORAL DECLARATION OF RELEVANT INTERESTS IN THE SENATE

Introduction

At its meeting on 8 April 1998, the Committee of Senators' Interests resolved "that the Registrar of Senators' Interests prepare a paper on the meaning of relevant interests for the purpose of paragraph 5 of the senators' interests resolution concerning oral declaration of interests during proceedings".

The relevant part of the Senate resolution of 17 March 1994 states that:

Notwithstanding the lodgment by a senator of a statement of the senator's registrable interests [for him or herself, spouse and dependent children], 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 . . . in the Senate ... or a committee of the Senate ... and
- (b) as soon as practicable after a division is called for in the Senate . . . or a committee of the Senate . . . if the senator proposes to vote in that division . . .

In debating legislation a declaration is generally made only twice - when first a senator speaks and when first a senator votes.

The resolution does not define "relevant interest". However, its meaning can be deduced from the concept of conflict of interest on which the resolution is based.

Conflict of interest

Typically, a conflict of interest is a state of affairs in which one's natural concern to advance one's pecuniary interests co-exists with one's public duty in a relevant office to act without regard to those pecuniary interests. A relevant office is one where the normal conduct of it offers opportunity to advance one's pecuniary interests. In politics, this usually means an elected office, and more particularly ministerial office.

One may have interests other than pecuniary interests, for example, moral, social, religious, political, family or recreational interests, and one may have a natural concern to advance those interests. They can give rise to a conflict of interest, where, for example, they offer their holder some pecuniary advantage or reward. There could also be a conflict where these interests constitute an attachment or association (for example, holding high private offices) which gives rise to the risk that one's loyalty to them may influence performance of one's public duty in the relevant office.

This co-existence of pecuniary or other interests and public duty gives rise to the risk that one's natural concern to advance one's personal interests may influence performance of one's public duty and that influence would be improper.

It is not necessary that performance of one's public duty is *actually* influenced or that some improvement in one's pecuniary or other interests *actually* occurs. The conflict exists if the state of affairs discloses the risk of influence. The risk is often assumed from the inherent qualities of the state of affairs. For example, the risk is assumed where a person owns shares in a business while holding office capable of affecting public policy for such businesses.

Resolving conflicts of interest

The conflict of interest is usually resolved in one of three ways. Because of their greater power to affect public policy, ministers are expected either to *divest* themselves of a pecuniary interest such as shares, or *resign* their portfolio. Under the Senate resolution all senators are expected to *declare* their pecuniary and other interests both in writing and again orally when first speaking in debate and when first voting.

The rationale for the oral declaration is simply to enable the conflict of interest to be taken into account by all concerned. This includes the senator who orally declares it and the Senate or public which hears it or reads it later in Hansard. The senator declares, in effect, and the Senate and the public are thereby invited to accept, that the senator has transcended the personal interest in favour of the public duty.

This Senate procedure is a compromise with principle because it is not expected that every senator must either divest themselves of pecuniary and other interests, abstain from debate or voting, or resign from the Senate.

Please note, though, that standing order 27(5) provides that "a senator shall not sit on a committee if the senator has a conflict of interest in relation to the inquiry of the committee." However, this is taken to mean a real, immediate and personal conflict, for example an inquiry into the senator's behaviour or affairs.)

Viewed from this perspective of its origins in conflict of interest, the requirement orally to declare "relevant interests" is easier to comprehend, interpret and apply.

Relevant interests

"*Interests*" are those pecuniary and other interests which must be declared in the Register under the Senate resolution. They include shares, including indirectly held shares where control exists, bonds, debentures, bank accounts, trusts, real estate, directorships, partnerships, liabilities, assets, sources of income, gifts, sponsorships, memberships and "other interests where a conflict of interest with a senator's public duties could foreseeably arise or be seen to arise". (The resolution has thresholds for some interests, eg sponsored travel or hospitality exceeding \$200.)

The resolution recognises that there are various sources of interest capable of improperly influencing a senator's judgment, the counter to which is public registration and oral declaration in debate and when voting.

"*Relevant* interests" are those interests from the list above which a reasonable person would consider capable of being advanced by the outcome of a particular debate or vote so that there

is a risk that the senator's natural concern to advance them may influence performance of their duty to act in the public interest.

In such cases the interests must be orally declared when the senator speaks and votes. The test is *not* that the (usually) pecuniary interest *will* influence the senator's behaviour but that there is a *risk* it could do so and such influence would be improper. That risk is addressed, though not removed, by written and oral declaration of the interest.

It could be a serious contempt not to declare all pecuniary interests such as shares. Shares tend to have a definite, objective, quantifiable and beneficial existence over which there can usually be little or no dispute. It is usually possible to discern that the outcome to a particular debate or vote is likely to advance a pecuniary interest like a share holding. The risk is generally understood or assumed to be real, and the influence, should it occur, to be improper.

Other non-pecuniary interests, such as significant relevant memberships and associations, may create a similar risk of improper influence and should be declared if the outcome of a debate or vote may advance those interests.

Oral declaration a personal and political responsibility

Having set out these approaches to definition it remains the case that oral declaration of interests is a matter of political judgment about propriety, to be exercised by each senator who wishes to speak or vote in a debate. The senator's judgment to declare or not declare is subject to the general *ex post facto* sanction of the Senate about what constitutes a serious conflict of interest that should have been transcended by an oral declaration.

In this sense it might be said that a relevant interest is one which, not having been declared, its subsequent discovery causes serious political controversy. Controversy comes from public opinion that retention of the interest or failure to declare it shows the senator has not done everything reasonable to minimise a conflict between personal interest and public duty.

Hence, the controversy will be about a culpable failure of political judgment, not a failure of definition in the resolution. It is for that reason that a failure, during relevant commercially-

orientated debates, orally to declare relevant shareholdings has consistently caused political controversy.

Original committee's view of senators' responsibility

In 1994 the inaugural Committee of Senators' Interests was aware of these dilemmas. However, it was firmly of the view that they were matters for each individual senator's judgment.

In its First Report (June 1994) the Committee repeatedly stated this view as follows:

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.

...

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.

...

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.

Current Committee's view of senators' responsibility

Neither the Committee nor the Senate has rescinded these views and they continue to have force today. In fact, on 20 March 1997, the Committee reinforced these views when the Chair, Senator Denman, made the following statement to the Senate:

... 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.

...

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.

Summary

In summary, a senator faced with the possibility of being influenced by a pecuniary or other registrable interest when addressing a matter of public policy like legislation, has a duty to attempt to transcend that interest by declaring it in debate and when voting. They thereby invite the Senate and the public to accept that, notwithstanding the interest, the senator is acting on the political or policy merits of the case as he or she sees them. Particularly in the

case of pecuniary interests, or other personal interests with a pecuniary dimension, that risk of influence will be assumed for a senator and an oral declaration will be expected.

A failure to declare raises the suspicion that the risk of improper influence may not have been transcended and the private interest may have had priority over the public duty. The significance and consequence of such a failure is a function of the political and public perception of the implications of that failure for particular decision-making or for parliamentary ethics generally.

Political controversy arises because public opinion sees a failure to declare as an unacceptable failure of political judgment and political honesty in dealing with a conflict of interest that affects legislation or public policy.

At the end of the day, no resolution can categorise every pecuniary and other interest or define every conflict of interest in legislative debate. It is for senators to act in accordance with the spirit and intent of the Senate resolution.

Peter O’Keeffe
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July 1998

Having concluded that the existing prohibition on unauthorised disclosure should remain, the committee has outlined the approach it expects other committees to take when examining the question as to whether matters of this nature should be referred to the Committee of Privileges. It has also set out its approach to dealing with matters when re-referred. The committee has made one minor recommendation relating to the handling of private documents.

What will be obvious from this unanimous report, and the committee's usual unanimous findings in respect of the matters referred, is the genuine concern about what the committee has called an epidemic of improper disclosures in recent times. The committee hopes that its declaration of intent about its treatment of possible contempts will be sufficient deterrent to persons who might consider improperly disclosing committee proceedings. It also intends to disseminate the report as widely as possible, in the hope that persons who have regular contact with parliament will become aware of their responsibilities in handling documents produced to and by the houses of parliament and their committees. Because of the nature of several findings, I seek leave to give a notice of motion.

Leave granted.

Senator ROBERT RAY—I give notice that I will move, in accordance with standing order 82, not less than seven sitting days after today:
That the Senate—

(a) endorse the findings contained in paragraphs 2.10, 2.27, 2.36, 2.56, 2.66 and 2.72; and

(b) adopt the recommendations contained in paragraphs 1.54 and 2.75,
of the 74th report of the Committee of Privileges.

Senators will observe that the notice of motion I have just given refers specifically to the committee's formal findings and recommendations. The committee will however assume that, if the Senate endorses the findings and adopts the recommendations, this will signify its agreement to the committee's treatment of the issues discussed in the report. I commend the report to the Senate and seek leave to continue my remarks later.

Leave granted; debate adjourned.

Senators' Interests Committee

Register

Senator DENMAN (Tasmania) (6.09p.m.)—I present the register of senators' interests incorporating current declarations of interest lodged between 1 July 1998 and 4 December 1998 and I seek leave to make a short statement.
Leave granted.

Senator DENMAN—The Senate resolution for the declaration of senators' interests has operated for almost five years since March 1994. It requires senators to declare in writing and orally private interests which might give rise to conflict with parliamentary or official duties. This obligation to declare makes senators conscious of their official roles and the need to act in them without seeking personal gain or advantage.

A procedure for declaring interest is, however, only one element in the ethical framework within which all parliamentarians should act. Other elements are contained in a code of conduct. I draw senators attention to an important Parliamentary Library research paper entitled 'A code of conduct for parliamentarians' by Dr Andrew Brien of Sturt University. Aware of surveys which show that trust in parliamentarians is at an all time low, Dr Brien sets out the background to codes of ethics and conduct for parliamentarians showing how they are designed to both enhance their standards and their standing in carrying out difficult public roles. I commend the research papers to senators.

There is as yet no code of conduct for the Commonwealth parliament. It is arguable that, without a suitable code, registers of interests are only a halfway house. Sample codes are in existence and I seek leave to incorporate in *Hansard* simplified summaries of codes to enable senators to reflect on the issue I have raised.

Leave granted.

The document read as follows—

Draft Federal Parliamentarians' Code

(Proposed by the Parliamentary Working Group. Full text tabled on 21 June 1995)

1. Loyal to Australia
Uphold the law
2. Exercise due diligence
Use public resources economically
3. Due regard for rights of others, eg. privacy, non-discrimination, confidentiality, privilege
4. Act honestly
Advance the public good
5. Seek the public interest
Avoid conflict of interest
6. Not obtain private benefit from public office
7. Personal conduct consistent with dignity and integrity of Parliament

Draft Federal Ministers' Code

(Proposed by the Parliamentary Working Group. Full text tabled on 21 June 1995)

1. Act without fear or favour
2. Be frank and honest with public and Parliament
3. Do not use official influence for private interests
4. May accept gifts, benefits, hospitality if report them as required by procedures
5. Don't abuse public property or entitlements
6. Don't misuse official information for personal gain
7. Be accountable to Parliament Pay proper regard to official advice Use discretion legitimately Document and justify decisions
8. Ensure staff act consistently with the above
9. After-departure from office don't seek improper advantage from influence over former colleagues or officials

Code of Conduct for NSW Parliamentarians—1.7.98

1. Declare conflicts of interests between private financial interests and official decisions
2. Do not promote a matter, vote or ask questions in Parliament in return for money or benefits
3. Declare gifts and benefits as required by procedures (+\$500)
4. Use public resources properly
5. Don't use confidential information for private gain
6. Political parties are a fundamental part of the democratic process and helping the party is legitimate for MPs

UK Code of Conduct 19.7.95

- A. Be faithful to Her Majesty
- B. Uphold the law
- C. Act in the interests of the nation
- D. Observe the 7 Principles of Public Life:
- E. Act to strengthen the public's trust in Parliament and do nothing to bring it into disrepute
- F. Accept no bribe, fee, or reward for doing anything in Parliamentary proceedings
- G. Register Interests as required by procedures

- H. Be open and frank if lobbying for an organisation in which you have a financial interest
- I. Do not act as a paid advocate in any proceedings in the House
- J. Observe requirements of confidential information and do not use it for personal gain
- K. Observe the 7 Principles of Public Life:
 - 1) **Selflessness:** Public interest not personal gain
 - 2) **Integrity:** Avoid obligations to others that might influence free judgement
 - 3) **Objectivity:** Act on merit when making appointments, official contracts and official rewards
 - 4) **Accountability:** Be accountable to the public and submit to scrutiny
 - 5) **Openness:** Be open about decisions and give reasons for them and release information unless clearly against the public interest
 - 6) **Honesty:** Declare private interests and resolve conflicts of interest
 - 7) **Leadership:** Support these Principles by personal example

Regulations and Ordinances Committee Statement

Senator CALVERT (Tasmania) (6.11p.m.)—
On behalf of Senator O'Chee, I present the regular end of sittings statement on behalf of the Regulations and Ordinances Committee on the work of the committee for the spring sittings 1998 and seek leave to incorporate the statement in *Hansard*.

Leave granted.

The statement read as follows—

1 June 1998
2127b

ALL SENATORS

Dear Senator

Register of Gifts to the Senate

I write to remind you of the Senate resolution of 26 August 1997 that gifts given to senators but intended or deemed to be gifts to the Senate as an institution must be declared within 10 days of receipt and placed in the custody of the Registrar of Senators' Interests. (Their return to senators for the purpose of temporary display/loan may be arranged.)

Under the resolution, gifts are intended for the Senate if the donor expressly states this intention or if the donor, the occasion or the gift are such that this intention may reasonably be assumed. A gift is deemed to be for the Senate if the Australian value of the gift exceeds \$500 (for an official gift from a government) or \$200 (for a gift from a private or non-government source).

On 12 March 1998, the Committee of Senators' Interests, which oversees the Register of Gifts, issued rules, guidelines and forms to assist senators to observe the requirements of the resolution. Copies can be obtained from the Table Office or from me.

May I draw your particular attention to paragraph 21 in the document which states:

It should be borne in mind by all senators that as a matter of history, culture and practice, and while respecting the traditions of other countries, Australia does not favour or encourage political gift giving or political gift receiving. There are, however, occasions of significance which governments, parliamentarians, parliamentary institutions or others may wish to mark by giving a gift to another Parliament. The Senate resolution and the procedural rules are designed to accommodate such occasions.

Please let me know if I can assist you with any matter concerning the Register of Gifts.

Yours sincerely

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

 (02) 6277 3399
Fax: (02) 6277 3199
Ca.Corporate.Sen@aph.gov.au

PROCEDURAL RULES

DECLARATION AND PRESERVATION OF GIFTS RECEIVED BY SENATORS FOR THE SENATE AND THE PARLIAMENT

In accordance with the resolution of the Senate of 26 August 1997 about the declaration of gifts received by senators but intended for the Senate or the Parliament, the Committee of Senators' Interests has made the following procedural rules to facilitate the operation of the resolution.

Compilation of the Register

1. A senator who receives a gift intended for the Senate (or the Parliament) is to declare receipt of it to the Registrar of Senators' Interests by completing and signing the approved form. To preserve both an audit and an historical record of such institutional gifts, the form is to be completed in full. The form is to be returned to the registrar within 10 days of receipt of the gift.
2. The gift must be, as soon as possible, be placed in the custody of the Registrar of Senators' Interests until the President (or the Senate) on the recommendation of the committee, determines how the gift is to be used, displayed or loaned.
3. Where a Senator's spouse, family member or staff member receives such a gift on an occasion when the senator is present in his or her capacity as a senator, the senator is to declare receipt of the gift on the approved form as if it had been received by the senator. Paragraph 2 applies equally to such a gift.
4. Declarations of receipt of gifts will be placed in the *Register of Gifts to the Senate and the Parliament* in alphabetical order under the name of the senator receiving the gift.
5. The Register will also contain a chronological list of gifts received with the name of the recipient senator, the name of the donor, and a description of the gift and its current location.

Maintenance of the Register

6. The original copy of a senator's declaration of receipt of a gift to the Senate (or the Parliament) will be kept on a registry file. A clear copy, date stamped with the registry stamp, will be placed on the Register.

7. Declarations will become public from the date of receipt.
8. New declarations will be tabled in the Senate within six months of receipt, preferably in June and December.
9. The Registrar will write to the Parliamentary Relations Office (PRO) at least twice a year to remind PRO officers assisting senators on delegations and travelling abroad of the requirements of the Senate resolution. Senate officers who accompany senators overseas must familiarise themselves with the terms of the resolution and these procedural rules.
10. A declaration will remain on the register as long as the gift remains in the possession, custody or control of the Senate (or the Parliament). However, declarations in the name of senators who are former members of the Senate will be held in a volume of the register separate from the volume holding declarations of serving senators.
11. A signed statement by the Registrar of the current location of the declared gift will be displayed in the Register with each senator's declaration of receipt of a gift.
12. Superseded statements of location will be retained on file with the original copy of the declaration.

Conditions of public access to the register

13. 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.
14. Access is to the whole register including statements of location.
15. Inquirers may make notes. A photocopy may be supplied if requested. In all cases, a photocopy will be supplied only of a senator's complete declaration and not extracts. A copy of a declaration 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.

16. 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.
17. Details from the register will not be provided over the telephone.

Preservation of gifts declared in the register

18. Before recommending to the President whether and how, a gift is to be used or displayed in Parliament House or used or displayed on loan elsewhere, the committee will, if appropriate, seek the advice of the Joint House Department on how best the gift might be physically preserved, and used, displayed or loaned.
19. A person or body (including a senator) to whom the President (or the Senate) grants the right to use or display a gift will give an undertaking to observe the appropriate duty of care and return the gift on request of the President to the custody of the Registrar.
20. When a senator who is using or displaying a gift ceases to be a senator, he or she must return the gift to the Registrar.

Explanatory notes

21. To assist senators the committee has prepared Explanatory Notes. These are for the guidance of senators and are not meant to be exhaustive. Particular attention is drawn to the following statement in the notes:

It should be borne in mind by all senators that as a matter of history, culture and practice, and while respecting the traditions of other countries, Australia does not favour or encourage political gift giving or political gift receiving. There are, however, occasions of significance which governments, parliamentarians, parliamentary institutions or others may wish to mark by giving a gift to another Parliament. The Senate resolution and the procedural rules are designed to accommodate such occasions.

22. It is for senators receiving gifts to bear in mind the requirements of the resolution and these rules and declare and surrender gifts that are intended to be institutional rather than personal.

THE SENATE

REGISTER OF GIFTS TO THE SENATE AND THE PARLIAMENT

SENATOR'S DECLARATION OF RECEIPT OF A GIFT INTENDED OR ASSUMED TO BE FOR THE SENATE OR THE PARLIAMENT

Senator's name:

State/Territory:

Gift received by:

(Self or spouse or
family member or
staff member)

Donor:

(Name and position)

Occasion:

(date, place and
circumstances of
donation)

Description of gift:

.....

The gift is taken to be a gift to the Senate (or the Parliament) because:

(there was a statement of intention by the donor or it is assumed from the circumstances of the donation or from the value of the gift (over \$500 from a government/official source, over \$200 from a non-government/private source))

.....

.....

Senator's signature: _____ **Date:** ____/____/____

THE SENATE**EXPLANATORY NOTES****DECLARATION OF GIFTS RECEIVED BY SENATORS FOR THE SENATE AND THE PARLIAMENT**

1. 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.
2. The new rules apply to all senators. However, they will mostly affect senate office-holders (for example, the President or the Deputy President) and senators who are leaders or members of parliamentary delegations travelling overseas.
3. It should be borne in mind by all senators that as a matter of history, culture and practice, and while respecting the traditions of other countries, Australia does not favour or encourage political gift giving or political gift receiving. There are, however, occasions of significance which governments, parliamentarians, parliamentary institutions or others may wish to mark by giving a gift to another Parliament. The Senate resolution and the procedural rules are designed to accommodate such occasions.
4. Any senator who receives a gift actually intended for the Senate (or the Parliament) must declare it to the Registrar within 10 days of receipt. A form is available for this.
5. The declaration will be placed in a Register of Gifts to the Senate and the Parliament.
6. If a senator's spouse, family member or staff member receives such a gift it is taken to be a gift received by the senator, who must declare it.
7. A gift is taken to be intended for the Senate (or the Parliament) if:
 - (a) the donor expressly states this intent, orally or in writing; or

- (b) the occasion and nature of the donation is such that it would be reasonable to assume the gift to be institutional rather than personal; or
 - (c) the Australian value of the gift is more than \$500 in the case of a gift from a government, or more than \$200 in the case of a gift from a private person or non-government source.
- 8. Uncertainty as to whether a gift is an institutional gift rather than a personal gift will be resolved by the Committee of Senators' Interests or the Senate.
- 9. In the first instance, a gift must be placed in the custody of the Registrar of Senators' Interests as soon as practicable after a senator receives it.
- 10. The Committee of Senators' Interest will recommend to the President how the gift is to be used or displayed in Parliament House, including in the office of a senator, or loaned for use or display elsewhere, for example in a museum or library etc. The Senate can also determine how a gift is to be displayed or loaned.
- 11. In taking such decisions, the President or the Senate are guided by the intention of the Senate that gifts are to be used, displayed or loaned in a way that:
 - (a) reflects respect for the donor and the dignity of the Senate; and
 - (b) recognises the public interest in institutional gifts; and
 - (c) takes account of practical issues such as space, safety, preservation etc.
- 12. It is considered to be a serious contempt of the Senate to fail to declare and surrender an institutional gift in accordance with the Senate resolution.

Committee of Senators' Interests

March 1998