

1996-97-98

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMITTEE OF MEMBERS' INTERESTS

Report on the operations of the Committee for 1997

Committee of Members' Interests

Membership

Hon. N B Reid MP (Chair) (resigned as member of the committee, 14 October 1996 re-appointed 4 February 1997)

Mr A M Somlyay MP (elected as Chair 14 October 1996, resigned as Chair 13 February 1997, resigned as member of the committee 23 October 1997)

Mr K J Andrews MP (appointed 14 October 1996)

Mr E L Grace MP

Mr H A Jenkins MP

Hon D F Jull MP (Appointed 23 October 1997)

Hon S P Martin MP

Mr P C Neville MP

Mr M J C Ronaldson MP (resigned as member of committee 14 October 1996)

Mr W L Taylor MP (appointed 14 October 1996, resigned 4 February 1997)

Clerk to the Committee:

Mr L M Barlin (to 26 July 1997)

Mr B C Wright (from 27 July 1997)

REPORT

Introduction

1. Under the provisions of standing order 28A by which the Committee is established, the Committee is required, as soon as practicable after each 31 December, to prepare and table in the House a report on its operations during that year.
2. This is the report of the Committee for the calendar year 1997.

Responsibilities of the Committee

3. Standing order 28A sets out the following terms of reference for the Committee:
 - (i) to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a Register of Members' Interests;
 - (ii) to consider any proposals made by Members and others as to the form and content of the register;
 - (iii) to consider any specific complaints made in relation to the registering or declaring of interests;
 - (iv) to consider what changes to any code of conduct adopted by the House are necessary or desirable;
 - (v) to consider what classes of persons (if any) other than Members ought to be required to register and declare their interests; and
 - (vi) to make recommendations upon these and any other matters which are relevant.

A report on each of these terms of reference follows.

Arrangements made for the compilation, maintenance and accessibility of the register

4. *No change was made to the arrangements by which the register is maintained. Since 1986 arrangements approved by the Committee provided that the register could be inspected, by appointment, between 10 am and 12 noon and 2 pm and 4 pm on working days in the office of the Registrar.*
5. Following considerable demand for access to the register, on 29 October 1996 the Committee agreed that the Registrar could grant permission for the register to be inspected outside of those hours if the Registrar was satisfied that the circumstances surrounding the request warranted the exercise of such a discretion.
6. In total the register was inspected on sixty-four occasions during the year. Seven of these inspections were made outside of the standard hours. These inspections take no account of the use of copies of statements of interests and notifications of alterations of interests tabled by the Chair and made available through the Table Office.
7. Notification of alterations of interests received were tabled on 26 March 1997 (alterations received between 12 December 1996 and 25 March 1997 and a statement of registrable interests), 26 June 1997 (alterations received between 26 March and 25 June) and 4 December 1997 (alterations received between 26 June and 3 December).

Proposals made by Members and others as to the form and content of the Register

8. No proposals were received for the alteration of the form or content of the register.

Specific complaints made in relation to the registering or declaring of interests

9. No formal complaint in relation to the registration of interests was received during the year. The House of Representatives itself had deleted the requirement for the oral declaration of interests in 1989 and this part of the requirements set out in standing order 28A is no longer applicable.

Changes to any code of conduct

10. The House has not adopted any code of conduct for Members, notwithstanding the tabling of such a draft code by the Speaker, on behalf of a working group, on 21 June 1995. The Committee was, therefore, not required to consider this matter.

Registration of interests by other classes of person

11. The Committee did not consider this matter during 1997.

Other matters

Shareholdings of family and business trusts, nominee companies and partnerships

12. Until 1996 it had been considered sufficient for Members to register the fact that a family or business trust, nominee company or partnership was engaged in making investments or share-trading without requiring the notification of actual shareholdings held by the trust, nominee company or partnership. However, in 1996 the committee, following concerns expressed and inquiries from Members, obtained legal advice on these matters. Having obtained this advice, the Committee concluded that where a Member, the Member's spouse or dependent children (or two or more of the Member, the Member's spouse or a dependent child or dependent children acting together) were able to exercise control over the right to vote or dispose of shareholdings held by a family or business trust, nominee company or a partnership, then it was necessary for the Member to notify details of such shareholdings to the Registrar.
13. The Committee determined that the new arrangement should apply from the commencement of the sittings in 1997, with notifications in respect of such shareholdings held on that date being required to be provided to the Registrar within 28 days of that date. Similarly it was decided that where such circumstances arose in the future, notifications were to be made within the usual period of 28 days.
14. As a result of these decisions, the explanatory notes were amended, and Members were informed accordingly and provided with copies of the revised explanatory notes.

Donations etc

15. During the year the Committee also considered the application of the requirements in relation to gifts, sponsored travel and hospitality, with particular reference to the application of the disclosure obligations of the Commonwealth Electoral Act.
16. The Commonwealth Electoral Act provides that a candidate need not include personal gifts in the disclosure required under that act. The committee understood that two key points needed to be satisfied for a donation to be exempt from the act's provisions: the donation must be intended by the donor as being for the candidate's personal use, and must not be used or intended to be used by the candidate solely or substantially for a purpose related to an election. The administration of these requirements is the responsibility of the Australian Electoral Commission.

17. Even though a donation received by a Member as a personal gift may fall within the exemption provisions of the Commonwealth Electoral Act referred to above, if the sum involved exceeds the limits set out in the resolutions of the House, there is a requirement for such a "gift" to be notified to the Registrar of Members' Interests. This requirement applies to all Members.
18. At the direction of the committee all Members were advised of these requirements on 7 March 1997.

Appreciation

19. The committee records its appreciation for the contributions made to its work by two Members who resigned from the Committee during 1997. Messrs Somlyay and Taylor. Mr Taylor resigned from the Committee on 2 January, and Mr Somlyay resigned on 23 October. Mr Somlyay MP had served as the Committee's chair from 15 October 1996 to 13 February 1997, and the Committee is grateful for his service in that capacity.
20. The Committee also wishes to record its appreciation for the excellent support provided by its former Clerk, Mr Lyn Barlin, AM. Mr Barlin, who retired from the Department of the House of Representatives on 26 July 1997, had been Secretary to the Committee of Members' Interests since its establishment in 1985 and Registrar of Members' Interests since that time. Like its predecessors, the Committee has been extremely well served by Mr Barlin. He had great knowledge of the registration requirements and the related issues. Mr Barlin served the Committee, and members generally, with notable diligence, discretion and courtesy.

(HON. N B REID)

Chair

10 March 1998

HOUSE OF REPRESENTATIVES
COMMITTEE OF MEMBERS' INTERESTS

38th Parliament - 7th Meeting

Minutes of Proceedings of meeting held on
13 February 1997 at 11.20am

1. Present

Mr K.J. Andrews, MP
Mr E.L. Grace, MP
Mr H.A. Jenkins, MP
Hon. S.P. Martin, MP
Mr P.C. Neville, MP
Hon. N.B. Reid, MP
Mr A.M. Somlyay, MP

2. Membership of Committee

Mr Somlyay (Chairman) informed the Committee that Mr W.L. Taylor, MP, had resigned from the Committee and the Hon. N.B. Reid, MP, had been appointed to the Committee.

3. Resignation of Chairman

Mr Somlyay informed the Committee that he wished to resign from the position of Chairman of the Committee.

4. Election of Chairman

On the motion of Mr Somlyay, seconded by Mr Grace, Mr Reid was elected as Chairman, and took the Chair.

5. Minutes of Proceedings

The minutes of proceedings of the meeting held on 11 December 1996 were confirmed.

6. Shareholdings held by family and business trusts, nominee companies and partnerships

The Chairman advised that following approval of the wording by members of the Committee, the Registrar had advised all Members by fax letter on 29 January 1997 of

the revised requirements in respect of the registration of shareholdings held by family and business trusts, nominee companies and partnerships and had also forwarded a copy of the revised Explanatory Notes. Originals of the letters and Explanatory Notes were also placed in Members' Parliament House offices.

7. **Tabling of Statements of Registrable Interests and notifications of alterations of interests**

The Chairman informed the Committee that on 12 December 1996 the former Chairman had tabled copies of Statements of Registrable Interests and notifications of alterations of interests received during the period 25 June 1996 to 11 December 1996.

8. **Letter from Member seeking advice of aspects of the registration requirements**

The Chairman presented the text of a letter received by the Clerk from a Member seeking advice on the interpretation to be placed on the requirements for the registration of gifts and sponsored travel and hospitality. The letter drew attention to the position "in respect of Independent Members of Parliament especially when travel, hospitality, gifts and donations are clearly received as part of a broader political process" and stated that it was understood "that the provisions of the Australian Electoral Act did not apply to Independents in this respect and therefore the ability of some Members of Parliament to perhaps not be accountable to the public at large exists".

The Clerk informed the Committee that, following some media reports in respect of these matters, an Independent Member had sought his advice and was informed that it was considered necessary for the receipt of gifts valued at more than \$200 received from other than official sources to be registered and that accommodation, sponsored travel and hospitality and up-graded travel should also be registered. He also informed the Committee that he had not inquired about an Independent Member's responsibility under the Australian Electoral Act and suggested that such a responsibility or any possible need for amendment of the Act was a matter for others, not the Committee.

The Committee deliberated.

Resolved—On the motion of Mr Martin—That the Committee concurs in the advice conveyed by the Clerk to the Member and that a letter should be sent to all Members reminding them of the registration requirements and inviting attention particularly to the need to register the receipt of gifts, sponsored travel and hospitality including up-graded travel.

9. **Request from the Register of Senators' Interests**

The Clerk reported a request received from the Registrar of Senators' Interests for access to the legal advices received by the Committee in relation to the need to register shareholdings held by family and business trusts, nominee companies and partnerships.

Resolved—On the motion of Mr Andrews—That the request be agreed to and that the Senate Committee be asked (1) to provide any legal advice it may have received which could be useful to this Committee and (2) to agree that if legal advice is required for the assistance of both committees in the future, that the cost should be shared between the two committees.

10. Interpretation of registration requirements

The Committee deliberated in respect of its interpretation of the requirements and the need for the registration of shareholdings in the following cases:

Member A

Spouse of Member and a **non-dependent** son have nominee company.

Control of nominee company lies with the spouse and a non-dependent son—both need to approve actions.

The nominee company has shareholdings.

Does the Member have to notify shareholdings that the nominee company holds?

Resolved—On the motion of Mr Andrews—That:

- (1) on the basis of the information available, and if in reality the spouse does not exercise control over the right to vote or dispose of the shares, there is not a requirement to register those shareholdings, and
- (2) the Clerk should write to the Member concerned explaining the Committee's determination based on the facts available but pointing out that if, in reality there is control exercised by the spouse, the Member is required to register those shareholdings.

Member B

The Member is a beneficiary of the Member's parents' family trust.

In normal circumstances, Member has no control over trust.

Member has an enduring Power of Attorney in event of incapacity or death of parents.

The family trust has shareholdings.

Is it necessary for the Member to notify those shareholdings?

Resolved—On the motion of Mr Somlyay—That:

- (1) on the basis of the information provided that the Member holds an enduring Power of Attorney, that is, a prospective power, there is no requirement for the shareholdings to be registered;

- (2) if the instrument held is a Power of Attorney giving the Member authority to act at any time, there is a need to register the shareholdings within 28 days of the exercise of that Power, and
- (3) the Clerk should write to the Member concerned drawing attention to the distinction between the two cases.

11. **Adjournment**

The Committee adjourned at 12.25pm until a date and hour to be determined by the Chairman.

Confirmed

CHAIRMAN

HOUSE OF REPRESENTATIVES
COMMITTEE OF MEMBERS' INTERESTS

38th Parliament - 8th Meeting

Minutes of Proceedings of meeting held on
26 February 1997 at 4.00pm

1. **Present**

Hon. N.B. Reid, MP (Chairman)
Mr E.L. Grace, MP
Mr H.A. Jenkins, MP
Hon. S.P. Martin, MP
Mr P.C. Neville, MP
Mr A.M. Somlyay, MP

2. **Minutes of Proceedings**

The minutes of proceedings of the meeting held on 13 February 1997 were confirmed .

3. **Matters arising from Minutes of Proceedings**

The Chairman informed the Committee that, following the clearance by himself and Mr Andrews, on 19 February 1997 the Clerk had written to the two Members (described as Member A and Member B) conveying the Committee's decision in relation to the matters they had raised which had been determined at the last meeting.

4. **The need for notification of donations received by Members**

The Committee further considered advice received from the Commonwealth Electoral Commission on the disclosure obligations of candidates (including Members).

Ordered that the Clerk should prepare for the Committee's consideration a form of words to be included in the reminder letter to be sent to all Members, as agreed at the previous meeting. Such advice is to have regard to the requirements of the Commonwealth Electoral Act.

5. **Interpretation of registration requirements**

The Committee deliberated in respect of its interpretation of the requirements and the need for the registration of shareholding in the following cases:

MEMBER X

- Member and spouse have a family trust
- Trust had shareholdings
- Member was a director of the trust
- Member recently resigned as director
- Member is not a beneficiary of Trust
- For past 10 months whilst the Committee was deliberating on need for the registration of shareholdings held by trusts, Member deliberately made it his business **not** to find out what shares trust held
- Since advice of 29 January 1997, Member's spouse has informed Member she has no intention of telling him what shares Trust holds
- Member has no intention of finding out what shares are held
- Member is **unaware** of current shareholdings held by Trust (and presumably those that may have been held on 4 February 1997)
- Member does not believe he is required to make any notification to Registrar (except his resignation as a Director of the Trust)
- Does Committee agree that no other notification is required?

Resolved—On the motion of Mr Grace — That:

- (1) on the basis of the information supplied, there is not a requirement to make any notification to the Registrar in relation to this matter, except for the Members' resignation as a director of the trust; and
- (2) the Clerk should write to the Member concerned advising of its decision based on the facts available and indicating that if the position is not in accordance with the Committee's understanding, the Member should advise the Clerk so that the matter can be reconsidered

MEMBER Y

- Member's spouse is a beneficiary of a discretionary family trust
- Spouse's father exercises sole control of the trust
- Trust has shareholdings
- Is there a requirement to notify shareholdings held by the trust

Resolved - On the motion of Mr Somlyay - That:

- (1) on the basis of the information supplied there is not a requirement for the Member to notify shareholdings held by the Trust; and
- (2) the Clerk should write to the Member concerned advising of its decision based on the facts available and indicating that if the position is not in accordance with the Committee's understanding, the Member should advise the Clerk so that the matter can be reconsidered.

6. Report on operations of the Committee for year ended 31 December 1996

The Chairman indicated that he anticipated circulating a draft report for consideration by members of the Committee prior to the next meeting.

7. Adjournment

The Committee adjourned at 5.00pm until Wednesday, 5 March 1997 at 4.00pm.

Confirmed

CHAIRMAN

HOUSE OF REPRESENTATIVES
COMMITTEE OF MEMBERS' INTERESTS

38th Parliament - 9th Meeting

Minutes of Proceedings of meeting held on
5 March 1997 at 4.00pm

1. **Present**

Hon. N.B. Reid, MP (Chairman)
Mr K J Andrews, MP
Hon. S.P. Martin, MP
Mr P.C. Neville, MP
Mr A.M. Somlyay, MP

2. **Minutes of Proceedings**

The minutes of proceedings of the meeting held on 26 February 1997 were confirmed .

3. **Report on the operations of the Committee for 1996**

The Chairman presented his draft report on the operations of the Committee for 1996.

Report considered as a whole.

Resolved—On the motion of Mr Martin—That the report:

- (a) be agreed to; and
- (b) be the report of the Committee to the House.

4. **Letter to Members in relation to donations**

The Chairman presented a draft letter prepared by the Clerk at the direction of the Committee in relation to the registration of gifts and the disclosure provisions of the Commonwealth Electoral Act.

The Committee deliberated.

Resolved—On the motion of Mr Martin—That:

- (a) the Committee endorses the letter, and
- (b) the Clerk forward a copy to each Member.

5. Adjournment

The Committee adjourned at 4.15pm until a date and hour to be determined by the Chairman.

Confirmed

CHAIRMAN

