



***PROCEDURE AND PRIVILEGES  
COMMITTEE***

***MEMBERS OF PARLIAMENT  
(FINANCIAL INTERESTS)  
ACT 1992  
REVIEW***

**Report No. 5**

**2006**

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Procedure and Privileges Committee

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(FINANCIAL INTERESTS)  
ACT 1992  
REVIEW***

**Report No. 5**

Presented by:  
Mrs Dianne Guise, Deputy Speaker of the Legislative Assembly  
Laid on the Table of the Legislative Assembly  
On 23 November 2006



## COMMITTEE MEMBERS

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Hon. Fred Riebeling, MLA  
Speaker of the Legislative Assembly

### Members

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Deputy Clerk of the Legislative Assembly

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## COMMITTEE'S FUNCTIONS, POWERS AND TERMS OF REFERENCE

Legislative Assembly Standing Order No. 282 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee -

### Procedure and Privileges Committee

**282.** (1) A Procedure and Privileges Committee will be appointed at the beginning of each session to —

- (a) examine and report on the procedures of the Assembly; and
- (b) examine and report on issues of privilege; and
- (c) wherever necessary, confer with a similar committee of the Council.

(2) The Procedure and Privileges Committee will have the powers of a select committee.

(3) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.

(4) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.

(5) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.

Problems and shortcomings of the *Members of Parliament (Financial Interests) Act 1992* were first brought to the attention of the Procedure and Privileges Committee some time ago by the Clerk of the House who is also the Registrar under the Act. This culminated in the Committee adopting terms of reference on 22 November 2005 which were then reported to the House. The terms of reference are as follows -

- (1) That a review of the *Members of Parliament (Financial Interests) Act 1992* be conducted by the Committee, taking into consideration –
  - Interests to be disclosed;
  - Return forms and the method of making additional disclosures;
  - The Register and the previous PPC's May 2000 recommendation that the registrar (the Clerk of the House) produce the register in a cumulative electronic format;
  - Current sanctions and alternative methods for the enforcement of the Act;
  - Findings and recommendations contained in the "*Members of Parliament (Financial Interests) Act 2002: A Review of the Act*", Margaret Quirk, MLA, 2002; and
  - Other related matters.

(2) That the Committee report to the Assembly by 28 September 2006.

The report date was subsequently extended until 30 November 2006.

The Committee advertised for submissions but, regrettably, other events quickly overtook the Committee's investigation into this matter when, on 1 December 2005, the House referred terms of reference to the Procedure and Privileges Committee requiring it to inquire into the actions of one of the Assembly's members and whether the member's actions in regards to the Members' Financial Interests Register constituted "misconduct" under the *Corruption and Crime Commission Act 2003* and or a breach of parliamentary privilege. That investigation also illustrated shortcomings of the Act particularly in the way it stipulates arrangements for access to the register. The Committee reported its findings to the Legislative Assembly through the Clerk of the Legislative Assembly on 22 December 2005. Your Committee undertook to also take into consideration the findings of that investigation which are relevant to this review.

## COMMITTEE ACTIVITIES

### 1. Meetings

The Committee at 17 meetings reviewed the *Members of Parliament (Financial Interests) Act 1992*.

### 2. Submissions

The Committee called for submissions both within Western Australia and in the Eastern States.

### 3. Investigative Travel

The Committee also undertook investigative travel to the Parliaments of Victoria, Queensland and New South Wales where it was briefed by like Committees, Presiding Officers and Registrars and staff responsible for their equivalent members' financial interests registers.

## RECOMMENDATIONS

### Recommendation 1

Your Committee recommends that -

- (1) except in section 17 (1) and (2), that wherever “Clerk” appears in the *Members of Parliament (Financial Interests) Act 1992* it be substituted with “Registrar”; and
- (2) in section 3 of the *Members of Parliament (Financial Interests) Act 1992* the definition of “Clerk” be deleted and the following new definitions inserted alphabetically -

“

“**Clerk**” means -

- (a) in relation to a Member of the Legislative Assembly, the Clerk of the Legislative Assembly; or
- (b) in relation to a Member of the Legislative Council, the Clerk of the Legislative Council,

and in the absence of the Clerk, in either case, means the Deputy Clerk or the Acting Clerk;

“**Registrar**” means -

- (a) in relation to a Member of the Legislative Assembly, the Clerk of the Legislative Assembly; or
- (b) in relation to a Member of the Legislative Council, the Clerk of the Legislative Council; ”.

### Recommendation 2

Your Committee recommends that the *Members of Parliament (Financial Interests) Act 1992* be amended to require the -

- (a) present ‘register’ to be divided into, and considered as, a series of annual registers and referred to accordingly. An Annual Register will consist of the annual returns for that year, together with any primary returns and any correspondence from members which provides further information in relation to any return period, which has been received up to the date at which the Registrar compiles the register for tabling in the House; and
- (b) register being compiled in the period from 1 July to the closing date for annual returns (30 September) to be referred to as the ‘Compiling Register’.

### **Recommendation 3**

Your Committee recommends that section 17 of the *Members of Parliament (Financial Interests) Act 1992* be amended by adding the requirement that a member may only inspect his or her original returns in the presence of the Registrar, or in the absence of the Registrar, the Deputy Registrar or an Acting Registrar.

### **Recommendation 4**

Your Committee recommends that the times in section 17(1) of the *Members of Parliament (Financial Interests) Act 1992* be amended to allow access by any person to certified copies of the annual registers at any time when the office of the Clerk is open, which automatically includes those times when the relevant House of Parliament is sitting.

### **Recommendation 5**

Your Committee recommends that section 18(1) of the *Members of Parliament (Financial Interests) Act 1992* be amended to require the Registrar to prepare a bound photocopy of the Annual Register for tabling in the House by the Presiding Officer.

### **Recommendation 6**

Your Committee recommends that subsections (3) and (4) of section 18 of the *Members of Parliament (Financial Interests) Act 1992* be deleted.

### **Recommendation 7**

Your Committee recommends that the *Members of Parliament (Financial Interests) Act 1992* be amended to ensure that, as far as possible, the definitions are all inclusive so that Act can be read and fully understood without reference to other Acts.

### **Recommendation 8**

Your Committee recommends that the Registrar, from time to time, seek further feedback on the explanatory information provided to members and make amendments as necessary.

### **Recommendation 9**

Your Committee recommends that section 4(3) of the *Members of Parliament (Financial Interests) Act 1992* be deleted and a new subsection 4(3) substituted in its place requiring full disclosure in all sections of an annual return, except under section 6 of the Act (Real Property) where it will be sufficient, for the purposes of the Act, for members to disclose only the suburb, town or district in which their residence is located. This will apply equally whether members have one or more than one legitimate residence.

### **Recommendation 10**

Your Committee recommends that section 4 of the *Members of Parliament (Financial Interests) Act 1992* be amended to allow members to amend, substitute or provide correcting information to their returns under the following circumstances -

- (1) Where the deadline for submission of the return has not passed, a member may -
  - (a) request the Registrar to remove the previous return for that period and substitute the new return in its place; or
  - (b) request the Registrar to produce the original return for that period to enable the member to make an amendment and then initial and date that amendment.
  
- (2) Where the deadline for submission of the return has passed, a member may write a signed and dated letter to the Registrar detailing correcting information and identifying the part of the return to which the corrections relate. The Registrar will include the letter in that part of the register which at the time of receipt of the letter is not tabled, and place a file note in the part of the register to which the letter relates.

A copy of the letter will be placed with the certified copy of the register available for inspection in the office of the Clerk.

All substituted members' returns and letters advising the Registrar of amendments must be stamped with the date of receipt by the Registrar.

### **Recommendation 11**

Your Committee recommends that the declaration value listed in sections 7, 9, 10 and 13 of the *Members of Parliament (Financial Interests) Act 1992* be increased from \$500 to \$2,000 and then adjusted every 10 years approximately in line with CPI increases.

### **Recommendation 12**

Your Committee recommends that section 6 of the *Members of Parliament (Financial Interests) Act 1992* be amended to require members to only disclose the suburb, town or district in which their residence is located. This will apply equally whether members have one or more than one legitimate residence.

### **Recommendation 13**

Your Committee recommends that a new section be inserted in Part V of the *Members of Parliament (Financial Interests) Act 1992* requiring the Registrar to notify the House, through the Presiding Officer, of any failure by a member to meet the deadline for lodging a return and any unauthorised access of or interference with the register.

#### **Recommendation 14**

Your Committee recommends that Part V of the *Members of Parliament (Financial Interests) Act 1992* be amended so that when a member intentionally provides inaccurate information or intentionally excludes required information from a return it will be regarded to be contempt of the House in which he or she is a member, and that House may deal with him or her accordingly.

#### **Recommendation 15**

Your Committee recommends that the specific exclusion applying to the Courts and other bodies under sections 20 and 21 of the *Members of Parliament (Financial Interests) Act 1992* should be extended to any suspected breach of the Act by a member or any suspected misconduct in relation to the register. In particular legislative amendments are required to ensure that the provisions of the *Crime and Corruption Commission Act 2003* do not apply to any matters to do with the register.

## **MINISTERIAL RESPONSE**

In accordance with Standing Order 277, the Committee directs the Premier to report to the Legislative Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

## INTRODUCTION

Your Committee when examining the *Members of Parliament (Financial Interests) Act 1992*, the House on 1 December 2005 referred a specific matter relating to the register for your Committee's investigation. The relevant findings of that investigation were also taken into consideration during this review.

### Terminology used in the report

#### *The Act*

Where the term "the Act" is used in this report it refers to the *Members of Parliament (Financial Interests) Act 1992* unless the context otherwise indicates.

#### *Clerk and Registrar*

The Act refers to the "Clerk" not to the "Registrar" and unless the context otherwise indicates, these terms are used interchangeably in this report. Your Committee proposes that, except in section 17 (1) and (2), all references to the "Clerk" in the Act should be changed to "Registrar".

#### *Committee and PPC*

In this report the terms "Committee" and "PPC" refer to the Procedure and Privileges Committee of the Legislative Assembly unless the context indicates otherwise.

## Part 1

### THE REGISTER OF MEMBERS' FINANCIAL INTERESTS

#### 1.1 KEEPING OF THE ANNUAL REGISTER

In its current form section 16 of the *Members of Parliament (Financial Interests) Act 1992* prescribes that each financial year the Clerk will compile alphabetically by surname a loose-leaf form register from the original returns lodged by the members of the House in accordance with section 4 of the Act.

##### 1.1.1 *Register*

At present, the Act defines 'register' as a register compiled and maintained under section 16. Your Committee when reviewing this section of the Act acknowledged that section 16 allows very little flexibility with regards to how the information is kept.

Your Committee considers that the present 'register' should be divided into, and considered as, a series of annual registers and referred to accordingly. An Annual Register will consist of the annual returns for that year, together with any primary returns and any correspondence from members which provides further information in relation to any return period, which has been received up to the date at which the Registrar compiles the register for tabling in the House. For convenience, the register being compiled in the period from 1 July to the closing date for annual returns (30 September) should be referred to as the 'compiling register'.

Your Committee proposes the *Members of Parliament (Financial Interests) Act 1992* be amended to reflect the changed terminology relating to the registers.

## 1.2 ACCESS TO THE REGISTER

Currently section 17 of the Act stipulates the register will be made available to any person at the office of the Clerk of the House between in the hours of 10.00 am to 4.00 pm on any day except Saturday, Sunday and public holidays. However, the PPC's recent investigation into the actions of an Assembly member in regards to the register illustrated the need for restricted access to the register (the original documents). It follows that if the original returns are not to be made available for inspection by any person other than members, then alternative arrangements are needed. Your Committee proposes that if a member wishes to inspect his or her original returns, they must be viewed in the presence of the Registrar.

Members lodge their annual return during the 3 month lodgement period from 1 July to 30 September. The Clerk is required under the Act to allow any person to have access to returns from the time they are lodged but this year, due to security concerns, access has been given to a file containing loose-leaf photocopies of the returns.

Your Committee endorses the practice of the Registrar providing access to a copy of a register, rather than the register itself. The Act should be amended to provide that a certified copy of the registers should be available for inspection.

### 1.2.1 *Time and place of access.*

Currently members are able to inspect a register at any time when the House is sitting and your Committee believes it is practical for the same access times to be extended to any person wanting to inspect a register. Accordingly your Committee proposes the times for any person to access certified copies of the Annual Register be amended in the Act to hours when the office of the Clerk is open, which automatically includes times when the relevant House of Parliament is sitting (the terminology "office of the Clerk" should not be changed in the Act because it describes the relevant physical locations at Parliament).

## 1.3 TABLING THE REGISTER

Currently section 18 of the Act requires the Clerk, within 14 sitting days after the last day for lodgement of members' returns (30 September), to present a copy of the register to the Presiding Officer for tabling in the House. The Clerk is required to arrange to have the register published by the Government Printer. This section also prescribes what matter may be edited from the tabled copy of the register.

### 1.3.1 *Tabled copy of the Register*

The original returns submitted by members form the Annual Register which is retained by the Registrar and cannot be tabled. Your Committee agrees that the Registrar should be required to provide a bound photocopy of the Annual Register for tabling in the House by the Presiding Officer.

### 1.3.2 Matter that may be edited from the tabled copy of the Annual Register

Currently section 18 (4) of the Act provides the Clerk with the authority to delete certain matter from members' returns. However, if all copies of the Annual Register are certified photocopies of the original returns, then it will no longer be necessary to edit the returns. Your Committee proposes that section 18 (4) of the Act be deleted.

### 1.3.3 Register to be published as a parliamentary paper

Currently section 18(3) of the Act requires the Clerk to arrange to have the Annual Register published by the Government Printer as a parliamentary paper once a copy of the register has been tabled in the House. Advice provided to your Committee indicates section 18(3) has never been used in the Legislative Assembly because technology allows the register to be printed in-house if required. Your Committee proposes that section 18(3) of the Act be deleted.

#### Recommendation 1

Your Committee recommends that -

- (1) except in section 17 (1) and (2), that wherever "Clerk" appears in the *Members of Parliament (Financial Interests) Act 1992* it be substituted with "Registrar"; and
- (2) in section 3 of the *Members of Parliament (Financial Interests) Act 1992* the definition of "Clerk" be deleted and the following new definitions inserted alphabetically -

“

**“Clerk”** means -

- (a) in relation to a Member of the Legislative Assembly, the Clerk of the Legislative Assembly; or
- (b) in relation to a Member of the Legislative Council, the Clerk of the Legislative Council,

and in the absence of the Clerk, in either case, means the Deputy Clerk or the Acting Clerk;

**“Registrar”** means -

- (a) in relation to a Member of the Legislative Assembly, the Clerk of the Legislative Assembly; or
- (b) in relation to a Member of the Legislative Council, the Clerk of the Legislative Council; ”.

### **Recommendation 2**

Your Committee recommends that the *Members of Parliament (Financial Interests) Act 1992* be amended to require the -

- (a) present 'register' to be divided into, and considered as, a series of annual registers and referred to accordingly. An Annual Register will consist of the annual returns for that year, together with any primary returns and any correspondence from members which provides further information in relation to any return period, which has been received up to the date at which the Registrar compiles the register for tabling in the House; and
- (b) register being compiled in the period from 1 July to the closing date for annual returns (30 September) to be referred to as the 'Compiling Register'.

### **Recommendation 3**

Your Committee recommends that section 17 of the *Members of Parliament (Financial Interests) Act 1992* be amended by adding the requirement that a member may only inspect his or her original returns in the presence of the Registrar, or in the absence of the Registrar, the Deputy Registrar or an Acting Registrar.

### **Recommendation 4**

Your Committee recommends that the times in section 17(1) of the *Members of Parliament (Financial Interests) Act 1992* be amended to allow access by any person to certified copies of the annual registers at any time when the office of the Clerk is open, which automatically includes those times when the relevant House of Parliament is sitting.

### **Recommendation 5**

Your Committee recommends that section 18(1) of the *Members of Parliament (Financial Interests) Act 1992* be amended to require the Registrar to prepare a bound photocopy of the Annual Register for tabling in the House by the Presiding Officer.

### **Recommendation 6**

Your Committee recommends that subsections (3) and (4) of section 18 of the *Members of Parliament (Financial Interests) Act 1992* be deleted.

## Part 2

### LODGEMENT OF RETURNS BY MEMBERS

#### 2.1 FORM OF RETURNS

##### 2.1.1 *Definitions - Section 3 of the Act*

The Act presently includes several references to other Acts which makes it difficult for members trying to ascertain their obligations under the Act. In order to gain an understanding of “income” in s.7 it is necessary to refer to “assessable income” as defined by the *Income Tax Assessment Act 1936* (Cwlth). Definitions of “interest” and “securities” with respect to corporations mentioned in section 11 of the Act are found in the *Corporations Act 2001* (Cwlth). Several other Acts are also referred to. The Clerk of the Legislative Assembly recommended that, to the greatest extent possible, the Act should stand alone so as to enable members to have a full understanding of their disclosure obligations.

Your Committee agrees with this proposition and proposes that the Act be amended to ensure that, as far as possible, the definitions are all inclusive so that members can fully understand their obligations solely by reference to the *Members of Parliament (Financial Interests) Act 1992*.

##### 2.1.2 *Explanatory Information*

The Clerk previously proposed to your Committee that explanatory information be circulated to members with their primary and annual returns. The information was reviewed and supported by your Committee on 13 June 2006 and was sent to all members in early July 2006 with their annual returns. Your Committee is appreciative of the Clerk’s proactive action regarding this matter and considers that further feedback on the explanatory information should be sought by the Registrar from time to time. Your Committee stresses that the explanatory information provided by the Registrar is not comprehensive in that it cannot reasonably cover all potential financial circumstances and should be used by members as guide only.

##### 2.1.3 *Return forms*

Return forms from a number of jurisdictions were reviewed by the Committee and there does not appear to be any need to vary the current forms promulgated under the Act, past what might be necessary after the changes to the legislation which this report envisages are made.

#### 2.2 COMPLETION OF RETURNS

While members are required to submit an annual return each year, that document by itself is not necessarily a complete record of their financial interests for that return period. Section 4(3) specifies that members are not required to include in a return any information disclosed in a previous return. This can be problematic for members when completing a new annual return and makes it particularly difficult for any person endeavouring to establish the nature

of a member's financial interests without having to refer to one or more of the previous returns.

Requiring members to provide a complete record of their financial interests on each return will assist members when completing a new return as each return will stand alone. Requiring members to declare afresh for each year will reduce the likelihood of members inadvertently including inaccurate information by reference to previous returns. Any person reading an annual register will be able to see the whole declaration in the one document. Your Committee proposes that subsection 4(3) be deleted and a new subsection 4(3) requiring full disclosure in all sections of a return be substituted in its place.

### **2.2.1 Disclosure of residential addresses**

Your Committee has taken into account legitimate security concerns regarding the requirement that members disclose, under the Real Property section of their returns, their private residential address. It should be sufficient for the purposes of the Act for members to disclose only the suburb, town or district in which their residence is located. This applies equally whether members have one or more than one legitimate residence.

## **2.3 AMENDMENT OF RETURNS**

Currently the Act does not make provision for members to amend returns or to provide further information in relation to returns already lodged. Notwithstanding that, currently the Clerk has adopted administrative practices which allow members to provide correct information.

### **2.3.1 Prior to 30 September deadline for lodging returns**

Administratively, the Clerk currently allows members to amend information in returns already lodged for the return period (previous financial year) during the '3 month window' between 30 June and the closing date 30 September when returns must be lodged with the Clerk. This practice is a good and sensible one which should be recognised in the Act. Your Committee proposes the Act be amended to allow members to provide new information to the Registrar within the period 1 July to 30 September by simply having their earlier return removed and new return substituted in its place. In this case, the earlier return must not be retained by the Registrar. A person can obtain a copy of returns lodged at any time during this return "window" and it should be possible to readily determine whether there have been adjustments since that return was copied. Consequently, all returns should be stamped with the date the return is lodged with the Registrar, and any subsequent amendments made to a return should be initialled by the member and dated.

### **2.3.2 After the 30 September deadline for lodging returns**

Currently, after expiry of the 30 September deadline for submission of annual returns for the immediate past period, the register is complete, whether or not all members have submitted their returns. Any additional or correcting information in relation to any return for which the submission period has closed must be supplied by letter to the Clerk.

Your Committee proposes that the current administrative practice implemented by the Clerk of the Legislative Assembly be formalised by including it in the Act. All letters must be

signed and dated by the member and stamped with the date it is received by the Registrar. The Registrar will place the letter in that part of the register which has not yet been tabled in the House and consequently it will be tabled as part of the next Annual Register. While there should be no requirement to add that letter or new material to the copy already tabled, it is appropriate to add a certified copy of that letter to the certified copy of the register which is available for inspection in the office of the Clerk so that it can be seen in context by any person inspecting the copies of the registers.

It is also expected that, in accordance with current practice, the Registrar will place a file note on the original register to which any such letter refers indicating that there is further information contained in the letter and in which Annual Register it is located.

### **2.3.3 Additional information for the period after 30 June**

Annual returns are declarations in retrospect for the immediate past financial year. There is no requirement for a member to report changes to their circumstances as and when they happen. However, under section (3) of the *Code of Conduct for Members of the Legislative Assembly* and Standing Orders 128 and 254, members are required to make declarations during debate regarding any pecuniary interest or conflict of interest between their public duties and their private interests that have not already been declared in their last financial interests return.

The Clerk has advised your Committee that some members choose to submit letters advising changes to their financial circumstances that have occurred after the last reporting period. This information is kept by the Clerk as part of the register which has not yet been tabled. Your Committee does not propose that members be required to make declarations about their pecuniary interests every time there is a change but it should remain open to members to make such a declaration to the Registrar if they wish and for that declaration to form part of the Compiling Register.

#### **Recommendation 7**

Your Committee recommends that the *Members of Parliament (Financial Interests) Act 1992* be amended to ensure that, as far as possible, the definitions are all inclusive so that Act can be read and fully understood without reference to other Acts.

#### **Recommendation 8**

Your Committee recommends that the Registrar, from time to time, seek further feedback on the explanatory information provided to members and make amendments as necessary.

#### **Recommendation 9**

Your Committee recommends that section 4(3) of the *Members of Parliament (Financial Interests) Act 1992* be deleted and a new subsection 4(3) substituted in its place requiring full disclosure in all sections of an annual return, except under section 6 of the Act (Real Property) where it will be sufficient, for the purposes of the Act, for members to disclose only the suburb, town or district in which their residence is located. This will apply equally whether members have one or more than one legitimate residence.

### **Recommendation 10**

Your Committee recommends that section 4 of the *Members of Parliament (Financial Interests) Act 1992* be amended to allow members to amend, substitute or provide correcting information to their returns under the following circumstances -

- (1) Where the deadline for submission of the return has not passed, a member may -
  - (a) request the Registrar to remove the previous return for that period and substitute the new return in its place; or
  - (b) request the Registrar to produce the original return for that period to enable the member to make an amendment and then initial and date that amendment.
- (2) Where the deadline for submission of the return has passed, a member may write a signed and dated letter to the Registrar detailing correcting information and identifying the part of the return to which the corrections relate. The Registrar will include the letter in that part of the register which at the time of receipt of the letter is not tabled, and place a file note in the part of the register to which the letter relates.

A copy of the letter will be placed with the certified copy of the register available for inspection in the office of the Clerk.

All substituted members' returns and letters advising the Registrar of amendments must be stamped with the date of receipt by the Registrar.

## Part 3

### FINANCIAL INTERESTS TO BE DISCLOSED

#### 3.1 DECLARATION VALUES

Sections 7, 9, 10 and 13 of the Act require declarations in relation to sources of income, gifts, contributions to travel and debts if the value is greater than \$500. This amount has not been increased since the Act was enacted 14 years ago. Your Committee now proposes that the amount be increased to \$2000 and then automatically reviewed every 10 years thereafter to be kept approximately in line with CPI increases and rounded to a convenient figure. Increases in the amount should be promulgated by regulation in accordance with section 22 of the Act.

Your Committee also considered whether members should be required to declare the number and value of shares held in a company. It is clear that the register is not intended to be a wealth register, but rather a register of interests: this policy is sound, and no alteration of this aspect is proposed.

#### 3.2 FINANCIAL INTERESTS TO BE DECLARED

As considered in part 2.2.1 in relation to section 6 of the Act and 'Real Property', your Committee proposes that for security reasons members be required to only record the suburb, town or district in which their residence is located. This applies equally whether members have one or more than one legitimate residence.

Your Committee reviewed sections 6 to 15 of the Act related to the declaration of financial interests and is satisfied that, other than the above proposed changes, no further amendments are required to Part III of the Act.

Your Committee also considered whether the Act should be extended to include the financial interests of a member's immediate family. Following considerable review of the matter, your Committee agreed that this would be an unwarranted invasion of the privacy of a member's immediate family. It is understood that Ministers, who have executive responsibility for decision making in a broad range of specific circumstances, will always be subject to a standard of disclosure appropriate to their role, and this rightly is set by Executive Government. Equally it must be recognised that the role of members of Parliament is to participate in providing the legislative framework for the State and in representing their constituents and the community generally. The capacity of individual members to influence specific outcomes is very limited when compared with those in Executive Government and your Committee has seen no argument which would justify the extension of declaration requirements to family members.

**Recommendation 11**

Your Committee recommends that the declaration value listed in sections 7, 9, 10 and 13 of the *Members of Parliament (Financial Interests) Act 1992* be increased from \$500 to \$2,000 and then adjusted every 10 years approximately in line with CPI increases.

**Recommendation 12**

Your Committee recommends that section 6 of the *Members of Parliament (Financial Interests) Act 1992* be amended to require members to only disclose the suburb, town or district in which their residence is located. This will apply equally whether members have one or more than one legitimate residence.

## Part 4

### NON-COMPLIANCE WITH OR BREACHES OF THE ACT

Currently the Act does not require the Clerk to report any instances where members do not comply with the requirements of the Act.

#### 4.1 FAILURE TO LODGE RETURN

Currently before the closing date for returns, the Clerk gives at least two reminders to those members who haven't submitted or fully completed their returns. In our view, this practice seems to work well and your Committee proposes that this should continue. Coupled with this reminder system, however, should be a formal requirement placed on the Registrar to report to the House, through the Presiding Officer, when a member fails to meet the deadline for lodging a return. Your Committee proposes that a new section be inserted in Part V of the Act requiring the Registrar to notify the House, through the Presiding Officer, of any breaches in the abovementioned matters.

#### 4.2 ACCURACY OF RETURNS

It is not possible for the Registrar to determine whether any entry is complete or accurate. Clearly this responsibility must continue to fall entirely on the member. Your Committee proposes that sections 4 and 20 of the Act be amended to include reference to the wilful provision of inaccurate information or exclusion of information from a member's return.

An associated question is whether the Registrar should report to the House that a member has failed to fill in any section of the return. If a member leaves a section blank, your Committee understands that this is usually brought to the member's attention by the Registrar although that is not a requirement of the Act and nor should it be. Your Committee does not believe that leaving a section blank, which we understand happens occasionally and inadvertently, should result in a report to the House.

#### 4.3 INTERFERENCE WITH THE REGISTER

In December 2005, your Committee was required by the House to inquire into the actions of a member who placed a page into a register from a past year and particularly whether the member's actions constituted "misconduct" under the *Corruption and Crime Commission Act 2003* or a breach of parliamentary privilege. That incident illustrated shortcomings of the Act and led to an immediately increased security arrangement for access to the register.

Your Committee believes that access to or alterations of the register by any person without the consent of the Registrar, or in the Registrar's absence, the Deputy Registrar or an Acting Registrar should be reported to the House through the Presiding Officer.

That investigation also highlighted the potential conflict between dual requirements placed upon the Clerk to report to the House and to anti-corruption bodies. There can be cases where there is doubt as to whether the Clerk, under section 25 of the *Corruption and Crime Commission Act 2003*, is required to advise the Corruption and Crime Commission of any

corrupt conduct by a member in relation to the Members' Financial Interests Register, and indeed whether the referral and any investigation should be kept secret from the House.

Policy underlying sections 20 and 21 of the *Members of Parliament (Financial Interests) Act 1992* is directed at precluding any suspected breach of the Act by a member or any suspected misconduct in relation to the register from being dealt with by any body other than the House to which the member belongs. The register is very closely bound up with the operations of the House itself and matters involving the register should not be dealt with anywhere but in the House to which the member belongs.

Your Committee believes legislative amendments are required to ensure that the provisions of the *Corruption and Crime Commission Act 2003* do not apply to any matters to do with the register.

#### 4.4 REFERENCE OF ALLEGED BREACHES TO THE PROCEDURE AND PRIVILEGES COMMITTEE

Recommendations 7 and 8 of the 2002 report by Margaret Quirk into the *Members of Parliament (Financial Interests) Act 1992* recommended that all breaches of the Act be referred by motion of the House for investigation by its Procedure and Privileges Committee. Your Committee believes that only the failure to lodge a return or an interference with the register ought to be reported to the House. As the Registrar is not required to check the veracity of the returns, no report should be required if the Registrar suspects that a return has not been filled in correctly. That must remain a matter for the member concerned. It will then be a matter for the House as to how an inaccurate or incomplete return is dealt with but one obvious course, and one already adopted by the House, is to refer the matter for investigation by the Procedure and Privileges Committee. The House then deals with the report from the Committee as it sees fit.

#### 4.5 PENALTIES FOR NON-COMPLIANCE OR INTERFERENCE WITH THE REGISTER

Your Committee reviewed section 20 of the Act which provides that a member who wilfully contravenes or fails to comply with Section 4 (1) of the Act is guilty of contempt and the House of which he is a member may deal with him accordingly. It is considered by your Committee that this provision is still appropriate and there is no need to amend the current provision.

#### 4.6 RESTRICTIONS ON PUBLICATION BY A MEMBER

Section 19 of the Act, in brief, precludes a Member from publishing in the course of proceedings in Parliament any information from a register or any comment on information in a register unless the information or comment is fair and published in good faith.

While it is easy to understand the sentiments expressed in this section, it cuts across the general provisions for freedom of speech in the House. It is already open for the House to find that a member has said or done something wrong in the course of a statement to the House and to deal with the member accordingly. This statutory addendum to the general law of privilege in the Houses is unnecessary and potentially restricts members from saying what

they think might need to be said about information contained on a register. Your Committee proposes that section 19 of the Act should be repealed.

### **Recommendation 13**

Your Committee recommends that a new section be inserted in Part V of the *Members of Parliament (Financial Interests) Act 1992* requiring the Registrar to notify the House, through the Presiding Officer, of any failure by a member to meet the deadline for lodging a return and any unauthorised access of or interference with the register.

### **Recommendation 14**

Your Committee recommends that Part V of the *Members of Parliament (Financial Interests) Act 1992* be amended so that when a member intentionally provides inaccurate information or intentionally excludes required information from a return it will be regarded to be contempt of the House in which he or she is a member, and that House may deal with him or her accordingly.

### **Recommendation 15**

Your Committee recommends that the specific exclusion applying to the Courts and other bodies under sections 20 and 21 of the *Members of Parliament (Financial Interests) Act 1992* should be extended to any suspected breach of the Act by a member or any suspected misconduct in relation to the register. In particular legislative amendments are required to ensure that the provisions of the *Crime and Corruption Commission Act 2003* do not apply to any matters to do with the register.

HON. FRED RIEBELING, MLA  
CHAIRMAN TO THE COMMITTEE  
16 November 2006

## SUBMISSIONS –

Peter J. McHugh, Clerk of the Legislative Assembly, Parliament of Western Australia

John Hyde, Chairman, Joint Standing Committee on the Corruption and Crime Commission, Legislative Assembly, Western Australia

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