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LAW REFORM COMMITTEE

Inquiry into review of the Members of Parliament (Register of Interests) Act

Melbourne — 29 June 2009

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Witnesses

Mr R. Purdey, Clerk of the Legislative Assembly (Victoria) and Clerk of the Parliaments, and
Mr W. Tunnecliffe, Clerk of the Legislative Council (Victoria).

The CHAIR — Thank you very much, Ray Purdey and Wayne Tunnecliffe, for coming this morning. Thank you very much for your comprehensive submission that you have presented. There are some formalities which, I must say, you of all people would be very familiar with. Nonetheless, processes are processes, and you will be aware that these hearings are covered under a range of acts, which I will not run through for you. Any comments that you make outside the hearing are not afforded privilege. Your comments and our discussion will be recorded by Hansard. You will be sent copies of the transcript afterwards so that you can make any minor changes.

We have just on 45 minutes. We will throw it open to you to speak to your submission and then, as you know, we have some questions and issues that would fall out of what you say and things that we have prepared as part of our inquiry. You would know everybody here, so I will not introduce everybody to you, other than you may not know Mahmud Begg, who is with us from the Victoria Law Foundation scheme as an intern.

Mr PURDEY — Thank you very much, Chair. You will notice that we have put in a joint submission to the committee. The reason for that is the reference itself is fairly narrow. I think if we put in separate submissions we would be telling you the same things, so we thought it was probably easier to put in a joint submission. The way we would like to handle it this morning is that we will split up the issues that we are going to speak on. I will speak on some things initially and then Wayne will follow up and cover some of the other issues, and I will finish up at the end.

Just starting off with the first thing we provided some advice on: that is in relation to the issues about advice to members. Understandably members of Parliament come to the clerks quite regularly to seek advice about questions in relation to the members' register of interests. The Clerk of the Parliaments is responsible for maintaining that register; however, as members are from both houses it is logical that they would go to their respective Clerk to seek information on that, and we certainly have no problem with that.

We regularly give advice certainly about administrative matters without too many qualms. That is usually simple things — when returns have to be in and those sorts of things. When it comes to declarable items, though, it is much more difficult for us. Neither of us has a law degree so we do not feel that we should be putting ourselves in a situation where we feel like we are giving legal advice to members of Parliament.

We are quite happy to discuss the issue with members of Parliament and try to give our view on the issue and even direct them to look at the way other members may have declared something similar in the past, but we will always say we are not competent to give legal advice. If members are unsure, then they should go and seek their own legal advice.

Our experience is that when members are coming to us, they are not trying to get around the act or anything like that. They are really just looking for plain, simple advice — that is, 'My situation has changed. What should I do? I want to make sure I comply with the act'. That is basically why we get queries from members. All members are trying to do is just ensure that they comply with the law. From our point of view, we think it probably would be better if there were someone available to members who could give such advice. It is not coming up regularly. I am guessing at the moment, but it might be six or seven times a year that people might contact me in relation to tricky things which will require legal interpretation of the act. Our suggestion is maybe there might be someone that the Parliament might employ on retainer to be able to provide that advice — certainly someone with legal experience.

We see the advantage of going down that track is that at least there is going to be consistency in the advice that is provided to members. If members have to go individually to their own legal adviser in relation to interpretation of the act, then you can have inconsistencies in interpretation.

The other thing is we feel that in order for members to be able to declare things properly, there probably need to be some guidelines in relation to the act. Things change as time goes on. If there were able to be some guidelines, they could be issued as a regulation under the act. Therefore they could be changed from time to time as different situations arose. I see that as being fairly similar to our standing orders, where you have your set rules of the house. From time to time rulings are made in the house to give interpretation of those standing orders. That is why we believe probably some guidelines might assist in the interpretation of the written word of the act; that would help.

In relation to training and guidance, we do provide training to new members of Parliament at the new members seminar at the beginning of every Parliament. We would also follow up and do that to any new member who was elected at a by-election or, in the case of the Legislative Council, when there was a casual vacancy. We have attached at the back of our submission the types of things that we would go over at that training session.

We also provide some explanation about things in the information that is sent out at the time that members are required, first of all, to put in a primary return after they are first elected and, secondly, when they have to fill out an ordinary return. That is on a 12 monthly basis. In fact those letters are about to go out to members at the moment, because ordinary returns are required to be completed as at 30 June and within 60 days thereafter, so those reminder letters are going out with the various information, and there will be some guidance in that.

The question may be asked about why do we not do some follow-up training. Like most things, even in relation to the parliamentary procedure, we try to do some follow-up training soon after a new Parliament commences. But once we get beyond the first 12 months we find we can offer those sorts of things but they are very rarely taken up. Members are usually very busy doing all sorts of other things, and we find that it is probably something that members would probably not see as terribly important. We would get very little response to it.

Those sorts of things have not been followed up with any further training after the new members' seminar. I might just hand over to Wayne to go over the next couple of points.

Mr TUNNECLIFFE — Thanks, Ray. I am going to talk very briefly about the current arrangements for making complaints regarding the act and investigating breaches and then very briefly on the number of occasions that alleged breaches have been investigated. As the committee would be aware, section 9 of the act deals with the failure to comply with the act and it provides that any wilful contravention by any person will be a contempt and may be dealt with accordingly. On top of that, each house may impose a fine of up to $2000. As any member of Parliament would know, issues of contempt of the houses are very serious matters indeed. Fortunately, they do not arise very often.

Each house has its own mechanisms under its standing orders for dealing with privilege issues and issues of contempt. We have set them out on page 3 of the submission. In the case of the Assembly, an alleged breach of privilege must first be raised with the Speaker who determines whether there is a prima facie breach. If that is the case, the member making the allegation is given precedence in the house to move a motion to have the matter referred to the Privileges Committee. If the Privileges Committee determines that there has been a breach of privilege, the house determines the penalty.

In the Council it is slightly different. An alleged breach of privilege is raised by a notice of motion, and the house can either deal with it directly or refer it to the Privileges Committee for investigation. I am happy to say that there has not been a matter raised in the Council. There has not been anything ever sent to the Privileges Committee, and I certainly hope that continues. There have only been two alleged breaches which have been raised in the houses — one in the Legislative Assembly in 1986, and a later one in the Legislative Council in 2001.

In 1986 the member for Monbulk raised in the house a complaint against the member for Gippsland West, who was Alan Brown at the time, alleging that the member had committed a contempt by failing to register his continuing pecuniary interest, failing to disclose in the house his interest during various debates and voting in the house in contravention of standing order 2. That matter was referred to the Privileges Committee, which investigated the complaint and found that there had been no breach of privilege.

The other case, in the Council, was on 5 December 2001, when the then Leader of the Government moved a motion to set up a Select Committee to investigate the failure of four members of the opposition at the time to register their interests in accordance with the act. That motion was considered in the house and defeated.

As you can see, the number of occasions on which matters have been raised has been few and far between. The reasons for this — as we have said on page 3 of the submission — is that I do not think there is much doubt that members are very assiduous in their actions and certainly do their best to ensure that they always comply with the act. That has certainly been my experience.

I can only echo what Ray said before. In all the years that I had responsibility for maintaining the register on a day-to-day basis, members were very careful and certainly wanted to do the right thing in terms of keeping their entries up to date.

Probably another reason is that the process of raising a contempt of Parliament is too onerous, and alleged breaches are not raised. As I said before, contempt matters are very serious. The final reason may well be that breaches of the act can only be raised by members themselves, so we have only ever had two cases.

Turning to the number of requests for access to the register each year, the committee is certainly aware that section 7(3) of the act prohibits the Clerk of the Parliaments from allowing anyone to inspect the register or any member's return. The actual form that each member submits, which constitutes the register, is not made available to anyone else other than the member themselves. The member can certainly come and have a look at it, but nobody else can.

The only things that are available for public access are the summaries of returns which are tabled in the house. We assume that members of the Parliament and the media are aware of this provision, as we certainly rarely ever receive any requests for access to the register. Occasionally it might happen. As members know, and as Ray alluded to a moment ago, on 1 July each year the ordinary return forms are sent out, and the summary of returns is normally tabled in September each year. Occasionally there is a little bit of interest from the media, but generally speaking throughout the year there is not.

As I said earlier, we get very few requests for access at all, but we stress the point that under the act — and the confidentiality provisions of the act require this — certainly nobody other than those who are involved in the administration of the act can have access to any member's return form.

Mr PURDEY — You did ask us for some other issues that we might raise in relation to the administration of the act. We have put a few things down in the submission, and I will quickly cover them for you. There is the reporting of failure to lodge returns on time. There is a requirement by which primary returns must be submitted and by which ordinary returns must be submitted. When that report on those returns is tabled in the house, as Clerk of the Parliaments I include in that a report on any members who may not have complied with the closing date for the returns. That is not a requirement of the act, but I always feel that is open and accountable information, and that is included in the report. The committee might want to consider whether that is made mandatory in the act.

There are three types of reports that we provide in the house. We do an update of variations every so often. They are casual notifications that come in from time to time. Although members are not required to, they can submit changes as they occur. We do a summary of variations.

When the ordinary returns have been lodged, a summary of those variations is tabled in the house, as is required by the act. We then do a cumulative summary, usually at about the end of October, where the cumulative summary of every member's register at that point in time is tabled in the house. The cumulative summary is not required to be tabled, nor the summary of casual changes. Once again, it is something that the committee might consider whether or not that is made mandatory in the act.

I have mentioned briefly the development of guidelines, and I will not go over that again.

With the location of the code of conduct, as you are aware, the member's register of interests has two parts. One is the code of conduct and the other is the requirement to declare pecuniary interests. Our view is that probably they should be separated. I think very few people know of or are aware of the code of conduct. As an accountability measure it would be better if the code of conduct was in a separate Act on its own, and leave the members register of interests, which is what the title of the act tends to make everyone understand what it is about, stand on its own.

Another point we would make is there are some references to monetary amounts. There are a few references to $500. That figure was set in 1978, and the value of money has changed since then. If you look at the Reserve Bank equivalent of $500 in 1978, today it would be about $2000, so it might be time to update the act to update those monetary amounts to a more relevant figure for today.

Finally, Wayne mentioned before that there is a requirement under the penalties section of the act for the houses to be able to impose a fine not exceeding $2000. The way those things are expressed in acts these days are by penalty units rather than monetary amounts. Once again, if the committee is looking at making any recommendations, it might be better to change the monetary amount for a fine to a penalty unit rather than have a monetary amount that keeps going out of date.

There is one other thing I want to mention while I have the microphone. In the Parliamentary Administration Act and the Public Administration Act, which have only recently been legislated by the two houses — the Public Administration Act in 2004 and the Parliamentary Administration Act in 2005 — are set values which officers of the Parliament and officers of the public sector must follow in carrying out their duties. The acts talk about such things as responsiveness, integrity, impartiality, accountability, respect and leadership.

This might be an opportunity for the committee to consider whether those types of things might be implemented in the code of conduct in relation to members of Parliament, because we do find, particularly in relation to parliamentary officers, that they do provide a very good guidance for staff in the way that they should act in carrying out their duties. We might now open up for questions.

The CHAIR — Thank you very much for that. I have a broad question that goes to the issue of privilege, and you mentioned privilege. As I understand from what you have said privilege has two sides. One is about obligation under the act — you talked about breaches that would go to the Privileges Committee, and you gave two examples — but the other part of privilege in my opening remarks about privilege was the protection that is provided to allow certain latitude in statements and remarks that are made that protects people from legal action that otherwise that particular comment, for example, might attract. Could you just talk to us for a bit about what you understand by 'privilege'.

Mr PURDEY — The main privilege, when you are talking about the privilege members of Parliament have, is a freedom of speech. By the privilege of freedom of speech, members are able to say really whatever they like in the house or in a parliamentary committee, and they are not able to be sued in relation to anything they have said in either the house or the committee.

That gives members that entitlement when they are operating in those areas. Members can breach privilege, in other words, if they do things outside that. So breach of privilege could be they breach their rights as a member of Parliament and therefore that issue can be taken up within the chambers themselves in relation to the way Wayne has just explained.

The other main privilege is freedom of access to the chambers and to the house. That has been watered down a little bit from what it used to be when we first had that privilege in 1856, but it is still a right. Really, the main privilege that members have these days is the freedom of debate, and no-one can contest that. If anyone tries to do anything in relation to that, then they could be held up as having breached privilege and could be dealt by the houses accordingly.

The CHAIR — But when Wayne spoke before about the two instances relating to the alleged noncompletion of the register, you described that as a breach of privilege that is actually a breach of the act. So that also comes under — —

Mr PURDEY — Because the act says that any wilful breach of the act will be considered as a contempt of Parliament, and a contempt of Parliament is handled as a breach of privilege. That is why we have explained that in relation to someone taking up an issue as a penalty under the act, they would need to take it up under the breach of privilege provisions.

The CHAIR — Just one last question before we move on. What is the basis of only a member of Parliament being able to raise those questions of privilege that you cited, Wayne?

Mr TUNNECLIFFE — Because it is a privilege issue, and it is a contempt issue, it can only be dealt with by the houses themselves. The only way that a matter can be raised in the houses themselves is by members. Is that clear?

The CHAIR — I understand that. Why could a member of the public, who observed something like that, not have a look at the register, find it has not been properly filled out and if they have a difficulty with that, go to a member of Parliament to advocate that for them?

Mr TUNNECLIFFE — There is no real capacity for them to do so at the moment. They could contact the press and try to get an issue raised that way or contact other members or the presiding officers, but the act makes it very clear that if it is only the houses that can deal with the matter as a matter of contempt, then the only people who can raise matters in the houses are members themselves.

Mr PURDEY — The individual would have to convince a member of Parliament to take the issue up on their behalf.

Mr CLARK — Following on from that question, you suggest in your submission that possibly the Ombudsman could be given jurisdiction to investigate complaints against MPs. Did you have in mind that the Ombudsman's investigatory role would be purely in relation to failure to comply with the register obligations, or did you also have in mind that it would include broader complaints against a code of conduct?

Secondly, do you have any particular views as to the merits of having an Ombudsman perform that role vis-a-vis, say, a parliamentary standards commission or indeed an anticorruption commission?

Mr PURDEY — Our view in relation to the Ombudsman is that there is already a provision there for the Ombudsman to be able to investigate whistleblower complaints in relation to members of Parliament. We just felt that that probably would be a natural extension of the Ombudsman's investigative powers as they apply to members of Parliament.

I think when we were looking at the issue we were more inclined to think it would be issues in relation to the register of interest-type things. The code of conduct, if you look at it, is more a fairly generalist type of thing; it is a statement of common sense, I suppose. I think we saw it more as being breaches of the register itself — the register of interest provisions — rather than the code of conduct.

Mr TUNNECLIFFE — I think there is a reasonable argument for saying that matters concerning members of Parliament could perhaps better be dealt with by someone who is independent from members. Whilst I have not had any specific instances of Privileges Committee inquiries in the Council, Privileges Committee inquiries can sometimes not be terribly satisfactory, particularly if parties take partisan positions on a matter. I personally think that is the best argument in favour of having someone who is independent and divorced from the parliamentary and political process adjudicate on matters concerning members.

Mr PURDEY — If I could just follow up on Mr Clark's question as well, the other thing we pointed out in our submission is that the time spent in debates in the houses these days is fairly time-critical. There is not a lot of spare time; therefore if investigations are going to take place through the time that the house must devote to other things, then it will mean that there will be some pressure on trying to get through the program of business as well. The time of the houses is fairly time-critical at the moment, and if you are going to impose other things upon them, I think it will cause the houses some difficulty in getting through their workload.

Mr FOLEY — Gentlemen, in relation to the issue of access to and the publication of whatever the final information is, we have had a number of submissions from other jurisdictions that put information out through everything from public records to the internet. Do you have a view on what the mechanism for distribution of the information regarding the register of interests should be?

Mr PURDEY — The act requires certainly publication in the Parliament, which I think is an important step, and I would not be advocating that we go away from that. We do put it on our intranet site, and I think that was seen as a first phase, if you like; I would have no issue with the information being provided on the internet site as well. I think that is probably a natural progression of where we have been going with this.

Mr TUNNECLIFFE — My personal view would be that I would like to see the information provided on the internet. Currently we have a system whereby the member submits their return on the form and then to some extent it is edited so that the public version — that is, the version that is contained in the published summaries which are tabled in the house and are therefore the public document — can sometimes vary a little bit from the

original version that is submitted by the member, which is available to nobody other than the member themselves.

I would like to see a process whereby, maybe through better education and better advice to members, the actual original information that is provided by the member is the information which is publicly available.

I think it is fair to say probably in excess of 95 per cent of the published summary is the same information that the member provided. But for a range of reasons — maybe the member is not quite sure; occasionally members have misinterpreted questions or misunderstood them — it is not unusual to contact members to try to get some clarification of the information that the member has provided on the return.

However, my view is that the best system would be that the publicly available material is the actual material that the member has provided and maybe there is a way of doing that electronically these days so then the material would be provided on the internet.

The CHAIR — So you are saying that the summary register that is publicly available that is 90 per cent as given — —

Mr TUNNECLIFFE — It would be in excess of that.

The CHAIR — So most of them are just as you get them but there are a few where you take some editorial — —

Mr TUNNECLIFFE — A little bit.

The CHAIR — Do you negotiate that with the member?

Mr TUNNECLIFFE — Absolutely.

The CHAIR — That's good.

Mr TUNNECLIFFE — If we are in any doubt at all as to what the member is trying to say, we contact them. The last thing we would want to do is be responsible for putting something in which is not accurate.

Mr PURDEY — Sometimes it has been put in the wrong area or something like that, and we talk to them, and say, 'We think this is a public donation so therefore it should be in that section'. When you are putting all the members' entries in together, for consistency's sake you want the same information shown in the same area for every entry, so that might be changed over to the right area, for instance.

Mr FOLEY — You discussed earlier — on the code of conduct rather than the interests — the issues regarding an independent source of advice. How would you see that person standing in the Parliament? Would they be an officer? What would be the, I suppose, legislative and legal station of those people given the different models we have seen around Australia and the commonwealth and other comparable jurisdictions?

Mr PURDEY — It does not even have to be as formal as that. It could be the Parliament engaging a consultant, if you like, on a retainer basis, to be known as the parliamentary adviser or something like that. It would not necessarily have to be as formal as a legislative position under an act of Parliament. There might be some guidelines or something in the act that says Parliament may appoint someone to advise members on the interpretation of the act, or something like that. I saw it more as informal rather than formal.

Mr TUNNECLIFFE — I think the main thing is that it would achieve a consistency of approach. I am not saying you do not necessarily get that now, but if the member comes to us, as we have said in the submission, we are not lawyers, and I think over the years our general advice has been to members that if you are in any doubt at all about something, put it in; it is better to declare it than not declare it. I would endorse what Ray said.

The CHAIR — Ray was also saying before when I was listening on that point that at the moment if such person were appointed, they would only have the act to rely on. You are saying that to make that more effective we would need some guidelines developed that would give them something to rest their advice on?

Mr PURDEY — Or they might be the person who is given the responsibility of developing the guidelines. The guidelines could be 'presiding officers', could be 'presiding officers with this person' or something like that, but as things go on, interpretations will change; and I think you need your guidelines to support your act as you go along.

Mrs KRONBERG — In terms of the person who might preside over whether privileges have been breached, would you see that person being somebody like a retired judge? To me, that person would have to transcend the day-to-day politics and cut-and-thrust of any one particular administration, so we would be looking for somebody, ostensibly, in the way we looked at judges appointments for life in the past?

Mr TUNNECLIFFE — Yes, I would. I suppose I could draw a parallel between that and the provisions of the Council's sessional order relating to production of documents which provide that the independent arbiter there in disputed cases is to be a retired Supreme Court judge or a QC, so I would agree that somebody of that standing is probably in the best position to have the degree of authority and independence to ensure that the system is transparent and accountable enough. I would agree with that.

Mrs KRONBERG — In terms of the production of information from the register of interests on an annual basis from members, is there any comparative analysis undertaken from one year to the next?

Mr PURDEY — No, we do not do any comparative analysis.

Mrs KRONBERG — It is just listed as presented?

Mr PURDEY — It is.

Mrs KRONBERG — And with your minor tweaking with the interface between the members for interpretation?

Mr PURDEY — If you go to the intranet site, the cumulative summaries for, I think, about the last eight years are there, so anyone who has access to the intranet could do a comparison themselves if they wanted to check returns year after year. The other way people could do an analysis, as I said, is by looking at the cumulative summary of returns that is printed every year. It is a printed and parliamentary paper so that information is there for people, but we do not do any analysis ourselves.

The CHAIR — Could I come back to training? You would have heard the Speaker earlier talking about how few electorate officers had come to the training, the induction on the code of practice; and I think you said, Ray, that there is an initial induction for members of Parliament and then it dramatically falls off. It is very difficult to get people to come back; so it kind of just disappears, really.

Do you think there is an argument that participation from time to time in the discussion and exposition around codes of conduct and guidelines when they are developed or obligations under the act should be mandatory for members of Parliament, given the importance of it — says he, almost putting words into your mouth.

Mr PURDEY — It is a nice idea. How you make it mandatory, I am not sure, and how you enforce it is going to be your biggest problem. It is a nice idea, and if you could achieve it, I think it would be a very good idea because if you could generate those discussions, there are lots of issues that I think are common to all members. To be able to have some sort of discussions about it, and if they are led by someone with some sort of expertise who can help to provide some sort of guidance, would be a very good idea. But I am not quite sure how you would get around the issue of making it compulsory and how enforcing that would take place.

The CHAIR — There are no examples in other jurisdictions that you know of where there is better participation?

Mr PURDEY — Not that I am aware of. I know in the previous Parliament we were required to provide some training for all members and staff on people and equal opportunity and those sorts of things. The presiding officers wrote to all members, encouraging them to come along because this was really training that everyone should participate in, and we hardly got any uptake. It is just difficult to get members to come along to training.

At the new members' seminar we will get almost 100 per cent of all new members. We try and do as much as we can at that point in time, because we know we will get new members. Sometimes we might run some

additional procedural seminars soon after the opening of the new Parliament and we still get members who come along to those, but our experience is that once you have gone through maybe the first 12 months it is very difficult to get members to come back to training sessions.

Mrs KRONBERG — I have a question for both of you. In terms of who may provide advice to members, do you place an emphasis on that being legal advice? Would you see the wisdom on having perhaps an ethicist involved in the advice so that people are not looking in terms of the constraints of the law but something that transcends it and brings us back to a values-based contribution as well?

Mr TUNNECLIFFE — Personally, I would not see the need for an ethicist. I think the main reason we have suggested there be somebody available is simply to provide consistency of advice. Having a legal background can certainly help in your capacity to interpret the provisions of the legislation. However, to touch on one of the issues Ray raised before, if there were guidelines and the guidelines were far more expansive than they are at the moment, you may not even need someone with legal training. I think we are trying to make the point that at the moment there are the provisions of the act and then they are translated into the primary return forms and the ordinary return forms, but there is nothing else.

Given the experience now over 30 years, I think there is a very real need for there to be more comprehensive guidelines as to what goes in, what does not go in, in what form it should go in. That is the reason we are suggesting there be somebody available to members to provide that advice, but I do not see the need for a parliamentary ethicist.

Mrs KRONBERG — You are talking about making available the original documents submitted on behalf of the individual. Are you doing that being aware of the fact that there is a science called graphology where the analysis of handwriting is undertaken and interpreted?

Mr TUNNECLIFFE — No.

Mrs KRONBERG — It is common practice in ascertaining the bona fides of people in the field of executive search.

Mr TUNNECLIFFE — If you had a system whereby this was all done electronically — the information was provided electronically by the member and then publicly availably electronically — then I guess the issue of handwriting analysis would become irrelevant. Speaking personally, my ideal situation would be to see the whole thing done electronically.

Mr CLARK — In relation to guidelines, in your submission you, rightly in my opinion, cite the issues about disclosure of addresses of properties in which members hold beneficial interests. The other issue that has proved difficult and sometimes contentious in recent times is the issue where members have beneficial interests in a family trust and whether they should therefore disclose in their return, for example, the beneficial interest in the Jones family trust or whether they should alternatively or in addition disclose all the shares and company holdings that that family trust may have if they fall under section 6(2)(c). What advice do you currently give to members on that issue? Do you have any views as to how that issue could best be clarified in guidelines?

Mr PURDEY — It is probably one of those things that we would suggest the member should seek some legal advice on. Certainly the act requires members to declare any trust that they have an interest in, but at the moment, as I read the act anyway, I do not think they are required to put all the details of every trust in the return. In the end that might be a call for the committee. As I see it, the act is there so members put on the public record the types of interests they have so that should they be debating anything in a committee or in the house itself, then people can understand the point of view they are coming from.

If they have an interest in an area, it is open and accountable. If the person takes part in the debate in the house, people fully understand that they might have an interest and that interest might sway them in the way they debate that matter in the house. It could be that if the trust is significant, the details of that trust, for accountability purposes, might have some effect on the way remarks in the house are made.

Mr TUNNECLIFFE — It has probably been one of the most common questions that we have had, that concerning trusts. It is a classic example of why we think probably the member ought to get their own legal advice. I note the provision in the act says ‘a concise description of any trust’. It could be argued that if it is

concise, it is meant to be brief and succinct and therefore the name of the trust is sufficient. But it is one of these ones where we certainly would not advise members one way or the other. Probably we would err on the side of saying put it all in if you have any doubts at all.

Mr CLARK — To pose the argument, one would be in terms of what Ray referred to: if the Jones family trust has a big investment or indeed any investment in XYZ Corporation and some matter concerning XYZ Corporation comes up in the Parliament, that interest is not known or not declared at the time the vote is taken. Perhaps as a matter of law also it could be argued that if you hold an interest in a trust, that is a beneficial interest in a company and therefore you should disclose the interest in XYZ Corporation as being a company in which the member holds a beneficial interest.

Mr PURDEY — I should point out, too, that the code of conduct does require, under section 3(1)(d):

> a Member shall make full disclosure to the Parliament of —
>
> (i) any direct pecuniary interest …
>
> …
>
> in or in relation to any matter upon which he —

that should be 'he or she' —

> speaks in the Parliament …

I guess in some respects that might cover it anyway. If there are substantial issues in the trust and the member has only put the name of the trust in their register, they are probably still obligated under the code of conduct to make a statement in the house before they speak, that they have an interest.

The CHAIR — We are nearly out of time but there is just one last one I want to ask you about — that is, the issue of when returns are submitted. At the moment they are returned annually, which you referred to earlier, but there is some suggestion that it might promote better disclosure of interests if members were to update from time to time. Do you think there is merit in that, or is the present arrangement satisfactory?

Mr PURDEY — I think Wayne has already alluded to that.

The CHAIR — Sorry.

Mr PURDEY — I think he was mentioning that probably a better way of doing things is if members were able to update their register as they went along, so that was all put on the internet and done electronically. Certainly if they could lodge their changes or lodge their returns electronically and we put all that on the internet, then everything would be current and available to the public.

The CHAIR — What would you say then in response to what the Speaker said earlier? I think you were in the room when she talked about where a member might be buying and selling the family home and there could be an interim period of a few weeks when they owned two properties. She put the question: should they then go and declare both of them? Clearly she did not think they should but it creates a problem. Do you think that is something that would matter?

Mr PURDEY — It depends on how long the period of time is. I guess if it is for a month or a few weeks, it probably is not going to make a significant difference but sometimes it could be 12 months or something like that when they held two properties. The timing could be critical to the issue. At the moment you only have to declare your interest at as 30 June and it is not an issue — you either own the property on 30 June or you do not. If you do own two properties as at 30 June, you have to declare them.

The CHAIR — Thank you both very much for your time and for your submission. As I said earlier, you will get a copy of the transcript. Thank you.

Witnesses withdrew.