C O R R E C T E D V E R S I O N

LAW REFORM COMMITTEE

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

Melbourne — 21 July 2009

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Mr H. Whitton, visiting fellow, and

Dr J. Swansson, consultant researcher, ANZSOG Institute for Governance, formerly the National Institute of Governance, at the University of Canberra.

The CHAIR — I welcome Howard Whitton and James Swansson from ANZSOG Institute for Governance. Thank you very much for coming, and thank you for the submission. Thank you for these additional documents you have provided today. Hansard will be recording proceedings and you will be provided with a copy of the transcript afterwards to make any minor adjustments. You will also be aware that these proceedings this morning occur under the Parliamentary Committees Act, which accords you parliamentary privilege for any comments that you make today that might not be exactly proper.

Mr WHITTON — Highly unlikely!

The CHAIR — Highly unlikely — exactly. But you will not be afforded that protection outside the confines of this hearing. We have got up to 45 minutes, so we will leave it up to you to perhaps speak to your submission and to other views you have around the terms of reference. Then we will have a broader discussion if that is okay with you. It is in your hands.

Mr WHITTON — Thank you, Chair and ladies and gentlemen, on behalf of both of us. Thirty-something years ago I was sitting in your chair with a Senate committee, not in this room but in the Parliament, hearing a matter rather similar to this — hearing evidence on a matter rather similar to this. I see Melbourne is doing much better weather this time so it is good to be here. I will give you a short overview of some of the key concerns in our submission, bearing in mind that my submission will be coming from the position of a functioning bureaucrat. My general approach to this submission was to look at the legislation in a narrow sense and to give some comments on what we thought were its strengths and weaknesses and then to make some suggestions where those weaknesses might be remedied. Dr James Swansson, my colleague, will give you some background as to the larger picture, which we did not address in the submission.

We take the view at the institute that the law is deficient in a number of respects, but that reflects the fact that it was drafted a long time ago. It was the first Australian effort at this kind of regulation. It reflected a time when politicians, elected officials generally I think, benefited from a rather higher level of public confidence or public trust than they perhaps do today. I have been following the various indices which come out from time to time in terms of public confidence in elected officials. In 1975 they were at about 30 to 50 per cent. But by the time I was actually working with this material in the late 1980s with the Fitzgerald process in Queensland, public confidence in the integrity of politicians had fallen to the bottom 5 per cent of the list of 75 professions, down with used car salesmen, insurance salespersons, and so on. So we have seen quite a change in community attitudes. Whether that is warranted or not is not a matter we need to take up here, but it does inform the position we take in terms of what this legislation ought to try to do. Ultimately our sense of that is that it is public confidence in the integrity of public institutions that is important rather than anything more narrowly focused on making trouble for individuals or other, what you might call, improper purposes.

The main objective of our proposed measures is to provide higher standards of transparency in the interest of generating that better level of public confidence in the integrity of the legislative process. Or if you want to flip that over, it is ensuring what the World Bank called 'state capture' — the capture of the regulatory, legislative and discretionary processes of government is not an issue or is not at risk here in Victoria.

Our general position is that asset and interest declaration mechanisms of various kinds are not sensibly undertaken as an end in themselves. They are a means to an end. What is appropriate depends very much on the context in which they operate. As we have set out in the submission, there are a number of reasons in OECD countries generally why governments are subjected or subject themselves to regulatory regimes of this kind. They include the detection of corruption or corruptive relationships — that is much less likely in our view to be a problem here in Australia generally despite our friend Mr Nuttall, who is now in jail. Perhaps the most important, or one of the most important anyway, objectives of such schemes is, apart from transparency being an end in itself, to get members of Parliament and relevant related persons to consider whether assets or interests that they hold in a private capacity might give cause for concern to a reasonable person, a bystander, who is in possession of the relevant information, rather than simply the troublemakers who are usually the focus of concerns. That is the general focus of our position.

We say that privacy considerations are obviously in tension with transparency considerations. But our position is that disclosure schemes like this should not be trumped by privacy considerations. The public interest test is a more important one. Most of the privacy concerns which are usually raised about these kinds of schemes are

reasonably easily dealt with, and in fact have already been dealt with in other areas which my colleague Dr Swansson is going to mention.

We have set out three or four proposals for things that might be strengthened in the legislation. I do not propose to go through them now, but one matter we did not canvass — it is implicit but not explicit — and I should mention now, is that offers of post-public office employment should be treated as a declarable interest. Our position generally is that in Australia — in Queensland, Victoria and New South Wales in particular — we have adopted an approach whereby both ad hoc declarations of conflicts of interest, as they emerge or as they become relevant to a matter on which a member is about to vote, debate or sit in a committee and make recommendations to government on, should sit side by side with statutory provisions requiring the routine registration of certain kinds or classes of interest and sometimes particular interests.

An 'interest' here includes for our purposes any interest that might give rise to a reasonable perception of a conflict of interest, so it includes indebtedness and memberships of certain bodies and so forth. Our approach is a broad one. As I said, it is aimed essentially at meeting the test of encouraging public confidence in the integrity of the Parliament and its processes. Dr Swansson is going to add to some of that.

Dr SWANSSON — Thank you, Howard. My background is much more academic in nature, and my position in the institute is very much about boundary crossing, applying academic learning to practical situations and improving practice. In that sense I am a relative newcomer to this specific field, so my contribution is to emphasise that history aspect. Howard has mentioned that the original Victorian act was one of the first, both in Australia and internationally. The supplementary paper that we sent through just focuses on a few articles, beginning with Marc Van der Hulst's summary, *The Parliamentary Mandate: A Global Comparative Study*. I have quoted there a paragraph from the conclusion just to indicate that in the period of that piece of legislation we have seen a massive global change in public attitudes towards parliaments internationally and in the way that these issues are dealt with on a number of levels. Bear in mind that at this point it is up to the year 2000. There are two major themes: the tendency to abolish privileges of parliamentarians, apart from those required for the exercise of government, and professionalisation of parliamentary mandates, including issues around levels of remuneration, training, induction and what have you.

It is probably worth noting that that also exists in tandem with, as it were, a privatisation of government — a move towards outsourcing of service delivery and outsourcing of functions within government to private providers — so that you have the generation of a relationship between professional bureaucrats in the public sector, as it were, and, in a sense, professional politicians, who, naturally enough, have relationships. It becomes on the one hand a need for increased perception that there is the potential for corruption in those relationships, and on the other hand an increased requirement for transparency and an understanding of the nature of those relationships and control of those interests. We get back to Howard's point that we are very much talking about the individual being able to manage their conflicts of interest, because you can never get rid of them. It is a question of managing them properly.

The particular issue that this focuses on is the third point there — about the notion of cleaning up politics and parliamentary activity in particular. That is where we get to a focus on the introduction of systems of declaration of assets and systems of declaration of interests — one of the things is we draw a distinction between the two — and questions of having an integrity system. As Howard described, we are focusing on individual members, as it were, policing themselves versus a policing system where in effect the state is policing individual members of Parliament.

One of the points that Van der Hulst explains very well is the distinction between a declaration of interests and a declaration of assets. A declaration of interests is very much a tradition through the British commonwealth system, where it is about managing conflicts of interest. If the interests are declared and known before they debate and a decision is made, then all of those involved in that debate are aware that an ex-parliamentarian is acting on behalf of GlaxoSmithKline, or whatever the case might be. A declaration of interests is traditionally much more focused on corruption and the idea that parliamentarians can use their position to enhance their personal wealth. The basic idea is to have a statement of what their assets are at the beginning of their mandate and a statement of what they are at the exit of the mandate and have some form of accountability in how you get from one to the other.

The thing about the Van der Hulst study is it is a very good statement of what the picture was globally up until 2000. Of course we are now nearly a decade after that. What we are beginning to witness is an interweaving of these two main streams, instead of talking about these two modes separately. If you read Van der Hulst, you will see there are very distinct traditions and jurisdictions to do with the British commonwealth or the French model, and the Norwegian model is the example.

The CHAIR — The British model, you are saying — you are talking about an integrity model and a policing model — —

Dr SWANSSON — No, sorry.

Mr FOLEY — Interests versus assets.

The CHAIR — So which jurisdiction is which?

Dr SWANSSON — The British commonwealth jurisdictions tend to focus on declarations of interests and the management of conflicts of interests, and the French model is very much more about the declaration of assets.

Mr WHITTON — And the US model too.

Dr SWANSSON — It includes the US — control of corruption, essentially. I want to make a distinction between that dichotomy and the dichotomy to do with an integrity model versus a policing model, which is very much more about how you go about managing it compared to what you are actually managing. One of the things we see from the 10 years intervening now is actually the intertwining of a declaration of interests and a declaration of assets; we are talking about both. We have couched our submission very much in talking about both. That leads you to a problem in our interest in listening to previous submissions today about privacy issues and the publication of those entries in the register. Traditionally you would have two registers. Van der Hulst makes the point that this issue about the transparency and publication of these registers is the most contentious issue still, for fairly obvious reasons. It is generally the case that declarations of interests are very publicly known. In the commonwealth model parliaments, you frequently make the declaration at the beginning of debates in Parliament itself. The other stream, being the French–US stream about the declaration of assets, tends to have much higher degrees of confidentiality, because you are talking about where people live, what relationships they have with third-party members that are part of the declaration but are not necessarily made public. One of the things about entwining these two things is that we are going to end up saying that you make some parts of it more public than others. I think I can explicitly say the focus is on the member. While you do want to collect information about the member's family, their spouse and dependants, you would not make information about their spouse and dependants public — that is the third-party issue that the privacy commissioner is focusing on.

The final point I wanted to make in terms of an introductory statement is a counterpoint to your two previous theories to do with the technology to deal with online privacy and security. I am going to do that by asking you a couple of questions.

The CHAIR — Hang on, you do not ask that; we ask the questions!

Dr SWANSSON — I did say it was a rhetorical question! You do not necessarily need to answer them, but the point is what your answer means in terms of the implication of the privacy of the online public register of interests and your declarations. The first question is: do you have a credit card? If you have a credit card, all of your credit card usage pattern is on an online database. Do you use online banking? In which case all of your banking information and your personal information is on an online, secure database. Thirdly, have you, let us say in the last 20 years, been a patient in a Victorian medical service that bills Medicare? Then all of your private information, including your medical history and patient care, is in an online database which is used by at least nine jurisdictions.

Mr WHITTON — Purely rhetorically, just to make the point, are you aware that your local government council almost certainly sells its database to any number of interests? So you are already in the public eye.

Dr SWANSSON — The point of those examples being if you actually bother to exclude your name and home address from being listed in the *White Pages*, a considerable amount of personal information about all of us is already in that domain and it is managed in a secure way that we all inherently trust and, from a technical point of view, pardon my background, I do not see any problem with constructing a system which can deliver this information online, deliver it in a layered manner, in a manner which informs you as members whose information it is, who is asking for it and why, in a manner which allows whichever office of the Parliament it is that manages the registrar to know who the register's users are, in effect, and all that sort of information — the technologies out there that can be involved — and it is just a question of what you are willing to do. I think I should end at that point in time.

Mr WHITTON — I would like to pick that theme up too and say by way of summary that this scheme, and any scheme of this kind, does not open a new door to bad people to do bad things to people whose information is registered. To the extent that bad people do bad things, where they get the information from is essentially irrelevant. If they are trying to mount an extortion attempt or, heaven forbid, kidnap your kids or whatever, then we already have a range of offences and a range of ways of dealing with those offences well established in our society, and the fact that they got the information off your database rather than from any number of other databases or bought it corruptly from your city council or Medicare, or whatever, is really irrelevant. Our position is: 'Let us not be overwhelmed by the privacy considerations. Sure they are there and they are real, but they are not the end of the matter'. At that point we would be happy to turn it over to you.

The CHAIR — Can I perhaps open up because I am just coming to terms with some of the things that you are describing. You have sketched to us you have got a policing approach, an integrity approach, and then you have got an assets and an interest approach, if you like — four dynamics that run across each other. In the jurisdictions that you have looked at, given that I guess the aim that we want to move to is an ethical framework that members of Parliament operate in, through their own volition, but understanding that has to have a framework of objective constraints around it, what are some steps and models that you could describe to us that have occurred in other jurisdictions that you would say we should look at in more detail perhaps as a way of moving forward?

Dr SWANSSON — The ACT might be — —

Mr WHITTON — The general framework is set out quite well in Van der Hulst and to the extent that it is 10 years old, I guess the details might have changed in some jurisdictions. We have not researched every jurisdiction on the planet, but the broad extremes are the compliance/policing model, where the United States, for example, requires a vast amount of information to be lodged. The last time I checked with my colleagues in the Office of Government Ethics, they were something like five years behind in checking the accuracy and completeness of those returns, and then there was an executive decision made under the previous administration that they would start with the oldest ones. You have to ask the question as to how that serves the timely provision of information to the Parliament and to the public at large about a member's assets and interests and possible conflicts of interest.

The problem with those kinds of schemes is the policing schemes generally put the transaction costs on the institution, on the taxpayer, and they are usually not completely effective in generating what you need to know in order to make an informed decision about whether a given member or a given group of members is kosher or not.

At the other extreme you have, if you like, the UK system, where we saw recently the limitations of self-regulation, perhaps, in terms of members' allowances. The story appears to be not so much that individual members were abusing their entitlements, although some fairly clearly were, but the more interesting story, I think, is that most of the members who were alleged to have taken more than they were entitled to said at some point, 'But we were only doing what the bureaucrats told us we were entitled to. The money is there, it has to be spent, and so I painted my duck pond', or whatever.

Mr FOLEY — 'Cleaned my moat' — that was my favourite.

Mr WHITTON — There were lots of variants of that.

Dr SWANSSON — I will intervene at this point in time. One of Howard's phrases is, 'What is the reasonable person test?', and I think the argument about that British case is that it fails the reasonable person test, and yet it was fully compliant with their system, so something about the system was not quite right.

Mr WHITTON — The practice had grown up, it is said in their defence, over 200 years that the money is there to be spent, and so it will be spent.

Mr DONNELLAN — Was it not an allowance originally for when they were not being paid a full-time wage, so it was more like an allowance which suddenly got left in and then became abused over time?

Mr WHITTON — Initially, yes, that is right, but in more modern times it was an allowance to cover the actual costs of going to London to attend, and we have the same allowances in Australia. Interestingly although one national newspaper tried to beat that up as an issue following the issues that were arising daily in the UK, it failed, essentially because we take a different approach in the Commonwealth. The money is paid over and MPs can use it as they see fit, but it is not an allowance; it is an entitlement, and so the question of abuse goes away: you are paid a reasonable amount to cover the costs of going to Canberra. If you choose to spend that on a duck pond or fairy floss, that is your affair. You are still going to have to cover the costs.

Those are two extremes. I think the model which we developed in the Commonwealth — and I actually drafted it in 1984 — is generic enough to catch what you need to catch to meet the test that we have identified as the main test; namely, to reassure the public at large that your relevant private-capacity interests and assets, and we will roll them together for this purpose, are known. Occasionally that confidence is tested. For example, when Peter Reith left Parliament on the eve of the 2004 election and the next day took up a job with a company which he had formerly had dealings with as minister, there was quite bit of press comment about whether that was appropriate or not given that he must have had access to the commercial-in-confidence information provided by competitors to the company that he went to work with, and so there was some questioning about whether those kinds of interests ought to have been declared.

One of the things we suggest is that the current Victorian scheme would be better if it were extended to cover members' interests after they leave Parliament for a period. The United States covers those interests to some extent by prohibition, as do many countries now, but 10 years ago that was not the case. They are prohibited by law, and a number of people have gone to jail in the US for having prohibited dealings with lobbyists or providers of services or contractors of a prohibited kind within a period after leaving public office. The Victorian standard, it seems to me, could well do a public service by extending to cover that kind of interest. You would like to know, I think, as a reasonable citizen, given that the fundamental ethical question behind this scheme is that of informed consent, 'Would we have elected Bloggs had we known that Bloggs was in the pocket of the US government or that Bloggs had 1 million shares in coal mining?'.

The Howard government had a famous series of these kinds of problems with ministers who had undeclared interests, and I think he lost seven or eight ministers in the space of 10 months in 1997. The issue there was not so much the interest but the fact that the public at large had not been put in a position of being able to make a judgement for themselves about whether that interest was fatal to their confidence in the member's integrity. It is not the interest as such; it is the informed consent principle, whereby ordinary citizens expect, in Australia, as a matter of democratic principle, to be put in a position where they can make a judgement for themselves and not have that judgement made on their behalf, least of all by the member who owns the interest that gives them a further conflict of interest. That is the range of extremes.

The CHAIR — I would like to move on to other people, but just before we do, I think James mentioned the ACT model. Could you talk about that because other people may ask some questions?

Dr SWANSSON — I am referring to the last reference in the supplementary document that we gave you.

Mr CLARK — It is in appendix 21, 'Declaration of Private Interests of Members'.

Dr SWANSSON — As an example, this is from 1992 originally but amended last year. There are a number of points out of it, the main one being perhaps — getting back to this issue of privacy — that the declaration is:

> … made available for perusal to any person subject on request subject to the Member concerned being advised by the Speaker of the name of the person to whom the information is made available and the reasons why it has been requested, in each case

This is an example of when you look at the detail of the conversation and if you look at this form, it goes through the declaration and a whole range of domains of types of assets and interests. The form itself is set out for making the declarations for self and spouse and dependents.

You can imagine an online system where if you want to apply for information you have to register into that system in order to have secure access into the particular details. Part of that system would be being able to notify a member that that access is being made. That was a particular model of how to manage that information and privacy. That is quite easy to do in an electronic system.

Mr WHITTON — Can I just add to that? I noticed that both Stephen Skehill, the ethics adviser for the ACT, and my colleague Gary Crooke, formerly the integrity commissioner in Queensland — he has just retired — have adopted the same approach. They have said that people seeking access should have to give their name, their identifying details and their reason. If you think about it, I am not sure that having to give a reason adds very much to the process, because there is no way of checking whether they are giving their real reason.

If their real reason is that they want to kidnap the member's kids, then they are not going to say that. But what it does do is introduce another apparent level of discretionary decision making which further fences off a member of the public from getting access to something which they have an entitlement to. Unless you can think of a really good reason why you would want requesters to give their reasons, I would simply leave it out. It is not worth the fight.

Mr CLARK — So far we have been talking about how to deal with conflicts between a member's personal interest and their public duties. I want to raise with you the proposition that we also have in Australia a serious problem with conflicts between a member's party-political interests and their public duties. As you may be aware, here in Victoria we have had allegations concerning Brimbank Council to the effect that councillors have either helped deliver payments or benefits for constituents of a fellow councillor in exchange for party-political support, or alternatively they have deprived them of benefits for their constituents based on not giving party-political support.

I suppose more generally there are a range of concerns about donations to political parties or to the fundraising wings of political parties in exchange for various benefits being delivered from government. To me, if anything, that is an even bigger issue than personal conflicts of interest. What would you recommend should be done in order to tackle those problems? Preceding that, do you agree with me that this is a significant problem in the Australian and Victorian political system?

Mr WHITTON — In principle, I do. I am speaking here personally rather than for the institute, because we have not considered this as question. It takes a number of forms. I agree with you that in principle it is a form of conflict of interest. Party membership — and party loyalty indeed — is a private interest, strictly speaking, in the same way as a member of any professional association could be a private interest.

If you were a doctor, a member of the AMA and health minister at the same time, no-one would have a problem concluding that that was a conflict of interest. We have seen this matter become a matter of public discussion over party fundraising — sometimes characterised as 'selling access' — and the rest of the matters which you have correctly identified. It is a vexed area; there is no conclusion to this yet, and there are contending views on both sides.

If you take the view that conflict of interest is the key to everything in this field and you unpack that particular relationship — I only know what I have read in the papers about the Brimbank Council — and what people did on behalf of what interests in that context in terms of conflict of interest, you get a long way to understanding where to draw the line between what is acceptable as a member and what is abuse of office.

Dr SWANSSON — I think I will invite Howard to expand on another point which is relevant at this point. One of the other contentious areas about these schemes is who has the authority to apply sanctions for breach of these systems, particularly coming from a Westminster culture where the standard form is contempt of Parliament and whether or not that is adequate in a culture like the Australian culture where we have very strong party discipline. I would ask Howard to expand on that.

Mr WHITTON — Chair, are you happy for me to address that now?

The CHAIR — Yes.

Mr WHITTON — We have seen a seismic change in the Westminster traditions. Gordon Brown has said 'We have seen the limitations of self regulation and we now need external scrutiny and regulation by some independent body'. For some time the British Parliament has had the parliamentary standards commissioner, who in some sense gave advice which was by convention adopted always based on the Lord Nolan principles.

As Prime Minister, Gordon Brown is now saying that this is no longer adequate. Look at the outcry in the public at large. I think he is saying therefore that public trust is more important than the observance of traditions about the autonomy and integrity of the Parliament. That is now seriously at risk, so the question of how the Parliament goes about enforcing standards, whatever they may be, over errant members of Parliament is an interesting existential question. When push comes to shove, is Parliament more than the collectivity of the current members of the Parliament?

Yes, in some sense it is, because we have standing orders which deal with matters of ethics and privileges, but at the end of the day, given strong party discipline, which is fairly unique in the Australian system as opposed to other Westminster countries, questions of what the charge will be, how it is dealt with, the procedures and the timing, let alone sanctions and enforcement, are all going to be in the control of the government.

This is a matter which we raise briefly in the submission. So you have a further public confidence problem, of ensuring that the public at large accepts that a given decision on a member's conflict or a member's conduct was dealt with on its merits rather than with one eye on what happens the next time there is a vote.

Mr CLARK — Firstly, do I take it from what you were saying in your most remarks that you would favour some form of anticorruption commission here in Victoria? Secondly, leaving aside the issue of fundraising donations — about which there is an established debate — in terms of other party-political conflicts of interest, conceptually, let alone practically, do you have any views as to how those problems should be tackled?

Mr WHITTON — I think we have already tackled them in most jurisdictions in Australia. It is said that Mr Nuttall, having been convicted of 36 counts of receiving secret commissions, which is an offence that has been on the books since the 19th century, has been dealt with in that respect, but there is now a significant new provision in the Crime and Misconduct Act to do with the abuse of public office as a public official. He is said to be potentially facing additional charges in relation to a specific payment for which he did something, as opposed to simply receiving money as a secret commission, and Judge Wolfe's comments about that are quite instructive.

I am not making a claim either way in relation to a stand-alone anticorruption commission in Victoria. I know there is a long history of discussion as to whether the current arrangements are adequate. I have no view about that. I know that the deputy Ombudsman takes an active interest in corruption matters. Ultimately that is a public policy call for Victoria.

What we do say in the submission is that an integrity commissioner, which importantly is not an anticorruption commissioner, of the kind which the Beattie government enacted in Queensland in 1999 — and for which I had some of the design responsibilities — is a useful device. Mr Crooke has already said as such in his annual reports as well as in his submission to you.

Importantly, the Queensland Integrity Commissioner is somewhat similar to the former ethics officer adviser of the Prime Minister of Canada which was abolished by a resolution of the Parliament and replaced by a parliamentary ethics commissioner in 2005 or so. The Parliament took the view that integrity advice should be made to the Parliament on behalf of the Parliament rather than as private advice to the Prime Minister, as it was, because it is about parliamentary standards.

We have seen that question addressed in the Canadian federal context, but that comes after more than 15 years of experience at the provincial level with conflict-of-interest commissioners who are somewhat similar. Indeed, we took account of the role that conflict-of-interest commissioners play at the provincial level in Canada where they give advice to members, and sometimes whether the member wants it or not, as to whether their current assets constitute a conflict-of-interest, a potential ground for public embarrassment, or a potential ground for public doubt about state capture, to summarise it roughly in World Bank terms.

The essence of the Queensland Integrity Commissioner is that he or she is to provide advice to the Premier of the day about the personal assets and interests of members and the prescribed assets and interests of members and other designated persons, but excluding members of the opposition. The rationale for this at the time was precisely to prevent scandal arising on the front page of the *Courier Mail* by in essence heading off problematic situations in advance. That is essentially the reason why the opposition was excluded from the original scheme, but Premier Bligh is about to propose a change to the Act whereby all members of Parliament will become 'designated persons'.

Mr FOLEY — Can I follow that up? Does the integrity commissioner have to report to the Parliament or still to the Premier?

Mr WHITTON — The Queensland scheme is different from Canada's in that respect exactly. The commissioner reports to no-one except the member who has the asset. It is private, indemnified advice to the member, but — and this is important, and Mr Nuttall's case is a good demonstration of it — where the member fails to take the advice and resolve the conflict, assuming the advice is, 'Yes, you have a conflict in owning these shares or being a member of whatever', then the integrity commissioner has an obligation under the Act to advise the Premier where the matter is not resolved to the integrity commissioner's satisfaction. But it is confidential.

Mr FOLEY — And that is the sanction?

Mr WHITTON — The sanction then is in the hands of the Premier, who can say, 'You are no longer a minister. Give up the asset or else'. Properly it is a matter for the Premier, not for the public at large. We already have a Crime and Misconduct Commissioner in Queensland.

Mr FOLEY — So if you extended that to the Parliament as a whole, not just government members, who would — —

Mr WHITTON — Presumably, the leader of the party of the member concerned. The scandal would be an embarrassment to the party. Or not: it may be prepared to tough it out. The integrity commissioner's advice might be, for example, 'You should get rid of the asset or put it into a blind trust', or whatever resolution is proposed in discussion with the member who has the asset. It is only where that is not done that the integrity commissioner then has the power and an obligation to take it further.

The CHAIR — I am conscious of the time and I know that other people have not had an opportunity to ask questions so maybe if we just do a quick roll through.

Mr WHITTON — There is a lot to cover.

The CHAIR — Yes, there is a lot to cover. We have got a few more minutes. Jan, did you have a question?

Mrs KRONBERG — It really comes from the fact that I have experience in accessing databases in a professional capacity prior to entering the Parliament. The suggestions and rhetorical questions that you earlier posed into the ether rather than directly to us were based on the assumption that everybody has got a credit card and therefore access is known. Of course people can access things. As part of their employment they have the right to access that information, and we can see that information now becoming globally accessible because banks' databases and information are spread throughout the English-speaking world.

I would like you to comment on this scenario. There is a person who wants to make the life of their local MP difficult. They are sitting on the internet at 2.00 a.m. and they might be putting some final touches to a Molotov cocktail or something like that, and they want to access information about property that is owned by their member of Parliament. If you make that available quite readily and accessibly on the internet, that is a very different experience from those who harvest information and then derive great revenue from that and in turn provide, through an exchange of several thousands of dollars, for levels of access to that information.

We all know there is a hierarchy of access. If you go to a credit reference agency and you are the average citizen, you pay a certain fee to access information about yourself. If you hold a private investigators licence, you have another form of access. Certain inquiries have the right to provide access. All of these entities actually

derive massive revenue streams from selling that information. The average citizen is not going to be able to come up with a $5000 subscription fee at 2.00 a.m. to find out information through a hierarchy.

I think you underpinned the points that I am making, saying in a fairly cavalier way that local government sells this off. It sells it off for a very good reason — to derive money from it. The people who buy that information from local government also derive a lot of money from selling access to it. It is a very different thing in terms of what would be generally available, unfettered, unsubscribed non-hierarchical access to this information.

It is quite different from all of the commercial forms of hierarchical access that are available out there which are all turned on the fact that somebody has a parcel of information and the question, 'How can we make maximum revenue from that?'. We understand that and it has been going on for a long time, 40 years in my experience. I myself have been a pioneer in the computer industry.

Mr WHITTON — I endorse your concern absolutely. It is a concern. Our point in the submission and earlier is that this scheme does not open any new doors to people who can already get access, as you say, by either purchasing what is legitimately available or by purchasing the information corruptly. Police officers everywhere can sell information from a database; sometimes they go to jail for it and sometimes they do not.

Your concern here underpins exactly the reason why you need a layered approach, which at one level identifies that you have an interest. For example, say you have a rental property in Mordialloc: the details of the rental property are now known in terms of the registration of the interest, which is the document that is returned to the Parliament every year.

But if it came to a development application in which your investment property in Mordialloc was suddenly an issue, whereas for the bulk of the year it is not going to be, then the ad hoc declaration of a conflict-of-interest kicks in. So you would say, 'I have to say in speaking on this motion that I have a property in the region which is affected by the development proposal'. At that point the detail is provided to the extent necessary to satisfy the public interest test, but it is not provided at the level of the annual registration, not even in a layered way. Our proposal is you would say, 'I have a rental property', or 'I have 10 rental properties' or whatever, end of story. But when any of those becomes a conflict-of-interest matter, then you are required by the second part of this process to make an ad hoc, timely, declaration of an interest and perhaps a conflict of interest.

Mr DONNELLAN — You say in 1975 there was this level of respect for politicians by whatever particular date — —

Mr WHITTON — The Australian Values Survey.

Mr DONNELLAN — Looking internationally, not just at states as that would probably be difficult, is there a correlation between better systems of disclosure, registers of interest and so forth and the public perception of politicians? I just thought that was an obvious one to raise since we are going through the exercise and we are down the bottom at the moment. It would be nice to be a little bit higher, so I just thought I would throw it up for consideration, if nothing else.

Mr WHITTON — 'I do not know' is the answer. It is intriguing to speculate. Certainly the level of public confidence, as expressed at the time, in the integrity or trustworthiness of 72 professions put dentists at the top, essentially because dentists were at the time engaged in promoting fluoride, which was seen as contrary to their commercial interests. Teachers came second, nurses came third and in the bottom 50 per cent in 1975, as I recall, were federal politicians, state politicians, local government politicians. That got you down to about 30 per cent. Thirty years later they are now in the bottom 10 per cent instead of the top of the bottom 50 per cent, as it were. At the same time we have had an increase in available technology, we have had an increase in declaration and registration schemes, we have had an increase in public corruption for a range of reasons which sociologists will tell you — —

Mr DONNELLAN — Do you say that we have had an increase in corruption or corruption which is actually identified in papers and things like that?

Mr WHITTON — No, I think it is reasonable to say we have had an increase in the incidence of corrupt and corruptive relationships in the public sector.

Mr DONNELLAN — Melbourne was a pretty corrupt place in the 1880s and 1890s.

Mr WHITTON — I am not making comments about any particular jurisdictions.

Mr DONNELLAN — I am not being silly when I say that, because historically there was a lot of corruption in Melbourne in terms of the land boomers and things like that, and it went right to the top.

Mr WHITTON — Absolutely; every country is different and there are different drivers in every country. I sat in on a lecture recently by an American academic who said Enron was not a surprise essentially because we no longer provide scholarships for university students, and that got everyone thinking. This was to the International Ombudsman Association. In his book he traces the connection between what happened 30 years ago when you went to university on a scholarship or pretty much for free, you graduated and started a job and then you had 20 years to make partner and 20 years to establish a family and so on. These days you graduate, he said, with a $200 000 to $400 000 debt and you have still got 20 years to make partner. There are more disincentives now for integrity in the business sector, and Enron comes out of the need to make that much money in the same amount of time. That is one possible explanation of why corruption is affected by this, but I am not able to go beyond that in a useful way.

Dr SWANSSON — I will just supplement that. This paper and the rest of our presentation obviously focuses on the public sector in general and public trust in parliamentarians specifically, but it is worth just making the point that it is a very general idea. You can see the same issue with the declining trust in directors of public and private companies and all the issues to do with the financial crisis: Enron, the World Bank, Parliament — you name it, we have got them. It is a very general phenomenon. I think the very general response is that transparency and the issues around trust are not taken for granted; trust is earnt, and it is earnt by that transparency.

Mrs VICTORIA — I want to go back to what my understanding is of some of what you have said. If I go back to Jan's question, your answer to her question was about perhaps the ad hoc declaration of interests, for example, with regard to property and that sort of thing. Then I look at part of your submission which says that is in some way a weakening of what we currently have in that at the moment we do have to declare the addresses and all that sort of thing in the register, on paper. Then I look at your proposal to register assets and interests and the person to whom you dispose those assets. Then I look at, I suppose, third-party privacy issues. I understand the concept of being accountable and making sure there are no tenuous relationships there, but what possible gain can there be for the public in having somebody who has bought, for example, my home declared for all to see?

Mr WHITTON — They are not necessarily declared. We are not interested in the person who bought it, necessarily. We are interested in whether you made a huge profit unexpectedly or unreasonably. There are some countries in which pre-declaration of assets that are not actually owned at the time and are not checked is routine, because the person, the member of Parliament, making the declaration expects to have made that asset or made that money by the time the next declaration comes around, so they want a show of continuity without great change in it. 'Pre-declaration' of non-existent assets so that the asset is actually on the books a year later is an emerging phenomenon.

What possible reason could there be for showing the disposal of an asset? The reason is to track corruption, and that is the same reason as we have made the proposal for tracking members' assets for three years after they leave the Parliament or elected office. You want a paper trail. You want to know whether Bloggs bought a beach shack for a dollar from Mr X, and that is reasonable to disclose, and 10 years later disposed of it, probably to the market at large, for $1.3 million. You want to know how come that happened. It may be entirely innocent, but it might not be, too.

One of the multiple purposes of assets and interest declarations processes is to track corruptive relationships should they ever become an issue, and that is one of the reasons why you do not, as some countries do, destroy the declarations at the end of the members' terms or give the declarations back to them. Because they are a public office-holder, you want a paper trail which shows the continuity of their holding of public office into their private lives, and if some unexpected profit turns up, then they may well have to explain that. That is the reason.

The CHAIR — I was panicking because I thought we had another witness at 12.00 o'clock, but we do not, so I am prepared to go on a little bit further if people have questions, but not much past 12; I think that is not reasonable.

Dr SWANSSON — I just want briefly to supplement that by saying we are actually proposing a very complicated hierarchical level. Van der Hulst explains the differences in jurisdictions around the world. Declarations of interest are very public in general because most often they are about people knowing that the interest exists at the time the decision is made. Declarations of assets generally have much more confidential systems built around them, and it is probably something you would adopt into this case, because what we are now proposing is interweaving those two things together. So you can already suggest that the assets part of it might be something around which you build a confidentiality framework, where the interest part of it is much more inherently public. So it is not a simple system by any means, I think, we would be proposing, even though it is online.

Mrs VICTORIA — I then say to that, if we are talking about accountability and public scrutiny, the more complex you make it, the more open we then are as politicians to this scrutiny where people are saying, 'You're hiding'.

Mr WHITTON — Yes, but what we find in most jurisdictions over time is that the public is not really interested. They want to know that the information is public and that they could go and get it if they wanted to, or someone could, but they would rather go fishing, frankly. They just want to know that there are no secrets and that some appropriate authority is keeping an eye on that for them.

Dr SWANSSON — And the Gordon Nuttalls get caught.

The CHAIR — Most of what you focused on relates to the register of interests, but there is also part of the act that has the code of conduct in it, and we have received some submissions, as you would know, urging us to move more towards a values-based code of conduct rather than one that focuses primarily on pecuniary interests. Do you have any views on where we should move?

Mr WHITTON — Yes.

The CHAIR — Could you share those with us?

Mr WHITTON — I think you need both. Fundamental values provide a framework within which precise requirements are to be interpreted. As the British Parliament has discovered, Lord Nolan's general principles, (which incidentally were not raised in any of the discussions that I covered and I covered most of the press discussion about the abuse of allowances), the seven principles of public life which were much lauded when they came out in 1996, were not adverted to. People went after whether an individual payment to clean a duck canal, or whatever, was reasonable.

The other side of that is if you, as either an ethics committee or as a member of a party committee, are going to charge someone with inappropriate conduct and if they are going to be able to defend themselves, you do not want general principles: you want precise regulation because general principles ultimately are open to abuse, open to misinterpretation. Ultimately it becomes a dead letter. You cannot enforce a general principle in a way that is fair and convincing, which is why the 1994 Public Sector Ethics Act in Queensland says the general principles of public administration are not directly enforceable. They are enforceable only through the codes of conduct which chief executives must develop, having regard to these principles. Victoria actually adopted a very similar approach for the public service, and I think that is the appropriate approach.

Mr FOLEY — At the start I think James spoke about the integrity, the policing, the declaration and the assets, the complex interchange there and the overlay of the change of government models in a western — not just European versus Westminster but broader western — developed world, outsourcing, less reliance on direct government and greater delivery of private servicing in a whole range of areas. If you head down this path that your submission details, what does the international experience tell us about the consequential demands that the public would then make on those private providers of all of those services? If there are declarations of interests, policing and all the rest on the elected public officials, what are the demands on the private sector's delivery of services to those when it comes to those same corruption areas, other than obviously in Australia where there

are different models, but in terms of the governing of the relationships between the private sector and the public officials?

Dr SWANSSON — I think once you go beyond the question of whether or not a particular member involved in making a decision at a parliamentary level has a connection and therefore has an interest and possibly has a conflict of interest that needs to be managed, and you actually start digging down into the bureaucracy and the bureaucracy's contractual relationship with private service deliverers, for one thing you are moving into a very much more complicated area of law. I think the big picture there is that the law will kick in and you will head into an area where there are quite a lot of civil and criminal sanctions for inappropriate behaviour and arrangements. I think the more general answer is to a degree there will be public interest in the behaviour of the leadership and directors of those private interests and the decision being the degree around the opprobrium of their behaviour, but being private interests there is much less control as it were, apart from what we have in terms of codes of conduct under the ASX and the rest of it, which themselves are hardly infallible. It is a very complex field.

Mr FOLEY — A broad area.

Dr SWANSSON — Yes. It is certainly very interesting but possibly will not be part of the task.

The CHAIR — Howard, had you quite finished your comments?

Mr WHITTON — With your indulgence I would like briefly to draw the committee's attention to the three proposals that we have for matters that are not currently covered, all of which we regard as quite important.

Dr SWANSSON — Just because it carries on from the previous topic.

The CHAIR — I am really conscious of the time because people have commitments elsewhere. Two more minutes.

Dr SWANSSON — I just wanted to draw your attention to page 124 in Van der Hulst's article where he spells out the codes of conduct, which may not themselves be codified directly but it does not mean that they are not codified in other areas. He makes the point that at the commonwealth level we have the constitution, the commonwealth Crimes Act and the Commonwealth Electoral Act, all of which provide codifications of certain elements of what we might consider to be a parliamentary code of conduct. So you probably have similar circumstances.

The CHAIR — And just quickly, Howard, then we will have to wind up.

Mr WHITTON — We have proposed on page 4 of the submission in fact three new measures. The first is that first-time candidates should have to declare their assets and interests in exactly the same way as continuing members. Fundamentally what is at issue in this kind of scheme is an ethics consideration to do with democratic principle — informed consent. The public should know who they are voting for and what their interests are to a level to enable them to make a reasonable judgement about whether the candidate meets their standard of integrity, shall we say, or does not come with baggage which is likely to be problematic. There is no difficulty in doing this, either administratively or legally.

Dr SWANSSON — It is done in the United States.

Mr WHITTON — Indeed. It is simply about informed consent. Secondly, the current scheme does not specifically deal with members who are offered employment by industry during their term, except where it emerges as an issue which is required to be declared on an ad hoc basis as a conflict of interest. We would suggest that all such offers should be registrable interests because they are commercially valuable, et cetera. You can follow the logic of that.

Thirdly, the current scheme only applies to current MPs, and we would strongly suggest that the scheme should be extended in principle in much the same way as the statutory prohibitions are extended in the United States and Canada. It should be extended at least to the extent of making members' interests post their term in public office matters of public information. So if Mr Reith does go in fact to Tenix, we would like to know what Mr Reith did prior to doing so to manage his conflicts of interests appropriately.

The CHAIR — Thank you. Sorry to hurry you towards the end of that. Thank you both very much. That has been a very comprehensive discussion that we have had. It has been very useful. You will be given a copy of the transcript, as you know, and we will get those back from you as soon as we can. I thank the members of the committee as well for what has been a very interesting morning.

Mr WHITTON — We should hold ourselves open to say that if there are any further questions, we would be happy to take them on notice.

The CHAIR — We will probably take you up on that.

Committee adjourned.