

**ETHICS COMMITTEE****Report No. 139**

*Matter of privilege referred by the Registrar on 19 March 2013 relating to an alleged failure of a member to register interests in the Register of Members' Interest and Register of Related Persons' Interest*

*and*

*Matter of Privilege referred by the Speaker on 4 June 2013 relating to an alleged deliberate misleading of the House by a member*

**Introduction**

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 17 May 2012.
2. The committee's area of responsibility includes dealing with complaints about the ethical conduct of particular members and dealing with alleged breaches of parliamentary privilege by members of the Assembly and other persons.<sup>1</sup>
3. This report concerns two matters of privilege that relate to the Member for Redcliffe, Mr Scott Driscoll MP as described above. In conducting its inquiries the committee considered the two matters referred separately and has made its finding based on the merits of each matter. However, whilst separate, the two matters of privilege are related and the committee has found that the cumulative effect of its findings has a bearing on the honour and dignity of the Legislative Assembly.
4. Accordingly, this report has been structured in three parts to deal with the two matters of privilege in turn and then address the cumulative effect of the committee's findings.

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<sup>1</sup> Section 104B *Parliament of Queensland Act 2001*.



**PART 1 – ALLEGED FAILURE TO REGISTER INTERESTS*****The referral and committee process***

5. Under section 104C of the POQA, the committee is to consider complaints referred to the committee about the failure to register particular interests.
6. Part one of this report concerns an allegation by the Leader of the Opposition, Ms Annastacia Palaszczuk MP, that the member for Redcliffe, Mr Scott Driscoll MP, failed to declare interests in the Register of Members' Interest and Register of Related Persons' Interest. The complaint was made by the Leader of the Opposition to the Registrar of Members' Interests (i.e., the Clerk of the Parliament) by letter dated 19 March 2013.
7. Section 14(3) of Schedule 2 of the Standing Rules and Orders of the Legislative Assembly (Standing Orders) states that the Registrar must refer an allegation made by a member to the committee. Consequently, the Registrar referred the matter to the committee on 19 March 2013.
8. Schedule 2 of the Standing Orders sets out the procedure to be followed where a member makes an allegation against another member that the other member has failed to comply with the registration requirements. This process includes giving the member against whom the allegation has been made the opportunity to be heard and to make written submissions.
9. During the course of its inquiry, the committee was notified that the Crime and Misconduct Commission (CMC) and/or the Queensland Police Service were considering complaints in relation to Mr Driscoll. In response, and exercising an abundance of caution approach which has been the custom and practice of past Ethics Committees, the committee resolved to suspend its inquiry pending advice from the CMC as to the outcome of its investigations.
10. As a consequence of this decision, the committee returned two submissions provided to the committee by Mr Driscoll dated 18 April 2013 and 2 May 2013.
11. Following significant deliberation and legal advice from Senior Counsel, the committee subsequently decided to recommence its inquiry into this matter. The rationale for this decision was the subject of the committee's Interim Report No. 134 tabled on 31 July 2013.
12. The committee has obtained information from other persons during its inquiry and investigation into this matter, including records from the Registrar, the CMC, and the Queensland Industrial Relations Commission and has also performed various company and business name searches.
13. At the time the CMC provided material to the committee, it requested that the material be protected against publication as much as possible on the basis that its investigation has not been finalised. Accordingly, the committee has consulted the CMC in respect to the relevant references to CMC material so as to prevent any disclosure of information that might prejudice its investigations or any potential future court processes.

***Mr Driscoll's opportunity to be heard and make written submissions***

14. After making its decision to recommence this inquiry, the committee extended Mr Driscoll the opportunity to make written submissions by letters dated 29 July 2013 and 22 August 2013. Mr Driscoll was invited to re-submit the two previous submissions of 18 April and 2 May 2013 that were returned to him and/or provide any additional evidence or information relevant to the committee's inquiry.
15. In response to those invitations, Mr Driscoll submitted that for medical reasons, he was unable to participate in the committee's process. Mr Driscoll also advised that he was unaware if his earlier submissions were retained but that his current medical condition pre-dated those earlier



submissions. Mr Driscoll provided the committee with supporting documentation from his medical specialist and General Practitioner.

16. On 10 September 2013, the committee wrote to the Clerk inquiring as to whether the submissions of 18 April and 2 May 2013, which were sent via e-mail, could be retrieved from the Parliament's e-mail archive. On 11 September 2013, the Clerk provided the relevant e-mail's to the committee..
17. The committee noted that prior to and subsequent to Mr Driscoll's advice of this inability to participate in the committee process there have been media reports of his return to work in the Redcliffe electorate office as well as his participation in press conferences along with appearances in the Legislative Assembly Chamber.
18. The committee wrote directly to Mr Driscoll's medical specialist on 12 September 2013 and 3 October 2013 seeking further particulars about Mr Driscoll's medical condition and ability to participate in the committee process.
19. In short, the outcome of that correspondence was advice to the committee that due to medical reasons, Mr Driscoll would be unable to assist the committee in this process for an unknown period of time.
20. Despite this, the committee considered that it had sufficient information before it to proceed to investigate the matter and by letter dated 3 October 2013 invited Mr Driscoll to attend before it and be heard.
21. In light of Mr Driscoll's medical condition, the committee offered Mr Driscoll the alternative of providing a written submission. It was also highlighted to Mr Driscoll that he may nominate other persons to assist the committee in its processes (as per section 15(2) (b) of Schedule 2 of the Standing Orders).
22. On 11 and 17 October 2013, the committee received correspondence from legal representatives acting on behalf of Mr Driscoll indicating that they were seeking further information from their client and his medical specialist.
23. On the basis that there has been no indication from Mr Driscoll or his medical specialist as to any change in Mr Driscoll's prognosis in the short to medium term, the committee decided to proceed towards determining the matter.
24. Accordingly, on 17 October 2013, Mr Driscoll (and his legal representative) were advised that the committee was minded to make a preliminary finding to recommend to the House that he be found guilty of contempts of Parliament for failing to register certain interests.
25. The Committee acknowledged the previous advice from Mr Driscoll's medical specialist that Mr Driscoll was unfit to provide a submission, however, in the event that Mr Driscoll's condition had improved, the committee again invited Mr Driscoll to make a submission in relation to the issue of penalty or the issue of whether a contempt has been committed.
26. On 24 October 2013, Mr Driscoll's legal representative provided a submission which purported to provide information from a person that the member had nominated as a person to whom the committee should provide an opportunity to be heard (as per section 15(2)(b) of Schedule 2 of the Standing Orders).
27. This submission, however, included submissions from Mr Driscoll's legal representative as to the committee's processes and submissions as to the facts of the matter from an unidentified third party. In the submission, the unidentified third party purported to provide evidence of Mr Driscoll's state of mind and intent with respect the registration of the various interests the subject of this inquiry.
28. The committee determined that it could not give consideration or weight to such a submission and advised Mr Driscoll and his legal representative accordingly.



29. On 7 November 2013, Mr Driscoll's wrote to the committee reminding the committee of his medical condition and seeking to make a brief submission as to the issues of contempt and penalty.
30. The committee sought senior counsel's advice as to whether there were any legal issues associated with taking into account Mr Driscoll's submissions given the medical advice as to his fitness. The committee were advised that there was no legal impediment to it taking into account the letters of 18 April, 2 May and 7 November 2013.
31. Accordingly, the committee resolved to take those submissions into account despite the medical advice that Mr Driscoll was not fit to make those submissions at the relevant dates..

### ***Previous references regarding the Register of Interests***

32. The Ethics Committee (and its predecessors) has considered six references concerning an alleged failure to register an interest in the Members' Register of Interests.
33. The first matter related to an alleged failure of the then Premier (Bligh) to register a benefit in the Register of Interests. The committee found that it could be argued that the Premier was required to register accommodation in the Register of Members' Interest within a month of the house-sitting arrangement. The committee noted that this subsequently occurred. The committee went on to find that the Premier had no knowledge at the time of the house-sitting arrangement that it was an interest that could be required to be registered. The Premier was therefore not guilty of contempt for knowingly failing to register the benefit in the Register of Members' Interests in the time required.<sup>2</sup>
34. The second matter related to an alleged failure of the then Leader of the Opposition (Springborg) to register a benefit in the Register of Interests. The committee found that as the sponsored travel (helicopter flights) was received in an official capacity, the benefit was not required to be disclosed.<sup>3</sup>
35. The third matter related to an alleged failure by a member (Emerson) to register their roles as Director and Secretary of a company and the company's activities that is, providing the Registrar with an incomplete statement of interests. The committee found that the member was required to declare their positions in the company and the nature of activities. However, the committee was of the unanimous view that it was an inadvertent omission and therefore the member was not guilty of a contempt.<sup>4</sup> In this matter, within 24 hours of the allegation being aired the member rectified the omission on his register and promptly notified the committee of his action and apologised for the omission.
36. The fourth and fifth matters related to a former member (Nuttall). In Report No. 105, the committee unanimously found Mr Nuttall was required to disclose 36 payments he received at the very least under s. 7(2)(m) or s. 7(2)(p) of the Standing Orders. Accordingly, the committee found that Mr Nuttall committed contempt of parliament for failing to disclose each of the payments received from Messers Talbot and Shand, in the Register of Interests on 36 separate occasions, within the time period prescribed in s. 5(2) of Schedule 2.
37. The committee recommended the imposition of the maximum fine for each contempt to reflect the gravity of each offence and to send a strong message to members and the public about the level of accountability expected of Members of Parliament. Accordingly, the committee

<sup>2</sup> MEPPC, *Matter of Privilege Referred by the Registrar on 21 July 2008 Relating to the Alleged Failure by the Premier to Register a Benefit Received in the Register of Members' Interests*, Report No. 93, Goprint, Brisbane, 2008 at 6.

<sup>3</sup> MEPPC, *Matter of Privilege Referred by the Registrar on 10 February 2009 Relating to the Alleged Failure by the then Leader of the Opposition to Register a Benefit Received in the Register of Members' Interests*, Report No. 96, Goprint, Brisbane, 2009 at 4.

<sup>4</sup> IEPPC, *Matter of Privilege Referred by the Registrar on 25 February 2010 Relating to an Alleged Failure by a Member to Register an Interest in the Register of Members' Interests*, Report No. 104, Goprint, Brisbane, 2010 at 5.



recommended that the House impose a fine of \$2,000 for each of the 36 separate occasions of contempt for non-disclosure of the payments received from Messers Talbot and Shand.<sup>5</sup>

38. In Report No. 114, the committee unanimously found Mr Nuttall was required to disclose 5 payments he received at the very least under s. 7(2)(m) or s. 7(2)(p) of the Standing Orders. Accordingly, the committee found that Mr Nuttall committed contempt of parliament for failing to disclose each of the payments received from Mr McKennariey, in the Register of Interests on five separate occasions, within the time period prescribed in s. 5(2) of Schedule 2.
39. Accordingly, the committee recommended that the House impose a fine of \$2,000 for each of the five separate occasions of contempt for non-disclosure of the payments received from Mr McKennariey.<sup>6</sup>
40. The sixth matter related to the production of a television address by the Premier (Newman). It was alleged that the Premier failed to register a 'gift in kind' in the Register of Members' Interests on the basis that the costs of production were borne, or substantially borne by the television station. The committee found that the production of a television address without recompense could amount to a gift but that as the benefit was not received by the Premier, it was not required to be disclosed.
41. The committee also considered whether the Premier ought to have declared the transaction on the basis that it appeared to raise a conflict of interest between the Premier's private interests and his duty as a member. However, the committee found that at the time the transaction occurred the Premier was not aware of the specific arrangements and there was no evidence to suggest that the Premier received an interest in a private capacity. Accordingly, the committee found that the Premier was not required to disclose the transaction.<sup>7</sup>

### **Two Separate Tests**

42. With respect to allegations of a failure to register an interest, the committee examines two separate tests and their elements as derived from the Standing Rules and Orders of the Legislative Assembly—
  1. Whether the matter required disclosure; and
  2. If yes, has the non-disclosure resulted in a contempt?
43. These tests are explored in detail below.

### **Whether the matters required disclosure?**

44. The purpose of the Register of Members' Interests is to place on record any pecuniary or other relevant interests of a member which may give rise to a conflict of interest or a perception of a conflict of interest between a member's private interests and the public interest. The register seeks to provide information which might be thought by others to affect a member's public duties, or to influence their speeches or votes in the Legislative Assembly.<sup>8</sup> The Preamble contains numerous statements that indicate the intention of the register of interests is for disclosure.

<sup>5</sup> IEPPC, *Matter of Privilege Referred by the Speaker on 13 November 2006 Relating to the Alleged Failure by a Former Member to Register a Payment Received in the Register of Members' Interests*, Report No. 105, Goprint, Brisbane, 2010 at 11.

<sup>6</sup> IEPPC, *Matter of Privilege Referred by the Registrar on 18 November 2010 Relating to the Alleged Failure by a Member to Register an interest in the Register of Members' Interests*, Report No. 114, Goprint, Brisbane, 2011 at 8.

<sup>7</sup> Ethics Committee, *Matter of Privilege referred by the Registrar on 15 October 2012 relating to an alleged failure to register an interest in the Register of Members' Interests*, Report No. 127, November 2012.

<sup>8</sup> Schedule 2 – Registers of Interests, *Standing Rules and Orders of the Legislative Assembly*: Effective from 31 August 2004 (as amended up to 14 September 2012).



45. The Register of Members' Interests and Register of Related Persons' Interests are mechanisms to encourage and foster transparency, accountability and openness.<sup>9</sup> As such the question of whether a member is required to register a benefit received is interpreted widely. There is an expectation, especially a public expectation that Members record any benefits received that may be perceived as a potential conflict of interest.

### **Timing of Registration**

46. Section 5 of Schedule 2 provides –

*5. (1) Members are required in accordance with section 69B (1) of the Parliament of Queensland Act 2001 to give to the Registrar statements of interests of the member and related persons within 1 month of taking their seat.*

*(2) Members are required in accordance with s.69B (2) of the Parliament of Queensland Act 2001 to notify the Registrar within 1 month of any changes to their interest or the interests of related persons.*

47. Members of the 54<sup>th</sup> Parliament, including Mr Driscoll, were sworn in on 15 May 2012.

### **Outline of matters before the committee**

48. The matters before the committee include those raised by the Leader of the Opposition in making the allegation and other matters which became apparent in the course of its inquiry. These matters are listed below and then dealt with in detail under sub headings:
- an alleged failure by Mr Driscoll to register his roles in Outsourcing Council Asia Pacific Ltd (OCAP) and Australian Small Business Coalition (ASBC) and that of his wife, Emma Driscoll, in ASBC;
  - an alleged failure by Mr Driscoll to register his roles and that of his wife in Queensland Retail Traders and Shopkeepers Association (QRTSA);
  - an alleged failure by Mr Driscoll to register his role and that of his wife in the Regional Community Association Moreton Bay (RCAMB);
  - an alleged failure by Mr Driscoll to register his roles and that of his wife in Norsefire Pty Ltd;
  - an alleged failure by Mr Driscoll to register motor vehicles; and
  - an alleged failure by Mr Driscoll to register several sources of income of his wife.

### **Outsourcing Council Asia Pacific (OCAP) Ltd & Australian Small Business Coalition (ASBC)**

49. The Leader of the Opposition in her letter to the Registrar alleges that Mr Driscoll failed to register his directorships of OCAP and the ASBC. Schedule 2, section 7(2)(b) requires that a statement of interests given by a member must contain the following details:
- (b) in respect of any company of which the member or a related person is an officer—*
- (i) the name of the company;*
  - (ii) the nature of the office held; and*
  - (iii) the nature of the activities of the company.*
50. OCAP is registered by the Australian Securities and Investments Commission (ASIC) as a company. ASBC was deregistered as a company on 28 May 2013.

<sup>9</sup> Note 3.



51. A review of ASIC and the Register of Interests records relating to Mr Driscoll's roles in OCAP and ASBC revealed as follows:
- On 3 June 2009, Mr Driscoll was appointed as a director of Australian Small Business Coalition;
  - On 16 September 2011, Mr Driscoll was appointed as a director of OCAP;
  - On 15 June 2012, the Registrar received Mr Driscoll's first statement of interests. This statement is required to be given to the Registrar within one month of taking seat under section 69B (1) of the POQA. Mr Driscoll did not declare his position as director of OCAP or any role in Australian Small Business Coalition in this statement;
  - Mr Driscoll ceased to be a director of ASBC on 28 November 2012;
  - Mr Driscoll ceased to be a director of OCAP on 29 November 2012; and
  - On 29 November 2012, Mr Driscoll wrote to the Registrar advising of this 'unintended omission' confirming also that he has since tendered his resignation from OCAP and ASBC as a director.
52. A review of ASIC records reveal that Mr Driscoll's wife held roles in ASBC as follows:
- On 28 July 2012, Mrs Driscoll was appointed as a director;
  - On 28 July 2012, Mrs Driscoll was appointed as secretary;
  - On 1 September 2012, Mrs Driscoll ceased to be secretary; and
  - On 28 May 2013, Mrs Driscoll ceased to be a director.
53. Mrs Driscoll's roles in ASBC have not at any time been declared in Mr Driscoll's Register of Related Persons' Interests.
54. On the material before the committee, the committee finds that Mr Driscoll was required to declare his roles as director in OCAP and ASBC and his wife's role in ASBC, and the nature of the activities of those organisations under section 7(2)(b).
55. The member's obligation to declare his directorships in OCAP and ASBC arose within one month of taking his seat, that is, by 15 June 2012. The Member's Register of Interests clearly indicates that neither of these directorships were declared at the relevant time.
56. The member's obligation to declare his wife's roles in ASBC arose within one month of her appointment and again within one month of the cessation of those roles. As no relevant entries appear in Mr Driscoll's Register of Related Persons' Interest, the committee finds that there has been a failure by Mr Driscoll to declare those roles.

#### **Queensland Retail Traders and Shopkeepers Association (QRTSA)**

57. The Leader of the Opposition in her letter to the Registrar makes reference to an article in the Courier Mail dated 18 March 2013 which refers to a relationship between Mr Driscoll, his family company Norsefire Pty Ltd and the QRTSA.
58. It should be noted that QRTSA is registered as a company on the ASIC register. In addition, there is also an organisation of the same name which is a registered industrial organisation under the *Industrial Relations Act 1999*.
59. The committee noted that in addition to the requirement in Schedule 2, section 7(2)(b) in relation to companies, section 7(2)(o) requires that a statement of interests to be given by a member must contain the following details:
- (o) the name of any political party, trade or professional organisation of which the member or related person is a member, the name of any other organisation of which the member is an officeholder or any organisation of which the member is a financial*



*contributor donating \$500 or more in any single calendar year to that organisation.*  
(Emphasis added).

**Secretary/Director of QRTSA the company**

60. A review of ASIC and the Register of Interests records relating to Mr Driscoll's roles in QRTSA revealed as follows:
- On 21 April 2008, Mr Driscoll was appointed as secretary of QRTSA the company;
  - Mr Driscoll was sworn in as member on 15 May 2012;
  - On 13 June 2012, Mr Driscoll declared that he was the director/secretary of QRTSA the company (received by the Registrar 15 June 2012);
  - On 24 September 2012, Mr Driscoll ceased to be a secretary of QRTSA the company (obligation to change the register by 24 October 2012);
  - On 24 September 2012, Mr Driscoll was appointed as a director of QRTSA the company (obligation to change the register by 24 October 2012);
  - On 28 November 2012, Mr Driscoll ceased to be a director of QRTSA the company; and
  - On 28 November 2012, Mr Driscoll notified the Registrar of a change to his register, effectively removing his declaration of the roles of director/secretary of the QRTSA from his register.
61. A review of ASIC records and Mr Driscoll's Register of Related Persons' Interest relating to Mrs Driscoll's roles in QRTSA revealed as follows:
- On 24 September 2012, Mrs Driscoll was appointed as a director of QRTSA the company (obligation to change the register by 24 October 2012);
  - On 4 April 2013, the Registrar received notice that Mrs Driscoll was a director of QRTSA the company; and
  - On 24 July 2013, the Registrar received notice to remove Mrs Driscoll's role as director of QRTSA the company from her register of interests 'as at 30 June 2013'.
62. There is some confusion as to when Mr Driscoll's role as director commenced. Although his initial declaration to the Registrar (dated 13 June 2012) referred to his role as 'Director/Secretary', ASIC records evidence that Mr Driscoll's appointment as a director commenced on 24 September 2012. The committee can only assume that while he may not have been formally appointed until September 2012, Mr Driscoll may have held himself out to be a director from at least 13 June 2012.
63. The committee finds that Mr Driscoll was required to declare his roles as director and secretary and that of his wife's role as director of QRTSA (the company) in accordance with section 7(2)(b). The material before the committee indicated that while this has been done in some instances the issue of timing of registration remains.
64. The member's obligation to notify the Registrar of his cessation as secretary and his wife's appointment as director of QRTSA (the company) arose within one month of those changes. As the changes were effective from 24 September 2012, and notification to the Registrar of Mr Driscoll's change of interest did not occur until over two months later, and over six months in the case of his wife's appointment as director, the committee finds that there has been a failure by Mr Driscoll to notify changes in interests within the required timeframe.

**President of QRTSA the industrial organisation**

65. As detailed in the second matter of privilege the subject of Part Two of this report on 19 March 2013, Mr Driscoll stated to the House:



*... prior to becoming an MP I was the voluntary honorary president of the Queensland Retail Traders and Shopkeepers Association, also known as the United Retail Federation.*

*... I ceased being a voluntary president in September last year, a role I had previously held for some time.*

66. Records relating to the operation and management of QRTSA the industrial organisation confirm that the role of president is a member of the executive committee of that organisation.
67. Mr Driscoll has not made any relevant declarations as to his role as president as an officeholder of the industrial organisation under section 7(2) (o). The member's obligation to declare his role of president was within one month of his swearing in as a member.
68. As no relevant entries appear in Mr Driscoll's register regarding this office, the committee finds that there has been a failure by Mr Driscoll to declare.

#### **Regional Community Association Moreton Bay (RCAMB)**

69. The Leader of the Opposition in her letter to the Registrar makes reference to an article in the Courier Mail dated 18 March 2013 which details a relationship between Mr Driscoll and the RCAMB.
70. There are no specific entries in the Register of Interests in relation to Mr and Mrs Driscoll's role or interests in RCAMB.
71. The committee considered that there were two potential sections which might require the registration of involvement with RCAMB.
72. Schedule 2 section 7(2)(o) requires that a statement of interests to be given by a member must contain the following details:
 

*(o) the name of any political party, trade or professional organisation of which the member or related person is a member, the name of any other organisation of which the member is an officeholder or any organisation of which the member is a financial contributor donating \$500 or more in any single calendar year to that organisation.*  
(Emphasis added).
73. Schedule 2 section 7(2) (p) requires that a statement of interests to be given by a member must contain the following details:

*(p) any other interest (whether or not of a pecuniary nature) of the member or a related person –*

*(i) of which the member is aware; and*

*(ii) that raises, appears to raise, or could foreseeably raise, a conflict between the member's private interest and their duty as a member.*

#### **Officeholder**

74. RCAMB minutes of 2 May 2013 indicate that Mr Driscoll was appointed as Patron of the organisation on that date.
75. A review of the register of interests of Mr Driscoll revealed that on 4 April 2013, Mr Driscoll notified the Registrar that he was a 'member and patron of various community groups';
76. A review of Mr Driscoll's Register of Related Persons' Interest reveal that on 4 April 2013, Mr Driscoll notified the Registrar that Mrs Driscoll was also a 'member of various community groups and organisations'.



77. In completing their Statement of Interests (for themselves and their related persons), the form includes a notation that members are not required to register that they are a patron of a community or sporting association.
78. It could be argued that Mr Driscoll's role as patron was effectively an officeholder and he was therefore required to register that interest under section 7(2)(o).
79. However, given the precedent that members are not required to register their role as patrons, the committee finds there was no obligation on Mr Driscoll to register his patronship of RCAMB under 7(2) (o).

#### **Conflict of interest**

80. In relation to section 7(2)(p), the committee considered the issue of whether Mr Driscoll's patronship and advocacy on behalf of RCAMB could raise a conflict between his private interests and duty as a member.
81. As is discussed in detail under the heading of 'other income' below, CMC records reveal that Mr Driscoll's wife was directly employed by RCAMB between September 2012 and February 2013. In addition, Norsefire Pty Ltd (the Driscoll family company) also held a contract with this organisation during the period of time that Mr Driscoll has been a Member of Parliament.
82. CMC records also reveal that Mr Driscoll was involved in the negotiation of service agreements between RCAMB and the Department of Communities, Child Safety and Disability Services while a member of Parliament and Patron of that organisation.
83. The committee is of the view that Mr Driscoll's and Mrs Driscoll's interests in RCAMB were clearly an interest which raises a conflict between the member's private interests and his duty as a member. The committee finds that Mr Driscoll ought to have declared this interest under section 7(2) (p) and that in failing to do so he sought to conceal his wife's sources of income.

#### **Norsefire Pty Ltd (Norsefire)**

84. The Leader of the Opposition in her letter to the Registrar makes reference to an article in The Courier Mail dated 18 March 2013 which refers to a relationship between Mr Driscoll, his family company Norsefire, and the Queensland Retail Traders and Shopkeepers Association.
85. A review of ASIC and the Register of Interests records relating to Mr Driscoll's roles in Norsefire revealed:
  - On 26 May 2010, Mr Driscoll was appointed as secretary of Norsefire;
  - On 26 May 2010, Mr Driscoll was appointed director of Norsefire;
  - On 15 May 2012, Mr Driscoll was sworn in as a member;
  - On 13 June 2012, Mr Driscoll declared that he was the director/secretary of Norsefire (received by the Registrar 15 June 2012);
  - On 25 February 2013, Mr Driscoll ceased to be a secretary of Norsefire;
  - On 25 February 2013, Mr Driscoll ceased to be a director of Norsefire;
  - On 27 February 2013, Mr Driscoll notified the Registrar to remove the references to his roles as director/secretary of Norsefire;
86. A review of ASIC records and Mr Driscoll's Register of Related Persons' Interest relating to Mrs Driscoll's roles in Norsefire revealed:
  - On 13 June 2012, Mr Driscoll declared his wife's shareholdings or controlling interest in Norsefire;



- On 25 February 2013, Mrs Driscoll was appointed secretary of Norsefire;
- On 25 February 2013, Mrs Driscoll was appointed as director of Norsefire;
- On 27 February 2013, Mr Driscoll notified the Registrar to add his wife's roles as director/secretary of Norsefire; and
- Mrs Driscoll is the sole shareholder of Norsefire.

87. The committee finds that these roles have been appropriately disclosed by Mr Driscoll.
88. The issue of investments held by Norsefire and income received from QRTSA and RCAMB via Norsefire are dealt with in detail below.

### Motor vehicles

89. The Leader of the Opposition in her letter to the Registrar also alleges Mr Driscoll has failed to register ownership of motor vehicles where from media reports, it appears that Mr Driscoll and/or members of his family have use of a Land Rover Discovery and a Honda CRV.
90. Schedule 2 section 7(2)(n) requires the registration of an asset of the member or the related person the value of which exceeds \$5,000, other than ---
- (i) household or personal effects;*
  - (ii) motor vehicles used only or mainly for personal use; and*
  - (iii) industry, public office and employer superannuation entitlements;*
91. On the material before the committee, there is nothing to suggest that the motor vehicles in question are assets personally owned by the Member or Mrs Driscoll as a related person.
92. In considering this allegation the committee also had regard to motor vehicles in the use and control of Norsefire from the perspective of whether the motor vehicles might constitute an investment or beneficial interest of a company and are required to be declared pursuant to section 7(2) (a) (iii).
93. Section 7(2)(a)(iii) requires that a statement of interests to be given by a member must contain the following details:
- (a) in respect of any company in which the member or a related person is a shareholder or has a controlling interest in shares-  
... (iii) where the shareholding or interest is held in a private company, the investments or beneficial interests of the company...*
94. The committee notes that there is no definition of the terms 'investments' or 'beneficial interests' in Schedule 2 of the Standing Orders. In addition, previous Ethics Committee reports which recommended amendments to Schedule 2 do not provide any assistance as to the intention of the House with respect to those terms.
95. The Macquarie Dictionary (online) defines 'investment' to include 'the investing of money or capital in order to secure profitable returns, especially interest or income'.
96. The definition of 'beneficial interests' in the Macquarie Dictionary Online includes 'an interest in a property, as in the property of a trust, held by a beneficiary to the trust'.
97. In applying the facts of this matter to the dictionary definitions, the committee found that there was no evidence before it to indicate a failure on the part of Mr Driscoll to register motor vehicles in the use or control of Norsefire as an investment or beneficial interest of that company.
98. The committee wishes to draw to the attention of the Committee of the Legislative Assembly (CLA) that absent a definition of the terms 'investment' and 'beneficial interests' in Schedule 2



of the Standing Orders it has found the application of Schedule 2 somewhat ambiguous and recommends that the CLA consider clarifying this issue in the next review of the Standing Orders.

#### Other income

99. The Leader of the Opposition in her letter to the Registrar also alleges that there is no entry in his wife's register of the source of income over \$500 per annum and refers to an article in the Courier Mail which *'details a relationship between Mr Driscoll and Regional [sic] Community Association Moreton Bay, and the employment of Mr Driscoll's wife Emma, who "received almost \$120,000 for consultancy work".'*
100. Schedule 2 section 7(2)(m) requires declaration of the source of any income over \$500 per annum received by—
- (i) the member or a related person;*
  - (ii) a private company, or a trust, in which the member or related person holds an interest;*
  - or of any income under \$500, where the source of the income raises, appears to raise, or could foreseeably raise, a conflict between the member's private interest and their duty as a member.*
101. Relevant records held by the Registrar reveal:
- Mrs Driscoll's shareholding or controlling interest in Norsefire has been declared since the original statement of interests was received by the Registrar on 15 June 2012; and
  - On 20 March 2013, the Registrar received notice from Mr Driscoll declaring Mrs Driscoll's income from Norsefire.
102. Material provided to the committee by the CMC indicates that Mr and Mrs Driscoll's joint bank account received income from Norsefire in excess of \$500 on 12 occasions in the period from 15 May 2012 to 20 March 2013 totalling \$215,670.02 as set out below:
- 21 May 2012                      \$1,000
  - 20 June 2012                    \$4,400
  - 28 June 2012                    \$25,000
  - 29 October 2012                \$57,200
  - 2 November 2012               \$14,612.18
  - 8 November 2012               \$64,019.26
  - 22 November 2012              \$1,700
  - 3 December 2012               \$30,000
  - 4 December 2012               \$2,100
  - 10 December 2012              \$4,638.58
  - 10 December 2012              \$6,000
  - 18 February 2013               \$5,000
103. The committee finds that Mr Driscoll was first required to declare this income from 21 June 2012 being one month after the first relevant payment.



104. CMC material before the committee shows that Norsefire has also received significant income from QRTSA and RCAMB since Mr Driscoll was sworn in as a Member of Parliament on 15 May 2012.
105. There are no relevant entries in either of Mr Driscoll's registers of interest declaring RCAMB or QRTSA as a source of income either directly to Mrs Driscoll or by way of a private company (Norsefire) in which the member or related person held an interest.
106. In relation to QRTSA, CMC records indicate three separate payments to Norsefire in excess of \$500 from June to August 2012 totalling \$139,434 (the first payment triggering a requirement to declare by 26 July 2012) as set out below:
- 26 June 2012                      \$14,717
  - 30 August 2012                  \$14,717
  - 30 August 2012                  \$110,000.
107. In relation to RCAMB, CMC records indicate 9 separate payments to Norsefire in excess of \$500 from May 2012 to February 2012 totalling \$151,331.44 (the first payment triggering a requirement to declare by 15 June 2012) as set out below:
- 15 May 2012                      \$13,750.02
  - 27 June 2012                      \$7,403
  - 27 August 2012                  \$23,907
  - 5 September 2012                \$22,621.50
  - 10 September 2012              \$10,376.94
  - 19 October 2012                \$21,861.52
  - 16 November 2012              \$11,424.78
  - 3 December 2012                \$11,424.78
  - 7 February 2013                \$28,561.90
108. In addition, CMC records show that Mrs Driscoll was herself directly employed by RCAMB as a part time administration officer between September 2012 and February 2013 resulting in 13 separate payments to her in excess of \$500 totalling \$15,831.23 (the first payment triggering a requirement to declare by 21 October 2012) as set out below:
- 21 September 2012              \$1,634
  - 3 October 2012                    \$1,232
  - 18 October 2012                  \$1,232
  - 26 October 2012                  \$616
  - 8 November 2012                \$1,232
  - 22 November 2012               \$1,232
  - 6 December 2012                \$1,232
  - 20 December 2012               \$1,232
  - 3 January 2013                    \$1,339.63



- 17 January 2013 \$1,232
- 31 January 2013 \$1,232
- 14 February 2013 \$1,232
- 1 March 2013 \$1,153.60

109. The committee finds that the receipt of any of the above 37 payments (totalling \$522,266.68) should have triggered Mr Driscoll's obligation to declare the receipt of income in accordance with section 7(2) (m).

***If yes, has the non-disclosure resulted in a contempt?***

110. The committee's findings as detailed above are that Mr Driscoll was required to declare the following interests across both registers:

(a) within one month of taking his seat on 15 June 2012:

1. Mr Driscoll's role as a director of OCAP under s.7(2)(b);
2. Mr Driscoll's role as a director of Australian Small Business Coalition under s.7(2)(b);
3. Mr Driscoll's role as president of QRTSA the industrial organisation, under s.7(2)(o); and
4. Mr Driscoll's and Mrs Driscoll's involvement with RCAMB as a matter which could raise a conflict of interest under s.7 (2) (p).

(b) within one month of the following changes:

5. Mrs Driscoll's appointment as secretary of Australian Small Business Coalition under s.7(2)(b) (obligation to declare from 28 August 2012);
6. Mrs Driscoll's appointment as a director of Australian Small Business Coalition under s.7(2)(b) (obligation to declare from 28 August 2012);
7. Mrs Driscoll's cessation as a director of Australian Small Business Coalition under s.7(2)(b) (obligation to declare from 28 June 2012);
8. Mrs Driscoll's cessation as secretary of Australian Small Business Coalition under s.7(2)(b) (obligation to declare from 1 October 2012) ;
9. Mr Driscoll's cessation as secretary of QRTSA under s.7(2)(b) (obligation to declare from 24 October 2012);
10. Mrs Driscoll's appointment as director of QRTSA under s.7(2)(b) (obligation to declare from 24 October 2012) ;
11. Direct income from Norsefire paid into Mr and Mrs Driscoll's joint bank account (12 separate payments) Under s.7(2)(m) (obligation to declare from 21 June 2012)
12. Mrs Driscoll's direct income from RCAMB (13 separate payments) under s.7 (2) (m) (obligation to declare from 21 October 2012).
13. Income received by Norsefire Pty Ltd from RCAMB (9 separate payments) under s.7 (2) (m) (obligation to declare from 15 June 2012);.and
14. Income received by Norefire Pty Ltd from QRTSA (3 separate payments) under s.7 (2) (m) (obligation to declare from 26 July 2012).



111. Having made the above finding, the committee then considered whether the non-disclosure of these interests resulted in a contempt.
112. Section 18 of schedule 2 of the Standing Orders sets out the effect of a failure to comply with the Register of Interest's requirements as follows—

*A member who knowingly—*

- (a) fails to give a statement of interests to the Register under subclause 5(1);*
- (b) fails to notify the Registrar under subclause 5(2) of a change of details contained in a statement of interest;*
- (c) gives to the Registrar a statement of interests, or gives information to the Registrar or the Committee, that is false, incomplete or misleading in a material particular;*

*is guilty of a contempt of the Parliament and may be dealt with accordingly (Emphasis added).*

113. The Leader of the Opposition's complaint did not provide the committee with any clear evidence, other than assertion, that the member *knowingly* failed to notify the Registrar of any required declarations.
114. The committee noted that, in his letter to the Registrar dated 29 November 2012, Mr Driscoll indicated that his failure to register his roles as director of OCAP and ASBC was an 'unintended omission' and an 'oversight'. Mr Driscoll re-iterated these statements in his submission to the committee of 18 April 2013 stating "I sincerely regret this genuine oversight and apologise for it occurring".
115. In addition, Mr Driscoll stated in his submission of 18 April 2013 that his failure to register his wife's other income over \$500 was "...both a genuine oversight and also a genuine misunderstanding on my part, for which I sincerely regret and apologise".
116. In his submission of 2 May 2013, Mr Driscoll asserts that until 48 hours before that date he was unaware that he was listed as a "Director" of QRTSA the company and he also stated that he accepted and acknowledged an "unintentional oversight" in not registering his role as "Secretary" of QRTSA.
117. In his submission of 7 November 2013, Mr Driscoll stated "At no point did I ever deliberately or knowingly complete my Member's Interest Register, or that of my wife, incorrectly".
118. The committee notes that it was at somewhat of a disadvantage in not being able to call Mr Driscoll and question him under oath as to his knowledge of the requirement to register the interests and his alleged intentional failure to register.
119. However, the committee had the following factual information before it:
- Mr Driscoll attended the new members induction program which included a session by the Clerk in relation to Conflicts and Register of Interests on 17 April 2012;
  - At the end of that session the Clerk made an offer to make an appointment with all new members to go through each Member's individual requirements regarding the register of interest; and
  - Mr Driscoll did not avail himself of that opportunity of an appointment with the Clerk.
120. The committee believes that Mr Driscoll had the requisite information placed before him in order for him to have knowledge of the requirements of the register. The committee takes the view that there is a positive obligation on all members to familiarise themselves with the requirements of the Register and if in any doubt to seek assistance from the Clerk as Registrar.
121. In addition, the committee made the following observations:



- The requirements to register offices held in companies in s 7(2)(b) and for other organisation in s.7(2)(o) are very clear cut (i.e. there is little scope for ambiguity);
- Mr Driscoll has demonstrated an understanding of the need to register such interests as evidenced by the correct registration in relation to offices held in Norsefire;
- The requirement to register income received from a single source over \$500 in s.7 (b) (o) is also clear cut (i.e. there is little scope for ambiguity). In addition, this requirement was so widely publicised in the cases regarding Mr Nuttall that Mr Driscoll ought to have been aware of it; and
- The issue of the potential conflict of interest between Mr Driscoll's private interest in the receipt of his wife's income both directly from RCAMB, and from RCAMB and QRTSA via Norsefire, ought to have been clearly evident to Mr Driscoll.

### **Conclusion regarding contempt**

122. Taking all of the above points into account, on the information available to it, the committee finds, on the balance of probabilities that Mr Driscoll had the requisite knowledge that the 14 interests detailed above required declaration and that they should have been registered.
123. The committee also finds that, based on the information available to the committee, Mr Driscoll knowingly failed to register the 14 interests in the appropriate timeframe.

### **Penalty**

124. Section 15(1) of Schedule 2 of the Standing Orders sets out that the committee must, with its report, recommend the action that should be taken.
125. As noted above, the committee sought a submission from Mr Driscoll as to the penalty. In his letter of 7 November 2013, Mr Driscoll submitted that "an apology to the Committee and the Parliament should be sufficient punishment".

### **Punishment vs Standards setting**

126. The Code of Ethical Standards states that the public's confidence in the institution of Parliament is essential. Specifically, 'members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and avoid any action which may diminish its standing, authority or dignity'.<sup>10</sup>
127. The committee has an important function in ensuring that high standards are maintained by all members and these standards were considered when making a recommendation as to penalty.
128. There is a well-established principle in the general law in relation to bodies which have an obligation to protect professional standards that a sanction imposed is for the purpose of maintaining the standards rather than imposing a 'punishment' in the traditional sense.
129. In the case of *Karriaper v Wijesinha*<sup>11</sup>, the Privy Council found that sanctions imposed against members of Parliament against whom allegations of bribery had been substantiated were designed 'not to punish but to keep public life clean'.

### **Precedents for penalties for failure to register**

<sup>10</sup> Members' Ethics and Parliamentary Privileges Committee (2004), *Code of Ethical Standards*, at 3.

<sup>11</sup> (1968) AC 717



130. The committee was cognisant of the two previous matters where the predecessor committee to this committee has made a finding of contempt in relation to failure to register interests. Both these matters relate to former member Mr Gordon Nuttall.
131. In Report No. 105, the committee found Mr Nuttall was required to disclose 36 payments he received at the very least under s. 7(2)(m) or s. 7(2)(p) of the Standing Orders. Accordingly, the committee found that Mr Nuttall committed contempt of Parliament for failing to disclose each of the payments received from Messers Talbot and Shand, in the Register of Interests on 36 separate occasions, within the time period prescribed in s. 5(2) of Schedule 2.
132. In Report No. 105, the committee recommended the imposition of the maximum fine for each contempt to reflect the gravity of each offence and to send a strong message to members and the public about the level of accountability expected of Members of Parliament. Accordingly, the committee recommended that the House impose a fine of \$2,000 for each of the 36 separate occasions of contempt for non-disclosure of the payments received from Messers Talbot and Shand.<sup>12</sup>
133. In Report No. 114, the committee also found that Mr Nuttall committed contempt of Parliament for failing to disclose each of the payments received from Mr McKennarney, in the Register of Interests on 5 separate occasions, within the time period prescribed in s. 5(2) of Schedule 2. The committee again recommended that the House impose a fine of \$2,000 for each of the five separate occasions of contempt for non-disclosure of the payments received from Mr McKennarney.<sup>13</sup>
134. This committee notes that its predecessor committee in both Report 105 and 114 considered the argument in relation to the receipt of income that where there were multiple payments from one source that it should count as a single contempt. However, the previous committee took the view that the receipt of each payment should have been a signal for the member to consider the obligation to register and therefore the receipt of each payment was considered a separate count of contempt. This committee has determined to follow that precedent in this current matter which means that the total counts of contempt regarding Mr Driscoll's failure to register comes to 48 counts.
135. The committee is aware of the precedent in the Nuttall matters and considers that the imposition of a monetary fine as a penalty is an appropriate recommendation in this matter.

### Conclusion regarding penalty

136. In this matter the committee has distinguished between the various failures to register and recommends as follows:
  - (a) in relation to the two counts of contempt associated with Mr Driscoll's failure to register his roles as director of OCAP and ASBC. Given his indication that it was an unintended omission and the fact Mr Driscoll took steps to rectify the situation prior to the allegation made by the Leader of the Opposition to the Registrar the committee considers, as in the precedent of the Emerson Case (Report No. 104), that no penalty be imposed;
  - (b) in relation to the four counts of contempt associated with Mr Driscoll's failure to register his wife's appointment and cessation as director and secretary of ASBC in the Register of Related Persons' Interest on the basis that no steps were taken by Mr Driscoll to rectify the situation, even after he took steps to declare his own role in ASBC, the

<sup>12</sup> IEPPC, *Matter of Privilege Referred by the Speaker on 13 November 2006 Relating to the Alleged Failure by a Former Member to Register a Payment Received in the Register of Members' Interests*, Report No. 105, Goprint, Brisbane, 2010 at 11.

<sup>13</sup> IEPPC, *Matter of Privilege Referred by the Registrar on 18 November 2010 Relating to the Alleged Failure by a Member to Register an interest in the Register of Members' Interests*, Report No. 114, Goprint, Brisbane, 2011 at 8.



committee considers that the House should impose a fine of \$1000 in relation to each count (total value of \$4,000);

(c) in relation to the forty-two counts of contempt associated with Mr and Mrs Driscoll's:

- i. roles in QRTSA;
- ii. the conflict of interest caused by their involvement with RCAMB; and
- iii. the income received both directly from RCAMB and through Norsefire Pty Ltd from RCAMB and QRTSA

The committee is of the view that each of these failures to register were significant and it should follow the precedent in the Nuttall matters of recommending the imposition of the maximum fine for each contempt to reflect the gravity of each offence and to send a strong message to members and the public about the level of accountability expected of members of Parliament. Accordingly, the committee recommends that the House impose a fine of \$2,000 for each of the 42 counts of contempt at a total value of \$84,000

137. The total fines recommended to the House in relation to failure to register interests is \$88,000.

#### **Rules regarding times**

138. Section 277(1) of the Standing Orders sets out that when the House has adjudged a person guilty of contempt, the House may order them to pay a fine not exceeding two thousand dollars per offence and require payment of that fine within a specified reasonable period of time.

139. In the event that a person does not pay the fine within the time set by the House, the House may order that the person be imprisoned in the custody of the Sergeant-at-Arms or in the custody of the Department of Corrective Services, until the fine has been paid, or until the end of the existing session, or for such shorter period as the House by the same or any subsequent order may direct (Standing Order 277(2)).

#### **Conclusion 1**

**The committee finds that Mr Driscoll was required to register a total of 14 different interests in the Register of Members' Interest and Register of Related Persons' Interest on a total of 48 occasions in accordance with Schedule 2 of the Standing Orders.**

#### **Conclusion 2**

**The committee finds that Mr Driscoll committed contempts of Parliament for failing to register each of those interests within the time period prescribed in section 5(2) of Schedule 2.**

#### **Recommendation 1**

**The committee recommends the House find Mr Driscoll committed a contempt of Parliament on each of the 48 occasions he failed to register an interest in the Register of Members' Interest and the Register of Related Persons' Interest, within the time period prescribed in section 5(2) of Schedule 2.**

#### **Recommendation 2**

**The committee recommends:**



- (a) in relation to the two counts of contempt associated with Mr Driscoll's failure to register his roles as director of OCAP and ASBC. Given his indication that it was an unintended omission and the fact Mr Driscoll took steps to rectify the situation prior to the allegation made by the Leader of the Opposition to the Registrar the committee considers as in the precedent of the Emerson Case (Report No. 104) that no penalty be imposed;
- (b) in relation to the four counts of contempt associated with Mr Driscoll's failure to register his wife's appointment and cessation as director and secretary of ASBC in the Register of Related Persons' Interest, on the basis that no steps were taken by Mr Driscoll to rectify the situation even after he took steps to declare his own role in ASBC, the committee recommends that the House impose a fine of \$1000 in relation to each count (total value of \$4,000); and
- (c) in relation to the forty-two counts of contempt associated with:
- i. Mr and Mrs Driscoll's roles in QRTSA;
  - ii. the conflict of interest caused by their involvement with RCAMB; and
  - iii. the income received both directly from RCAMB and through Norsefire Pty Ltd from RCAMB and QRTSA; and
- the committee is of the view that each of these failures to register were significant and the House should follow the precedent in the Nuttall matters of recommending the imposition of the maximum fine for each contempt to reflect the gravity of each offence and to send a strong message to members and the public about the level of accountability expected of members of Parliament.

Accordingly, the committee recommends that the House impose a fine of \$2,000 for each of the 42 counts of contempt at a total value of \$84,000

The total fines recommended to the House in relation to the failure to register interests is \$88,000.

### Recommendation 3

That the Committee of the Legislative Assembly consider clarifying the terms 'investments' and 'beneficial interests' in Schedule 2 of the Standing Orders in its next review of Standing Orders.

## PART TWO – ALLEGED DELIBERATE MISLEADING OF THE HOUSE

### *The referral and committee process*

140. Part Two of this report concerns an allegation that the Member for Redcliffe, Mr Scott Driscoll MP, deliberately misled the House on 19 March 2013 in statements made during a personal explanation.
141. The Deputy President of the Queensland Industrial Relations Commission (QIRC), Mr Adrian Bloomfield wrote to the Speaker on 31 May 2013 raising the allegation.
142. On 4 June 2013, the Speaker referred the matter to the committee making the following statement in the House:



*Honourable members, yesterday, on 3 June 2013, I received correspondence from Mr Adrian Bloomfield, the Deputy President of the Queensland Industrial Relations Commission. This correspondence attaches documentary evidence which prima facie suggests that the member for Redcliffe deliberately misled parliament on 19 March 2013 when he stated in a prepared personal explanation that he ceased being a voluntary president of the Queensland Retail Traders and Shopkeepers Association—also known as the United Retail Federation—in September last year.<sup>14</sup>*

143. As detailed in relation to the failure to register matter in Part One above, before commencing this inquiry, the committee became aware that the Crime and Misconduct Commission (CMC) and/or the Queensland Police Service were considering complaints in relation to Mr Driscoll. In response, and exercising an abundance of caution approach which has been the custom and practice of past Ethics Committees, the committee resolved to suspend its inquiry pending advice from the CMC as to the outcome of its investigations.
144. As with the failure to register matter, the committee subsequently decided to commence its inquiry into this matter. On 31 July 2013, the committee tabled Interim Report No. 134 advising of its rationale for commencing this inquiry.
145. After making its decision to commence this inquiry all the parties were invited to make written submissions.
146. Deputy President Bloomfield did not provide a further submission to the committee. However, the QIRC provided a copy of the transcript of the findings of its hearing of 30 May 2013.

***Mr Driscoll's opportunity to be heard and make written submissions***

147. As per above, the committee extended Mr Driscoll the opportunity to make written submissions by letter dated 29 July 2013.
148. On 12 August 2013, Mr Driscoll wrote to the committee seeking an extension of time to make submissions on medical grounds. This request was made in relation to both matters before the committee.
149. As detailed in relation to the failure to register matter the committee corresponded with Mr Driscoll's medical specialist. The outcome of that correspondence was advice to the committee that, due to medical reasons, Mr Driscoll would be unable to assist the committee in this process for an unknown period of time.
150. Despite this, the committee considered that it had sufficient information before it to proceed to investigate the alleged contempt and resolved to proceed on the assumption that it was unlikely that there will be any change in Mr Driscoll's prognosis in the short to medium term.
151. As with the first matter the subject of this report, the committee also wrote to Mr Driscoll (and his legal representatives) acknowledging the prognosis, but none the less offering Mr Driscoll the opportunity to make a written submission or appear before the committee in a private hearing.
152. On 31 October 2013, Mr Driscoll's legal representative provided a submission which purported to provide information from a person that the member had nominated as a person to whom the committee should provide an opportunity to be heard (as per section 15(2)(b) of Schedule 2 of the Standing Orders).

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<sup>14</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 4 June 2013, at 1858.



153. This submission, however, included submissions from Mr Driscoll's legal representative as to the committee's processes and submissions as to the facts of the matter from an unidentified third party.
154. As in the case of the failure to register interests, the committee determined that it could not give consideration or weight to such a submission in this matter.
155. On 31 October 2013, Mr Driscoll (and his solicitor) were advised that the committee was minded to make a preliminary finding to recommend to the House that he be found guilty of a contempt of Parliament.
156. The Committee acknowledged the previous advice from Mr Driscoll's medical specialist that he was unfit to provide a submission, however, in the event that Mr Driscoll's condition had improved, the committee again invited Mr Driscoll to make a submission in relation to the issue of penalty or the issue of whether a contempt has been committed.
157. On 7 November 2013, Mr Driscoll's wrote to the committee reminding the committee of his medical condition and seeking to make a brief submission as to the issues of contempt and penalty.
158. As mentioned in Part One, the committee sought senior counsel's advice as to whether there were any legal issues associated with taking into account Mr Driscoll's submissions given the medical advice as to his fitness. The committee was advised that there was no legal impediment to it taking into account the letter of 7 November 2013 regarding this matter. Accordingly, the committee resolved to take that submission into account.

### **Contempt**

159. Section 37 of the *Parliament of Queensland Act 2001* defines the meaning of "contempt" in the Assembly as follows—
  - (1) *"Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.*
  - (2) *Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—*
    - (a) *the free exercise by the Assembly or a committee of its authority or functions; or*
    - (b) *the free performance by a member of the member's duties as a member.*

### **Deliberately misleading the House**

160. Standing Order 266(2) enables the House to treat "deliberately misleading the House or a committee" as a contempt.
161. There are three elements to be established where it is alleged that a person has committed the contempt of deliberately misleading the House—
  - firstly, the statement must have been misleading;
  - secondly, it must be established that the person making the statement knew at the time the statement was made that it was incorrect; and
  - thirdly, in making the statement, the person intended to mislead the House.<sup>15</sup>

<sup>15</sup> McGee, D, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, at 653-655.



162. The Ethics Committee of the 48th Parliament stated that the term 'misleading' is wider than 'false' or 'incorrect'. The committee considered it "possible, although rare and unlikely, that a technically factually correct statement could also be misleading"—for example, by the deliberate omission of relevant information.<sup>16</sup>
163. Previous ethics committees, and David McGee, the former Clerk of the New Zealand House of Representatives in his book *Parliamentary Practice in New Zealand*,<sup>17</sup> have noted that the standard of proof demanded in cases of deliberately misleading Parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations.

#### **Matter referred to the Ethics Committee**

164. On 19 March 2013, the member for Redcliffe stated to the House:

*... prior to becoming an MP I was the voluntary honorary president of the Queensland Retail Traders and Shopkeepers Association, also known as the United Retail Federation.*

*... I ceased being a voluntary president in September last year, a role I had previously held for some time.*

165. In his letter to the Speaker, Mr Bloomfield provided two pieces of information which he suggested contradicted the statements made by Mr Driscoll. The first is a copy of a notification to the Australian Security and Investment Commission (ASIC), dated 24 September 2012, which indicates that Mr Driscoll was appointed as Director of Queensland Retail Traders and Shopkeepers Association (QRTSA) on 24 September 2012. It also refers to a secondary notice to ASIC that indicated he ceased to hold the position on 28 November 2012.
166. The second piece of information that Mr Bloomfield provided Madam Speaker is a copy of a Notice sent to members of the QRTSA dated 4 December 2012 under the signature of Mr Driscoll describing himself as the 'National President, United Retail Federation'. Mr Bloomfield explained that United Retail Federation is a name that QRTSA traded under.

#### **Queensland Retail Traders and Shopkeepers Association (QRTSA)**

167. As detailed in relation to the failure to register matter, QRTSA is an industrial association of employers for the purposes of Industrial Relations legislation as listed on the QIRC website.
168. There is also a registered company called QRTSA and ASIC records confirm that Mr Driscoll has been both secretary (21 April 2008–24 September 2012) and director (24 September 2012–28 November 2012) of that company.
169. ASIC records also confirm that QRTSA, the company, registered United Retail Federation as a business name. QRTSA, as the holder of the business name United Retail Federation is the legal owner of it. Generally, the officeholders of QRTSA would also be responsible for the activities of United Retail Federation.
170. The constitution and rules of QRTSA the industrial organisation defines the executive management of QRTSA to include a president. Records indicate that Mr Driscoll was elected unopposed as president of QRTSA (the industrial association of employers) in April 2010.
171. Minutes of a meeting purportedly held on 1 September 2012 were presented to the QIRC by Mrs Driscoll indicating that resolutions took place for Mrs Driscoll to replace Mr Driscoll as President on that date.

<sup>16</sup> MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 10.

<sup>17</sup> Note 2.



172. However, the findings of the QIRC casts doubt on the validity of resolutions made by QRTSA (the industrial association of employers) since at least 18 April 2011. In the transcript of hearing of 30 May 2013, Mr Bloomfield found that any resolutions passed on 1 September 2012, which included the removal of Mr Driscoll as president, to be a 'total fiction'.
173. Purported QRTSA records also indicate that Mrs Driscoll resigned her position as president on 15 April 2013 although the constitution and rules of the organisation provide that the executive committee continues to act until successors are appointed.

***Establishing a prima facie case of possible contempt***

**Issues to be resolved**

174. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are listed below.
- (a) Do the Member's statements contain any factually (or apparently) incorrect matter?
  - (b) Were any of the Member's statements misleading?
  - (c) (If yes), did the Member know at the time the statements were made that they were misleading and was it the Member's intention to mislead the House?
- (a) Do the Member's statements contain any factually (or apparently) incorrect matter?
175. In his statement to the House on 19 March 2013, Mr Driscoll referred to the roles of 'voluntary honorary president' and 'voluntary president'.
176. Deputy President Bloomfield of the QIRC provided an email that was sent on 4 December 2012 to members of QRTSA (the industrial association of employers) identifying Mr Driscoll as the 'National President'.
177. The findings of the QIRC also suggests that the purported resolution made on 1 September 2012 removing Mr Driscoll as president of QRTSA (the industrial association of employers) was not properly made as there was not a properly constituted meeting of persons whom had been elected to the executive committee on 1 September 2012.
178. In his findings of 30 May 2013, Deputy President Bloomfield states "it appears to me that any of the resolutions said to have been made on that that day (1 September 2012) are a total fiction".
179. The purported minutes of the 1 September 2012 meeting indicate that the following persons were present:
- S Driscoll (Chairman),
  - N. Withycombe (via phone),
  - J. Edwards,
  - E. Driscoll,
  - J. Jiang,
  - B. Mills, and
  - L. Mills
180. The QIRC evidence establishes that Withycombe, Edwards and Jiang had given blanket proxies to Mr Driscoll and did not attend a meeting on 1 September 2012.
181. In her Sworn Affidavit to the QIRC dated 3 May 2013, Mrs Driscoll gave evidence that attendees on 1 September 2013 were Bruce Mills, Leesa Mills, Scott Driscoll and Emma Driscoll.



182. In the QIRC Transcript of Proceedings of 16 May 2013, Mr Bruce Mills gave evidence on oath that he did not attend the meeting on 1 September 2012 (pgs 1-20 and 1-21). Similarly, at pg 1-23 of the Transcript, Ms Leesa Mills gave evidence on oath that she did not attend the meeting of 1 September 2012.
183. Mr Mills also gave evidence at page 1-24 of the transcript that he couldn't remember if Scott Driscoll ever resigned as president. Mr Mills stated "Scott never let go of control of the organisation" and confirmed that he still took part in the management of the QRTSA. This evidence was re-iterated by Mr Mills in his CMC statement of 9 July 2013 at para 205 where he stated:
- "It was about this time, 1 September 2012, Scott became the self appointed patron of QRTSA and used this as a shield to enable him to control QRTSA whilst distancing himself in his role in parliament (*Scott advised me as the patron, he could still manage QRTSA*)..."
184. The issue before the committee with respect to the first element is whether Mr Driscoll was incorrect in stating on 19 March 2013 that he ceased to be president of QRTSA (the industrial association of employers) in September 2012.
185. There were documents before the committee (i.e. the purported minutes and resolutions) which on their face indicate that on 1 September 2012, QRTSA had taken steps to replace Mr Driscoll as the president of the industrial organisation.
186. However, there was also evidence before the committee that the purported minutes and resolutions of the committee are a sham and the actual meeting did not actually take place, as found by the Deputy President of the QIRC and supported by the sworn testimony of the Mr and Ms Mills.
187. Having carefully weighed the evidence before it, the committee finds in accordance with the QIRC findings. The committee finds, on the balance of probabilities, the Member's statement in the House on 19 March 2013 contains factually incorrect matter in that he did not cease to be President of the QRTSA the industrial organisation in September 2012.
188. The Committee is of the view that Mr Driscoll did not validly cease in the role of President in September 2012 and, in fact, the minutes and resolutions of the meeting of 1 September 2012 have been concocted to create the impression that he had ceased in the role.

**(b) Were any of the Member's statements misleading?**

189. The focus of the committee's inquiry in relation to this element was on the issue of whether Mr Driscoll ceased in the role of President in September 2012.
190. Having found, on the balance of probabilities, that Mr Driscoll's purported ceasing in the role of President on 1 September 2012 was a fiction the committee therefore finds the statement that he ceased as president in September 2012 was misleading.

**(c) (If yes), did the Member know at the time the statements were made that they were misleading and was it the Member's intention to mislead the House?**

191. As mentioned above, previous ethics committees, and David McGee (McGee),<sup>18</sup> have noted that the standard of proof demanded in cases of deliberately misleading Parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations.

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<sup>18</sup> Note 2.



192. McGee further notes that remarks made off the cuff in debate can rarely fall into the category of deliberate do not mislead, nor can matters about which the member can only be aware of in an official capacity. However, where a member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality (for example, by way or personal explanation) a presumption of an intention to mislead the House will more readily arise.
193. The committee notes Mr Driscoll's statements regarding his ceasing as President were not made off the cuff but as part of a prepared personal explanation to the House following the arising of certain allegations in the media.
194. In his submission of 7 November 2013, Mr Driscoll asserts "This statement is completely truthful, factual and in no way intended to mislead the Parliament in any manner. I did resign from this role 1 September 2012 and not seek re-election, when a new Interim Committee took office."
195. As per its comments in relation to the matter in Part One of this report, the committee notes that it was at somewhat of a disadvantage in not being able to call Mr Driscoll in this matter and to question him under oath as to his knowledge of the purported meeting of 1 September 2012.
196. However, having taken all the information available to it, the committee is satisfied, on the balance of probabilities, that Mr Driscoll was aware that the purported meeting of 1 September 2012 was a fiction and therefore his purported cessation as President on that date did not actually occur. Accordingly, the committee finds that Mr Driscoll knew that his statement to the House on 19 March 2013 was misleading and that he intended to mislead the House.

### **Conclusion Regarding Contempt**

197. Taking all of the above points into account, the committee finds on the balance of probabilities that Mr Driscoll deliberately mislead the House.

### **Penalty**

#### **Precedents for penalties for deliberately misleading**

198. In his letter of 7 November 2013, Mr Driscoll submitted that "an apology to the Committee and the Parliament should be sufficient punishment".
199. There are three previous matters where the Ethics Committee has made a finding of contempt in relation to deliberately misleading the House or its committees.
200. The first matter related to a Mr Amprimo presenting a submission to a parliamentary committee under a fictitious signature in circumstances likely to mislead the committee (Report No. 22<sup>19</sup>). The Select Committee on Privileges recommended no further action be taken due to the sincere apology tendered to the House by Mr Amprimo, his remorse and acceptance of responsibility for his contempt.
201. The second matter related to the then Member for Ipswich West, Mr Jack Paff, who was found to make a deliberately misleading statement in a dissenting committee report tabled on 11 March 1999 (MEPPC Report No.35<sup>20</sup>). The committee recommended he be admonished for

<sup>19</sup> Select Committee of Privileges Report No. 22 *A Forged Submission to a Parliamentary Committee* (tabled 9 September 1994).

<sup>20</sup> Members' Ethics and Parliamentary Privileges Committee Report No. 35, *Report on a matter of privilege – A member making a deliberately misleading statement in a "Dissenting Report"* (tabled 15 September 1999).



his conduct by the Speaker and apologise to the House. In addition, the committee recommended suspension from the services and precincts of the House for 21 days.

202. The third matter relates to the former Member for Sandgate Mr Gordon Nuttall who was alleged to have deliberately mislead Estimates Committee D (Report No.72<sup>21</sup>). Before the committee had finalised its inquiry the House resolved to deal with the matter as a contempt and to accept the Member for Sandgate's resignation as a Minister and Member of the Executive Council, and his apology to the House as an appropriate penalty.

#### **Conclusion regarding penalty**

203. The committee found that none of the above precedents were particularly useful in guiding their recommendation as to the appropriate penalty for deliberately misleading the House in this matter.
204. The committee is of the view that contempt committed by Mr Driscoll of deliberately misleading of the House was related to and equally as serious as the contempts of failing to register various interests dealt with earlier in this report.
205. Accordingly, the committee recommends that as with the failure to register matter, the House impose the maximum fine to reflect the gravity of the offence and to send a strong message to members and the public about the level of accountability expected of members of Parliament. Accordingly, the committee recommends that the House impose a fine of \$2,000.

#### **Conclusion 3**

The committee finds that in his personal explanation on 19 March 2013 in referring to his role as President of the Queensland Retail Shopping Traders Association that in stating '...I ceased being a voluntary president in September last year...' Mr Driscoll deliberately mislead the House.

#### **Conclusion 4**

The committee finds that in deliberately misleading the House Mr Driscoll committed a contempt of Parliament.

#### **Recommendation 4**

The committee recommends the House find Mr Driscoll committed a contempt of Parliament.

#### **Recommendation 5**

The committee recommends the House impose the maximum fine available to it of \$2,000 for this contempt to reflect the gravity of the offence and to send a strong message to members and the public about the level of accountability expected of members of Parliament.

<sup>21</sup> Ethics Committee Report No. 72, *Matter of Privilege Referred by the Speaker on 24 August 2005 Relating to the Alleged Misleading of Estimates Committee D* (tabled 2 March 2006).



**PART THREE – THE CUMULATIVE EFFECT OF THE FINDINGS OF CONTEMPT**

206. In conducting its inquiries, the committee considered the allegations in relation to the failure to register interests and deliberately misleading the House separately. The committee made its findings of fact and recommendation regarding penalty as detailed above in relation to each matter on its merits.
207. However, while the two matters are separate they are related specifically with respect to the common issue of Mr Driscoll's role with the QRTSA and the potential conflict of his private interests with his role as a Member of Parliament.
208. In investigating both matters the committee has been presented with evidence which suggests that whilst registering the Driscoll private company, Norsefire Pty Ltd there was a failure to register the various sources of income to that private company (QRTSA and RCAMB) in order to conceal the receipt of such income and prevent exposure of the inherent conflicts of interests of Mr Driscoll's private interests with his role as a Member of Parliament.
209. The committee notes the failure by Mr Driscoll to advise the House of his continuing involvement in the management of the QRTSA and relationship with RCAMB while at the same time advocating for those organisations in the House.
210. Specifically, the committee notes that on 5 June 2012, Mr Driscoll made a speech in the House supporting independent retailers against the major retailers without declaring the pecuniary interest that the member or related person had via QRTSA at the beginning of his speech as required under Standing Order 260.
211. Similarly, the committee notes Mr Driscoll made a speech on 10 July 2012 advocating for more federal funding for the RCAMB without declaring at the beginning of his speech his pecuniary interest in that RCAMB was a direct source of income to Norsefire as required under Standing Order 260.
212. The committee notes that there is a direct relationship between Mr Driscoll's conduct as found in Parts One and Two of this report and his speeches on 5 June and 10 July 2013.
213. Having considered all the material before with respect to the matters in Parts One and Two of this report and Mr Driscoll's speeches in the House the committee resolved to consider the possibility of a recommendation with respect to expulsion.
214. The committee has had reference to various Parliamentary Law texts such as Erskine May (23<sup>rd</sup> Ed, pages 164 and 165) which states that expulsion by the House of Commons (United Kingdom) may be regarded as an example of the House's power to regulate its own constitution, and that members have been expelled for a wide variety of causes including being guilty of contempt.
215. In the House of Commons, expulsion results in the vacation of the seat of a Member and a new writ is immediately issued. Although expulsion vacates the seat of a Member, it does not create a disability to serve again in the House, if re-elected.
216. In addition, the committee notes that McGee (3<sup>rd</sup> Ed, page 647) states that in jurisdictions with a link to the House of Commons privileges (such as Queensland) it is accepted that the power to expel a member remains by virtue of that link.
217. Section 9 of the *Constitution of Queensland 2001* provides that the Legislative Assembly has all the powers rights and immunities of the House of Commons as at 1 January 1901 unless otherwise defined under an Act.
218. The committee considered whether other Westminster jurisdictions had a link to the House of Commons privileges and whether any of those jurisdictions had exercised the power to expel a member as a result of a finding of contempt.



219. The committee noted that in Victoria (which has a link to the House of Commons privileges) five members have been expelled for contempts involving felony convictions, accepting bribes offering bribes, injuriously reflecting on members and seditious libel on the King – albeit none since 1901.
220. In New South Wales (NSW), the powers and privileges are no longer defined by reference to the House of Commons, but by reference to the common law principle of reasonable necessity – that the Houses of the NSW Parliament possesses such powers as are reasonably necessary for their existence and the proper exercise of their functions.
221. Four members have been expelled from the NSW Parliament, the most recent example in 1969 when a member (Armstrong) was expelled from the Legislative Council for conduct unworthy of the House. In that matter, the NSW Court of Appeal [*Armstrong v Budd* (1969) 71 SR (NSW) 386] held that the expulsion of that member was not punitive but necessary to protect the honour and dignity of the House.
222. The committee also sought advice from senior counsel which confirmed that the Legislative Assembly does have the power to order the expulsion of a member where there have been findings of contempt.
223. The committee is of the view that the combined effect of the findings of contempt regarding Mr Driscoll is evidence of an attempt by him to conceal the receipt of income and prevent exposure of the inherent conflicts of interests of Mr Driscoll's private interests with his role as a Member of Parliament.
224. The committee finds that in doing so Mr Driscoll has engaged in conduct unworthy of a Member of the Legislative Assembly and in doing so has brought odium on the Legislative Assembly as an institution.
225. The committee notes that in the Nuttall case, by the time the contempt charges were dealt with Mr Nuttall was no longer a Member of the Legislative Assembly and therefore expulsion was not an option for its predecessor committee in that matter.
226. The committee was conscious that a recommendation of expulsion is not a recommendation that should be taken lightly or exercised irresponsibly or capriciously. The committee understands that the sanction should be rarely used and for the purpose of preserving the dignity of the House and public confidence in the institution of Parliament.
227. However, having considered the totality of all the material before it with respect to both matters of privilege and the member's speeches in the House, the committee believes that Mr Driscoll's conduct demonstrates a want of honesty and probity that is not fitting of a Member of the House.
228. The committee finds in this case the cumulative effect of Mr Driscoll's failure to register interests and his deliberate misleading the House warrants a recommendation of expulsion in order to protect the honour and dignity of the Legislative Assembly.



**Conclusion 5**

The committee finds that jurisdictions with a link to the House of Commons privileges (such as Queensland) It is accepted that the power to expel a member remains by virtue of that link.

**Conclusion 6**

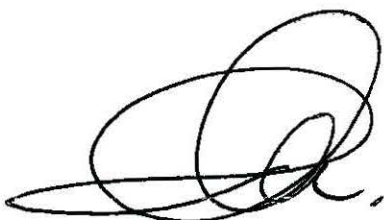
The committee finds that its findings of contempt regarding Mr Driscoll in relation to the failure to register interests and deliberately misleading the House combine to evidence an attempt by Mr Driscoll to conceal the receipt of income and prevent exposure of the inherent conflicts of interests of his private interests with his role as a Member of Parliament.

**Conclusion 7**

The committee finds that the cumulative effect of its findings in respect of Mr Driscoll's failure to register interests and his deliberate misleading the House warrants a recommendation of expulsion in order to protect the honour and dignity of the Legislative Assembly.

**Recommendation 6**

The committee recommends the House move a motion to expel Mr Driscoll as a member of the Legislative Assembly and declare the seat of Redcliffe in the Queensland Legislative Assembly as vacant.



Michael Crandon MP  
**Chair**

November 2013



**Membership — 54<sup>th</sup> Parliament**

Mr Michael Crandon MP, Chair  
*Member for Coomera*

Mrs Jo-Ann Miller MP, Deputy Chair  
*Member for Bundamba*

Mr Ian Kaye MP  
*Member for Greenslopes*

Mr Michael Pucci MP  
*Member for Logan*

Ms Jackie Trad MP  
*Member for South Brisbane*

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