# MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

# REPORT ON CERTAIN ISSUES RELATING TO THE REGISTRATION AND DISCLOSURE OF MEMBERS' INTERESTS – RESPONSE TO MATTERS RAISED BY THE AUDITOR-GENERAL IN AUDIT REPORT NO. 1 OF 1999-2000[1]

# REPORT NO. 43

## BACKGROUND AND INTRODUCTION

In July 1999, the Queensland Auditor-General, Mr Len Scanlan, commenced an audit[2] in relation to certain matters associated with the issue of an interactive gambling licence to GOCORP Limited.[3] A then member of the Legislative Assembly[4] ("MLA") and a former MLA[5] who had an active interest in the venture[6] had been involved in making representations prior to, and during, the licence application assessment process.[7]

Amongst other matters,[8] the Auditor-General reviewed whether the financial, legal and other requirements for MLAs had been complied with.[9]

The Auditor-General's report (Audit Report No. 1 of 1999-2000) raised a number of issues relating to the registration and disclosure of the financial, commercial and other interests of MLAs.

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1 Auditor-General of Queensland, *Audit of Certain Matters Associated with the Issue of an Interactive Gambling Licence*, Audit Report No. 1 of 1999-2000 ("the Auditor-General's Report"), tabled on 30 September 1999.

2 On 27 July 1999, the Premier and the Treasurer wrote jointly to the Auditor-General seeking the Auditor-General's advice "… in relation to several matters concerning the awarding of an interactive gambling licence by the Office of Gaming Regulation" (QOGR). In his response to the Premier and Treasurer dated 27 July 1999, the Auditor-General advised that "… a financial audit was currently in progress at QOGR, that preliminary inquiries into the matters referred to [the Auditor-General] would be made, and that [the Auditor-General] would be in a position to advise of [his] intended course of action by 29 July 1999". The Auditor-General wrote again to the Premier on 29 July 1999 advising that "… as the auditor for the Parliament [he] would, in the public interest, undertake an audit of certain matters associated with the issue of an interactive gambling licence". The Auditor-General also advised the Premier that his audit "… would not necessarily be limited to the matters raised in [the Premier's] request, and that the results of the audit would be reported to Parliament". ibid, at 3, 9.

3 GOCORP was previously named Australian Internet Entertainment Limited. Auditor-General's Report, Note 1 at 45.

4 Mr W D'Arcy MLA.

5 Mr D Livingstone.

6 Mr D'Arcy and Mr Livingstone had family shareholdings in GOCORP via another company, Navari Pty Ltd. Auditor-General's Report, op. cit., at 13. In Mr Livingstone's case, the shares in Navari were held by a family company, Delrex. Note 1 at 14, 81.

7 Note 1 at 14, 74, 75-78.

8 Note 1 at 37.

9 Note 1 at 10. To facilitate this review, the members' interests resolution which establishes the Register of Members' Interests and the Register of Related Persons' Interests was amended by the Legislative Assembly on 17 August 1999, granting the Auditor-General access to documents relating to the Register of Related Persons' Interests. Auditor-General's report, op. cit., at 39. As noted by the Auditor-General this is a positive step in increasing public confidence in the transparency of the declaration process.

## THE COMMITTEE'S RESPONSIBILITY

Registers of Members' and Related Persons' Interests are established by resolution of the Legislative Assembly. By virtue of s 15 of the *Parliamentary Committees Act 1995* the Members' Ethics and Parliamentary Privileges Committee ("the MEPPC") has responsibility for examining the arrangements for compiling, keeping and allowing inspection of the registers. The committee also has responsibility for considering proposals about the form and content of the registers and documents relevant to the registers, including statements of interests to be made by members.

The Auditor-General noted that some of the issues he had identified which were associated with the actions of MLAs fell outside the scope of his audit mandate. He believed that the matters were for the Parliament itself to determine[10] and recognised the MEPPC as the appropriate body to examine such issues.[11]

The MEPPC gave detailed consideration to the matters raised in the Auditor-General's report and met with the Auditor-General and Assistant Auditor-General (Mr Eric Muir) on 10 November 1999 to canvass a number of issues in more detail. The committee would like to take this opportunity to acknowledge the Auditor-General's cooperation in meeting with the committee and to record its thanks for his assistance.

This report of the MEPPC is the committee's formal response to the issues raised in the Auditor-General's Audit Report No. 1 of 1999-2000.

The issues raised in this report are integral to the committee's inquiry into a code of conduct for members of the Legislative Assembly. Some issues may also be covered, therefore, in the committee's *Report on a Code of Ethical Standards for members of the Queensland Legislative Assembly* (Report No. 44)[12] in the context of the code of conduct inquiry.

## KEY ISSUES

Specific matters raised by the Auditor-General in his report[13] and considered by the MEPPC during the course of this review were:

1. Whether the level of disclosure required by the resolution establishing the Registers of Members' and Related Persons' Interests should be extended to enhance the associated accountability and transparency. That is, whether the extent of shareholding interests whether direct or indirect should be disclosed.[14]

2. Public duty versus private interest and the inherent responsibilities of public office holders.[15]

3. Perceived and potential conflicts of interest for MLAs and guidance for MLAs to assist them to make consistent judgments about these matters.[16]

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10 Note 1 at 17, 81-82.
11 Note 1 at 13, 17, 81-82.
12 Tabled with this report.
13 Item 5 arose subsequently during discussions between the Auditor-General and the MEPPC.
14 Auditor-General's Report, Note 1 at 17, 82.
15 Note 14.
16 Note 14.

4. Whether MLAs involved in representation activities should formally declare any financial interests in the matter to all parties with whom they are dealing, and whether minutes of formal meetings should record the declaration of such interests.[17]

5. Whether MLAs should be required to make an oral disclosure in the Legislative Assembly in relation to any interest they have concerning a matter being debated in the Assembly.[18]

Each of these issues is addressed below.

[17] Auditor-General's Report, Note 1 at 14, 16, 17, 50, 74, 77, 79, 82.
[18] Transcript, MEPPC meeting 10 November 1999 ("MEPPC meeting") at 13.

## 1. SHOULD THE LEVEL OF DISCLOSURE IN THE REGISTER OF MEMBERS' INTERESTS BE EXTENDED TO INCLUDE INDIRECT INTERESTS

### COMMENT IN AUDITOR-GENERAL'S REPORT

[The MEPPC may wish to consider] *whether the level of disclosure in the Registers of Members' and Related Persons' Interests should be extended to enhance the associated accountability and transparency e.g. the extent of shareholding interests whether direct or indirect.*[19]

*Both persons*[20] *had adequately disclosed their interests and the interests of related persons in the Members' and Related Persons' Registers in terms of the prevailing requirements and to QOGR* [Queensland Office of Gaming Regulation] *in terms of their probity review.*[21]

*As a Member of the Legislative Assembly, Mr Livingstone had correctly disclosed his interests in Delrex (his family company) in the Register of Members' Interests. Based on private professional advice,* [he] *made no specific reference to his interest in Navari via Delrex. I note further that his family interest in Navari was disclosed in the Related Persons' Register.*[22]

### MEPPC'S RESPONSE TO THE AUDITOR-GENERAL'S CONCERNS

#### Current provisions relating to the declaration of direct and indirect shareholdings

The disclosure measures which now apply to members of the Legislative Assembly were adopted by the House in a revised members' interests resolution on 25 May 1999.[23] The revised resolution became effective on 1 July 1999 and imposes additional declaration requirements concerning indirect shareholdings. The revised resolution was not in force when Mr Livingstone was a member. Disclosure requirements under the revised resolution are much more extensive.

The committee noted that Mr Livingstone did not include in his declaration the relationship between Navari and Delrex. The Auditor-General stated in his report[24] that Mr Livingstone made no specific reference in the Register of Members' Interests to his shareholding interest in Navari via Delrex based on private professional advice concerning the requirements of the time.

However, the committee believes it important to stress that if Mr Livingstone had been a member of the Legislative Assembly after 1 July 1999 (the date from which the extended requirements applied), he would have been required to declare his indirect interest in Navari under the revised members' interests resolution. This is because Delrex was (a) a private company; and/or (b) it is assumed that Mr Livingstone held a controlling interest; and/or (c) it was a "holding company".

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19 Auditor-General's Report, Note 1 at 17, 82.

20 Mr D'Arcy and Mr Livingstone.

21 Auditor-General's Report, op. cit., at 14, 33.

22 Note 1 at 14, 81.

23 The Auditor-General advised the MEPPC that the comments in Audit Report No. 1 relating to extending the declaration requirements had been made in the context of the requirements of the members' interests resolution prevailing at the time. Thus, although the report was tabled in September 1999 (after the revised members' interests resolution was adopted and the extended declaration requirements were in place) the report did not comment on those extended requirements. The Auditor-General advised the committee that it may have been appropriate to have mentioned the extended declaration requirements, but it was not the focus of the audit. (MEPPC meeting, Note 18 at 8-9.) The Auditor-General also confirmed that he had no concerns with the current provisions relating to "any other interests" and had no reason to believe there were any difficulties other than that particular declaration. (MEPPC meeting, Note 18 at 10.)

24 Auditor-General's Report, Note 1 at 14.

By virtue of part 2, paragraph 7 of the current members' interests resolution, members must now declare their direct and indirect shareholding interests as follows:[25]

- shareholdings or controlling interests in shares or companies (showing the company name);
- where the shareholding or interest is a controlling one, the shareholdings of that company in any other company must be shown;
- where the shareholding or interest is in a private company, the investments or beneficial interests of the company must be shown;
- where the shareholding is in a private company that is a holding company, the investments of the holding company must be shown, as well as the name and investments of any subsidiary of the holding company, or any subsidiary of the subsidiary company.

The extended declaration requirements which now apply to Queensland MLAs are among the most, if not the most, stringent of any Australian House of Parliament.

**Current provisions relating to the declaration of "other interests"**

The Auditor-General suggested in discussions with the committee that other interests such as members' indirect interests could be declared by members.[26]

However, the committee noted that paragraph 7(o) of the members' interests resolution already requires members to declare other interests and this paragraph was also included in the superseded members' interests resolution. Paragraph 7(o) states:

> *7. A statement of interests required to be given by a Member must contain the following details—*
>
> *(a) In respect of any company in which the Member…*
>
> **…**

[25] This is an extension of the previous requirement whereby members were not required to disclose their indirect shareholdings through the investments of subsidiaries of holding companies.

[26] MEPPC meeting, Note 18 at 11. The Auditor-General suggested trust-type arrangements, family trusts or bequeaths, related party-type interests, and business or other affiliated types of interests as possible indirect interests which could be included in the Members' Interests Register should they become relevant. MEPPC meeting, Note 18 at 11.

> ***(o) 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 his or her duty as a Member.*** [Emphasis added.]

The MEPPC believes that an inference could be drawn from the Auditor-General's report that disclosure requirements relating to the indirect or non financial interests of members ("other interests") are not sufficient, when in fact this is clearly not the case.[27]

It is evident that the spirit of paragraph 7(o) is meant to include potential conflicts of interest arising from a member's indirect shareholdings, and from their personal, financial or commercial activities. The requirement under paragraph 7(o) could have been used to declare the relationship between the various companies.

In summary, an appropriate safeguard concerning the "other interests" of members was in the previous members' interests resolution and remains in the current resolution.

**Purpose of declaration**

Before considering whether or not the declaration requirements should be further extended, it is constructive to reflect upon the purpose of members' interests declarations.

The widely acknowledged purpose of the declaration of interests is to indicate whether or not a member's financial or other interests touch any issue which is the subject of that member's parliamentary duties—including speeches and "parliamentary action".[28] Indeed, the Auditor-General stated in discussions with the committee:

> *The only compelling reason [for disclosing MLAs' shareholdings] … is transparency and to guard against a perceived conflict of interest in relation to any issue that may be being determined before Parliament.*[29]

The committee also notes that the disclosure required to be made in the Register of Members' Interests is not the only obligation

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27 MEPPC meeting, Note 18 at 10.

28 Members' interests resolution adopted by the Legislative Assembly on 25 May 1999 (see Preamble point 5); UK Select Committee on Members' Interests (Declaration), *Report from the Select Committee on Members' Interests (Declaration)*, December 1969 at xxiii.

29 MEPPC meeting, Note 18 at 2.

upon members. It is merely one mechanism for ensuring members' accountability by recognising and declaring the potential conflicts between their public duty and their private interests.

**A register of members' interests or a register of members' wealth?**

The committee believes that a member's relative wealth is irrelevant to the acknowledged purpose of declaration. Merely knowing the wealth of a member does not enhance accountability or openness regarding a member's parliamentary actions. Because wealth *per se* is irrelevant any action taken which simply seeks to measure wealth is inappropriate and a breach of personal privacy.

The previous MEPPC stressed in Report No. 2[30] that the Register of Members' Interests is not intended to be a register of wealth and noted that this is a common feature of most registers of interests in Australian Parliaments.

**Should the declaration requirements relating to members' shareholdings be further extended?**

Under the revised members' interests resolution, members are currently required to declare (a) their shareholdings (if any), and (b) whether or not those shareholdings constitute a controlling interest in the company concerned. In discussions with the committee, the Auditor-General indicated that these extended disclosure provisions were broadly in order.

However, the Auditor-General also noted that the fact that a member holds shares in a particular company gives no indication as to the level of shareholding or interest in that particular activity.[31]

The Auditor-General believed that the level of a member's shareholdings could become an issue should a matter come before Parliament, where a member may or may not choose to debate vigorously for or against, or where a member could potentially stand to gain substantially in relation to the shareholdings.[32] The Auditor-General believed that there was the potential—notwithstanding in the case of a public company a fairly remote potential—for such shares *"… to rise and fall in relation to the deliberations of Cabinet, or of Government or Parliament"*.[33]

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30 Members' Ethics and Parliamentary Privileges Committee, *Report No. 2—Review of the Register of Members' Interests of the Legislative Assembly*, October 1996 at 5.

31 MEPPC meeting, Note 18 at 1.

32 Note 18 at 4.

33 Note 18 at 2.

The rationale for the declaration of the extent of a member's interest in a company was explained by the Assistant Auditor-General who stated that:

> *… the potential to have any significant influence in relation to the company [is what] … we are talking about. And with a public company, obviously that is going to be a different scenario. But if the member has something in excess of 1% or 2%, then that becomes a very significant potential influence in a public company environment. Whereas in a private company, it may be 5% or 6%; so it is to try to get some sort of a percentage which is indicative to this Committee [the MEPPC] that the person has the potential to influence the decision-making process in that company.*[34]

**Conclusion**

**The committee notes that where instances of a conflict of interest arise, the extent of conflict is rarely an issue. Rather, the issue is the mere fact that there is a potential or actual conflict. There is already a requirement on members to disclose their shareholdings and whether or not those shareholdings constitute a controlling interest in a particular company.[35] To go further than this by imposing a requirement to identify the extent of interest in a company may actually be counterproductive. It may indirectly create the impression with members that the degree of conflict is a predominant consideration, whereas the committee maintains that the degree of conflict is irrelevant.**

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34 Note 18 at 5.

35 Members' interests resolution, Part 2, Disclosure of interests, paragraph 7(a).

## 2. PUBLIC DUTY VERSUS PRIVATE INTEREST AND THE INHERENT RESPONSIBILITIES OF PUBLIC OFFICE HOLDERS

**COMMENT IN AUDITOR-GENERAL'S REPORT**

[The MEPPC may wish to consider] *public duty versus private interest and the inherent responsibilities of public office holders.*[36]

*I note that the MEPPC has been giving consideration to a draft Code of Conduct for MLAs. In light of these matters I believe it would be desirable … for the Code to incorporate some reference to obligations of Members of Parliament with regard to public duty versus private benefit consistent with the proposed ethical principles.*[37]

### MEPPC'S RESPONSE TO THE AUDITOR-GENERAL'S CONCERNS

**Current provisions relating to the primacy of the public interest**

The Queensland Parliament recognises the primacy of a member's public duty.

The revised members' interests resolution contains (in its preamble) what could be considered a statement of fundamental principles regarding a member's public duty. The preamble states:

1. *It is vital that in a representative democracy the public have confidence in the integrity of their elected representatives.*

2. *It is also vital that elected representatives be continually reminded that they exercise a public trust which should not be subject to any private interest.*

3. *It is also in the interests of elected representatives that they be able to demonstrate that at all times they have made scrupulous disclosure of their private interests.*

4. *The Legislative Assembly requires its members to demonstrate a commitment to maintain the highest possible standard of propriety and to avoid and declare any potential conflict of interest.*

5. *The Members' and Related Persons' Registers of Interests are mechanisms to encourage and foster transparency, accountability and openness.*

6. *The following provisions [should] be recognised as the minimum disclosure required by members and members [should] be aware that the following provisions are not intended to be an exhaustive list of all possible financial arrangements which require, in the spirit of the resolution, to be declared.*

The primacy of public duty was also a key component of the *Statement of Ethical Principles* which formed part of the previous MEPPC's draft code of conduct. The second ethical principle stated:

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[36] Auditor-General's Report, Note 1 at 17, 82.

[37] Note 1 at 17.

***Primacy of the public interest***

*Members are elected to act in the public interest and make decisions solely in terms of the public interest. Members also have a continuing duty to declare any private interests relating to their public duties as they arise, and to take steps to avoid, resolve or disclose any conflicts arising in a way that protects the public interest.*[38]

This statement remains in the proposed *Code of Ethical Standards* recommended by this committee in its Report No. 44, tabled with this report.

The Auditor-General agreed that both the preamble and the *Statement of Ethical Principles* adequately stress the importance and primacy of public duty over private interest.[39]

**Conflicts of interest**

The private interests of a member may sometimes overlap with their public duty and often this is to the benefit of the Parliament or the constituency. It is arguable, however, that there is the potential at times for a conflict of interest to arise.

The Auditor-General indicated that in terms of the concerns he had expressed in his report, the existing and proposed declaration of interests/code of ethical standards framework is broadly adequate to stress the primacy of public duty over private interest.[40]

**Conclusion**

**The committee concludes that the existing and proposed declaration of interests/code of ethical standards[41] framework is adequate to stress the primacy of a member's public duty over their private interest.**

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38 MEPPC Report No. 21 - Part B, *Draft Code of Ethical Conduct for Members of the Queensland Legislative Assembly*, May 1998 at 2.

39 MEPPC meeting, Note 18 at 5-6, 14.

40 Note 18 at 6.

41 See MEPPC Report No. 44 titled *Report on a Code of Ethical Standards for members of the Queensland Legislative Assembly* and proposed *Code of Ethical Standards* tabled with this report.

## 3. PERCEIVED AND POTENTIAL CONFLICTS OF INTEREST FOR MLAS, AND GUIDANCE FOR MLAS TO ASSIST THEM TO MAKE CONSISTENT JUDGMENTS ABOUT THESE MATTERS

**COMMENT IN AUDITOR-GENERAL'S REPORT**

[The MEPPC may wish to consider] *… perceived and potential conflicts of interest for MLAs and guidance for MLAs to assist them to make consistent judgments about these matters.*[42]

*There may be a need for clearer guidelines to be put in place to ensure that Members are fully aware of their obligations and are clear about the requirements which need to be met to properly discharge these obligations.*[43]

*Obviously the mere perception of inappropriate behaviour by MLAs can lead to a commensurate loss of confidence in the institution of Parliament.*[44]

[In light of the matters raised during the audit] *I believe it would be desirable for the Code [of conduct for members] to be issued as soon as practicable and for the Code to incorporate some reference to obligations of Members of Parliament with regard to public duty versus private benefit consistent with the proposed ethical principles. The Code should not unduly dwell on the financial interests but should also cover other interests which could effectively impinge on the execution of the duties of Members*.[45]

[42] Auditor-General's Report, Note 1 at 17, 82.
[43] Note 1 at 81.
[44] Note 1.
[45] Auditor-General's Report, Note 1 at 17.

**MEPPC'S RESPONSE TO THE AUDITOR-GENERAL'S CONCERNS**

**Current provisions relating to perceived and potential conflicts of interest**

The Auditor-General advised the committee that he believed there needed to be a consciousness amongst members that potential conflicts of interest are not confined to direct financial matters.[46]

The current members' interests resolution deals with potential conflicts of interest (and the perception of a conflict of interest) under three categories. These are: 'Gifts'; 'Other sources of income'; and 'Any other interest that could foreseeably raise a conflict'–

- Members shall declare gifts valued at more than $500 or $500 in aggregate from one source. Gifts received from family members or personal friends in a purely personal capacity need not be registered unless the member judges that an appearance of conflict of interest may be seen to exist. [Part 2, paragraph 7(j)]
- Members shall declare any other source of income over $500 (including the source of income from a private company or a trust in which an interest is held). Members are also required to declare income under $500 where the income might, in the judgment of the member, involve sensitivity or be capable of misconstruction. [Part 2, paragraph 7(l)]
- Members shall declare a pecuniary or non-pecuniary interest of which the member is aware that could raise a conflict. [Part 2, paragraph 7(o)]

The previous MEPPC's draft code also included non-pecuniary matters. For example, the committee highlighted (under the section titled *Obligations and Requirements of Members of the Legislative Assembly*)[47] Standing Orders 158 and 203 which relate to conflicts of interest, and also conflict situations that may arise with respect to the *Corporations and Securities Legislation*. The Auditor-General was supportive of the proposals contained in the draft

[46] MEPPC meeting, op. cit., at 14.
[47] MEPPC Report No. 21 – Part B, Note 30 at 4-16.

code, which he viewed as a very good starting point that could be reviewed over time.[48]

**Guidelines for members**

It is difficult to define or specify all conflicts of interest (for example, conflicts between a member's parliamentary and political roles). Indeed, the previous MEPPC emphasised that the purpose of its draft code was educative—that is, to assist members in three important ways: in the proper discharge of their responsibilities; to manage conflicts of interest; and to resolve ethical dilemmas.[49] The code itself will therefore provide clearer guidelines. The previous committee also recommended voluntary training and induction seminars for members regarding ethical issues.

The Auditor-General suggested that it may be useful to include examples or illustrations in certain situations to guide members[50] and the committee sees merit in this approach. In this regard, the committee notes that under paragraph (18) of the members' interests resolution, the MEPPC may (either on its own initiative or upon request of the Registrar[51]) produce and publish explanatory notes to further explain the requirements of the resolution and the information to be included in the registers.

The Clerk of the Parliament is also available to advise members on the operation of the register and can refer matters to the MEPPC. The Auditor-General agreed that advice to members should be provided by an officer of the Parliament. He believed that it was appropriate to treat all members consistently as elected members.[52] Should the Executive and other persons insist on their own more stringent requirements, the Auditor-General believed that was a matter for them.[53]

The Auditor-General believed that for "*… a conscientious member who is doing their best to abide and taking reasonable steps in terms of doing the right thing …*",[54] the current framework in conjunction with the proposed code would be quite adequate to assist members to make consistent judgments about conflict of interest matters.[55]

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48 MEPPC meeting, op. cit., at 14.
49 MEPPC Report No. 21 – Part B, Note 30 at 1.
50 MEPPC meeting, Note 18 at 7.
51 The Clerk of the Parliament is the Registrar of Members' Interests.
52 MEPPC meeting, Note 18 at 13.
53 Note 18.
54 MEPPC meeting, Note 18 at 8.
55 Note 18.

**Timing and review of the code of conduct**

The Auditor-General stated that he believed it would be desirable for the members' code to be issued as soon as practicable. The MEPPC concurs, but notes that the committee deliberately delayed finalising the code when the interactive gambling matter arose, so as to ensure that any matters arising from the Auditor-General's review were able to be included in the recommended code.

Further, the committee provided draft copies of this report (Report No. 43), Report No. 44 and the proposed *Code of Ethical Standards* to the Auditor-General for his consideration. Amendments suggested by the Auditor-General to the reports were adopted by the committee.

The Auditor-General also suggested that the code be reviewed in twelve months to two years time.[56] The committee agrees that a review mechanism is desirable, and has made an appropriate recommendation on this issue in Report No. 44.

**Conclusion**

**The committee concludes that existing provisions and sources of assistance, together with the proposed *Code of Ethical Standards* and matters recommended in Report 44[57] will generally provide adequate guidance for members to assist them to make consistent judgments about conflict of interest matters.**

[56] MEPPC meeting, Note 18 at 14.
[57] MEPPC Report No. 44, Note 41 tabled with this report.

## 4. SHOULD MLAS INVOLVED IN REPRESENTATION ACTIVITIES FORMALLY DECLARE ANY FINANCIAL INTERESTS IN THE MATTER TO ALL PARTIES WITH WHOM THEY ARE DEALING AND SHOULD MINUTES OF FORMAL MEETINGS RECORD THE DECLARATION OF SUCH INTERESTS

### COMMENT IN AUDITOR-GENERAL'S REPORT

[The MEPPC may wish to consider] … *whether MLAs involved in representation activities should formally declare any financial interests in the matter to all parties with whom they are dealing and whether minutes of formal meetings should record the declaration of such interests*.[58]

*In addition to the information disclosed in the Registers of Members' and Related Persons' Interests it is important that members of the Legislative Assembly should clearly disclose their financial and commercial interests to persons with whom they are dealing when making representations. This should ensure that any potential conflicts of interest are more readily transparent*.[59]

*The onus is clearly on Members of Parliament to ensure that all registrable interests in relation to themselves, and of related persons of which they are aware, are appropriately declared*.[60]

*In order to ensure the transparency of any decision-making process, it is essential that Members disclose their own personal or financial interests in a matter when making representations to other MLAs. For MLAs, this should go beyond the formal declaration in the Register of Members' and Related Persons' Interests*.[61]

### MEPPC'S RESPONSE TO THE AUDITOR-GENERAL'S CONCERNS

#### Current provisions relating to the declaration of interests during representation activities

The *Statement of Ethical Principles* recommended by the previous MEPPC provides a framework of reference for members in the discharge of their responsibilities. It included the following fundamental principle:

> ***Transparency and scrutiny***
>
> *It is vital to parliamentary democracy that the public have confidence in the integrity of the decision-making process of Parliament. To ensure public confidence, it is necessary that each member disclose their pecuniary interests for reasons of transparency and public scrutiny.*

The Auditor-General was supportive of the *Statement of Ethical Principles*.[62]

#### Further onus on members

The Auditor-General suggested that members should formally declare any interest they may have in a matter about which they are making representations by declaring their interests in correspondence on the matter or in the minutes of any formal meetings in respect of the matter. The declaration of such interests only in the Register of Members' Interests was considered by the Auditor-General to be insufficient.[63]

The committee notes that the members' interests resolution, and thus the Registers of Members' and Related Persons' Interests, can be justified on the basis of its relationship to "proceedings in Parliament" and enforcement of the requirements is not problematic.[64] The situation regarding minutes of ministerial and public service meetings, and thus declarations of interests by MLAs during representation activities, is not so clear-cut.

Firstly, there may not always be formal minutes or even notes taken during meetings a member has with Ministers and public officials.

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58 Auditor-General's Report, Note 1 at 17, 82.

59 Note 1 at 14.

60 Note 1 at 81.

61 Auditor-General's Report, Note 1 at 16. For similar comments regarding representations to Government, Treasury Department, QOGR and other persons, see Auditor-General's Report, op. cit., at 50, 74, 77, 79.

62 Now expressed as a fundamental principle in the *Code of Ethical Standards*.

63 MEPPC meeting, Note 18 at 9.

(For example, much informal representation occurs.) Secondly, it is clearly not a matter for the MEPPC to recommend that public officials be compelled to take notes of meetings between Ministers and/or public officials and members. Thirdly, any such requirement would, in any event, be difficult to monitor.

Finally, there are doubts about the Legislative Assembly's power to enforce such a requirement on members. The onus should be on MLAs to formally declare their interests in regard to representation activities,[65] because there is clearly an onus on members to adhere to the spirit as well as the letter of the members' interest resolution. However, correspondence and transactions between a member and a Minister, or a member and others in government concerning a member's constituency duties, and their personal commercial and financial interests, are not generally recognised as being "proceedings in Parliament".[66] A House of Parliament is not able to extend the scope of its powers in respect of such matters merely by resolution of the House. It is arguable, therefore, that legislation would be required if the Parliament sought to impose on members a formal requirement to declare their personal commercial and financial interests during representation activities with Ministers, other members or public officials. On the other hand, it is also arguable that a House of Parliament does have an inherent power to determine rules of conduct for its members and, therefore, legislation is not required.[67]

**House of Commons' resolution**

In May 1974, the House of Commons agreed to the following general resolution regarding "any relevant pecuniary interest or benefit":

> *That, in any debate or proceeding of the House or its committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have.*[68]

The House of Commons' resolution is in addition to the requirements of the register of members' interests.[69]

The MEPPC considered whether such a resolution was desirable in the Legislative Assembly to assist members clarify their obligations in respect of representation activities with Ministers and other

64 See MEPPC Issues Paper No. 3, *Parliamentary Privilege in Queensland*, July 1997 at 4.

65 MEPPC meeting, Note 18 at 9.

66 Canvassed by the MEPPC in Issues Paper No. 3, op. cit., at 6.

67 See, for example, *Armstrong v. Budd* (1969) 89 WN (Pt 2) 15 NSWR 172.

68 Limon D & McKay WR (eds), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament (Erskine May's Parliamentary Practice)*, 22nd ed, Butterworths, London, 1997 at 420.

69 Note 67 at 419-424.

officials. Broadly speaking, the committee sees merit in the terms of the resolution.

The Auditor-General indicated that he would be supportive of a resolution in those general terms. He also noted, however, the all-embracing nature of the House of Commons' resolution and the implication that even trivial matters required declaration under the resolution. The term "any significant pecuniary interest or benefit" was seen by the Auditor-General as a more appropriate term than "any relevant pecuniary interest or benefit".[70]

**Conclusion**

**The committee concludes that consideration should be given by the Legislative Assembly to adopting a provision (in similar terms generally to the 1974 House of Commons' resolution outlined above) whereby members are required to disclose any financial interests they may have in a matter during any representations or communications they may have on that matter with Ministers, other members or public officials. However, the committee recommends that prior to adopting such an order the statutory amendments recommended in Report 44[71] be adopted in order to ensure the enforcement of such an order is not problematic.**

[70] MEPPC meeting, Note 18 at 13.
[71] MEPPC Report No. 44, Note 41 at 13-16.

## 5. SHOULD MLAS BE REQUIRED TO MAKE AN ORAL DISCLOSURE IN RELATION TO ANY INTEREST THEY HAVE CONCERNING A MATTER BEING DEBATED IN THE PARLIAMENT

### COMMENT IN AUDITOR-GENERAL'S REPORT

*It would appear that Mr D'Arcy's interest in the gaming industry and the fact that he had a business relationship with Mr Livingstone were reasonably well known in the Parliament but his financial interest in GOCORP was not as widely known. This was not disclosed to the Parliament at the time the legislation was passed by the House on 18 March 1998*[72] *and in accordance with the prevailing standing orders there was no requirement to do so as there was no division required for the passing of the legislation.*[73]

### MEPPC'S RESPONSE TO THE AUDITOR-GENERAL'S CONCERNS

#### Current provisions relating to the declaration of members' interests during debate

The Auditor-General stated that there was no requirement for Mr D'Arcy to disclose his interests in GOCORP when the legislation was being considered by the House as there was no division taken on the legislation. The Auditor-General's statement, as a matter of parliamentary procedure, is not entirely correct. Regardless of whether or not a division had been called, Mr D'Arcy would still not have been required to disclose the interest he had in the interactive gambling matter because the interest did not fall under the definition of Standing Order 158. Standing Order 158[74] states:

> ***No Member to vote if pecuniarily interested.***
>
> *No Member shall be entitled to vote in any division upon a question (not being a matter of public policy) in which he or she has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. The vote of a Member may not be challenged except on a substantive motion moved immediately after the division is completed, and the vote of a Member determined to be so interested shall be disallowed.*[75]

The Clerk of the Parliament provided the previous MEPPC with advice as to the accepted parliamentary meaning of the term "direct pecuniary interest". In summary, the interest must be immediate and personal and not merely of a general or remote character, and must not be in common (or potentially in common) with the rest of Her Majesty's subjects or on a matter of state policy.[76]

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72 Messrs D'Arcy and Livingstone did not speak on the Interactive Gambling (Player Protection) Bill during its second reading on 5 and 18 March 1998.

73 Auditor-General's Report, Note 1 at 16.

74 Standing Order 158 is complemented in respect of declarations in parliamentary committee proceedings by Standing Order 203 which states: ***Conflict of Interest.*** *A Member of a Committee shall disclose to the Committee any conflict of interest the Member may have in relation to a matter before the Committee.*

75 At 18 March 1998, Standing Order 158 provided: *A Member shall not be entitled to vote either in the House or in a Committee upon any question in which he has a direct pecuniary interest, and the vote of any member so interested shall be disallowed.*

76 Therefore, a member currently does not have to declare an interest in a Bill that deals with public policy and the member's interest is one shared by the public or a portion of the public generally.

Nearly all legislation that comes before the Legislative Assembly deals with matters of public policy. Therefore, it would be most unlikely for a member to have their vote disqualified in the House. The House of Representatives has taken a similar approach.

**Should the requirement for oral declarations of interests by members during debate be extended?**

The Auditor-General advised the MEPPC that it would have been preferable if the then member and former member involved in the interactive gambling matter had made their commercial and financial interests known formally during the passing of the legislation, notwithstanding that they had met the formal requirements of the House in terms of their declaration on the Register of Members' Interests.[77]

In this regard, the committee notes that the previous MEPPC proposed that Standing Order 158 be supported by a new additional Standing Order (158A). This would have required members to make an oral declaration during debate of any relevant interest they had in a matter rather than only declaring any direct pecuniary interest they had. The proposed Standing Order stated:

> ***Declaration of interest in debate and other proceedings***
>
> *158A That, notwithstanding the lodgment by a Member of a statement of the Member's registrable interests and the registrable interests of which the Member is aware (a) of the Member's spouse; and (b) of any children who are wholly or mainly dependent on the Member for support; and (c) other dependent persons and the incorporation of that statement in a Register of Members' Interests, a Member shall declare any relevant interest:*
>
> *(a) at the beginning of his or her speech if the Member participates in debate in the House, Committee of the whole Legislative Assembly, or a Committee of the Legislative Assembly; or*
>
> *(b) as soon as practicable after a division is called for in the Legislative Assembly, Committee of the whole Legislative Assembly, or a Committee of the Legislative Assembly, if the Member proposes to vote in that division;*
>
> *and the declaration shall be recorded and indexed in the Votes and Proceedings or minutes of proceedings of the Committee and in any Hansard report of those proceedings of that division, but it shall not be necessary for a Member to declare an interest when directing a question seeking information in accordance with Standing Order 67A or 68.*

This committee also believes that the proposed Standing Order 158A has merit, but notes that the proposed standing order relates only to members' speeches and voting during divisions. The proposed Standing Order would not have applied in the circumstances which arose with the interactive gambling matter, where the then members did not participate in debate and the legislation passed without a vote being taken.

The previous committee's recommendation was not adopted, and the previous and current government in their responses instead endorsed amending Standing Order 158 by adopting the House of Representatives Standing Order 196. The House subsequently adopted House of Representatives Standing Order 196. This amendment clarified to some extent the elements of a 'direct pecuniary interest'.

The Auditor-General believed that Standing Order 158 as it stands is inadequate,[78] and that the proposed Standing Order 158A would be generally effective,[79] but expressed the view—and the committee agrees—that it may not always be entirely clear to members (in procedural terms) whether a division will be called on a particular matter before the House.[80]

**Conclusion**

**The committee concludes that a Standing Order, such as proposed Standing Order 158A recommended by the MEPPC of the 48th Parliament, would strengthen transparency regarding matters before the House on which the member intends to speak or vote. The committee believes consideration should be given by the Legislative Assembly to adopting a similar Standing Order. This matter is dealt with in more detail in Report No. 44.[81]**

John Mickel MLA
Chairman

5 September 2000

77 MEPPC meeting, Note 1 at 7.

78 Note 75.
79 MEPPC meeting, Note 18 at 14.
80 Note 18 at 15.
81 MEPPC Report No. 44, Note 41 at 8-9.

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