



## INTEGRITY, ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

### Report No. 104

*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*

#### **Introduction and background**

1. The Integrity, Ethics and Parliamentary Privileges Committee (the IEPPC or the committee) is a statutory committee of the Queensland Parliament established under the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 23 April 2009.
2. Section 91 of the POQA provides that the IEPPC's area of responsibility about the ethical conduct of members includes considering complaints referred to the committee about the failure to register particular interests. The committee investigates and may report on allegations referred to it by the Registrar, and inquires into and reviews other significant issues regarding the Register of Members' Interests.<sup>1</sup>
3. By letter to the Registrar of Members' Interests (i.e. the Clerk of the Parliament) dated 24 February 2010, the Treasurer, Mr Andrew Fraser MP, raised the allegation that Mr Emerson MP, had 'not declared matters as required under 7(2)(b)(ii) and (iii) of Schedule 2 of the Standing Orders'. The Treasurer provided documentation that outlined Mr Emerson's roles as both a Director and Secretary of Merson Investments Pty Ltd (*Merson*) and that these appointments commenced on 18 November 2004.

#### **The reference**

4. Section 14(3) of Schedule 2 of *The Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (Standing Orders) states that the Registrar must refer an allegation made by a member, made in writing, to the IEPPC. Consequently, the Registrar referred the matter to the committee on 25 February 2010.
5. On 25 February 2010, Mr Emerson wrote to the Chair of the IEPPC acknowledging that the point made by the Treasurer was correct. Mr Emerson states that while he has clearly declared beneficial interests in *Merson* in sections 6, 7, 8 and 17, he admitted he inadvertently omitted to detail his Director and Secretary roles in section 5.

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<sup>1</sup> Schedule 2: *Registers of Interests. Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (amended 26 May 2005, 30 March 2006, 20 June 2006, 8 February 2007, 1 May 2007, 24 May 2007 and 12 February 2008) at 69.

6. Specifically, the matter before the committee concerns an allegation that Mr Emerson provided an incomplete statement of interests to the Registrar.

### ***Previous references***

7. The committee has previously considered two references concerning an alleged failure to register an interest in the Register of Interests. The first matter related to an alleged failure of the Premier 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 a contempt for knowingly failing to register the benefit in the Register of Members' Interests in the time required.<sup>2</sup>
8. The second matter related to an alleged failure of the then Leader of the Opposition to register a benefit in the Register of Interests. The committee found that as the sponsored travel was received in an official capacity, the benefit was not required to be disclosed.<sup>3</sup>

### ***Two separate tests***

9. 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 Orders<sup>4</sup>—
10. Whether the matter required disclosure; and
11. If yes, has the non-disclosure resulted in a contempt?

### ***Whether the Matter required disclosure?***

12. 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>5</sup>
13. The Preamble contains numerous statements that indicate the intention of the register of interests is for disclosure. The Register of Members' Interests and Register of Related Persons' Interests are mechanisms to encourage and foster transparency, accountability and openness.<sup>6</sup> Accordingly, the question of whether a member is required to register an interests needs to be considered in this context.
14. Schedule 2 of the Standing Orders contains the rules relating to the registration of members' interests. Pursuant to section 7(2)(b) of Schedule 2, a statement of interests required to be

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<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> Schedule 2 – *Registers of Interests. Standing Rules and Orders of the Legislative Assembly*: Effective from 31 August 2004 (amended 26 May 2005, 30 March 2006, 20 June 2006, 8 February 2007, 1 May 2007, 24 May 2007 and 12 February 2008).

<sup>5</sup> Note 4.

<sup>6</sup> Note 4.

given by a member must contain, 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.<sup>7</sup>

15. The Treasurer's complaint relates to the Member failing to declare his roles as Director and Secretary of *Merson* in the Register of Interests. The Treasurer's submission states—

*I am writing to advise you that it appears that the Member for Indooroopilly has not declared matters as required under 7(2)(b)(ii) and (iii) of Schedule 2 of the Standing Orders.*

16. Mr Emerson's submission dated 25 February 2010, acknowledges that the position should have been declared:

*With regards to the matter raised by the Hon. Member for Mount Coo-tha, I acknowledge that the point made by the Member is correct.*

...

*I have immediately rectified this omission in my declaration.*

17. It is clear that Mr Emerson was required to declare the offices held in *Merson* pursuant to s.7(2)(b)(ii) and the nature of the activities of the company under s.7(2)(b)(iii), despite clearly declaring his beneficial interest in *Merson* under a number of other categories in the Register of Interests.

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

18. 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. Under these procedures, members must make allegations about current members to the Registrar.

19. 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].*

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<sup>7</sup> Schedule 2, section 7(2)(b); also see section 5 on Forms 1 and 2 relating to the Register of Interests.

20. The test here is did the member deliberately provide the Registrar with an incomplete statement of interests in the knowledge that the interest should be registered. Applying this to the facts, the committee would have to be satisfied that the member knew that he should have included his offices in *Merson* in his statement of interests and deliberately omitted to do so.

21. The Treasurer's submission acknowledges that Mr Emerson's beneficial interest in *Merson* is appropriately declared.

*While Mr Emerson has appropriately declared Merson Investment Pty Ltd under 7(2)(c)(i)-(iv); 7(2)(d) and 7(2)(m)...*

22. The Treasurer does not indicate that the omission of the offices held in the company was deliberate and he does not provide any evidence that the member *knowingly* failed to notify the Registrar of his position. The Treasurer simply states—

*...there is no declaration of his roles as Director and Secretary on this company on the Register of Interests.*

23. Mr Emerson's submission states that this was an inadvertent oversight.

*I inadvertently omitted to detail my director and secretary roles in section 5.<sup>8</sup>*

24. Mr Emerson further states that—

*This was an inadvertent oversight and my declarations in sections 6, 7, 8 and 17 make it clear that there was no intention to make a false, incomplete or misleading disclosure.*

25. It is unlikely that a Member would disclose an interest in a company in a number of sections of the Register and then deliberately fail to declare the offices held in that company or the activities of that company.

26. It is noted that within 24 hours of becoming aware of the omission, the member has taken steps to rectify the situation by including the nature of offices held and activities of the company (including his related person's declaration) and promptly notified the committee of his action.

27. On the information before the committee, the committee is of the view that the Member inadvertently omitted to record his position in *Merson* or the activities of *Merson* in the Register of Interests.

### **Conclusion**

28. The committee finds that, the Member for Indooroopilly was required to declare the offices held in *Merson* pursuant to s.7(2)(b)(ii) and the nature of the activities of the company under s.7(2)(b)(iii), despite clearly declaring his beneficial interest in *Merson* under a number of other categories in the Register of Interests.

29. The committee finds that the Member for Indooroopilly inadvertently omitted to record the offices held in *Merson* and the nature of *Merson*'s activities in the Register of Interests. Accordingly, the member did not *knowingly* provide the Registrar with an incomplete statement of interests. The Member for Indooroopilly is therefore not guilty of a contempt for knowingly providing an incomplete statement of interests to the Registrar.

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<sup>8</sup> Section 5 of Form 1 is pursuant to s. 7(2)(b) of schedule 2 of the Standing Orders.

**Conclusion 1**

The committee unanimously finds that the Member for Indooroopilly was required to register the offices held and the nature of the activities of Merson Investments Pty Ltd in the Register of Members' Interests in accordance with schedule 2 of the Standing Orders.

**Conclusion 2**

After applying the facts of this case to the Standing Orders, the committee unanimously finds that the Member for Indooroopilly inadvertently omitted to record the offices held and the nature of activities of the company in the Register of Interests. Accordingly, the committee finds that the member did not knowingly provide the Registrar with an incomplete statement of interests. The Member for Indooroopilly is therefore not guilty of a contempt for knowingly providing an incomplete statement of interests to the Registrar.

**Recommendation 1**

The committee recommends that the House take no action in relation to this matter.

**Recommendation 2**

The committee encourages all members to take care in completing their declarations and to correct inadvertent errors in their Register of Interests as soon as it comes to their attention, as the Member for Indooroopilly has done in this instance.

Kerry Shine MP

**Chair**

March 2010

## **Membership — 53rd Parliament**

Mr Kerry Shine MP, Chair  
*Member for Toowoomba North*

Mr Tim Nicholls MP, Deputy Chair  
*Member for Clayfield*

Mr Glen Elmes MP  
*Member for Noosa*

Hon Margaret Keech MP  
*Member for Albert*

Ms Carolyn Male MP  
*Member for Pine Rivers*

Mr Curtis Pitt MP  
*Member for Mulgrave*

Dr Mark Robinson MP  
*Member for Cleveland*

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