

Standing Committee on Parliamentary Privilege and Ethics

Report on inquiry into the Pecuniary Interests Register

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Terms of Reference

- 1) That this House notes the requirements of section 14A (1) of the Constitution Act 1902 and the Constitution (Disclosures by Members) Regulation 1983 for Members to disclose the following pecuniary interests or other matters:
 - (a) real property
 - (b) sources of income
 - (c) gifts
 - (d) contributions to travel
 - (e) interests and positions in corporations
 - (f) positions in trade unions and professions or business associations
 - (g) debts
 - (h) dispositions of property, and
 - (i) discretionary disclosures.
- 2) That this House further notes section 14A (2) of the Constitution Act 1902 which states:
 - (2) If a Member of either House of Parliament wilfully contravenes any regulation made under subsection (1), that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.
- 3) That this House notes that in response to Questions without Notice directed to the Honourable Edward Obeid, he stated, among other things:
 - (a) "...Since I became a minister I have had no active part in any professional practice or in any business." – Letter to Premier in Hansard, 8 September 1999, p. 64,
 - (b) "...my pecuniary interests of 1999 stand." – Hansard, 29 August 2000, p. 8392,
 - (c) "I have complied with the requirements of my pecuniary register every year." – Hansard, 31 August 2000, p. 8555,
 - (d) "My pecuniary interests are well in order..." – Hansard, 5 September 9 2000, p. 8602
 - (e) "...I have answered enough questions on my pecuniary interests. They are there for everyone to see. They comply with the requirements of the Constitution..." – Hansard, 31 October 2000, p. 9331,
 - (f) "...Anything I have to say about my pecuniary interests is well recorded. Any time that I feel it should be corrected, I have done so." – Hansard proof, 18 September 2002, p. 16.

- 4)** That the Standing Committee on Parliamentary Privilege and Ethics investigate and report on:
 - (a) whether, under section 14A (2) of the Constitution Act 1902, the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, has wilfully contravened the requirements of clause 12 of the Constitution (Disclosures by Members) Regulation 1983 by failing to disclose any pecuniary interest as required under the Regulation,
 - (b) what, if any, sanctions should be enforced in relation to the conduct of the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, in this matter, and
 - (c) whether the provisions of the Constitution (Disclosures by Members) Regulation 1983 should be amended to provide for the provision of supplementary or amended disclosures by Members.
- 5)** That the Committee have power to take evidence, and to send for persons, papers, records and things.
- 6)** That leave be given to Members and Officers of the Legislative Council to appear and give evidence to the Committee in relation to the inquiry.
- 7)** That the Committee report in relation to paragraph 4 (a) and (b) by Thursday 31 October 2002, and in relation to paragraph 4 (c) as the Committee thinks fit.

These terms of reference were referred to the Committee by resolution of the House on 25 September 2002 (*Minutes of the Proceedings of the Legislative Council*, No. 36, Wednesday 25 September 2002, entry 14).

Committee membership

The Hon Helen Sham-Ho MLC *Chair*

Independent

The Hon Patricia Forsythe MLC *Deputy Chair*

Liberal Party

The Hon Amanda Fazio MLC

Australian Labor Party

The Hon Jenny Gardiner MLC

National Party

The Hon John Hatzistergos MLC¹

Australian Labor Party

The Hon Tony Kelly MLC

Australian Labor Party

The Revd the Hon Fred Nile MLC

Christian Democratic Party (Fred Nile Group)

The Hon Peter Primrose MLC

Australian Labor Party

¹ Appointed to the Committee to replace the Hon Janelle Saffin MLC on 26 September 2002: *Minutes of the Proceedings of the Legislative Council*, No. 37, 26 September 2002, entry no. 5.

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Chair's Foreword

This has been a unique inquiry. For the first time, since the establishment of the pecuniary interest disclosure scheme, a Committee of the NSW Parliament has been required to investigate and report on whether or not a Member has “wilfully contravened” the requirements of the Constitution (Disclosure by Members) Regulation 1983. Section 14 A (2) of the Constitution Act 1902 provides that if a Member “wilfully contravenes” the Regulation the House may declare the Member’s seat vacant.

When the then Premier, the Hon Neville Wran MP, introduced the Constitution (Disclosures by Members) Amendment Bill 1981, which led to the establishment of the Pecuniary Interest Registers for Members of the New South Wales Parliament, he said:

The establishment of a scheme whereby Members of Parliament can be seen to be above reproach not only enhances the prestige of our parliamentary system but also protects the Members themselves against scurrilous attacks, which in the past they found difficult to rebut.

The Bill was approved by the people at a referendum in September 1981. Clearly, the public place a high trust in Members of Parliament and they expect high standards of ethical behaviour. It is reasonable for the public to expect that Members will comply with the provisions of the Constitution Act 1902.

Difficulties faced in this inquiry

This was always going to be a difficult inquiry due to:

- the absence of any legal precedent to guide the Committee as to the meaning of “wilfully contravenes” in the context of section 14A (2) of the Constitution Act 1902;
- the highly charged political background against which the inquiry has been conducted, less than six months away from the next State election;
- the fact that 8 Members of the Legislative Council, representing four political parties and one independent Member, have been effectively asked to sit in judgment upon another Member, who is a senior Minister in the Government; and
- the limited time provided to the Committee in which to report on these matters.

Inadequacies in this report

This was an important inquiry for the Legislative Council. The report will be no doubt be looked at as a precedent for subsequent considerations of failures to comply with pecuniary interest disclosure requirements, not only in this Parliament but also in other Parliaments throughout Australia and overseas.

It is therefore extremely disappointing that this report is, in my view, so inadequate and “politicised.”

On the basis of the evidence before the Committee, I do not believe that the Member has “wilfully contravened” the provisions of the Constitution (Disclosure by Members) Regulation 1983, and therefore he is not in danger of having his seat declared vacant.

I understood that my draft report would not have satisfied all Members of the House. However, I believed that it was both fair, balanced, impartial and non-partisan.

Chapters One to Four of the report, as agreed by the Committee, contain some useful background material, which I hope will be of use to the House and inform the public.

Unfortunately, Chapters Five and Six of my draft report were decimated by the majority of the Committee. The Minutes of Proceedings, reproduced as Appendix Nine of the report, detail the Committee's deliberations.

Errors in the Member's pecuniary interest returns

Some of the purely factual elements of my draft report which, for whatever reason, the majority found unacceptable and deleted from my draft report include the following facts, which are evident from the table which is reproduced as Appendix Seven (and which were actually confirmed by Mr Obeid):

- that Mr Obeid had made 154 errors in his pecuniary interest returns since 1991;
- 137 of these errors had been "corrected" (in the sense that the Mr Obeid has disclosed an association, but not the precise details of the nature of the interest or position, in the relevant corporation in the relevant year, through correspondence to the Clerk which has been placed on the register which is available for public inspection); and
- 17 of these errors had not been "corrected" before the Mr Obeid gave sworn evidence to the Committee on 16 October 2002.

Sanctions available to the House

The majority also found the prospect of recommending a sanction unacceptable and deleted almost the entire text of my draft Chapter Six.

Whilst the Committee concluded that Mr Obeid's contraventions of the Constitution (Disclosures by Members) Regulation 1983 have not been wilful and that section 14A (2) of the Constitution Act 1902 has not been offended, that does not mean that the House cannot impose a sanction in relation to this matter. Provided that a sanction is not punitive, the House may act so as to protect its dignity. The fact that the House has the inherent power to impose such a sanction in relation to the conduct of a Member was reaffirmed by the High Court of Australia in *Egan v Willis* ([1998] HCA 71). Other Parliaments, including the House of Commons, have imposed a range of sanctions where members have failed to comply with pecuniary interest disclosure requirements. In a previous case concerning the conduct of a Member of this House (albeit not in respect of pecuniary interest disclosures) the Standing Committee on Parliamentary Privilege and Ethics recommended that the Member apologise to the House. In line with those precedents, and in view of the number of Mr Obeid's contraventions of the Constitution (Disclosures by Members) Regulation 1983, I believe that it would not be unreasonable for the House to impose a sanction on the Member.

Accordingly, my draft report recommended:

- That the Hon Edward Obeid MLC immediately table in the House a full statement of all of his interests/positions in corporations since his election to the Legislative Council in 1991

- That the Hon Edward Obeid MLC apologise to the House for making 154 errors in his pecuniary interest returns since his election to the Legislative Council in 1991
- That, provided that by 13 November 2002 the Hon Edward Obeid MLC has complied with recommendations 1 and 2 above, no further sanction be imposed by the House in this matter.
- That, if by 13 November 2002 the Hon Edward Obeid MLC has not complied with recommendations 1 and 2 above, the House immediately pass a motion of “censure” and “no confidence” in the Member.

The community is demanding greater accountability and greater transparency. I cannot imagine what the public will make of the Committee’s failure to recommend any sanction, however mild, in relation to the Member’s repeated failure to disclose his interests/positions in corporations.

I am perplexed and disturbed by the statement in the report, as determined by the majority, that because section 14A (2) of the Constitution Act 1902 had not been offended, the Committee could not recommend any sanction to the House. As previously alluded to, I believe that this statement is wrong, in view of the inherent power of the House to impose a sanction in order to protect its own dignity.

Once again, I realise that my draft report would not have satisfied all Members. However, I simply ask Members to stand back from the short term politics of this matter and ask themselves whether or not the dignity of the House and the Parliament as a whole is enhanced or diminished by the failure of the majority of the Committee to recommend that any sanction be applied in this case.

Acknowledgments

I would like to thank the Hon Greg Pearce MLC and the Clerk of the Parliaments for their detailed submissions.

I would particularly like to thank the Hon Edward Obeid MLC for his approach to this inquiry. He has been co-operative, frank, and responsive in all of his dealings with the Committee. In view of his willingness to present the Committee with details of his interests/positions in corporations and to take responsibility for the mistakes in his pecuniary interest returns, I would not have been surprised if Mr Obeid was willing to undertake the actions proposed in my draft recommendations. This makes it all the more curious, and unsatisfactory, that the majority deleted those recommendations.

Finally, I would like to thank the Committee Secretariat for their support during the course of this most unpleasant, frustrating and divisive inquiry.

Hon Helen Sham-Ho MLC

Chair

Chapter 1 Introduction

Terms of reference for inquiry

1.1 The current inquiry was established by a resolution of the Legislative Council passed on 25 September 2002,² on the motion of the Hon Greg Pearce MLC.³ The resolution is set out in full at pp. (iv) – (v) of this report. The matters addressed in each paragraph of the resolution are outlined below.

1.2 Paragraphs 1 to 3 of the resolution note the following matters:

- the requirements of section 14A(1) of the *Constitution Act 1902* and the *Constitution (Disclosures by Members) Regulation 1983* for Members to disclose certain pecuniary interests and other matters (paragraph 1);
- section 14A(2) of the *Constitution Act*, which relates to ‘wilful’ contravention by a Member of any regulation made under subsection (1) (paragraph 2); and
- certain statements made by the Hon Edward Obeid MLC in response to various questions without notice in the House (paragraph 3).

1.3 Paragraph 4 states:

4. That the Standing Committee on Parliamentary Privilege and Ethics investigate and report on:
 - (a) whether, under section 14A (2) of the *Constitution Act 1902*, the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, has wilfully contravened the requirements of clause 12 of the *Constitution (Disclosures by Members) Regulation 1983* by failing to disclose any pecuniary interest as required under the *Regulation*,
 - (b) what, if any, sanctions should be enforced in relation to the conduct of the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, in this matter, and
 - (c) whether the provisions of the *Constitution (Disclosures by Members) Regulation 1983* should be amended to provide for the provision of supplementary or amended disclosures by Members.

² *Minutes of the Proceedings of the Legislative Council*, No. 36, Wednesday 25 September 2002, entry 14.

³ (a) Mr Pearce’s motion was agreed to with amendments moved by Revd Mr Nile and Mr Cohen.
 (b) The week before, Mr Pearce had given notice of a differently-worded motion on the same subject, but had withdrawn that notice on 24 September 2002. *Minutes of the Proceedings of the Legislative Council* No. 35, entry 6. The text of the notice of motion is reproduced at Appendix 1.

- 1.4** Paragraphs 5 and 6 deal with certain procedural matters. Paragraph 7 requires the Committee to report in relation to paragraph 4(a) and (b) by Thursday 31 October 2002, and in relation to paragraph 4(c) as the Committee thinks fit.

Conduct of inquiry

Submissions

- 1.5** On 26 September 2002 the Committee resolved to seek the following written submissions:
- (1) a submission from Mr Obeid in relation to the inquiry;
 - (2) a submission from Mr Pearce in relation to the inquiry, detailing any evidence or information he possessed concerning possible contraventions of the *Constitution (Disclosures by Members) Regulation 1983* by Mr Obeid; and
 - (3) a submission from the Clerk of the Parliaments containing the following information:
 - (a) details of any previous occasions on which Members have provided supplementary information concerning their pecuniary interests since the introduction of the *Constitution (Disclosures by Members) Regulations 1983*, including details of the Members concerned and the dates on which the information was provided;
 - (b) a summary of Mr Obeid's returns since his election to the House; and
 - (c) any other matters the Clerk considers relevant.⁴
- 1.6** All three submissions were duly received, and were made public by the Committee on 16 October 2002.⁵

Hearing

- 1.7** On 16 October 2002 the Committee held a public hearing at which Mr Pearce and Mr Obeid appeared, and gave evidence. Following the hearing, the Committee resolved to make public the transcript of the hearing, and certain documents tabled by the witnesses. The Committee also resolved to provide Mr Obeid with a copy of the submissions received by the Committee, the transcript of the hearing, and the documents tabled at the hearing, to give him an opportunity to respond to the matters raised.⁶
- 1.8** On 17 October 2002 Mr Obeid wrote to the Committee Chair to clarify his interpretation of a question asked by her at the hearing. This correspondence was considered by the Committee at its meeting on 23 October 2002. The Hon Helen Sham-Ho MLC then wrote

⁴ Minutes No. 20, 26 September 2002, p. 2 (Appendix 9).

⁵ Minutes No. 22, 16 October 2002, p. 2 (Appendix 9).

⁶ *ibid.*

to Mr Obeid to clarify the intent of her question and to seek any further information which Mr Obeid could provide in relation to that question. This exchange of correspondence is included as Appendix 2.

Deliberations

- 1.9** The Committee met on 23 October 2002 to commence its deliberations on the inquiry. The Committee resolved to report in two stages, with the first report (this report) limited to the matters set out in paragraphs 4 (a) and (b) of the terms of reference. The Committee also adopted preliminary findings to assist in the preparation of the Chair's draft report. The Chair's draft report was considered by the Committee at a meeting on 29 October 2002.

Report outline

- 1.10** The Report contains six chapters. Chapter 2 outlines the background to the insertion of section 14A in the *Constitution Act 1902* (NSW), and the introduction of *Constitution (Disclosures by Members) Regulation 1983* ('the Regulation').
- 1.11** Chapter 3 provides an overview of the requirements relating to the registration of Members' pecuniary interests in a number of other jurisdictions.
- 1.12** Chapter 4 discusses the meaning of 'wilfully contravenes', as that term appears in section 14A(2) of the *Constitution Act 1902*.
- 1.13** Chapter 5 concerns the question of whether Mr Obeid has 'wilfully contravened' clause 12 of the Regulation, which is referred to in paragraph 4(a) of the terms of reference for this inquiry.
- 1.14** Chapter 6 concerns the question of what sanctions, if any, should be enforced in relation to the conduct of Mr Obeid in this matter, which is referred to in paragraph 4(b) of the terms of reference for this inquiry.

Chapter 2 Historical outline

2.1 The registration of Members' pecuniary interests in NSW is governed by section 14A in the *Constitution Act 1902* (NSW), and the *Constitution (Disclosures by Members) Regulation 1983*. This chapter outlines the historical background to the introduction of these provisions, as well as summarising the key features of the Regulation.

Joint Committee on Pecuniary Interests, 1976-1978

2.2 The first step towards a system of registration of Members' pecuniary interests in NSW was the appointment of a joint parliamentary committee in 1976 to inquire into the need for a register.⁷ The appointment of the committee occurred in the context of a political controversy at the time,⁸ but was also in line with contemporary reforms in a number of other Westminster Parliaments.⁹

2.3 The Joint Committee handed down its final report on 4 April 1978. The report recommended the establishment of a pecuniary interests register for the Members of each House, to be compiled and maintained by the Clerk of the House, and oversighted by a joint parliamentary committee. It also recommended that pecuniary interest registers be established for certain other classes of persons, including public servants and employees of statutory authorities, members of the media who report on political proceedings, and members of Ministers' personal staff.

2.4 The range of interests which the Committee recommended be disclosed in the register was broad, including certain interests held by a Member's family. The full list of interests is set out below:

- (a) details of shareholdings, debentures, charges and interests as defined in the Companies Act in bodies corporate (including guarantee companies) no matter where incorporated or carrying on business, whether held as an individual, partnership or trust;
- (b) all sources of income (but not amounts) from corporations, partnerships, businesses, profession, trusts and partnerships;
- (c) details of all positions held (whether remunerated or not) in or in relation to bodies corporate, trusts and partnerships;
- (d) all benefits under Trusts;
- (e) all interests in real property and the location of that property;

⁷ *Minutes of the Proceedings of the Legislative Council*, No. 11, 29 September 1975, entry No. 7.

⁸ *Parliamentary Debates*, 15 September 1976, p. 885.

⁹ *ibid.*

- (f) all individual gifts exceeding \$500 in value, together with gifts from the same source which, in aggregate, exceed \$500 in value in any one year made to a Member or his spouse or his infant children or from sources outside the family;
- (g) sponsored travel arising out of membership of Parliament including accommodation expenses and other benefits;
- (h) all payments and all material benefits received directly or indirectly from or on behalf of any foreign government, organisation, company or person; and
- (i) all business transactions or arrangements which the Member and/or the Member's spouse directly or through a company entered into with any government department or body or with any semi-government or other statutory body.¹⁰

2.5 As well as considering the need for registration of Members' interests, the Committee also considered the question of how non-compliance by Members with the registration requirements should be dealt with. The Committee noted that in some Parliaments where the establishment of registers had been recommended or adopted, the preferred approach was for the House to discipline any Member who failed to comply. However, the Committee was concerned that this approach would result in the question of sanctions against a Member being determined by the majority numbers in the House. To overcome this problem, the Committee preferred the view that, by making the registers public, the electorate would be the final arbiter on Members' actions, the ultimate sanctions for failure to comply being through the ballot box.¹¹

2.6 Despite this view, however, the Committee did envisage that a procedure for complaints from Members and members of the public would be established, and that this procedure would be the responsibility of the committee which would oversight the scheme, acting on the advice of the Registrars from each House.¹²

Resolutions establishing pecuniary interests registers, 1979 - 1980

2.7 In November 1979 both Houses of Parliament passed resolutions implementing the Committee's recommendations, with some modifications.¹³ The resolutions established a pecuniary interests register for each House, and a committee in each House to administer the register and consider complaints. There was no proposal to implement the recommendations relating to persons other than Members, as the Government intended to

¹⁰ *Report from the Joint Committee of the Legislative Council and the Legislative Assembly upon Pecuniary Interests 1978*, NSW Parliament, p. 19.

¹¹ *ibid*, p. 14, para 1.62.

¹² *ibid*, p. 19, para 2.33.

¹³ *Votes and Proceedings*, No. 27, 8 November 1979, entry 10; *Minutes of the Proceedings of the Legislative Council*, No. 31, 27 November 1979, entry 22.

wait and see how the registers worked in the parliamentary realm before extending registration to those groups.¹⁴

2.8 Paragraph 11 of the resolutions passed by both Houses stated:

(11) That wilful breach by a Member of any of the requirements of this resolution shall be a contempt of the Parliament and may be dealt with accordingly.

2.9 During debate in the Legislative Assembly, the Premier noted that this paragraph differed from the view expressed by the joint committee on the question of sanctions,¹⁵ but argued that 'the ordinary powers of sanction of each House should remain available to be exercised against a Member found to have wilfully transgressed the provisions of the scheme'.¹⁶

Rescission of resolutions, 1980

2.10 Some months after the resolutions had been passed by the Houses, doubts arose as to the legal validity of paragraph 11, due to uncertainty as to the power of the Houses to punish for contempt. In that regard, the Government informed both Houses that it had received legal advice that the Parliament could only vest the Legislative Assembly with the power to punish for contempt by legislation (not by resolution), and that it could only vest the Legislative Council with such power by legislation approved at a referendum.¹⁷

2.11 As a result of these concerns, which called into question the enforceability of the scheme, the resolutions were rescinded by both Houses in November 1980.¹⁸ The Government foreshadowed that it would introduce a bill for approval at a referendum, to give each House an enforceable pecuniary interests scheme.¹⁹

Constitution (Disclosures by Members) Amendment Act 1981

2.12 On 13 April 1981 the Premier introduced the *Constitution (Disclosures by Members) Amendment Bill*. The Bill proposed the insertion of a new section in the *Constitution Act 1902*, section 14A, which would empower the Governor to make regulations to give effect to a pecuniary interests scheme for Members. The new section included provisions giving power to both Houses to declare a Member's seat vacant if the Member wilfully contravened a regulation made under the section. As well as introducing section 14A, the Bill also contained

¹⁴ *Parliamentary Debates*, Legislative Assembly, 6 November 1979, pp. 2524-2525.

¹⁵ *ibid*, p. 2529.

¹⁶ *ibid*, 2528-2529.

¹⁷ *Parliamentary Debates*, Legislative Assembly, 27 November 1980, p. 3827; Legislative Council, p. 3796.

¹⁸ *Minutes of the Proceedings of the Legislative Council*, No. 27, 27 November 1980, entries 12, and 19.

¹⁹ *Parliamentary Debates*, Legislative Assembly, 27 November 1980, p. 3827.

amendments to sections 7A and 15 of the *Constitution Act*, consequential to the insertion of section 14A.

2.13 The second reading speech on the Bill stated that:

the establishment of a scheme whereby Members of Parliament can be seen to be above reproach not only enhances the prestige of our parliamentary system but also protects the Members themselves against scurrilous attacks, which in the past they found difficult to rebut.²⁰

2.14 It was also stated that it was proposed that a committee be established in each House to oversee the scheme, and deal with complaints:

In practice, it is proposed that committees be established in each House to oversee the scheme, and that allegations or complaints about non-compliance by any member with the scheme be referred to the respective committee for investigation and report back to the House. This should have the effect of allowing any Member who, by omission or oversight, has failed to meet any of the requirements, to rectify his oversight or omission before the House is called upon to determine whether or not he has been guilty of any wilful contravention. New section 14A(3) requires the House to specify the circumstances that constitute the contravention, and regulates the manner in which the House may deal with a declaration that a seat has become vacant.²¹

2.15 It was further noted that, as the Bill contained provisions which altered the powers of the Legislative Council, it was necessary for it to be approved by the electors at a referendum, under section 7A of the *Constitution Act*.²²

2.16 The Bill was passed by both Houses of Parliament on 12 May 1981, and was approved at a referendum held on 19 September 1981. The Bill was subsequently reserved for Her Majesty's assent, notification of which was published in the Government Gazette on 29 January 1982. The key features of section 14A and the consequential amendments made by the Act are outlined below.

Section 14A

2.17 Section 14A consists of seven subsections, which relate to the following matters:

- | | | |
|-----------------|---|--|
| Subsection 1 | - | Power of Governor to make regulations relating to the registration of Members' pecuniary interests and other matters |
| Subsections 2-3 | - | 'Wilful' contravention by a Member of any such regulation |
| Subsection 4 | - | Regulations to apply equally to Members of both Houses |

²⁰ *Parliamentary Debates*, Legislative Assembly, 13 April 1981, p. 5710.

²¹ *ibid.*

²² *ibid.*, p. 5709.

- Subsection 5 - Governor to take account of any representations made by any relevant committees of the Houses concerning proposed regulations
- Subsection 6 - Regulations to be disallowable only by vote of both Houses of Parliament (contrary to the normal practice which is for regulations to be disallowable by one House alone)
- Subsection 7 - Publication of registers of pecuniary interests deemed to have been authorised by House.

2.18 The most relevant subsections for the purposes of the current inquiry, subsections 1 to 3, are as follows:

- (1) The Governor may, subject to subsections (4) and (5), make regulations for or with respect to:
 - (a) the disclosure by Members of either House of Parliament of all or any of the following pecuniary interests or other matters:
 - (i) real or personal property,
 - (ii) income,
 - (iii) gifts,
 - (iv) financial or other contributions to any travel,
 - (v) shareholdings or other beneficial interests in corporations,
 - (vi) partnerships,
 - (vii) trusts,
 - (viii) positions (whether remunerated or not) held in, or membership of, corporations, trade unions, professional associations or other organisations or associations,
 - (ix) occupations, trades, professions or vocations,
 - (x) debts,
 - (xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, Members,
 - (xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations,
 - (b) prescribing the manner in which, and the times at which, pecuniary interests or other matters shall be disclosed and providing for the verification by statutory declaration or otherwise of any such disclosure, and
 - (c) the compilation and maintenance of registers of pecuniary interests or other matters disclosed by Members of either House of Parliament and the inspection and publication of any such register.
- (2) If a Member of either House of Parliament wilfully contravenes any regulation made under subsection (1), that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.

- (3) A declaration under subsection (2) shall:
- (a) specify the circumstances that constitute the contravention,
 - (b) declare that the House is of the opinion that the contravention is of such a nature as to warrant the seat of the Member being declared vacant, and
 - (c) be made in accordance with such Standing Rules and Orders of the House as may regulate the making of the declaration.

Consequential amendments

Section 7A

2.19 Section 7A states that certain kinds of bills and provisions cannot be enacted except in the manner provided in the section.²³ The manner provided in the section includes the holding of a referendum.²⁴ The types of provisions to which the prescribed manner applies are listed in subsection (1). Despite subsection (1), however, certain exceptions to this requirement are listed in subsection (6).

2.20 The *Constitution (Disclosures by Members) Act 1981* made changes to both subsections (1) and (6). Firstly, it added a new paragraph to subsection (1), reflecting the provisions of section 14A(2) and (3), which relate to declarations by the Houses vacating a Member's seat:

- (d) any provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant.

2.21 Secondly, it added two new paragraphs to subsection 6(1), in the following terms:

- (d) a provision with respect to the persons capable of being elected or of sitting or voting as Members of either House which applies in the same way to the persons capable of being elected or sitting and voting as Members of either House of Parliament;
- (e) a provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant which applies in the same way to the circumstances in which the seat of a Member of the other House of Parliament becomes vacant.

2.22 The second reading speech in the Legislative Council described the aim of these changes as follows:

Those amendments are designed to provide that any enactment with respect to the circumstances in which the seat of a member of Parliament becomes vacant, as does the present bill, must be approved at a referendum unless it applies in the same way to both Houses of Parliament. The new subparagraphs 7A(6)(d) and (e) are designed simply to ensure that regulations, standing orders and other provisions made under this bill do not have to be resubmitted to the people.

²³ Subsection (1).

²⁴ Subsections (2) – (5).

Under the present wording of section 7A(1)(c) it is not clear that even though this bill is approved by referendum, the regulations to be made under it as an Act in due course may otherwise have fallen foul of the blanket provisions of section 7A.²⁵

Section 15

2.23 Section 15(1) gives power to the Houses of Parliament to prepare and adopt Standing Orders and Rules regulating various matters, which are specified in section 15(1) (a) to (f). The *Constitution (Disclosures by Members) Act 1981* added a new paragraph to this provision, as follows:

(g) any other matter that, by or under this Act, is required or permitted to be regulated by the Standing Rules and Orders.

2.24 The new paragraph was relevant to section 14A(3)(c), which refers to ‘such Standing Rules and Orders of the House as may regulate the making of’ a declaration vacating a Member’s seat. However, no Standing Rules or Orders have been made by either House as contemplated by section 14A(3)(c).

Development of the Constitution (Disclosures by Members) Regulation 1983

Committees on Disclosures by Members

2.25 Section 14A(5) of the Constitution Act provides that, before making a regulation, the Governor shall afford any committee of either House of Parliament established for the purpose an opportunity to consider and make representations with respect to the proposed regulation, and take any such representations into account. In November 1982, committees were established in both Houses of Parliament to consider and make representations to the Governor with respect to a proposed regulation.²⁶

2.26 The committees prepared representations in relation to the draft regulation. It appears that, in each case, the representations were submitted to the relevant Presiding Officer for transmission to the Governor, and were not presented to the House or made public. However, for the purposes of this inquiry the Committee obtained a copy of the representations from Legislative Council departmental files.

2.27 The committees’ representations did not call for any major changes to the draft regulation. However, they did suggest amendments to certain specific clauses, and made a number of more general proposals. Of relevance to the current inquiry are the Assembly committee’s Representations No.s 13-15, which concern wilful contraventions of the regulation, and the need for the establishment of relevant committees in each House, and the Council committee’s proposal for the establishment of committees in each House.

²⁵ *Parliamentary Debates*, Legislative Council, 12 May 1981, p. 6818.

²⁶ *Minutes of the Proceedings of the Legislative Council*, No. 13, 2 November 1982, entry 7.

2.28 The Assembly committee's Representations 13 to 15 were as follows:

Representation No. 13

The Committee is of the opinion that there is not sufficient provision in either the Act, Regulation of Standing Rules and Orders to deal with the question of 'wilful contravention' by either Members or other persons. To that end, the Committee recommends that there shall be appointed in each House of Parliament a Standing Committee whose duty it shall be to -

- (i) investigate matters arising from the operation of the Act or this Regulation;
- (ii) receive complaints from Members or the public concerning contravention of the Act or Regulation, whether wilful or not;
- (iii) report to their respective House through the President or the Speaker what action is deemed necessary concerning the matters referred to it for investigation.

Representation No. 14

The Committee is of the opinion that section 14A of the Constitution Act, 1902 be amended as follows -

- (1)...
- (2) To provide in clear terms what constitutes a 'wilful contravention' by a Member.

Representation No. 15

The Committee is of the opinion that the Standing Rules and Orders be amended as follows:

- (1) To provide in clear terms the method by which a contravention shall be dealt with and perhaps provide penalties other than expulsion in certain cases.
- (2) To provide a code of conduct for Members in relation to disclosure of pecuniary interests.
- (3) To provide for the appointment of a Standing Committee to consider complaints and the machinery whereby such a Committee would operate.²⁷

2.29 In addition to these matters, the Assembly committee also considered a number of other possible representations, which it did not ultimately pursue due to legal advice. The proposals considered by the committee, so far as may be relevant to the current inquiry, are noted below:

- The Committee proposed that a definition of 'wilfully contravenes' be included in the Regulation. The Crown Solicitor advised that such definition could not be provided by

²⁷ *Representations by the Committee of the Legislative Assembly on Disclosures by Members upon the proposed Constitution (Disclosures by Members) Regulation, 1982, made pursuant to section 14A of the Constitution Act 1902, pp. 5-6.*

regulation, as a regulation cannot change the operation of the Act under which it is made.²⁸

- The Committee proposed that the regulation provide for a 'stronger penalty than expulsion', such as imposition of fines on Members. The Crown Solicitor advised that, as the Parliament has provided for the liability, the regulation-making power does not extend to providing for some further liability on the part of the Member.²⁹
- The Committee proposed that 'clear provision of [the] method by which contravention is dealt with by the House' be supplied. The Crown Solicitor advised that this matter is governed by subsections (2) and (3) of section 14A, and by any Standing Orders which may be made under section 15(1)(g), as contemplated by section 14A(3)(c).³⁰
- The Committee proposed that a provision be included in the Regulation appointing parliamentary standing committees to investigate and report on certain matters connected with the disclosure of Members' pecuniary interests. In this case, Parliamentary Counsel advised that section 14A does not confer the necessary power to make such regulation, and that sections 14(3)(c) and 15(1)(g) contemplate that a proposal along the lines suggested by the Committee would be dealt with by standing rules and orders rather than the proposed Regulation.³¹

Council committee

2.30 The Council committee attached to its 'Representations' a list of five further matters which it wished to be taken into account. The final matter listed, matter (e), stated:³²

The Committee feels strongly that a Standing Committee should be appointed in each House to

(i) investigate any matter arising from the operation of the Regulation or the relevant provisions of the Constitution Act;

(ii) receive complaints from any person concerning possible contravention of the Regulation or the relevant provisions of the Constitution Act; and

(iii) report to the respective House through the President or the Speaker, as the case may be, what action is deemed necessary concerning any matter received by the Committee for investigation.³³

²⁸ Crown Solicitor's Office, advice to Clerk of the Legislative Assembly, *Proposed Constitution (Disclosures by Members) Regulation*, 13 November 1982, CS 82/4868 HKR, p. 2.

²⁹ *ibid*, p. 7.

³⁰ *ibid*, p. 8.

³¹ Parliamentary Counsel, letter to Clerk of the Legislative Assembly, 23 November 1982, p. 6.

³² The other four matters, (a) to (d), concerned the need for a definition of 'corporation', the need for explanatory notes in relation to the Regulation and section 14A, and the need for annual review of the monetary limits stated in the Regulation.

- 2.31** Despite this suggestion, and the similar suggestion by the Assembly committee, no such committees have been established.

Content of the Constitution (Disclosures by Members) Regulation 1983

- 2.32** The *Constitution (Disclosures by Members) Regulation 1983* was published in the Government Gazette on 6 May 1983. The key features of the Regulation are set out below.³⁴

Returns and registers

- 2.33** There are two types of returns specified in the Regulation – primary returns and ordinary returns. Primary returns refer to the first return made by a Member. With respect to Members who were Members on 30 June 1983, the primary return relates to the Member’s interests on 30 June 1983. With respect to a Member who first becomes a Member after 30 June 1983, the primary return relates to the Member’s interests at the date on which he or she takes and subscribes the oath, or makes the affirmation required under section 12 of the Constitution Act.³⁵
- 2.34** Ordinary returns refer to the annual return lodged with the Clerk. Generally, the annual return relates to the Member’s interests for the 12 month period ending 30 June of each year and must be lodged with the Clerk by 1 October each year.³⁶ Where the previous return was a primary return, the return period is the period commencing on the day after the primary return date and ending on 30 June in that particular year. Where the primary return date is in the period 1 May to 30 June, the Member is not required to lodge an ordinary return for that same year.
- 2.35** The Clerk is required under Clause 17 to compile and maintain a register in respect of disclosures of pecuniary interest and other matters made by Members of the Legislative Council made under the Regulation – the “Register of Disclosures by Members of the Legislative Council”. The Clerk of the Legislative Assembly is required to compile and maintain a similar register in respect to Members of the Legislative Assembly. The Register comprises the returns lodged by Members within the previous eight (8) years.
- 2.36** The Regulation requires the Register to be open to public inspection at the office of the Clerk during specified hours, and is to be open to inspection by Members during the additional hours when the House is sitting. The Clerk is required to table a copy of the Register (a) within 21 sitting days after the last day for lodgement of primary returns, and

³³ Legislative Council Committee on Disclosures by Members, *Representations by the Legislative Council Committee on Disclosures by Members upon proposed regulation under section 14A of the Constitution Act, 1902*, final page, matter (e).

³⁴ Paragraphs 2.33 – 2.42 reproduce the paragraphs 2.4 – 2.15 of the submission received from the Clerk of the Parliaments.

³⁵ Clauses 4-5.

³⁶ Clause 6.

(b) within 21 sitting days after the last day for lodgement of ordinary returns that form part of the Register not previously tabled.³⁷

2.37 Members' primary and ordinary returns are the only form of return required or permitted by the Regulation – the need for supplementary returns by Members was not anticipated in the Regulation. The practice of the provision of additional information by Members who wish to add to or correct their primary or ordinary returns was adopted early in the administration of the Register. This additional information is not tabled in the House, although they are filed in the Register with the Member's return for the relevant year. As a result of this practice the additional information is open to public inspection as part of the compiled Register. The need to amend the Regulation to allow for supplementary returns is addressed briefly in part 5 of this submission.

Interests to be disclosed

2.38 The interests that are required to be disclosed are listed in Part III of the Regulation. These fall under eight headings:

- Real property (Clause 8)
- Sources of income (Clause 9)
- Gifts (Clause 10)
- Contributions to travel (Clause 11)
- Interests and positions in corporations (Clause 12)
- Positions in trade unions and professional of business associations (Clause 13)
- Debts (Clause 14)
- Disposition of property (Clause 15)

2.39 In addition, Clause 16 provides for discretionary disclosures by Members of any direct or indirect benefit, advantages or liabilities, whether pecuniary or not which are not required to be disclosed under clauses 8 to 15 and which the Member considers may appear to raise a conflict between his or her private interests and his or her public duty as a Member or which he or she otherwise desires to disclose.

2.40 Clause 22 provides that even where no disclosures are included in a primary or ordinary return, the Member must nevertheless lodge a return.

Interests and positions in corporations

2.41 Clause 12 provides:

- (1) A Member shall disclose in a primary return and an ordinary return:

³⁷ Clauses 20 - 21.

- (a) the name and address of each corporation in which he had an interest or held any position (whether remunerated or not) on the primary return date or at any time during the ordinary return period, as the case may be;
 - (b) the nature of the interest, or the description of the position held, in each such corporation; and
 - (c) except in the case of a public company—a description of the principal objects of each such corporation.
- (2) An interest, or position held, in a corporation need not be disclosed by a Member in a primary return or an ordinary return if the corporation is:
- (a) formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion or charity or for any other community purpose;
 - (b) required to apply its profits (if any) or other income in promoting its objects; and
 - (c) prohibited from paying any dividend to its members.

2.42

The term “public company” is defined in Clause 7 to mean a listed company within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth. The submission received from the Clerk of the Parliaments includes advice recently received from the Crown Solicitor in relation to the following questions:

1. What is “an interest or position in a corporation” in the context of Clause 12 of the Constitution (Disclosures by Members) Regulation 1983 and section 9 of the *Corporations Act 2001* (Commonwealth).
2. What is the implication if any, for Members of the Legislative Council, of amendments to the Constitution (Disclosures by Members) Regulation 1983 by the following Acts:
 - (a) Corporations (Consequential Amendments) Act 2001, Sch 3 [1] –[3], and
 - (b) Financial Services Reform (Consequential Amendments) Act 2002, Sch 3.1.

Inquiry by Committee on the ICAC, 1991-1994**2.43**

In December 1991 the Parliament’s Committee on the ICAC received a reference from both Houses of Parliament to investigate and report on:

- (i) a review of the adequacy of the existing pecuniary interests provisions applying to Members of Parliament;
- (ii) a review of the adequacy of existing pecuniary interest provisions applying to senior executives; and

(iii) an examination of the need for and suggestions as to the content of a code of ethics for Members.

2.44 The first two parts of the reference derived from the charter of reform of the non-aligned Independent Members of the Legislative Assembly of 1991,³⁸ while the third part arose from an ICAC report.³⁹

2.45 In 1991-92, the Committee called for public submissions in relation to the inquiry, and conducted two days of hearings. However, after these preliminary stages of the inquiry had been completed, the Committee came to the view that 'the matter at hand was of such importance and complexity that instead of presenting a report to Parliament a Discussion Paper should be prepared.'⁴⁰

2.46 The Discussion Paper was released in April 1994. Matters addressed in the Paper include: improving the form of disclosure; disclosure of family interests; and amending the regulation. In relation to this latter issue, the Discussion Paper states that, to amend the regulation (other than by statute), committees would have to be established in each House specifically for this purpose, as occurred in 1982 when the regulation was first developed.⁴¹

³⁸ Committee on the ICAC, *Discussion paper on pecuniary interests provisions for Members of Parliament and senior executives and a code of ethics for Members of Parliament*, April 1994, p. 1.

³⁹ *ibid.*

⁴⁰ *ibid.*, p. 2.

⁴¹ *ibid.*, p. 9.

Chapter 3 Other jurisdictions

This chapter briefly outlines the provisions relating to the registration of Members' pecuniary interests which apply in the other Australian Parliaments, and certain overseas jurisdictions. The Committee will be conducting a more detailed examination of the pecuniary interest disclosure requirements in other jurisdictions during the second stage of this inquiry.

Australian jurisdictions

Overview of provisions

3.1 All Australian Parliaments have made provision, either by statute, Standing Order, or resolutions of the Houses, for the registration of Members' pecuniary interests. The key features of the relevant provisions in each Parliament are similar in many respects, and are summarised below:

- (1) Within a certain period of taking the oath or affirmation (usually 28 days), Members are required to provide a primary return disclosing interests held at the date of the Members' election, and/or a statement of any source of income the Member has or expects to have, in the period of 12 months after the date of the primary return.
- (2) An ordinary return is required to be lodged annually, in most cases, disclosing certain interests. In some cases, the interests to be disclosed are defined precisely and specifically, while in others, the registrable interests are described in more general terms. The categories of registrable interests include:
 - sources of income
 - interests or offices/positions in companies, partnerships or associations
 - membership of political parties, or trade/professional associations
 - interests in trusts
 - interests in real property
 - contributions to travel and hospitality
 - gifts
 - assets and/or investments
 - liabilities.
- (3) Members are not required to disclose the actual value, amount, or extent of interests.

- (4) Members may make discretionary disclosures in relation to any direct or indirect benefits, advantages or liabilities (pecuniary or not) which are not required to be disclosed, if the Member considers the interest may constitute a conflict between the Member's private interests and his or her duties as a Member of Parliament.
- (4) Disclosures are made to a registrar, who is in most cases the Clerk of the House to which the Member belongs.
- (5) In all but one case (Victoria), the register is available for public inspection under certain conditions. The register, in some form or other, is presented to the relevant House on an annual basis, and authorised to be made public.
- (6) In most cases, sanctions are specified for breaches of the registration requirements.

3.2 Appendix 3 summarises the sources of authority for the provisions in each Australian jurisdiction, the principal differences between the various provisions, the mechanisms for enforcing or administering the provisions, and the applicable sanctions for failure to comply.

Disclosures relating to corporations

3.3 In every jurisdiction in Australia, Members are required to disclose in their returns certain defined interests and positions in corporations. The level of disclosure required varies among the jurisdictions. For example, in Victoria, the only disclosure required is the name or description of any company in which the Member held an office or a beneficial interest exceeding \$500. At the other end of the spectrum, the disclosure requirements in Queensland are detailed and specific, distinguishing between different types of interests in corporations, such as mere shareholdings, controlling interests in corporations, and shareholdings in holding companies which have shares in other companies.

3.4 In four of the Australian jurisdictions, the disclosure requirements extend beyond interests held by the Member personally, to interests held by related persons or family members, as defined.⁴²

3.5 The registrable interests and positions in corporations required to be disclosed in each of the Australian jurisdictions are summarised at Appendix 4.

Contraventions of registration requirements

3.6 In most of the Australian jurisdictions, the relevant provisions specify that failure to comply amounts to a contempt of Parliament, and/or attracts a fine, which is defined by

⁴² Queensland, the Commonwealth, South Australia, and the ACT: see Appendix 4. In addition, in Victoria and the Northern Territory, Members are required to disclose any substantial interests (pecuniary or not) of family members, of which the Member is aware and which the Member considers might appear to raise a material conflict of interest between the Member's private interest and public duty as a Member.

statute (see Appendix 3). In four of the jurisdictions, such consequences are triggered by any 'wilful' contravention of the registration requirements, as in NSW.⁴³

- 3.7** There have been two cases where contraventions of the relevant disclosure requirements have been established. Both cases arose in 1983, and involved Members of the South Australian House of Assembly who failed to disclose any information on the interests of their respective spouses. In one case, it is understood that the matter of the Member's non-compliance ceased to be viewed as an issue after press speculation that the Member's spouse had no interests to declare. In the other, it is understood that the Member continued to lodge incomplete returns accompanied by statements advising of her husband's refusal to provide the information, until 1986, when they divorced.⁴⁴
- 3.8** In addition to these cases, there has been one case where a claimed contravention has been the subject of a parliamentary inquiry. In that case, a Member of the Victorian Legislative Assembly raised as a breach of privilege the alleged non-compliance by another Member with the *Members of Parliament (Register of Interests) Act 1987*. The issue was referred to the Privileges Committee of the House, which found that the Member had complied with the relevant requirements.⁴⁵ The House debated the Committee's report, but took no further action in relation to the matter.

Overseas jurisdictions

House of Commons (UK)

Registration requirements

- 3.9** The rules relating to the registration of Members' pecuniary interests in the House of Commons are set out in a document which was first adopted by the House in 1996, entitled *The Code of Conduct and the Guide to the rules relating to the Conduct of Members*.⁴⁶ That document includes certain earlier resolutions and rules of the House concerning the registration and declaration of Members' interests.⁴⁷
- 3.10** Under the relevant rules, Members are required to submit returns disclosing interests held within ten categories, including remunerated directorships of private or public companies,

⁴³ Victoria, South Australia, Western Australia and the Northern Territory: see Appendix 3.

⁴⁴ See, for example, 'The bloodhounds are sniffing at MPs' private lives', *The Weekend Australian*, October 22-23 1983, p. 15.

⁴⁵ Legislative Assembly Privileges Committee, *Report on Complaint made the Honourable Member for Monbulk*, Parliament of Victoria, 1987.

⁴⁶ Available at www.publications.parliament.uk.

⁴⁷ *The Guide to the Rules relating to the Conduct of Members*, 'Introduction,' p. 1; '1. Registration of Members interests', p. 2.

and interests in shareholdings above a certain value, whether held by the Member personally, or with or on behalf of the Member's spouse, partner or dependent children.⁴⁸

- 3.11** Following the lodging of an initial return, any changes to Members' registrable interests must be notified within four weeks of the changes occurring.⁴⁹ The returns are compiled into a register, which is available for public inspection and published annually both in hard copy and on the internet. Responsibility for compiling the register is vested in a commissioner appointed by the House, the Parliamentary Commissioner for Standards, who is assisted by the Registrar of Members' Interests.⁵⁰

Enforcement

- 3.12** As well as compiling the register, the Parliamentary Commissioner for Standards also investigates complaints from Members or members of the public alleging failure to comply with the disclosure requirements (or failure to comply with any other provision of the code of conduct).⁵¹ If, as a result of an investigation, the Commissioner finds a prima facie case of failure to comply, the Commissioner reports that finding to a committee of the House, the Committee on Standards and Privileges. The Committee considers the matter, and may make further investigations, after which it reports to the House with an appropriate recommendation.
- 3.13** In the case of admitted failures to register interests where the interest involved is minor or the failure to register was inadvertent, the Commissioner has a discretion to allow the Member to rectify the matter. In the case of non-registration, rectification requires a belated entry in the current Register, with an appropriate explanatory note. Any rectification is reported briefly to the Committee.⁵²
- 3.14** Complaints regarding Members' failures to comply with the registration requirements are relatively common, in comparison to the Australian jurisdictions. For example, in the 2001-2002 parliamentary session, five such complaints have been considered by the Commissioner and the Committee.⁵³ Where complaints have been considered by the Committee, actions taken by the Committee include:

⁴⁸ *ibid*, pp 4, and 10, categories 1 and 9.

⁴⁹ *ibid*, p. 3.

⁵⁰ *ibid*, p. 2.

⁵¹ *ibid*, p. 26 ('4. Procedure for complaints').

⁵² *ibid*, pp. 26-27.

⁵³ The First, Second, Fifth, Seventh, and Ninth reports of the Committee for the Session 2001-2002, available at www.parliament.the-stationery-office.co.uk.

- inviting the Member to register the omitted interest⁵⁴
- recommending that the Member rectify his entry and make an apology to the House by means of a personal statement⁵⁵
- recommending that the Member be suspended from the House for three weeks⁵⁶ (which was agreed to by the House⁵⁷).

3.15 Before the adoption of the current regime in 1996, complaints regarding failure to register pecuniary interests were considered by the Select Committee on Members' Interests. In 1990, that Committee investigated and upheld a complaint that a Member had failed to register certain interests. In respect of this conduct, the House agreed to a resolution suspending the Member from the service of the House for 20 sitting days and suspending the Member's salary for the same period.⁵⁸

South Africa

3.16 Apart from the House of Commons, the position in South Africa is also relevant in this context, given the existence of a recent precedent involving a contravention of the registration requirements, and the use of the term 'wilfully' in the applicable provisions.

3.17 The provisions relating to the registration of Members' pecuniary interests are contained in the Members' Code of Conduct, which is attached to the Joint Rules of Parliament. The Code stipulates that a Member breaches the Code if (inter alia) the Member:

when disclosing registrable interests, wilfully provides the Registrar with incorrect or misleading details.

3.18 In a recent case, a parliamentary committee found that a Member of the National Assembly had failed to disclose various donations and interests, which were required to be registered under the Code.⁵⁹ In reaching this view, however, the Committee did not find it necessary

⁵⁴ Select Committee on Standards and Privileges, *Twelfth Report, Complaint against Mr John Prescott*, Session 1999-2000, para 3.

⁵⁵ Select Committee on Standards and Privileges, *Sixth Report, Complaints against Mr Roy Beggs*, Session 2000-2001, para 6. In that case, the Member admitted having acted incorrectly and sought guidance as to how he could put things right (para 5).

⁵⁶ Select Committee on Standards and Privileges, *First Report, Complaint against Mr Geoffrey Robinson: supplementary report*, Session 2001-2002, para 6. In that case, the Member had failed to provide the Commissioner and the Committee with full and accurate responses to their questions, and the Member's conduct was found by the Committee to have fallen below the standards the House is entitled to expect of its Members (para 5).

⁵⁷ House of Commons, *Hansard*, 31 October 2002, column 906.

⁵⁸ House of Commons, *Hansard*, 7 March 1990, column 973.

⁵⁹ Parliament of the Republic of South Africa, *Announcements, tablings and committee reports*, 6 September 2002, *Report of the Joint Committee on Ethics and Members' Interests on the Breach of the Code of Conduct by the*

to analyse or discuss the meaning of the term 'wilfully', as it appears in the relevant provision of the Code. The Committee recommended that the Member be 'severely reprimanded' by the Speaker of the Assembly for her conduct, and penalised with a reduction of the equivalent of a period of 15 days' salary.⁶⁰

Hon Mrs N W Madikizela-Mandela, dated 21 August 2002, pp. 10-11 ('5. Unanimous findings of the panel'). The report also made comments concerning the Member's non-attendance before the Committee, and certain other conduct by the Member involving court proceedings.

⁶⁰ *ibid*, p. 11 ('6. Penalty').

Chapter 4 The meaning of ‘wilfully contravenes’

Significance of the meaning of ‘wilfully contravenes’

4.1 Paragraph 4(a) of the terms of reference for this inquiry require the Committee to investigate and report on:

Whether, under section 14A(2) of the *Constitution Act 1902*, the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, has wilfully contravened the requirements of clause 12 of the Constitution (Disclosures by Members) regulation 1983 by failing to disclose any pecuniary interest as required under the Regulation.

4.2 The question of whether the Minister has ‘wilfully contravened’ the requirements of the Regulation is significant because of the terms of section 14A (2) of the *Constitution Act 1902*. Section 14A(2) provides that:

If a Member of either House of Parliament wilfully contravenes any regulation made under subsection (1), that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.

The meaning of ‘contravenes’

4.3 The Concise Oxford Dictionary defines ‘contravene’ as to ‘infringe (a law of conduct)’.⁶¹ The Macquarie Dictionary defines ‘contravene’ as to ‘violate, infringe, or transgress: to contravene the law’.⁶²

4.4 The word contravene has been defined in legislation as ‘a failure to comply with the provision, direction, prohibition, restriction, requirement or condition, and the expression contravene shall be construed accordingly.’⁶³ It has been held that the characteristic of any contravention is that it could result in a penalty.⁶⁴

⁶¹ *The Concise Oxford Dictionary*, Ninth Edition, Oxford, Clarendon Press, 1995.

⁶² *The Macquarie Concise Dictionary*, Third Edition, Macquarie University, The Macquarie Library Pty Ltd, 1997.

⁶³ *Words and Phrases legally defined*, Third Edition, London, Butterworths, 1998, p 340.

⁶⁴ *Ibid.*

The meaning of wilfully

Ordinary meaning of 'wilfully'

4.5 The *Concise Oxford Dictionary* defines wilful as:

adj. 1. (of an action or state) intentional, deliberate (*wilful murder; wilful neglect, wilful disobedience*). 2. (of a person) obstinate, headstrong. **wilfully** adv.⁶⁵

4.6 The *Macquarie Concise Dictionary* defines wilful as:

adj. 1. willed, voluntary, or intentional: *wilful murder*. 2. Self-willed or headstrong; perversely obstinate or intractable... **wilfully**, adv.⁶⁶

4.7 Clearly, it is the first sense of the word wilful, which is relevant here, as the adverb 'wilfully' is used to describe an action, namely the way in which the Constitution (Disclosures by Members) Regulation 1983 is contravened.

The absence of any direct precedent

4.8 As outlined in Chapter 2 no guidelines have been developed to assist the House, or a committee such as this one, determine what constitutes a wilful contravention of the regulations. This is the first case in which this question has had to be addressed in either House of the Parliament of New South Wales. There is therefore no direct precedent to be followed or applied.

4.9 As outlined in Chapter 3, the concept of 'wilful contravention' as the test to be applied in determining whether a failure to disclose interests is a contempt or requires the imposition of a penalty, is present in the applicable legislation in Victoria, South Australia, Western Australia, and the Northern Territory. However, there does not appear to have been any cases in which the relevant Houses (or committees) have been required to consider the meaning of that term. There is therefore no precedent to be applied from those jurisdictions.

Judicial consideration of 'wilful'

4.10 There is a considerable body of case law concerning the meaning of the word 'wilful'. This includes interpretation of the word 'wilful' in isolation, as well as consideration of 'wilful' in conjunction with another word or term, such as 'contempt', 'default', 'false representation', and 'misconduct'. A number of key cases, including Australian authorities, are outlined below. However, it should be noted that no case has been found where the courts have interpreted 'wilful contravention' or 'wilfully contravenes'.

⁶⁵ *The Concise Oxford Dictionary*, Ninth Edition, Oxford, Clarendon Press, 1995.

⁶⁶ *The Macquarie Concise Dictionary*, Third Edition, Macquarie University, The Macquarie Library Pty Ltd, 1997.

The definition of 'wilful': English authorities

- 4.11** There is a range of English cases in which the meaning of the word wilful has been considered. The range of meanings attributed to the word 'wilful' or 'wilfully' includes:
- 'an absence of an honest belief' (in the context of wilfully entering upon lands without consent)⁶⁷
 - 'wantonly' or 'causelessly' (in the context of wilfully throw soil, earth or rubbish into certain ... watercourses)⁶⁸
 - 'if you permit a thing, not under compulsion, you do it wilfully'⁶⁹
 - 'Wilfully' means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it.⁷⁰
 - 'An act is wilfully done if it is an act of the will done deliberately, as distinct from something done without thought on the spur of the moment.'⁷¹
 - 'deliberately – because that is what 'wilfully' means'⁷²
 - 'If a man permits a thing to be done, it means that he gives permission for it to be done, and if a man gives permission for a thing to be done, he knows what is to be done or is being done, and, if he knows that, it follows that it is wilful'⁷³
 - 'Wilful' in this context ['wilfully obstructing a constable'] in my judgment means not only 'intentional' but also connotes something which is done without lawful excuse.'⁷⁴

The definition of wilful: Australian authorities – the High Court

- 4.12** The meaning of 'wilful' and 'wilfully' has been discussed in a number of cases in Australia, in a number of different contexts, ranging from 'wilfulness and false representation' to

⁶⁷ *Steele v Midland Rly Committee* (1869) 21 LT 387 at 392 per Cockburn CJ.

⁶⁸ *Smith v Burnham* (1876) 1 Ex D 419 at 423, 424 per Bramwell B.

⁶⁹ *High Wycombe Corpn v River Thames Conservators* (1898) 78 LT 463 at 465, DC per Kennedy J.

⁷⁰ *R v Senior* [1899] 1 QB 283 at 290, 291 per Lord Russell of Killowen CJ.

⁷¹ *Smith v Wemyss Coal Committee Ltd* (1927) 21 BWCC 483 at 490-492 per the Lord President (Lord Clyde).

⁷² *Hall v Jordon* [1947] 2 All ER 574 1 All ER 826 at 827 per Lord Goddard CJ.

⁷³ *Lomas v Peek* [1947] 2 All ER 574 at 575 per Lord Goddard CJ.

⁷⁴ *Rice v Connolly* [1966] 2 All ER 649 at 651 per Lord Parker CJ.

'wilful blindness (murder)' to 'wilfully (water pollution)'. Set out below are brief notes in relation to a number of instances where the High Court has considered the term.

- 4.13** *Gould v Mount Oxide Mines Ltd, Birbeck v Mount Oxide Mines Ltd, Bacon v Mount Oxide Mines Ltd* (1916) 22 CLR 490: This case was concerned with the articles of association of a company which provided that directors would only be liable in the case of 'wilful defaults'. Justices Isaacs and Rich stated, in relation to the meaning of 'wilful default':

'Wilful default' is a term which, like most other terms, must depend for its precise connotation on the subject matter and the context. It does not connote dishonesty. Here it means – a course of conduct consciously pursued in circumstances which would indicate to a reasonable man who considered the matter that the duty he has undertaken to the Company is not being performed with due care for its interests.⁷⁵

- 4.14** The reference to 'a reasonable man' suggests that the test to be applied in determining whether there has been a 'wilful default' is an objective test. That is, rather than focussing on the subjective state of mind of the person being considered, the focus is on the view that a 'reasonable person' would take in relation to whether or not the conduct was a 'wilful default.'

- 4.15** *Bell v Stewart* (1920) 28 CLR 419: This case concerned an appeal against the conviction of the printer and publisher of the *Argus* newspaper for contempt of the Commonwealth Court of Conciliation and Arbitration. The relevant legislation provided that there must be an element of wilfulness in any contempt of the Court of Conciliation and Arbitration. Justices Isaacs and Rich stated, in relation to the meaning of the word 'wilful':

We are of the opinion that this part of the case turns both on the word 'wilful' as to its meaning and legal effect in the first place, and as to how far the evidence supports it... It is clear to our minds that the word 'wilfully' does more than negative 'accidentally' or 'unconsciously'. The Legislature was, of course, not simply excluding acts done in sleep or hypnosis or under compulsion. To speak of a person 'wilfully insulting or disturbing the Court' means that he intended to insult or disturb the Court, and not in the sense that his volition impelled the word or act, but that his purpose was that his word or his act should have the effect of conveying the insult or causing the disturbance.⁷⁶

- 4.16** *Lewis v Judge Ogden* (1984) 153 CLR 682: This was another case concerned with contempt of court, this time in relation to the County Court of Victoria. The relevant legislation referred to penalties applying if 'any person (a) wilfully insults any judge...' Justices Mason, Murphy, Wilson, Brennan and Dawson state, in relation to the meaning of 'wilfully':

... 'wilfully' means 'intentionally', or 'deliberately', in the sense that what is said or done is intended as an insult, threat etc. Its presence does more than negative the

⁷⁵ *Gould v Mount Oxide Mines Ltd, Birbeck v Mount Oxide Mines Ltd, Bacon v Mount Oxide Mines Ltd* (1916) 22 CLR 490 at 528-529 per Isaacs and Rich JJ.

⁷⁶ *Bell v Stewart* (1920) 28 CLR 419 at 427 per Isaacs and Rich JJ.

notion of ‘inadvertently’ or ‘unconsciously’. The mere voluntary utterance of words is not enough. ‘Wilfully’ imports the notion of purpose.⁷⁷

4.17 *Iannella v French* (1968) 119 CLR 84: This case dealt with an appeal against a conviction under South Australian legislation concerned with rent control. One of the issues addressed was whether the landlord had ‘wilfully demanded or wilfully recovered’ as rent an irrecoverable sum. Justices Barwick and Windeyer discussed the meaning of ‘wilfully’ in the following terms:

... it is quite clear from a reading of the cases that the denotation of the words ‘wilful’ or ‘wilfully’ has depended, in each case where antecedent authority was not merely accepted and followed, upon the context of the statutory or contractual provision in which it is placed and upon the subject matter with which the particular instrument dealt...

In my opinion, ‘wilful’ connotes intention and knowledge: the problem is to determine in the particular circumstances what is to be intended and what known. The answer, as I have said, must vary with the nature of the act proscribed and the context of the statutory provision creating the offence.⁷⁸

The word ‘wilfully’ does not stand alone. Its importance is in the meaning which it gives to its context... When the word ‘wilfully’ forms part of the description of an offence what is meant is an act done with knowledge of all the facts which make it an offence... If the word ‘wilfully’ be given the meaning and effect that I think it has in this context, then an honest mistake as to the existence of any element essential to the offence is a defence.⁷⁹

4.18 However, it should be noted that Chief Justice Barwick and Justice Windeyer were in the minority on this matter. Justice McTiernan said that ‘wilful’ would play its intended part in the relevant subsection of the legislation ‘if it is taken to mean wilful intent.’⁸⁰ Justice Taylor, with whom Justice Owen agreed, appears to use the word ‘wilful’ interchangeably with ‘intentional’.⁸¹

The meaning of ‘wilful’: Australian cases – State courts

4.19 *Environment Protection Authority v N* (1992) 26 NSWLR 352: This case was concerned with an appeal against a conviction under the *Environmental Offences and Penalties Act 1989 (NSW)* for ‘wilfully’ disposing of waste in a manner which has is likely to harm the environment. Justice Hunt, Chief Judge at Common Law, stated in relation to the meaning of ‘wilfully’:

⁷⁷ *Lewis v Judge Ogden* (1984) 153 CLR 682 at 688 per Mason, Murphy, Wilson, Brennan and Dawson JJ.

⁷⁸ *Iannella v French* (1968) 119 CLR 84 at 93, 95 per Barwick CJ.

⁷⁹ *Ibid*, at 108-109, per Windeyer J.

⁸⁰ *Ibid*, at 98 per McTiernan J.

⁸¹ *Ibid*, at 101 per Taylor J.

The immediate context of the word 'wilfully' in s5(1) of the Act with which this appeal is concerned is that, as an adverb, it qualifies the verb 'disposes'. That word, however, already imports the notion of intention. To dispose of waste means to get rid of it; such an action is necessarily deliberate or intentional. As a general rule, a court will adopt that construction of a statutory provision which will give some effect to all of the words which it contains: *Beckwith v The Queen* (1976) 135 CLR 569 at 574. The interpretation given to 'wilfully' by the majority in *Iannella v French* would give it no operation at all in s5 if the qualification which it creates were limited to the verb 'disposes'. The only additional ingredient of the offence is that the manner of disposal was one which harms or is likely to harm the environment. Thus, in order to give the word 'wilfully' any operation at all to perform, in my view, it must qualify the stated consequence of the manner in which the disposal is effected...

It seems to me that – both in order to give the word 'wilfully' some work to do and... - the prosecution must establish that the person charged with this offence pursuant to s5(1) of the Act either intended or was aware that the waste which he was disposing of would or was likely to harm the environment.⁸²

4.20 *Gardenal-Williams v R* (1989) Tas R 62: This case was concerned the statutory offence of arson. The relevant Tasmanian legislation provided that the act injury to property was not a crime unless done 'wilfully'. Justice Neasey stated, in relation to the meaning of 'wilful' and 'wilfully':

In the great majority of cases involving conduct which is criminal or constitutes a statutory offence it will be found that the word (I treat them here as one) implies something blameworthy in the state of mind accompanying the conduct which is to be 'wilful' Even in a civil context, 'wilful' will be found often used in respect of conduct which is unreasonable or captious – for example, in the field of contract law.... This usage accords with the most appropriate of the dictionary definitions. The word is capable in ordinary speech of a wide range of meaning. Thus, the Shorter Oxford English Dictionary (vol 2, p 2549) gives the following for 'wilfully': '1. willingly, readily; patiently, submissively. 2. Of one's own free will, of one's own accord, voluntarily. According to one's own will; at will, freely. 3. Purposely, on purpose, intentionally, deliberately. Chiefly, now always, in bad sense; occasionally implying maliciously. 4. In a self-willed manner; perversely, obstinately, stubbornly'.⁸³

The meaning of 'wilful': conclusions

4.21 Although the words 'wilful' and 'wilfully' have been the subject of consideration and interpretation by the courts in a variety of contexts, there appears to be an absence of direct authority on the legal meaning of 'wilfully' in the context of 'wilfully contravenes'. More specifically, there is no authority on the meaning of 'wilfully' in the context of 'wilfully contravenes' in section 14A (2) of the *Constitution Act 1902*.

⁸² *Environment Protection Authority v N* (1992) 26 NSWLR 352 at 355-356 per Hunt CJ at CL

⁸³ *Gardenal-Williams v R* (1989) Tas R 62 at 74, 78 per Neasey J.

- 4.22** It is also noted that applying *Gould v Mount Oxide Mines Ltd*,⁸⁴ it appears that the test to be applied in determining whether a person has ‘wilfully contravened’ a statutory provision is an objective test (that of the view that a reasonable person would take in relation to the matter) rather than a subjective test (focussing on the subjective state of mind of the person whose conduct is under consideration).
- 4.23** In the absence of any authority on the meaning of ‘wilfully’ in the context of ‘wilfully contravenes’ in section 14A (2) of the *Constitution Act 1902*, the Committee has been guided by the definitions of ‘wilful’ contained in the *Concise Oxford Dictionary* (‘intentional, deliberate’)⁸⁵ and the *Macquarie Concise Dictionary* (‘willed, voluntary, or intentional’).⁸⁶

⁸⁴ (1916) 22 CLR 490 at 528-529.

⁸⁵ *The Concise Oxford Dictionary*, Ninth Edition, Oxford, Clarendon Press, 1995.

⁸⁶ *The Macquarie Concise Dictionary*, Third Edition, Macquarie University, The Macquarie Library Pty Ltd, 1997.

Chapter 5 **The question of wilful contravention in this case**

Paragraph 4(a) of the terms of reference for this inquiry require the Committee to investigate:

whether, under section 14A(2) of the Constitution Act 1902, the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, has wilfully contravened the requirements of clause 12 of the Constitution (Disclosures by Members) Regulation 1983 by failing to disclose any pecuniary interest as required under the Regulation.

Clause 12 of the Constitution (Disclosures by Members) Regulation 1983

5.1 Clause 12 of the Constitution (Disclosures by Members) Regulation 1983 provides:

(3) A Member shall disclose in a primary return and an ordinary return:

- (a) the name and address of each corporation in which he had an interest or held any position (whether remunerated or not) on the primary return date or at any time during the ordinary return period, as the case may be;
- (b) the nature of the interest, or the description of the position held, in each such corporation; and
- (c) except in the case of a public company—a description of the principal objects of each such corporation.

(4) An interest, or position held, in a corporation need not be disclosed by a Member in a primary return or an ordinary return if the corporation is:

- (a) formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion or charity or for any other community purpose;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from paying any dividend to its members.

5.2 The term ‘public company’ is defined in Clause 7 to mean a listed company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth. The submission received from the Clerk of the Parliaments included a copy of advice from the Crown Solicitor on the following issues:

- (1) What is “an interest or position in a corporation” in the context of Clause 12 of the Constitution (Disclosures by Members) Regulation 1983 and section 9 of the *Corporations Act 2001* (Cth).

(2) What is the implication if any, for Members of the Legislative Council, of amendments to the Constitution (Disclosures by Members) Regulation 1983 by the following Acts:

(a) Corporations (Consequential Amendments) Act 2001, Sch 3 [1] –[3], and

(b) Financial Services Reform (Consequential Amendments) Act 2002, Sch 3.1.

5.3 The Crown Solicitor’s advice on these issues is summarised below.

Meaning of ‘interest’

5.4 The advice notes that the term ‘interest’, in relation to a corporation, is defined in clause 7 of the Regulation to mean:

a relevant interest (within the meaning of the Corporations Act 2001 of the Commonwealth) in any securities issued or made available by the Corporation’.⁸⁷

5.5 The term ‘securities’, which appears within that definition, is also defined in clause 7, as having ‘the same meaning as it has in section 92(1) of the *Corporations Act*’.⁸⁸ The relevant definitions of the *Corporations Act* are set out in full in the advice.

5.6 Having considered the relevant definitions, the advice concludes that a Member has an ‘interest’ in a corporation for the purposes of clause 12(1) if the Member has:

a relevant interest (within the meaning of ss. 608 and 609 of the *Corporations Act*) in any of the securities listed in paras (a) – (d) of s. 92(1) of the *Corporations Act* which are issued or made available by the corporation.⁸⁹

5.7 Section 608, 609 and 92(1) of the *Corporations Act* are reproduced in Appendix 5

Meaning of ‘position’

5.8 The advice notes that word ‘position’ is not defined in the Regulation⁹⁰ or in the *Interpretation Act 1987*.⁹¹ However, the word will have the same meaning as it has in section 14A of the *Constitution Act*, unless a contrary intention appears.⁹²

⁸⁷ IV Knight, Crown Solicitor, ‘Disclosures of interest or position in a Corporation’, advice to the Clerk of the Parliaments, 8 October 2002, para 2.4.

⁸⁸ *ibid*, para 2.4, p. 5.

⁸⁹ *ibid*, para 3.1.

⁹⁰ *ibid*, para 3.3.

⁹¹ *ibid*, para 3.5.

⁹² *ibid*, para 3.4. Section 11 of the *Interpretation Act 1987* provides that ‘words and expression that occur in an instrument have the same meanings as they have in the Act, or in the relevant provisions of the Act, under which the instrument was made’.

5.9 Against this background, a ‘position’:

- need not be remunerated [consistently with section 14A(1)(a)(viii)];⁹³
- does not include membership of a corporation [consistently with section 14A(1)(a)(viii)];⁹⁴ and
- may include an office, such as that of a non-executive director, in a corporation.⁹⁵

Corporations (Consequential Amendments) Act 2001

5.10 The advice states that the *Corporations (Consequential Amendments) Act 2001* amended clause 7 of the Regulation as a consequence of the repeal of the *Securities Industry Act 1980* (Commonwealth) and the enactment of the *Corporations Act 2001*.⁹⁶ The amendments replaced references to the definitions of ‘interest’ and ‘securities’ in the *Securities Industry (New South Wales) Code*, with references to the definitions of those terms appearing in the *Corporations Act 2001* of the Commonwealth.⁹⁷ The advice does not seek to compare the earlier and current definitions.⁹⁸

Financial Services Reform (Consequential Amendments) Act 2002

5.11 The advice states the *Financial Services Reform (Consequential Amendments) Act 2002* amended the definition of ‘public company’ in clause 7.⁹⁹ The term ‘public company’ is used in clause 12(1)(c), which provides that Members must disclose the principal objects of any corporation in which they have an interest or position, except in the case of a public company.

5.12 Prior to the amendment, the definition of ‘public company’ referred to a company whose shares are listed for quotation on the stock market of a stock exchange in NSW.¹⁰⁰ The present definition refers to a listed company within the meaning of section 9 of the *Corporations Act*. Unlike the earlier definition, the present definition:

⁹³ *ibid* para 3.3.

⁹⁴ *ibid*, para 3.4.

⁹⁵ *ibid*, para 3.5.

⁹⁶ *ibid*, para 4.1.

⁹⁷ *ibid*, paras 4.1-4.2.

⁹⁸ *ibid*, para 4.3.

⁹⁹ *ibid*, para 5.1.

¹⁰⁰ *ibid*.

operates by reference to whether a company is included in the official list of a prescribed financial market operated in the defined geographical area, which area extends beyond New South Wales'.¹⁰¹

- 5.13** As a result, a company which previously was not defined as a public company may now be caught by the definition of a public company, with the consequence that a description of its principal objects does not have to be disclosed pursuant to cl. 12(1)(c) of the Regulation.¹⁰²

Mr Obeid's interests/positions in corporations

- 5.14** When he appeared before the Committee to give sworn evidence on 16 October 2002, Mr Obeid tabled a document entitled 'Nature of Interest by Eddie Obeid MLC in Companies Named by Mr Greg Pearce'. This document is reproduced at Appendix 6.

- 5.15** The document tabled by Mr Obeid details interests/positions in 31 corporations, from 1991 (the year Mr Obeid was elected to the Legislative Council) to 2001. The document includes 232 entries, all of which were required to be disclosed under clause 12 of the Regulation.

- 5.16** At the hearing on 16 October 2002, the Committee Chair asked Mr Obeid whether, in addition to the interests/positions listed in the tabled document (and Obeid Corporation which had not been listed as it had not been the subject of any comment by Mr Pearce), he had held an interest or position in any other corporation since his election to the Legislative Council which had not been disclosed to date. Mr Obeid replied:

I am not aware of anything. I have declared everything I am aware of or have been made aware of.¹⁰³

- 5.17** The submission received from Mr Pearce contains a list of what he describes as 'apparently false entries/omissions' in Mr Obeid's pecuniary interest returns. (The interests/positions noted in the submission received from Mr Pearce correlate almost precisely with the information contained in the document tabled by Mr Obeid on 16 October 2002.) The submission noted that the source for the information, as to Mr Obeid's interests/positions in corporations, was a 'Current and Historic Personal Name Extract as at 30 January 2001', from the Australian Securities and Investments Commission. At the hearing on 16 October 2002, the Committee Chair asked Mr Pearce if he was satisfied that the extract shows all of Mr Obeid's interests or positions in corporations. Mr Pearce replied:

The document I am referring to there is behind tab 2: It is a personal name extract search from the Australian Securities and Investments Commission. I cannot vouch for whether it is complete; it is what the Australian Securities and Investments Commission has provided. The Australian Securities and Investments Commission depends for its information upon directors and secretaries of

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ Transcript of hearing 16 October 2002 (proof), p. 34.

companies filing the relevant returns that are required in order to establish information about companies.¹⁰⁴

5.18 The findings and conclusions included in this chapter are predicated on documents and evidence that are before the Committee.

Primary and ordinary returns submitted by Mr Obeid 1991-2002

5.19 The information in the following paragraphs is reproduced from the submission received from the Clerk of the Parliaments, section 3:

Primary return

5.20 Mr Obeid submitted his primary return on 12 December 1991 in respect of pecuniary interests at 12 September of that year. In relation to interests and positions in corporations, Mr Obeid declared his interest in 22 different corporations, represented in the table below:

Table 5.1 The Hon E Obeid – declaration of interests and positions in corporations - primary return, 12 September 1991

Name of corporation	Nature of interest	Description of position	Description of principle objects
Obeid Corporation Pty Ltd	Shareholder	Director	Family Trustee Company
Linkban Pty Ltd	Nil	Director	Publisher
15 Garners Ave (No 2) Pty Ltd	Nil	Director	Non Trading
Sydney Shout Pty Ltd	Nil	Director	Non Trading
Beirut Sydney Publishing Pty Ltd	Nil	Director	Non Training
Riovale Pty Ltd	Nil	Director	Family Trustee Company
Metrona Pastoral Pty Ltd	Nil	Director	Non Trading
15 Garners Act (No 3) Pty Ltd	Nil	Director	Non Trading
Oceanline Constructions Pty Ltd	Nil	Director	Non Trading
Hafomo Pty Ltd	Nil	Director	Property Owner
Media Corporation Pty Ltd	Nil	Director	Non Trading
15 Garners Ave (No 1) Pty Ltd	Nil	Director	Non Trading
Southpac Pty Ltd	Nil	Director	Non Trading
Brinba Pty Ltd	Nil	Director	Non Trading
Southpac Holdings Pty Ltd	Nil	Director	Property Owner
Pondzash Pty Ltd	Nil	Director	Non Trading
Oceania Export & Import Co Pty Ltd	Nil	Director	Non Trading
Moona Plains Pastoral Pty Ltd	Shareholder	Director	Family Trustee Company
Redpoc Pty Ltd	Nil	Director	Trustee Company

¹⁰⁴ Transcript of hearing 16 October 2002 (proof), p. 6.

Cecourt Pty Ltd	Nil	Director	Trustee Company
Keltham Pty Ltd	Nil	Director	Trustee Company
The Stables Perisher Pty Ltd	Nil	Director	Tourism

5.21 Mr Obeid signed a declaration attached to his primary return which stated:

I certify the Return is correct in all particulars to the best of my knowledge and belief, and is in accordance with the information available to me at the date of execution thereof.

I undertake that should I ascertain that any particular in such Return is erroneous, or if there is omission, then I will forthwith notify the Clerk and correct such error or omission.

Ordinary returns

5.22 Mr Obeid's interests and positions in corporations as specified in his ordinary returns for the years ending 30 June 1992 to 30 June 2002 are summarised in the table below. As described in relation to his primary return above, Mr Obeid signed and attached a disclaimer in case of accidental or inadvertent error in his return to each of his ordinary returns for the years ending 30 June 1992 to 30 June 2002. The interests and positions in corporations as declared by Mr Obeid are summarised in the tables below:

Table 5.2 The Hon E Obeid – declaration of interests and positions in corporations – ordinary returns, year ending 30 June 1992 to year ending 30 June 1996

Name of corporation	Nature of interest	Description of position	Description of principle objects
Year ending 30 June 1992			
Obeid Corporation Pty Ltd	Shareholder	Director	Family Trustee Company
Metrona Pastoral Pty Ltd	Nil	Director	Non Trading
Oceanline Constructions Pty Ltd	Nil	Director	Non Trading
Southpac Holdings Pty Ltd	Nil	Director	Non Trading
The Stables Perisher Pty Ltd	Nil	Director	Tourism
Year ending 30 June 1993			
Obeid Corporation Pty Ltd	Shareholder	Director	Family Trustee Company
Southpac Holdings Pty Ltd	Nil	Director	Property Owner
Moona Plains Pastoral Pty Ltd	Shareholder	Nil	Family Trust Company
Redpoc Pty Ltd	Shareholder	Director	Trustee Company
Cecourt Pty Ltd	Shareholder	Director	Trustee Company
The Stables Perisher Pty Ltd	Nil	Director	Tourism

Year ending 30 June 1994			
Obeid Corporation Pty Ltd	Shareholder	Director (resigned 26.08.93)	Family Trustee Company
Southpac Holdings Pty Ltd	Nil	Director (resigned 26.08.93)	Family Trust Company
Redpoc Pty Ltd	Shareholder	Director (resigned 26.08.93)	Trustee Company
Cecourt Pty Ltd	Shareholder	Director (resigned 26.08.94)	Trustee Company
The Stables Perisher Pty Ltd c/- Perisher Patience	Nil	Director (resigned 26.08.93)	Tourism
Jensay Pty Ltd	Nil	Director (appointed 26.08.94)	Property Owner
Olympia Group Pty Ltd	Nil	Director (appointed 22.04.94)	Refrigeration Makers
Year ending 30 June 1995			
Obeid Corporation Pty Ltd	Shareholder	Nil	Family Trustee Company
Southpac Holdings Pty Ltd	Shareholder	Nil	Family Trust Company
Redpoc Pty Ltd	Shareholder	Nil	Trustee Company
Cecourt Pty Ltd	Shareholder	Nil	Trustee Company
Pondzash Pty Ltd	Shareholder	Nil	Trustee Company
15 Garners Ave (No 1) Pty Ltd	Shareholder	Nil	Trustee Company
15 Garners Ave (No 2) Pty Ltd	Shareholder	Nil	Trustee Company
Year ending 30 June 1996			
Obeid Corporation Pty Ltd	Shareholder	Nil	Family Trustee Company
Southpac Holdings Pty Ltd	Shareholder	Nil	Family Trust Company
Redpoc Pty Ltd	Shareholder	Nil	Trustee Company
Cecourt Pty Ltd	Shareholder	Nil	Trustee Company
Pondzash Pty Ltd	Shareholder	Nil	Trustee Company
15 Garners Ave (No 1) Pty Ltd	Shareholder	Nil	Trustee Company
15 Garners Ave (No 2) Pty Ltd	Shareholder	Nil	Trustee Company

Table 5.3 The Hon E Obeid – declaration of interests and positions in corporations – ordinary returns, year ending 30 June 1997 to year ending 30 June 1999

Name of corporation	Nature of interest	Description of position	Description of principle objects
Year ending 30 June 1997			
Obeid Corporation Pty Ltd	Shareholder	Nil	Family Trustee Company
Southpac Holdings Pty Ltd	Shareholder	Nil	Family Trust Company
Redpoc Pty Ltd	Shareholder	Nil	Trustee Company
Cecourt Pty Ltd	Shareholder	Nil	Trustee Company
Pondzash Pty Ltd	Shareholder		Trustee Company
15 Garners Ave (No 1) Pty Ltd	Shareholder	Nil	Trustee Company
15 Garners Ave (No 2) Pty Ltd	Shareholder	Nil	Trustee Company
Year ending 30 June 1998			
Obeid Corporation Pty Ltd	Shareholder	Nil	Family Trustee Company
Southpac Holdings Pty Ltd	Shareholder	Nil	Family Trust Company
Redpoc Pty Ltd	Shareholder	Nil	Trustee Company
Cecourt Pty Ltd	Shareholder	Nil	Trustee Company
Pondzash Pty Ltd	Shareholder		Trustee Company
15 Garners Ave (No 1) Pty Ltd	Shareholder	Nil	Trustee Company
15 Garners Ave (No 2) Pty Ltd	Shareholder	Nil	Trustee Company
Year ending 30 June 1999			
Obeid Corporation Pty Ltd	Shareholder	Nil	Family Trustee Company
Southpac Holdings Pty Ltd	Shareholder	Nil	Family Trust Company
Pondzash Pty Ltd	Shareholder		Trustee Company
15 Garners Ave (No 1) Pty Ltd	Shareholder	Nil	Trustee Company
15 Garners Ave (No 2) Pty Ltd	Shareholder	Nil	Trustee Company
15 Garners Ave (No 3) Pty Ltd*	Shareholder	Nil	Trustee Company
Beirut Sydney Publishing Company Committee Pty Ltd*	Shareholder	Nil	Trustee Company
Max Cutting Pty Ltd	Shareholder	Nil	Trustee Company
South Sydney District Rugby League Football Club Limited	Director (non remunerative)	Nil	NRL Rugby League Competition
* Deregistered companies restored to non-active status for purposes of pursuit of defamation action			

Table 5.4 The Hon E Obeid – declaration of interests and positions in corporations – ordinary returns, year ending 30 June 2000 to year ending 30 June 2002

Name of corporation	Nature of	Description of	Description of
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	interest	position	principle objects
Year ending 30 June 2000			
Obeid Corporation Pty Ltd	Shareholder (ceased 3.11.99)	Nil	Family Trustee Company
Southpac Holdings Pty Ltd	Shareholder (ceased 3.11.99)	Nil	Family Trust Company
Pondzash Pty Ltd	Shareholder (ceased 3.11.99)		Trustee Company
15 Garners Ave (No 1) Pty Ltd	Shareholder (ceased 3.11.99)	Nil	Dormant
15 Garners Ave (No 2) Pty Ltd	Shareholder (ceased 3.11.99)	Nil	Dormant
15 Garners Ave (No 3) Pty Ltd	Shareholder (ceased 3.11.99)	Nil	Dormant
Beirut Sydney Publishing Company Committee Pty Ltd*	Shareholder (ceased 3.11.99)	Nil	Dormant
Max Cutting Pty Ltd	Shareholder (ceased 8.10.99)	Nil	Trading Company
Linkban Pty Limited	Shareholder (ceased 7.10.99)	Nil	Trading Company
South Sydney District Rugby League Football Club Limited	Director non remunerative ceased 28.7.99)	Nil	NRL Rugby League Competition
Moona Plains Pastoral Pty Ltd	Shareholder (ceased 15.4.92; processed by ASIC 21.10.99; effective 31.12.99)	Nil	(in liquidation)
Year ending 30 June 2001			
Hafamo Pty Ltd	Shareholder 5.9.00 ceased 3.10.00	–	Dormant
Year ending 30 June 2002			
Nil			

Additional information provided by Mr Obeid in relation to his pecuniary interest returns

5.23 The submission received from the Clerk of the Parliaments notes that:

Members' primary and ordinary returns are the only form of return required or permitted by the Regulation – the need for supplementary returns by Members was not anticipated in the Regulation. The practice of the provision of additional information by Members who wish to add to or correct their primary or ordinary returns was adopted early in the administration of the Register. This additional information is not tabled in the House, although they are filed in the Register with the Member's return for the relevant year. As a result of this practice the

additional information is open to public inspection as part of the compiled Register.¹⁰⁵

5.24 The submission received from the Clerk of the Parliaments details the instances where Mr Obeid has provided additional information in relation to his pecuniary interest disclosures on: 1 November 1996; 11 October 1999; 9 November 1999; 3 September 2002; and 17 September 2002. This information is reproduced in full below.

5.25 On 1 November 1996 Mr Obeid wrote advising that

... it has been brought to my attention by my accountants after September 30 this year that I am a shareholder in two companies not listed with my interests and positions in corporations. They are –

15 Garners Ave (No 3) Pty Ltd

Beirut Sydney Publishing Co Pty Ltd

I hold one share in each. I hold no position with either. Both are trustee companies.

Both companies had been deregistered, but subsequently restored for the sole purpose of litigation involving a legal action by myself.

Neither showed up on an ASIC search conducted on my behalf through the Parliamentary Library data base connection with corporate records.

The Australian Securities Commission has verbally advised my accountants that the two companies are listed as non-active and unable to operate outside the conditions set down for restoration to the corporate register.

Although the said shares are registered in my name, my accountants advise they do not appear to be beneficially held by myself.

They also report that in respect to 15 Garners Ave (No 2) Pty Ltd, the last entry in my 1996 declaration, that the one share recorded is not held beneficially by myself.

5.26 The receipt of this letter was acknowledged in a letter from [the Clerk] to Mr Obeid, which stated:

Thank you for your letter of 1 November 1996 forwarding additional information in respect of your Pecuniary Interests return for the year ended 30 June 1996.

Whilst there is no provision for supplementary returns under the Constitution (Disclosure by Members) Regulation 1983, your letter has been filed with your 1996 return.

5.27 On 11 October 1999 Mr Obeid wrote advising that:

My 1998/99 Pecuniary Interest Statement discloses that I hold one share in Max Cutting Pty Ltd. I have not previously declared this shareholding, as I have only just become aware that my name was still associated with this company.

¹⁰⁵ Clerk of the Parliaments, Submission, 9 October 2002, p. 6.

My shareholding in this company has not been revealed by previous corporate searches as it was incorrectly recorded in ASIC records under the name Edward Moses **Obeid**.

I believe the share was issued to me as an administrative measure when I was employed in an accountancy firm in 1971. Mr Max Cutting and his family now have some 700 shares. The company is a trading company that operates a vegetation plant hire business in the Western Suburbs. I have signed a relinquishment of the sole share back to Mr Cutting, dated 8 October 1999. Since the early 1970s I have not participated in the operation of the business, attended any meeting, or received any financial benefit from this company.

I also wish to advise you of two erroneous omissions from my Pecuniary Interest Statement relating to Moona Plains Pastoral Pty Ltd (Under External Administration) and Linkban Pty Ltd.

In regard to the latter, my former accountants did not process a 1992 request to transfer my single shareholding in Linkban Pty Ltd to my son, Paul Moses Obeid.

In 1992 other accountants did not process a transfer of my single share in Moona Plains Pastoral Pty Ltd from myself to my son, Gerard Obeid.

In both the above cases, I was unaware that there was still a technical association between myself and these two companies. I became aware of this oversight on 7 October 1999 after my 1998/99 Pecuniary Interest Statement had been lodged.

Since 1992 I have not received any remuneration from, and have played no management role in Linkban Pty Ltd and Moona Plains Pastoral Pty Ltd. The nominal shareholdings in my name have now been transferred in accordance with my 1992 instructions.

5.28 This letter was acknowledged in a letter from [the Clerk] to Mr Obeid, which stated:

Thank you for your letter of 11 October 1996 concerning the non disclosure of shares you hold in the three companies you mentioned.

The regulation providing for the scheme of disclosure of Pecuniary Interests by Members does not provide for supplementary disclosures. However, I will place your letter with the return furnished to me on 30 September 1999 so that the record is complete should anyone wish to investigate the register.

Since the Returns have already been tabled in the House, the details contained in your letter will not be included in the published Returns.

5.29 Mr Obeid provided an additional letter dated 9 November 1999 containing further additional information in relation to his 1999 return. The letter stated:

I wish to volunteer some additional information in relation to five companies that were declared in my 1999 Pecuniary Interest Statement. Beirut Sydney Publishing Co Pty Ltd, 15 Garners Avenue (No 1) Pty Ltd, 15 Garners Avenue (No 2) Pty Ltd and 15 Garners Avenue (No 3) all relate to a business undertaking that I conducted until the mid-1980s. Pondzash Pty Ltd is a trustee company.

All the companies were declared in my primary Pecuniary Interest Statement lodged on 12 September 1991. Beirut Sydney Publishing and Garners Avenue (No 3) were not included in returns between 1992 and 1998. Garners Avenue (No 1), Garners Avenue (No 2) and Pondzash were not included in returns between 1992 and 1994.

Pondzash is not a trading company and has not paid me dividends whilst I have been a Member of the Legislative Council. The remaining four companies have non-active status with ASIC and have not traded or paid dividends whilst I have been a Member of the Legislative Council.

I also wish to volunteer information in relation to a former company that was deregistered in 1994, Hafomo Pty Ltd. Hafomo was declared in my 1991 Pecuniary Interest Statement, but was not included in returns between 1992 and 1995. It was deregistered in July 1994. Hafomo was not an ongoing business, and had not paid me any dividends whilst I have been a Member of the Legislative Council.

The decisions to omit these companies from the stated returns were made by the accountants responsible for preparing my Pecuniary Interest Statements between 1992 and 1998. Upon review by my current accountant, it is clear these decisions were erroneous.

I wish to stress that Beirut Sydney Publishing, Garners Avenue (no 1), Garners Avenue (No 2), Garners Avenue (No 3) and Pondzash have all been correctly declared in my 1999 Pecuniary Interest Statement. Hafomo no longer exists and is correctly omitted from my 1999 statement.

Finally I reiterate that whilst I have been a member of the Legislative Council all of the above companies have not been part of any ongoing business activity and they have not paid any dividends to me.

5.30 This letter was also acknowledged in a letter from [the Clerk] to Mr Obeid which stated:

Thank you for your letter of 9 November 1999 concerning the disclosure of additional information in relation to the five companies you hold.

The regulation providing for the scheme of disclosure of Pecuniary Interests by Members does not provide for supplementary disclosures. However, I will place your letter with the return furnished to me on 30 September 1999 so that the record is complete should anyone wish to investigate the register.

5.31 On 3 September 2002, Mr Obeid wrote advising that:

In my 1993/94 pecuniary interest statement I declared I was a director of two companies – Jensay Pty Ltd and Olympia Group Pty Ltd. I became a director on 22 April, 1994.

I have today become aware that my 1994/95 pecuniary interest statement did not include a reference to these two companies.

I would like to draw your attention to the fact that I was a director of these two companies for less than five months of the 1994/95 financial year. I ceased to be a director on 16 November 1994.

Even through my brief association with these two companies has been a matter of public record since 1994, I ask that you note this correction and place it on the publicly available file.

5.32 This letter was acknowledged in a letter from [the Clerk] to Mr Obeid, which stated:

Thank you for your letter of 3 September 2002 forwarding additional information in respect of your Pecuniary Interests return for the year ended 30 June 1995.

You will be aware that there is no provision for supplementary returns under the *Constitution (Disclosure by Members) Regulation 1983*. I will place your letter in the current register and a copy with the 1995 register.

5.33 Mr Obeid forwarded an additional letter dated 17 September 2002 correcting his pecuniary interest returns for the years 1991, 1992, 1993, 1994, 1996 and 1999. It stated:

I have become aware that, in relation to several of my past pecuniary interest returns, there have been errors in recording the periods in which I was associated with a number of companies. The companies concerned are listed in schedule A attached to this letter.

I would also like to draw your attention to several other companies in which I had a technical interest. The companies listed in schedule B were inadvertently omitted in previous returns.

The advice is provided to you in accordance with the standard procedure for making such corrections.

Schedule A

Name of Company	Dates in Previous Returns	Revised dates
Brinba (also known as Maxicon)	From 12/09/91	12/09/91 - 06/04/92
Keltham	From 12/09/91	12/09/91 - 15/04/92
Media Corporation	From 12/09/91	12/09/91 - 24/06/93
Metrona Pastoral	12/09/91 – 30/06/92	12/09/91 - 24/06/93
Oceania Export and Import	From 12/09/91	12/09/91 - 15/04/92
Oceanline Constructions	From 12/09/91	12/09/91 – 03/03/93
Riovale	From 12/09/91	12/09/91 – 15/04/92
South Sydney District Rugby League Football Club	31/08/99 – 28/07/99	31/08/99 – 22/10/99
Southpac	From 12/09/91	12/09/91 – 15/04/92
Sydney Shout	From 12/09/91	12/09/91 – 13/08/93

Schedule B

Name of Company	Dates
Ashglide ⁱ	12/09/1991 – 19/04/1993
Detuca ⁱ	12/09/1991 – 24/06/1993
Jet Set Constructions ⁱⁱ	12/09/1991 – 27/02/1992
Law Foundation Superannuation Nominees ⁱⁱⁱ	12/09/1991 – 16/12/1994
Rainbow Pacific ⁱ	12/09/1991 – 13/06/1996
South Sydney Leagues Club ^{iv}	01/07/1999 – 28/07/1999

ⁱ Since becoming a Member of the Legislative Council I did not participate in the management of, or attend any Board meetings of, this company.

ⁱⁱ My actual involvement in this company ended prior to becoming a Member of the Legislative Council

ⁱⁱⁱ Associated with an appointment to the NSW Law Foundation prior to becoming a Member of the Legislative Council

^{iv} South Sydney District Rugby League Football Club was included in the 1999/2000 pecuniary interest return. My membership of the Board of South Sydney Leagues Club was for four weeks only, and I did not attend any meetings of the Board.

5.34 This letter was acknowledged in a letter from [the Clerk] to Mr Obeid, which stated:

Thank you for your letter of 17 September 2002 forwarding additional information in respect of discrepancies in your previous Pecuniary Interests returns for the years 1991, 1992, 1993, 1994, 1996 and 2000.¹⁰⁶

You will be aware that there is no provision for supplementary returns under the *Constitution (Disclosure by Members) Regulation* 1983. I will, however, place your letter in the current register and a copy with the 1991, 1992, 1993, 1994, 1996 and 2000¹⁰⁷ register.

Errors in the disclosure of Mr Obeid's interests/positions in corporations

5.35 The submission received from the Clerk of the Parliaments states that:

Mr Obeid has clearly contravened the strict requirements of Clause 12 of the Regulation by failing to fully disclose all interests and positions in corporations in

¹⁰⁶ The letter as sent to Mr Obeid on 18 September 2002 stated 1999 instead of 2000 but was corrected by a subsequent letter on 25 September 2002.

¹⁰⁷ The letter as sent to Mr Obeid on 18 September 2002 stated 1999 instead of 2000 but was corrected by a subsequent letter on 25 September 2002.

his primary return for 1991 and ordinary returns from 1992 to 1999 lodged with the Clerk.¹⁰⁸

5.36 Following the hearing on 16 October 2002, each of the interests/positions in corporations identified in the document tabled by Mr Obeid were checked against Mr Obeid's pecuniary interest returns from 1991 – 2002. The results are summarised in a table, reproduced as Appendix 7, entitled 'The Hon E Obeid MLC: Summary of interests/positions in corporations.' This table was forwarded to Mr Obeid to give him an opportunity to review it and respond, if necessary. Mr Obeid did provide a number of corrections which have been incorporated into the table. The Committee notes that Mr Obeid has had interests/positions in 31 corporations since his election in 1991. Whilst the Committee has found that there is a large number of specific entries that were not included in Mr Obeid's pecuniary interest returns, the important question is whether or not Mr Obeid had disclosed his association with corporations. During the period up until Mr Obeid's most recent correspondence to the Clerk on 17 September 2002, there were only six corporations with which Mr Obeid's association had not been disclosed:

- Ashglide
- Detuca
- Jet Set Constructions
- Rainbow Pacific
- Law Foundation Superannuation Nominees
- South Sydney Leagues Club

(The latter two appear to be discretionary disclosures.)

5.37 Following his most recent correspondence to the Clerk on 17 September 2002, Mr Obeid had disclosed an association with all 31 corporations. When he gave sworn evidence before the Committee on 16 October 2002, Mr Obeid provided full details of the 232 specific entries in relation to his interests/positions in corporations that were required to have been disclosed in the period since 1991.

Were Mr Obeid's errors 'wilful'?

The evidence of the Hon G Pearce MLC

¹⁰⁸ Clerk of the Parliaments, Submission, 9 October 2002, p 18.

5.38

Set out below is a summary of the points made by Mr Pearce, in his submission and his sworn evidence before the Committee on 16 October 2002, in relation to the question of whether or not Mr Obeid's errors in disclosure of his pecuniary interest were 'wilful':

- Mr Obeid's statement that he relied on the advice of his accountants in preparing and checking his pecuniary interest returns 'supports the contention that his omissions and false declarations were intentional and deliberate. He clearly applied his mind to the question as to what was disclosed. He gave instructions to his accountants, considered their advice and then made the entries or omitted to make entries.'¹⁰⁹
- The non-disclosure of companies in which the Member states he ceased to have an interest, 'also supports the contention that he has deliberately and intentionally chosen not to disclose the positions and interests.'¹¹⁰
- At paragraphs 25 to 26 of his written submission, Mr Pearce stated:

25. In relation to Linkban and Moona Plains, in which the Member claimed inadvertence due to the failure of a prior accountant to carry out his instructions to transfer his share to various of his sons, the Committee should seek to obtain evidence of the instruction.

26. However, this assertion also appears to be at odds with the Obeid group corporate activity that took place in 1992 and 1993.

In fact, in the first part of 1992, a number of documents were filed (including outstanding annual returns) in relation to 15 Garners (No. 1), (No. 2) and (No. 3), Beirut Sydney Publishing, Brindba, Hafomo (all in June 1992) Redpoc (January 1992) and Moona Plains (March 1992) all of which listed the Member as a shareholder, i.e. establishing his shareholding...¹¹¹

- In the various letters to the Clerk in which Mr Obeid admitted making omissions, 'there was a deliberate and repeated attempt to obfuscate and minimise the impact. For example, in the letter of 11 October 1999, the Member refers to 'technical' involvement but does not disclose separately his shareholding and other positions which were clearly not 'technical'.¹¹²
- Mr Obeid's 'persistent and deliberate false disclosures and non-disclosures in ten returns over nine years cannot be ignored or excused as inadvertence'.¹¹³

¹⁰⁹ The Hon G Pearce MLC, Submission, 3 October 2002: p 6, Transcript, 16 October 2002, p 3.

¹¹⁰ The Hon G Pearce, Submission, p 6.

¹¹¹ Ibid, pp 6-7.

¹¹² Ibid, p 7.

¹¹³ Ibid.

- Mr Obeid's claim that that he has not made any deliberate or wilful omissions in his pecuniary interest statements is 'completely inconsistent with the fact that the Member's pecuniary interest statements contain a litany of inconsistencies.'¹¹⁴
- The pattern of errors in the Members' disclosures over the years indicates that once the Member had ceased to have active involvement in a business, he 'ceased to have any regard or responsibility for the entities in which he had previously been involved.'¹¹⁵

5.39 During the hearing on 16 October 2002, Mr Pearce was questioned about his views on whether Mr Obeid's errors had been 'wilful'.

CHAIR: You have alleged that Mr Obeid has been making false entries or omissions. What evidence can you present to the Committee to support the contention that any false entry or omission is wilful?

The Hon. GREG PEARCE: I cannot give you anything other than what is publicly available, and I have given you that. For my own part, I am willing to be convinced but I fail to see how anyone could in 10 declarations made over nine years, well over 100 times, with advice and having checked on numerous occasions and written to correct the information, having received responses from the Clerk and having been questioned in Parliament be said to have been other than deliberate in what he or she has done. I do not think any member of the public could conceive that this action is other than wilful.¹¹⁶

* * *

CHAIR: ... Mr Pearce, I would like you to explain your argument in paragraphs 21 and 23 on pages 6 to 8 [of your submission] as to why the apparent false entries or omissions were "intentional and deliberate".

The Hon. GREG PEARCE: The member indicated in his statement in Parliament that the accountants were to blame for the errors. The issue that I was trying to point to has two parts. First, if he had his accountants prepare advice, he clearly must have understood that he had an obligation to make disclosures. He gave instructions to the accountants, he received advice from them and then he acted having taken into account that advice. So he quite clearly went through a process of making a deliberate decision as to what he would disclose.

The Hon. JOHN HATZISTERGOS: What do you say is the motive?

The Hon. GREG PEARCE: I do not know; you will have to ask him.

The Hon. JOHN HATZISTERGOS: So you have no idea about motive?

¹¹⁴ Transcript, 16 October 2002, p 3.

¹¹⁵ Ibid, pp 3-4.

¹¹⁶ Transcript, 16 October 2002, p 7.

The Hon. GREG PEARCE: How would I have any idea what his motive was?

The Hon. JOHN HATZISTERGOS: You are alleging that it was wilful and a calculated measure.

The Hon. GREG PEARCE: I have not said calculated; I have said that it seems to me that you cannot conclude that it was other than deliberate when he has said himself that he instructed his accountant, obtained advice from his accountant and then made a decision as to what to disclose. That is clearly deliberate.

The Hon. JOHN HATZISTERGOS: If people did things deliberately in the way that you have defined it, they would have done it for a purpose or reason. What is the purpose or reason that you believe is behind these claimed non-disclosures and false entries?

The Hon. GREG PEARCE: I can only go on what Mr Obeid has said and I have already commented about that.

The Hon. JOHN HATZISTERGOS: So you are unable to give us a purpose?

The Hon. GREG PEARCE: No, I am not able to give you a purpose. I understand that is the reason why you are calling Mr Obeid to appear before the Committee.¹¹⁷

* * *

CHAIR: On page 6 you use the words "deliberate and intentional". Why do you not use "wilful"?

The Hon. GREG PEARCE: Simply because these days we use the word "deliberate" more than "wilful" in normal parlance. It is a word that is basically a simile for wilful in the various dictionary definitions. I can refer you to other dictionary definitions—such as the Longman dictionary or Collins—all of which say "intentional or deliberate".

The Hon. JOHN HATZISTERGOS: They are not substitutes for the words "wilful contravention".

CHAIR: Do you believe in this case "wilful" and "intentional and deliberate" have the same meaning?

The Hon. GREG PEARCE: It is not for me to make that decision at the moment. I am telling you that, based on what I have seen and heard—

The Hon. PETER PRIMROSE: You can tell us what your understanding is. You used the word "simile" a few minutes ago. Do you believe the words are similes; do you believe they have the same meaning?

The Hon. GREG PEARCE: From what I have seen and heard to date, my current understanding and belief is that the Minister has been wilful.

¹¹⁷ Ibid, pp 7-8.

The Hon. AMANDA FAZIO: But you were not prepared to say that in your submission. On the first page of your submission you refer to possible contraventions. You then go through other cases and use the words "intentional and deliberate". In fact, in your primary interest returns summary you call them "lies". If you are prepared to use that language and say that you believe the Minister lied in his pecuniary interest statement, why are you so shy about using the term "wilful" in your submission? Is it because you are not sure of your facts?

The Hon. GREG PEARCE: No, I am not at all shy about using the term. As I understand it, the process—perhaps you have not focused on this, Ms Fazio—is that this Committee is inquiring into the various issues. It is then for this Committee to make a recommendation to the House and for the House to make a decision. My submission is a submission to the Committee. It is not a conclusion in itself so I did not need to use words of conclusion. I simply made a submission to try to assist the Committee in which I set out the facts that were publicly available at that stage. It is a matter for the Committee to determine whether they represent the full facts. When I am asked today what my conclusion is, as I said, I have not yet seen the rest of the evidence that the Committee will acquire. I have not seen yet the definition and the interpretation that the Committee recommends to the House so I have not finalised a concluded opinion. But as I sit here now it seems to me that there is no other conclusion than that the Minister was wilful. I hope that explains the circumstance.¹¹⁸

* * *

Reverend the Hon. FRED NILE: But you do believe yourself that they were wilful, otherwise you would not be here now?

The Hon. GREG PEARCE: As I answered earlier, based on what I have seen I cannot see how any other conclusion is possible, but I am looking forward to seeing the other evidence that the Committee obtains and I am looking forward to the debate in the House when, with all of the evidence and members' views about it, and the benefit of this Committee's recommendations, and particularly the benefit of this Committee's interpretation of what is wilful and whether all of this can be considered wilful or not, then I will be in a position to make a final decision. But, as I sit here now, with just the bald facts of the nondisclosures, the explanations offered so far by Mr Obeid, and the letters and the contamination of the letters, in my interpretation, where the Minister in his letters tried to obfuscate and tried to minimise the impact, I cannot come to any other conclusion than on what we have at the moment that it is wilful, but I am looking forward to the Committee's report and recommendations to make a final decision.¹¹⁹

The evidence of Mr Obeid

5.40 The written submission received from Mr Obeid highlights four key points in relation to the question of whether his errors in his pecuniary interest returns were "wilful":

¹¹⁸ Ibid, pp 8-9.

¹¹⁹ Ibid, p 14.

1. As a member of Parliament and as a Minister I have never had a conflict of interest.
2. I have not made any deliberate or wilful omissions regarding my pecuniary interest statements.
3. I have not gained or sought to gain any advantage from any errors that have been made in my pecuniary interest statements.
4. Whenever I became aware of errors, I moved swiftly to correct the public record.¹²⁰

5.41 When he appeared before the Committee to give sworn evidence on 16 October 2002, Mr Obeid was asked whether he could assure the Committee that the errors in his pecuniary interest returns were not 'wilful.'

CHAIR: Mr Pearce in his submission identifies numerous mistakes in your pecuniary interests returns over the years. Can you assure the Committee that none of these mistakes were deliberate or wilful?

The Hon. EDDIE OBEID: Madam Chair, I acknowledge mistakes were made. I acknowledge errors were made. I have attempted to correct them upon the advice I got at the time when I got it and I can only say that I am not blaming anyone for this, I have taken full responsibility for that and, as I am made aware of any issue in relation to my pecuniary interests I declare it to the Clerk.¹²¹

5.42 Despite the fact that Mr Obeid has taken full responsibility for the mistakes in his pecuniary interest returns, he gave evidence as to the circumstances which led to the omission of some matters:

The Hon. PATRICIA FORSYTHE: You said that a professional accountant undertook searches. Given that anyone can look at the Australian Securities and Investments Commission register and find a company such as Ashglide Pty Ltd, why was the accountant not able to do so and establish that you were a director and the secretary?

The Hon. EDDIE OBEID: That is exactly what I am saying. It amazes me. Everything that is being referred to here is on the public record. The error was that it was not translated to my pecuniary interests declaration by the accountant who was asked to do the search. Everything that has been mentioned today is already on the public record; it is there for everyone to see. It was a question of doing the searches year by year and reflecting the information in my declarations. That did not occur and I acknowledge that. Those errors were corrected as different accountants came in and searched appropriately and found them. We acknowledged that in Parliament. It is one of those issues. I cannot answer better than that.¹²²

¹²⁰ The Hon E Obeid MLC, Submission, 4 October 2002, p 1.

¹²¹ Transcript, 16 October 2002, p 35.

¹²² Ibid, p. 27.

5.43 As noted at paragraph 5.23, whilst there is no provision in the Regulation for Members to lodge supplementary returns a convention has been adopted whereby additional information provided to the Clerk is filed with the register and open to public inspection. Mr Obeid gave evidence as to the nature of the additional information provided by him to the Clerk, as has been done by other Members (a list of which is reproduced as Appendix 8):

CHAIR: I know that you have corrected the errors, but you have not actually specified the nature of the interest. You have not indicated whether you are a director, a company secretary or just a shareholder. Why have you not provided that information?

The Hon. EDDIE OBEID: To the best of my knowledge, as the Clerk of the Legislative Council has previously advised me and others, there is no set prescriptive procedure for the making of corrections to unintentional errors in pecuniary interest statements. In the absence of a prescribed form, when I made written corrections I attempted to communicate all the relevant information, particularly to highlight any omission of a company in a given year.¹²³

5.44 As noted at paragraphs 5.14-16 above, when he appeared before the Committee to give sworn evidence on 16 October 2002 Mr Obeid tabled a document which detailed his interests/positions in 31 corporations from 1991 to 2001, including 232 entries which were required to be disclosed under Clause 12 of the Regulation.

The Committee's conclusions

5.45 On the basis of the evidence before it, the Committee makes the following findings in relation to the question of wilful contravention in this case:

1. Mr Obeid has made errors in his pecuniary interest returns between 1991 and 1999.
2. The errors relate to information that was already publicly available through ASIC.
3. The errors have been corrected in accordance with relevant conventions.
4. There was no evidence to suggest any motive or conflict of interest in non disclosure.
5. The errors were not wilful contraventions within the terms of the *Constitution (Disclosures by Members) Regulation 1983*.

¹²³ Ibid, p. 25.

Chapter 6 What, if any, sanctions should be enforced in this matter?

6.1 Paragraph 4 (b) of the terms of reference for this inquiry requires the Committee to investigate and report on ‘what, if any, sanctions should be enforced in relation to the conduct of the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, in this matter.’

Section 14A (2) Constitution Act 1902

6.2 Section 14A (2) of the *Constitution Act 1902* provides that:

If a Member of either House of Parliament wilfully contravenes any regulation made under subsection (1), that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.

6.3 The Committee has concluded, in Chapter Five of this report, that Mr Obeid’s errors in his pecuniary interest returns are not wilful contraventions of the *Constitution (Disclosures by Members) Regulation 1983*. Accordingly no sanction can be recommended.

6.4 The Committee has found that Mr Obeid’s failure to disclose his association with corporations, as with his errors in not including various specific entries in relation to his interests/positions in corporations (with which he had, in most cases, already disclosed an association), was not wilful, and that there is no evidence that these omissions have had any bearing on his role as a Member of Parliament or a Minister.

Appendix 1

**Notice of motion given by
the Hon Greg Pearce MLC
on 19/9/2002, withdrawn on
24/9/2002**

Extract from: *Notices of Motions and Orders of the Day, Legislative Council, 24 September 2002, No. 34, entry 97.*

97. Mr Pearce to move—

1. That this House notes the requirements of section 14A (1) of the Constitution Act 1902 and the Constitution (Disclosures by Members) Regulation 1983 for Members to disclose the following pecuniary interests or other matters:
 - (a) real property
 - (b) sources of income
 - (c) gifts
 - (d) contributions to travel
 - (e) interests and positions in corporations
 - (f) positions in trade unions and professions or business associations
 - (g) debts
 - (h) dispositions of property, and
 - (i) discretionary disclosures.

2. That this House further notes section 14 A (2) of the Constitution Act 1902 which states:
 - (2) If a Member of either House of Parliament wilfully contravenes any regulation made under subsection (1), that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.

3. That this House notes that in response to various Questions without Notice directed to the Honourable Edward Moses Obeid, about his pecuniary interests returns, he has stated, among other things:
 - (a) "...Since I became a minister I have had no active part in any professional practice or in any business." – Letter to Premier in Hansard, 8 September 1999, p. 64,
 - (b) "...my pecuniary interests of 1999 stand." – Hansard, 29 August 2000, p. 8392,
 - (c) "I have complied with the requirements of my pecuniary register every year." – Hansard, 31 August 2000, p. 8555,
 - (d) "My pecuniary interests are well in order..." – Hansard, 5 September 9 2000, p. 8602
 - (e) "...I have answered enough questions on my pecuniary interests. They are there for everyone to see. They comply with the requirements of the Constitution..." – Hansard, 31 October 2000, p. 9331,
 - (f) "...Anything I have to say about my pecuniary interests is well recorded. Any time that I feel it should be corrected, I have done so." – Hansard proof, 18 September 2002, p. 16.

4. That this House is of the opinion that the Honourable Edward Moses Obeid, Minister for Mineral Resources and Minister for Fisheries, has contravened the requirements of clause 9 of the Constitution (Disclosures by Members) Regulation 1983, by failing to disclose in his primary and various ordinary returns lodged with the Clerk by 1 October each year, sources of income, as follows:
- (a) as guarantor of borrowings by various entities including Dakmint Pty Limited and Plyfee Pty Limited,
 - (b) as a lender to various individuals and entities including Strathfield Councillor John Abi-Saad,
 - (c) as guarantor of the obligations of Southpac Holdings Pty Limited to Stephen A. Elias Pty Limited,
 - (d) as beneficiary of dealings between Keltham Pty Limited and the NSW Department of Housing,
 - (e) as a secured creditor of Keltham Pty Limited.
5. That this House is of the opinion that the Honourable Edward Moses Obeid, Minister for Mineral Resources and Minister for Fisheries, has contravened the requirements of clause 12 of the Constitution (Disclosures by Members) Regulation 1983, by failing to disclose in his primary and various ordinary returns lodged with the Clerk by 1 October each year, his interests and positions in the following corporations:
- (a) Linkban Pty Limited
 - (b) 15 Garners Avenue (No. 2) Pty Limited
 - (c) Sydney Shout Pty Limited
 - (d) Beirut Sydney Publishing Pty Limited
 - (e) Riovale Pty Limited
 - (f) Metrona Pastoral Pty Limited
 - (g) 15 Garners Avenue (No. 3) Pty Limited
 - (h) Oceanline Constructions Pty Limited
 - (i) Hafomo Pty Limited
 - (j) Media Corporation Pty Limited
 - (k) 15 Garners Avenue (No. 1) Pty Limited
 - (l) Southpac Pty Limited
 - (m) Brinba (or Maxicon Group) Pty Limited
 - (n) Southpac Holdings Pty Limited
 - (o) Pondzsash Pty Limited
 - (p) Oceania Export & Import Co Pty Limited
 - (q) Moona Plains Pastoral Pty Limited
 - (r) Redpoc Pty Limited
 - (s) Cecourt Pty Limited
 - (t) Keltham Pty Limited
 - (u) Jensay Pty Limited
 - (v) Olympia Group Pty Limited
 - (w) Max Cutting Pty Limited
 - (x) Law Foundation Superannuation Nominees Pty Limited
 - (y) Legal Expense Insurance Limited
 - (z) Rainbow Pacific Pty Limited
 - (aa) Ashglide Pty Limited

- (bb) Detuca Pty Limited
- (cc) Jetset Constructions Pty Limited.

6. That this House is of the opinion that the Honourable Edward Moses Obeid is, for the reasons outlined in paragraphs 3, 4 and 5, unfit to serve as a Minister of the Crown.
7. That under section 14A (2) of the Constitution Act 1902, this House is of the opinion and declares that the circumstances of the failure to disclose the pecuniary interests outlined in paragraphs 4 and 5 above:
 - (a) constitute a wilful contravention of the requirements of the Constitution (Disclosures by Members) Regulations 1983 by the Honourable Edward Moses Obeid, Minister for Mineral Resources and Minister for Fisheries, and
 - (b) is of such a nature as to warrant the seat of the Member being declared vacant.
8. That, under section 14 (2) of the Constitution Act 1902, and for the circumstances and reasons declared in paragraph 7, this House declares the seat of the Honourable Edward Moses Obeid, as a Member of the Legislative Council, to be vacant.

(Notice given 19 September 2002)

Appendix 2

Correspondence between the Hon Edward Obeid MLC and the Chair concerning a question asked at the hearing

Appendix 3

Provisions in other Australian Parliaments concerning disclosure of Members' pecuniary interests -

Summary of differences

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Jurisdiction	Source of authority	Variations in provisions including threshold values where applicable	Enforcement and/or administration	Sanctions
Senate	Special Order of the Senate (17 March 1994)	<ul style="list-style-type: none"> ▪ Includes interests of spouse, partner and dependent children of which Member aware (records kept confidential to Committee, unless conflict of interest arises) ▪ Must notify within 28 days of any alteration occurring. ▪ Gifts \$500+ from official sources and \$200+ from other sources ▪ 'Any other assets' (excluding household) \$5000+ ▪ Any other interests where a conflict of interest with Member's public duties could be seen to arise 	Standing Committee of Senators' Interests (currently has majority of non-Government Senators) has administrative functions	'Knowingly' failing to comply is a serious contempt of the Senate; to be referred to Privileges Committee
House of Representatives	resolutions (9 October 1984 amended 21 March 1985, 13 February 1986, 22 October 1986, 30 November 1988 and 9 November 1994).	<ul style="list-style-type: none"> • Includes interests of spouse and dependent children of which Member aware • Must notify within 28 days of any alteration occurring • Gifts \$500+ from official sources and \$200+ from other sources • 'Any other assets' (excluding household) \$5000+ • Any other interests where a conflict of interest with Member's public duties could be seen to arise 	Committee of Members' Interests has administrative and complaints functions	'Knowingly' failing to comply is a serious contempt of the House
Victoria	Members of Parliament (Register of Interests) Act 1978	<ul style="list-style-type: none"> ▪ Includes family trusts ▪ Annual ordinary returns required; changes may be notified to Clerk at any time <li style="padding-left: 40px;">family trusts ▪ Gifts \$500+ 	Register not to be inspected except where someone is directly authorised by the Clerk; a summary by Clerk is published	Any 'wilful contravention' is contempt of Parliament, a fine may be determined by House not exceeding \$2000. Default in payment of fine means seat

Jurisdiction	Source of authority	Variations in provisions including threshold values where applicable	Enforcement and/or administration	Sanctions
		<ul style="list-style-type: none"> ▪ Income \$500+ ▪ Beneficial interest in corporation \$500+ ▪ Any other substantial interest (pecuniary or not) of Member, or of a family member of which Member aware, which the Member considers might appear to raise a material conflict of interest. 		becomes vacant.
Queensland	Resolution of the House 25 May 1999	<ul style="list-style-type: none"> • 2 Registers (one for Members and one for 'related persons'.) • Must notify within one month of changes; annual 'no changes' statements must be filed if applicable. • Details of related person only if Member is aware of it. • Gifts \$500+ • Sources of income \$500+ (exceptions) • Assets \$5000+ (except household and personal effects, motor vehicle, superannuation entitlements) • Financial contributor to political party, trade or professional association of \$500+ 	<p>Members' Ethics and Parliamentary Privileges Committee.</p> <ul style="list-style-type: none"> • Registrar advises Members on questions raised as to whether or not a matter should be included in statement; if matter not resolved referred to Committee (defined procedure) • Inspection of the Register of Related Persons Interests restricted to nominated persons (Speaker, Premier, any other political party leader, Chairman and members of Committee, Criminal Justice Commission, Auditor-General) • Registrar may refer allegations from Members or others of failure to comply to the Members' Ethics and Parliamentary Privileges Committee for resolution (defined procedure) 	'Knowingly' failing to comply is contempt.
Tasmania	Parliamentary (Disclosure of Interests) Act 1996	<ul style="list-style-type: none"> • (stet)Annual ordinary returns required; any changes may be notified to Clerk, who amends the return • Source of income \$500+ • Liabilities \$500+ • Travel \$250+ • Gifts \$500 		Failure to comply is contempt of Parliament. In addition to any punishment for contempt, the House may admonish, impose a fine of not more than \$10000, and/or suspend the Member for any determined period.
South Australia	Members of Parliament (Register of Interests) Act	<ul style="list-style-type: none"> • Includes interests of Members' family • Annual returns required; changes may be 		Wilful contravention or failure to comply results in penalty of not

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Jurisdiction	Source of authority	Variations in provisions including threshold values where applicable	Enforcement and/or administration	Sanctions
	1983	<ul style="list-style-type: none"> • notified to Registrar • Income source \$1000+ • Travel \$750+ • Gifts \$750+ • Use of property \$750+ not acquired for adequate consideration • Contract with monetary consideration \$7500+ • Investor in company of \$10000+ • Debtors outside family \$7500+ • Creditors outside family \$10000+ 		more than \$5000.
Western Australia	Members of Parliament (Financial Interests) Act 1992	<ul style="list-style-type: none"> • Annual returns required; do not need to disclose any information disclosed in a previous return • Sources of income \$500+ • Gifts \$500+ • Debts \$500+ 	<ul style="list-style-type: none"> • A Member shall not publish or comment on information derived from the register during proceedings in Parliament unless information is a fair and accurate summary, or comment is fair, and published in good faith. • Contravention constitutes contempt . 	Wilful contravention or failure to comply with requirement to lodge a return is contempt of the House
Northern Territory	Legislative Assembly (Register of Members' Interests) Act 1992	<ul style="list-style-type: none"> ▪ Includes certain interests of Member's family • Annual returns required AND must advise Registrar of any change within 60 days of change occurring, Register to amend the Register accordingly • Gifts \$500+ • Sources of income \$500+ • Any other substantial interest of the member or family of which Member has knowledge (pecuniary or not) which the Member considers might appear to raise conflict between private interest and public duty. 	A person shall not publish or comment on information contained in the register unless the information is a fair and accurate summary or the comment is fair and it is published or made without malice in the public interest.	Wilful contravention is contempt of the Assembly.
Australian Capital Territory	Resolution of the House 7 April 1992(amended 27 August 1998), and	<ul style="list-style-type: none"> • Includes interests of spouse (including de facto) and dependent children, of which Member aware 		

Jurisdiction	Source of authority	Variations in provisions including threshold values where applicable	Enforcement and/or administration	Sanctions
	Explanatory Notes	<ul style="list-style-type: none"> • Must notify within 28 days of any alteration. • Gifts \$250+ from official sources, \$100+ from non-official sources • Includes frequent flyer points 		

Appendix 4

Registrable interests and positions in corporations:

Other Australian jurisdictions

Summary of registrable interests and positions in corporations in other Australian jurisdictions

Jurisdiction	Registrable interests and positions in corporations
Senate	Name of company in which shares held; nominee company in which beneficial interest held; registered directorship of any company. Includes interests/positions of Member's spouse/partner/dependent child, of which Member is aware.
House of Representatives	As above.
Victoria	Name or description of company in which Member held an office or a beneficial interest exceeding \$500.
Queensland	<ul style="list-style-type: none"> ▪ Name of company in which shares or a controlling interest held; ▪ (where controlling interest held) details of company's shareholdings in any other company; ▪ (where shares held in a private company) details of investments or beneficial interests of the company; ▪ (where shares held in a private company that is the holding company of another company) details of any investments or beneficial interests of the holding company, but not the value thereof; ▪ details of any company in which in which an office held. <p>Includes interests/offices of related persons.</p>
South Australia	Name of company in which Member, or family, held an office; name or description of company in which Member, or family, is an investor. Only includes information known to the Member or ascertainable by reasonable diligence.
Western Australia	Name, address, and principal business of any corporation in which Member had an interest or position.
Tasmania	Name, address, and principal objects of any corporation in which Member held an interest or position. Exceptions apply for certain non-profit corporations.
Northern Territory	Name and description of company in which Member had a beneficial interest or held an office.
ACT	Name of company, including holding/ subsidiary/ nominee company, in which Member, spouse or dependant held shares. Includes any relevant interest in shares, whether held directly or indirectly, which enables Member etc to exercise control over the right to vote or dispose of shares.

Appendix 5

Sections 608-609 and 92 of the *Corporations Act 2001* (Commonwealth)

Section 608

608 Relevant interests in securities

Basic rule—relevant interest is holding, or controlling voting or disposal of, securities

- (1) A person has a relevant interest in securities if they:
- (a) are the holder of the securities; or
 - (b) have power to exercise, or control the exercise of, a right to vote attached to the securities; or
 - (c) have power to dispose of, or control the exercise of a power to dispose of, the securities.

It does not matter how remote the relevant interest is or how it arises. If 2 or more people can jointly exercise one of these powers, each of them is taken to have that power.

Extension to control exercisable through a trust, agreement or practice

- (2) In this section, power or control includes:
- (a) power or control that is indirect; and
 - (b) power or control that is, or can be, exercised as a result of, by means of or by the revocation or breach of:
 - (i) a trust; or
 - (ii) an agreement; or
 - (iii) a practice; or
 - (iv) any combination of them;

whether or not they are enforceable; and

- (c) power or control that is, or can be made, subject to restraint or restriction.

It does not matter whether the power or control is express or implied, formal or informal, exercisable alone or jointly with someone else. It does not matter that the power or control cannot be related to a particular security.

Extension to relevant interests held through bodies corporate

- (3) A person has the relevant interests in any securities that any of the following has:
- (a) a body corporate, or managed investment scheme, in which the person's voting power is above 20%;

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- (b) a body corporate, or managed investment scheme, that the person controls.

Paragraph (a) does not apply to a relevant interest that the body corporate or scheme itself has in the securities merely because of the operation of that paragraph in relation to another body corporate or managed investment scheme.

- (4) For the purposes of paragraph (3)(b), a person controls a body corporate if the person has the capacity to determine the outcome of decisions about the body corporate's financial and operating policies.
- (5) In determining whether a person has this capacity:
 - (a) the practical influence the person can exert (rather than the rights they can enforce) is the issue to be addressed; and
 - (b) any practice or pattern of behaviour affecting the body corporate's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
- (5) The person does not control the body corporate merely because the person and an entity that is not an associate jointly have the capacity to determine the outcome of decisions about the body corporate's financial and operating policies.
- (7) A person is not taken to control a body corporate merely because of a capacity they have if they are under a legal obligation to exercise that capacity for the benefit of:
 - (a) if the person is an individual—someone else; or
 - (b) if the person is a body corporate—someone other than its members.

Extension to control in anticipation of performance of agreements etc.

- (8) If at a particular time all the following conditions are satisfied:
 - (a) a person has a relevant interest in issued securities;
 - (b) the person (whether before or after acquiring the relevant interest):
 - (i) has entered or enters into an agreement with another person with respect to the securities; or
 - (ii) has given or gives another person an enforceable right, or has been or is given an enforceable right by another person, in relation to the securities (whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition); or
 - (iii) has granted or grants an option to, or has been or is granted an option by, another person with respect to the securities;
 - (c) the other person would have a relevant interest in the securities if the agreement were performed, the right enforced or the option exercised;

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the other person is taken to already have a relevant interest in the securities.

Note: Subsections 609(6) and (7) deal with specific situations in which the agreement will not give rise to a relevant interest.

Body corporate may have relevant interest in its own securities

(9) This section may result in a body corporate having a relevant interest in its own securities.

Section 609

609 Situations not giving rise to relevant interests

Money lending and financial accommodation

- (1) A person does not have a relevant interest in securities merely because of a mortgage, charge or other security taken for the purpose of a transaction entered into by the person if:
 - (a) the mortgage, charge or security is taken or acquired in the ordinary course of the person's business of providing financial services and on ordinary commercial terms; and
 - (b) the person whose property is subject to the mortgage, charge or security is not an associate of the person.

Note: Sections 11 to 17 define associate.

Nominees and other trustees

- (2) A person who would otherwise have a relevant interest in securities as a bare trustee does not have a relevant interest in the securities if a beneficiary under the trust has a relevant interest in the securities because of a presently enforceable and unconditional right of the kind referred to in subsection 608(8).

Note: This subsection will often apply to a person who holds securities as a nominee.

Holding of securities by securities dealer

- (3) A securities dealer does not have a relevant interest in securities merely because they hold securities on behalf of someone else in the ordinary course of their securities business.

Shares covered by buy-backs

- (4) A person does not have a relevant interest in a company's shares if the relevant interest would arise merely because the company has entered into an agreement to buy back the shares.

Proxies

- (5) A person does not have a relevant interest in securities merely because the person has been appointed to vote as a proxy or representative at a meeting of members, or of a class of members, of the company, body or managed investment scheme if:
 - (a) the appointment is for one meeting only; and
 - (b) neither the person nor any associate gives valuable consideration for the appointment.

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Exchange traded options and futures contracts

- (6) A person does not have a relevant interest in securities merely because of:
- (a) an exchange traded option over the securities; or
 - (b) a right to acquire the securities given by a futures contract.

This subsection stops applying to the relevant interest when the obligation to make or take delivery of the securities arises.

Note: Without this subsection, subsection 608(8) would create a relevant interest from the option or contract.

Conditional agreements

- (7) A person does not have a relevant interest in securities merely because of an agreement if the agreement:
- (a) is conditional on:
 - (i) a resolution under item 7 in the table in section 611 being passed; or
 - (ii) ASIC exempting the acquisition under the agreement from the provisions of this Chapter under section 655A; and
 - (b) does not confer any control over, or power to substantially influence, the exercise of a voting right attached to the securities; and
 - (c) does not restrict disposal of the securities for more than 3 months from the date when the agreement is entered into.

The person acquires a relevant interest in the securities when the condition referred to in paragraph (a) is satisfied.

Pre-emptive rights

- (8) A member of a company, body or managed investment scheme does not have a relevant interest in securities of the company, body or scheme merely because the company's, body's or scheme's constitution gives members pre-emptive rights on the transfer of the securities if all members have pre-emptive rights on the same terms.

Director of body corporate holding securities

- (9) A person does not have a relevant interest in securities merely because:
- (a) the person is a director of a body corporate; and
 - (b) the body corporate has a relevant interest in those securities.

Prescribed exclusions

- (10) A person does not have a relevant interest in securities in the circumstances specified in the regulations. The regulations may provide that interests in securities are not relevant interests subject to specified conditions.

Section 92

92 Securities

(1) Subject to this section, securities means:

- (a) debentures, stocks or bonds issued or proposed to be issued by a government; or
- (b) shares in, or debentures of, a body; or
- (c) interests in a managed investment scheme; or
- (ca) in Parts 7.3 to 7.6 (inclusive)—interests that would be interests in a managed investment scheme but for paragraph (h) of the definition of managed investment scheme in section 9; or
- (d) units of such shares; or
- (e) an option contract within the meaning of Chapter 7;

but does not include a futures contract or an excluded security.

Note: Regulations under subsection 92A(2) may provide that specified provisions of this Act and the regulations apply in relation to relevant agreements to which section 92A applies as if the agreements were securities.

(2) The expression *securities*, when used in relation to a body, means:

- (a) shares in the body; or
- (b) debentures of the body; or
- (c) interests in a managed investment scheme made available by the body; or
- (ca) in Parts 7.3 to 7.6 (inclusive)—interests made available by the body that would be interests in a managed investment scheme but for paragraph (h) of the definition of *managed investment scheme* in section 9; or
- (d) units of such shares;

but does not include a futures contract or an excluded security.

(2A) In Parts 7.3 to 7.6 (inclusive):

securities includes an interest in a benefit fund (within the meaning of the *Life Insurance Act 1995*).

Note: See section 16B of the Life Insurance Act 1995.

(3) In Chapters 6 to 6D (inclusive):

securities means:

- (a) shares in a body; or
- (b) debentures of a body; or
- (c) interests in a registered managed investment scheme; or
- (d) legal or equitable rights or interests in:
 - (i) shares; or
 - (ii) debentures; or
 - (iii) interests in a registered managed investment scheme;
- (e) options to acquire (whether by way of issue or transfer) a security covered by paragraph (a), (b), (c) or (d).

It does not cover a futures contract or an option approved by a securities exchange as an exchange traded option.

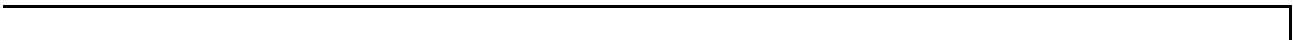
Note: Section 9 defines *body* and sections 9 and 72 define *futures contract*.

Appendix 6

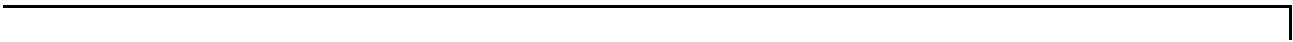
'Nature of Interest by Eddie Obeid MLC in Companies Named by Mr Greg Pearce MLC'

Document tabled by the Hon E Obeid MLC at the Committee's hearing on 16/10/2002

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Appendix 7

The Hon E Obeid MLC: Summary of interests/positions in corporations

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Inquiry into Pecuniary Interest Register

The Hon E Obeid MLC: Summary of interests/positions in corporations

All interests/positions identified by Mr Obeid in the document entitled “Nature of Interest by Eddie Obeid MLC in Companies Named by Mr Greg Pearce” (together with one other disclosed in Mr Obeid’s pecuniary interest returns) are listed.

These have been checked against Mr Obeid’s pecuniary interest returns from 1991 – 2002.

Interests/positions properly disclosed are in normal type.

Omissions in pecuniary interest returns are *italicised*.

Where associations with corporations in the relevant year have been subsequently disclosed an asterisk* has been included.

Omissions which have not been “corrected” are underlined.

Interests/positions declared in the original pecuniary interest returns, but not in fact held by Mr Obeid are in [brackets].

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COMPANY	1991	1992	1993	1994	1995	1996	1997	1998	1999
Obeid Corp Pty Ltd	Director Share	Director Share	Director Share	Director Share					
15 Gamers (No 1)	Director <u>Share</u>	<i>Director</i> * <i>Share</i>	* <i>Share</i>	* <i>Share</i>	Share	Share	Share	Share	Share
15 Gamers (No 2)	Director <u>Share</u>	<i>Director</i> * <i>Share</i>	<i>Director</i> * <i>Share</i>	<i>Director</i> * <i>Share</i>	Share	Share	Share	Share	Share
15 Gamers (No 3)	Director <u>Share</u>	<i>Director</i> * <i>Share</i>	<i>Director</i> * <i>Share</i>	<i>Director</i> * <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	Share
Ashglide	<i>Director</i> <i>Secretary</i> * <i>Share</i>	<i>Director</i> <i>Secretary</i> * <i>Share</i>	<i>Director</i> <i>Secretary</i> * <i>Share</i>						
Beirut – Sydney	Director <u>Secretary</u> <u>Share</u>	<i>Director</i> <i>Secretary</i> * <i>Share</i>	<i>Director</i> * <i>Share</i>	<i>Director</i> * <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	Share
Brinba (Maxicon)	Director * <i>Share</i>	<i>Director</i> * <i>Share</i>							
Cecourt	Director <u>Share</u>	<i>Director</i> * <i>Share</i>	Director Share	Director Share	Share	Share	[Share]	[Share]	
Detuca	<i>Director</i> * <i>Share</i>	<i>Director</i> * <i>Share</i>	<i>Director</i> * <i>Share</i>						
Hafomo	Director <u>Share</u>	<i>Director</i> * <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>				
Jensay				Director	<i>Director</i> *				
Jet Set Const- ructions	<i>Director</i> <i>Secretary</i> * <i>Share</i>	<i>Director</i> <i>Secretary</i> * <i>Share</i>							
Keltham	Director <i>Secretary</i> *	<i>Director</i> <i>Secretary</i> *							
Law Found -ation Super	<i>Director</i>	<i>Director</i>	<i>Director</i>	<i>Director</i>	<i>Director</i>				

COMPANY	1991	1992	1993	1994	1995	1996	1997	1998	1999
Nominees	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>
Linkban	Director <i>Share</i>	<i>Director</i> * <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>
Max Cutting	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>
Media Corporation	Director	<i>Director</i> *	<i>Director</i> *						
Metrona	Director <i>Secretary</i> *	<i>Director</i> <i>Secretary</i> *	<i>Director</i> <i>Secretary</i> *						
Moona Plains	Director <i>Share</i>	<i>Director</i> * <i>Share</i>	<i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>	* <i>Share</i>
Oceania Export & Import	Director <i>Secretary</i> *	<i>Director</i> <i>Secretary</i> *							
Oceanline Construction	Director <i>Secretary</i> *	<i>Director</i> <i>Secretary</i> *	<i>Director</i> <i>Secretary</i> *						
Olympia				Director	<i>Director</i> *				
Pondzasch	Director <i>Share</i>	<i>Director</i> * <i>Share</i>	* <i>Share</i>	* <i>Share</i>	<i>Share</i>	<i>Share</i>	<i>Share</i>	<i>Share</i>	<i>Share</i>
Rainbow Pacific	<i>Director</i> *	<i>Director</i> *	<i>Director</i> *	<i>Director</i> *	<i>Director</i> *	<i>Director</i> *			
Redpoc	Director <i>Secretary</i> <i>Share</i>	<i>Director</i> <i>Secretary</i> * <i>Share</i>	Director <i>Secretary</i> <i>Share</i>	Director <i>Secretary</i> <i>Share</i>	<i>Share</i>	<i>Share</i>	<i>Share</i>	[<i>Share</i>]	[<i>Share</i>]
Riovale	Director *	<i>Director</i> *							
South Sydney Leagues Club									
Southpac	Director	<i>Director</i>							

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COMPANY	1991	1992	1993	1994	1995	1996	1997	1998	199
Pty Ltd		*							
Southpac Holdings Pty Ltd	Director <i>Share</i>	Director <i>Share</i>	Director <i>Share</i>	Director <i>Share</i>	Share	Share	Share	Share	Sh
Sydney Shout	Director *	<i>Director</i> *	<i>Director</i> *	<i>Director</i> *					
The Stables Perisher (Scobde)	Director	Director	Director	Director					

Appendix 8

Additional disclosures by other Members

Table 1 Additional disclosures by Members of the Legislative Council

Date	Member	Nature of information
29/1/85	Hon Ted Pickering	Change of company name
25/7/86	Hon Peter Philips MLC	Additional detail in relation to disclosed interests
18/12/97	Hon JJ Doohan MLC	Correction of detail in disclosed interest
02/11/90	Hon John Hannaford MLC	Additional travel disclosure
02/11/92	Hon Delcia Kite MLC	Additional shareholdings
19/10/93	Hon Stephen Mutch MLC	Additional income \$250 fee for lecture
15/11/94	Hon Elisabeth Kirkby MLC	Additional income \$6,447.81 commission on book royalties
27/9/96	Hon Ian Cohen MLC	Additional shareholding
01/11/96	Hon E Obeid MLC	Additional shareholdings
11/10/99	Hon E Obeid MLC	Additional shareholdings
09/11/99	Hon E Obeid MLC	Additional directorships
20/10/99	Hon Ian Macdonald MLC	Additional travel disclosure
17/01/00	Hon John Della Bosca MLC	Additional gifts
04/04/00	Hon John Della Bosca MLC	Additional directorship / trusteeship
22/05/00	Hon Jan Burnswoods MLC	Additional real property ownership
16/10/96	Hon Henry Tsang MLC	Additional real property ownership
05/06/01	Hon Mike Gallacher MLC	Additional shareholding
24/09/01	Hon John Hatzistergos MLC	Additional shareholding
03/10/01	Hon Carmel Tebbutt MLC	Additional gifts
17/10/01	Hon Malcolm Jones MLC	Additional gift
03/09/02	Hon E Obeid MLC	Additional directorship
17/09/02	Hon E Obeid MLC	Additional shareholdings/directorships/ "technical interests"

Table 2 Additional disclosures by Members of the Legislative Assembly

Date	Member	Nature of information
29/9/83	Garry McIlwaine	Additional real property held as executor
15/6/84	Bob Carr	Additional source of income (\$500 from published article)
15/10/84	Paul Landa	Additional real property
28/3/85	Wilfred Petersen	Additional source of income (rent)
30/9/85	Garry McIlwaine	Additional real property held as executor
14/10/85	Neville Wran	Additional travel disclosure
7/11/85	Robert Webster	Sale of real property
29/1/86	Bob Carr	Additional travel disclosure
26/2/86	Neville Wran	Additional shareholding (and sale of)
23/4/86	Andrew Refshauge	Additional shareholding
13/8/86	Garry McIlwaine	Additional real property held as executor
30/10/86	Richard Mochalsky	Additional shareholding
18/8/92	Michael Knight	Additional travel disclosure
23/10/92	Kerry Chikarovski	Resigned directorship and other positions; additional position with association
29/10/92	Ralph Clough	Additional travel disclosure
28/10/92	Faye Lo Po	Additional source of income (as Alderman)
3/11/92	Faye Lo Po	Additional source of income (as Alderman)
3/11/92	Anne Cohen	Additional interest in real property (lease)
10/12/92	Andrew Tink	Additional gift
23/12/93	Jeremy Kinross	Additional source of income (as member Board of Law Foundation)
22/3/94	Jim Small	Additional real property
17/10/94	Barry Morris	Additional travel disclosure

Date	Member	Nature of information
10/11/94	Wendy Machin	Additional sources of income (rents); correction of company name
22/11/95	Barry O'Farrell	No longer holds real property
23/11/95	Bob Debus	Additional real property; deletion of real property; deletion of position with association
15/11/96	John Brogden	Additional real property
19/11/96	John Aquilina	Additional shareholding
20/10/97	John Aquilina	Additional interest in corporation (previously listed only under 'sources of income')
23/12/97	John Mills	Additional shareholding
27/7/98	Barry O'Farrell	Additional travel disclosure
4/8/98	Bruce MacCarthy	Membership of 2 organisations
17/8/98	Liz Kernohan	Additional shareholding
24/8/98	Bob Harrison	Correction of detail of travel disclosure
1/9/98	Jill Hall	Correction of detail of travel disclosure
9/9/98	Clover Moore	Receipt of proceeds of deceased estate
28/9/98	Jeff Hunter	'Income' from sale of property
13/10/98	Peter Macdonald	Sale of real property
14/10/98	Malcolm Kerr	Error in printed version of return
22/10/98	Morris Iemma	Additional shareholding
9/11/98	Paul Whelan	Additional shareholding
1/9/99	Clover Moore	Receipt of further proceeds of deceased estate
11/1/99	Paul Whelan	Sale of shareholding
26/10/99	Paul Crittenden	Additional real property
7/1/00	Bob Carr	Additional gifts and travel disclosure
10/1/00	David Barr	Additional gifts under \$500

Date	Member	Nature of information
12/1/00	Rob Oakeshott	Additional travel disclosure
28/3/00	Peter Webb	Additional real property
11/5/00	Ian Armstrong	Additional position in corporation
24/5/00	Thomas George	Interest in superannuation fund
13/10/00	Ian Glachan	Additional shareholding
13/10/00	Marianne Saliba	Additional gifts
3/11/00	Ian Slack-Smith	Additional shareholding
12/6/01	David Barr	Additional real property
3/10/01	Brad Hazzard	Additional gifts
9/10/01	John Watkins	Additional gift
23/10/01	Richard Face	Additional gifts
6/2/02	Kerry Chikarovski	Correction of detail of travel disclosure
6/3/02	Reba Meagher	Sale of real property; additional source of income (rent)
1/7/02	Craig Knowles	Sale of real property; additional real property
3/9/02	John Brogden	Additional directorship (in relation to 1996-97 return) (also additional disclaimer)

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Appendix 9

Minutes of the Committee's proceedings

Minutes of the Committee's proceedings

Note: Asterisks indicate text which has been omitted as not relevant to the current inquiry.

Meeting No. 20

Thursday 26 September 2002

at Parliament House, Sydney at 10.30 pm

MEMBERS PRESENT

Mrs Sham-Ho (in the Chair)

Ms Fazio	Mr Kelly
Ms Forsythe	Mr Primrose
Ms Gardiner	Revd Mr Nile

Apologies were received from Ms Saffin.

In attendance: Lynn Lovelock, Velia Mignacca and Janet Williams.

Inquiry into Pecuniary Interests Register

The Committee continued to deliberate.

Resolved, on motion of Revd Mr Nile: That the Chair write to the Clerk of the Parliaments, as Registrar of the pecuniary interests register, seeking:

- (a) details of any previous occasions on which Members have provided supplementary information concerning their pecuniary interests since the introduction of the *Constitution (Disclosures by Members) Regulations 1983*, including details of the Members concerned and the dates on which the information was provided;
- (b) a summary of Mr Obeid's returns since his election to the House; and
- (c) any other matters the Clerk considers relevant.

Resolved, on motion of Revd Mr Nile: That the Chair write to Mr Obeid requesting him to provide a written submission in relation to the inquiry, by midday on Friday 4 October 2002.

Resolved, on motion of Mr Primrose: That the Chair write to Mr Pearce requesting him to provide a written submission in relation to the inquiry, detailing any evidence or information he possesses concerning possible contraventions of the Regulation by the Hon Edward Obeid MLC, by midday on Friday 4 October 2002.

The Committee adjourned at 11.00 am sine die.

Lynn Lovelock
Clerk to the Committee

Meeting No. 21

Thursday 10 October 2002

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Mrs Sham-Ho (in the Chair)

Ms Fazio	Mr Kelly
Ms Forsythe	Mr Primrose
Ms Gardiner	Revd Mr Nile
Mr Hatzistergos	

In attendance: David Blunt, Velia Mignacca and Janet Williams.

Minutes of meeting no. 20, as amended, were confirmed on motion of Revd Mr Nile.

Correspondence received:

- (i) Submission dated 3 October 2002 from the Hon G Pearce MLC in relation to the Committee's inquiry concerning the pecuniary interests register.
- (ii) Submission dated 4 October 2002 from the Hon E Obeid MLC in relation to the Committee's inquiry concerning the pecuniary interests register.
- (iii) Letter dated 9 October 2002 from the Clerk of the Parliaments attaching a submission in relation to the Committee's inquiry concerning the pecuniary interests register.

Correspondence sent:

- (i) Letter dated 26 September 2002 from the Chair to the Hon E Obeid MLC requesting him to provide a written submission in relation to the Committee's inquiry concerning the pecuniary interests register.
- (ii) Letter dated 26 September 2002 from the Chair to the Hon G Pearce MLC requesting him to provide a written submission in relation to the Committee's inquiry concerning the pecuniary interests register.
- (iii) Letter dated 26 September 2002 from the Chair to the Clerk of the Parliaments requesting him to provide certain information concerning the pecuniary interests register.

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Inquiry on Pecuniary Interests Register

The Committee noted the submissions received from:

- The Hon G Pearce MLC, dated 3 October 2002;
- The Hon E Obeid MLC, dated 4 October 2002; and
- Mr J Evans, Clerk of the Parliaments, dated 9 October 2002.

The tabled briefing papers prepared by the Secretariat for the information of Members of the Committee, addressing:

- Historical background;
- Other parliaments; and
- The meaning of “wilfully contravenes.”

The Committee deliberated.

Resolved, on motion of Mr Kelly: That the Committee invite the Hon Greg Pearce MLC and the Hon Edward Obeid MLC to appear before the Committee and give evidence at a hearing on Wednesday 16 October 2002 in accordance with the following schedule:

9.30 am – 11.00 am	-	Mr Pearce
<i>15 minute break</i>		
11.15 am – 12 noon	-	Mr Obeid
<i>Lunch</i>		
2.30 pm – 3.30 pm	-	Mr Obeid (continued)

The Committee continued to deliberate.

Resolved, on motion of Mr Hatzistergos: That the Committee obtain details of additional information provided by Members of the Legislative Assembly in relation to their pecuniary interests returns since 1983.

The Committee adjourned at 10.05 am until Wednesday 16 October 2002.

David Blunt
Acting Clerk to the Committee

Meeting No. 22

Wednesday 16 October 2002

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Mrs Sham-Ho (in the Chair)

Ms Fazio	Mr Kelly
Ms Forsythe	Revd Mr Nile
Ms Gardiner	Mr Primrose
Mr Hatzistergos	

In attendance: David Blunt, Velia Mignacca and Janet Williams.

Inquiry into pecuniary interests register

Members of the public and the media were admitted.

The Hon Greg Pearce MLC affirmed and examined.

Mr Pearce tabled a company extract together with certain other documents, relating to Keltham Pty Ltd.

Evidence continued.

Mr Pearce tabled a completed ASIC form providing supplementary information relating to the Annual Return of Moona Plains Pastoral Pty Limited for the year ended 30 June 1992.

Evidence continued.

Mr Pearce tabled a Deed of Assignment dated 12 February 1992 and a Deed dated 3 December 1997, concerning Southpac Holdings Pty Limited.

Evidence continued.

Evidence concluded, the witness withdrew.
The Hon Edward Obeid MLC was sworn and examined.

Mr Obeid tabled a document entitled 'Nature of interest by Eddie Obeid MLC in companies named by Mr Greg Pearce MLC'.

Evidence continued.

The Chair left the chair at 12.15 pm.

The Committee resumed at 2.30 pm.

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Members of the public and the media were admitted.

Examination of Mr Obeid continued.

Evidence concluded, the witness withdrew.

Members of the public and the media withdrew.

The Committee deliberated.

Resolved, on motion of Revd Mr Nile: That pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the three submissions received by the Committee from the Clerk of the Parliaments, Mr Obeid, and Mr Pearce.

Resolved, on motion of Ms Forsythe: That pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the transcript of the hearing and the documents tabled by the witnesses at the hearing.

Resolved, on motion of Mr Kelly: That a copy of the submissions received by the Committee, the transcript of the hearing, and the documents tabled at the hearing, be provided to Mr Obeid, to give him an opportunity to respond to them.

Ms Forsythe moved: That Mr Obeid be invited to appear before the Committee and give further evidence on Monday 21 October 2002.

Debate ensued.

Question put.

Ayes: Ms Forsythe
Ms Gardiner

Noes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose
Mrs Sham-Ho

Question resolved in the negative.

The Committee continued to deliberate.

Resolved, on motion of Ms Fazio: That, notwithstanding any previous resolution of the Committee, the Deed of Assignment dated 12 February 1992 and Deed dated 3 December 1997, concerning Southpac

Holdings Pty Limited, tabled by Mr Pearce, being documents the source of which was not clear, not be made public by the Committee at this time.

The Committee adjourned at 3.55 pm until Wednesday 23 October 2002 at 1.00 pm.

David Blunt
Acting Clerk to the Committee

Meeting No. 23

Wednesday 23 October 2002

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Mrs Sham-Ho (in the Chair)

Ms Fazio	Mr Kelly
Ms Forsythe	Revd Mr Nile
Ms Gardiner	Mr Primrose
Mr Hatzistergos	

In attendance: David Blunt, Velia Mignacca and Janet Williams.

Minutes of meetings no.s 21 and 22 were confirmed on the motion of Revd Mr Nile.

Correspondence sent:

- (iv) Letter dated 10 October 2002 from the Chair to the Hon E Obeid MLC inviting him to appear before the Committee at a hearing to be held on 16 October 2002.
- (v) Letter dated 10 October 2002 from the Chair to the Hon G Pearce MLC inviting him to appear before the Committee at a hearing to be held on 16 October 2002.
- (vi) Letter dated 15 October 2002 from the Chair to the Hon E Obeid MLC outlining aspects of the procedures to be followed at the hearing on 16 October 2002.
- (vii) Letter dated 15 October 2002 from the Chair to the Hon G Pearce MLC outlining aspects of the procedures to be followed at the hearing on 16 October 2002.
- (viii) Letter dated 17 October 2002 from the Clerk to the Hon E Obeid MLC enclosing the transcript of the Committee's hearing of 16 October 2002, and the documents tabled at the hearing, in accordance with the Committee's resolution of 16 October 2002.
- (ix) Letter dated 17 October 2002 from the Clerk to the Hon E Obeid MLC enclosing a copy of the proof transcript of hearing of 16 October 2002, requesting any corrections.

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- (x) Letter dated 17 October 2002 from the Clerk to the Hon G Pearce MLC enclosing a copy of the proof transcript of hearing of 16 October 2002, requesting any corrections.

Correspondence received:

- (i) Letter dated 17 October 2002 from the Hon E Obeid MLC to the Chair concerning a question asked by the Chair at the Committee's hearing on 16 October 2002.

The Chair tabled the text of the response to a question without notice to the Hon E Obeid MLC, in question time on Wednesday 23 October 2002.

Inquiry into pecuniary interests register

The Committee noted the research material prepared by the Secretariat and circulated to members in response to requests made at the meeting on 10 October 2002.

The Chair advised the Committee of her intention to write to the Hon E Obeid MLC to clarify the question referred to in his letter of 17 October 2002 and to seek further information from him in relation to that question.

Mr Kelly expressed concern about the about the publication of information in relation to the deliberations of the Committee in the article entitled "Committee spares accountable Obeid", published in *The Sydney Morning Herald* on 17 October 2002.

Resolved on the motion of Revd Mr Nile: That the Chair write to the author, on behalf of the Committee, to:

- express concern about the about the publication of information in relation to the deliberations of the Committee in the article entitled "Committee spares accountable Obeid", published in *The Sydney Morning Herald* on 17 October 2002;
- remind the author that under Standing Order 252 of the Legislative Council, the deliberations of parliamentary committees are confidential until the Minutes of Proceedings are published in the Committee's report to the House; and
- request the author to provide the Committee with advice as to the source of the confidential information about the Committee's deliberations.

The Committee deliberated in relation to the draft report framework circulated to members.

Resolved, on the motion of Revd Mr Nile, that the Committee note the definitions of "wilful" contained in the *Concise Oxford Dictionary* and the *Macquarie Concise Dictionary*, and note that the Committee was guided by those definitions in its deliberations in this inquiry.

Resolved, on the motion of Ms Gardiner, that the Clerk be requested to provide advice to the Committee as to whether or not the status of a person as a chargee amounts to an interest in a corporation required to be disclosed under the *Constitution (Disclosure by Members) Regulation 1983*, (including any status that Mr Obeid may have had as a chargee with regard to Keltham Pty Ltd since his election as a Member of the Legislative Council).

Resolved, on the motion of Revd Mr Nile, that the document entitled “Material for inclusion in proposed chapter five of report on Inquiry into Pecuniary Interest Register – the Hon E Obeid MLC: Summary of interests/positions in corporations”, be provided to Mr Obeid to give him an opportunity to review it and respond, if necessary, prior to its possible inclusion in the Committee’s first report on its Inquiry into the Pecuniary Interest Register.

Ms Fazio moved: That, based on the evidence currently before the Committee, the Committee adopt the following draft findings for the purposes of preparation of the Chair’s draft report, on the understanding that they may be added to or deleted when the Committee deliberates on the Chair’s draft report:

1. Mr Obeid has made errors in his pecuniary interest returns between 1991 and 1999.
2. The errors relate to information that was already publicly available through ASIC.
3. The errors have been corrected in accordance with relevant conventions.
4. There was no evidence to suggest any motive or conflict of interest in non disclosure.
5. The errors were not wilful.

Debate ensued.

Question put.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose
Mrs Sham-Ho

Noes: Mrs Forsythe
Ms Gardiner.

Question resolved in the affirmative.

The Committee continued to deliberate.

Resolved, on the motion of Revd Mr Nile, that the Committee report on this inquiry in two stages, with the first report to be tabled by Thursday 31 October 2002 dealing solely with the matters in paragraphs 4 (a) and (b) in the Committee’s terms of reference.

Ms Gardiner requested that the minutes note that, at the conclusion of the hearing on 16 October 2002 she had further questions that she wanted to put to Mr Obeid. Ms Fazio asked that the minutes note that, at the conclusion of the hearing on 16 October 2002, she had further questions that she wanted to put to Mr Pearce.

The Committee adjourned at 2.20 pm until Tuesday 29 October 2002 at 6.30 pm.

David Blunt
Acting Clerk to the Committee

Meeting No. 24

Tuesday 29 October 2002

at Parliament House, Sydney at 6.30 pm

MEMBERS PRESENT

Mrs Sham-Ho (in the Chair)

Ms Fazio	Mr Kelly
Ms Forsythe	Revd Mr Nile
Ms Gardiner	Mr Primrose
Mr Hatzistergos	

In attendance: David Blunt, Velia Mignacca and Janet Williams.

Minutes of meeting no 23, as circulated, taken as read.

Resolved, on the motion of Ms Fazio, that the minutes be amended to clarify that, whilst the Committee Chair advised of her intention to write to the Hon E Obeid MLC to clarify the question referred to in his letter of 17 October 2002, the Committee had noted that she was writing in her capacity as a Member of the Committee and not on behalf of the Committee.

The Committee Clerk reported back to the Committee in relation to the request for advice concerning whether or not the status of a person a person as a chargee amounts to an interest in a corporation required to be disclosed under the Constitution (Disclosures by Members) Regulation 1983.

Resolved, on the motion of Mrs Forsythe, that the question of whether or not the status of a person a person as a chargee amounts to an interest in a corporation required to be disclosed under the Constitution (Disclosures by Members) Regulation 1983 be examined further by the Committee during the second stage of this inquiry.

Resolved, on the motion of Revd Mr Nile, that the minutes, as amended, be confirmed.

Correspondence sent:

Letter dated 23 October 2002 from the Chair to the Hon E Obeid MLC providing him with a copy of the document entitled "Material for inclusion in proposed chapter five of report on Inquiry into Pecuniary Interest Register – the Hon E Obeid MLC: Summary of interests/positions in corporations", to give him an opportunity to review it and respond, if necessary.

Letter dated 23 October 2002 from the Chair to the Hon E Obeid MLC clarifying the question the subject of Mr Obeid's letter of 17 October 2002.

Letter dated 23 October 2002 from the Chair to Mr Robert Wainwright, Sydney Morning Herald, expressing concern about the publication of information in relation to the deliberations of the

Committee in the article entitled “Committee spares accountable Obeid”, published in *The Sydney Morning Herald* on 17 October 2002.

Correspondence received:

Letter dated 29 October 2002 from the Hon E Obeid MLC to the Chair concerning corrections to the document entitled “Material for inclusion in proposed chapter five of report on Inquiry into Pecuniary Interest Register – the Hon E Obeid MLC: Summary of interests/positions in corporations”, and also in relation to the question the subject of Mr Obeid’s letter of 17 October 2002.

Inquiry into pecuniary interests register

The Chair’s draft report, as circulated, was taken as read.

Chapter One read.

Mrs Forsythe moved: That footnote 2 (b) be deleted.

To which, Mr Kelly moved an amendment: That the words after “footnote 2 (b)” be deleted and instead insert the words “be amended to note that the text of the Notice of Motion referred to is reproduced as an Appendix to the report.”

Debate ensued.

Question put.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Noes: Mrs Forsythe
Ms Gardiner.
Mrs Sham-Ho

Question resolved in the affirmative.

Question put on the motion of Mrs Forsythe, as amended: That footnote 2 (b) be amended to note that the text of the Notice of Motion referred is reproduced as an Appendix to the report.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Noes: Mrs Forsythe
Ms Gardiner.

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Mrs Sham-Ho

Question resolved in the affirmative.

Resolved, on the motion of Ms Fazio, that the third sentence in paragraph 1.8 be amended by deleting the words “Committee Chair” and instead inserting “the Hon Helen Sham-Ho MLC” and deleting the words “the question” and instead inserting “her question.”

Chapter One, as amended, agreed to.

Chapter Two read and agreed to.

Chapter Three read.

Resolved, on the motion of Revd Mr Nile, that the introductory paragraph be expanded to emphasise that the Committee will be conducting a more detailed examination of the pecuniary interest disclosure requirements in other jurisdictions during the second stage of this inquiry.

Chapter Three, as amended, agreed to.

Resolved, on the motion of Revd Mr Nile, that the Appendices referred to in Chapter Three be included in the report.

Chapter Four read.

Resolved, on the motion of Mr Primrose, that the references in Chapter Four to the Concise Oxford Dictionary and Macquarie Concise Dictionary be footnoted to include details of the relevant edition and year of publication.

Chapter Four, as amended, agreed to.

Chapter Five read.

Resolved, on the motion of Mr Hatzistergos, that paragraph 5.17 be amended to insert after words “list of”, the words “what he describes as.”

Resolved, on the motion of Ms Fazio, that the quote following paragraph 5.17 be amended by deleting the words “Unfortunately, in Mr Obeid's case it is a persistent and regular habit of his and of the companies in which he is involved not to file the returns and not to file them on time. It is quite possible that there are other companies for which returns have not been filed or that there is other information that has not been provided by the Obeids.”

Resolved, on the motion of Mr Kelly, that paragraph 5.18 be amended by deleting the words “the assumption that the document tabled by Mr Obeid on 16 October 2002 fully discloses all of Mr Obeid's interests/positions in corporations from 1991 to 2001” and instead inserting the words “documents and evidence that are before the Committee.”

Resolved, on the motion of Ms Gardiner, that the third dot point under paragraph 5.36 be amended by deleting the words “had not been “corrected” prior to 16 October 2002” and instead inserting the

words “were “corrected” by Mr Obeid when he provided the corrected information in his sworn evidence before the Committee on 16 October 2002.”

Resolved, on the motion of Revd Mr Nile that an additional paragraph be added after the last dot point under paragraph 5.36 to note the information in paragraph 5.15 that Mr Obeid has had interests in 31 corporations since his election to the Legislative Council in 1991.

Resolved, on the motion of Ms Fazio that the third dot point under paragraph 5.37 [5.38]¹²⁴ be amended to contain only the exact words at paragraphs 25 and 26 of the written submission received from Mr Pearce.

Resolved, on the motion of Ms Fazio, that the seventh dot point under paragraph 5.37 [5.38] be amended by deleting the words “Once he believed that a company no longer suited his purposes, he simply ceased to disclose anything about it and to comply with Corporations Law requirements... This is the nub of the issue: The member simply walks away from his obligations when it no longer suites him to deal with them.”

Resolved, on the motion of Revd Mr Nile, that a new paragraph [5.42] be inserted after the quote under paragraph 5.40 [5.41], commencing with the words “Despite the fact that Mr Obeid has taken full responsibility for the mistakes in his pecuniary interest returns, he gave evidence as to the circumstances which led to the omission of some matters:” and quoting paragraphs 11 and 12 from page 27 of the transcript of the hearing on 16 October 2002.

Ms Gardiner moved: That a new paragraph be inserted before paragraph 5.41 [5.44]: “Because the Committee voted not to take further evidence, the Committee did not have the opportunity to question Mr Obeid’s accountant.”

Debate ensued.

Question put.

Ayes: Mrs Forsythe
Ms Gardiner.
Mrs Sham-Ho

Noes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Question resolved in the negative.

Resolved on the motion of Ms Fazio, that a new paragraph [5.43] be inserted before paragraph 5.41 [5.44], commencing with the words “As noted at paragraph 5.23, whilst there is no provision in the Regulation for members to lodge supplementary returns a convention has been adopted whereby additional information provided to the Clerk is filed with the register and open to public inspection.

¹²⁴ Paragraph numbers in [brackets] refer to paragraph numbers in the final report as tabled.

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Mr Obeid gave evidence as to the nature of the additional information provided by him to the Clerk, as has been done by others Members (a list of which is reproduced as Appendix ?) and quoting paragraphs 11 and 12 of page 25 of the transcript of the hearing on 16 October 2002.

The Committee deliberated in relation to “The Committees conclusions” under paragraph 5.42 [5.45] of the draft report.

It was agreed that the “Committee’s conclusions”, as read, were:

On the basis of the evidence before it, the Committee makes the following findings in relation to the question of wilful contravention in this case:

1. Mr Obeid has made errors in his pecuniary interest returns between 1991 and 1999.
2. The errors relate to information that was already publicly available through ASIC.
3. The errors have been corrected in accordance with relevant conventions.
4. There was no evidence to suggest any motive or conflict of interest in non disclosure.
5. The errors were not wilful.

Ms Gardiner moved: That conclusion 1 Be amended by inserting after the word “made” the umber “154”.

Question put.

Ayes: Mrs Forsythe
Ms Gardiner.
Mrs Sham-Ho

Noes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Question resolved in the negative.

Mrs Forsythe moved: That conclusion 3 be amended by deleting the word “The” and instead inserting the number “137”.

Question put.

Ayes: Mrs Forsythe
Ms Gardiner.
Mrs Sham-Ho

Noes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Question resolved in the negative.

Mrs Forsythe moved: That conclusion 4 be deleted and that there be instead inserted the words “The Committee has not been able to identify any motive or conflict of interest in relation to the errors in Mr Obeid’s pecuniary interest returns.”

Question put.

Ayes: Mrs Forsythe
Ms Gardiner.
Mrs Sham-Ho

Noes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Question resolved in the negative.

Ms Fazio moved: That conclusion 5. Be amended by inserting after the word “wilful” the words “contraventions within the terms of the Constitution (Disclosure by members) Regulation 1983.”

Question put.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose
Mrs Sham-Ho

Noes: Mrs Forsythe
Ms Gardiner.

Question resolved in the affirmative.

Mr Kelly moved: That Chapter Five, as amended, be agreed to.

Question put.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose
Mrs Sham-Ho

: -

Noes: Mrs Forsythe
Ms Gardiner.

Question resolved in the affirmative.

Chapter Six read.

Mr Hatzistergos moved: That paragraph 6.3 be amended by deleting the words “contraventions of the Constitution (Disclosures by Members) Regulation 1983 have not been wilful. On the basis of the evidence available to the Committee, section 14A (2) of the Constitution Act 1902 has not been offended in relation to the conduct of the Hon E Obeid MLC” and inserting instead the words “errors in his pecuniary interest returns are not wilful contraventions of the Constitution (Disclosures by Members) Regulation 1983. Accordingly no sanction can be recommended.”, and that the remainder of the Chapter be deleted.

Debate ensued.

Resolved, on the motion of Revd Mr Nile, that the Committee reconvene to continue its deliberations at 1.00 pm on Wednesday 30 October 2002.

The Committee adjourned at 8.30 pm until 1.00 pm on Wednesday 30 October 2002.

David Blunt
Acting Clerk to the Committee

Meeting No. 25

Wednesday 30 October 2002

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Mrs Sham-Ho (in the Chair)

Ms Fazio	Mr Kelly
Ms Forsythe	Revd Mr Nile
Ms Gardiner	Mr Primrose
Mr Hatzistergos	

In attendance: David Blunt, Velia Mignacca and Janet Williams.

Minutes of meeting no 24 were confirmed on the motion of Ms Fazio.

Inquiry into pecuniary interests register

The Committee resumed its consideration of the Chair's draft report.

Resolved, on the motion of Mr Hatzistergos, that Chapter five be recommitted.

Resolved, on the motion of Mr Hatzistergos, that the table referred to in paragraph 5.36 to be reproduced as an Appendix to the report, be amended by deleting the last page.

Rev Nile moved: That paragraphs 5.36 be amended by deleting the words "The document identifies that:

- Mr Obeid has made 154 errors in the disclosure of interests/positions in corporations in his pecuniary interest returns since 1991;
- 137 of these errors had been "corrected" (in the sense that Mr Obeid has disclosed an association, but not the precise details of the nature of the interest or position, in the relevant corporation in the relevant year, through correspondence to the Clerk which has been placed on the register which is available for public inspection);
- 17 of these errors were "corrected" by Mr Obeid when he provided the corrected information in his sworn evidence before the Committee on 16 October 2002;
- Prior to his provision of additional information in correspondence to the Clerk on 17 September 2002, Mr Obeid had not disclosed his association with 6 corporations."

and instead inserting the words:

"The Committee notes that Mr Obeid has had interests/positions in 31 corporations since his election in 1991. Whilst the Committee has found that there is a large number of specific entries that were not included in Mr Obeid's pecuniary interest returns, the important question is whether or not Mr Obeid had disclosed his association with corporations. During the period up until Mr Obeid's most recent correspondence to the Clerk on 17 September 2002, there were only six corporations with which Mr Obeid's association had not been disclosed:

- Ashglide
- Detuca
- Jet Set Constructions
- Law Foundation Superannuation Nominees
- Rainbow Pacific
- South Sydney Leagues Club

(The latter two appear to be discretionary disclosures.)

Following his most recent correspondence to the Clerk on 17 September 2002, Mr Obeid had disclosed an association with all 31 corporations. When he gave sworn evidence before the Committee on 16 October 2002, Mr Obeid provided full details of the 232 specific entries in relation to his interests/positions in corporations that were required to have been disclosed in the period since 1991."

Debate ensued.

Question put.

: -

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Noes: Mrs Forsythe
Ms Gardiner.
Mrs Sham-Ho

Question resolved in the affirmative.

Mr Kelly moved: That Chapter Five, as amended, be agreed to.

Question put.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose
Mrs Sham-Ho

Noes: Mrs Forsythe
Ms Gardiner.

Question resolved in the affirmative.

The Committee resumed its consideration of Chapter Six.

Mr Hatzistergos moved: That paragraph 6.3 be amended by deleting the words “contraventions of the Constitution (Disclosures by Members) Regulation 1983 have not been wilful. On the basis of the evidence available to the Committee, section 14A (2) of the Constitution Act 1902 has not been offended in relation to the conduct of the Hon E Obeid MLC” and inserting instead the words “errors in his pecuniary interest returns are not wilful contraventions of the Constitution (Disclosures by Members) Regulation 1983. Accordingly no sanction can be recommended.”, and that the remainder of the Chapter be deleted.

Debate ensued.

To which Mrs Forsythe moved an amendment: That the words “that the remainder of the Chapter be deleted” be deleted and instead insert the words “that a new paragraph 6.8 be added under the heading Should a sanction be imposed in relation to Mr Obeid’s conduct?:

Whilst the Committee has concluded that Mr Obeid’s contraventions of the Constitution (Disclosures by Members) Regulation 1983 have not been wilful and that section 14A (2) of the Constitution Act 1902 has not been offended, that does not mean that the House cannot impose a sanction in relation to this matter. Provided that a sanction is not punitive, the House may act so as to protect its dignity.

Other Parliaments, including the House of Commons, have imposed a range of sanctions where members have failed to comply with pecuniary interest disclosure requirements. In a previous case concerning the conduct of a Member of the House (albeit not in respect of pecuniary interest disclosures) this Committee recommended that the Member apologise to the House. In line with those precedents, and in view of the number of Mr Obeid's contraventions of the Constitution (Disclosures by Members) Regulation 1983, it would not be unreasonable for the House to expect the Member to table in the House a full statement of all of his interests/positions in corporations since his election to the Legislative Council in 1991, as well as apologising to the House for the errors in his pecuniary interest returns since 1991."

To which Ms Gardiner moved an amendment: That the words "the majority of" be inserted after the word "Whilst."

Question put in relation to the question of Ms Gardiner.

Ayes: Mrs Forsythe
Ms Gardiner.

Noes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose
Mrs Sham-Ho

Question resolved in the negative.

Question put in relation to the amendment of Mrs Forsythe.

Question put.

Ayes: Mrs Forsythe
Ms Gardiner.
Mrs Sham-Ho

Noes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Question resolved in the negative.

Question put in relation to the amendment of Mr Hatzistergos.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile

: -

Mr Primrose
Mrs Sham-Ho

Noes: Mrs Forsythe
Ms Gardiner.

Question resolved in the affirmative.

Rev Nile moved: That a new paragraph 6.4 be inserted: “The Committee has found that Mr Obeid’s failure to disclose his association with corporations, as with his errors in not including various specific entries in relation to his interests/positions in corporations (with which he had, in most cases, already disclosed an association), was not wilful, and that there is no evidence that these omissions have had any bearing on his role as a Member of Parliament or a Minister.”

Question put.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose
Mrs Sham-Ho

Noes: Mrs Forsythe
Ms Gardiner.

Question resolved in the affirmative.

The Committee Chair made a statement to be recorded in the Minutes of Proceedings, about Chapter Six in which she expressed her concern that the Committee had “decimated” her draft report and that the changes made to Chapter Six meant that the Committee had failed in to properly address paragraph 4 (b) of its terms of reference, and made the following points:

- Whilst it is available to the Committee to decide not to recommend a sanction, it is wrong at law to say that “accordingly no sanction can be recommended.”
- For the committee to state that “no sanction can be recommended” could be setting a precedent – the committee could be seen to be denying its own powers to make such a recommendation and/or for the House to impose a sanction in relation to the conduct of a member.
- The sanctions recommended in the Chair’s draft report are at the mild end of the spectrum of sanctions available and are in line with recent precedents from the House of Commons.
- The fact that the House of Commons has a different disclosure regime (which does not depend on “wilfulness”) and a different monitoring system (including a Commissioner for Standards) does not mean that those precedents are not relevant.

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- On the contrary, the fact that these precedents do not depend upon a finding of wilful contravention, but on the practical means of addressing failures to meet disclosure requirements, make these precedents even more relevant.
 - What will the community think if there is no sanction (no matter how mild) recommended? What will that do for the reputation of this Committee, the House, the Parliament of NSW, and parliamentarians in general?
 - This report will be looked to as a precedent by other Australian parliaments in years to come --how will they understand the failure to recommend any sanction?

Mr Kelly moved: That Chapter Six, as amended, be agreed to.

Question put.

Ayes: Ms Fazio
Mr Hatzistergos
Mr Kelly
Revd Mr Nile
Mr Primrose

Noes: Mrs Forsythe
Ms Gardiner.
Mrs Sham-Ho

Question resolved in the affirmative.

Resolved, on the motion of Mr Kelly, that the report, as amended, be the report of the Committee.

Resolved, on the motion of Mr Hatzistergos, that the transcript of evidence, submissions, tabled documents, other documentation and correspondence (excepting the Deed of Assignment dated 12 February 1992 and Deed dated 3 December 1997, concerning Southpac Holdings Pty Limited, tabled by Mr Pearce on 16 October 2002) be tabled with the report and made public.

The Committee discussed the arrangements to be made for the lodgment of dissenting statements. [Advice was subsequently provided to members that the resolution establishing the Committee did not provide for dissenting statements in reports of the Committee.]

The Committee discussed the arrangements for the tabling of the report and take note debate, and noted that the advice of the Clerk would be sought in relation to the possible arrangements for the fixing of the date for the take note debate.

The Committee discussed stage two of the inquiry.

Resolved, on the motion of Mr Primrose, that the Clerk prepare a briefing paper including a possible timetable for the completion of stage two of the inquiry.

The Committee adjourned at 2.15 pm sine die.

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David Blunt
Acting Clerk to the Committee