



Queensland Parliamentary Service

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Your Ref:

Our Ref: 9.1

31 March 2015



Hon Peter Wellington MP
Speaker
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Speaker

You have requested my advice in relation to issues that have recently arisen in respect to the Member for Cook, Mr Billy Gordon MP.

Specifically, you have requested advice whether any matters of qualification or disqualification have arisen, based on material in the public domain or in your possession.

Allegations against and disclosures by Mr Billy Gordon MP

In recent days there have been a number of matters arise in respect of Mr Gordon.

The allegations are sourced from an email sent to your office on the evening of 24 March 2015 (8.06pm), opened by your office on 25 March 2015 and first brought to your attention early on 26 March 2015. This email was from Mr Gordon's former partner.

I confirm that we met early on 26 March 2015 and it was decided that it was important that Mr Gordon's former partner be advised, as soon as practical, that the email had been received and brought to your attention and would be considered in detail by you after you had obtained advice (which you sought from me). It is noted that nothing in that email indicated Mr Gordon's former partner was in immediate danger and that the allegations of criminal matters in the email were dated. Furthermore, a cursory examination of the material did not reveal any disqualifying event.

The information in this email appears to be similar in content to material sent earlier to the Premier and Members of the Opposition (according to media reports) and alleges that Mr Gordon:

- a. failed to lodge tax returns in an effort to avoid paying an appropriate amount of child support;
- b. has failed to pay child support; and
- c. was abusive to his former partner and based on the information his former partner provides has allegedly committed various offences in respect of her, including multiple occasions of assault and deprivation of liberty. (These matters relate to the period 2005-2008.)

The disclosure by Mr Gordon reported in the press concern his criminal history, detailed below.

Failure to lodge income tax returns

The failure of a person to lodge tax returns is essentially a matter within the remit of the Australian Tax Office (ATO). The ATO has the discretion to prosecute a person for the failure to lodge tax returns; however, prosecutions are reserved by policy to matters essentially involving tax evasion.

Section 161 of the *Income Tax Assessment Act 1936* (Cth) (ITAA) states that every person must, if required by the Commissioner of Taxation by notice published in the Gazette, give to the Commissioner a return for a year of income within the period specified in the notice. A taxpayer who has failed to lodge an income tax return commits an offence under section 8C(1)(a) of the *Taxation Administration Act 1953* (Cth) (TAA).

The action taken by the ATO to achieve lodgement, in circumstances where a taxpayer has failed to lodge an income tax return as required, depends on the circumstances of the case.

The first step, in most cases, might be for the ATO, to make direct contact with the taxpayer or their tax agent through a reminder letter or telephone call. In circumstances of continuing failure to comply, the Commissioner may issue a final notice, under section 162 of the ITAA, requiring lodgement by a specified date and outlining the consequences of continuing non-compliance, including the Commissioner's ability to impose penalties or commence prosecution for the offence.

Prosecution is generally regarded by the ATO as the most severe sanction available to attempt to secure the lodgement of outstanding tax returns. Prosecution will not typically be pursued where an administrative penalty or other forms of administrative response will result in a taxpayer lodging an outstanding return.

In the event of prosecution, section 8E of the TAA provides that an offence against section 8C of the TAA is punishable on conviction by a fine not exceeding 20 penalty units (currently \$3,400). Previous convictions for certain tax offences can attract an increased fine of 40 penalty units (currently \$6,800), 50 penalty units (\$8,500) and/or imprisonment for a period not exceeding 12 months.

In most cases, where prosecution is not considered appropriate, at least initially, the strategies available to the ATO to secure compliance with the requirement to lodge an income tax return can include:

- issuing a 'default assessment' under section 167 of the ITAA; or
- making the taxpayer liable for penalties and interest charges.

The ATO's policy regarding penalties is that a penalty will generally not be applied to late-lodged tax returns which are considered to be 'low-risk documents', such that the lodgement occurred voluntarily and does not result in any tax payable. A penalty is more likely if a taxpayer has more than one outstanding tax return, has a poor lodgement history and has not complied with a request to lodge their tax return. Liability for 'failure to lodge' penalties arises under subsection 286-75(1) of Schedule 1 of the TAA. The amount of the penalty is determined under subsection 286-80.

The failure to lodge a tax return in itself does not breach any qualification or disqualification rule relating to a Member of the Legislative Assembly under the *Parliament of Queensland Act 2001*.

Failure to pay child support

Mr Gordon's former partner has alleged that Mr Gordon has failed to pay for child support. There is no specificity as to whether this has been overdue for a specific period of time; or relates to one, two or multiple occasions of child support.

Parts IV and V of the *Child Support (Registration and Collection) Act 1988* (Cth) cover the collection of child support payments by deduction from salary or wages and the payment and recovery of child support debts.

The Child Support Agency (CSA) will enforce the payment of outstanding child support payments when there is little or no evidence of a parent's commitment to meeting their child support responsibilities or there is evidence of fraud. A paying parent can choose to self-manage their payments to CSA or have their child support payments automatically deducted from their pay on a regular basis. However, if the paying parent refuses to pay child support or enter into a satisfactory payment arrangement, the CSA may ask their employer to make child support deductions from their pay. In other words, the Parliamentary Service could be directed to pay Mr Gordon's child support payments out of his salary before being dispersed to Mr Gordon.

The failure to pay child support in a timely manner does not breach any qualification or disqualification rule relating to a Member of the Legislative Assembly under the *Parliament of Queensland Act 2001*.

Allegations that Mr Gordon has been abusive to his former partner and committed various offences in respect of her, including allegations of multiple occasions of assault and deprivation of liberty

Mr Gordon's former partner has made serious allegations against Mr Gordon, which could give rise to criminal proceedings. Mr Gordon's former partner makes at least eight separate allegations of common assault, three of which appear to have been committed in Queensland (s.335 of the *Criminal Code 1899*) and five in New South Wales. Common assault carries a maximum penalty of 3 years imprisonment in Queensland. There are also two allegations of deprivation of liberty that appear to have been committed in New South Wales. If convicted of such offences, and depending upon the sentence imposed, Mr Gordon could be disqualified from being a member.

It is noted that these allegations appear to date between 2005 and 2008. However, there is no time limit for when charges must be laid for an indictable offence in Queensland. There is no indication as to whether these matters have previously been reported by Mr Gordon's former partner to police. Whether the delay in reporting has affected the ability of police and prosecutors to charge or prosecute is a matter for enforcement agencies.

I note that the Premier has already referred various matters to police. I recommend, however, that the email you have received also be referred to the Commissioner of Police.

Matters relating to disqualification on the grounds of criminal offences are discussed in more detail below.

Mr Gordon's criminal history

There have been public revelations of Mr Gordon's criminal history in the last few days. The matters reportedly released by Mr Gordon include the following:

- *Breaking, entering and stealing in 1987 in Innisfail.*
- *Breaking and entering with intent, attempted breaking and entering and stealing in 1990 in Atherton.*
- *Breach of probation in 1992 in Atherton.*
- *Public nuisance in 1996 in Normanton.*

- *Breach of bail conditions in 1999 (stemming from not attending a court summons from the 1996 incident).*
- *In addition, I have twice had my driver's licence suspended for unlicensed driving (2004 and 2008).*
- *Finally, in 2008 I was served with an Apprehended Violence Order as a result of a complaint by my mother. My mother at the time was concerned that I was going to return to a relationship with an ex-partner (we were at said ex-partner's residence) and I asked her to leave in a manner that she found threatening. My mother has confirmed to me that there were no allegations of physical violence made with respect to this incident. This AVO was never heard in court, and does not form part of my criminal record, however I provide its details now for completeness.*

The issues that arises are:

- whether Mr Gordon was under an obligation to disclose any of the above convictions and breaches; and
- whether any of the above convictions and breaches affected Mr Gordon's qualification to be a member of the Legislative Assembly or would cause his disqualification.

Disclosure of previous offences - Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)

Section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) (RO Act) provides that where a rehabilitation period has expired in relation to a "conviction recorded against any person" and the conviction has not been revived in respect of the person, neither that person nor any other person, if the person knows that the rehabilitation period has expired, shall disclose the conviction unless—

- (a) the person against whom the conviction is recorded wishes to disclose the conviction; or
- (b) the person makes the disclosure under the authority of a permit granted by the Minister; or
- (c) the person makes the disclosure in circumstances that constitute a legal exception.

A conviction is defined to mean a conviction by or before any court for an offence, whether recorded, in Queensland or elsewhere, before or after the date of commencement of this Act.

Section 8 of the RO Act provides that where the rehabilitation period has expired in relation to a conviction recorded against any person and the conviction has not been revived in respect of the person, it is lawful to claim, upon oath or otherwise, that the person has not suffered the conviction, except where there is a statutory exception. In relation to a conviction upon indictment recorded against a person who in relation to that conviction was not dealt with as a child, the rehabilitation period is 10 years commencing on the date the conviction is recorded; or where an order of a court made in relation to the conviction has not been satisfied within that period of 10 years—a period terminating on the date the order is satisfied. In the case of non-indictable offences, the rehabilitation period is 5 years commencing on the date the conviction is recorded.

Section 9A of the RO Act provides statutory exceptions to the general rule of non-disclosure in special cases. The provision contains a schedule with professions and positions, against which disclosure of certain offences may be required to be made regardless of the rehabilitation period. At note 18 of the Schedule a candidate for election as a member of the Legislative Assembly is listed. These persons may be required to disclose contraventions of a disqualifying electoral offence within the meaning of the *Electoral Act 1992* and contraventions of an offence that would be a disqualifying electoral offence within the meaning of the *Electoral Act 1992*, except that the offender was convicted of the offence before the commencement of the *Electoral and Other Acts Amendment Act 2002*.

The clear purpose of the RO Act is to motivate persons who are convicted to not re-offend and reward their good behaviour with a clean record. Section 11 of the RO Act provides, however, that convictions are “revived” should an offender re-offend. If the conviction is revived, the rehabilitation period for the original offence starts to run again (either 5 or 10 years). However, s.11(2) provides that a subsequent conviction for a simple offence or a regulatory offence or an offence that can be dealt with in a summary way does not revive earlier convictions unless the court by which the person is subsequently convicted is satisfied that, having regard to the public interest, previous convictions recorded against the person, or any of them, should be revived and so orders.

In short, there appears, based on the limited information available, to have been no lawful obligation on Mr Gordon to disclose any of the matters relating to his criminal history.

Parliament of Qld Act 2001 – Qualifications and Disqualifications

Qualifications

Section 64 of the *Parliament of Queensland Act 2001* (the POQ Act) provides the grounds for qualifications for being a member of parliament. For current purposes the relevant sections are s.64(2)(b) and (4&5).

(2) A person is a disqualified person if the person—

(b) within 2 years before the day of nomination, has been convicted of an offence against the law of Queensland, another State or the Commonwealth and sentenced to more than 1 year’s imprisonment; or

...

(4) For subsection (2)(a), the circumstances in which a person is subject to a term of imprisonment or detention—

(a) include circumstances in which the person is released from the term of imprisonment or detention on parole, leave of absence or otherwise without being discharged from all liability to serve all or part of the term; but

(b) do not include circumstances in which a person is subject to a term of imprisonment but is at liberty because the term of imprisonment has been suspended.

(5) For subsection (2)(b), the following apply—

(a) if the sentence of imprisonment is suspended, the provision does not apply;

(b) however, if the person is ordered at any time to actually serve more than 1 year of the suspended term of imprisonment, the provision applies.

As can be seen from the above, a person is not qualified to be a member if they have been convicted of an offence and sentenced to imprisonment for a period of one year, no less than two years prior to being a candidate.

This ground of qualification does not appear to be an issue in the context of Mr Gordon. There is no suggestion that within 2 years before the day of nomination, Mr Gordon has been convicted of an offence against the law of Queensland, another State or the Commonwealth and sentenced to more than 1 year’s imprisonment.

Disqualification of a member

Section 72 of POQ Act provides relevantly as follows.

Vacating seats of members in particular circumstances

(1) A member's seat in the Assembly becomes vacant if any of the following happens--

...

(i) the member is convicted of any of the following offences--

- (i) an offence against the law of Queensland, another State or the Commonwealth for which the member is sentenced to more than 1 year's imprisonment;*
- (ii) an offence against the Criminal Code, section 59 or 60;*
- (iii) a disqualifying electoral offence;*
- (iv) treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth;*

In short, a member is only disqualified if they are convicted of an offence and sentenced to a term of imprisonment of one year or more or convicted of certain enumerated offences (corruption, electoral corruption, treason etc.).

As outlined earlier the material provided to you makes allegations against Mr Gordon (assault and deprivation of liberty) in respect of which if he was convicted, he may be sentenced to a period of imprisonment exceeding one year. If this was the case he would be disqualified under the provisions of the POQ Act. However, Mr Gordon is entitled to the presumption of innocence and until such time as he is convicted and sentenced of any offence that satisfies s.72, he is not disqualified from being a member.

I note that in recent memory there have been numerous allegations against members of criminal conduct or similar (eg domestic violence). I have included at **Attachment 1** a list of some of the matters that have arisen in respect of sitting members and the outcomes.

Mr Gordon's vote in the House

You have also asked me for advice in respect of Mr Gordon's vote in the House; and whether his vote can be set aside in any circumstances.

Section 13(a) of the POQ Act provides:

13 Voting

At a meeting of the Assembly or a Committee of the Whole House--

- (a) a question is decided by a majority of the members present and voting; and*
- (b) the Speaker or Deputy Speaker presiding--*
 - (i) has no deliberative vote; but*
 - (ii) if the votes are equal, has the casting vote.*

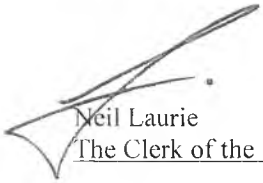
Neither the Speaker, party leader, nor the House itself can generally disallow Mr Gordon's vote on any matter. The only legitimate grounds to disallow Mr Gordon's vote is in the exceedingly rare circumstance of a vote on a matter in which a member has a direct pecuniary interest (SO 259). Impeding or attempting to impede a member or inappropriately influence a member's vote may constitute a contempt.

There has been considerable talk in recent days about whether parties should rely on Mr Gordon's vote. Under current Standing Orders (see Chapter 19), any member in the Assembly when a vote takes place on a question, must vote with either the Ayes or the Noes. They cannot abstain on the floor of the Assembly. Members vote from their seat and the votes of cross bench members (which Mr Gordon now is) are not

apparent to anyone until such time as the Clerk verbally advises the vote of those cross bench members to the Assembly. The votes of cross-bench members are recorded after the votes of the government and the opposition.

In other words, it is not up to the discretion of a party leader as to whether they are going to use Mr Gordon's vote – Mr Gordon has a right to vote. Furthermore, party leaders would not necessarily know what the vote of Mr Gordon was until towards the conclusion of the division after party votes have already been recorded.

Yours sincerely



Neil Laurie
The Clerk of the Parliament

Attachment 1

Name	Parliamentary representation	Nature and details of allegation	Nos. in the Assembly	Additional Information
William Theodore D'Arcy	Albert 27 May 1972 – 7 Dec 1974 Woodridge 12 Nov 1977 - 9 Jan 2000 (resigned)	Child sex offences – charged in October 1998	Hung Parliament – 1998 – 2001 1998 Election result: ALP – 44, Nat – 23, Lib – 9, PHON – 11, Ind - 2 (ALP had additional seat from Dec 1998 following a by-election in Mulgrave)	Chairman of Committees at time of resignation. Convicted of child sex offences later in 2000.
James Peter Elder	Manly 2 Dec 1989 – 19 Sep 1992 Capalaba 19 Sep 1992 – 17 Feb 2001 (did not contest)	Allegations regarding electoral fraud. Alleged members of his family had made false enrolments. ¹	Hung Parliament – 1998 – 2001 1998 Election result: ALP – 44, Nat – 23, Lib – 9, PHON – 11, Ind - 2 (ALP had additional seat from Dec 1998 following a by-election in Mulgrave)	Resigned as Deputy Premier on 22 Nov 2000. Became an Independent from 30 Nov 2000, following Shepherdson Inquiry hearings. [CJC report – The Shepherdson Inquiry tabled on 1 May 2001. Public hearings were held between 3 Oct 2000 – 19 Jan 2001].
Michael Hans Kaiser	Woodridge 5 Feb 2000 – 17 Feb 2001 (did not contest)	Allegations regarding electoral fraud. Made admissions to Inquiry regarding false enrolments. ²	Hung Parliament – 1998 – 2001 1998 Election result: ALP – 44, Nat – 23, Lib – 9, PHON – 11, Ind - 2 (ALP had additional seat from Dec 1998 following a by-election in Mulgrave)	Became an Independent from 10 January 2001, following Shepherdson Inquiry hearings. [CJC report – The Shepherdson Inquiry tabled on 1 May 2001. Public hearings were held between 3 Oct 2000 – 19 Jan 2001].
Grant Steven Musgrove	Springwood 13 Jun 1998 – 17 Feb 2001 (did not contest)	Allegations regarding electoral fraud.	Hung Parliament – 1998 – 2001 1998 Election result: ALP – 44, Nat – 23, Lib – 9, PHON – 11, Ind - 2	Became an Independent from 4 December 2000, following Shepherdson Inquiry hearings.

¹ Criminal Justice Commission: The Shepherdson Inquiry – An Investigation into Electoral Fraud, April 2001, tabled 1 May 2001, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2001/5001T324.pdf>

² Criminal Justice Commission: The Shepherdson Inquiry – An Investigation into Electoral Fraud, April 2001, tabled 1 May 2001, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2001/5001T324.pdf>

		Made admissions that he had probably falsely enrolled people. ³	(ALP had additional seat from Dec 1998 following a by-election in Mulgrave)	[CJC report – The Shepherdson Inquiry tabled on 1 May 2001. Public hearings were held between 3 Oct 2000 – 19 Jan 2001].
Charles Robert Rappolt	Mulgrave 13 Jun 1998 – 4 Nov 1998 (resigned)	Allegations his partner had taken out a domestic violence order against him. ⁴	Hung Parliament – 1998 – 2001 1998 Election result: ALP – 44, Nat – 23, Lib – 9, PHON – 11, Ind - 2 (ALP had additional seat from Dec 1998 following a by-election in Mulgrave)	Died 2 August 1999 (reportedly suicide).

³ Criminal Justice Commission: The Shepherdson Inquiry – An Investigation into Electoral Fraud, April 2001, tabled 1 May 2001, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2001/5001T324.pdf>

⁴ Refer Hansard, Motion of Condolence, 17 August 1999, <http://www.parliament.qld.gov.au/documents/hansard/1999/990817ha.pdf>.



Your Ref: Our Ref: 8.1.7

31 March 2015

Handwritten signature
31/3/15

Mr Neil Laurie
Clerk of the Parliament
Queensland Parliament
Cnr Alice & George Street
BRISBANE QLD 4000

Dear Mr Laurie

Please find attached a letter from yourself dated 31 March 2015 regarding allegations made against the Member for Cook.

In accordance with Standing Order 31, I require you to table this document as soon as practicable.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Peter Wellington'.

HON PETER WELLINGTON MP
Speaker of the Legislative Assembly

Enc.