

(MR SPEAKER)

SPEAKER'S RULING – REFERRAL TO ETHICS COMMITTEE, CRIME AND CORRUPTION COMMISSION REFERRAL REGARDING THE DEPUTY PREMIER

MR SPEAKER Honourable members,

SUMMARY OF THE RULING

On 9 September 2019, the Acting Chairperson of the Crime and Corruption Commission (CCC), Mr Marshall Irwin, wrote to me regarding the recently finalised assessment of the CCC into allegations raised against the Deputy Premier, the Hon Jackie Trad MP. Mr Irwin's letter identified allegations which the CCC asserted that were matters that the Parliament should consider and determine whether the Deputy Premier should be referred to the Ethics Committee.

Whilst I did not agree with all of the CCC assertions, and this was advised to the CCC through correspondence, the practical effect was that the CCC had placed material before me which I was duty bound to consider in terms of exercising the Speaker's initiative in Standing Order 268(2) to refer matters to the Ethics Committee.

In question before me is whether to refer to the Ethics Committee the allegations that the Deputy Premier has;

- failed to comply with the requirements relating to the registration of a matter
- not complied with Standing Order 262 (Disclosure in representations or communications of pecuniary interest)

I wrote to the Deputy Premier on 9 October 2019 to seek information from her as the person the subject of allegations, similar to the process as detailed in Standing Order 269(4). A response from the Deputy Premier was received on 25 October 2019.

My consideration of this matter was complicated in that both the CCC and the Deputy Premier have referred to in their correspondence the existence of additional material which has not been provided to me. Furthermore, there is no precedent of allegations of failure to comply with Standing Order 262 to guide my consideration. In such cases where no precedent

exists, the convention has been for matters to be considered by the Ethics committee and not the Speaker.

I have reached the conclusion that there are sufficient questions of fact to be determined against the evidence such that it would be prudent to refer the matters to the Ethics Committee for further consideration.

I also wish to stress that I have not taken this decision lightly, and I have given this decision lengthy and serious consideration. My reasons are contained in detail in the full ruling below and this summary should be read in conjunction with that ruling.

BACKGROUND TO THE COMPLAINTS

On 9 September 2019, the Acting Chairperson of the Crime and Corruption Commission (CCC), Mr Marshall Irwin, wrote to me regarding the CCCs recently finalised assessment into allegations raised against the Deputy Premier, the Hon Jackie Trad MP regarding a property purchased in Woolloongabba and her involvement in a decision making process relating to the Cross River Rail (CRR) and the Inner City South State Secondary College (ISSSC).

Mr Irwin's letter referred to the CCC's media statement on 6 September 2019. Mr Irwin noted that the media statement confirmed that, following its assessment, the CCC had determined that no investigation would be commenced on the basis that no evidence or information was identified that supports a reasonable suspicion of corrupt conduct as defined in the *Crime and Corruption Act 2001*.

However, Mr Irwin's letter of 9 September 2019 noted that, as part of conducting its assessment, the CCC identified allegations that the Deputy Premier may have failed to register an interest within the one month timeframe as set out in section 69B(2) of the *Parliament of Queensland Act 2001* (POQA) and Schedule 2 to the Standing Orders.

In his correspondence, the Acting Chairperson of the CCC also identified further allegations relating to the purchase of the property at Woolloongabba. Specifically that the Deputy Premier may have breached the *Queensland Cabinet Handbook* and *Ministerial Handbook* requiring disclosure and management of any potential, perceived or actual conflict of interest.

Mr Irwin noted that the relevant Cabinet Budget Review Committee (CBRC) meetings for which the Deputy Premier participated occurred on 27 March and 3 April 2019 for the CRR and 5 April 2019 for the ICSSSC. The latter meeting having been conducted by flying minute.

Mr Irwin's letter advised that the CCC was of the understanding that the alleged breaches were matters for the Parliament to consider and determine whether the Deputy Premier should be referred to the Ethics Committee to deal with pursuant to section 104B and 104C of the POQA. In addition, Mr Irwin advised that the CCC had resolved to refer these matters to me as Speaker for consideration and appropriate action.

On 16 September 2019, I responded to Mr Irwin advising, amongst other things, my view that the CCC was operating under a misconception in that responsibility for the enforcement of the *Ministerial Handbook* and the *Ministerial Code of Conduct* rightly rests with the Premier, and not the Parliament.

I also advised that should the CCC wish to make a complaint in relation to an alleged failure to register an interest that the correct process would be for the CCC to write to the Clerk as Registrar in accordance with Schedule 2, section 16.

I also noted, for completeness, that if the allegations concerning the conduct of the Deputy Premier included in his letter regarding breaches of the Cabinet and Ministerial Handbook were established, such conduct might also raise issues in terms of a possible breach of parliamentary privilege and/or contempt for failure to comply with Standing Order 262 – Disclosure in representations or communications of pecuniary interests.

However, I noted that the information contained in the CCC's letter of 9 September 2019 regarding the conduct in relation to Cabinet processes did not contain sufficient evidence of an allegation of contempt for me as Speaker to determine to refer the matter to the Ethics Committee.

On 20 September 2019, the Acting Chairperson of the CCC responded to my letter agreeing that *Queensland Cabinet Handbook* and *Ministerial Handbook* are instruments of the executive government and that the enforcement of those Handbooks were rightly a matter for the Premier.

Mr Irwin sought to clarify that in referring both these matters to me on 9 September 2019, the CCC was not making a complaint or performing

any function under the CCC Act other than to refer information to an entity that it considered appropriate in the circumstances.

With respect to the alleged failure to register an interest within the timeframes as set out in section 69B(2) of the POQA and Schedule 2 to the Standing Orders, Mr Irwin also noted that any Member of Parliament might refer an alleged failure to register interest issue with the Clerk under section 14, Schedule 2 of the Standing Orders.

In regard to the possible failure to disclose a pecuniary interest in representations or communications with other Members or with Ministers or servants of the Crown in accordance with Standing Order 262, Mr Irwin confirmed that possible contravention of that Standing Order was a relevant consideration in this matter. However, he noted that such an allegation could only be referred to the Ethics Committee by the Speaker in accordance with Standing Order 268(2) or by another member raising the matter with the Speaker in accordance with Standing Order 269.

Accordingly, the effect of the correspondence from the CCC was to place material before me to which I was duty bound to consider in terms of exercising the Speaker's initiative in Standing Order 268(2). The specific question before me being - whether I should draw to the attention of the House these matters and recommend that these matters be referred to the Ethics Committee?

I should note that Mr Irwin advised in his correspondence that the material placed before me by the CCC is not all the material obtained by the CCC in its assessment process. Mr Irwin's correspondence notes that if further information is needed that might be gathered by appropriate procedures under the POQA and relevant Standing Orders.

Whilst Standing Order 269 sets out a procedure to be followed in matters other than SO 268, I have taken the view that the procedure and criteria for considering whether a matter should be referred to the Ethics Committee as set out in SO 269 should be equally applied to the facts by a Speaker in determining whether to exercise the Speaker's initiative under SO 268(2).

On that basis, I determined to seek further information from the Deputy Premier as the person the subject of allegations, similar to the process as detailed in Standing Order 269(4).

Accordingly, on 9 October 2019, I wrote to the Deputy Premier outlining that, as a result of the correspondence from the CCC, I had been placed in a situation where I was duty bound to consider the following questions:

- a) Whether to make a complaint to the Registrar under s.14 of Schedule 2 of Standing Orders of the allegation that she has failed to comply with the requirements relating to the registration of a matter, which will stand automatically referred to the Ethics Committee; or
- b) Whether to report to the House under Standing Order 268 that allegation that she has failed to comply with the requirements relating to the registration of a matter and recommend its referral to the Ethics Committee, which will stand automatically referred to the Ethics Committee; and/or
- c) Whether to report to the House under Standing Order 268 the allegation that she has not complied with Standing Order 262 (Disclosure in representations or communications of pecuniary interest) and recommend the allegations referral to the Ethics Committee, which will stand automatically referred to the Ethics Committee; and/or
- d) Not take any further action.

On 25 October 2019, the Deputy Premier responded to my letter and made submissions to the effect that I should consider that no further action is warranted.

I will now outline in detail my consideration of the material before me and the conclusions reached.

In doing so, I wish to emphasise that my role is not to determine whether there has been proven fault (a breach of privilege or contempt) but, rather, whether there are sufficient issues in play to warrant the further consideration of the House via the Ethics Committee.

CONSIDERATION

Again, whilst there is nothing in SO 268 in terms of procedure or criteria, I have taken the view that the procedure and criteria for considering whether a matter should be referred to the Ethics Committee as set out in SO 269 should be applied in exercising the Speaker's initiative under SO 268(2).

In considering whether a matter should be referred to the committee, under Standing Order 269(4) the Speaker is required to take account the degree of importance of the matter which has been raised and whether an adequate apology or explanation has been made in respect of the matter. No matter should be referred to the Ethics Committee if the matter is technical or trivial and does not warrant the further attention of the House.

Degree of Importance – Technical or Trivial

Alleged failure to register an interest

In her submission, the Deputy Premier referred to the Registrar's (the Clerk of Parliament's) comments at an Estimates hearing on 22 July 2019 where he states in relation to the obligation to declare within 30 days:

"...members tend to be human, they tend to be very busy people and my experience has been that, with no malfeasance intended, members oftentimes take longer than that to actually update their register."

"I know from my experience as registrar now for 17 years or more that oftentimes when we send out the midyear reminders to members – members are required by standing orders to update their register midyear every year with a form that says it is correct or they need to update. I know there are updates that are made that have probably occurred sometimes before, but their memory is only jogged by our correspondence to them."

Whilst agreeing with the pragmatic anecdotal evidence of the Clerk, and accepting that from time to time human error will occur, in my view, it does not necessarily follow that an inadvertent failure to register an interest in accordance with the POQA and the Standing Orders would fall into the category of a technical or trivial matter.

In my view, to classify an inadvertent failure to register an interest as trivial or technical would not pay sufficient deference to the Register of Interest regime as established, both in statute and the Standing Orders of the House.

Furthermore, it would also not be consistent with past allegations of failure to register interests that were treated as serious enough to be referred to the Ethics Committee.

I note previous Ethics Committee Report Nos. 104 *Matter of privilege referred by the Registrar on 25 February 2010 relating to an alleged failure*

*by a member to register an interest in the Register of Members' Interests*¹ and 149 *Matter of privilege referred by the Registrar on 16 June 2014 relating to an alleged failure to register an interest in the Register of Members' Interests*² are examples where the committee was tasked with considering other inadvertent failures to register interests.

In my view, the inadvertent nature of a failure to register may be a relevant mitigating factor to the question as to what is the appropriate penalty or sanction following a finding of contempt, but not to the issue of whether or not an alleged breach is a serious matter.

I have reached the conclusion that, if proven, the allegation against the Deputy Premier that she failed to register an interest within the timeframes as set out in section 69B(2) of the POQA and Schedule 2 to the Standing Orders is not a matter that would fall into the category of trivial or technical.

Alleged failure to disclose a pecuniary interest

The background to Standing Order 262 involves the Interactive Gambling Licence matter in the late 1990s early 2000s. In a report on the matter (Auditor-General of Queensland Report No.1 1999-2000 – Audit of Certain Matters Associated with the Issue of an Interactive Gambling Licence, 24 September 1999), the Auditor-General suggested that members should declare in correspondence or in minutes of meetings any interest they may have in a matter about which they are making representations.

The Auditor-General considered the declaration of such interests only in the Register of Members' Interests to be insufficient. In its formal response to the Auditor-General's report, the Members Ethics and Parliamentary Privileges Committee in Report No. 44 noted the 1974 resolution of the House of Commons which requires members of the House of Commons to disclose "... any relevant pecuniary interest or benefit of whatever nature ..." in any "...transactions or communications which a Member may have with other members or with Ministers or servants of the Crown". The committee saw merit in an order in those general terms and recommended that the Legislative Assembly adopt a similar provision which was the predecessor to SO 262.

In my view, the allegation against the Deputy Premier that she failed to disclose a pecuniary interest in representations or communications with

¹ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2010/5310T1960.pdf>

² <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T6291.pdf>

other Members or with Ministers or servants of the Crown in accordance with Standing Order 262 is a serious matter.

Again, I believe that to classify such an alleged breach as trivial or technical would not pay due deference to the rationales behind the regime of requirements for Members to make ad hoc declarations of interest in Chapter 40, in particular Standing Order 262.

Accordingly, I have reached the conclusion that, if proven, the allegation against the Deputy Premier that she failed to disclose a pecuniary interest in representations or communications with other Members or with Ministers or servants of the Crown in accordance with Standing Order 262 is a serious matter that would not fall into the category of trivial or technical.

Adequate Apology/Explanation

Alleged failure to register an interest

In her response to my letter, the Deputy Premier pointed to her press conference on 6 September 2019, where she included a public apology to the Premier, her colleagues, to the community and to all Queenslanders.

The Deputy Premier made a case that an adequate apology has been made in respect to the failure to register the investment property.

I note that whilst a public apology was made in the press conference of 6 September 2019, in the three sitting weeks subject to that apology the Deputy Premier has not made an apology in the House in relation to her failure to register.

In searching the record of proceedings, I note that on 17 September 2019 in response to a Question without Notice (p 2806), the Deputy Premier referred the Member asking the question to her statements made in the press conference on 6 September 2019. Again, on 19 September 2019, in response to another Question without Notice (p 3008), the Deputy Premier referred the questioner to answers given previously in question time.

Whilst it is entirely appropriate that a public apology has been made outside the House, in my view, for an adequate apology to be made in terms of matters of privilege, an apology also needs to be made to the Legislative Assembly as the body to which the duty to register an interest is owed.

Had the Deputy Premier made an apology in the House, similar to the one she made outside the House on 6 September 2019, I would have been comfortable in ruling that an adequate apology has been made and the matter does not warrant the further attention of the House.

However, in the absence of such an apology in the House, I cannot so rule.

Accordingly, the only remaining relevant criteria that I can consider in accordance with Standing Order 269 is whether there has been an adequate explanation.

In her response to my letter, the Deputy Premier clarified that in accordance with the POQA and the Standing Orders that she should have notified the Registrar of the purchase of the Woolloongabba property by 25 May 2019.

She also provided a chronology relating to her written communications with the Registrar in relation to registration which began on 2 July 2019 and ultimately resulted in the signed forms being received by the Registrar on 18 July 2019.

The Deputy Premier also submitted that during the period between 27 March 2019 when the contract for the property was registered and settlement on 26 April 2019 she had orally advised the registrar that she intended to update her register.

The Deputy Premier argued that the late declaration was an example of human error of the nature seen by the Registrar on many occasions for which no malfeasance was intended. She also argued that since the airing of these issues publically, personal and professional consequences have been visited on her including the actions of the Premier to relieve her of the Cross River Rail responsibilities and her public apology via press conference.

As by their very nature, the consequences that have resulted from the alleged failure to register arose after the relevant conduct the subject of the complaint, I cannot accept that they could constitute an explanation as to how the alleged contempt occurred.

Accordingly, it is my concluded view that the arguments made by the Deputy Premier might be entirely relevant to the question as to what is the appropriate penalty or sanction following a finding of contempt. However,

I cannot find that these arguments provide an adequate explanation of the conduct the subject of the alleged breach.

Alleged failure to disclose a pecuniary interest

On the information provided by the CCC, the Deputy Premier became aware of the purchase of the Woolloongabba property on 29 March 2019 and CBRC met to consider the Cross River Rail submissions on 29 March 2019 and 3 April 2019 and considered the Inner City South State Secondary College (ICSSSC) submission on 5 April 2019.

The letter from the CCC of 20 September 2019, states that the Deputy Premier has not disputed that she did not declare an actual potential or perceived conflict of interest.

However, in her response to me, the Deputy Premier did dispute this fact and argued that she has received legal advice that she did not have a conflict of interest in respect of Cabinet and CBRC decisions concerning the ICSSSC and the Cross River Rail project.

The Deputy Premier advised that the legal advice has, at its foundation, facts and information arising out of CBRC-in-Confidence material and as such she was not in a position to provide the full legal advice to me as Speaker. However, in the letter, the Deputy Premier does provide an assurance that the legal advice is such that I should not refer the matter to the Ethics Committee.

In her correspondence, the Deputy Premier does not offer an apology for the alleged failure to disclose a pecuniary interest and she has not made such an apology in the House.

In the absence of an apology, again, the only remaining criteria that I can consider in accordance with Standing Order 269 is whether there has been an adequate explanation.

However, it is impossible for me to rule on the adequacy of such an explanation when I have not been provided with the full material including the legal advice that is the purported basis for her explanation.

In addition, I note that there is not any precedent of allegations of failure to comply with Standing Order 262 having been previously considered by Speaker's nor any referral of the same to the Ethics Committee to guide me in my consideration.

In such cases where no precedent exists, the convention has been for matters to be considered by the Ethics committee and not the Speaker.

Based on all the above, I have reached the conclusion that the Ethics Committee is best placed to investigate all the relevant evidence and determine questions of fact in relation to the potential breach of Standing Order 262 by the Deputy Premier.

Conclusions

In conclusion, having carefully considered all the material before me, in accordance with Standing Order 268(2), I formally bring to the attention of the House and refer the following matters which have been raised in correspondence from the CCC to me, to the Ethics Committee:

- the allegation that the Deputy Premier failed to register an interest, specifically a property in Woolloongabba within the one month of its purchase on 26 April 2019 as set out in section 69B(2) of the POQA and Schedule 2 to the Standing Orders; and
- the allegation that the Deputy Premier has not complied with Standing Order 262 (Disclosure in representations or communications of pecuniary interest) by not declaring her interest in the Woolloongabba property in representations or communications with other Members or with Ministers or servants of the Crown when CBRC met to consider the Cross River Rail submissions on 29 March 2019 and 3 April 2019 and considered the Inner City South State Secondary College (ICSSSC) submission on 5 April 2019.

I wish to note that procedurally it was an option for me to deal with the allegation regarding the failure to comply with the requirements relating to the Registration of Interests by making a complaint to the Registrar under s.14 of Schedule 2 of Standing Orders.

The rationale behind this procedural step is a sound one in that if a Member wished to make a complaint about a failure to register an interest by the Speaker of the day, the complaint should rightly be made via the Clerk and not the Speaker. In the vast majority of complaints regarding Registration of Interests the procedure in s.14 of Schedule 2 should be followed.

However, as I noted earlier, I have come to the conclusion that the effect of the correspondence from the CCC has been to place me in a situation where I was duty bound to consider exercising the Speaker's initiative under Standing Order 268(2). Accordingly, I have decided that in these circumstances it is more appropriate for me to follow the process as outlined in that Standing Order and refer the matter directly to the Ethics Committee.

I also wish to stress that I have not taken this decision lightly, and I have given this decision lengthy and serious consideration.

I reiterate that my role is not to determine whether there has been proven fault (a breach of privilege or contempt) but, rather, whether there are sufficient issues in play to warrant the further consideration of the House via the Ethics Committee

In my view, there are sufficient questions of fact to be determined against the evidence such that it would be prudent to refer the matters to the Ethics Committee. Furthermore, both the CCC and the Deputy Premier have referred to in their correspondence the existence of additional material which has not been provided to me. Accordingly, I am of the view that the Ethics Committee is more appropriately placed to call for and examine such evidence in accordance with the powers of the Committee under the POQA and the Standing Orders, should it resolve to do so.

I remind members that Standing Order 271 now applies, and members should not refer to these matters in the House.

I also remind everyone generally, that the Deputy Premier should be afforded the courtesy of fairness while the Ethics Committee considers this matter.