



MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 93

Matter of Privilege Referred by the Registrar on 21 July 2008 Relating to the Alleged Failure by the Premier to Register a Benefit Received in the Register of Members' Interests

Introduction and background

1. The Members' Ethics and Parliamentary Privileges Committee (the MEPPC or the committee) is a statutory committee of the Queensland Parliament established under the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 11 October 2006.
2. Section 91 of the POQA provides that the MEPPC's area of responsibility about the ethical conduct of members includes considering complaints referred to the committee about the failure to register particular interests. The committee investigates and may report on allegations referred to it by the Registrar, and inquires into and reviews other significant issues regarding the Register of Members' Interests.¹
3. By letter to the Registrar dated 21 July 2008, the Leader of the Liberal Party, Mr Mark McArdle MP, raised the allegation, based on a media report, that the Premier, the Honourable Anna Bligh MP, had 'failed to register a personal benefit from a Director of a company in receipt of a significant Queensland Government contract' in the Register of Members' Interests. The alleged benefit referred to was a house-sitting arrangement for a family friend's Sydney residence in January 2008.

The reference

4. Section 14(3) of Schedule 2 of *The Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (Standing Orders) states that the Registrar must refer an allegation made by a member, made in writing, to the MEPPC. Consequently, the Registrar referred the matter to the committee on 21 July 2008.
5. Specifically, the matter referred to the committee concerns an allegation that the Premier allegedly failed to register a benefit received in the Register of Interests.

¹ Schedule 2: *Registers of Interests. Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (amended 26 May 2005, 30 March 2006, 20 June 2006, 8 February 2007, 1 May 2007 and 24 May 2007) at 68.

Previous reference

6. The committee has previously had one reference concerning an alleged failure to register a benefit in the Register of Interests. However, this matter was deferred pending the outcome of the CMC investigation.²

Two separate tests

7. The committee examined *two separate tests* and their elements as derived from the Standing Orders³—
 - i. Whether the matter required disclosure; and
 - ii. If yes, has the non-disclosure resulted in a contempt?

Whether the Matter required disclosure?

8. The purpose of the Register of Members' Interests is to place on record any pecuniary or other relevant interests of a member which may give rise to a conflict of interest or a perception of a conflict of interest between a member's private interests and the public interest. The register seeks to provide information which might be thought by others to affect a member's public duties, or to influence their speeches or votes in the Legislative Assembly.⁴
9. The Preamble contains numerous statements that indicate the intention of the register of interests is for disclosure. The Register of Members' Interests and Register of Related Persons' Interests are mechanisms to encourage and foster transparency, accountability and openness.⁵ Accordingly, the question of whether a member is required to register a benefit received needs to be considered in this context.
10. In her submission to the committee, the Premier asserts her belief that the Register of Members' Interests is:

*an important part of the high standards of accountability required of Members of Parliament.*⁶

11. The Premier's belief echoes the committee's view that the Register of Members' Interests is a mechanism to encourage and foster transparency, accountability and openness. The Premier states that:

*It is designed to ensure potential conflicts of interest in the exercise of parliamentary duties are made public.*⁷

12. Section 1 of Schedule 2 of the Standing Orders presents two potential categories of benefits requiring registration which the house-sitting arrangement could potentially fall into. It is the committee's view that the benefit received in this case does not fall into the category of a 'gift' as defined in section 1 of schedule 2 of the Standing Orders but rather needs to be considered in the category of 'sponsored travel and accommodation' as defined in the same section.

² *Matter of Privilege Referred by the Speaker on 13 November 2006 Relating to the Alleged Failure by a Member to Register a Private Loan in the Register of Members' Interests.*

³ Schedule 2 – *Registers of Interests. Standing Rules and Orders of the Legislative Assembly*: Effective from 31 August 2004 (amended 26 May 2005, 30 March 2006, 20 June 2006, 8 February 2007, 1 May 2007 and 24 May 2007).

⁴ Note 3.

⁵ Note 3.

⁶ Premier, *Submission to Committee*, 2008, at 2.

⁷ Note 6.

13. Sponsored travel or accommodation is defined in schedule 2 as any travel undertaken, including accommodation incidental to the travel, or any accommodation benefit received, by the member or a related person in respect of which a contribution (whether in cash or kind) to the cost of the travel (including incidental accommodation) or the accommodation is made by a person other than the member or a related person.⁸
14. In her submission, the Premier asserts that she always understood that section 7(2)(l) of the schedule related to a circumstance where a third party actually pays for some or all of the costs of travel or accommodation. However, as detailed above the Standing Orders clearly contemplates in kind contributions.
15. Accordingly, the committee finds that the Premier's stay arguably falls within the definition of sponsored travel or accommodation as defined in section 1 of Schedule 2 detailed above. However, there are four exceptions to the requirement to register according to this definition. The first three exceptions do not apply in this case. The fourth exception states that sponsored travel or accommodation does not include:

...

(d) a benefit received from a family member or family friend where the contribution made by the sponsor is received in a purely personal capacity, and there is no connection or possible conflict of interest between the member's duties and the interest of the sponsor.

16. On the information before it, the committee unanimously agrees that the Premier house-sat out of a genuine family friendship and accepts that the elements of the first limb of the exception namely 'a benefit received' from a 'family friend' and 'in a purely personal capacity' are clearly satisfied in this case.
17. However, for the exception to apply, the second limb requires that there be 'no connection or possible conflict of interest between the member's duties and the interests of the sponsor'.
18. The committee understands that the sponsors were not present at the time. Further, there is no evidence before it of any intent to influence the Premier. Accordingly, the committee found that there was no *actual* conflict of interest in this instance.
19. However, for the exception in section 1(d) of schedule 2 (above) to apply, it is not sufficient that there was no *actual* conflict of interest but rather that there be *no connection or possible conflict of interest*. The Standing Orders do not define the phrase *no connection or possible conflict of interest* and therefore what would satisfy that part of the exception is open to interpretation.
20. The committee notes that the Standing Orders of the Queensland Parliament sets a very high standard of requirement for registering sponsored travel and accommodation and that Queensland has arguably one of the highest Registration of Interest requirements in Australian jurisdictions. This in turn places an extremely high standard for a Premier given the breadth of portfolio responsibilities and duties of that office.
21. Erring on the side of caution in interpreting the relevant standing orders, the committee, agrees that a possible conflict of interest could be perceived between the broad duties of the Premier of the State and the interests of the sponsors. The interests of the sponsors in this case being office holders of two prominent Australian companies (BHP and Thiess). The committee has

⁸ Schedule 2, section 1 – definitions.

assumed from its collective common knowledge that those companies either have or are likely to have dealings with the State.

22. Whilst the Premier, in her submission, asserts that she honestly believed that she had complied with the requirements of the Standing Orders, she concedes that after reviewing the Standing Orders, she accepts that others may interpret them differently, thus giving rise to an obligation to register the benefit.

However, after reviewing the possible relevant clauses of the Standing Orders, I accepted that others may interpret them differently to the way that I have outlined above...

...

While I believed that I satisfied my obligations....I subsequently wrote to the Clerk of the Parliament on 20 July asking that he include the relevant facts on the Register.⁹

23. The committee accepts that doubt could have arisen as to whether the house-sitting arrangement was captured by the Standing Orders as what constitutes a possible conflict of interest is open to interpretation. The committee notes that the Premier accepted that others might interpret the Standing Orders differently and she subsequently took action to register the benefit.

Timing of registration

24. The committee notes that section 5 (2) of schedule 2 states that:

A member must notify the Registrar in writing of any change in the details contained in the last statement of interests given by the member within one month of becoming aware of the change.

25. Accordingly, the committee finds that Premier's obligation to register the benefit in accordance with the above standing order arose one month following the stay which occurred in January 2008.
26. Whilst the committee finds that it could be argued that the Premier was required to register accommodation in the Register of Interests earlier than she did, this high requirement to register is not equated with a member being found in contempt. The question that remains before the committee is did the Premier's failure to register an interest within the prescribed timeframe amount to a contempt. Contempt is determined by test two.

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

27. Section 18 of schedule 2 of the Standing Orders sets out the effect of a failure to comply with the Register of Interest's requirements as follows—

A member who knowingly—

(a) fails to give a statement of interests to the Register under subclause 5(1);

(b) fails to notify the Registrar under subclause 5(2) of a change of details contained in a statement of interest;

⁹ Note 6 at 2-3.

(c) gives to the Registrar a statement of interests, or gives information to the Registrar or the Committee, that is false, incomplete or misleading in a material particular;

is guilty of a contempt of the Parliament and may be dealt with accordingly [Emphasis added].

28. The test here is did the member deliberately fail to register the interest in the timeframes specified pursuant to section 5(2) of schedule 2 in the knowledge that the interest should be registered. Applying this to the facts, the committee would have to be satisfied that the Premier knew that she should register the interest and deliberately failed to notify the Registrar despite this knowledge.
29. In the Premier's submission (and her letter to the Speaker of 20 July 2008) she asserts that she honestly believed that she had complied with the requirements of the Standing Orders.

*...I take my Parliamentary obligations very seriously and honestly believed that in this instance...I complied with the requirements of the Standing Orders.*¹⁰

30. From the information before the committee, the committee is of the view that the Premier had no actual knowledge at the time, that she should notify the Registrar of the interest and that it honestly wouldn't have occurred to her as an interest she should register.

Conclusion

31. The committee finds that, arguably the Premier's house sitting arrangement falls within the definition of sponsored travel or accommodation as defined in section 1 of schedule 2 of the standing orders.
32. The committee finds that the Premier house-sat out of a genuine family friendship and accepts that the elements of the first limb of exception (d) in section 1 of schedule 2 of the standing orders namely 'a benefit received' from a 'family friend' and 'in a purely personal capacity' are clearly satisfied in this case.
33. On applying the facts of this case to the second limb of exception (d) the committee finds it is arguable that a possible conflict of interest could be perceived between the broad duties of the Premier of the State and the interests of the sponsors.
34. Accordingly, the committee finds that in erring on the side of caution it could be argued that the Premier was required to register accommodation in the Register of Interests within a month of the house-sitting arrangement which occurred in January 2008. The committee notes that the registration occurred on 20 July 2008.
35. However, the committee finds that the Premier had no knowledge at the time of the house-sitting arrangement that it was an interest that could be required to be registered. Therefore in applying the facts to the test in section 18 of schedule 2 of the Standing Orders, the Premier is not guilty of a contempt for knowingly failing to register the benefit in the Register of Members' Interests in the time required.

¹⁰ Note 6.

Conclusion 1: The committee unanimously finds that it could be argued that the Premier was required to register accommodation in the Register of Members' Interests within a month of the house-sitting arrangement which occurred in January 2008 in accordance with schedule 2 of the Standing Orders. The committee notes that registration has subsequently occurred on 20 July 2008.

Conclusion 2: After applying the facts of this case to the Standing Orders, the committee unanimously finds that the Premier had no knowledge at the time of the house-sitting arrangement that it was an interest that could be required to be registered. The Premier is therefore not guilty of a contempt for knowingly failing to register the benefit in the Register of Members' Interests in the time required.

Recommendation 1: The committee recommends that the House take no action in relation to this matter.

Linda Lavarch MP

Chair

November 2008

Membership — 52nd Parliament¹¹

Mrs Linda Lavarch MP, Chair (from 11 November 2008) (from 6 February 2007)
Member for Kurwongbah

Mr Mike Horan MP, Deputy Chair
Member for Toowoomba South

Mr Phil Gray MP
Member for Gaven

Ms Anastacia Palaszczuk MP¹²
Member for Inala

Mrs Dorothy Pratt MP
Member for Nanango

Mr Jeff Seeney MP (from 12 February 2008)
Member for Callide

Ms Karen Struthers MP (from 16 April 2008)
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¹¹ Mr Stirling Hinchliffe MP, Chair, *Member for Stafford*, to 1 November 2006. Mrs Jo-Ann Miller MP, *Member for Bundamba*, to 16 April 2008. Ms Rachel Nolan MP, *Member for Ipswich*, to 6 February 2007. Mr Lawrence Springborg MP, *Member for Southern Downs*, to 12 February 2008. Hon Dean Wells MP, *Member for Murrumba*, to 1 November 2006.

¹² Ms Anastacia Palaszczuk MP, Chair, *Member for Inala*, to 11 November 2008.