



# MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

## Report No. 98

### Report on Study Investigation by the Committee – July 2009

#### 1 INTRODUCTION

On 30 and 31 July 2009, five members of the Members' Ethics and Parliamentary Privileges Committee of the Queensland Parliament undertook a study investigation to Wellington, New Zealand.<sup>1</sup> This report to Parliament outlines:

- meetings held on 30 and 31 July 2009;
- matters discussed; and
- relevant observations of the committee members attending.

#### 2 THE COMMITTEE

The Members' Ethics and Parliamentary Privileges Committee (MEPPC or the Committee) is a statutory committee of the Queensland Parliament established under section 80 of the *Parliament of Queensland Act 2001* (POQA or the Act). The provisions of the Act concerning parliamentary committees have the main object of enhancing the accountability of public administration in Queensland.

Sections 90-93 set out the committee's areas of responsibility. Some of these areas include:

- examining the arrangements for compiling, keeping and allowing inspection of the register of interests and register of related persons interests;

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<sup>1</sup> Two committee members were unable to attend due to other commitments. Committee members attending were:  
Mr Kerry Shine MP, Member for Toowoomba North (Chair);  
Mr Tim Nicholls MP, Member for Clayfield (Deputy Chair);  
Hon Margaret Keech MP, Member for Albert;  
Ms Carolyn Male MP, Member for Pine Rivers; and  
Mr Curtis Pitt MP, Member for Mulgrave.  
The members were accompanied by:  
Mr Michael Ries, Research Director; and  
Ms Kellie Moule, Senior Research Officer.

- considering proposals made by members and other persons about the form and content of the registers and documents relevant to the registers;
- considering complaints referred to the committee about the failure to register particular interests;
- publishing explanatory information about the requirements to register interests;
- publishing and reviewing a code of ethical conduct for members, including procedures for complaints about a member not complying with the code;
- the reform of legislation and standing rules and orders about the ethical conduct of members, including the registration or declaration of interests;
- considering complaints against particular members for failing to comply with the code of ethical conduct;
- publishing explanatory information about the obligations of members about their ethical conduct; and
- the powers, rights and immunities of the Assembly, its committees and members.

### **3 THE STUDY INVESTIGATION**

The purposes of the study investigation were to examine:

- different processes governing the compiling, keeping and allowing inspection of the register of interests in light of the committee's upcoming review of the Register of Members' Interests in the 53rd Parliament;
- processes for dealing with complaints referred to the committee about the failure to register particular interests. The MEPPC has had a recent increase in referrals in relation to this matter, with the Committee of the 52nd Parliament reporting for the first time on a referred complaint. The Committee has developed a process involving two separate tests. The New Zealand Privileges Committee (Privileges Committee) recently produced a comprehensive report on its first matter in relation to their Register of Pecuniary Interests;<sup>2</sup>
- background and comparative information from a parliament with a similar unicameral structure; and
- processes involving the code of ethical conduct in light of the committee's upcoming review of the Code of Ethical Standards.

Pursuant to these objectives and other matters relating to the MEPPC, the committee members met with:

- Hon Dr Lockwood Smith, Speaker of the House of Representatives and Chair of the Standing Orders Committee;
- Dame Margaret Bazely DNZM Hon DLit, Registrar of Pecuniary Interests and Elizabeth Woolcott, Senior Parliamentary Officer;
- Members of the New Zealand House of Representatives' Privileges Committee and Catherine Parkin (Clerk of the Committee);
- Ross Robertson MP;

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<sup>2</sup> Privileges Committee Report No. 1.17D, tabled 22 September 2008.

- Harry Walker, Chief of Staff from Maori Party and Jeanette Fitzsimons, former Green Party Co-Leader;
- David McGee CNZM QC, Ombudsman (and former Clerk of the New Zealand House of Representatives); and
- Mary Harris, Clerk of the House of Representatives and Debbie Angus, Deputy Clerk of the House of Representatives.

In addition, the committee observed the House of Representatives' processes and procedures during question time.

## **4 MATTERS DISCUSSED**

### **4.1 Register of Members' Pecuniary Interests**

In New Zealand, the Registrar is the Deputy Clerk of the Parliament, who delegates the position to an external appointment. This allows the Clerk to advise the Privileges Committee on matters concerning the Register of Members' Pecuniary Interests without the Clerk being in a position where she also provided advice to the member referred to the committee.

As the external appointment does not necessarily have any legal training or experience in parliamentary practice and procedure, the Registrar has access to legal services at parliament and a Senior Parliamentary Officer. The role of the Registrar focuses on providing advice to members and reporting to the Speaker. The Speaker, not the Registrar, is responsible for referring matters to the Privileges Committee. The Parliament, not the Registrar, allows inspection of the Registrar of Pecuniary Interests.

Although the Registrar is provided with office facilities at Parliament House, she is largely off-site and therefore not as readily accessible as the Clerk in the Queensland example. The Registrar performs this role part-time and typically has many other roles to dedicate time towards.

New Zealand does not have an Integrity Commissioner as such but does have an Auditor/Controller. The Auditor/Controller can examine reports on alleged breaches of the pecuniary interests' register. However, this has not occurred to date.

The Senior Parliamentary Officer supporting the Registrar expressed interest in Queensland's preamble and purpose to the Registrar. There was also interest in Queensland's "catch all" provision which provides that:

- (p) *any other interest (whether or not of a pecuniary nature) of the member or related person—*
- (i) of which the member is aware; and*
  - (ii) that raises, appears to raise, or could foreseeably raise, a conflict between the member's private interest and their duty as a member.*

Currently, the House of Representatives' Standing Orders do not provide a preamble or purpose to the Registrar, or a "catch all" provision. If a category of interest is not listed in the Standing Orders, then a Member is not required to declare it, regardless of whether it poses a strong conflict of interest.

### **4.2 Privileges Committee**

The Privileges Committee consists of ten members of parliament. Membership is selected with the aim of reflecting the proportion of membership in the House and the Chair is not necessarily a government member. The Privileges Committee considers matters relating to or concerning

parliamentary privilege. It currently does not have the 'ethical' jurisdiction that Queensland's committee has and the House of Representatives does not have a Code of Conduct.

The Privileges Committee is not a full-time committee and only meets when a matter is before the committee. Since May 2003, the Privileges Committee has had 12 references that have been reported on and tabled in the House compared to 40 in Queensland.

Discussions with the Clerk and Deputy Clerk highlighted a significant difference between Queensland and New Zealand's committee system that was of interest to our committee. In New Zealand proposed legislation is not dealt with by one committee, such as the scrutiny of legislation committee. Each committee deals with bills that are relevant to their particular committee. This allows members of the public and interested groups to make a submission on almost all legislation that passes through the House.<sup>3</sup> This process potentially allows for enhanced scrutiny of bills and an avenue for significant public involvement in the legislative process.

The Privileges Committee deals with a similar variety of matters to Queensland including alleged reflections on a member, breaches of pecuniary interests register, unauthorised disclosure of committee reports and agreement of policing functions within the precinct. The Privileges Committee deals with considerably less 'alleged deliberate misleading' matters.

The Privileges Committee recently tabled its first report in relation to the Register of Pecuniary Interests. In this matter the Privileges Committee sought advice from senior counsel, the Registrar, and David McGee (Ombudsman and former Clerk). The Privileges Committee followed a two part test process similar to Queensland and ultimately found the member guilty, by majority, of contempt. The member was censured and required to register the details in the pecuniary interests register.

Of significance, the Privileges Committee found that services provided in kind, such as legal services, were still required to be registered.

The Privileges Committee also recommended that the Clerk of the House of Representatives enhance the support available to the Registrar of Pecuniary Interests, in order to allow the Registrar to provide authoritative legal and financial advice to members on these matters. The MEPPC's discussions with the Registrar indicate that this has subsequently occurred.

### **4.3 Code of Ethical Conduct Bill and Voluntary Codes of Conduct**

The Committee met with Mr Ross Robertson MP to discuss his Code of Ethical Conduct Bill. The Committee was interested to note that members' bills are only introduced if drawn out of a ballot. There are usually 30 to 40 bills in each ballot with limited spaces on the Order Paper for members' bills.

The Committee was also interested in why the member chose to place the Code of Ethical Standards in a bill rather than as a part of the Standing Orders or a stand alone document. Mr Robertson advised that he had attempted to introduce the Code as a declaratory Code of Ethical Conduct on a number of occasions but it had been rejected by the Standing Orders Committee. As proposed legislation is routinely considered by the relevant Parliamentary Committee, progressing by way of a bill was a tactical measure to have the code considered by the Standing Orders Committee.

The Committee also met with Ms Jeanette Fitzsimons MP, Green Party and Mr Harry Walker, Chief of Staff, Maori Party, to discuss Voluntary Codes of Conduct. In the absence of a Code adopted by the

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<sup>3</sup> Urgent bills may be passed in the House without being referred first to a committee.

House, the minor parties in the House of Representatives have produced their own Voluntary Code of Conduct for members to sign. It is envisaged that if a member breaches the voluntary code, they would be censured by their own party.

#### **4.5 David McGee CNZM QC, Ombudsman**

David McGee is New Zealand's third Ombudsman, a Queen's Counsel, and Companion of the New Zealand Order of Merit recipient. He was Clerk of the House of Representatives for 22 years and has been in the parliamentary service for 34 years. As Clerk, Mr McGee was the principal advisor to the Speaker and Members of Parliament on parliamentary law and practice. Mr McGee is a longstanding expert on parliamentary practice throughout the Commonwealth. He is a published author of books, articles, papers and reviews. When dealing with privilege matters, Queensland's MEPPC often relies on his work titled *Parliamentary Practice in New Zealand*, now in its third edition. Mr McGee has written extensively in the area of parliamentary practice and constitutional studies.

The Committee discussed:

- effective repetition and in particular the outcomes of the Buchanan v Jennings case;
- the provision of legal assistance to Members of Parliament and the operation of the Party Leaders Fund for this purpose;
- parliamentary estoppel; and
- issues surrounding the Register of Pecuniary Interests, including Mr McGee's role in advising the Privileges Committee and different processes governing the compiling, keeping and allowing inspection of the register of interests in light of the committee's upcoming review of the Register of Members' Interests in the 53<sup>rd</sup> Parliament.

## **5 COMMITTEE COMMENTS**

### **5.1 Register of Members' Pecuniary Interests**

The MEPPC was pleased to provide the Registrar's Office with Queensland's preamble, purpose and "catch all" provision for their information. The MEPPC was also very grateful for receiving information on the registration requirements in New Zealand. The Committee was particularly interested in the accessibility of an external appointee and the legal and parliamentary support provided to the Registrar.

### **5.2 Privileges Committee**

The MEPPC saw many advantages with the Committee structure in New Zealand, highlighted by the Clerk and Deputy Clerk of the House of Representatives. The method of referring bills to specific subject committees, which then invite public submissions, appeared to enhance open and accountable government.

The Privileges Committee's process for dealing with referrals was particularly useful to the MEPPC and provided a wealth of background and comparative information.

### **5.3 Code of Ethical Conduct Bill and Voluntary Codes of Conduct**

The Committee noted that Queensland's Code of Ethical Conduct is comparatively comprehensive and necessarily declaratory rather than mandatory. The Committee noted the efforts of many New Zealand MPs who are attempting to implement their own Code of Conduct in the interim.

#### **5.4 David McGee CNZM QC, Ombudsman**

Mr McGee's insight into matters concerning the Register of Members' Interests was invaluable to the Committee who are dealing with a recent increase in referrals in relation to the Register of Members' Interests. Also of value was Mr McGee's comments on matters such as effective repetition, parliamentary estoppel and the provision of legal assistance to members.

### **6 CONCLUSION**

The Committee is grateful to the New Zealand Speaker, Members of Parliament, Mr McGee, the Registrar, the Clerk and Deputy Clerk and Parliamentary Staff who were generous with their time and made themselves available to the Committee during its Study Investigation. The insight into the processes of a similar unicameral legislature will be beneficial to the committee in its consideration of upcoming matters and reviews. The Committee would like to take this opportunity to thank each person involved including New Zealand's Inter-Parliamentary Relations Officer, Kate Thornton, who assisted greatly in the organisation of the Study Investigation.

**Kerry Shine MP**  
Chair

September 2009

### **Membership — 53rd Parliament**

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

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

Hon Margaret Keech MP  
*Member for Albert*

Ms Carolyn Male MP  
*Member for Pine Rivers*

Mr Curtis Pitt MP  
*Member for Mulgrave*

Dr Mark Robinson MP  
*Member for Cleveland*

Mr Ted Sorensen MP  
*Member for Hervey Bay*

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