



## INTEGRITY, ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

### Report No. 114

#### *Matter of Privilege Referred by the Registrar on 18 November 2010 Relating to the Alleged Failure by a Member to Register an Interest in the Register of Members' Interests*

#### **Introduction**

1. The Integrity, Ethics and Parliamentary Privileges Committee (the IEPPC 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 23 April 2009.
2. Section 91 of the POQA provides that the IEPPC'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.<sup>1</sup>
3. By letter to the Speaker and Registrar dated 2 November 2010, the Premier, the Hon Anna Bligh, requested that the Speaker refer the former Member and Minister, Mr Gordon Nuttall (Mr Nuttall) to the ethics committee for allegedly failing to disclose payments received, in accordance with the requirements of the register of interests.
4. The Registrar discussed the matter with the Speaker and agreed that the correspondence amounts to a complaint in accordance with s.14 of Schedule 2 of the Standing Orders.<sup>2</sup>
5. Accordingly, the Registrar referred the matter to the IEPPC by letter dated 18 November 2010.

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<sup>1</sup> 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, 24 May 2007, 12 February 2008, 28 October 2009, 26 November 2009 and 1 January 2010) at 71.

<sup>2</sup> Schedule 2 sets out the procedure to be followed where a member makes an allegation *against another member* that the other member has failed to comply with the registration requirements. Under these procedures, members must make allegations to the Registrar.

## ***Previous references regarding the Register of Interests***

6. The committee has previously considered four references concerning an alleged failure to register an interest in the Register of Interests. The first matter related to an alleged failure of the Premier to register a benefit in the Register of Interests. The committee found that it could be argued that the Premier was required to register accommodation in the Register of Members' Interest within a month of the house-sitting arrangement. The committee noted that this subsequently occurred. The committee went on to find 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 was therefore not guilty of a contempt for knowingly failing to register the benefit in the Register of Members' Interests in the time required.<sup>3</sup>
7. The second matter related to an alleged failure of the then Leader of the Opposition to register a benefit in the Register of Interests. The committee found that as the sponsored travel was received in an official capacity, the benefit was not required to be disclosed.<sup>4</sup>
8. The third matter related to an alleged failure by a member to register their roles as Director and Secretary of a company and the company's activities, that is, providing the Registrar with an incomplete statement of interests. The committee found that the member was required to declare their position in the company and the nature of activities. However, the committee was unanimously of the view that it was an inadvertent omission and therefore the member was not guilty of a contempt.<sup>5</sup>
9. The fourth matter also related to Mr Nuttall. In Report No. 150, the committee unanimously found Mr Nuttall was required to disclose 36 payments he received at the very least under s. 7(2)(m) or s. 7(2)(p) of the Standing Orders. Accordingly, the committee found that Mr Nuttall committed contempt of parliament for failing to disclose each of the payments received from Messers Talbot and Shand, in the Register of Interests on 36 separate occasions, within the time period prescribed in s. 5(2) of schedule 2.
10. The committee recommended the imposition of the maximum fine for each contempt to reflect the gravity of each offence and to send a strong message to members and the public about the level of accountability expected of Members of Parliament. Accordingly, the committee recommended that the House impose a fine of \$2,000 for each of the 36 separate occasions of contempt for non-disclosure of the payments received from Messers Talbot and Shand.<sup>6</sup>

## **The current reference**

### ***Five separate payments received by Mr Nuttall***<sup>7</sup>

11. On 27 October 2010, Mr Nuttall was convicted of five counts of official corruption relating to payments he received from Mr Brendan McKennarney between 2001 and 2005 and on 16 December 2010, was sentenced to five years imprisonment.

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<sup>3</sup> MEPPC, *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*, Report No. 93, Goprint, Brisbane, 2008 at 6.

<sup>4</sup> MEPPC, *Matter of Privilege Referred by the Registrar on 10 February 2009 Relating to the Alleged Failure by the then Leader of the Opposition to Register a Benefit Received in the Register of Members' Interests*, Report No. 96, Goprint, Brisbane, 2009 at 4.

<sup>5</sup> IEPPC, *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*, Report No. 104, Goprint, Brisbane, 2010 at 5.

<sup>6</sup> IEPPC, *Matter of Privilege Referred by the Speaker on 13 November 2006 Relating to the Alleged Failure by a Former Member to Register a Payment Received in the Register of Members' Interests*, Report No. 105, Goprint, Brisbane, 2010 at 11.

<sup>7</sup> Sourced from Indictment presented in District Court, dated 8 February 2008.

12. The following is a breakdown of each payment received by Mr Nuttall from Mr McKennariey. Note that a statement of interests was provided by Mr Nuttall in 2002, 2003, 2004, 2005 and 2006. None of these statements disclosed any of the payments received. On the face of the information before the committee, Mr Nuttall failed to notify the registrar of a change of details contained in a statement of interests, within one month of each of the 5 occasions.
- 1) On or about 10 December 2001, Mr Nuttall received \$10,000.00 from Mr Brendan McKennariey;
  - 2) On 24 December 2001, Mr Nuttall received \$1,200.00 from Mr Brendan McKennariey;
  - 3) On 29 December 2004, Mr Nuttall received \$4,000.00 from Mr Brendan McKennariey;
  - 4) On 4 July 2005, Mr Nuttall received \$2,000.00 from Mr Brendan McKennariey; and
  - 5) On a date unknown between the thirty-first day of March 2005 and the 29th day of July 2005, Mr Nuttall received valuable consideration from Mr Brendan McKennariey.

### ***Mr Nuttall's opportunity to provide a submission to the committee***

13. The committee invited Mr Nuttall to provide a submission, specifically addressing the question as to whether he was required to register the payments received from Mr McKennariey as gifts (s.7(2)(k)), income (s.7(2)(m)), or any other interest (s.7(2)(p)) and whether he knowingly failed to notify the registrar of those interests pursuant to those particular sections of the Standing Orders. No such submission was forthcoming.

### ***Two separate tests***

14. With respect to allegations of a failure to register an interest the committee examines *two separate tests* and their elements as derived from the Standing Orders<sup>8</sup>—
15. Whether the matter required disclosure; and
16. If yes, has the non-disclosure resulted in a contempt?

### ***Whether the Matter required disclosure?***

17. 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.<sup>9</sup>
18. 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. Accordingly, the question of whether a member is required to register an interest needs to be considered in this context.

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<sup>8</sup> 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, 24 May 2007, 12 February 2008, 28 October 2008, 26 November 2009 and 1 January 2010).

<sup>9</sup> Note 8.

19. The overarching themes of openness and transparency support the committee's view that members are required to check their interests against every category in the register. If a particular interest does not fit into any specific category, or appears exempt from one category, the member is required to check all other categories, including whether the interest should be declared under the 'catch all' provision in s. 7(2)(p). If there is any doubt, the member should seek the advice of the Registrar.
20. Section 7 of Schedule 2 of the Standing Orders presents three potential categories of interests requiring registration which the payments received could fall into. This includes:
  - 'Gifts valued at more than \$500.00' under s. 7(2)(k);
  - 'The source of any other income over \$500.00' under s. 7(2)(m); and
  - 'Any other interest' under s. 7(2)(p).

### **Gifts valued at more than \$500.00**

21. Gifts is defined in Part 1 of Schedule 2 of the Standing Orders as—
  - (a) *the transfer of money, property or other benefit—*
    - (i) *without recompense; or*
    - (ii) *for a consideration substantially less than full consideration; or*
  - (b) *a loan of money or property made on a permanent, or indefinite, basis;*...
22. Section 7(2)(k) of Schedule 2 of the Standing Orders provides—
  - (2) *A Statement of interests required to be given by a member must contain the following details—*
    - (k) *the source and nature of any gifts valued at more than \$500 from one source, or where two or more gifts are made from the one source during the return period exceed, in aggregate, \$500 provided that a gift received by a member, the member's spouse or dependent children from family friends or personal friends in a purely personal capacity need not be registered unless the member judges that an appearance of conflict of interest may be seen to exist;*...
23. The amounts of the payments from Mr McKennariey as detailed in the court indictment clearly exceed the \$500 threshold for gifts.
24. The test for the exemption in relation to gifts is that "the member judges that the appearance of conflict of interest may be seen to exist".
25. Accordingly, in order to find that the payments from Mr McKennariey required disclosure as a gift under s.7(2)(k), due to the subjective test applied to the exemption in that paragraph, the committee would need to adduce evidence to establish that Mr Nuttall judged that an appearance of conflict of interest may be seen to exist.
26. There is no evidence before the committee that would indicate that Mr Nuttall judged that an appearance of conflict of interest may be seen to exist. Accordingly, in order to find that the payments from Mr McKennariey required disclosure as a Gift under s. 7(2)(k), due to the subjective test applied to the exemption in that paragraph, the committee would need to adduce further

evidence to establish that Mr Nuttall judged that an appearance of conflict of interest may be seen to exist.

### **Any other income**

27. Section 7(2)(m) provides—

*The source of any income over \$500 per annum received by—*

*(i) the member or a related person;*

*(ii) a private company, or a trust, in which the member or related person holds an interest;*

*or any other income under \$500, where the source of that income raises, appears to raise, or could foreseeably raise, a conflict between the members private interest and their duty as a member.*

28. There is no definition of 'income' as it applies in Schedule 2 of the Standing Orders. The Collins English Dictionary defines income as "the amount of monetary or other returns, either earned or unearned, accruing over a given period of time".
29. The payments received by Mr Nuttall were monetary in nature and according to the court transcripts of his criminal trial, accrued into his bank accounts over a period of time. Accordingly, the committee is of the view that such payments are properly classified as income.
30. In section 7(2)(m) the test for requirement to register is an objective assessment of whether "the source of that income raises, appears to raise, or could foreseeably raise, a conflict between the members private interest and their duty as a member". The committee were of the view that it would be difficult to argue that a reasonable person properly informed could conclude that the receipt of regular income from a businessman who had dealings with the departments falling under the then minister's portfolio responsibility did not appear to raise or could not foreseeably raise a conflict between the members private interest and their duty as a member.
31. The committee finds that by accepting other income in instalments, as detailed in the court indictment, from a person with Mr McKennariey's business interests could foreseeably raise a conflict with Mr Nuttall's duties as Minister for Industrial Relations and Minister for Health, and in a broader sense, his then position as a member of Cabinet, therefore taking collective responsibility for all Cabinet decisions.
32. Accordingly, the committee finds that Mr Nuttall was required to declare the payments received in the register of interests pursuant to s. 7(2)(m) Any other income.

### **Any other interest**

33. Section 7(2)(p) provides—

*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, or appears to raise, or could foreseeably raise, a conflict between the member's private interest and their duty as a member.*

34. Reading the schedule as a whole, the object of the Register is to promote 'openness and transparency'. Section 7(2)(p) is a general catch-all provision designed to enhance this objective. Accordingly, any interest 'that may raise, appears to raise, or could foreseeably raise, a conflict

between the member's private interest and their duty as a member' is required to be declared pursuant to s. 7(2)(p), if not already declared under another category.

35. This situation was addressed in the Springborg matter. In that case, the member correctly judged an interest of sponsored helicopter flights to fall under s. 7(2)(l) Sponsored travel and accommodation. Under the definition of sponsored travel, Mr Springborg was exempt from declaring the interest (under that section) as it was travel received in an official capacity.<sup>10</sup> Mr Springborg was effectively exempt from declaring the interest pursuant to s. 7(2)(l) but not exempt from declaring the interest entirely. Mr Springborg was still required to consider s. 7(2)(p) and whether the interest presented a conflict between his private interest and his duty as a member. There was nothing to suggest that such a conflict existed and accordingly Mr Springborg was not required to declare this interest in the Register.<sup>11</sup>
36. The committee were of the view that Mr Nuttall was clearly aware of the interest as the sums were regularly paid to him and were subsequently deposited into his bank accounts. The committee notes that the court transcripts from the criminal trial reveal that the former member did not deny being aware of the payments.
37. Again, the test for s. 7(2)(p) is an objective one. As with 'any other income' the committee is of the view that a reasonable person, properly informed, would conclude that payments of the amounts specified from a businessmen who had dealings with the departments falling under the then minister's portfolio responsibility could appear to raise or could foreseeably raise a conflict between the member's private interest and his duty as a member.
38. Accordingly, the committee finds that Mr Nuttall was required to declare the payments received, pursuant to s. 7(2)(p) Any other interest if he did not declare it under any other section on the register.

### Timing of registration

39. Section 5(2) of schedule 2 provides—

*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.*

40. Accordingly, the former member's obligation to register the payments pursuant to the above standing order arose one month following each of the payments received.
41. The Register clearly indicates the payments were not ever declared.

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

42. 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);*

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<sup>10</sup> MEPPC, *Matter of Privilege Referred by the Registrar on 10 February 2009 Relating to the Alleged Failure by the then Leader of the Opposition to Register a Benefit Received in the Register of Members' Interests*, Report No. 96, Goprint, Brisbane, 2009 at 3, paragraph 19.

<sup>11</sup> MEPPC, *Matter of Privilege Referred by the Registrar on 10 February 2009 Relating to the Alleged Failure by the then Leader of the Opposition to Register a Benefit Received in the Register of Members' Interests*, Report No. 96, Goprint, Brisbane, 2009 at 3-4, paragraphs 21-23.

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

*(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].*

43. The key element here is knowledge. Ethics committee precedent for contempt cases and the law of equity generally places a very high test on the knowledge requirement. Applying this to the facts, the committee would have to prove that Mr Nuttall knew that failing to notify the Registrar of the payments would be a contempt and proceeded regardless of this knowledge.
44. The committee is of the view that there is little ambiguity involved when s.7(2) (m) and (p) are considered in the context of the facts of this case and finds that Mr Nuttall knowingly failed to register the payments.

## **Conclusions**

45. On the information before the committee, and taking into account Mr Nuttall did not provide a submission, the committee finds that Mr Nuttall was required to disclose the payments received at the very least under s. 7(2)(m) or s. 7(2)(p). The committee finds that Mr Nuttall committed a contempt of parliament for knowingly failing to disclose payments received in the Register of Interests on 5 separate occasions, within the time period prescribed in s. 5(2) of Schedule 2.

## **Penalty**

46. Section 270(5) of the Standing Orders sets out that the committee must, with its report, recommend the action that should be taken.
47. The committee sought a submission from Mr Nuttall as to the appropriate penalty. In his response, Mr Nuttall did not address the question of penalty but instead argued that he be given an audience before the bar of the House.
48. The committee considered the range of penalty options available for a contempt of parliament. The committee notes that in the event that a person does not pay the fine within the time set by the House, the House may order that the person be imprisoned in the custody of the Sergeant-at-Arms or in the custody of the Department of Corrective Services, until the fine has been paid, or until the end of the existing session, or for such shorter period as the House by the same or any subsequent order may direct (Standing Order 277(2)).
49. The committee took into consideration the range of penalty options available. The committee considered that the payments were regular and from the same source. However, the committee took the view that the receipt of each payment should have been a signal for Mr Nuttall to consider the conflict of interest and the obligation to register.
50. The committee was of the view that a fine is the most appropriate form of penalty in relation to this matter. Most other penalties are not appropriate for a non-member and the gravity of each offence, in this case, warrants the imposition of the most severe penalty. It is noted that Mr Nuttall was a Minister at the time of committing these contempts and as such was in a position of great trust and responsibility with respect to fellow members and the public.

51. The committee unanimously decided to recommend the imposition of the maximum fine for each contempt to reflect the gravity of each offence and to send a strong message to members and the public about the level of accountability expected of Members of Parliament.
52. Section 277(1) of the Standing Orders sets out that when the House has adjudged a person guilty of contempt, the House may order them to pay a fine not exceeding two thousand dollars and require payment of that fine within a specified reasonable period of time.<sup>12</sup>
53. Accordingly, the committee recommends that the House impose a fine of \$2,000 for each of the 5 separate occasions of contempt for non-disclosure of the payments received from Mr McKennariey.

#### **Conclusion 1**

**The committee unanimously finds that Mr Nuttall was required to disclose the payments received at the very least under s. 7(2)(m) or s. 7(2)(p). Accordingly, the committee finds that Mr Nuttall committed a contempt of parliament for failing to disclose each of the payments received from Mr McKennariey in the Register of Interests on 5 separate occasions, within the time period prescribed in s. 5(2) of schedule 2.**

#### **Conclusion 2**

**The committee recommends the imposition of the maximum fine for each contempt to reflect the gravity of each offence and to send a strong message to members and the public about the level of accountability expected of Members of Parliament. Accordingly, the committee recommends that the House impose a fine of \$2,000 for each of the 5 separate occasions of contempt for non-disclosure of the payments received from Mr McKennariey.**

#### **Recommendation 1**

**The committee recommends that the House find Mr Nuttall committed a contempt of parliament for failing to disclose payments received from Mr McKennariey, in the Register of Interests on 5 separate occasions, within the time period prescribed in s. 5(2) of schedule 2.**

#### **Recommendation 2**

**The committee recommends that the House impose a fine of \$2,000 for each of the 5 separate occasions of contempt for non-disclosure of the payments received from Mr McKennariey.**

Kerry Shine MP

**Chair**

April 2011

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<sup>12</sup> Section 40(2) of the *Parliament of Queensland Act 2001 (Qld)* provides that the House may order a person to have committed a contempt to pay a fine not more than an amount found in Standing Orders. Section 40(3) provides that if the fine is not paid within a reasonable time stated by the House, the House may order the person be imprisoned.



## **Membership — 53rd Parliament**

Mr Kerry Shine MP, Chair

*Member for Toowoomba North*

Mr Tim Nicholls MP, Deputy Chair

*Member for Clayfield*

Mr Glen Elmes MP

*Member for Noosa*

Hon Margaret Keech MP

*Member for Albert*

Mr Peter Lawlor MP

*Member for Southport*

Ms Carolyn Male MP

*Member for Pine Rivers*

Dr Mark Robinson MP

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