



## ETHICS COMMITTEE

### Report No. 127

#### **Matter of privilege referred by the Registrar on 15 October 2012 relating to an alleged failure to register an interest in the Register of Members' Interests**

##### ***Introduction***

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 17 May 2012.
2. The committee's area of responsibility includes dealing with complaints about the ethical conduct of particular members and dealing with alleged breaches of parliamentary privilege by members of the Assembly and other persons.<sup>1</sup> The committee's responsibility includes considering complaints referred to the committee about the failure to declare particular interests.<sup>2</sup>
3. The matter in this report concerns an allegation by the Leader of the Opposition, Ms Anastacia Palaszczuk MP, that the Premier, Hon Campbell Newman MP failed to register a gift received in accordance with the requirements of the Members' Register of Interests.
4. By letter to the Registrar (the Clerk of the Parliament) dated 12 October 2012, the Leader of the Opposition requested that the Registrar refer the matter to the committee.
5. Accordingly, the Registrar referred the matter to the committee by letter dated 15 October 2012 in accordance with section 14(3) of Schedule 2 of the Standing Orders.
6. The committee invited both parties to provide a submission to the committee. The committee received a submission from the Premier on 9 November 2012 and from the Leader of the Opposition on 12 November 2012.

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<sup>1</sup> S.104B *Parliament of Queensland Act 2001*.

<sup>2</sup> S.104C(1)(a) *Parliament of Queensland Act 2001*.

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

7. Previous ethics committees have considered five references concerning an alleged failure to register an interest in the Members' Register of Interests.
8. The first matter related to an alleged failure of the then 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>
9. The second matter related to an alleged failure of the then Leader of the Opposition (Mr Lawrence Springborg MP) to register a benefit in the Register of Interests. The committee found that as the sponsored travel (helicopter flights) was received in an official capacity, the benefit was not required to be disclosed.<sup>4</sup>
10. 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 positions in the company and the nature of activities. However, the committee was of the unanimous view that it was an inadvertent omission and therefore the member was not guilty of a contempt.<sup>5</sup>
11. The fourth and fifth matters related to Mr Nuttall. In Report No. 105, 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.
12. 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>
13. In Report No. 114, the committee unanimously found Mr Nuttall was required to disclose 5 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 Mr McKennariey, in the Register of Interests on 5 separate occasions, within the time period prescribed in s. 5(2) of Schedule 2.

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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.

14. Accordingly, the committee recommended 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.<sup>7</sup>

### **Background to the current reference**

15. On 17 September 2012, an article appeared in the Australian Newspaper titled, 'Newman calls favours in at Nine'. The article referred to a request by the Director of the Premier's Media Unit, for assistance in the production of a television address by the Premier in relation to the Commission of Audit Interim Report. The address was televised on 24 June 2012. The article suggested that a spokesperson for the Premier confirmed that Channel Nine absorbed the recording cost of the audio.
16. During the Finance and Administration Committee's budget estimates hearing on 9 October 2012, the Premier clarified that an invoice for \$1,226 was presented to the Department of the Premier and Cabinet in respect of the post production costs of the television address including classification, captioning and station delivery. In his response to a question taken on notice at the hearing, the Premier provided a letter to the Finance Committee with attachments dated 11 October 2012 which stated that 'The cost associated with producing the advertisement including filming, lighting, autoucue and operators was met by Channel 9.'
17. In her letter to the Registrar, the Leader of the Opposition alleges that the Premier received 'gifts in kind valued at in excess of \$500, being the production of the advertisement, from Channel Nine, which he failed to disclose in his Register of Interests' in accordance with obligations for disclosure under the Standing Orders.

### **Two separate tests**

18. 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>—
  1. Whether the matter required disclosure; and
  2. If yes, has the non-disclosure resulted in a contempt?
19. The *two separate tests* are analysed below.

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

20. 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>
21. 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>7</sup> IEPPC, *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*, Report No. 114, Goprint, Brisbane, 2011 at 8.

<sup>8</sup> Schedule 2 – *Registers of Interests. Standing Rules and Orders of the Legislative Assembly*. Effective from 31 August 2004 (as amended up to 14 September 2012).

<sup>9</sup> Note 8.

22. 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.

Did the matter require disclosure under section 7(2)(k) of Schedule 2?

23. The Leader of the Opposition in her letter to the Registrar argues that the transaction with Channel Nine should have been registered by the Premier if it amounted to a gift under s. 7(2)(k) of Schedule 2.
24. 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; [Emphasis added]*
- ...
25. 'Gift' is defined in Part 1 of Schedule 2 of the Standing Orders as follows—
- (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;*
- ...
26. The committee considered whether the transaction amounted to a transfer of a benefit (i.e. the production of the address to camera including filming, lighting and autocue operators) for a consideration without recompense or for a consideration substantially less than full consideration.
27. The Leader of the Opposition in her letter to the Registrar argued that, 'the production of the Premier's broadcast would prima facie fit within the definition of gift as a transfer of a benefit (being the production of the advertisement) without recompense.'
28. On the material before the committee, it considered that the production of the address to camera could amount to the transfer of an 'other benefit' without recompense and therefore satisfy the definition of 'gift' under s. 7 (2)(k).
29. The committee also considered a subsequent issue as to whether the benefit was *received* by the Premier.
30. In his submission to the committee, the Premier asserted that, 'the arrangements were not benefited to me as a Member of Parliament, and therefore the matter did not require disclosure under s. 7(2)(k) and (p) of the Standing Orders.'
31. On the material before the committee, it appears that the transfer of the benefit was the result of an approach by the Director of the Government Media Unit to Channel Nine and in the

context of it being broadcast at a timeslot previously booked by the Department of the Premier and Cabinet. In this context, the committee considers that it is difficult to argue that a 'gift' was received by the Premier.

32. Accordingly, based on the evidence before the committee, the committee finds that the Premier was not required to declare the transaction in the Members' Register of Interests under s. 7 (2)(k) of Schedule 2 of the Standing Orders.

### Did the matter require disclosure under section 7(2)(p) of Schedule 2?

33. 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, the committee considered whether the transaction required disclosure under the 'catch all' provision of section 7(2)(p).

34. Section 7(2)(p) provides—

*any other interest (whether or not of a pecuniary nature) of the member or related person—*

1. *of which the **member is aware**; and*
2. *that raises, or appears to raise, or could foreseeably raise, a conflict between the member's **private interest** and their duty as a member. [Emphasis added]*

35. The committee considered two aspects of section 7(2)(p), specifically, whether the Premier was aware of the transaction and whether the transaction appears to raise a conflict of interest between the Premier's private interests and his duty as a member.

36. In her submission to the committee, the Leader of the Opposition asserted that the Premier's answers during the Finance and Administration Committee's estimates hearing on 9 October 2012 in relation to the production of the television address indicated that he was aware of the request 'by asking, through the Director of the Government Media Unit, for the services that were provided by Channel Nine.'

37. During the estimates hearing the Premier stated inter alia:<sup>10</sup>

*Mr Newman: My information, as I have already said, is that the production costs were met by Channel 9 and the costs of—*

*Ms Palaszczuk: Sorry, the production costs were met by Channel 9?*

*Mr Newman: That is my understanding. I will seek confirmation of that. That is my understanding. That is what I have been advised, that it was met by Channel 9.*

38. Whilst it is evident that the Premier was aware of the transaction following questions at the estimates hearing, there is no evidence before the committee to suggest that the Premier was aware of the specific arrangement that Channel Nine were to meet the production cost, or that Channel Nine was requested to absorb the costs at the time the transaction occurred.

39. Even if it could be demonstrated that the Premier was aware of the transaction, consideration still needs to be given to whether the Premier received the transaction in an official or private capacity.

40. As flagged under the earlier heading regarding previous references the only prior consideration of this issue by the committee related to the declaration of sponsored helicopter flights by the then Leader of the Opposition, Mr Lawrence Springborg MP. In that matter, the committee found that under the definition of sponsored travel, Mr Springborg MP was exempt from

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<sup>10</sup> Queensland Parliament, Record of Proceedings, 9 October 2012, at 19.

declaring the interest (under s. 7(2)(l) Sponsored travel and accommodation) as it was travel received in an official capacity.<sup>11</sup> The committee also found that Mr Springborg was still required to consider declaring the interest under s. 7(2)(p) and whether the interest presented a conflict between his private interest and his duty as a member. There was nothing in that matter to suggest that such a conflict existed and accordingly, Mr Springborg was not required to declare the interest in the Register.<sup>12</sup>

41. In respect of the current matter the committee were of the view that there is no evidence before them to suggest that the Premier received an interest in a private capacity. In fact, the committee considers that the evidence strongly suggests that the transaction occurred in an official capacity (i.e. the broadcast of the Premier's official address to the people of Queensland). In addition, no evidence was presented to the committee to suggest that there may be a conflict or perceived conflict between the Premier's private interests and the public interest.
42. Accordingly, the committee finds that the Premier was not required to declare the transaction in the Members' Register of Interests under s. 7(2)(p) of Schedule 2 of the Standing Orders.

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

43. Despite determining that the transaction did not require disclosure under either s. 7(2)(k) or (p) of Schedule 2, for completeness the committee has addressed the second element below.
44. 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 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].

45. The key element here is knowledge. Ethics committee precedent for contempt cases generally places a very high test on the knowledge requirement. Applying this to the facts for a contempt to be made out, the committee would have to be satisfied that the Premier knew that failing to notify the Registrar of the benefit would be a contempt and proceeded regardless of this knowledge.
46. There was no evidence presented to the committee to indicate that the Premier had the relevant knowledge that the transaction with Channel Nine occurred at the time of the transaction. Furthermore, the committee were of the view, as demonstrated by their finding in relation to the first element, that the transaction was not an interest which would clearly and unambiguously require the Registrar to be notified.

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<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, paragraph 19.

<sup>12</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.

## **Conclusion**

47. On the information before the committee, the committee finds that the Premier was not required to disclose the transaction in the Members' Register of Interests under s. 7(2)(k) or s. 7(2)(p) of Schedule 2 of the Standing Orders.

### **Conclusion**

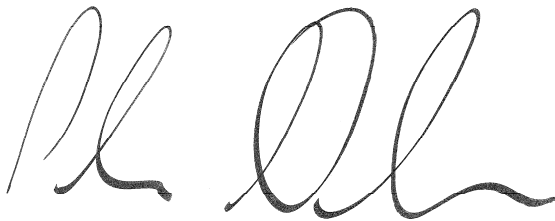
**On the information before the committee, the committee finds that the Premier was not required to disclose the transaction in the Members' Register of Interests under s. 7(2)(k) or s. 7(2)(p) of Schedule 2 of the Standing Orders.**

### **Recommendation 1**

**The committee recommends that the House take no further action in relation to the matter.**

### **Recommendation 2**

**The committee encourages all members to seek advice from the Registrar if members have any doubts about disclosing a benefit received.**

A handwritten signature in black ink, appearing to read 'Peter Dowling', written in a cursive style.

Mr Peter Dowling MP  
**Chair**

November 2012

### **Membership — 54<sup>th</sup> Parliament**

Mr Peter Dowling MP, Chair  
*Member for Redlands*

Dr Alex Douglas MP, Chair<sup>13</sup>  
*Member for Gaven*

Mr Ian Walker MP, Acting Chair<sup>14</sup>  
*Member for Mansfield*

Mrs Jo-Ann Miller MP, Deputy Chair  
*Member for Bundamba*

Mr Ian Berry MP  
*Member for Ipswich*

Mr Ian Kaye MP  
*Member for Greenslopes*

Ms Jackie Trad MP  
*Member for South Brisbane*

Mr Peter Wellington MP  
*Member for Nicklin*

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<sup>13</sup> On 27 November 2012, the Member for Gaven was discharged from the committee and the Member for Redlands was appointed to the Committee as Chair.

<sup>14</sup> In accordance with Standing Order 202(1) the Member for Mansfield was appointed the replacement committee member for the Member for Gaven as Acting Chair from 13-24 November 2012.