



ETHICS COMMITTEE

REPORT NO. 199

MATTER OF PRIVILEGE REFERRED BY THE REGISTRAR ON 24 FEBRUARY 2020 RELATING TO AN ALLEGED FAILURE TO MAINTAIN AN ACCURATE STATEMENT OF INTERESTS IN THE REGISTER OF MEMBERS' INTERESTS

Introduction and background

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'). The current committee was appointed by resolution of the Legislative Assembly on 15 February 2018.
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.¹ The committee investigates and reports on matters of privilege and possible contempts of Parliament referred to it by the Speaker, the Registrar, or the House.
3. This report concerns a referral from the Registrar regarding a possible contempt of Parliament by the Members for Cooper (Hon Kate Jones MP), McConnel (Hon Grace Grace MP), Bulimba (Hon Di Farmer MP), Mackay (Ms Julianne Gilbert MP), Mount Ommaney (Ms Jessica Pugh MP) and Rockhampton (Mr Barry O'Rourke MP) ('the Members') for failing to maintain accurate statements of interests on the Register of Members' Interests ('the Register').

The referral

4. On 21 February 2020, the Member for Buderim, Mr Brent Mickelberg MP, wrote to the Registrar (the Clerk of the Parliament) alleging that the Members had failed to delete their membership of the National Union of Workers (NUW), and then failed to add their subsequent membership of the United Workers Union (UWU) within the one month time frame required by the *Parliament of Queensland Act 2001* ('the POQA').²
5. Subclause 14 of Schedule 2 of the Standing Orders sets out the procedure to be followed when a member alleges another member has failed to comply with the Register requirements. Under these procedures, members must make allegations in writing to the Registrar.

¹ *Parliament of Queensland Act 2001* s 104B.

² *Parliament of Queensland Act 2001* s 69B(2).

6. Unlike referrals from the Speaker, where the Speaker undertakes an assessment of the matter in accordance with Standing Order 269, there is no such provision for the Registrar to assess allegations. Rather, the subclause 14 of Schedule 2 of the Standing Orders stipulate that the Registrar must refer any allegation regarding the Register to the committee.
7. Accordingly, on 24 February 2020, the Registrar referred the allegation to the committee.
8. At this time, and also in accordance with Standing Orders, the Registrar also wrote to the Members, notifying them of the allegations and referral to the committee.

Obligations when considering allegations

9. Subclause 15 of Schedule 2 of the Standing Orders outlines the obligations on the committee with respect to an allegation referred by the Registrar:
 - (1) *The Ethics Committee must consider each allegation referred to it, and for that purpose, may—*
 - (a) *give each member concerned the opportunity to be heard; and*
 - (b) *obtain information from such other persons, and make such inquiries, as it thinks fit;**after which it may—*
 - (c) *make a report to the Legislative Assembly; and*
 - (d) *with the report, recommend the action that should be taken in relation to the matter.*
 - (2) *The Ethics Committee must not make a report unless—*
 - (a) *it has given the member against whom the allegation has been made the opportunity—*
 - (i) *to be heard; and*
 - (ii) *to make written submissions; and*
 - (b) *it has given the person that the member nominates the opportunity to be heard.*

Definition of contempt

10. Section 37 of the POQA defines the meaning of ‘contempt’ of the Assembly as follows:
 - (1) *“Contempt” of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.*
 - (2) *Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—*
 - (a) *the free exercise by the Assembly or a committee of its authority or functions; or*
 - (b) *the free performance by a member of the member’s duties as a member.*
11. Standing Order 266(24) and the POQA section 37 (example 7) make it clear that failing to keep an accurate statement of interests can be a contempt of Parliament.
12. Standing Order 266(24):

Contravening the requirements and orders imposed by the operation of the Parliament of Queensland Act (see also Examples 7 and 8 s 37 Parliament of Queensland Act and s 58 Criminal Code).
13. POQA section 37 (example 7) states that a contravention of section 69B(1), (2) or (4) of the POQA is an example of a contempt.
14. Section 69B of the POQA states:

Statements of interests

- (1) *A member must, within 1 month after taking the member’s seat, give to the registrar the following statements—*
 - (a) *a statement of the interest, as at the date of the election, of the member (a statement of interests (member));*

(b) a statement of the interest, as at the date of the election, of which the member is aware of each person who is a related person of the member (a statement of interests (related persons)).

(2) A member must, within 1 month after becoming aware of a change in the particulars contained in the last statement of interests given by the member, notify the registrar in writing of the change.

...

(4) A member must not give to the registrar a statement of interests or information relating to a statement of interests the member knows is false or misleading in a material particular.

15. A breach of the Register requirements will not always be a contempt of Parliament. Subclause 18 of Schedule 2 of the Standing Orders sets out the requirements for a finding of contempt:

A member who—

(a) knowingly fails to give a statement of interests to the Register as required

(b) knowingly fails to notify the Registrar of a change of details contained in a statement of interest; or

(c) breaches s 69B(4) of the Parliament of Queensland Act 2001,³

is guilty of a contempt of the Parliament and may be dealt with accordingly.

The committee's proceedings

16. The committee has established proceedings for dealing with privileges references, which ensure procedural fairness and natural justice is afforded to all parties. These procedures are set out in chapters 44 and 45 of Standing Orders. The committee is also bound by instructions regarding witnesses, at Schedule 3 to Standing Orders.
17. The committee considered the referral from the Registrar and the material provided by the Member for Buderim. The committee also undertook its own inquiries by reviewing publicly available material relevant to the matter, such as the statements of interest on the Register and material relating to the amalgamation of the unions.
18. The committee found it had sufficient information to consider the allegations.
19. The committee has previously considered references concerning an alleged failure to register an interest. In accordance with the procedures of past committees, the committee applied the following *two separate tests* to determine if the Members were guilty of contempt:
1. Whether the matter required disclosure; and
 2. If yes, has the non-disclosure resulted in a contempt?

The committee's considerations

20. The purpose of the Register 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
21. Schedule 2 of the Standing Orders makes it clear that union membership, inter alia, is an interest that requires disclosing:

7.(5) A statement of interests required to be given by a member must contain the following details—

³ Section 69B(4) of the *Parliament of Queensland Act 2001* provides that a member must not give to the Registrar a statement of interests or information relating to a statement of interests the member knows is false or misleading in a material particular.

⁴ Schedule 2 – Registers of Interests, *Standing Rules and Orders of the Legislative Assembly*: Effective from 31 August 2004 (as amended at 15 February 2019).

...

(m) the name of any political party, trade or professional organisation of which the member or related person is a member...

22. Section 69B of the POQA states that a member must update their register within 1 month after becoming aware of a change of particulars:
(2) A member must, within 1 month after becoming aware of a change in the particulars contained in the last statement of interests given by the member, notify the registrar in writing of the change.
23. In 2019, the NUW and the United Voice union amalgamated to form one single union, the UWU. The terms of this amalgamation, which took effect on 11 November 2019, are set out in a decision of the Fair Work Commission.⁵
24. The decision states the NUW was to be de-registered, effective 11 November 2019.
25. The Member for Buderim argued that because the NUW was deregistered, and the UWU came into existence on 11 November 2019, the Members should have updated their statement of interests to reflect this change by 11 December 2019.
26. The committee agrees with this interpretation. The Standing Orders and POQA make it clear that the Members should have updated their statements by 11 December 2019 to reflect the change of membership in NUW to UWU.
27. Therefore, the committee determines that each of the Members did have an interest that required disclosing, and they each failed to disclose that interest within the required timeframe.
28. The committee notes, however, that when the committee met on 20 March 2020 to consider the matter, each of the Members had already amended their statement of interest on the Register to remove reference to NUW.
29. The Members for Cooper, Bulimba, Mackay, Mount Ommaney and Rockhampton had added membership of UWU on their updated statements. The Member for McConnel has not added membership of UWU, but the committee understands that the Member is not a member of the newly formed UWU and therefore no such disclosure is required.
30. The committee considers it appropriate to take the view that register of interest matters should be dealt with pragmatically.
31. A pragmatic framework sees the paramount consideration of the committee being to ensure that there is no evidence of corrupt conduct, or of potential for corrupt conduct, when a Member fails to comply with the requirements of the Register.
32. Where there is no evidence of corruption or intentional deceit, the next consideration is for the committee to ensure that the Register is an accurate reflection of the Members' interests at this point in time.
33. That is, if the committee identifies any inadvertent errors or admissions, it will take steps to encourage the members involved to amend their statements accordingly. This approach is one of education and improvement, rather than punishment and formal sanction for what may be inadvertent omissions.
34. Such an approach is consistent with an ethical framework encouraging continuous improvement, rather than a punitive framework penalising inadvertent errors.
35. As such, the committee determines that while each of the Members failed to update their statement of interests within the 1 month time frame, this was an inadvertent error with no evidence of a resulting real, potential or perceived conflict.

⁵ [\[2019\] FWC 7672](#).

36. The committee did not need to make a request of any of the Members to amend their statements on the Register. At the time the committee first considered the matter, each of the Members had already amended their statements to accurately reflect their interests.

Conclusion

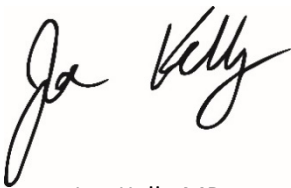
37. The committee finds that the removal of the NUW membership, and addition of the UWU membership to the Register, where applicable, was not carried out within the required 1 month time frame.
38. However, the committee finds that the failure to update the Register was inadvertent, with no evidence of corruption or deceit by any of the Members.
39. The committee does not consider it appropriate that inadvertent errors with respect to the Register, where not material to any issue, should result in a serious finding of contempt of Parliament.
40. Therefore, the committee finds that that while there was a technical breach of the requirements of Schedule 2 of Standing Orders, the breach was trivial and does not require further attention by the committee or the House in accordance with Standing Order 270(1)(a).

Conclusion

On the information before it, the committee finds that on the matter of privilege in relation to the Members for Cooper, McConnel, Bulimba, Mackay, Mount Ommaney and Rockhampton, that while there was a breach of the requirements of Schedule 2 of Standing Orders, this breach was inadvertent and is not a contempt of Parliament.

Recommendation

The committee recommends that the matter be dismissed under Standing Order 270(1)(a) because it is trivial and does not require further attention by the committee of the House.



Joe Kelly MP
Chair

April 2020

Membership — 56th Parliament

Mr Joe Kelly MP, Chair
Member for Greenslopes

Mr Tim Nicholls MP, Deputy Chair
Member for Clayfield

Ms Nikki Boyd MP
Member for Pine Rivers

Ms Leanne Linard MP
Member for Nudgee

Mr Mark McArdle MP
Member for Caloundra

Mr Ray Stevens MP
Member for Mermaid Beach

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EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE REGISTRAR ON 24 FEBRUARY 2020 RELATING TO AN ALLEGED FAILURE TO MAINTAIN AN ACCURATE STATEMENT OF INTERESTS IN THE REGISTER OF MEMBERS' INTERESTS



Ethics Committee

Meeting No. 38
Friday, 20 March 2020, 10.32am
Teleconference

Present	Mr Joe Kelly MP, Chair Mr Tim Nicholls MP, Deputy Chair Ms Leanne Linard MP Mr Mark McArdle MP
Apology	Ms Nikki Boyd MP Mr Ray Stevens MP
In attendance	Ms Bernice Watson, Committee Secretary Ms Rebecca Meehan, Assistant Committee Secretary

Inquiry No. 14 – National Union of Workers matter

Discussion ensued.

Resolved

That the matter be summarily disposed of under Standing Order 270(1)(a) because it is trivial and does not warrant further attention by the committee or the House, with the secretariat to draft a Final Report in these terms.

Moved: Mr Nicholls Seconded: Mr Kelly

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE REGISTRAR ON
24 FEBRUARY 2020 RELATING TO AN ALLEGED FAILURE
TO MAINTAIN AN ACCURATE STATEMENT OF INTERESTS
IN THE REGISTER OF MEMBERS' INTERESTS**



Ethics Committee

Meeting No. 39
Wednesday, 8 April 2020, 11.02am
Teleconference

Present

- Mr Joe Kelly MP, Chair
- Mr Tim Nicholls MP, Deputy Chair
- Ms Nikki Boyd MP
- Ms Leanne Linard MP
- Mr Mark McArdle MP
- Mr Ray Steven MP

In attendance

- Ms Bernice Watson, Committee Secretary
- Ms Rebecca Meehan, Assistant Committee Secretary

Inquiry No. 14 – National Union of Workers matter

Discussion ensued.

Resolved

That the committee adopts the Chair's draft report and authorises its tabling.

Moved: Mr Kelly Seconded: Mr Nicholls

Extracts certified correct on 20 April 2020

A handwritten signature in black ink that reads "Joe Kelly".

Joe Kelly MP
Chair