



ETHICS COMMITTEE

REPORT NO. 204

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 15 APRIL 2020 RELATING TO AN ALLEGED FAILURE TO DECLARE A CONFLICT OF INTEREST IN COMMITTEE PROCEEDINGS IN ACCORDANCE WITH STANDING ORDER 261

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 or the House.
3. This report concerns allegations the Member for Toohey, Mr Peter Russo MP, failed to declare a conflict of interest in committee proceedings in accordance with Standing Order 261.

The referral

4. On 17 October 2019, the Member for Kawana, Mr Jarrod Bleijie MP, wrote to the Speaker alleging, inter alia, that the Member for Toohey breached Standing Order (SO) 261 by failing to declare a conflict of interest in proceedings of the Legal Affairs and Community Safety Committee (LACSC).
5. SO 261 says that '*A member of a committee shall disclose to the committee any conflict of interest the member may have in relation to a matter before the committee*'.
6. The Member for Toohey is the Chair of the LACSC, and has been since 15 February 2018.²
7. The Member for Toohey is also principal of Russo Lawyers. Russo Lawyers has a preferred supplier agreement with Legal Aid Queensland (LAQ).
8. Preferred suppliers are private legal practitioners who receive funding from LAQ to provide services to Queenslanders who meet LAQs eligibility and priority criteria, if unable to access services at a LAQ office. There are over 400 preferred suppliers in Queensland.³

¹ *Parliament of Queensland Act 2001*, section 104B.

² Queensland Parliament, Record of Proceedings, 15 February 2018, p. 61.

³ Legal Aid Queensland website <<http://www.legalaid.qld.gov.au>>.

9. The Member for Kawana alleges that there were four separate occasions where, due to the relationship between the Member for Toohey, Russo Lawyers and LAQ, the Member for Toohey should have declared a conflict of interest in accordance with SO 261:

- First, the Member for Toohey asked the LAQ CEO a question during estimates hearings on 26 July 2019;
- Second, the Member for Toohey asked the Queensland Ombudsman questions in relation to LAQ during a LACSC public meeting on 20 April 2018;
- Third, the Member for Toohey asked representatives from the Queensland Law Society about LAQ during an LACSC public hearing on 18 July 2019; and
- Fourth, the Member for Toohey corresponded with LAQ about the LACSC's inquiry into the Criminal Code and Other Legislation Amendment Bill 2019 in February 2019.

10. With respect to the estimates hearing on 26 July 2019, the Member for Toohey asked the following question:

The next question is to the chief executive officer of Legal Aid. I refer to page 43 of the SDS and ask the chief executive officer to outline what Legal Aid Queensland is doing to support Queenslanders, particular regional Queenslanders, accessing the justice services they need.

11. With respect to the LACSC public meeting on 20 April 2018, the following exchange occurred between the Member for Toohey and staff members of the Queensland Ombudsman:

CHAIR: *One of the submissions from Legal Aid Queensland is in relation to section 45 of the Ombudsman Act, which provides that the state or an agency is not entitled to claim privilege in response to a request by the Ombudsman for the production of documents. Often these documents relate to persons who have received legal aid and are subject to legal professional privilege under the legal aid act. Their submission suggests that your office regularly seeks access to such documents. Legal Aid submits that section 45 should be clarified to provide that the legal professional privilege of legally assisted persons is not waived by the provision of the privileged information to your office. Do you have a view on that?*

Mr Clarke: *Certainly. Thank you very much for the question. I must say that, as far as I am aware, the question of privilege for Ombudsman investigations in Queensland is no different from that of any other jurisdiction. I am subject to correction on that, but I believe that is the circumstance.*

I believe that the access by my office to documents related to legal advice to parties to an investigation, particularly agencies—and Legal Aid is an agency for the purposes of the Ombudsman Act—is essential for us to be able to conduct a satisfactory review of those matters. It seems to me that the issue about privilege is whether I take steps that would otherwise harm the privilege for the client or the agency. We are extremely careful in terms of the way we deal with matters when we see what would otherwise be privileged advice to a complainant. In my time, in terms of the release of privileged information—and again, I would be subject to correction—I do not believe that we have released any material that would be regarded as privileged without the consent of the person to whom that privilege would attach to. I do not believe that we have done that. Whether, in fact, there is an argument at law that, by simply releasing the information to the Ombudsman, that privilege is waived by the agency, equally, I am not aware of any case where that has been argued. I am not sure there is a problem to be dealt with.

CHAIR: *If someone lodges a complaint about Legal Aid Queensland or the handling of their matter, what is the process for that person? When they sign their complaint, are they also signing a waiver of privilege at that point?*

Mr Clarke: No, they are not.

CHAIR: Do they later sign a document to waive privilege?

Mr Clarke: No. I am not aware that we have ever asked anybody to waive privilege on legal documents. As I said, under the Ombudsman Act there is no privilege for the state in regard to legal advice. I am entitled to see any agency based legal advice. If that legal advice is provided to a complainant by Legal Aid, again, subject to taking my own advice, I believe that that information fits into that same category. In other words, it is a public record. Therefore, I am entitled to receive it. We do not ask anybody to waive their legal privilege in the conduct of an investigation. For complainants, of course, it may be in their interests to provide the information to us, but that is part of their willing participation in the investigation and providing the evidence upon which probably—most likely—their complaint about Legal Aid is based.

CHAIR: If someone has a complaint about their lawyer, or the organisation, there are other avenues for those people to pursue?

Mr Clarke: Yes.

CHAIR: You have the Legal Services Commission.

Mr Clarke: Yes. Generally, if it is a behaviour issue about a legal practitioner, we would exercise the opportunities available to us under section 23 of the Ombudsman Act to recommend that the complaint be taken to the Legal Services Commission. I also have oversight of the Legal Services Commission, so at the same time we would probably advise the complainant that, if they are not satisfied by the dealings of the Legal Services Commission, they can bring the matter back to the office. If it is about an administrative decision of Legal Aid—for example, a grant of aid—that is something that we are more likely to take on ourselves, because it is not a behaviour issue, or a professional conduct issue about a particular lawyer.

CHAIR: If it is an application for a grant of assistance that you are looking at, whether they complied with their guidelines or whatever, I do not want to put words in your mouth, but does that create this issue that Legal Aid Queensland is worried about in relation to professional privilege?

Mr Clarke: Without seeing the submissions from Legal Aid it is difficult for me to comment. Perhaps if I can make a general comment: in regard to considering complaints about the grant of aid, much of it comes down to the exercise of discretion. If the matter is straightforward and Legal Aid basically has no capacity to provide legal aid for a particular client group or a particular set of legal proceedings or in a particular court as the case may be, then there is little room for us to exercise any sort of alternative recommended action than Legal Aid would take itself. Legal Aid also has a pretty sound external review process in terms of complaints that are handled by Legal Aid itself. It typically would come down to a situation where Legal Aid has the opportunity to exercise discretion and that is where we would probably end up in a discussion. Most complaint cases with Legal Aid would be about their exercise of discretion and whether they have handled that in a reasonable, fair, open, appropriate way. I might ask Jess if she would care to comment further.

Ms Wellard: That is fairly consistent. A lot of the times the complaints go through the external review process that Legal Aid has so when we look at it it's essentially judging whether that exercise of discretion was sound, whether there is any evidence of maladministration in line with our act.

Mr Clarke: I guess if I could just in summary say what we do not seek to do is change Legal Aid's policy framework et cetera. We really look to see whether they are exercising their

discretion in an appropriate way given that their policy framework cannot deal with every set of circumstances that arise that comes through their door.

12. With respect to the LACSC public hearing on 19 July 2019, the following exchange occurred between the Member for Toohey and members of the Queensland Law Society:

CHAIR: *My question goes probably to the workability of funding in relation to when a person is taken into custody. My understanding is that a person is taken into custody and then every effort has to be made to find a lawyer and a parent or guardian or carer. My understanding is that there are limitations in the act or in the regulations that would enable, for example, a watch house keeper to contact anyone outside of Legal Aid—that is, it would be limited to Legal Aid unless the regulations are changed. Am I drilling too much into the detail?*

Mr Bartholomew: *I understand that it is the definition of the legal aid organisation in the Police Powers and Responsibilities Act, which would include a legal aid organisation. We have some concerns in relation to that definition, and obviously our organisation and others would like some clarity to ensure that would include other legal service providers that are able to provide legal services to young people.*

CHAIR: *Right, because that is something that has been identified as something that, to make it workable, would need to be amended.*

Mr Bartholomew: *I think it is the intention perhaps that it might include organisations such as ours. There is also some concern as to that definition of what a legal aid organisation is and the definition section within the act in how it is defined. There would certainly seem to be some benefit in enhancing that and clarifying that it is to include—*

CHAIR: *Organisations such as yourselves?*

Mr Bartholomew: *Exactly.*

CHAIR: *My understanding is that trying to get hold of a Legal Aid lawyer after a certain time at night is near impossible. Is that something that you do not want to comment on?*

Mr Bartholomew: *Legal Aid has in the last two years provided the Legal Aid hotline, which is a new introduction provided by funding, as I understand it, from this government as part of the packages at the time that 17-year-olds came into the youth justice system. They do provide a legal advice service by telephone until 9 pm during the week, and I understand their hours over the weekend have recently been extended. However, there is no service provision after 9 pm and that service provision from Legal Aid is by telephone. The Aboriginal and Torres Strait Islander Legal Service also provide a telephone service and have a greater capacity to provide field officers and, as I understand it in some situations, solicitors to attend at police stations as required*

13. With respect to the correspondence with LAQ about the LACSC's inquiry into the Criminal Code and Other Legislation Amendment Bill 2019, this relates to a submission from LAQ.⁴ In the submission, LAQ state they are responding to an invitation from the Member for Toohey to comment on amendments to the Queensland Criminal Code:

I refer to the letter from Mr Peter Russo, MP, Chair of the Legal Affairs and Community Safety Committee, inviting Legal Aid Queensland (LAQ) to comment on the Criminal Code and Other Legislation Amendment Bill 2019 and the Criminal Code and Other Legislation (Mason Jett Lee) amendment Bill 2019.

14. On the 15 April 2020, the Speaker tabled a ruling referring the matter to the committee for consideration, noting the scope of SO 261 and that there is no precedent for a breach of SO 261:

As per my earlier consideration of Standing Orders 259 and 260 it is difficult to see how there is a direct pecuniary interest arising out of the matters considered by the committee. Further,

⁴<https://www.parliament.qld.gov.au/documents/Committees/LACSC/2019/CriminalCode2019/Submissions/010.pdf>

and notwithstanding that the Member for Toohey might have some remote pecuniary interest arising out of these proceedings, it is difficult to see how the interest was any different from that shared by other members of a similar class.

However, Standing Order 261 requires a member of a committee to disclose ‘any conflict of interest’ they may have in relation to a matter before the committee. Accordingly, the requirement to declare an interest under Standing Order 261 is wider than the pecuniary interest requirements of Standing Orders 259 and 260. This wider ambit of Standing Order 261 is confirmed in the Code of Ethical Standards for the Legislative Assembly.

Importantly, I note that the Ethics Committee (or predecessor committees) has not previously considered a conflict of interest in committee proceedings (SO 261 or equivalent) and therefore there is no precedent to apply.

Given the wider scope of Standing Order 261 in capturing ‘any conflict of interest’, and given that this allegation involves a novel breach of standing orders and the absence of any guiding precedent, I have reached the conclusion that [this] allegation... requires further consideration by the House. I will therefore be referring [this] allegation... to the Ethics Committee.

Definition of contempt

15. 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.

A breach of Standing Order 261

16. Standing Order 261 reads:

A member of a committee shall disclose to the committee any conflict of interest the member may have in relation to a matter before the committee.

17. Erskine May discusses declarations in Select Committees, and the importance of such declarations:

In any proceeding of a select committee, Members must disclose any relevant financial interest or benefit of whatever nature, whether direct or indirect, that they may have had, may have or may be expecting to have. Although this obligation is expressed in terms of financial interests, it is taken in practice to include relevant interests of a non-financial nature, such as membership of a trade union or pressure group. This requirement on select committee members is additional to the requirement on all Members to register interests in the Register of Members' Financial Interests, and includes some types of interests which do not require registration. All such declarations made in private session are entered in the formal minutes of the committee.

...

Where a member of a committee, particularly the chair, has a financial interest which is directly affected by a particular inquiry or considers that a personal interest may reflect upon the work of the committee or its subsequent report, the Member should stand aside from the committee proceedings relating to it.⁵

18. The Code of Ethical Standards for the Legislative Assembly of Queensland and accompanying Guide, speak to the scope of SO 261, in relation to similar standing orders that also require declaration of interests:

⁵ Erskine May, Parliamentary Practice (Online), [para 38.15](#).

In relation to members of a parliamentary committee, however, SO 261 imposes a requirement over and above SO 259 and SO 260, because under SO 261 a committee member must disclose any conflict of interest. Any conflict of interest is a wider concept. It would include pecuniary and non-pecuniary interests and direct and indirect interests. For example, SO 261 would require a member of a committee, such as the Parliamentary Crime and Corruption Committee, to disclose to the committee any interest or involvement the Member had in any matter before the Crime and Corruption Commission, if the committee was reviewing that matter.

19. As a breach of SO 261 has not been previously considered by the ethics committee, the committee was required to determine the elements that would amount to a breach.
20. In a previous matter considered by the Ethics Committee in 2014, that committee considered that any breach of a duty imposed by the Standing Orders would equate to an improper interference with the free exercise by the Legislative Assembly of its authority and functions.⁶
21. The committee considered that SO 261 places a positive duty on a member by use of the words 'shall disclose'. A breach of this positive duty may result in a breach of privilege, and potentially a contempt of Parliament.
22. The committee determined that a breach of SO 261 would amount to a contempt of Parliament in that the improper interference with the free exercise by the committee of its functions, in such a case, would be that a failure of a member to declare any conflicts of interest invites the committee proceedings to be tainted with, or be perceived to be tainted with, an improper influence.
23. The elements for the contempt would come from Standing Order 261 itself:
 - a member of a committee shall, in relation to a matter before the committee;
 - disclose any conflict of interest the member may have in relation to the matter;
24. SO 261 does not articulate the timing or process for such a disclosure to be made, however, the committee determined the disclosure should occur before or during the consideration of any such matter as a conflict potentially arises.
25. Therefore the three questions that the committee found must be answered in the positive in order to find the Member for Toohey in contempt of Parliament are:
 - Were each of the four occasions raised by the Member for Kawana, matters before the LACSC?
 - If yes, did the Member for Toohey have any conflict of interest in any one or all of these matters?
 - If yes, did the Member for Toohey disclose any conflicts of interest to the LACSC prior or during any one or all of these matters?

The committee's proceedings

26. 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.
27. The standard of proof in determining a contempt is the balance of probabilities. This is a lower standard than the 'reasonable doubt' standard required for criminal matters. However, a very high order of proof on the balance of probabilities is required to find a contempt, consistent with the test applied in relation to misconduct charges at common law. In the leading High Court authority in the area, *Briginshaw v Briginshaw* (1938) 60 CLR 336, Latham CJ at 343-344 stated: *'The standard of proof required by a*

⁶ While this matter was a consideration of SO 260, comparisons can be drawn with SO 261: Ethics Committee Report No. 147 *Matter of privilege referred by the Speaker on 12 February 2014 relating to an alleged failure of a Member to declare an interest in the House*, p 4.

cautious and responsible tribunal will naturally vary in accordance with the seriousness and importance of the issue'

28. The committee wrote to the Member for Kawana and the Member for Toohey, inviting submissions which addressed the elements to be established in considering the alleged contempt of failing to declare a conflict of interest in accordance with SO 261.
29. Both Members responded and the committee then found it had sufficient information to deliberate on the allegations.
30. The committee applied the three elements that it determined would amount to a contempt of parliament for breaching SO 261:
 - Were each of the four occasions raised by the Member for Kawana, matters before the LACSC?
 - If yes, did the Member for Toohey have a conflict of interest in any one or all of these matters?
 - If yes, did the Member for Toohey disclose any conflicts of interest to the LACSC prior or during any one or all of these matters?

Element 1: Were each of the four occasions matters before the LACSC?

32. In his submission, the Member for Kawana stated that each of the four occasions mentioned were matters before the LACSC as each occasion occurred during, or in relation to, an official inquiry of the LACSC.
33. The Member for Toohey did not state whether this element was made out on each occasion. Rather, the Member for Toohey made a distinction between 'proceedings' and 'matters.' He contends that the 'matter' is the subject matter of the proceedings.
34. The committee agreed with the Member for Toohey's analysis and determined that for the purposes of SO 261, a 'matter before the committee' is the subject matter of the committee proceedings.
35. As an aside, when arguing what constituted a matter of the LACSC, the Member for Toohey argued that there is tension with requiring disclosure under SO 261 of a potential conflict, when no such disclosure is required under SO 260(4).
36. SO 260(4), which governs proceedings of both the House and a committee, and relates to pecuniary interests only, states:

It shall not be necessary for a member to declare an interest when directing a question seeking information.
37. Notwithstanding the potential tension between these two standing orders, the committee notes that SO 260 relates to when pecuniary interests must be declared, while SO 261 relates to when a conflict of interest (i.e. any interest) must be declared.
38. The committee considered that SO 261 was explicit in its requirements for a member to declare any conflict of interest in matters before the committee.
39. The committee also reinforces its longstanding view that in relation to declaring interests, whether that be before the House or a committee, or on the Register of Members' Interests, that a member should err on the side of caution and when in doubt, always declare.

Element 2: Did the Member for Toohey have a conflict of interest in relation to any of the matters?

40. The Member for Kawana contended that the Member for Toohey had a pecuniary interest generally, with that interest being specifically identified as the Preferred Supplier Agreement between Russo Lawyers and LAQ.
41. The Member for Kawana further contended that this interest creates a real conflict of interest with the Member for Toohey's duties to provide oversight of LAQ as part of the LACSC responsibilities.

42. However, the Member for Kawana also indicated that even if there was not a real conflict, it was still possible that there was a perceived conflict:

At the very least there is a perception that the Member is simultaneously responsible for scrutinising the operations and budget of LAQ while also personally benefitting from doing business with LAQ.

43. The Clerk provided the Member for Toohey with advice which advised that the Member for Toohey may be required to make ad hoc declarations under SO 261 with respect to Russo Lawyers as required.⁷ This advice was provided after the four occasions in question, and did not contain any specific examples of when a conflict may arise.
44. The Member for Toohey did not deny that he has a pecuniary interest in Russo Lawyers, and noted that his statement on the Register of Members' Interests has always reflected this interest, including secondary income from Russo Lawyers.
45. The committee considered that the question was not one of a general interest (which is required to be disclosed on the Register), but whether there was a conflict with respect to specific matters before the committee that required disclosing above and beyond the requirements of the Register.
46. In order to assess whether the Member for Toohey had a conflict of interest in relation to either of the four occasions, the committee looked to legal precedent relating to conflicts of interest, as well as material from the CCC and Integrity Commissioner.
45. The objective test at law for assessing whether an interest gives rise to a conflict, requires the situation to be viewed through the eyes of a fair-minded member of the community, and whether, including having regard to political role, responsibility and accountability of the decision-maker, they would reasonably apprehend that decisions may not be made impartially by that decision-maker.⁸
46. This test is a settled area of law that is applicable to both judicial and administrative decision-makers.
47. The committee noted that the *apprehension* of bias outlined in the above legal test differs from actual bias. An apprehension, or perception, of a decision-maker's inability to bring an impartial mind to a matter, does not engage with how the matter is actually considered by that decision maker. It is not an accusation of wrongdoing, rather it is indicating that the decision-maker is at risk of not acting impartially (even if that is not their intention) due to the personal interests they hold.
48. With respect to Ministers, the Queensland Integrity Commissioner recommends a Minister apply a version of the above test to their individual situation to help determine if they have a conflict of interest that requires managing.⁹
49. The QLD Ministerial Handbook also restates the objective legal test outlined above:
- Whether a personal interest of a Minister gives rise to a conflict that must be managed, involves an objective test of whether, in the circumstances, a fair and reasonable member of the community might perceive that the Minister would be unable to bring an impartial mind to a decision because of their personal interest and which might conflict with the proper performance of the Minister's duties.*¹⁰
50. The committee noted that there was no precedent for assessing an allegation of a breach of SO 261. The committee further noted that most resources about identifying conflicts in the political setting were aimed at Ministers. Therefore the committee determined it was necessary to adapt the objective legal test specifically for the parliamentary committee context.

⁷ Tabled on 15 October 2019: <https://www.parliament.qld.gov.au/documents/tableoffice/taledpapers/2019/5619T1828.pdf>.

⁸ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; *Minister for Immigration and Multi-cultural Affairs v Jia Legeng* (2001) 205 CLR 507; [2001] HCA 17.

⁹ Queensland Integrity Commissioner, *Identifying, Disclosing, and Managing Potential Conflicts of Interest: A Guide for Ministers*.

¹⁰ Department of Premier and Cabinet, *The Queensland Ministerial Handbook*, [Appendix 1](#).

51. The committee articulated the following test (reasonable person test) to be applied when considering a breach of SO 261:
- Would a fair and reasonable person perceive that the member would be unable to bring an impartial mind to committee proceedings because of their personal interest in the matter before the committee?*
52. The committee determined that if the answer to the reasonable person test is yes, a conflict of interest would exist and must be declared under SO 261.
53. The committee noted that such a test is dependent on the level of responsibility and accountability held by the decision-maker, therefore it could follow that with respect to committees, the threshold for a Chair to have a conflict may be lower than that of other members of a committee.
54. With respect to the scope of what constitutes a conflict, the committee looked to the CCC and the Integrity Commissioner. Both the CCC and the Integrity Commissioner define 'conflicts of interest' widely, including actual, perceived and potential conflicts.
55. The CCC provides guidance on the different types of conflicts of interest that may exist with respect to government employees:
- 'What is a conflict of interest? A conflict of interest may be potential, perceived or actual and the risk of having a conflict will increase where an employee's role includes the authority to make decisions.*
- *An **actual** conflict of interest exists where your actions as a government employee, right now, could be influenced by your private interests.*
 - *A **perceived** conflict arises where it appears that decisions you make in the course of your employment may be influenced by your private interests, whether or not this is in fact the case.*
 - *If you are employed in a role where your future decision making may be influenced by your private interests, you have a **potential** conflict of interest.¹¹*
56. The Integrity Commissioner notes:
- In providing advice and guidance about best practice standards, the term 'conflict of interest' is used by the QIC to describe all conflicts, including those that arise from very direct interests ('actual'), those that arise from less direct or obvious interests ('perceived'), or future or prospective concerns ('potential'). This is because the best practice standards relate to meeting community expectations and perception is critical.¹²*
57. The current committee also noted that in the previous matter from 2014, the Ethics Committee commented that when considering issues around the declaration of interests, the perception of an interest by the public can be just as important, and damaging to the public confidence in the Assembly and its members as an actual interest.¹³
58. Following this guidance, the committee determined with respect to SO 261, a conflict could be actual, perceived or potential.
59. The committee then applied the reasonable person test to determine if the Member for Toohey had a conflict of interest during any of the four occasions.
60. Before considering each matter separately, the committee noted the following facts were relevant to each matter:

¹¹ CCC, [Conflicts of interest – are you managing yours appropriately?](#), June 2018.

¹² Queensland Integrity Commissioner, *Identifying, Disclosing and Managing Personal Interests: Developing an Interests Management Framework to Guide Practice for Multi-Member Decision-Making Bodies*, October 2019, [p 14](#).

¹³ Ethics Committee Report No. 147 *Matter of privilege referred by the Speaker on 12 February 2014 relating to an alleged failure of a Member to declare an interest in the House*, [p 9](#).

- The Member for Toohey is the Chair of the LACSC;
- The Member for Toohey is Director of Russo Lawyers;
- Russo Lawyers has a standing agreement, known as a preferred supplier agreement, with LAQ to provide legal services to legal aid eligible clients;
- The cost of the legal services that Russo Lawyers provide to these clients, is paid by LAQ to Russo Lawyers; and
- According to the LAQ website, there are almost 400 private legal practitioners in Queensland who provide services that are subsequently funded by LAQ.

Matter 1: LACSC Estimate Hearings – 26 July 2019

61. With regard to this first matter, the Member for Toohey asked the LAQ CEO what LAQ was doing to support access to justice for Queenslanders:

The next question is to the chief executive officer of Legal Aid. I refer to page 43 of the SDS and ask the chief executive officer to outline what Legal Aid Queensland is doing to support Queenslanders, particular [sic] regional Queenslanders, accessing the justice services they need.¹⁴

62. While the question asks what is being done for Queenslanders generally, it then narrows more specifically to regional Queenslanders.
63. Applying the objective test to this matter, the committee asked itself whether a fair and reasonable person may perceive that the Member for Toohey would be unable to bring an impartial mind to the Estimates Hearings when inquiring about improving LAQ services, as a result of his interest in Russo Lawyers, and its relationship with LAQ.
64. When answering this question, the committee identified the following additional relevant considerations:
- Russo Lawyers is based in Brisbane and does not perform Legal Aid work in regional Queensland.
 - The decision associated with the asking of this question is whether or not the LACSC agrees to the government's proposed funding for LAQ for 2019-20, that funding ultimately to be approved (or not) by the Parliament.
65. The committee considered that the nature of Russo Lawyers' business operations, being that the firm is based in metropolitan Brisbane, was key. The question by the Member for Toohey specifically related to regional Queensland residents being able to access LAQ services. Russo Lawyers does not provide legal services in regional Queensland.
66. On this basis, the committee determined that the Member for Toohey was able to bring an impartial mind to the matter.
67. Therefore, for this matter, the committee found that the Member for Toohey did not have a conflict of interest that required disclosing in accordance with SO 261.

Matter 2: LACSC Public Meeting – 30 April 2018¹⁵

68. In this meeting, the Member for Toohey asked the Queensland Ombudsman a question relating to legal professional privilege. Specifically, the question related to a provision in the *Ombudsman Act 2001* which prevents the State or an agency from claiming privilege in response to a request by the Ombudsman to

¹⁴ Record of Proceedings, 26 July 2019, [p 13](#).

¹⁵ Transcript of Proceedings, Public Meeting – Office of the Ombudsman, [30 April 2018](#).

provide documents. Discussion followed as to whether a LAQ client is ever asked by the Ombudsman to waive legal professional privilege as outlined in paragraph 11.¹⁶

69. The committee asked itself whether a fair and reasonable person may perceive that the Member for Toohey would be unable to bring an impartial mind to the consideration of the LAQ submission, subsequent questioning of the Ombudsman, and provision of statutory oversight of the Ombudsman by the committee, as a result of his interest in Russo Lawyers and its relationship with LAQ.
70. When answering this question, the committee identified the following additional relevant considerations:
- The Member for Toohey stated when asking the question that the issue was raised by LAQ in its submission to the LACSC.
 - Legal advice proffered by Russo Lawyers to its clients could potentially be contained in documents requested by the Ombudsman under the *Ombudsman Act 2001*.
 - The decision associated with these proceedings was whether the committee considers the Ombudsman is discharging statutory responsibilities appropriately.
71. The committee considered that the Member for Toohey was merely making an inquiry that was brought to the LACSC's attention via an LAQ submission and had no personal interest in the subject matter of the question.
72. The committee also considered that notwithstanding the relationship between the Member for Toohey and LAQ via Russo Lawyers, the Member for Toohey was still able to bring an impartial mind to the question of whether the Queensland Ombudsman was discharging responsibilities appropriately.
73. Therefore, for this matter, the committee found that the Member for Toohey did not have a conflict of interest that required disclosing in accordance with SO 261.

Matter 3: LACSC Public Hearing – 19 July 2019¹⁷

74. During this public hearing, the Member for Toohey questioned Mr Damian Bartholomew, the Chair of the Children's Law Committee from the Queensland Law Society about the definition of a 'legal aid organisation'.¹⁸
75. The Member for Toohey asked if this definition meant that the only organisation that could be contacted to provide legal aid services for Queensland youth is Legal Aid Queensland, and if Mr Bartholomew had any comment on that.
76. Mr Bartholomew commented that his organisation had concerns, and that other services such as the Aboriginal and Torres Strait Islander Legal Service provide a phone service that is more comprehensive than LAQ, and also that they have a greater capacity to provide field officers outside of hours than LAQ.
77. The committee asked itself whether a fair and reasonable person may perceive that the Member for Toohey would be unable to bring an impartial mind to the questioning of Mr Bartholomew, as a result of his interest in Russo Lawyers and its relationship with LAQ.
78. When answering this question, the committee identified the following additional relevant considerations:
- On a reading of the transcript, the committee considered that the Member for Toohey appeared more encouraging, rather than discouraging, of widening the definition of 'legal aid organisation' to include organisations other than LAQ;

¹⁶ Transcript of Proceedings, Public Meeting – Office of the Ombudsman, [30 April 2018](#).

¹⁷ Transcript of Proceedings, Public hearing – Inquiry into Youth Justice and Other Legislation Amendment Bill, [19 July 2019](#).

¹⁸ Transcript of Proceedings, Public hearing – Inquiry into Youth Justice and Other Legislation Amendment Bill, [19 July 2019](#).

- The decision to be made by the Member for Toohey was whether to support the committee recommending that the Youth Justice and Other Legislation Amendment Bill be passed by the House.

79. Ultimately the committee report recommended that the Bill be passed, and the definition of a legal aid organisation was subsequently widened.¹⁹
80. The committee considered that widening the definition of 'legal aid organisation' to increase access to justice for Queensland youth could not benefit the Member for Toohey, either indirectly or directly.
81. As a result the committee found that the Member for Toohey was able to bring an impartial mind to the proceedings.
82. Therefore, for this matter, the committee found that the Member for Toohey did not have a conflict of interest that required disclosing in accordance with SO 261.

Matter 4: Response from LAQ regarding correspondence from the Member for Toohey

83. In a submission to the inquiry into the Criminal Code and Other Legislation Amendment Bill 2019, LAQ wrote that it was responding to a letter from Mr Peter Russo MP, Chair of the LACSC, inviting the LAQ to comment.²⁰
84. The Member for Toohey contended that the letter inviting the LAQ to provide a submission was standard correspondence from the secretariat and that he did not personally invite LAQ make a submission to the inquiry.
85. The committee was able to confirm the nature of the correspondence, that being standard correspondence, after seeking further information from the LACSC secretariat. The LACSC secretariat also noted that LAQ had been identified as being a stakeholder in their inquiries, and that LAQ was one of 195 other stakeholders that the LACSC secretariat regularly contacted to invite submissions to inquiries.
86. The committee then asked itself whether a fair and reasonable person may perceive that the Member for Toohey would be unable to bring an impartial mind when overseeing an inquiry in which the LACSC (via the secretariat) invited LAQ to make a submission, as a result of his interest in Russo Lawyers, and its relationship with LAQ.
87. The committee considered that key to the matter was the fact that it was standard practice to invite submissions from LAQ to LACSC inquiries, as opposed to the Member for Toohey personally requesting that the secretariat contact LAQ for comment.
88. Also, the committee considered that LAQ is clearly a stakeholder for inquiries by the LACSC and it is not unusual or controversial that they would appear on the stakeholder list.
89. Therefore, the committee determined it unlikely the Member for Toohey would be unable to bring an impartial mind to committee proceedings because of his interest in Russo Lawyers, even where LAQ had been invited to make a submission.
90. Therefore, for this matter, the committee found that the Member for Toohey did not have a conflict of interest that required disclosing in accordance with SO 261.

Element 3: Did the Member for Toohey disclose any conflict of interest?

91. Notwithstanding the committee determined that the Member for Toohey did not have a conflict of interest that required declaring in accordance with SO 261 in any of the four aforementioned matters, for completeness the committee considered the third element.
92. In his submission to the committee, the Member for Toohey stated:

¹⁹ [Youth Justice and Other Legislation Amendment Act 2019](#) s 45.

²⁰ <https://www.parliament.qld.gov.au/documents/Committees/LACSC/2019/CriminalCode2019/Submissions/010.pdf>

I did not make a formal disclosure of the fact that Russo Lawyers Pty Ltd does Legal Aid work. Such a disclosure was not required. Nor, frankly, did it occur to me to make one. My work with LACSC has always been carried out entirely uninfluenced by the fact the firm does Legal Aid work. I do not rule out the possibility that I mentioned that fact to one or more of the LACSC members during the period I have been on that committee if it came up naturally in the course of conversation. As I said above, it is not something that 'I hide', but I do not have a specific recollection of doing so.

93. As a result of this submission, the committee was satisfied that the Member for Toohey did not formally disclose a conflict of interest in relation to any of the four aforementioned matters, and as such, this element was made out.

Conclusion

94. On the information before it, the committee finds that on the matter of privilege in relation to the Member for Toohey failing to declare a conflict of interest in accordance with SO 261, that the elements of the contempt are not made out.

Committee comment: Declarations of interest by Members of Parliament

95. The committee notes that in recent times it has been tasked with considering multiple instances of members failing to declare an interest, whether that be in relation to the Register of Members' Interests, or in accordance with requirements of the standing orders.
96. The committee further notes that in most of these situations, the failure to declare was inadvertent and there was no material conflict. That is, there was not an intention by the members to deliberately withhold an interest, rather the members did not turn their minds to a potential conflict or simply failed to comply with administrative requirements of declarations and remedied this once becoming aware.
97. The Code of Ethical Standards, made under the *Parliament of Queensland Act 2001* and adopted by the Legislative Assembly in June 2018, confirms the primacy of the public interest, and notes the public registration of interests 'provides some basis upon which the integrity of Members may be judged'.²¹
98. Further, the Code notes that the Register of Interests is not an exhaustive disclosure mechanism; and that Members are required, by standing orders, to declare their interests on an ongoing basis.
99. The Standing Orders of the Legislative Assembly requirements for declaring interests, and conflicts of interest, apply in different contexts: for example, the Register of Interest, and ongoing declarations of interests, or conflicts of interest, are required during Assembly and committee proceedings and in representations or communications outside the House.²²
100. Therefore, the committee takes this opportunity to reinforce its advice that Members should be constantly turning their mind to the relationship between their personal interests and the public interest, and ensuring any relationship is on the public record.
101. Interests recorded on the Register of Interests should be declared on an ongoing basis wherever the business of the Assembly or a committee has a connection to those interests – regardless of whether those interests give rise to a real or perceived conflict. Erring on the side of caution takes little effort on the part of a Member, and demonstrates a Member is taking active steps to ensure they are accountable to the public and can comprehensively defend any future allegations in relation to conflicts of interest that may arise.

²¹ Queensland Code of Ethical Standards, p 20.

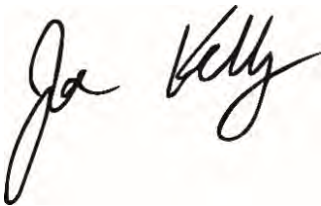
²² Standing Orders 259 – 262.

Conclusion

On the information before it, the committee finds that on the matter of privilege in relation to the Member for Toohey, that the allegations of contempt are not made out.

Recommendation 1

The committee recommends that the House take no further action in relation to these allegations.

A handwritten signature in black ink, reading "Joe Kelly", is displayed on a light beige rectangular background.

Joe Kelly MP

Chair

September 2020

Membership — 56th Parliament

Mr Joe Kelly MP, Chair
Member for Greenslopes

Mr Tim Nicholls MP, Deputy Chair
Member for Clayfield

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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5 June 2020

Ethics Committee
Attention: Mr Joe Kelly MP

By email: ethics@parliament.qld.gov.au

Dear Mr Kelly

Thank you for your letter of 21 May 2020.

I am pleased to assist by providing the following further information as requested by the Committee.

On top of what has already been provided to the Committee it is important to note the Member for Toohey admitted on 28 November 2019 that his error and confirmed that he had, at least on one occasion, performed paid work for a Legal Aid Queensland-funded client pursuant to the Preferred Supplier Agreement between Legal Aid Queensland (LAQ) and Russo Lawyers. An extract from Hansard is **attached** for reference.

It could be inferred by the Member's statement that he did not take reasonable steps to avoid any possible breach of s.70 and s.71 of the *Parliament of Queensland Act 2001* by putting in place appropriate protections to ensure he did not perform legal work for LAQ directly.

The Committee has sought further material addressing the elements of Standing Order 261.

Standing Order 261 states "*A member of a committee shall disclose to the committee any conflict of interest the member may have in relation to a matter before the committee.*"

The Committee has identified three elements to be met when determining whether a Member has breached Standing Order 261 and thus committed a Contempt:

1. Were the proceedings in question matters before the Legal Affairs and Community Safety Committee (LACSC)?
2. Did the member have any conflict of interest in these matters?
3. Did the member disclose any conflicts of interest to the LACSC prior or during these matters?

I will address each of these elements in turn.

First Element – were each of the four instances identified in my complaint, “matters before” the LACSC?

In my complaint to the Speaker, I identified four instances of the Member failing to declare his interest in the Preferred Supplier Agreement with LAQ. The four instances are as follows:

- Directly questioning the LAQ CEO at the Public Estimates hearing of the LACSC on 26 July 2019;
- Asking questions relating to LAQ at the LACSC public meeting with the Office of the Ombudsman on 30 April 2018;
- The Member asked questions of the Ombudsman about LAQ at a public hearing into the *Youth Justice and other Legislation Amendment Bill 2019* on 19 July 2019; and
- The Member had corresponded with LAQ about the LACSC’s inquiry into the *Criminal Code and Other Legislation Amendment Bill 2019*.

Each of the four instances I referred to were matters before the LACSC as each instance occurred during, or in relation to, an official inquiry of the LACSC.

I submit that on each instance this element is met.

Second Element -- Did the member have any conflict of interest in these matters?

For reasons outlined in my complaint, I submit that the Member has a personal interest – a pecuniary interest – in the Preferred Supplier Agreement between his law firm, Russo Lawyers, and Legal Aid Queensland.

I submit this situation amounts to a real conflict of interest with the Member’s duties to oversight LAQ as part of the LACSC responsibilities.

At the very least, there is a perception that the Member is simultaneously responsible for scrutinising the operations and budget of LAQ while also personally benefiting from his firm doing business with LAQ.

The Member has tabled advice from the Clerk of the Parliament advising that on occasion the Member would be required to make ad hoc declarations to the LACSC for matters connected with Russo Lawyers.¹ The Member was on notice he may need to declare to the LACSC certain interests and he ignored that advice but curiously seeks to rely on the Clerk’s reflection on the “fulsomeness” of the Member’s declarations.

I have had the opportunity to read the Member’s submission to the Speaker in response to my complaint, especially, the material in the Memorandum of Advice dated 21 November 2019. The advice contains factual errors, (for example stating that the Budget does not set the funding for Legal Aid Queensland: “...[the budget]

¹ See tabled paper number 1828 on 15 October 2019.

<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T1828.pdf>

Bills did not determine the amounts of funds allocated to Legal Aid Queensland") and misconstrue the legal effect of the standing orders. For example, this section from page 57:

21. At this point, as in that discussed above and below, it is to be remembered that the relevant interest must be a pecuniary one. It is reasonable to ask what possible pecuniary interest you could have had in asking this question. As in the Committee's Decision No. 147, the question was one of general public policy affecting Queenslanders at large. It does not appear to have been a question which you could have had a pecuniary interest, or any interest that was not shared by Queenslanders at large.

That is incorrect. Standing order 261 does not require an interest to be "pecuniary." Obviously, a pecuniary interest may give rise to a conflict, but a non-pecuniary interest may also give rise to a conflict with a Member's duties on a portfolio committee. The Member's advice is making a strawman argument rather than dealing with the real issues before the Committee.

The best defence mounted by the Member's expensive legal advisors rests on the superficial absurdity that LAQ is not an "entity" of the state. If LAQ is not an entity of the state, how is it funded? From where does it take legal personality? If Mr Russo were to render an invoice to LAQ and he were not to be paid, would he sue his client or LAQ? He would sue LAQ, and at law, he would receive an order to be paid out of funds administered from the Queensland Government consolidated fund. The Member's argument that LAQ is not an entity of the state makes a mockery of these important proceedings. It's little more than an insincere, deliberate misreading of the *Legal Aid Queensland Act 1997*.

It is clear from the material provided by LAQ under Right to Information, that Russo Lawyers, and the Member himself on at least one occasion, provided services to a third party in quid pro quo for payment drawn from the Queensland taxpayer pursuant to a contract with LAQ. This has occurred since before the Member was elected in 2015, and in late 2015 and 2018 the Member as Principal of Russo Lawyers executed further Preferred Supplier contracts.

The Integrity Commissioner has provided a useful tool² to determine whether a Conflict of Interest exists. Using the Integrity Commissioner's recommended factors, I submit:

1. There is a causal link between the Member's personal interest and how he might vote or act as Chair of the LACSC. It's not a tenuous or theoretical link to suggest that as a recipient from work from LAQ, he might change how he deals with LAQ during an examination or inquiry, or how he would vote on whether to recommend approval of the appropriation to be given to LAQ.

² Queensland Integrity Commissioner, 'Identifying, Disclosing, and Managing Personal Interests: A Guide for Multi-Member Decision Making Bodies' (13 November 2019) available from <https://www.integrity.qld.gov.au/assets/document/catalogue/resources/multi-member-decision-making-bodies.pdf>

2. **The value of the interest**, as Russo Lawyers are Criminal Law specialists, doing LAQ-funded work is likely a significant proportion of its revenue. The value of the Preferred Supplier Agreement to Russo Lawyers is likely to be significant, given that it receives at least 20 briefs per year according to the latest LAQ Annual Report and as confirmed by the Member in his letter to the Speaker.
3. **Directness/ Remoteness**, the LACSC is directly responsible for recommending to the Legislative Assembly whether to approve the appropriation for LAQ, some of which will in turn be paid to Russo Lawyers. The ability of the Member to bring about a benefit or detriment to his own interest is significant
4. **Size and Class of Persons affected**. I have addressed this in my complaint. The Member's firm is one of the 25 firms most frequently briefed firms in Queensland. This is a very limited class by any objective measure.

Third Element -- Did the member disclose any conflicts of interest to the LACSC prior or during these matters?

As the Member admits in his letter to the Speaker at page 44, he did declare any interest to the LACSC.

The Committee has also sought further submissions on whether there was an actual or perceived conflict of interest (in any of the four matters referred to the committee) which impacted negatively on the public's trust and confidence in the integrity of LACSC or broader Parliamentary decision-making processes.

I have addressed this in the second element above. In my submission, each of the four matters gives rise to at least a perceived conflict of interest, and possibly, a real conflict of interest.

In respect of public confidence issues, I ask the Committee to consider the role of portfolio committees in our unicameral house. Portfolio committees are intended to be the de facto check and balance on executive power and should provide important scrutiny of legislation and appropriation. For this reason, the rules around declaring perceived conflicts of interest should be higher than ordinary rules for Members in the regular activities.

In my view, the public perception of the Member's behaviour is very poor. Putting aside tortured legal arguments mounted in his defence, to have the Chair of the Legal Affairs Committee receiving payment for work provided at the request of an arm of the Queensland Government, including himself personally, does not reflect well on the Parliament, the Legal Affairs Committee or the Member.

Any reasonable, open minded person would question how it is appropriate for the Member to remain chair of the LACSC when he continues to have a Preferred Supplier Agreement with LAQ.

Thank you again for the opportunity to make this further submission.

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned to the left of the printed name and title.

JARROD BLEIJIE MP
MANGER OF OPPOSITION BUSINESS
SHADOW MINISTER FOR EDUCATION
SHADOW MINISTER OF INDUSTRIAL RELATIONS
MEMBER FOR KAWANA

a reduction against the national average of 21.5 per cent, that is offensive. When the minister says, 'Tourism is booming' and an operator in the Whitsundays has seen their share of the international market reduce by 39.5 per cent—and that was before the shark debacle—that is offensive.


By all means the minister should talk about the offering in Queensland, but we need to have an honest conversation about where we are at. Do members know what state has had an honest conversation? Tasmania. On the back of that that once sleepy state—

Mrs Stuckey interjected.

Mr CRISAFULLI: I take that interjection from a former tourism minister—the once sleepy state of Tasmania has stolen the march. They have done that by looking the noisy minority in the eye and not just talking about ecotourism, as we have in this state for too long, but delivering it. Tasmania has increased its share of ecotourism nationally by 45 per cent, or 67 per cent in real terms. That is what a booming tourism industry looks like.

When I hear the member for Cairns tell us about things being great in his city, it reminds me of a conversation that I had with a person in Cairns when I was there last who said, 'He's a pretty good guy, but he's pretty ineffective.' The city of Cairns needs somebody who advocates for them. We need to act on shark protection. We need to act on new industries. We need to be honest about the need to stop talking about ecotourism and delivering it. The Queensland tourism industry needs a leader, not a cheerleader.

Toohey Electorate, Schools; Correction to Record of Proceedings, Apology

 **Mr RUSSO** (Toohey—ALP) (2.45 pm): I rise to inform the House of the great things that have been happening under the leadership of the Palaszczuk government in my electorate of Toohey. Next week the Premier will be coming out to my electorate to open the Sunnybank Special School. This project has gone on for quite some time. I would like to send a shout-out to the principal, Darren. The facilities that have been provided by the Palaszczuk government at that school are world class. The experience that the students will now have at that school places them in good stead to deal with the complexities that they face every day.


Many other great things have happened in my electorate. One is the drop and go zone at MacGregor State School. That would never have happened if it were not for the hard work of the former education minister, Kate Jones, and the current Minister for Education, Minister Grace, who has seen the conclusion of the construction of that great drop and go zone. The drop and go area was constructed jointly with the Brisbane City Council. The school, the students and the parents are very grateful that they now have the safety of being able to drop off children straight outside the school. Another success is the work undertaken at Eight Mile Plains. I must give a shout-out to Minister Bailey. With the upgrade of the M1 in that area of the school, the school also received a drop and go zone.

While I am on my feet, I wish to correct the record. On 15 October 2019 I stated—

Whilst I have performed Legal Aid work in the past, I have not represented any clients who qualify for Legal Aid funding since I became a member of parliament.

At the time of making that statement I believed it to be correct. However, recently, in the course of working through other matters I became aware that in late 2018, due to an unexpected and unforeseen staffing issue, I instructed in court for part of a day on a Legal Aid funded matter until one of the employed solicitors was able to attend. I unreservedly apologise to the House for this omission.

Attorney-General and Minister for Justice, Integrity

 **Mr JANETZKI** (Toowoomba South—LNP) (2.48 pm): Those opposite are high on sanctimony and taking the moral high ground, but when we scratch beneath the surface we really get to the truth. We have just heard from the member for Toohey about some of his dealings, but I want to turn to the Attorney-General. Sitting week after sitting week the Attorney-General walks into this House and assumes the moral high ground. We receive lecture after lecture after lecture.

Recently we have seen what the Attorney-General is really all about. Today we received a couple of lectures on the financial gerrymandering of the electoral system. A bill was introduced knowing everything we know about what the Labor Party has done. The Attorney-General came in here and lectured us about appeals, as though those on this side of the House have no valid right to write to her and seek for her to take advice to appeal decisions.

Mr Krause: Or ask questions.

Peter Russo MP

Your Strong Voice for the Southside

Mr Joe Kelly MP
Chair
Ethics Committee

Dear Chair,

Matter of privilege referred by the Speaker to the Ethics Committee on 15 April 2020

I am writing in response to your letter dated 21 May 2020. I have attached herewith my submissions in that respect. Please note that I have included an Executive Summary at the beginning of those submissions which I trust will be of assistance. Attached to the submissions is a supplementary advice from Mr Angus Scott of Counsel, clarifying and confirming earlier advice from himself and Mr Peter Callaghan QC (now Supreme Court Justice Callaghan) that there is no basis in law for the Member for Kawana's complaint.

As my submission outlines:

1. I have always disclosed my interest in the law firm Russo Lawyers Pty Ltd. The surname in the title makes no secret of my interest in the firm.
2. Russo Lawyers Pty Ltd received a portion of its revenue from acting for Legal Aid clients under an agreement with Legal Aid Queensland. The fact that my law firm does Legal Aid work is long publicly known and appears for all to see on the firm website.
3. While it is hard to understand, the Member for Kawana's submission appears to be saying that I have some particular interest in access to justice for regional Queenslanders, protecting legal professional privilege for people dealing with the Ombudsman or young people getting access to lawyers in watchhouses. I am sure, and would certainly hope, that these are things that all Members of Parliament share an interest.



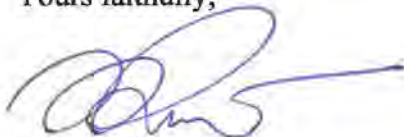
PETER RUSSO FOR TOOHEY

Mail: Suite 4, 309 Mains Road Sunnybank Q 4109 **Phone:** 3414 3120
Email: sunnybank@parliament.qld.gov.au **f t** PeterRussoMP

4. The Estimates Committee decisions referred to by the Member for Kawana were considering the matter of whether budget appropriations for a range of government agencies should be supported, a question in which I have no special interest beyond the Queensland community, let alone other Members. My interest in a law firm certainly does not create a conflict of interest.
5. There is no discernible pecuniary interest in any of the matters before the Committee, much less an interest which presents a conflict of interest.
6. Further, all questions asked by me, and the signing of a letter to a stakeholder giving effect to standard Committee procedure to provide a stakeholder with the opportunity to make a submission, were wholly in pursuance of my duty as Chair, and completely unrelated to, and unaffected by, my interest in Russo Lawyers Pty Ltd.
7. Thus as a matter of reality, I was not acting under any conflict of interest. Further, as a matter of potentiality and perception: there was no real sensible possibility of conflict in respect of any of these matters. This is confirmed by the legal advice obtained.

In the circumstances, it is respectfully submitted that the Ethics Committee will readily proceed to the conclusion that the complaints are without substance and merit, and that there is no evidence at all of any breach of Standing Order 261, much less is there evidence of contempt of Parliament.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Peter Russo', with a long horizontal flourish extending to the right.

Peter Russo MP
Member for Toohey

5 June 2020

**Matter of privilege referred by the Speaker to the Ethics
Committee on 15 April 2020**

Submissions made by Peter Russo MP

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Introduction

1. I note that you state that the Committee is in the initial stages of its assessment of this matter and is seeking information from the parties involved before determining if this matter requires further investigation.
2. I trust that upon receipt of this correspondence the Committee will form the view that this matter does not require any further investigation and that no further action should be taken in respect of the matter.

Executive Summary of these submissions

3. I have a pecuniary interest in the law firm Russo Lawyers Pty Ltd, a firm in the Brisbane CBD. A portion of the income of that firm comes from acting for Legal Aid clients under an agreement with Legal Aid Queensland.¹
4. My pecuniary interest in the law firm is, and has been at all relevant times, recorded on my Register of Interests. The Clerk of Parliament has confirmed, in writing, that I “have made fulsome declarations about [my] practice and associated companies and the source of [my] income from the practice and the companies.”²
5. The fact that my law firm does Legal Aid work is long publicly known, and appears for all to see on the firm website.
6. The Member for Kawana alleges that I have breached Standing Order 261 on four occasions by not declaring this pecuniary interest “when possible conflicts of interest arose with the Committee’s proceedings”.³ The extent of the particulars provided by the Member for Kawana in making those allegations are:

Allegation one:

“The transcript of the public Estimates hearing of the LACSC from 26 July 2019 shows that the Member asked a question to the LAQ chief executive officer without making any public disclosure of his conflict of interest arising from the preferred supplier arrangement with Russo Lawyers.”⁴

¹ The arrangement is called a “preferred supplier arrangement”. These arrangements are entered into by Legal Aid with firms it considers appropriate to represent Legal Aid clients.

² See email from Mr Laurie, The Clerk of the Parliament, to me, 14 October 2019, contained at page 64 of the documents which I provided to the Speaker.

³ Letter from Member for Kawana to Speaker, 17 October 2019

⁴ Paragraph 28, page 8, of the submissions attached to the 17 October 2019 letter from the Member for Kawana to the Speaker 17 October 2019

- I presume that the question here referred to is my question to the Chief Executive Officer to outline what Legal Aid Queensland is doing to support Queenslanders, particular (sic) regional Queenslanders, accessing the justice services they need.

Allegation two:

“The transcript of the LACSC public meeting with the office of the Ombudsman on 30 August 2018 shows that the Member asked questions of the Ombudsman about Legal Aid Queensland without making any public disclosure of his conflict of interest arising from the the preferred supplier arrangement with Russo Lawyers.”⁵

- I presume that the questions here referred to are questions asked regarding the maintenance of legal professional privilege (a fundamental common law privilege) in the context of requests from the Ombudsman, and a question about alternate avenues of complaint for people about their lawyer.

Allegation three:

“The transcript of the LACSC public hearing of 19 July 2019 into the *Youth Justice and other Legislation Amendment Bill 2019* shows the Member asking questions to representatives from the Queensland Law Society about LAQ.”⁶

- I presume that the questions here referred to are questions asked to Mr Bartholomew, concerning the accessibility of young people to lawyers when held in a watchhouse, and whether there might be benefit in clarifying the definition of legal aid organisation in the Police Powers and Responsibilities Act to include organisations such as Mr Bartholomew’s, that is, the Youth Advocacy Centre and the Aboriginal and Torres Strait Islander Legal Services.

Allegation four:

“The LACSC website also contains public documents that show the Member, as Chair of the LACSC’s inquiry into the *Criminal Code and Other Legislation Amendment Bill 2019*, however the correspondence does not contain evidence of any disclosures being made.”⁷

7. The Member for Kawana appears to proceed from the premise that because I have a pecuniary interest in a law firm which has a preferred supplier agreement, that I automatically have a

⁵ Paragraph 30, page 8, of the submissions attached to the 17 October 2019 letter from the Member for Kawana to the Speaker 17 October 2019

⁶ Paragraph 31, page 9, of the submissions attached to the 17 October 2019 letter from the Member for Kawana to the Speaker 17 October 2019

⁷ Paragraph 28, page 8, of the submissions attached to the 17 October 2019 letter from the Member for Kawana to the Speaker 17 October 2019

- “conflict of interest in relation to” each of the matters before the Committee at the times. He does not seek to articulate (a) what each of the “matters” were, or how my pecuniary interest presented a conflict of interest. Rather he makes an ambit claim, unsupported by any connective logic. He does not seek to articulate any incompatibility between duty and interest.
8. The claim seems to proceed on the premise that asking questions (including signing a letter offering a stakeholder the opportunity to provide a submission) in, and of itself, requires a declaration of interest. That, clearly, is not the case: Standing Order 260(4).
 9. In any event, legal advice obtained from Mr Callaghan SC (as his Honour then was) and Mr Scott of Counsel, confirms that there is no breach of Standing Order 261.⁸ Supplementary advice received from Mr Scott of Counsel clarifies and confirms that position.⁹
 10. Black’s Law Dictionary¹⁰ definition relevantly defines “conflict of interest” as “a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.”
 11. For there to be a conflict, the reasonable person:

“looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict.”¹¹
 12. In respect of allegation one, the matter before the Committee were the estimates for the LACSC’s areas of responsibility in the *Appropriation Bill* 2019.
 13. In respect of allegation two, the matter before the Committee was LACSC’s oversight responsibility for entities under section 88 of the Parliament of Queensland Act 2001 and schedule 6 of the Standing Orders. Those functions include monitoring and reviewing the performance of the Information Commissioner against its functions; reporting to the Assembly on any matter concerning the Commissioner examining the annual reports tabled in the Legislative Assembly under the Acts; and examining each report of a strategic review of the Office of the Information Commissioner.
 14. In respect of allegation three, the matter before the Committee was an inquiry into the Youth Justice and Other Legislation Amendment Bill.
 15. In respect of allegation four, the matter before the LACSC to which the letter relates, it was as to the *Criminal Code and Other Legislation Amendment Bill* 2019 and the *Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill* 2019.

⁸ See advice of Callaghan SC and Scott of Counsel provided to the Speaker.

⁹ That supplementary advice is attached to this correspondence.

¹⁰ 9th Edition, Bryan Garner, Thomson Reuters

¹¹ *Boardman v Phipps* [1967] 2 QC 46, 124 per Lord Upjohn.

16. There is no discernible pecuniary interest in any of these matters, much less an interest which presents a conflict of interest. Further, all questions asked, and signing a letter to a stakeholder providing the opportunity to provide a submission, were wholly in pursuance of my duty as Chair, and completely unrelated to, and unaffected by, my interest in Russo Lawyers Pty Ltd. This is as a matter of reality (I was not acting under any conflict of interest) and as a matter of potentiality and perception: there was no real sensible possibility of conflict in respect of any of these matters. This is confirmed by the legal advices obtained.
17. In the circumstances, it is respectfully submitted that the Ethics Committee will readily proceed to the conclusion that the complaints are without substance and without merit, and that there is no evidence at all of any breach of Standing Order 261, much less is there evidence of contempt of Parliament.

Referral by the Speaker

18. The letter of referral from the Speaker to the Ethics Committee dated 15 April 2020 states that the referral to the Ethics Committee is in respect of the following matter:

The allegation that the Member for Toohey breached Standing Order 261 by not declaring the relationship between Legal Aid Queensland and Russo Lawyers to the Legal Affairs and Community Safety Committee when possible conflicts arose with the Committees proceedings.

19. I note that in the Speaker's ruling, the Speaker has not stated that there are any particular facts which warrant investigation by the Ethics Committee. Rather, his decision to refer the allegations to the Ethics Committee is on the following basis:

"I note that the Ethics Committee (or predecessor committees) has not previously considered a conflict of interest in committee proceedings (SO 261 or equivalent) and therefore there is no precedent to apply.

Given the wider scope of Standing Order 261 in capturing "any conflict of interest", and given that this allegation involves a novel breach of standing orders and the absence of any guiding precedent, I have reached the conclusion that the allegation 3 requires further consideration by the House. I will therefore be referring allegation 3 to the Ethics Committee."

The allegations (in brief)

20. The provenance of the allegations that were made to the Speaker is a complaint made by the Member for Kawana. Each allegation apparently arises out of the fact that I have an interest in

Russo Lawyers Pty Ltd who is a preferred supplier for Legal Aid Queensland. The allegation is that that is a pecuniary interest which I ought specifically to have disclosed before:

- (a) Asking the CEO of Legal Aid a question during estimates hearings on 26 July 2019; (Allegation one)
- (b) Asking the Queensland Ombudsman questions in relation to Legal Aid Queensland during a public meeting on 20 April 2018; (Allegation two)
- (c) Asking representatives from the Queensland Law Society about Legal Aid Queensland during an LACSC public hearing on 18 July 2019; (Allegation three) and
- (d) Signing correspondence to Legal Aid Queensland about the LACSC's inquiry into the *Criminal Code and Other Legislation Amendment Bill 2019*. (Allegation four)

21. The Member for Kawana alleges that there has been:

- (a) Failures to disclose; and
- (b) Those alleged failures constitute a contempt of Parliament.

22. The Member for Kawana makes those allegations notwithstanding that:

- (a) It is openly recorded on my Register of Interests that I receive income from Russo Lawyers Pty Ltd;
- (b) It is, and always has been, a matter of open and public record that Russo Lawyers Pty Ltd does Legal Aid work: for example, it is prominently stated on the home page of the website for Russo Lawyers Pty Ltd. The fact that Russo Lawyers Pty Ltd is a preferred supplier is contained within the 2019 Annual Report. The Member for Kawana was readily able to locate these facts on records which are readily, and wholly, publicly accessible;¹²
- (c) I have never sought, in any respect, to "hide" the facts in (a) and (b). To the contrary, this is publicly known information;
- (d) I did not make a formal disclosure of the fact that Russo Lawyers Pty Ltd does Legal Aid work. Such a disclosure was not required. Nor, frankly, did it occur to me to make one. My work with the LACSC has always been carried out entirely uninfluenced by the fact that the firm does Legal Aid work. I do not rule out the possibility that I mentioned that

¹² I also note, with some scepticism, the undercurrent of the Member for Kawana's complaint, that the involvement of Russo Lawyers with Legal Aid was not previously known to them. When I was first elected to Office, I defeated Mr Mark Stewart, LNP, member, son of Brian Stewart, Chair of the Legal Aid Board. In any event, as stated above, that Russo Lawyers Pty Ltd does legal aid work is publicly known.

fact to one or more of the LACSC members during the period I have been on that committee if it came up naturally in the course of conversation. As I said above, it is not something that “I hide”, but I do not have a specific recollection of doing so. Also as stated above, there was no need to specifically disclose this.

- (e) The Member for Kawana has not alleged any proper basis for thinking that there might be any breach of Standing Order 261.
- (f) As a matter of law, the conduct alleged against me does not amount to a breach of Standing Order 261 much less amount to a wilful breach of a Standing Order or conduct which is intended or likely to amount to an improper inference with:
 - (i) The free exercise by the assembly or a committee of its authority or functions; or
 - (ii) The free performance by a member of the member’s duty as a member.¹³

Legal advice that was before the Speaker and supplementary advice obtained and provided to this Ethics Committee

- 23. In my response to the Speaker, I attached legal advice that I obtained from Mr Peter Callaghan SC (now Supreme Court Justice Callaghan) and Mr Angus Scott of Counsel, both highly respected barristers in Queensland, of seniority and standing.
- 24. They opine, in summary:
 - (a) That no breach of Standing Order 261 is shown;
 - (b) That disclosure obligations do not arise in respect of everything that might be regarded as a pecuniary interest. The interest must be in the particular matter to which the order refers, that is the particular matter before the committee.¹⁴
 - (c) Elementary common sense underpins this limitation: *“There is first a test of relevance. If the.. “matter” does not engage, relevantly, with a pecuniary interest, an obligation does not arise.”*
 - (d) In respect of allegation one (that is, the question asked of the CEO of Legal Aid on 26 July 2019), the question asked was one of general public policy affecting Queenslanders at large. It was not one in which I had a pecuniary interest.¹⁵ (I note that the only type of interest the Member for Kawana accuses me of having is a pecuniary interest. It need hardly be said that I don’t have a “personal interest” either.)

¹³ Section 37 of the *Parliament of Queensland Act*

¹⁴ Paragraph 10 of the Callaghan SC and Scott advice.

¹⁵ Paragraph 21 of the Callaghan SC and Scott advice.

- (e) In respect of allegation two, that is, the proceedings on 30 April 2018 when I asked the questions of the Queensland Ombudsman, there does not appear to have been anything pecuniary attaching to my interest in the subject matter. The questions were directed to matters of general public importance about which members of the public generally may be interested.
 - (f) In respect of allegation three, that is, the questions asked of Mr Bartholomew of the Queensland Law Society, *"concerned matters in which members of the public generally have an interest. Any interest that you had was no greater than the interests of the members of the public generally. It appears to have been neither personal, nor pecuniary."*¹⁶ (Put another way, I did not have a pecuniary or personal interest.)
 - (g) In respect of allegation four, that is, the letter to Legal Aid Queensland about the LACSC's enquiry into the Criminal Code and Other Legislation Amendment Bill, a document which is standard correspondence generated by the secretary of the committee inviting relevant stakeholders to comment on proposed legislation, this did not amount to a pecuniary interest in matters before the LACSC.¹⁷
25. Having observed the Speakers observations that Standing Order 261 has a "wider scope" than Standing Order 260, I considered it prudent to seek clarification of the advice provided by Messers Callaghan and Scott. Obviously as Callaghan J has now been elevated to the Supreme Court, it was not appropriate that I seek clarification from his Honour. In the circumstances, I sought clarification from Mr Scott of Counsel given that he was the joint author of the original advice and worked closely in conjunction with Callaghan J in the preparation of that advice, and also given that he is regarded highly within the legal community.
26. Mr Scott was asked to clarify aspects of the joint written advice. He was expressly asked as to whether his view remains that there has been no breach of Standing Order 261, having regard to the fact that Standing Order 261 is:
- (a) Not limited merely to pecuniary interests, and
 - (b) The disclosure obligation is not subject to the express words which appear in Standing Order 259, that is, that the interest be "not held in common with the rest of the subjects of the Crown"; and

¹⁶ Paragraph 27 of the Callaghan SC and Scott advice.

¹⁷ Paragraph 29 of the Callaghan SC and Scott advice.

- (c) The disclosure obligation is not subject to the express words which appear in Standing Order 260, that is, that the interest must be “greater than the interest held in common with subjects of the Crown or members of the House generally”; and
- (d) The disclosure obligation is not subject to the express words which appear in Standing Order 262 that is, that the interest be “significantly greater than the interest held in common with subjects of the Crown or members of the House.”

27. Mr Scott supplementary advice is **attached**. Importantly, it states:

“I advise that my view remains that there has been no breach of Standing Order 261. The reasons for this follow:

- (a) For Standing Order 261 to apply, there must be a conflict of interest that the member has in relation to a “matter” before the committee”. The matters were not ones in which you held a pecuniary or other interest, and thus not ones for which a conflict could be said to arise.
- (b) As a side note, I observe that that the only interest alleged against you as presenting conflict was a pecuniary one, namely, that Russo Lawyers Pty Ltd earned money from doing Legal Aid. There was no pecuniary interest in the matters.
- (c) No other type of interest was alleged, nor could we identify one. There was no personal interest in respect of the matters.
- (d) In *Aberdeen Railway Co v Blaikie Brothers*,¹⁸ Lord Cranworth LC said that no-one, having fiduciary duties to discharge, “shall be allowed to enter into engagements in which he has, or can have a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect”. The phrase “possibly may conflict” was subsequently explained by Lord Upjohn in *Boardman v Phipps*¹⁹ as follows:

“In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as

¹⁸ [1843-60] All ER Rep 249.

¹⁹ [1967] 2 AC 46 at 124.

real sensible possibilities by any reasonable person, result in a conflict.”

(e) Observations as to the test to like effect have been made by the High Court.²⁰

(f) The allegations do not purport to articulate what the “real sensible possibility of conflict” might be in respect of any of the actions taken by Mr Russo in respect of allegation 3 made to the Speaker.²¹ nor can I discern any such possibility.

(g) The basic threshold for standing order 261 is simply not met. (My underlining)

28. I trust that you will find these legal advices of significant assistance, particularly Mr Scott’s supplementary advice which makes it plain that the basic threshold for a breach of Standing Order 261 is simply not met. I respectfully submit that you would find these advices compelling in readily reaching a conclusion that this matter should not proceed beyond assessment into investigation.

29. In any event, I have sought, in this correspondence to set out a disciplined analysis of the elements which must be established for a breach of Standing Order 261 to be proved, and analysis of the additional matters which must be proved in order for such a breach to amount to a contempt of Parliament.

30. This type of analysis was not done by the Member for when making his complaint to the Speaker, notwithstanding the requirement in Standing Order 269 that a Member writing to the Speaker:

“must formulate as precisely as possible the matter, and where contempt is alleged, enough particulars so as to give any person against whom it is made a full opportunity to respond to the allegation.”

31. Before turning to that analysis, I note that in the material that I provided to the Speaker, I included a table which set out the allegations made by the Member for Kawana and my responses to same, which were provided as instructions to Mr Callaghan SC and Mr Scott of Counsel. For your convenience and assistance, I have extracted the relevant parts of that table here.

²⁰ *Chan v Zacharia* (1984) 154 CLR 178 at 199; and *Hospital Products Ltd v United States Surgical Corp* (1984) 156 CLR 41 at 103.

²¹ That is allegation 3 of the allegations made by the Member for Kawana, which cover the four allegations referred by the Speaker to this Committee.

	ALLEGATIONS	INSTRUCTIONS
1.	The Member for Toohey, Peter Russo MP (the "Member") trades as Russo Lawyers, according to the ASIC Business Name register. [FOONOTE I]	<p>This is not correct. I do not trade as Russo Lawyers. Russo Lawyers Pty Ltd trades as Russo Lawyers.</p> <p>It is correct that the ASIC Business Name register records me as the holder of the business name, but it is not correct that I trade as Russo Lawyers. Russo Lawyers Pty Ltd trades as Russo Lawyers. I am an employee of Russo Lawyers Pty Ltd.</p>
2.	The Member is a director and secretary, and Peter Russo Holdings Pty Ltd is the only shareholder, of Russo Lawyers Pty Ltd. The shares of Peter Russo Holdings Pty Ltd are held by the Member's Spouse, Kerri Anne Mellifont. The Member's register of interest states that Russo Lawyers Pty Ltd is related to the legal practice of Russo Lawyers. [FOOTNOTES II AND III]	This is correct.
3.	There is some tension between the ASIC Business Name registry entry and the disclosed interests on the Member's Register of Interests as to which legal entity operates the law firm, Russo Lawyers. However, it is open to find that by either view of the correct legal entity, the Member has a pecuniary interest in the firm, either as a sole trader, or as a shareholder and declared recipient of income from the firm.	<p>The Business Name registry entry records the "holder" as Russo Lawyers. The disclosed interests on the Member's Register of Interests records, for subclause 7(5)(a)() "shareholdings or controlling interests in shares in companies" the following: ..Russo Lawyers Pty Ltd; Peter Russo Holdings Pty Ltd.</p> <p>I don't accept that there is tension between the Business Name registry entry and the disclosed interests as to which legal entity operates the law firm. Clearly, the legal entity which operates the law firm is Russo Lawyers Pty Ltd, an incorporated legal practice.</p> <p>I accept that I receive income from the firm, and that I have declared that to be the case.</p> <p>I do not accept that I am a sole trader. (I do not accept that I am a trader at all. The company is the trader.)</p>
4.	According to Legal Aid Queensland's 2018-19 Annual Report, Russo Lawyers is a preferred supplier to Legal Aid Queensland. According to the terms of the preferred supplier agreement, Russo Lawyers has the right to receive work, and an obligation to undertake work, from LAQ. A template preferred supplier agreement is available on the LAQ website.	<p>This is correct. The incorporated legal practice, Russo Lawyers, is a preferred supplier to Legal Aid Queensland.</p> <p>(NB: Counsel has been briefed with the preferred supplier agreement for Legal Aid.)</p>

	ALLEGATIONS	INSTRUCTIONS
	[FOONOTES IV AND V]	
5.	LAQ preferred supplier agreements run for three-year periods from 1 August 2015 and from 1 August 2018 to 2021. [FOONOTE VI]	This is correct.
6.	LAQ Criminal Law preferred suppliers, such as Russo Lawyers, are paid for legal work pursuant to a published scale of fees which is available from the LAQ website.	This is correct.
7.	Both the Premier and the Attorney-General have refused to advise in Question Time exactly how much LAQ has paid to Russo Lawyers, but according to LAQ's 2018-19 Annual Report Russo Lawyers is one of only 25 Law Firms in Queensland who receive more than 20 criminal law briefs. [FOOTNOTE VII]	<p>The Premier and the Attorney-General have not "refused to advise" – they are not privy to the amount paid to Russo Lawyers by Legal Aid.</p> <p>It is correct that the Annual Report reports this. It is open and public knowledge that Russo Lawyers is a preferred supplier.</p>
8.	Russo Lawyers has used its LAQ preferred supplier status in its social media and internet marketing. [FOOTNOTE IX]	This is correct.
9.	The facts above, in my submission, give rise to an interest that the Member within the meaning of an interest of Schedule 2, Part 7(5)(n) of the standing orders as it gives rise to a real or at the least, a perceived conflict of interest in certain circumstances as I will outline below.	I do not agree that the facts give rise to a real or perceived conflict of interest in respect of any of the circumstances which Bleijie MP then goes on to allege.
19.	Having made this conclusion, and given the failure to declare this pecuniary interest, I submit that the Member has breached standing order 260 and committed a contempt of the Assembly.	<p>I disagree. I did not perceive that I had an obligation to make a declaration. If am I wrong in that, then my error was unintentional. It did not amount to contempt because it was not, in any sense, a deliberate, failing.</p> <p>The fact that Russo Lawyers Pty Ltd is a preferred supplier is no secret. It is publicly known. That Russo Lawyers does legal aid is stated on the front page of its website. The home page of russolawyers.com.au states: "we take pride in conducting work through Legal Aid Queensland to those who are eligible".</p> <p>The fact that Russo Lawyers Pty Ltd does Legal Aid is contained in the most recent Annual Report.</p>

	ALLEGATIONS	INSTRUCTIONS
		<p>If you search the legal aid website for Russo, Russo Lawyers Pty Ltd comes up.</p> <p>That I receive income from Russo Lawyers Pty Ltd is declared on my Register of Interests.</p> <p>I have never hid, or sought to hide, that Russo Lawyers Pty Ltd does Legal Aid, from anyone, and certainly not from the Opposition. For the record, I note that the incumbent LNP Member I defeated when I was first elected was Mark Stewart, son of Brian Stewart, Chair of the Board of Legal Aid Queensland 2014-May 2017, who was appointed by the Member for Kawana.</p>

Third matter- failure to disclose an interest to a Committee

26.	The Ethics Committee should consider the role of the Member as Chair of the Legal Affairs and Community Safety Committee ("LACSC") and whether the Member has complied with standing order 261.	I disagree. In my view, there is no proper basis to form a view that I might have committed a contempt.
27.	Standing order 261 states: A member of a committee shall disclose to the committee any conflict of interest the member may have in relation to a matter before the committee.	I agree that this is what Standing Order 261 states.
28.	The transcript of the public Estimates hearing of the LACSC from 26 July 2019 shows that the Member asked a question to the LAQ chief executive officer, without making any public disclosure of his conflict of interest arising from the preferred supplier arrangement with Russo Lawyers. A review of the LACSC's report does not contain any indication that the Member disclosed his pecuniary interest. [FOOTNOTE XII]	<p>I agree that I asked the following question to the CEO of Legal Aid: "The next question is to the chief executive officer of Legal Aid. I refer to page 43 of the SDS and ask the chief executive officer to outline what Legal Aid Queensland is doing to support Queenslanders, particular (sic) regional Queenslanders, accessing the justice services they need."</p> <p>The Member for Kawana makes the bare assertion that I merely asking a question of the CEO creates a declarable matter under Standing Order 261. Some common sense has to be applied to the concept of what is a declarable interest, and what is a conflict of interest. There seems to be a trend to alleging that simply because you may have something to do, however tangential, with something, that is automatically a conflict.</p> <p>I was not of the view that the fact that Russo Lawyers Pty Ltd did Legal Aid created a</p>

		<p>conflict which would prevent me from simply asking the question which was asked.</p> <p>I also note Standing Order 260(4) which expressly provides that "it shall not be necessary for a member to declare an interest when directing a question seeking information."</p>
29.	<p>The transcript of the LACSC public meeting with the Office of the Ombudsman on 30 April 2018 shows that the Member asked questions of the Ombudsman about Legal Aid Queensland without making any public disclosure of his conflict of interest arising from the preferred supplier arrangement with Russo Lawyers. [FOOTNOTE XIII]</p>	<p>I agree that I asked the Ombudsman the following questions:</p> <ul style="list-style-type: none"> • One of the submissions from Legal Aid Queensland is in relation to section 45 of the Ombudsman Act, which provides that the state or an agency is not entitled to claim privilege in response to a request by the Ombudsman for the production of documents. Often these documents relate to persons who have received legal aid and are subject to legal professional privilege under the legal aid act. Their submission suggests that your office regularly seeks access to such documents. Legal Aid submits that section 45 should be clarified to provide that the legal professional privilege of legally assisted persons is not waived by the provision of the privileged information to your office. Do you have a view on that? • If someone lodges a complaint about Legal Aid Queensland or the handling of their matter, what is the process for that person? • When they sign their complaint, are they also signing a waiver of privilege at that point? • Do they later sign a document to waive privilege? • If someone has a complaint about their lawyer, or the organisation, there are other avenues for those people to pursue? (and I said, "You have the Legal Services Commission.") • If it is an application for a grant of assistance that you are looking at, whether they complied with their guidelines or whatever, I do not want to put words in your mouth, but does that create this issue that Legal Aid

		<p>Queensland is worried about in relation to professional privilege?</p> <p>The Member for Kawana makes the bare assertion that I merely asking a question of the CEO creates a declarable matter under Standing Order 261. Some common sense has to be applied to the concept of what is a declarable interest, and what is a conflict of interest. There seems to be a trend to alleging that simply because you may have something to do, however tangential, with something, that is automatically a conflict.</p> <p>I was not of the view that the fact that Russo Lawyers Pty Ltd did Legal Aid created a conflict which would prevent me from simply asking the question which was asked.</p> <p>I also note Standing Order 260(4) which expressly provides that "it shall not be necessary for a member to declare an interest when directing a question seeking information."</p>
30.	<p>The transcript of the LACSC public hearing of 19 July 2019 into the Youth Justice and other Legislation Amendment Bill 2019 shows the Member asking questions to representatives from the Queensland Law Society about LAQ.</p> <p>[FOOTNOTE XIV]</p>	<p>I agree that the following ex change occurred (at pages 40-41)²²</p> <p>CHAIR: My question goes probably to the workability of funding in relation to when a person is taken into custody. My understanding is that a person is taken into custody and then every effort has to be made to find a lawyer and a parent or guardian or carer. My understanding is that there are limitations in the act or in the regulations that would enable, for example, a watch house keeper to contact anyone outside of Legal Aid—that is, it would be limited to Legal Aid unless the regulations are changed. Am I drilling too much into the detail?</p> <p>Mr Bartholomew: I understand that it is the definition of the legal aid organisation in the Police Powers and Responsibilities Act, which would include a legal aid organisation. We have some concerns in relation to that definition, and obviously our organisation and others would like some clarity to ensure that would include other legal service providers</p>

²² Marked in red page numbering in your brief [ie. set of the Footnote material] as pages 748-749.

		<p>that are able to provide legal services to young people.</p> <p>CHAIR: Right, because that is something that has been identified as something that, to make it workable, would need to be amended.</p> <p>Mr Bartholomew: I think it is the intention perhaps that it might include organisations such as ours. There is also some concern as to that definition of what a legal aid organisation is and the definition section within the act in how it is defined. There would certainly seem to be some benefit in enhancing that and clarifying that it is to include—</p> <p>CHAIR: Organisations such as yourselves?</p> <p>Mr Bartholomew: Exactly.</p> <p>CHAIR: My understanding is that trying to get hold of a Legal Aid lawyer after a certain time at night is near impossible. Is that something that you do not want to comment on?</p> <p>Mr Bartholomew: Legal Aid has in the last two years provided the Legal Aid hotline, which is a new introduction provided by funding, as I understand it, from this government as part of the packages at the time that 17-year-olds came into the youth justice system. They do provide a legal advice service by telephone until 9 pm during the week, and I understand their hours over the weekend have recently been extended. However, there is no service provision after 9 pm and that service provision from Legal Aid is by telephone. The Aboriginal and Torres Strait Islander Legal Service also provide a telephone service and have a greater capacity to provide field officers and, as I understand it in some situations, solicitors to attend at police stations as required.</p> <p>I repeat the comments I have made in respect of paragraphs 28 and 29.</p>
31.	<p>The LACSC website also contains public documents that show the Member, as Chair of the LACSC had corresponded with Legal Aid Queensland about the LACSC's inquiry into the Criminal Code and Other Legislation Amendment Bill 2019, however the correspondence does not contain evidence of any disclosures being made.</p> <p>[FOOTNOTE XV]</p>	<p>The correspondence which generated the response from Legal Aid, which is the document referenced in footnote XV, is correspondence which was generated from the Secretariat. It is standard for the Secretariat to generate these letters inviting relevant stakeholders to comment on proposed legislation.</p> <p>I repeat the comments I have made in respect of paragraphs 28, 29, and 30.</p>

32.	It is possible that the Member made pecuniary interest disclosures to the other members of the LACSC in private sessions. It does not appear that the LACSC minutes for these inquiries are publicly available. However, the lack of any public declaration of the Member's pecuniary interest suggests that it is more likely than not that the Member did not properly declare his conflict of interest in each of the matters above.	I did not make a pecuniary interest disclosure to the other members of the LACSC in private sessions. It did not occur to me that I should or needed to.
33.	In the absence of any public declaration, it is reasonable for the Committee to find that the Member has failed to declare his pecuniary interest and resulting conflict of interest in each of the inquiries outlined in clauses 28 to 31 above. Therefore I submit the Member has breached standing order 261 and committed a contempt of the Assembly in relation to each of these matters.	I disagree, for the reasons set out above. Further, if I am wrong in that there was no requirement to disclose an interest, then this was inadvertent, that is, not deliberate.

Questions which you ask

32. Before turning to an analysis of the elements of Standing Order 261 and of contempt, I note that you ask that my response provides additional information which specifically addresses the “elements of contempt” set out by you at the top of page 2 of your letter as follows:

“The elements to establish this contempt are as follows:

- (i) Were the proceedings in question matters before the LACSC?
- (ii) Did the member have any conflict of interest in these matters?
- (iii) Did the member disclose any conflicts of interest to the LACSC prior or during these matters?.”

and, on page one, the element at contained with s37(2) of the POQA which provides that:

“conduct, including words, is not contempt of the assembly unless it amounts, or is intended or likely to amount, to an improper interference with –

- (c) 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 duty as a member”.

33. As to the last element I can assure you even if there was a breach of the Standing Order, which I strenuously deny, (and the legal advices make plain there was no such breach), the conduct

alleged could not sensibly be said to amount to an improper inference in the free exercise by a committee of its authority or functions or the free performance by a member of the member's duty's as a member.

34. As you are aware in order for there to be "contempt", there must be conduct that has a tendency to obstruct or impede the House in the performance of its functions by "bringing such House into odium, contempt, or ridicule or by lowering its authority."²³ Central to the tenets of "contempt" is that the conduct offends the authority or dignity of the House. It must amount to, it be intended or likely to amount, to an improper interference with the free exercise by the Assembly or a committee of its authority or functions or the free performance by a member of the member's duties as a member.²⁴
35. None of the conduct alleged against me falls within that description.
36. I also note that even the Member for Kawana has not alleged, in terms, that the conduct amounts to that which fits within this description. He has merely made the bare assertion that there is a breach of the Standing Order and thus a contempt. Such an assertion is not tenable at law or in logic.
37. Turning then to the three questions asked:
 - (i) With respect to allegations 1-3, the questions that I asked were asked during a proceeding or a meeting. The "matter before the Committee" is the subject matter that was before the Committee at that time, to which the proceeding/meeting related. I will deal with the element of "matter before the Committee", in more detail below, under the section which analyses the elements of the alleged contempt.
 - (ii) I did not have any conflict of interest in any matter before the committee.
 - (iii) I did not disclose a conflict of interest to the committee because there was no conflict of interest to disclose.

Elements which must be proved in order to establish that there is a contempt

Matter before the Committee

²³ William McKay (ed), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (23rd ed, 2004), page 142.

²⁴ Section 37 *Parliament of Queensland Act*

38. The first matter which must be identified is the “matter before the Committee”.
39. In this regard, I note what is perhaps trite: the question/s asked is/are not the “matter” before the Committee.
40. The matter before the Committee is the subject which is under consideration by the Committee in respect of the relevant proceeding or meeting.
41. The Member for Kawana has not identified, or even sought to identify, what the “matter before the Committee was” at the time the questions were asked, or letter signed.
42. To assist the Committee, I have sought to identify what the “matter before the Committee was” at the times the questions were asked and letter signed. I have done that below under each individual allegations.

There must be a conflict of interest in relation to that matter

43. The second element that must be proved is that there is a conflict of interest in relation to that matter. To analyse this, one must:
 - (d) First, identify what the “interest” of the Member is said to be; and
 - (e) Secondly, determine whether that interest is such that the Member has a conflict of interest in relation to the matter before the Committee.
44. The “interest” alleged is my pecuniary interest in Russo Lawyers, a firm which does some work for Legal Aid Queensland.
45. The Member for Kawana has not sought to identify why it is that that interest presents a conflict of interest in relation to any of the matters before the LACSC. As stated above, he has made an ambit claim that merely because Russo Lawyers has a preferred supplier arrangement with Legal Aid that automatically presents a conflict of interest whenever a question it asked to, or about, Legal Aid. That does not follow as a matter of logic or law. It is untenable.
46. Notwithstanding the failure of the Member of Kawana to particularise the basis of the alleged conflict, I have set out below why the interest does not amount to a conflict of interest in relation to any of the matters. Before doing so, it may be of some assistance to say something about what the concept “conflict of interest” means.
47. As you would be acutely aware, it is not determined by reference to some “pub test” or “media test”, but rather by an application of law.
48. As you would also know, the concept of “conflict of interest” is a concept well known to the law. It is variously defined, but has, at its heart, the notion of “conflict” – of incompatibility between duty and interest.

49. Black's Law Dictionary²⁵ definition defines "conflict of interest" as follows:

"1. A real or seeming incompatibility between one's private interests and one's public or fiduciary duties. 2. A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent."²⁶ (My underlining)

50. In the current context, it is the first definition which is relevant. You will see that it speaks to a real or seeming incompatibility between one's private interests and one's public duties. As noted in the supplementary legal advice from Mr Scott, Lord Upjohn stated, in *Boardman v Phipps*,²⁷ that for there to be a conflict, the reasonable person:

"looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict".²⁸ (My underlining)

51. As stated above, the Member for Kawana has not sought to articulate how it is said that my private interest in Russo Lawyers is somehow incompatible with my public duty such as to give rise to a conflict of interest. No doubt this is because it is not possible for him, or anyone for that matter, to sensibly do so.
52. As such, in responding to the Speaker, in the absence of an articulated statement of alleged conflict, I was left to argue a negative proposition (that is, that there is no conflict of interest).
53. It was for this reason that I sought legal advice from Mr Callaghan SC and Mr Scott of Counsel to see if they could identify any conflict of interest (which of course would include real, potential or perceived conflict). They were not able to identify any such conflict of interest, and presumably neither will you, thus once again leading to the inexorable conclusion that this

²⁵ 9th Edition, Bryan Garner, Thomson Reuters

²⁶ Even non-peer reviewed sources such as Wikipedia are consistent with the definition provided in Black's, which is a very reputable legal publication. Wikipedia states that "A widely used definition is: "A conflict of interest is a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest."

²⁷ [1967] 2 AC 46, 124, extracted on page 2 of Mr Scott's advice, at (d).

²⁸ I note also that the requirement that the question of conflict be viewed from the position of a reasonable person looking at relevant facts and circumstances is one which is reflected in the *Australasian Institute of Judicial Administration Incorporated* Guide to Judicial Conduct (Third Edition), published for the Council of Chief Justices of Australia and New Zealand, which states, at page 12, The guiding principles are Whether an appearance of bias or a possible conflict of interest is sufficient to disqualify a judge from hearing a case is to be judged by the perception of a reasonable well-informed observer."

matter should not proceed beyond assessment into investigation. That is, you would readily conclude that no conflict of interest is shown, and thus no breach of Standing Order 261, and thus the matter should not proceed beyond assessment into investigation.

Allegation one

54. The allegation by the Member for Kawana is as follows:

“The transcript of the public Estimates hearing of the LACSC from 26 July 2019 shows that the Member asked a question to the LAQ chief executive officer, without making any public disclosure of his conflict of interest arising from the preferred supplier arrangement with Russo Lawyers. A review of the LACSC's report does not contain any indication that the Member disclosed his pecuniary interest.”

55. The question that I asked was:

“The next question is to the chief executive officer of Legal Aid. I refer to page 43 of the SDS and ask the chief executive officer to outline what Legal Aid Queensland is doing to support Queenslanders, particular (sic) regional Queenslanders, accessing the justice services they need.”.

56. It need hardly be said that if a Member is going to make an allegation of contempt, then that Member, if acting with *bona fides*, would take the time and exercise the discipline to identify, with respect to each and every allegation:

- (f) What the alleged “matter” is as that term is used in Standing Order 261; and
- (g) What the interest by the Member is said to be; and
- (h) How that interest presents a conflict of interest in the matter, that is, how it is said that the interest presents an incompatibility with the public duty of the Member (real or perceived).

57. The Member for Kawana identifies the interest as a pecuniary one, that is, my interest in Russo Lawyers, which does some work for Legal Aid under a preferred supplier agreement.

58. He does not, in respect of any of the four allegations, exercise the discipline of identifying (a) or (c).

59. Nor did he, in any allegation, particularise how it is said that the alleged breach of standing order 261 amounts to contempt. That is, he does not allege that it is wilful, and nor does he allege that it was intended to obstruct or impede the House or articulate any formula by which his bare allegations of breach of standing order 261 are somehow to be elevated to contempt.

60. As such, I am left to speculate what was in his mind, if anything, about what is alleged to constitute (a), (c) and the additional feature/s necessary for a breach of a standing order to amount to contempt. This is the case with respect to the four allegations.
61. In responding to the Speaker, and here, I have considered, at length, these matters and have sought to address these general unparticularised allegations as best I can on the basis of the information known to me. (As to further on this point, see the final section of this correspondence.)

Was the proceeding in question a "matter" before the LACSC?

62. The proceedings referred to was the LACSC sitting in Estimates. The matter before the Committee was the estimates for the LACSC's areas of responsibility in the *Appropriation Bill* 2019.²⁹

Did the member have any conflict of interest in relation to this matter?

63. Messrs Callaghan SC and Scott opine that:

It does not appear to have been a question which you could have had a pecuniary interest, or any interest that was not shared by Queenslanders at large.

64. That there was no interest in the matter which could give rise to a conflict was confirmed in the advice of Mr Scott.
65. Thus, there is no relevant "interest" in a matter before the Committee.
66. I am still left wondering how it is thought by the Member for Kawana that my question, which went to the good of Queenslanders as a whole, and which had, as its obvious focus, regional Queenslanders accessing justice services (which my firm is based in Brisbane CBD) could ever give rise to a conflict of interest in the matter before the Committee.

Other matter – Standing Order 260(4)

67. As submitted above, it seems to me that the "matter" before the Committee is not the question/s asked, but rather the subject matter of the Committee's work.
68. Nonetheless, I thought I should note for your consideration Standing Order 260(4) which provides that "it shall not be necessary for a member to declare an interest when directing a question seeking information". I have not found any decision which considers this Standing Order, but it seems plain enough that a Member is not required to declare an interest when directing a question seeking information. It seems that the Member for Kawana has, in his

²⁹ See page 2 of the transcript

articulation of the allegation [which, in essence, appears to allege that the question/s asked as constituting the “matter”] would also fail given Standing Order 260(4). This would apply with respect to allegations one, two and three, and, arguably four.

Allegation two

69. The Member for Kawana alleges:

The transcript of the LACSC public meeting with the Office of the Ombudsman on 30 April 2018 shows that the Member asked questions of the Ombudsman about Legal Aid Queensland without making any public disclosure of his conflict of interest arising from the preferred supplier arrangement with Russo Lawyers.

70. I agree that I asked the Ombudsman the following questions:

- One of the submissions from Legal Aid Queensland is in relation to section 45 of the Ombudsman Act, which provides that the state or an agency is not entitled to claim privilege in response to a request by the Ombudsman for the production of documents. Often these documents relate to persons who have received legal aid and are subject to legal professional privilege under the Legal Aid Act. Their submission suggests that your office regularly seeks access to such documents. Legal Aid submits that section 45 should be clarified to provide that the legal professional privilege of legally assisted persons is not waived by the provision of the privileged information to your office. Do you have a view on that?
- If someone lodges a complaint about Legal Aid Queensland or the handling of their matter, what is the process for that person?
- When they sign their complaint, are they also signing a waiver of privilege at that point?
- Do they later sign a document to waive privilege?
- If someone has a complaint about their lawyer, or the organisation, there are other avenues for those people to pursue? (and I said, “You have the Legal Services Commission.”)
- If it is an application for a grant of assistance that you are looking at, whether they complied with their guidelines or whatever, I do not want to put words in your mouth, but does that create this issue that Legal Aid Queensland is worried about in relation to professional privilege?

71. The Member for Kawana makes the bare assertion that I merely asking a question of the CEO creates a declarable matter under Standing Order 261. In his complaint, he exhibits a thought

process to the following effect: simply because you may have something to do, however tangential, with something, that is automatically a conflict. As you know, this is not nearly sufficient. I refer again, the test of “conflict of interest” set out above.

72. It is difficult to see how questions asked about the maintenance of a fundamental privilege of the common law, that is, legal professional privilege, could possibly be the subject of a legitimate claim of conflict of interest. So too a question which asks about avenues that a person can complain about lawyers.

Was the proceeding in question a “matter” before the LACSC?

73. The matter before the LACSC at the meeting was the LACSC’s oversight responsibility for entities under section 88 of the Parliament of Queensland Act 2001 and schedule 6 of the Standing Orders. Those functions include monitoring and reviewing the performance of the Information Commissioner against its functions; reporting to the Assembly on any matter concerning the Commissioner examining the annual reports tabled in the Legislative Assembly under the Acts; and examining each report of a strategic review of the Office of the Information Commissioner.³⁰

Did the member have any conflict of interest in relation to this matter?

74. Mr Callaghan SC and Mr Scott advised “There does not appear to have been anything pecuniary attaching to your interest.” They observe that “The questions were directed to matters of general public importance about which members of the public generally may be interested.”³¹
75. Mr Scott confirmed the absence of any conflict of interest in his supplementary advice.
76. Again, the Member for Kawana has not identified how there is said to be a conflict. No doubt that is because it is not possible to sensibly articulate a conflict of interest in the circumstances.

Allegation three

77. The Member for Kawana alleges:

The transcript of the LACSC public hearing of 19 July 2019 into the Youth Justice and other Legislation Amendment Bill 2019 shows the Member asking questions to representatives from the Queensland Law Society about LAQ.

[FOOTNOTE XIV]

³⁰ See page one of the meeting transcript.

³¹ Paragraph 25, page 8.

78. Questions asked to Mr Bartholomew, concerned the accessibility of young people to lawyers when held in a watchhouse, and whether there might be benefit in clarifying the definition of legal aid organisation in the Police Powers and Responsibilities Act to include organisations such as Mr Bartholomew's, that is, the Youth Advocacy Centre and the Aboriginal and Torres Strait Islander Legal Services.
79. It is difficult to see how questions which explored the possibility of legal assistance being provided by organisations beyond Legal Aid Queensland could possibly be argued to be a conflict of interest.

80. Looking to that transcript, the following exchange occurred (at pages 40-41)³²

CHAIR: My question goes probably to the workability of funding in relation to when a person is taken into custody. My understanding is that a person is taken into custody and then every effort has to be made to find a lawyer and a parent or guardian or carer. My understanding is that there are limitations in the act or in the regulations that would enable, for example, a watch house keeper to contact anyone outside of Legal Aid—that is, it would be limited to Legal Aid unless the regulations are changed. Am I drilling too much into the detail?

Mr Bartholomew: I understand that it is the definition of the legal aid organisation in the Police Powers and Responsibilities Act, which would include a legal aid organisation. We have some concerns in relation to that definition, and obviously our organisation and others would like some clarity to ensure that would include other legal service providers that are able to provide legal services to young people.

CHAIR: Right, because that is something that has been identified as something that, to make it workable, would need to be amended.

Mr Bartholomew: I think it is the intention perhaps that it might include organisations such as ours. There is also some concern as to that definition of what a legal aid organisation is and the definition section within the act in how it is defined. There would certainly seem to be some benefit in enhancing that and clarifying that it is to include—

CHAIR: Organisations such as yourselves?

Mr Bartholomew: Exactly.

CHAIR: My understanding is that trying to get hold of a Legal Aid lawyer after a certain time at night is near impossible. Is that something that you do not want to comment on?

³² Marked in red page numbering in your brief [ie. set of the Footnote material] as pages 748-749.

Mr Bartholomew: Legal Aid has in the last two years provided the Legal Aid hotline, which is a new introduction provided by funding, as I understand it, from this government as part of the packages at the time that 17-year-olds came into the youth justice system. They do provide a legal advice service by telephone until 9 pm during the week, and I understand their hours over the weekend have recently been extended. However, there is no service provision after 9 pm and that service provision from Legal Aid is by telephone. The Aboriginal and Torres Strait Islander Legal Service also provide a telephone service and have a greater capacity to provide field officers and, as I understand it in some situations, solicitors to attend at police stations as required.

Was the proceeding in question a “matter” before the LACSC?

81. Once again, the Member for Kawana has not identified the “matter”. As indicated above, the Member for Kawana appears to proceed on the flawed premise that questions constitute matters.
82. In any event, the matter which was the subject of this public hearing was an inquiry into the Youth Justice and Other Legislation Amendment Bill.

Did the member have any conflict of interest in relation to this matter?

83. Messrs Callaghan SC and Scott opine that: “The discussion concerned matters in which members of the public generally have an interest. Any interest that you had was no greater than the interests of the members of the public generally. It appears to have been neither, personal, nor pecuniary.”³³
84. They stated, further, that none of the “matters involve a pecuniary interest in matters before the LACSC. Such interest as you may have had in those matters is one which might reasonably have been held by members of the general public.”³⁴
85. Mr Scott’s supplementary advice confirms that there is no conflict of interest.
86. Again, the Member for Kawana has not articulated how it is said that any interest I had put me in a position of conflict when asking these questions. Again, this is no doubt because it is not capable of sensible articulation. There was no conflict of interest.

Allegation four

87. The Member for Kawana alleges;

The LACSC website also contains public documents that show the Member, as Chair of the LACSC had corresponded with Legal Aid Queensland about the LACSC’s

³³ Paragraph 27, page 10

³⁴ Paragraph 29, page 10

inquiry into the Criminal Code and Other Legislation Amendment Bill 2019, however the correspondence does not contain evidence of any disclosures being made.

[FOOTNOTE XV]

88. The correspondence which generated the response from Legal Aid, which is the document referenced in footnote XV, is correspondence which was generated from the Secretariat. It is standard for the Secretariat to generate these letters inviting relevant stakeholders to comment on proposed legislation.

Was the proceeding in question a "matter" before the LACSC?

89. In respect of this allegation, which relates to a letter, there was no proceeding as such.
90. As to the matter before the LACSC to which the letter relates, it was as to the *Criminal Code and Other Legislation Amendment Bill 2019* and the *Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019*.

Did the member have any conflict of interest in relation to this matter?

91. Messrs Callaghan SC and Scott opine that this matter does not "involve a pecuniary interest in matters before the LACSC. Such interest as you may have had in those matters is one which might reasonably have been held by members of the general public."³⁵
92. Mr Scott's supplementary advice confirms that there is no conflict of interest.
93. Once again, the Member for Kawana has not articulated how it is said that any interest I had put me in a position of conflict when asking these questions. Once again, this is because it is not capable of sensible articulation. There was no conflict of interest.

Members Code of Ethical Standards (Page 6)

94. I note that you have included within your letter a reference to Members Code of Ethical Standards, and in particular that it speaks to the primacy of the public interest:

Members are elected to act in the public interest and make decisions solely in terms of the public interest. Members also have a continuing duty to declare any private interests relating to their public duties as they arise, and to take steps to avoid, resolve or disclose any conflicts arising in a way that protects the public interest. It is vital to Parliamentary democracy that the public has confidence in the integrity of the decision making process of Parliament...

95. I note, that you have, with respect, quite properly, not suggested that the Members Code of Ethical Standards defines or extends that which is contained within the express words of Standing Order 261.

³⁵ Paragraph 29, page 10

96. In determining whether there is a breach of Standing Order 261, one must determine the question on the basis of the expressed words contained with the Standing Order and the legal test of “conflict of interest”.
97. The Members Code of Ethical Standards cannot, in any respect, extend the reach of Standing Order 261. I trust that you will have no difficulty in accepting this as an entirely conventional approach to the construction of instruments.
98. Further, I observe that the Code of Ethical Standards itself expressly acknowledges the limited purposes of the material contained within page 6. In this respect I refer to page 5 which states that:

“In carrying out their parliamentary and public duties, Members are expected to observe the six fundamental principles outlined below.

The fundamental principles are aspirational in nature and are not enforceable obligations on Members. The principles are intended to encourage Members to aspire to the highest ethical standards.

99. One of the fundamental principles is the “*primacy of the public interest*”³⁶. It is this section that you have quoted from.
100. In any event it is fundamentally clear that the aspirational intent of the wording on page 6 which you have quoted has not been transgressed by me in any respect.
101. Nothing that I did, which is alleged against me, is contrary to the reminder that members have a continuing duty to declare any private interests “relating to their public duties” as they arise. My private interest did not “relate to” the public duties that I operated under at any time.
102. It was not necessary for me to take steps to avoid, resolve or disclose any conflicts because there was no conflict to arise.
103. The public interest was not, in any sense whatsoever, in need of protection which such as to require me to do anything other than what I did, which was to ask questions of general public interest to government stakeholders wholly consistent with the exercise of my authority and functions as Chair of the Committee.

³⁶ Under section 2 on page 5 of the Code of Ethics.

104. Similarly, the letter to Legal Aid which I signed, was no more than a standard piece of correspondence which is produced by the secretary in order to offer the opportunity to stakeholders to make a submission on matters before the Committee.

Quote by the Speaker from Erksine May

105. I note that the Speaker makes reference to a quote from Erksine May in respect of declarations in select committees. Although this quote is not referred to in your letter, out of an abundance of caution, I make the following observations.
106. The extract in the Speaker's ruling summarises a resolution made on 13 July 1992 by the House of Commons in which they approved certain sections of a report by the select committee on members interests relating to the financial interests of chairs and members of select committees.³⁷ There is no equivalent resolution in Queensland nor is there an equivalent report. As such, the extract is irrelevant to the position in Queensland.
107. In any event, even if it were relevant, there has been no financial interest directly affected by a particular enquiry. Nor have I considered that a personal interest may reflect upon the work of the Committee. Thus, the extract is irrelevant as a matter of law, practise and the facts.

Additional element necessary to establish contempt

108. I have addressed this, in short compass, above. Simply put the conduct does not amount to contempt. The Member for Kawana does not purport to set out why he says any breach of the Standing Order, if proved, would amount to contempt. Again, this is because no sensible articulation can be made, given the utterly benign circumstances which attach to each of the allegations.

Whether there was an actual or perceived conflict of interest which impacted negatively on the public's trust and confidence in the integrity of the LACSC or broader Parliamentary decision-making processes

109. You invite me to address the question posed in this heading.
110. First, there was no conflict, actual or perceived. This is abundantly clear in the advices from Counsel, and as a matter of logic and common sense.
111. Secondly, nothing that I did impacted negatively on the public's trust and confidence in the integrity of the LACSC or broader Parliamentary decision-making processes. To the contrary, the questions asked by me were sensible logical questions asked in good faith with a view to the LACSC carrying out its work properly and diligently. The letter to the stakeholder was,

³⁷ First Report of a Select Committee on Member's Interests, 8c 108 1990-91, paras 8-16, 24 and 25.

again, done in good faith with a view to the LACSC carrying out its work properly and diligently.

112. Finally, and with great respect, it is unclear to me precisely how this question might be considered relevant in considering whether there is a breach of Standing Order 261 or whether a breach amounts to contempt. The wording used in the question is not contained within Standing Order 261, nor is it contained within section 37 of the Parliament of Queensland Act. It is possible that it appears in case law which I have not identified. If it is a significant consideration for the Ethics Committee, I would very greatly appreciate being advised of these matters so that I can provide any further response as is necessary. In any event, as observed in the preceding paragraph, my conduct most certainly did not impact negatively on the public's trust and confidence in the integrity of the LACSC or broader Parliamentary decision-making processes.

Conclusion

113. I note again the opinion of Messrs Callaghan SC and Scott:

In our opinion, none of the conduct set out by the Member for Kawana has transgressed standing orders of Parliament and therefore no contempt of Parliament has been disclosed.

114. Mr Scott's supplementary advice confirms his view that the basic threshold requirement of Standing Order 261 is simply not met: there is no conflict of interest.
115. I can assure the Ethics Committee, that I have, at all times, conducted myself with utmost honesty and integrity. I have not, at any stage, disobeyed any of the Standing Orders of the House, or the Parliament of Queensland, as is alleged by the Member for Kawana.
116. Nor have I (and nor is there any evidence that I have) committed a contempt of Parliament, which requires conduct that has a tendency to obstruct or impede the House in the performance of its functions by "bringing such House into odium, contempt or ridicule or by lowering its authority." Central to the tenets of "contempt" is that the conduct offends the authority or dignity of the House or indeed a breach of a duty legitimately imposed by the House upon its members.
117. Further, as you are also aware, conduct is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by the Assembly or a committee of its authority or functions or the free performance by a member of the member's duties as a member.

118. I can assure the Committee that in asking the questions, and in signing the letter, that my interest in Russo Lawyers impacted, in any aspect at all, in the way I conducted myself. I can also assure the Committee that nothing I have done at any stage in my work as a Member of Parliament has been done in the hope of some benefit or preferential treatment from Legal Aid Qld. Certainly I have received no such preferential treatment.
119. It is troubling that the Ethics Committee is burdened with these unparticularised and entirely unmeritorious allegations by the Member for Kawana.
120. In the circumstances, it is submitted that you would readily find that no breach is shown, and that the matter should not proceed beyond assessment into investigation.
121. Thank you again for the opportunity to respond. If you feel I can provide any further clarification or information, please do not hesitate to contact me.

Further matter

122. As stated above, the Member for Kawana's complaint to the Speaker goes no further than to make bare assertions of breach of Standing Order 261 and contempt.
123. In making submissions to the Speaker, I obtained a legal advice from two very respected practitioners, both of whom opined that there is no breach of Standing Order 261.
124. I have since obtained a supplementary advice of Mr Scott of Counsel which confirms that there is no breach of Standing Order 261.
125. That submissions, and those advices, were provided without an articulation of:
- (i) What the "matter" is said to be;
 - (j) How it is said that my interest amounts to a conflict of interest in that matter; and
 - (k) How it is said to be that any breach is so egregious as to be elevated to a contempt of parliament.
126. If, contrary to this submission, and contrary to the legal advices provided, the Ethics Committee is of the view (preliminary or otherwise), that I had a conflict of interest in relation to a matter before the committee, I ask that the Ethics Committee please particularise (a) and (b). Similarly, if there is a preliminary view that the alleged conduct is such as to amount to "contempt", I ask that I be provided particulars as to that. I ask for these things to occur so that I can have a proper opportunity to respond. I trust that this will not be necessary given the very clear cut legal advice, and the very clear cut logic that no serious possibility of breach and/or contempt arises for the Ethics Committee's consideration.

Yours faithfully



Peter Russo MP

Peter **RUSO** MP

Your Strong Voice for the Southside

Your ref: 191018-OUT-Toohey

The Honourable Curtis Pitt MP
Speaker of the Legislative Assembly
Parliament House
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22 November 2019



Dear Mr Speaker

**REGARDING CORRESPONDENCE FROM THE MEMBER FOR KAWANA
ON 17 OCTOBER 2019
ALLEGING MULTIPLE INSTANCES OF CONTEMPT**

1. I refer to your correspondence dated 18 October 2019, referring to the 17 October 2019 letter from the Member for Kawana, alleging that I have committed multiple instances of contempt of the Assembly. I deny that I have committed any act of contempt whatsoever.
2. I thank you for this opportunity to provide you with further information to assist you in making a determination as to whether the matter should be referred to the Ethics Committee under *Standing Order 269*.



PETER RUSSO MEMBER FOR TOOHEY

Mail: PO Box 23 Sunnybank QLD 4109 Phone: 3411 3120
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3. In my respectful submission, once you have had the opportunity to read this correspondence and attachments, that you will readily form the view, taking into account all relevant matters, in particular those under Standing Order 269(4), that none of the matters raised require the further attention of the House. That is, it is submitted, for the reasons advanced below, that there is simply no evidence whatsoever of contempt, and that none of the matters raised by the Member for Kawana, are appropriate matters for referral to the Ethics Committee.

BACKGROUND

4. The allegations by the Member for Kawana each concern the fact that Russo Lawyers Pty Ltd is a preferred supplier for Legal Aid Queensland. He makes these allegations against me, notwithstanding that:
- (a) It is openly recorded on my Register of Interests that I receive income from Russo Lawyers Pty Ltd;
 - (b) It is, and always has been, a matter of open and public record that Russo Lawyers Pty Ltd does Legal Aid work: for example, it is prominently stated on the home page of the website for Russo Lawyers Pty Ltd. The fact that Russo Lawyers Pty Ltd is a preferred supplier is contained within the 2019 Annual Report. The Member for Kawana was readily able to locate these facts on records which are readily, and wholly, publicly accessible;¹
 - (c) I have never sought, in any respect, to “hide” the facts in (a) and (b). To the contrary, this is publicly known information;
 - (d) As a matter of law, the conduct alleged against me does not amount to a breach of Standing Order 260,² 261³, or 262⁴ (see **Attachment F – Advice from Mr Callaghan SC, and Mr Scott, Barristers-at-Law**), much less amount to a wilful

¹ I also note, with some scepticism, the undercurrent of the Member for Kawana’s complaint, that the involvement of Russo Lawyers with Legal Aid was not previously known to them. When I was first elected to Office, I defeated Mr Mark Stewart, LNP, member, son of Brian Stewart, Chair of the Legal Aid Board. In any event, as stated above, that Russo Lawyers Pty Ltd does legal aid work is publicly known.

² The Member for Kawana alleges Matters 1 and 2 in his submission amount to a breach of Standing Order 260

³ The Member for Kawana alleges Matter 3 is a breach of Standing Order 261

⁴ The Member for Kawana alleges Matter 4 is a breach of Standing Order 262

breach of a Standing Order (which is what is necessary to be proved to possibly amount to a contempt);

- (e) I have received advice from the Clerk of Parliament that he is satisfied that I have made fulsome declarations about Russo Lawyers Pty Ltd and associated companies and the source of income from both. (See **Attachment G**). There is no basis upon which it can be properly asserted, as the Member for Kawana has, that I have failed to declare an interest on my Register of Interests; and
 - (f) As a matter of law, there is no breach of Section 70 and 71 of the *Parliament of Queensland Act* (see **Attachments B and D - Advice and Supplementary Advice from Mr Scott of Counsel**).
5. Thus, in short, each of the allegations made by the Member for Kawana proceeds from, in each instance, an incorrect understanding of the law. As a matter of law, there has been no breach of Standing Orders or of the *Parliament of Queensland Act*.
6. The Member for Kawana established any proper basis for thinking that there might be a breach of any Standing Order, or the *Parliament of Queensland Act*,⁵ such as to warrant further investigation. In the circumstances, it is respectfully submitted that you would readily form the view that none of the matters raised require the further attention of the House.
7. I will turn now to deal with the matters in some more detail.

FIRST FOUR MATTERS ALLEGED BY THE MEMBER FOR KAWANA

8. The Member for Kawana alleges that I have breached:
- (a) Standing Order 260 with respect to Matters 1 and 2;
 - (b) Standing Order 261 with respect to Matter 3;
 - (c) Standing Order 262 with respect to Matter 4.

⁵ The Clarke Kann advice does not provide such a basis. This issue will be expanded on further below.

9. Mr Callaghan SC and Mr Scott of Counsel advise that the conduct identified by the Member for Kawana has not transgressed a Standing Order. (See **Attachment F – Joint advice of Mr Callaghan SC and Mr Scott of Counsel**).
10. In the circumstances, there is no evidence of contempt of Parliament, and thus the Member for Kawana has not established any proper basis for referral of this matter to the Ethics Committee.
11. Please note that in the Memorandum to Mr Callaghan SC and Mr Scott of Counsel, seeking advice, (**Attachment E**), I set out a table of each of the allegations made by the Member for Kawana, and my instructions in respect of the allegations, and information relevant thereto. I ask that you read the information I have provided in that Memorandum to Counsel into this correspondence. It is submitted that you would readily form the view that this information, together with the legal advices, provides more than an adequate explanation (as that term is used in Standing Order 269(4)) in respect of the matters raised.

MATTER FIVE ALLEGED BY THE MEMBER FOR KAWANA

12. Matter five concerns the allegation by the Member for Kawana that I have failed to declare an interest on my register of interest. Mr Callaghan SC and Mr Scott of Counsel advise that the Member for Kawana's contention in this regard is not correct as a matter of law. They opine:

38. Section 7(5)(n) of Schedule 2 to the Standing Orders only required disclosure of an interest "that raises, appears to raise, or foreseeably raises a conflict between the Member's private interest and their duty as a Member". In respect of this requirement:
 - (a) the interest did not in fact or appear to raise "a conflict between the Member's private interest and their duty as a Member". There is nothing in your duties of which inherently involves any conflict between those duties and your interest in the preferred supplier agreement with Legal Aid Queensland; and
 - (b) the requirement in respect of what conflict could "foreseeably" be raised from a particular interest is an objective one. There is nothing in the material provided to us which indicates that there could "foreseeably" be a conflict between your duties and the interests you have in your firm's agreement with Legal Aid Queensland. No particular foreseeable basis for conflict has been identified. For

reasons discussed, we do not see that one has been located in any of the instances cited.

39. Further, even if the failure specifically to mention your firm's agreement with Legal Aid Queensland in your Statement of Interests was a breach of the Standing Orders, it does not appear, in the circumstances, that it would amount to contempt. In its decision 127 of 2012, the Ethics Committee found (at [45]) that, for contempt to be established, it must be shown that a failure to include a disclosure in a Statement of Interests was known by the Member to be a contempt. There is no evidence that you knowingly committed a contempt. To the contrary, you made full disclosure of your interest in your firm and omitted only to disclose specifically your firm's publicly known agreement with Legal Aid Queensland.

MATTER SIX ALLEGED BY THE MEMBER FOR KAWANA

13. The Member for Kawana alleges that I have breached Section 71 of the *Parliament of Queensland Act 2001*. He states that he has attached a legal advice by Clark Kann Lawyers that "deals with this point fully".⁶ With respect to the author of that advice,⁷ the Member of Kawana's description of the advice as dealing "with this point fully" is inapt.⁸ The advice expresses an opinion based, on some aspects of the operation of the legislation, including, on the question as to whether Legal Aid Queensland is an entity of the state. It predates the 15 October 2019 advice of Mr Scott of Counsel (that advice is at **Attachment B – First advice of Mr Scott of Counsel**) and simply does not cover the same "territory" that Mr Scott's advice traverses. That is, the Clarke Kann advice it does not deal with the fundamental requirement under section 70 that for there to be a transaction of business with the state with respect to the provision of services, there must be a direct (cf indirect) dealing.
14. **Attachment A** to this correspondence is the Memorandum to Mr Scott of Counsel, which set out my understanding of the law in this respect. I ask that you read that Memorandum into this letter. However, for convenience, I have extracted some paragraphs from that Memorandum to Counsel which make the point clear:

Thus, section 70 was amended by adding the words underlined, thus creating an effective dichotomy in the current legislation which mirrors the dichotomy present historically: subparagraph (a) prevents direct or indirect interests in a contract

⁶ Paragraph 46 of the Member for Kawana's submissions.

⁷ Mr Shane Williamson, Solicitor

⁸ Further, the advice is based on unestablished assumptions. In addition, it contains assertions as to what he considers should be disclosed to Parliament absent any stated legal reasoning in respect of same.

with the entity of the State for the supply of goods⁹; and subparagraph (b) prevents the Member, in his/her individual capacity, performing a duty or service for reward for the State.¹⁰

Thus, if it were the case that I, as an individual, (and not as an employee) provided Legal Aid services, then I would fall foul of section 71(1), because that would be to transact business within the meaning in section 70(1)(b).

So too would I fall foul of section 71(1) if Russo Lawyers Pty Ltd provided goods to the State, because I would have an indirect interest in such a contract, and that would be to transact business within the meaning in section 70(1)(b).

However, having an indirect interest in the supply of a service to the State is not to “transact business with an entity of the State”.

This interpretation is wholly consistent with the stated purpose of the legislation. The Explanatory Memorandum for the amending Bill¹¹ expressly states:¹² (Annexure E is the relevant extract from the Explanatory Memorandum).

*Clause 75 amends section 70 Meaning of transacts business) to provide that the term “transacts business” refers only to agreements or contracts for the provision of goods by a member to an entity of the State. The intention of this clause is to provide in express terms that the restrictions on Members transacting business with an entity of the state for a contract extend only to agreements or contracts to provide or receive goods. The amendment clarifies the scope of the restrictions to ensure that it is consistent with the legislative position as it existed prior to the commencement of the *Parliament of Queensland Act 2001*.*

15. By opinion dated 15 October 2019, Mr Scott of Counsel advised me that he considered my analysis as to the dichotomy between contracts for goods and the provision of services to be correct. Having received the Clarke Kann advice provided by the Member for Kawana, I briefed Mr Scott of Counsel with it, and asked him whether his opinions remained the same, or were changed, in light of receiving this advice. By supplementary opinion, he advises that on this issue, his opinion remains unchanged. (**Attachment D – Supplementary advice of Mr Scott of Counsel**). It is submitted, that his advice would be readily accepted by you, in forming the conclusion that there is no correct basis at law

⁹ Cf services

¹⁰ I can find nothing in the Explanatory Memorandum or extrinsic materials which would lead to the conclusion that the legislature intended to prohibit an indirect interest in the provision of services to the State. A link to the EM is: <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2010-1535>

¹¹ Integrity Reform (Miscellaneous Amendments) Bill 2010

¹² <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2010-1535>, page 39

for considering that there is evidence of a breach of section 71 of the *Parliament of Queensland Act* which would warrant referral to the Ethics Committee.

16. I note, in this regard, that Mr Scott's advice was tabled in Parliament prior to the Member for Kawana writing to you on 17 October 2019. Presumably, if the Member for Kawana considered the matters raised in that advice were incorrect, he would have sought and obtained further legal advice. Presumably he has not done so because he agrees with Mr Scott's advice.
17. I also note that the Clarke Kann implies, by paragraph 5.1(a), that a reason to refer the matter to the Ethics Committee is that that would enable the Ethics Committee to give a direction to me to disclose the firm's relevant financial records.
18. Paragraph 5.1(a), though, proceeds from an incorrect premise, namely, that the financial records would be relevant to a consideration of whether section 71 of the *Parliament of Queensland Act* has been breached.
19. However, once the dichotomy spoken about in paragraph 14 above is considered and properly understood, it becomes readily apparent that financial records contemplated by the Clarke Kann advice are irrelevant and unnecessary to dispose of the issue. The issue is disposed of by the advice and supplementary advice of Mr Scott of Counsel.
20. As I have noted, that dichotomy was not part of the reasoning in the Clarke Kann advice,¹³ and it may be that that is why Clarke Kann considered, at that time, for it to be appropriate to make the assertion at 5.1(a). As I have also noted, Mr Scott's advice was available to the Member for Kawana before he wrote to you on 17 October 2019, and he chose not to put contrary arguments to you, presumably because he accepts Mr Scott's advice to be correct.
21. I also note that the Member for Kawana asks the Committee to consider whether signing a preferred supplier agreement twice, in addition to what he alleges is regular correspondence and dealing with Legal Aid as a preferred supplier, constitutes a deliberate, as opposed to inadvertent breach. It is submitted that you would disregard

¹³ Dated 5 September 2019, some several weeks before the Member for Kawana provided it to you, and some several weeks before the 15 October 2019 advice of Mr Scott of Counsel was tabled in Parliament, such advice elucidating the historical dichotomy and correct construction of the legislation.

this request because it must have, as its premise, that there was an intentional or knowing breach of section 71 *Parliament of Queensland Act*. There is no evidence, at all, of same.

Standard

22. Finally, the Member for Kawana submits to you that the fact that I am a current practicing solicitor and a principal of law firm “should be considered against the Member for Toohey and a stricter standard should be applied.” First, I note that the Member for Kawana does not identify the subject of that which he says is the subject of a stricter standard. Secondly, I disagree with the Member for Kawana’s assertion that a stricter standard should be applied to me because of the fact that I am a current practicing solicitor and a principal of a law firm. The test to be applied in respect of whether there is a breach of a Standing Order is an objective one, and thus, would not seem to depend on the identity, or status, of the individual (beyond them being a Member of Parliament). Thus, it is submitted that you would readily disregard the Member for Kawana’s assertion in this regard as being wholly ambiguous, incorrect at law, and of no assistance to you.

Conclusion

23. I can assure you, Mr Speaker, that I have, at all times, sought to conduct myself with utmost honesty and integrity. I have not, at any stage, disobeyed any of the Standing Orders of the House, or the *Parliament of Queensland*, as is alleged by the Member for Kawana.¹⁴
24. Nor have I (and nor is there any evidence that I have) committed a contempt of Parliament, which, as you are aware, requires conduct that has a tendency to obstruct or impede the House in the performance of its functions by “bringing such House into odium, contempt or ridicule or by lowering its authority.”¹⁵ Central to the tenets of “contempt” is that the conduct offends the authority or dignity of the House or indeed a breach of a duty legitimately imposed by the House upon its members.

¹⁴ Even if there was a breach of a Standing Order (which, for the reasons which will be set out in later in this correspondence and are set out in legal advice attached to this letter, there was not), for it to possibly amount to contempt, it must be wilful: Standing Order 266(22). I certainly did not commit any wilful breach.

¹⁵ William McKay (ed), *Erskine May's treatise on the Law, Privileges, Proceedings and Usage of Parliament* (23rd ed, 2004), page 142.

25. Further, as you are also aware, conduct is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by the Assembly or a committee of its authority or functions or the free performance by a member of the member's duties as a member.¹⁶
26. In my submission, the Member for Kawana has shown no proper basis for referral of this matter to the Ethics Committee. It is submitted that you would form the view that an adequate explanation has been provided by me in respect of the matters raised by the Member for Kawana, and that the matter does not require the further attention of the House.
27. In the circumstances, it is submitted that you would take no further action on the request by the Member.
28. Thank you again for the opportunity to respond. If you feel I can provide any further clarification or information, please do not hesitate to contact me.

Yours faithfully,



Peter Russo MP

Member for Toohey

¹⁶ Section 37 *Parliament of Queensland Act*

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 15 APRIL 2020 RELATING TO AN ALLEGED FAILURE TO DECLARE A CONFLICT OF INTEREST IN COMMITTEE PROCEEDINGS IN ACCORDANCE WITH STANDING ORDER 261



Ethics Committee

Meeting No. 42

Thursday, 21 May 2020, 1.04pm

Committee Room 3, Parliamentary Annexe and Teleconference

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls, Deputy Chair
Ms Leanne Linard MP
Mr Mark McArdle MP
Mr Ray Stevens MP
Mr Chris Whiting MP

In attendance

Ms Bernice Watson, Committee Secretary
Ms Rebecca Meehan, Assistant Committee Secretary (teleconference)

9. Inquiry No. 17 – Russo matter

Discussion ensued.

Resolved

That the committee write to the Member for Kawana and the Member for Toohey as per the draft letters prepared by the secretariat.

Moved: Mr Kelly Seconded: Mr Nicholls

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 15 APRIL 2020 RELATING TO AN ALLEGED FAILURE TO DECLARE A CONFLICT OF INTEREST IN COMMITTEE PROCEEDINGS IN ACCORDANCE WITH STANDING ORDER 261



Ethics Committee

Meeting No. 45

Thursday, 16 July 2020, 1.01pm

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls, Deputy Chair
Ms Leanne Linard MP
Mr Mark McArdle MP
Mr Ray Stevens MP
Mr Chris Whiting MP

In attendance

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

7. Inquiry No. 17 – Russo matter

Discussion ensued.

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 15 APRIL 2020 RELATING TO AN ALLEGED FAILURE TO DECLARE A CONFLICT OF INTEREST IN COMMITTEE PROCEEDINGS IN ACCORDANCE WITH STANDING ORDER 261



Ethics Committee

Meeting No. 47

Thursday, 13 August 2020, 1.04pm

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr John Paul Langbroek MP (substitute for Mr Tim Nicholls MP under SO 202)
Ms Leanne Linard MP
Mr Mark McArdle MP
Mr Ray Stevens MP
Mr Chris Whiting MP

Apology

Mr Tim Nicholls MP

In attendance

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

7. Inquiry No. 17 – Russo matter

Discussion ensued.

Resolved

That the committee adopts the following test to support deliberations about the alleged breaches of Standing Order 261: *Would a fair and reasonable person perceive that the member would be unable to bring an impartial mind to committee proceedings because of their personal interest in the matter before the committee?*

Moved: Mr Kelly Seconded: Mr Stevens

Resolved

That the committee write to the LACSC secretariat requesting a copy of the letter allegedly sent by the Member to Legal Aid Queensland, and requesting information regarding the circumstances surrounding the letter.

Moved: Mr Kelly Seconded: Mr Stevens

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 15 APRIL 2020 RELATING TO AN ALLEGED FAILURE TO DECLARE A CONFLICT OF INTEREST IN COMMITTEE PROCEEDINGS IN ACCORDANCE WITH STANDING ORDER 261



Ethics Committee

Meeting No. 48

Thursday, 10 September 2020, 4.05pm

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Mr Ray Stevens MP
Mr Chris Whiting MP

Apology

Ms Leanne Linard MP
Mr Mark McArdle MP

In attendance

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

8. Inquiry No. 17 – Russo matter

Discussion ensued.

Resolved

That the committee will not proceed to investigate the referral of the Member for Toohey by the Speaker on 15 April 2020, and directs that the Secretariat draft a report in the terms discussed.

Moved: Mr Kelly

Seconded: Mr Nicholls

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 15 APRIL 2020 RELATING TO AN ALLEGED FAILURE TO DECLARE A CONFLICT OF INTEREST IN COMMITTEE PROCEEDINGS IN ACCORDANCE WITH STANDING ORDER 261



Ethics Committee

Meeting No. 51
Monday, 28 September 2020, 2.38pm
Teleconference

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Ms Leanne Linard MP
Mr Mark McArdle MP
Mr Ray Stevens MP
Mr Chris Whiting MP

In attendance

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

6. Inquiry No. 17 – Russo 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 1 October 2020

A handwritten signature in black ink, appearing to read "Joe Kelly".

Joe Kelly MP
Chair