

(MR SPEAKER)

 12/10/18

**SPEAKER'S RULING – REFERRAL TO ETHICS COMMITTEE,  
KATTER PARTY RESOURCES**

MR SPEAKER                      Honourable members,

**Complaints**

On 5 September 2018, the Member for Traeger wrote to me, making a complaint in accordance with Standing Order 269 that the Premier had committed two possible contempts as exemplified in Standing Order 266, namely:

Standing Order 266 (9) - Assaulting, threatening or intimidating a member or an officer of the House acting in the discharge of the member's or the officer's duty; or

Standing Order 266 (17) - Assaulting, threatening or disadvantaging a member on account of the member's conduct in the House or a committee.

Later, on 28 September 2018, the Member for Traeger wrote to me making additional complaints in accordance with Standing Order 269 that the Premier had committed further possible contempts as exemplified in Standing Order 266 and s.37 of the *Parliament of Queensland Act 2001* (POQA) namely:

Section 37 - Example 2 - attempting to compel a member by force, insult or menace to take a particular position in relation to a proposition or matter pending, or expected to be brought, before the Assembly or a committee

Section 37 - Example 3 - sending a threat to a member because of the member's performance of his or her parliamentary duties

Section 37 - Example 5 - the offering of a bribe to or attempting to bribe a member

Standing Order 266 (8) offering or attempting to bribe a member to influence the member's conduct in respect of proceedings in the House or a committee;

Standing Order 266 (10) obstructing or molesting a member or an officer of the House in the discharge of the member's or the officer's duty;

The Member for Traeger's second letter of complaint followed a press release by the Crime and Corruption Commission and a press conference by its Chair on 27 September 2018, outlining the results of a complaint by the Member for Traeger to that body.

On 13 September and 28 September 2018, in accordance with the standard practice pursuant to Standing Order 269(5), I wrote to the Premier providing the material provided to me by the Member for Traeger in support of his complaint and invited the Premier to provide a response to assist me with my consideration in accordance with that Standing Order. The Premier provided a response on 10 October 2018.

### **Factual background**

The short facts of this matter are detailed below.

On 1 April 2015 the Premier wrote to the Member for Traeger as the leader of the Katter Australia Party (KAP) in the Legislative Assembly indicating the government's intent to provide extra staffing for KAP members.

On 14 April 2015, the Premier wrote to the Clerk confirming the additional resources to be provided to the members of the Katter's Australian Party (KAP). The Members' Remuneration Handbook was subsequently amended to reflect that additional resources can be provided by the Premier and the staff resources are provided to KAP.

On 14 August 2018, Senator Fraser Anning made a speech in the Australian Senate relating to immigration that was controversial.

On 21 August 2018, the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs gave notice of a Motion in the Assembly in support of various historical facts and principles related to Australia's immigration policies and cultural values.

On 22 August 2018, the Member for Warrego asked the following Question Without Notice to the Premier:

*My question is to the Premier. I table the Speaker's advice to estimates that, by approval of the Premier, the Katter's Australian Party receives five extra taxpayer funded staff beyond its*

*entitlement. In light of the hateful and disgraceful comments by the Katter part's Fraser Anning which the Queensland Katter party members have sought to legitimise and defend, will the Premier stand up against this hate speech and tear up Labor's special deal with the Katter party?*

The Premier responded as follows:

*Let me say at the outset that I completely disapprove of Senator Anning's comments. I said that very publicly. I condemn it. I would like to see those opposite condemn it as well.....In fact, they have a great opportunity, when we debate the government motion.....What I have said very clearly is that I would like to see members of the Katter party here in this parliament get up and say exactly the same thing. Yes, I can say that I will be reviewing that arrangement as well.*

On 22 August 2018, the Premier is quoted as making the following comments to the Courier Mail:

*"....I will be reviewing those resources unless I hear from Robbie Katter, who is the leader of the state parliamentary party...."*

*"....I want to hear from the state Katter parliamentary party whether or not they agree with what Senator Anning said... "*

*" ...I think it's disgusting, it is outrageous, it is extreme and I am waiting to hear their comments..."*

On 23 August 2018 in the debate of the Motion for which the Minister for Local Government gave on 21 August, the Premier made the following statement:

*'...I say to those Katters sitting here today that one of your senators talked about a final solution. That 'final solution' is about the extermination of a race of people.....*

On 23 August 2018, the Premier wrote to the Member for Traeger. In this letter, the Premier confirmed that the staffing arrangements for the KAP would be reviewed. The letter also notes that the Premier is writing to seek the views of the state parliamentary KAP on Senator Anning's comments.

On 24 August 2018, the Member for Traeger responds to the Premier's letter the day earlier noting that the accusations of racism levelled at KAP members and the party's policies are misplaced and inappropriate.

On 2 September 2018, the Premier made the following comments at the ALP Qld state conference:

*'...We have the right to free speech in our parliaments but that free speech is not free of consequence. So because his party will not denounce Senator Fraser Anning, I denounce his party.'*

*'...I am withdrawing the additional staff I granted to the Katter's Australia Party because it tolerates the intolerable and it defends the indefensible. And Senator Fraser Anning's statements are indefensible...'*

On 2 September 2018 the Premier issued an official media release reiterating the comments made at the Qld ALP conference as follows:

*"Yes, we have the right to free speech in our parliaments but that free speech is not free of consequence nor is it free of responsibility.*

*"So, because his party will not denounce him, I denounce his party and I will withdraw the additional staff granted to the Katter's Australian Party".*

### **CCC complaint and outcome**

On 3 September 2018, the Member for Traeger wrote to the CCC, requesting an investigation into the conduct of the Premier in relation to a decision to remove staffing resources from members of State Parliament.

On 27 September 2018, the CCC issued a media release noting it had completed its assessment of the complaint. Later on 27 September 2018 the CCC Chairperson, Mr Alan MacSporran, gave a press conference on the CCC's decision.

There are a number of extraordinary aspects to the CCC's media release and the press conference that I feel compelled to comment on for the public record.

The CCC's release states that it considers that the Legislative Assembly is the appropriate entity to deal with the complaint.

The CCC's release states that 'the information available, if proved, may involve an offence against s. 60 of the Criminal Code regarding the answer given by the Premier to a Question without Notice by the Member for Warrego on 22 August 2018.'

At the press conference, Mr MacSporran in relation to the s.60 offence states that the matter 'technically satisfies the elements of the offence such that there is what we call as lawyers a prima facie case.'

Mr MacSporran also stated that there was no breach of the extortion provision in s.415 of the Code, because 'there is no threat or demand'. He also said that there was no interference with political rights and there is no case under section 78.

As the matter was dealt with by media release and press conference, there is no report detailing the information (evidence) available to the CCC nor detailing the analysis of relevant facts (evidence) against the elements of each offence.

There is no explanation as to why the CCC believes the Legislative Assembly is the appropriate entity to deal with the matter, when it believes that there is no reasonable prospect of a successful prosecution for an offence.

The CCC's media release apparently finds great significance in the absence of objection from anyone present during the parliamentary debate, and that there was no censure from the Speaker. But there is no explanation as to why this is seen as significant and what parliamentary proceeding is being referenced.

The effect of the CCC's media release and the Chair's press conference have, without detailed explanation of evidence or analysis, declared a 'technical' breach of the law whilst at the same time creating a public expectation that this matter will be dealt with by the Legislative Assembly as a contempt.

I must also note the CCC has not formally referred the matter to me or through me or the Attorney-General, to the Legislative Assembly. Accordingly, for clarity, I advise that my consideration of this matter is in response to the allegations raised by the Member for Traeger in his correspondence with me and in terms of my responsibilities as prescribed in Standing Order 269.

However, given the CCC's actions, I believe it has become necessary for me to give a more detailed response than usual.

## **The Criminal Law and Contempt of Parliament**

On occasions the same conduct may constitute both a criminal offence and a contempt of Parliament. Interference with the Legislature (s.55 Criminal Code), disturbing the proceedings of the Legislative Assembly when it is in session (s.56 Criminal Code), a member receiving bribes (s.59 Criminal Code), bribery of a member (s.60 Criminal Code), false evidence before a committee or the Assembly (s.57 Criminal Code), refusal to attend or produce material pursuant to a summons (s.58 Criminal Code), extortion (s.415 Criminal Code) and assault are all examples where the same conduct may constitute both an offence and a contempt.

However, the elements of a criminal offence and a similar contempt are often different, and the same conduct may not always constitute an offence and a contempt.

For example, s.60 of the Criminal Code which is headed 'bribery of a member' has two distinct sections. Section 60(1) is more akin to the contempt of bribery. Section 60(2) is more akin to the contempt of 'improper influence' in that its focus is around attempts to influence a member of Parliament.

As explained below, every contempt has an additional constitutional element requiring it to be an "improper interference" with the Assembly, its committees or members. Improper interference has, in itself, also been defined as a contempt by previous Ethics and Privileges Committees of the Assembly.

Generally, for a contempt to be made out, there should be some nexus between the proceedings of the Assembly or its committees and the conduct. For example, assaulting a member on the street may be a criminal offence, but it is unlikely to also be a contempt, unless the assault's purpose was to prevent the member attending the Assembly or committee or clearly on account of the member's conduct in the Assembly or committee.

It is noted that proceedings in parliament are protected from being 'impeached or questioned' in any court or other place. This means that

generally evidence of what is said, done or written in a parliamentary proceeding cannot be used in criminal proceedings, unless there is a statutory exemption to this protection. Such a statutory exemption applies in s.54 of the Criminal Code, but only to offences found in that Chapter of the Code.

On the other hand, there is no restriction on evidence 'outside of parliament', such as statements in the media, at party conferences or in written correspondence being used in contempt proceedings.

### **Lawfulness of allocation and withdrawal of resources**

The CCC's media release stated: "The CCC acknowledges that the government of the day has authority to determine appropriate resourcing for Ministerial and other office holders".

Opposition resources have effectively always been at the warrant of the Premier of the day.

There are also precedents for the Premier of the day to approve resources to minor parties or independents through Ministerial Services Branch and, more recently, through the Parliamentary Service.

The lawfulness of a decision to withdraw the KAP resources cannot itself be questioned. It was always within the Premier's power to withdraw those resources.

The question in this matter is whether that power was used in an improper manner.

### **"Improper interference"**

Section 37 of the Parliament of Queensland Act 2001 provides:

#### ***37 Meaning of contempt of the Assembly***

*(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.*

Unless conduct can amount to “improper interference” as defined in s.37(2), there can be no contempt.

The term “improper” implies that there is some element of public mischief, corruption or breach of public trust.

There are a wide range of activities that have long been regarded as a normal part of the political process and not amounting to ‘improper’ conduct and thus not a contempt. For example, there are many examples of undertakings given or promises made on policy and resources during negotiations on the formation of government.<sup>1</sup> The normality and public nature of these promises mitigates against them being viewed as improper.

Attempts to influence members or political parties are common place. Influence is a normal part of the political process. A contempt only arises where a line is crossed. Where the conduct or behaviour reaches the threshold of being improper.

McGee in *Parliamentary Practice in New Zealand*<sup>2</sup> notes that not all interference is improper:

*A distinction must be drawn however, between members or outside persons properly seeking to influence other members, and attempts to influence members' actions which are intimidatory and may be held to contempt. All members, when they speak in debate, try to influence their fellow members; so do all lobbyists when they are advancing their interests. Such conduct is perfectly proper. There is no contempt in respect of attempts to influence members, even by bringing pressure to bear on them (such as to withdraw support from them at the next election), unless there is a threat to do something which is improper in itself or which is of such an extraordinary or*

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<sup>1</sup>See for example: <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/1998/4998T10.pdf>  
<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/1998/4998T11.pdf>

<sup>2</sup> 3<sup>rd</sup> edition, page 652

*exaggerated nature that it goes beyond an attempt to influence the members and becomes an attempt to intimidate.*

### **Contempt of bribery**

In Ethics Report No.155<sup>3</sup> the nature of the contempt of bribery or offering an inducement to a member was canvassed. The Ethics Committee endorsed the notion that in order to constitute bribery, the “bribe” should seek to influence the Member in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to either House, or to a committee.

The Member's Ethics and Parliamentary Privileges Committee, in its report No. 74, appeared to accept advice by the Clerk that to constitute bribery there would have to be clear evidence to establish each of the elements of the contempt of bribery, namely:

- (i) a benefit is offered, accepted or solicited;
- (ii) to or by a Member of Parliament;
- (iii) in order to influence, or upon an understanding to influence the Member in the free performance by a Member of the Member's duties as a Member; and
- (iv) that the agreement or attempted agreement is “improper” in that it has some element of public mischief, corruption or breach of public trust.

On the facts before me, there is no prima facie attempt, by a bribe (a benefit), to influence a Member whether that be in relation to a specific bill, resolution, matter or thing submitted or intended to be submitted to the House or the free performance by a Member of the Member's duties as a Member more generally. I am not, therefore, referring consideration of the alleged contempt relating to bribery to the Ethics Committee.

### **Threats, intimidation, molestation, compulsion or menace etc.**

Most of the other various contempts raised by the Member for Traeger rest on the proposition that the Premier's response to the Question Without Notice combined with the Premier's subsequent correspondence with the Member for Traeger and statements outside of the House (in the media, at the ALP State Conference and the Media Release) constituted

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<sup>3</sup> <http://www.parliament.qld.gov.au/documents/Committees/ETHICS/2014/Matter-of-privilege20May2014/rpt-155-04Jun2015.pdf#search=bribery>

threats, menaces, intimidation or molestation of the KAP members or that the subsequent action of withdrawing the staff resources constituted disadvantaging the KAP members on account of their conduct in the House (i.e. their failure to disapprove, condemn or denounce the maiden speech of Senator Anning).

The Premier's response argues her conduct did not amount to threats, intimidation, molestation or compulsion by menace and was a normal part of the political process.

All of the alleged contempts rest on the need to find that the Premier's actions were "improper".

### **Improper influence**

The former Select Committee on Privileges in a 1994 report<sup>4</sup> noted that attempts by improper means to influence Members in their Parliamentary conduct may be considered contempts.

The committee noted that a "tendency to impair" independence does not give rise to a contempt if that tendency is merely coincidental to, or an unwitting or unintended consequence of the conduct complained of. It must be shown that the person accused of contempt intended their conduct would tend to affect, or have the likely consequence of affecting, a Member in a way likely to impair their independence.

Furthermore, the Committee noted that the conduct amounting to improper influence must be directed at affecting the Member "in the future performance of their duties". "Future performance" refers to the Member's stated or proposed stance or conduct with respect to a particular issue, or the Member's vote on a particular issue before the House or its various committees. The Committee also found that there appears to be no precedent which precludes "future performance" from also referring to the general conduct of Members in the discharge of their duties or responsibilities in proceedings of the Parliament.

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<sup>4</sup> <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/1994/4794T5644.pdf> see also Ethics Report 153:  
<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T6418.pdf>

The Committee noted, with approval of the principle enunciated in the 1947 House of Commons Committee of Privileges Report (HC118) that not only must the means by which the attempt to influence a Member be “improper” but the circumstances of the attempted influence must be of such an extraordinary nature that the compromise to a Member's independence which it threatens is of a kind from which the Parliament considers it absolutely necessary that the Member be protected.

## **Conclusion**

I wish to emphasise that my role is not to determine whether there has been proven fault (a breach of privilege) but, rather, whether there are sufficient issues in play to warrant the further consideration of the House via the Ethics Committee.

In considering whether a matter should be referred to the committee, under Standing Order 269 (4) I am required to take account of the degree of importance of the matter which has been raised and whether an adequate apology or explanation has been made in respect of the matter. No matter should be referred to the ethics committee if the matter is technical or trivial and does not warrant the further attention of the House.

This matter cannot be seen to be unimportant, technical or trivial.

I formally refer the Member for Traeger's complaints to the Ethics Committee in relation to the following:

- Threats or intimidation or disadvantaging a member - SO266(9), (17) or POQA s 37 example 3;
- Molestation of a member – SO 266 (10);
- Compulsion by menace – POQA s 37 example 2; and
- The Contempt of Improper Influence – s.37(2) of the POQA.

I have not taken this decision lightly, I have given this decision serious consideration.

In my view there are sufficient questions of fact to be determined against the evidence such that it would be prudent to refer the question as to whether there has been a contempt to the Ethics Committee

In relation to each of the potential contempts it would be for the Committee to consider whether the Premier's conduct could be considered an

improper interference with the free performance of KAP Members duties as members of Parliament.

I remind members that Standing Order 271 now applies, and members should not refer to these matters in the House.

I also remind everyone generally, that the Premier should be afforded the courtesy of fairness while the ethics Committee considers this matter.