



ETHICS COMMITTEE

REPORT NO. 181

**INQUIRY INTO MATTERS RELATING TO A MATTER OF PRIVILEGE REFERRED BY THE
SPEAKER ON 15 JUNE 2018 RELATING TO A BREACH OF THE BROADCAST TERMS
AND CONDITIONS****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 an allegation that Ms Dee Madigan breached the Conditions of Access for the further publication of the broadcast of proceedings of the Parliament.

The referral

4. On 15 June 2018, Speaker Pitt made the following statement in referring the matter of privilege to the Ethics Committee:

Honourable members, on 14 May 2018 the member for Kawana wrote to me alleging that a contempt had been committed when a photograph from the broadcast of proceedings of the parliament on 9 May 2018 was republished on Twitter in contravention of the parliament's terms and conditions of broadcast. The photograph is of the member for Kawana on his feet in the House. It was included in a tweet from a Twitter account belonging to Ms Dee Madigan. It is accompanied by the statement 'Your taxes at work. A toddler tantrum for @JarrodBleijieMP.'

The terms and conditions of the broadcast of proceedings of parliament provide inter alia that the further publication of the broadcast of proceedings not be used for satire or

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

ridicule. I am aware that the opposition office had previously raised this issue with the Clerk and that the Clerk had corresponded with Ms Madigan advising her of the relevant terms and conditions and that the use of the broadcast material in contravention of the condition imposed by the Legislative Assembly may constitute a contempt of parliament. In that correspondence the Clerk urges Ms Madigan to remove the tweet in question. My office has also made attempts to have the material removed. To date, Ms Madigan has refused to remove the material.

Given the material has not been removed, I have decided that the matter does warrant the further attention of the House via the Ethics Committee. I therefore refer the matter to the Ethics Committee for further examination. Members, in doing so, 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. I remind members that standing order 271 now applies and members should not refer to these matters in the House.

Definition of contempt

5. 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.*

Nature of the contempt of using footage of the broadcast of parliamentary proceedings in contravention of the Terms and Conditions

6. Section 49 of the POQA defines a ‘parliamentary record’ as including a record of proceedings in the Assembly; and it may be in any form. The Act provides an example: ‘The record may be in audio or visual form and last only a short time’.
7. Section 58 of the POQA provides that the Legislative Assembly may, at any time, impose conditions on the publication of a parliamentary record, including the broadcast of proceedings of Parliament. Any such conditions apply regardless of whether the parliamentary record has been published previously or whether the Assembly authorises or has authorised the publication.
8. An example provided at s 58(2) is:

Assume an audio or visual record of proceedings in the Assembly is published on the internet by an authorised publisher under section 51. The Assembly may impose conditions on the publication by the authorised publisher. The Assembly may also impose conditions on the publication by a person who has accessed the internet publication of a parliamentary record derived from that access.
9. Section 58(3) of the POQA provides that the publication of a parliamentary record in contravention of a condition imposed by the Assembly is a contempt of the Assembly.
10. The Terms and Conditions imposed by the Assembly for the use of its broadcast footage provide that the further publication of the broadcast of proceedings shall be used only for the purpose of fair and accurate reports of proceedings and shall not be used for:
 - political party advertising or election campaigning,

- satire or ridicule, and
- commercial sponsorship or commercial advertising.

Historical relevance

11. The terms and conditions do not define satire or ridicule. Where no definition is provided in a statute 'the meaning should be the ordinary meaning, giving consideration to the sense in which words are used'.² 'The sense in which words are used' can require attention to the purpose of the statute.

12. The Oxford English Dictionary defines satire as:

The use of humour, irony, exaggeration, or ridicule to expose and criticise people's stupidity or vices, particularly in the context of contemporary politics and other topical issues.

And ridicule as:

The subjection of someone or something to contemptuous and dismissive language or behavior.

13. The prohibition on use of footage for satire or ridicule aims to:

- maintain public confidence in the Parliament, and
- ensure the accuracy of accounts of parliamentary proceedings.

14. The prohibition accords with the principle that:

Other acts besides words spoken or writing published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing such House into odium, contempt or ridicule or by lowering its authority may constitute contempt.³

Establishing a prima facie case of possible contempt

15. The committee has established procedures 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 the Standing Orders. The committee is also bound by the Instructions to committees regarding witnesses contained in Schedule 3 of the Standing Orders.

16. The committee found that it had sufficient material before it to deliberate on the matter. This material included correspondence from Mr Speaker and a submission provided to the committee by Ms Madigan and information obtained from the Twitter social media platform.

17. Ms Madigan's submission to the committee in response to the allegation of contempt made four key arguments:

- a) Ms Madigan is not a party to the contract which imposes the Terms and Conditions and is therefore not bound by them;
- b) The member for Kawana routinely posts broadcast footage for purposes similar to Ms Madigan's without facing charges of contempt of Parliament. Either the Terms and Conditions are therefore not applied fairly and uniformly to all citizens, or precedent supports Ms Madigan's right to keep her tweet online.

² Sanson, Michelle, *Statutory Interpretation*, Oxford University Press, Melbourne, 2012, p 113.

³ Erskine May, *Parliamentary Practice*, 22nd edition, Butterworths, 1997.

- c) Ms Madigan's tweet constituted legitimate criticism, and was not in breach of the specific restrictions that the Terms and Conditions places on the use of parliamentary footage.
- d) The Terms and Conditions must be interpreted narrowly, because if they were interpreted broadly they would breach the implied freedom of political communication.
18. The committee's role is to apply the rules relating to parliamentary privilege, not to consider the merits of those rules. In that context, the committee considered each of the four arguments in Ms Madigan's submission and determined that only the argument put forward at c) above in respect of the terms and conditions, is relevant to the matter at hand.
19. In respect of argument a) regarding the terms of a contract, the committee notes that contracts are not relevant in respect of the parliamentary broadcast footage or a parliamentary record generally. There are no contracts in place with respect to the terms and conditions. The terms and conditions apply via the statute. Statute provides the power to place the terms and conditions on the broadcast, thus they have force of law.
20. The committee acknowledges that the photograph Ms Madigan tweeted was from footage on a third party account, and that the terms and conditions were not displayed in that context. However Ms Madigan was subsequently advised by the Clerk of the terms and conditions, requested to remove the tweet and advised that 'generally, when offending material is removed, no further action is required'. Ms Madigan declined to remove the tweet. The Office of the Speaker also made contact with Ms Madigan and again the request to remove the tweet was declined.
21. In respect of argument b) above, Section 104B of the POQA provides the committee's jurisdiction with respect to dealing with alleged breaches of parliamentary privilege by persons. Under section 104C, it acts on referrals of complaints. It does not have a complaint before it in relation to Mr Bleijie. This argument is not relevant to the committee's consideration of whether Ms Madigan breached the terms and conditions.
22. In respect of argument d) above, Ms Madigan's submission contends that the terms and conditions with respect to satire and ridicule are inconsistent with the implied right to freedom of political communication in the Australian Constitution.
23. We note that for a law to be inconsistent with the implied freedom of political communication it must first be shown that the law burdens freedom of political discussion and secondly that the law does not adequately serve, or is disproportionate in its impact upon political discussion in serving some other legitimate purpose.
24. The terms and conditions imposed by the Parliament on the use of its broadcast footage do not prohibit any expression of political opinion. They merely prevent the use of images from the official broadcast of parliament in a manner that breaches the terms and conditions.
25. If Ms Madigan's tweet amounted to a publication of a parliamentary record in contravention of a condition imposed by the Assembly, it will be a contempt.

Was the footage of the broadcast of proceedings used for satire or ridicule?

26. The question to be determined by the committee is whether the footage of the broadcast of proceedings was used for satire or ridicule.
27. As noted in Ms Madigan's submission, the POQA does not define satire and ridicule. The submission offers:

Neither the Parliament of Queensland Act 2001 nor the Terms and Conditions define the terms 'satire' or 'ridicule'. The Oxford English Dictionary defines satire as 'the use of humour, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices,

particularly in the context of contemporary politics and other topical issues,⁴ and defines ridicule as 'the subjection of someone or something to contemptuous and dismissive language or behaviour'. Ms Madigan's tweet does not fit into either of those definitions.

28. Ms Madigan's submission does not go to the definition of contemptuous or dismissive. The Oxford English Dictionary defines contemptuous as *Showing contempt; scornful*. Scornful is defined as *Feeling or expressing contempt or derision*. And, dismissive is defined as *Feeling or showing that something is unworthy of consideration*.
29. The committee considers that a reasonable person would consider that the phrase accompanying Ms Madigan's retweeted image of the broadcast, 'toddler tantrum', is dismissive or scornful and thus meets the definition of ridicule.
30. Accordingly, the committee finds the publication of the parliamentary record on Twitter to illustrate the comments amounts to its use for the purposes of ridicule.

Conclusions

31. On the information before it the committee finds that in relation to the matter of privilege concerning Ms Madigan, the republication of the Assembly broadcast together with the accompanying words on the Twitter social media platform, constitutes a breach of the Parliament's Broadcast Terms and Conditions and that a prima facie case of contempt has been established.
32. Ms Madigan was requested by the Clerk and by the Speaker's office to remove the footage from Twitter, and was provided with an explanation of the terms and conditions and the principles behind the rule in question. Ms Madigan was advised by the Clerk of the Parliament that should she remove the tweet it was likely no further action will be taken. Ms Madigan refused to do so.
33. We note that Ms Madigan has had ample opportunity to remove the publication in the time since the potential breach was first brought to her attention in May 2018, but has not done so.
34. We find it disappointing to see any person, more so one with a public profile, deliberately disrespect the rules of a democratically elected Parliament. We note that in contrast all due respect has been shown to Ms Madigan in bringing the breach to her attention and providing ample opportunities to rectify the breach and avoid further action.
35. We strongly encourage all individuals to comply with the rules established by the Parliament. If a member of the community considers that Parliamentary rules or indeed laws made by the Parliament are inappropriate, there are processes in place for review of those rules or laws.
36. This particular contempt is, bearing in mind the principle behind the rule, relatively minor. While section 39 of the POQA provides that we could ultimately recommend the Assembly impose a penalty, in this instance we recommend no further action be taken.

Observations

37. With regard to the rules established by the Parliament prohibiting the use of official parliamentary broadcast footage for satire or ridicule, the committee observes that in Parliaments in a number of similar jurisdictions reviews of the prohibition have been undertaken and as a result the prohibition has been removed. This was reinforced during recent discussions between the committee and the Privileges Committee of the New Zealand Parliament. While beyond the scope of the terms of reference for this committee, it may be timely for the Queensland Parliament to consider the matter.

⁴ <https://en.oxforddictionaries.com/definition/satire>

Conclusion

On the information before it the committee finds that:

- (a) Republication of the broadcast footage by Ms Madigan with the accompanying words 'toddler tantrum' amounted to a breach of the Parliament's Broadcast Terms and Conditions and thus a contempt of the Parliament.

Recommendation

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



Joe Kelly MP
Chair

December 2018

Membership — 56th Parliament

Mr Joe Kelly MP, Chair
Member for Greenslopes

Mr Tim Nicholls MP, Deputy Chair
Member for Clayfield

Ms Nikki Boyd MP
Member for Pine Rivers

Ms Leanne Linard MP
Member for Nudgee

Mr Mark McArdle MP
Member for Caloundra

Mr Ray Stevens MP
Member for Mermaid Beach

Secretariat

Ms Bernice Watson, *Committee Secretary*
Ms Ciara Furlong, *Assistant Committee Secretary*
Ms Andrea Musch, *Executive Secretary*

Contact

Telephone: 07 3553 6610
Facsimile: 07 3553 6614
E-mail: ethics@parliament.qld.gov.au
Internet: www.parliament.qld.gov.au/ethics
Subscribe: www.parliament.qld.gov.au/subscribe

EXTRACT OF MINUTES



INQUIRY INTO MATTERS RELATING TO A MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 15 JUNE 2018 RELATING TO A BREACH OF THE BROADCAST TERMS AND CONDITIONS

Objective ID: A356903

Ethics Committee

Meeting No. 07A

Thursday 23 August 2018, 1:14PM

Committee Room 1, Parliamentary Annexe, Brisbane

Present

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

Apologies Nil

In attendance

- Ms Bernice Watson, Committee Secretary
- Ms Ciara Furlong, Assistant Committee Secretary

Inquiry 5 – Madigan

The Chair noted that Mr Marler – who is connected with the matter – was a constituent, with whom the Chair has worked in relation to Mr Marler’s son. The Chair noted that he did not believe himself to have any conflict in relation to the matter.

Ms Boyd noted that she follows Ms Madigan on Twitter and that she has met her briefly at events but did not believe she has any conflict in relation to the matter.

Discussion ensued.

Resolved

That the committee continue to deal with the matter and write to Ms Madigan inviting further information, correspondence wording to be agreed by the Chair and Deputy Chair.

Moved: Mr Stevens Seconded: Ms Linard

Close **The meeting closed at 1:55PM**

EXTRACT OF MINUTES



INQUIRY INTO MATTERS RELATING TO A MATTER OF PRIVILEGE
REFERRED BY THE SPEAKER ON 15 JUNE 2018 RELATING TO A BREACH
OF THE BROADCAST TERMS AND CONDITIONS

Objective ID: A379575

Ethics Committee

Meeting No. 09A

Thursday 18 October 2018, 1:05PM

Committee Room 1, Parliamentary Annexe, Brisbane

Present

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

Apologies

Nil

In attendance

Ms Bernice Watson, Committee Secretary
Ms Ciara Furlong, Assistant Committee Secretary

Inquiry 5 – Madigan

A discussion draft of a possible report was provided.

Discussion ensued.

Resolved

That the wording of the final report is to be agreed between the Chair and Deputy Chair following the committee's visit to New Zealand.

Moved: Ms Linard Seconded: Mr McArdle

Close

The meeting closed at 1:52PM

EXTRACT OF MINUTES



INQUIRY INTO MATTERS RELATING TO A MATTER OF PRIVILEGE
REFERRED BY THE SPEAKER ON 15 JUNE 2018 RELATING TO A BREACH
OF THE BROADCAST TERMS AND CONDITIONS

Objective ID: A399170

Ethics Committee

Meeting No. 13A

Thursday 6 December 2018, 12:00PM

Committee Room 1, Parliamentary Annexe and via teleconference

Present

- Mr Joe Kelly MP, Chair
- Mr Tim Nicholls MP, Deputy Chair
- Ms Leanne Linard MP
- Mr Mark McArdle MP
- Ms Melissa McMahon MP (SO 272)
- Mr Ray Stevens MP

Apologies Ms Nikki Boyd MP

In attendance

- Ms Bernice Watson, Committee Secretary
- Ms Ciara Furlong, Assistant Committee Secretary

Inquiry 5 – Matter of Privilege referred by the Speaker on 15 June 2018 (Madigan)

Discussion ensued.

Resolved

That the draft report as amended be adopted and tabled with the additional tabling material.

Moved: Mr Kelly Seconded: Mr McArdle

Close The meeting closed at 12:16PM

Extracts certified correct on 7 December 2018

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

Joe Kelly MP

Chair

Submission to the Ethics Committee of the Parliament of Queensland

Ms Madigan posted a tweet on 11 May 2018 that included a short video clip. The clip was originally taken from the Parliamentary broadcast, which the ABC then published. The clip was then tweeted by Mr David Marler and was later retweeted by Ms Madigan.

The clip depicted Mr Jarrod Bleijie, the Member for Kawana, tearing some paper while in the Parliamentary Chamber. Ms Madigan's tweet contained the following caption: 'Your taxpayer dollars at work. A toddler tantrum for @jarrodBleijie'.

Ms Madigan has been asked to remove this tweet as it allegedly breaches the Terms and Conditions of the use of the Parliamentary broadcast of the Queensland Parliament, made under section 58 of the *Parliament of Queensland Act (Terms and Conditions)*. She has been told that her tweet may result in her being guilty of contempt of Parliament if she does not remove it.

It is submitted that Ms Madigan's tweet does not breach the Terms and Conditions for four reasons:

1. Ms Madigan is not a party to the contract which imposes the Terms and Conditions and is therefore not bound by them;
2. The member for Kawana routinely posts broadcast footage for purposes similar to Ms Madigan's without facing charges of contempt of Parliament. Either the Terms and Conditions are therefore not applied fairly and uniformly to all citizens, or precedent supports Ms Madigan's right to keep her tweet online.
3. Ms Madigan's tweet constituted legitimate criticism, and was not in breach of the specific restrictions that the Terms and Conditions places on the use of parliamentary footage.
4. The Terms and Conditions must be interpreted narrowly, because if they were interpreted broadly they would breach the implied freedom of political communication.

Section 58

Section 58 of the *Parliament of Queensland Act* provides:

58 ASSEMBLY MAY IMPOSE CONDITIONS ON PUBLICATION

- (1) The Assembly may at any time impose conditions on the publication of a parliamentary record. ...

Not a party to the contract

Presumably the ABC has a contract under section 58 which imposes conditions on ABC's use of parliamentary footage, including the Terms and Conditions. The footage which was retweeted by Ms Madigan has the ABC watermark on it and was presumably used by the ABC pursuant to its contract. If that is correct, it is significant that Ms Madigan is not a party to any contract between the ABC and the Queensland Parliament, and is therefore not bound by it.

Previous Tweets by the Member of Kawana

The Member for Kawana has routinely published broadcast footage taken in the Parliamentary Chamber for blatantly political purposes and to ridicule fellow members. For example, he posted a tweet on 23 August 2017 with the caption 'I suspected @JoAnnMillerMP was going to drop a bomb, but I didn't expect that!' to accompany edited footage taken from the Parliamentary broadcast, in a manner that was not dissimilar from Ms Madigan's comments. The tweet remains online and can be accessed here: <https://twitter.com/JarrodBleijieMP/status/900212097291890688/video/1>.

It is curious that the Member for Kawana is willing to use parliamentary footage to criticise the actions of his political opponents, but is not willing to accept similar criticism of his actions within the Parliament from a private citizen.

There are two possible explanations for this:

1. Either the Terms and Conditions are not applied in a fair, non-partisan and uniform manner, thus politicising the process and resulting in an abuse of power and an abuse of process.
2. Alternatively, the Member for Kawana's tweets serve as precedent, demonstrating that legitimate criticism is permitted by the Terms and Conditions.

Legitimate Criticism

In his initial email to Ms Madigan, dated 11 May 2018, in which the Clerk requested that Ms Madigan remove her tweet ('the initial email'), the Clerk of the Parliament provided an excerpt of the Terms and Conditions, reproduced below:

1. *The material must only be used for the purposes of fair and accurate reports of proceedings and must not in any circumstances be used for*
 - i. *political advertising, election campaigning or any advertising campaign that would normally require at law a broadcaster to announce who has authorised the material;*
 - ii. *satire or ridicule; and*
 - iii. *commercial sponsorship or commercial advertising;*
2. *Reports of proceedings must provide a balanced presentation of differing views;*
3. *Excerpts of proceedings are to be placed in context so as to avoid any misrepresentation;*

While the Clerk did not specify which provisions Ms Madigan had allegedly breached, presumably, her alleged contravention was of one or more of clauses 1(i) to 1(iii).

As Ms Madigan did not purport to 'report' on the proceedings of Parliament, but merely retweeted a short excerpt of the Parliamentary proceedings, any notion that she could be in breach of clause 2 is absurd. Further, the act depicted in the footage retweeted by Ms Madigan in its context, and it was not a misrepresentation of the Member for Kawana's actions. Thus, I also reject the notion that Ms Madigan could be in breach of clause 3. As no

political or commercial purpose is apparent in Ms Madigan's tweet, it is presumably alleged that she breached clause 1(ii). of the Terms and Conditions.

'satire or ridicule'

Ms Madigan's tweet contained neither satire nor ridicule. Rather, it provided legitimate criticism of the actions of a member of the Legislative Assembly.

Ms Madigan's short caption read: *'Your taxes at work. A toddler tantrum for @JarrodBleijieMP'*.

This statement contains neither ridicule nor satire but was a legitimate criticism of the actions of the Member for Kawana while inside the chamber. His attack on Ms Madigan may reflect a degree of embarrassment at his own behaviour.

Ms Madigan did not use the footage to make a comment or suggestion about the member personally in any way. Her comment could be understood as suggesting that the Member for Kawana was acting in a manner unworthy of a person on a publicly funded salary.

Neither the *Parliament of Queensland Act 2001* nor the Terms and Conditions define the terms 'satire' or 'ridicule'. The Oxford English Dictionary defines satire as *'the use of humour, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues'*,¹ and defines ridicule as *'the subjection of someone or something to contemptuous and dismissive language or behaviour'*. Ms Madigan's tweet does not fit into either of those definitions. As publicly elected officials, the actions of politicians are, and should be, scrutinised as a part of the political process. Actions taking place inside the Parliamentary chamber should be subject to particular scrutiny as that is where political debate occurs and legislative decisions are made.

In a ruling on previously alleged contraventions of the Terms and Conditions in May 2018, the Speaker of the House sought to make clear the rationale for the Terms and Conditions and said:

'It is emphasised that the broadcast was about opening up the democratic process to Queenslanders. But from the inception of broadcasting, it was appreciated that the broadcast should only be used for the purpose of fair and accurate reports of proceedings and a balanced presentation of differing views. The Assembly has always sought to ensure it is not used for used for commercial advertising, political advertising, satire etc. or otherwise distorted.'

Ms Madigan's comments did not distort, in any way, the actions of the Member for Kawana. They did not decontextualise them, satirise them or use them for political or commercial advertising. At most they amounted to a legitimate criticism of the actions of an elected official while acting in his capacity as a Member of the Legislative Assembly while the Assembly was in session.

¹ <https://en.oxforddictionaries.com/definition/satire>

If Ms Madigan was bound by the Terms and Conditions, her tweet was not a breach of the Terms and Conditions as they did not satirise or ridicule the Member of Kawana but legitimately criticised his actions.

Breach of Freedom of Political Communication

Sections 7 and 24 of the Australian Constitution have been found to imply a right of freedom of political communication. This right is not absolute but is a 'qualified limitation on legislative power' and allows for 'legislative restrictions serving a legitimate purpose compatible with the system of representative government... where the extent of the burden can be justified as suitable, necessary and adequate'.

The case of *Unions NSW v NSW* confirmed that this freedom applies to state governments and legislatures in addition to the Commonwealth. *McCloy v NSW* set out a three-step test to determine the validity of a law that may impinge upon this freedom.

The first question is whether the law effectively burden the implied freedom of political communication in its terms, operation of effect. Quite clearly, restricting the use of parliamentary footage and restriction of comments that may be published along-side such footage, is an impingement on this freedom.

The second question is the 'compatibility test' which asks whether the purpose of the law, and the means adopted to achieve that purpose are legitimate, in the sense that they are compatible with the maintenance of the constitutionally prescribed system of representative government. That the proceedings of Parliaments should be open to the public for scrutiny is a principle so plainly established that it requires no reference. It is a part of the very foundations of a Parliamentary democracy as the actions of elected officials must be open to scrutiny for a free and functioning democracy to exist. The purpose of the law, as stated by the Speaker of the House in May 2018, is to ensure that the broadcast is '*only... used for the purpose of fair and accurate reports of proceedings and a balanced presentation of differing views. The Assembly has always sought to ensure it is not used for used for commercial advertising, political advertising, satire etc. or otherwise distorted.*'

Ensuring that the proceedings of parliament, or actions of members, are not misrepresented or distorted may be considered a legitimate and compatible purpose, as it aims to maintain a high quality of debate about the proceedings of Parliament. If the compatibility test is passed, the law must pass a third and final test.

The third question is the proportionality test, and asks whether the law is reasonably appropriate and adapted to advance that legitimate object. If the Terms and Conditions apply to commentary such as that of Ms Madigan, then the Terms and Conditions clearly fail this test. A law which prevents the actions of Parliamentarians inside the chamber to be seen, openly discussed and (importantly) criticised, is grossly disproportionate to the benefits it may bring in terms of improved public debate.

In the case of *Coleman v Power*, a provision of the Vagrancy Act banned the use of 'insulting words'. The High Court read this provision down to mean "insulting words which provoke violence", because to ban all insulting words would breach the implied freedom of political communication. Similarly, in this matter, the terms 'satire' and 'ridicule' must be interpreted strictly and narrowly for the Terms and Conditions to remain valid. They cannot be

AICKIN CHAMBERS:
LEVEL 30, 200 QUEEN ST,
MELBOURNE 3000
burnside@vicbar.com.au
www.julianburnside.com

POSTAL ADDRESS:
C/- CLERK G
205 WILLIAM ST MELBOURNE, 3000
PH: (03) 9225 7488
FAX: (03) 9225 7350

interpreted so broadly as to include commentary such as the statements of Ms Madigan that are currently in question, else they breach this freedom.

Conclusion

Ms Madigan's tweet of 11 May 2018 does not satirise or ridicule the Member for Kawana if those words are interpreted strictly and narrowly. Nor does it breach any of the other Terms and Conditions provided by the Parliament of Queensland for the publication and republication of the Parliamentary broadcast. Rather, Ms Madigan's words involve a legitimate criticism of the actions of an elected official and thus can accompany the broadcast footage without breaching those Terms and Conditions.

If the words 'satire' and 'ridicule' and interpreted broadly, they may include comments like Ms Madigan's, but that interpretation would be a breach of the freedom of political communication implied by the Australian Constitution. The validity of the Terms and Conditions requires them to be read down and interpreted narrowly.

I therefore submit that:

1. Ms Madigan is not bound the Terms and Conditions for the use of the Parliamentary broadcast footage;
2. In any event, Ms Madigan has not breached the Terms and Conditions.

J.W.K. Burnside

Aickin Chambers

7 September 2018