

**ETHICS COMMITTEE****REPORT NO. 197****MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 26 MARCH 2019
RELATING TO ALLEGED CONTEMPT BY A MEMBER****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 a referral from the Speaker regarding a possible contempt of Parliament by the Member for Maiwar, Mr Michael Berkman MP, in involving himself in disorderly conduct on the parliamentary precinct.

The referral

4. On 26 March 2019, the Speaker made the following ruling in the House:

I am in possession of a security incident report and have received other information which indicates that during a public assembly on 15 March 2019 the Member for Maiwar was in the crowd and then returned and was seen on level B (above the Porte Cochere) and was clapping and waving to the crowd and had two children with him who both had "the Greens" Signs displayed. The member was also wearing a black T shirt with protest slogans.

Section 50 of the Parliamentary Service Act enables the Speaker to make directions to regulate the behaviour and conduct of persons entering the parliamentary precinct. The directions can take the form of by-laws. Under Speaker's by-laws banners, signs or other things that are, or contain matter, associated with a political cause or campaign are a proscribed item and cannot be brought into the precinct. They must be left in the custody of an authorised officer. As a matter of practicality, clothing like protest t-shirts have to be removed, covered by a jacket or turned inside out. The rationale for these directions and by-laws is to keep the precinct free of protest and preserve its dignity. Public assembly

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

outside the gates of the precinct has long been welcomed, evidenced by the establishment of the Speakers' corner in the area between the Gardens and the Precinct.

Pursuant to section 50(7), the by-laws do not apply to members of the Legislative Assembly in the conduct of their parliamentary business. The rationale for this exclusion is that the Legislative Assembly should deal with its members, not authorised officers.

On 30 May 2000 there was a public assembly (regarding the deregulation of the milk industry) outside the precinct of Parliament. In view of that public assembly, three members of the Assembly carried a milk can onto the parliamentary precinct and emptied its contents outside the front entrance of Parliament House under the Porte Cochere. The former Members' Ethics and Parliamentary Privileges Committee in report No. 41 held that the three members committed a contempt by engaging in disorderly and disrespectful conduct in the precincts of the Parliament while it was in session and behaving in a manner not befitting members of Parliament. The report stated "There is no doubt that it is a contempt of Parliament for members or strangers to involve themselves in disorderly conduct on the parliamentary precinct".

As the Member for Maiwar's conduct cannot be dealt with under the by-laws, I have decided to refer this matter under Standing Order 268(2) to the Ethics Committee.

5. On 4 April 2019, the Speaker wrote to the committee enclosing the ruling, an incident report from the Parliamentary Security and Attendant Services (security incident report) and a Facebook post by the Member for Maiwar.

Definition of contempt

6. 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.*
7. It is generally accepted that it is a contempt of parliament for members to involve themselves in disorderly conduct on the parliamentary precinct.²

Parliamentary Service Act and By-laws

8. As noted in the Speaker's ruling, section 50 of the *Parliamentary Service Act 1988* (PSA) provides:
 - (1) *All persons entering or upon the parliamentary precinct shall comply with the directions of the Speaker as to the behaviour, demeanour and conduct of such persons.*
 - (2) *Directions of the Speaker may take the form of by-laws prescribing behaviour and conduct made from time to time by the Speaker*
9. Section 13 of the *Parliamentary Service By-law 2013* states:
 - (2) *Also, a person on the parliamentary precinct must not, without the permission of the Speaker or an authorised officer, display a banner, sign or other thing that is, or contains matter, associated with a political cause or campaign.*
 - (3) *In this section— display includes display on an item of clothing in a conspicuous way.*

² MEPPC, Report on a matter of privilege – Matter concerning the disorderly conduct of members of Parliament within the Parliamentary Precinct, [Report No. 41](#), p2.

10. A person who fails to comply with the by-laws commits an offence under the PSA and is subject to a maximum penalty of 10 penalty units (\$1350.55).³
11. However, as noted in the Speaker's ruling, section 50(7) of the PSA provides that such directions/by-laws do not apply to members of the Legislative Assembly in the conduct of their parliamentary business. The rationale for this exclusion is that the Legislative Assembly should deal with its Members.
12. With regard to Members of the Legislative Assembly, Speaker's Rulings have confirmed that members displaying political material is not to be tolerated.⁴ For example, in 2007 Speaker Reynolds ruled:

*I make the following matters clear: it is the undoubted right of Queenslanders to peacefully protest and I support the right of peaceful protest and the right of members to engage with protesters. However, that should not extend to any action that is an indignity to the precinct, which I maintain affixing material to the fences is. Members involved in the protest cannot hide behind the actions of protesters when they are taking clear advantage of the same actions for a media grab. Importantly, members have a higher duty to maintain the dignity of this House and its precinct. Members should use their best endeavours to ensure no indignity to the House or precinct occurs and not simply stand idly by waiting for an opportunity to gain politically.*⁵
13. As noted in the current Speaker's referral, a similar matter was referred to the former Members' Ethics and Parliamentary Privileges Committee (MEPPC) in May 2000.⁶ The committee considered it pertinent to consider the facts in this matter.
14. That matter concerned alleged disorderly conduct by two then Members of Parliament Mr Shaun Nelson, former Member for Tablelands and Mrs Dorothy Pratt, former Member for Barambah.
15. There was a public assembly (regarding the deregulation of the milk industry) outside the precincts of Parliament House. Mr Nelson and Mrs Pratt carried a milk can onto the parliamentary precinct and emptied its contents outside the front entrance of Parliament House under the Porte Cochere.
16. The MEPPC stated in its report:

*There is no doubt that it is a contempt of Parliament for members or strangers to involve themselves in disorderly conduct on the parliamentary precinct. The actions of the members for Tablelands and Barambah, as described, constitute disorderly and disrespectful conduct within the Parliamentary precinct.*⁷
17. The MEPPC found that the two Members engaged in contempt and recommended to the House that:
 - a) both Members be suspended from the House for 28 days;
 - b) both Members not be permitted to take their seats in the House until they apologise to the House; and
 - c) Mr Nelson (who was a member of the MEPPC) be discharged from his membership of the committee.

Role of the committee

18. The role of the Ethics Committee is to consider alleged breaches of parliamentary privilege, including contempts of parliament.
19. In this matter, the question before the committee was whether the Member for Maiwar's actions on 15 March 2019 amounted to a contempt of parliament.

³ *Parliamentary Service Act 1988* s 50(9).

⁴ For example, see the Record of Proceedings of the Legislative Assembly as follows: 8 June 2005 p1857; 16 February 2006 p 209; 5 June 2007 pp1775-6; 14 November 2012 p2582.

⁵ Legislative Assembly, Record of Proceedings, 5 June 2007, pp 1775.

⁶ MEPPC, Report on a matter of privilege – Matter concerning the disorderly conduct of members of Parliament within the Parliamentary Precinct, [Report No. 41](#).

⁷ MEPPC, Report on a matter of privilege – Matter concerning the disorderly conduct of members of Parliament within the Parliamentary Precinct, [Report No. 41](#), p2.

20. When the MEPPC deliberated on the similar case outlined above, it did not address the elements of contempt in its report. As the POQA is now in force, and this Act provides a statutory definition of contempt,⁸ the committee proceeded with its investigation by addressing the elements of contempt.
21. The committee carefully considered the scope of its inquiry and using past Ethics Committee precedent, determined that the Member for Maiwar would be in contempt of parliament if his behaviour could be considered disorderly conduct on the Parliamentary precinct, and that behaviour was an improper interference with the free exercise by the Assembly of its authority or functions.⁹

The committee's proceedings

22. 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.
23. When investigating this matter, the committee invited the Member for Maiwar to make a submission addressing the elements of a contempt when members involve themselves in disorderly conduct on the parliamentary precinct. The Member for Maiwar provided two submissions (10 May 2019 and 8 November 2019), and information contained in those submissions formed the basis for the committee's determination.
24. The committee applied the elements to be established for a contempt as outlined in paragraph 21:
 - First, did the member engage in disorderly conduct on the parliamentary precinct?
 - Second, did the conduct amount to, or was it intended to amount to, an improper interference with the free exercise by the Assembly of its authority or functions?¹⁰

Element 1 – Did the Member for Maiwar engage in disorderly conduct on the parliamentary precinct?

25. The first limb of this element is whether the conduct in question occurred on the parliamentary precinct. The second limb is whether the conduct was disorderly.

Parliamentary precinct

26. 'Parliamentary precinct' is defined in section 4 of the PSA to include all land and improvements within the land reserved for House of Parliament, but does not include the Legislative Assembly chamber, or the galleries of the House, whilst the Legislative Assembly is in session.
27. The security incident report notes that 'the Member for Maiwar was in the crowd and then returned and was seen on level B'.
28. In his first submission to the committee, the Member confirms he was on the level B balcony above the Porte Cochere, with his two children.
29. The committee was satisfied the Member was on the parliamentary precinct.

Disorderly conduct

30. The alleged conduct by the Member for Maiwar on the parliamentary precinct was outlined in the Speaker's ruling on 26 March 2019:

...clapping and waving to the crowd and had two children with him who both had "the Greens" Signs displayed. The member was also wearing a black T shirt with protest slogans.¹¹
31. In his initial submission to the committee, the Member for Maiwar advised he was wearing a black t-shirt that read "Adani No Means No" in support of the Wangan and Jagalingou Family Council.

⁸ *Parliament of Queensland Act 2001* s 37.

⁹ MEPPC, Report on a matter of privilege – Matter concerning the disorderly conduct of members of Parliament within the Parliamentary Precinct, [Report No. 41](#), p 3

¹⁰ MEPPC, Report on a matter of privilege – Matter concerning the disorderly conduct of members of Parliament within the Parliamentary Precinct, [Report No. 41](#), p 3

¹¹ Speaker's Ruling, 26 March 2019, p 1.

32. The question was whether this conduct amounted to 'disorderly conduct'. In criminal law, disorderly conduct refers to behaviour which causes disturbance or annoyance to others present or any substantial breach of decorum which tends to disturb the peace or interfere with the comfort of other people.¹²
33. A similar definition is found in the Macquarie Dictionary, where disorderly conduct is said to generally include *nuisances, breaches of the peace, offensive or immoral conduct in public*. Disorderly can also mean *violating, or opposed to, constituted order; contrary to public order or morality*.
34. The security incident report describes the circumstances surrounding the conduct by the Member for Maiwar:
 - a) The conduct took place amidst a student protest on climate change on 15 March 2019.
 - b) The group began to set up at Speaker's corner around 10.00am, with a protest occurring around 12.00pm. The group disbursed [*sic*] at 12.40pm.
 - c) Just before 2.00pm a larger group was seen marching down George Street and gathered at the corner of George and Alice Street. Crowd numbers were estimated to be over 3000.
 - d) There were a number of protestors standing on the fence pillars surrounding the Old House, and security officers attempted to direct protestors off the fence to prevent injury.
 - e) The Member for Maiwar was seen in the crowd and later on Level B.
 - f) The protestors were generally compliant and the peaceful protest concluded at approximately 2.30pm and protestors began to disperse without incident.
35. According to the security incident report, the protest was a peaceful one and there is no evidence to suggest that the Member for Maiwar's conduct disturbed the peace or was contrary to order, or morality.
36. The Member for Maiwar stated in his first submission that he was approached by the Clerk of the Parliament after first entering the precinct with a request to speak to the organisers of the event about crowd safety. At the time, there were grave concerns for the safety of the crowd from climbing the fences outside of Parliament House. The Member complied with the request from the Clerk of the Parliament before returning to the precinct.
37. In his submissions to the committee, the Member for Maiwar noted that his conduct did not raise concerns for any of the authorised officers present at the time of the incident.
38. The committee took a position consistent with previous positions, that a matter not being censured at one point in time does not preclude it being raised at a later time. The issue of public safety was rightly the priority at the point of time in question.
39. The committee considers that conduct by Members should be consistent with, or above, that which is required of general members of the public within the parliamentary precinct. The by-laws provide that a person on the parliamentary precinct must not, without permission, display a banner, sign or other thing that is associated with a political cause or campaign. As the Speaker referenced in his statement at paragraph 4, this prohibition is designed to keep the precinct free of protest and preserve its dignity.
40. The Speaker's ruling notes that the reason the by-laws do not apply to Members is to accord with the principle that the Assembly should deal with its members. The committee takes this to mean the intention was *not* to develop separate behavioural standards on the parliamentary precinct for members of the public and members of Parliament. Therefore the committee saw fit to hold the Member for Maiwar to the standard expected of the general public, if not higher.
41. The committee considered that *prima facie* breaching a by-law authorised by the Assembly of which one is a Member constitutes disorderly conduct, particularly where had it been breached by any other

¹² Encyclopaedic Australian Legal Dictionary.

person it would have resulted in a potentially significant penalty.¹³ Any penalty recommended by the committee on the Member for Maiwar would still be less than that which may be imposed on a member of the public for the same conduct.

42. The Member for Maiwar, through his counsel Mr Saul Holt QC, contended that there is no penalty for a breach of this by-law by a member of the public. That is incorrect. The penalty is set out at section 50(9) of the PSA.
43. While the Member for Maiwar alleged that his behaviour does not fall within the ordinary dictionary meaning of 'disorderly', the Speaker has previously ruled that members using political props and placards is disorderly.¹⁴ The Speaker has also ruled that members have a higher duty to maintain the dignity of the House and its precinct when he was addressing protest behaviour by members.¹⁵
44. The committee considered the conduct of the Member for Maiwar did constitute disorderly conduct, notwithstanding that his behaviour was peaceful and not intended to inflame the situation.
45. The committee was satisfied both limbs of the first element were made out.

Element 2 – Did the conduct amount to, or was it intended to amount to, an improper interference with the free exercise by the Assembly of its authority or functions?

46. In order to establish a contempt, the Member for Maiwar's conduct needed to amount to, or have been intended to amount to, an improper interference with the free exercise by the Assembly of its authority or functions.
47. The term 'improper' has been considered by the committee in prior matters. Generally, the term 'improper' implies there is some element of public mischief, corruption or breach of public trust.
48. In Report No. 110 in 2010, the MEPPC established a test based firstly on the dictionary definition of 'improper', which included that it was 'inappropriate' and 'incorrect'; and noted judicial commentary that "the term 'improper' is not a term of art, but simply refers to conduct which is inconsistent with the proper discharge of the person's duties, obligations, and responsibilities".¹⁶
49. The committee then turned to the statement from the Members Code of Ethical Standards:

*The public's confidence in the institution of Parliament is essential. Members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and avoid any action which may diminish its standing, authority or dignity.*¹⁷
50. From the above, the committee determined that part of a member's duty is to strengthen the public's trust and confidence in the Parliament, and avoid any action which may diminish its standing, authority or dignity. Behavior inconsistent with this duty will be improper.
51. The Member for Maiwar contends that because the behaviour occurred on non-sitting day, there is no conceivable way that there was an improper interference with the free exercise of the Assembly of its authority or functions. The committee disagreed, and considered that the authority and functions of the Assembly extend beyond the sitting weeks of Parliament. This view was reinforced by the fact that people chose to protest on a non-sitting day, indicating that the public does not view the authority and functions of the Assembly as being limited to sitting weeks of Parliament.
52. To determine if the conduct amounted to, or was intended to amount to an interference with the free exercise by the Assembly of its authority or functions, the committee considered that the factors that required consideration were whether the Member's conduct:

¹³ A maximum of 10 penalty units in accordance with the *Parliamentary Service Act 1988* s 50(9). A penalty unit is currently \$133.45 in Queensland.

¹⁴ Acting Speaker Fouras (8/6/2005 PD p1857).

¹⁵ Speaker Reynolds (5/6/2007 PD p1775).

¹⁶ *Willers v R (1995) 125 FLR 22 at 225; Corporations Law (repealed) s 229; Southern Resources Ltd v Residues Treatment & Trading Co Ltd (1990) 56 SASR 455.*

¹⁷ Legislative Assembly of Queensland, *Code of Ethical Standards together with the Guide to the Code of Ethical Standards and Rules Relating to the Conduct of Members*, June 2018, p 5.

- breached a law made under parliamentary authority (this would interfere with the free exercise of the Assembly's authority); or
 - was disrespectful to, or diminished the standing, authority or dignity of, the Parliament (this would interfere with the free exercise of the Assembly's function, as this function relies on public's and trust confidence in Parliament, which must be upheld by its members).
53. The committee noted that although the Member was in breach of a by-law, this is technically not a breach of a law made under parliamentary authority because by-laws do not apply to members.
54. The committee went on to consider there were two actions that diminished the standing, authority or dignity of the Parliament and amounted to an improper interference with the free exercise by the Assembly of its authority or functions.
55. First, by displaying political material in the form of a t-shirt and placard. The Speaker explicitly highlighted in his ruling at paragraph 4 that the reasoning behind this prohibition for members of the public was to preserve the dignity of the Parliament. Therefore, for a Member of Parliament to undertake the same behavior that is prohibited for the public, diminishes the dignity of the Parliament.
56. Second, by accessing the level B balcony and waving to the crowd while displaying the political material.
57. As the displaying of political material is inconsistent with preserving the dignity of the Parliament, it follows that accessing a part of the Parliamentary precinct that is not readily available to the public and making political statements to a crowd in waving and displaying placards, does not preserve the dignity of the Parliament. The committee considered this behaviour disrespectful to the institution of Parliament.
58. Respect for the institution of Parliament is crucial to a functioning representative democracy. The standard of behaviour of Members of Parliament must be equal to, or above, the behaviour expected of the public when on the parliamentary precinct.
59. The Code of Ethical Standards adopted by the Legislative Assembly, and which applies to all Members, notes that the public's confidence in the institution of Parliament is essential and Members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament.
60. For the above reasons, the committee determined that the Member for Maiwar's behaviour did constitute an improper interference with the free exercise by the Assembly of its authority and functions and this element was made out.

Conclusion

61. The committee finds that the actions of the Member for Maiwar in:
- displaying a political banner, sign or other thing associated with a political campaign; and
 - accessing the Porte Cochere and waving at the crowd,
- did constitute disorderly conduct on the parliamentary precinct that was an improper interference with the free exercise by the Assembly of its authority and functions, and constitutes a contempt of the Parliament.

Mitigating factors

62. In making its findings, the committee took some potentially mitigating factors into consideration when determining the penalty for the Member for Maiwar.
63. The Member is in his first term as a Member of Parliament and appeared unaware of the seriousness of his actions on 15 March 2019.
64. While the Member's behavior was a contempt, there was no element of dishonesty or malice.

65. Just prior to the incident when requested by the Clerk to speak to organisers of the event with regard to safety and security concerns, the Member obliged.

Distinguishing the MEPPC Report on a matter of privilege – Matter concerning the disorderly conduct of members of Parliament with the Parliamentary Precinct (Report No. 41)

66. The Member for Maiwar, in his second submission dated 8 November 2019, sought to distinguish his behaviour from that which was dealt with in Ethics Committee Report No. 41. The committee too felt there were some important distinctions that should be made.
67. While the Member for Maiwar claimed that his behaviour showed no resemblance to the behaviour in Report No. 41, the committee determined that this report did relate to comparable behaviour.
68. The committee determined that while both involved conduct on the parliamentary precinct that was unbecoming of a Member of Parliament, the Member for Maiwar's behaviour, while of a similar class, was on a different scale to the behavior of the Member for Tablelands and Member for Barambah discussed in Report No. 41.
69. First, there is no evidence that the Member for Maiwar intended to inflame the crowd. When requested by the Clerk to speak to organisers of the event around safety and security concerns, the Member obliged. In contrast, the actions by the Member for Tablelands and Member for Barambah had the potential to *'incite passions and cause, rather than to prevent, riotous behaviour'*.¹⁸
70. Second, the conduct of the Member for Maiwar would have been a breach of the parliamentary by-laws if he was a member of the public, resulting in a fine. The conduct of the Member for Tablelands and Member for Barambah was identified as potentially breaching the Criminal Code. Had this behaviour been displayed by a member of the public, it may have resulted in significant penalty, including imprisonment.
71. The committee considered that the differing scale and gravity of the conduct here and in the prior matter was important to consider when determining a penalty for the Member for Maiwar.

Recommendation

72. Given the mitigating factors noted above, the committee recommends the following—
- The House take no further action in relation to the finding of contempt by the Member for Maiwar.

Conclusion

On the information before it, the committee finds that on the matter of privilege in relation to the Member for Maiwar, the allegations of contempt are made out.

Recommendation

The committee recommends a finding of contempt be made against the Member for Maiwar and the House take no further action.



Joe Kelly MP
Chair
February 2020

¹⁸ MEPPC, Report on a matter of privilege – Matter concerning the disorderly conduct of members of Parliament with the Parliamentary Precinct, [Report No. 41](#), p2.

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

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10 May 2019

Ethics Committee

Queensland Parliament

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

Submission re Speaker's referral to Ethics Committee for Contempt of Parliament

Your ref: A435230

To the Committee

Thank you for the opportunity to provide a submission in relation to allegations that I was in contempt of Parliament by engaging in disorderly conduct on the Parliamentary precinct. Specifically, you have invited me to address the following elements of contempt in relation to events on 15 March 2019:

1. Did I engage in disorderly conduct on the Parliamentary precinct?
2. Did the conduct amount to, or was intended to amount to, an improper interference with the free exercise by the Assembly of its authority or functions?

My view is that in light of all the circumstances neither of these elements are established, and the allegation of contempt cannot be upheld.

I understand the allegation of contempt arose from a routine incident report prepared by Mr George Kolic in relation to the School Strike for Climate Action, that was held on 15 March 2019 and culminated in a march to Parliament House and a rally at the Speakers' Corner. The incident report addresses a number of aspects of the School Strike event, and makes only the following comments about my conduct:

The Member for Maiwar Michael Berkman was in the crowd and then returned and was seen on level B waving to the crowd two children with him had "the Greens" Signs and he was wearing a Stop Adani black T shirt, the Clerk was advised.

Mr Speaker's ruling and referral of the incident to the Committee restated the details of the incident report as follows:

I am in possession of a security incident report and have received other information which indicates that during a public assembly on 15 March 2019 the Member for Maiwar was in the crowd and then returned and was seen on level B (above the Porte Cochere) and was clapping and waving to the crowd and had two children with him who both had "the Greens" Signs displayed. The member was also wearing a black T shirt with protest slogans.

There is no dispute about the fundamental facts as set by Mr Kolic and Mr Speaker. I was on the level B balcony above the Port Cochere with my two children and I was wearing a black t-shirt that read "Adani No Means No" in support of the Wangan and Jagalingou Family Council. The only (relatively inconsequential) departure from these facts is that only my daughter was carrying a Greens triangle when we entered the

precinct and on Level B, rather than both children, and, while I certainly clapped in response to the crowd, I don't recall waving, per se.

Rather than make detailed submissions in answer to the two elements of contempt, my intention here is to simply provide some additional factual context to inform the Committee's deliberations.

The Committee may be aware that there was a huge turnout at the the School Strike for Climate Action, with attendance estimates of 3,000 to 5,000 people. I attended not only so my children could take part but also to support everyone who participated and made the following policy demands that align with Greens policy:

1. Stop the Adani coal mine;
2. No new coal, oil and gas projects; and
3. 100% renewable energy by 2030.

I decided to take the opportunity to go to the Level B balcony, both to show my children the scale of the crowd and to take some photos and video footage of what was, by any measure, a very impressive turnout. I entered through the front gate with my children, at which point my daughter was still holding a Greens triangle that she had carried on the march.

On entering the precinct I was approached by Amanda Honeyman, who was at that point out the front of the level A entrance dealing with some security issues and took me to speak to Neil Laurie about these concerns. Mr Laurie explained that he held grave concerns for the safety of students standing on the fence outside Parliament House - given the large number of students standing on and leaning against the fence, and information Mr Laurie had about potential structural issues with the fence, Mr Laurie was concerned that it might fall and could injure the students. These issues are also reflected in the incident report prepared by Mr Kolic.

Mr Laurie asked if I might assist by speaking to the organisers and requesting that they have the students step down off the fence. Together with Mr Laurie, I exited through the easternmost gate (adjacent QUT) to avoid the crowds, and made the request of the organisers, while my children (and the Greens sign) remained in the precinct with Mr Kolic. I returned to the precinct and spoke further with Mr Kolic, Mr Laurie and Ms Honeyman. An announcement was made by organisers requesting that the students step off the fence and, when it was clear that the safety issues had been resolved, I entered Level A with my children and went to the Level B balcony, as reported by Mr Kolic.

While on Level B, I took some video footage, which is available for the committee to view online,¹ and a few photos that can be provided to the Committee on request. While I was taking the video footage the crowd cheered, and it was in response to this that I clapped at the crowd. Shortly after taking the video and photos, and after listening to the end of one of the speeches, my children and I returned to the crowd. My daughter was in possession of the Greens sign for most of the time we were on the precinct, but she handed it to me while we were on Level B before we returned to Speakers Corner.

I provide this additional background information only to make clear that none of the allegedly 'disorderly conduct' appeared to be cause for concern for any of the Authorised Officers who were present at the time, and with whom my children and I directly engaged.

In short, I believe the facts and circumstances clearly don't support either one of the elements of contempt.

¹ <https://www.facebook.com/michaelberkmangreens/videos/2178938365752020/>

With all due respect to the Speaker, the Committee, the parliamentary staff involved and the process with which I'm now engaged, in light of all the circumstances, I submit to the Committee that this matter is a triviality that should be summarily disposed of under standing order 270(1)(a).

While I don't believe this issue warrants the investment of any more of the Committee's time or effort, I'm happy to assist should you decide to take it further. Please don't hesitate to contact me or my office if you do.

Kind regards,



Michael Berkman MP



Michael Berkman MP
For Maiwar ▲

8 November 2019

Ethics Committee

Queensland Parliament

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

Matter of privilege referred by the Speaker to the Ethics Committee on 4 April 2019

Dear Mr Kelly,

I refer to your letter of 1 November 2019 and earlier correspondence in relation to the Ethics Committee's consideration of allegations that I committed a contempt of Parliament by engaging in disorderly conduct on the parliamentary precinct.

Thank you for agreeing to an extension to provide a submission regarding penalty, and I note your advice that the Committee will provide no further advice as to the basis for its conclusions on either or both of the elements of contempt prior to the tabling of its report.

My view, as stated in my letter of 10 May 2019, is that the facts and circumstances clearly don't support either one of the elements of contempt and that the matter is a triviality that would most appropriately have been disposed of under Standing Order 270(1)(a). On the information I understand is available to the Committee, including the additional information I provided in that letter, I consider this conclusion to be patently obvious.

In your letter dated 26 April 2019, you stated "I stress that the committee has not yet resolved to proceed to investigate this matter." The emphasis was your own. In light of this, and Standing Order 270, it appears clear to me that I am entitled to an opportunity to be heard, having communicated to the Committee that I dispute the allegations set out in that letter.

Given the Committee's surprising conclusion that not only did this issue warrant investigation, but that the Committee also apparently considers this triviality to be a contempt of Parliament, I provide the Committee with the attached submissions settled by my counsel, Mr Saul Holt QC.

Visit Us

1/49 Station Road, Indooroopilly
Open: Monday to Friday 9am - 5pm

Contact Us

Tel: (07) 37374100
maiwar@parliament.qld.gov.au
www.michaelberkman.com.au

These submissions are made on the assumption that the Committee has given me full particulars of the complaint, as it is required to under SO 270(6). You would be aware that under SO 270(6) this is a necessary precondition to the Committee making any adverse finding against me, and I reserve the right to be heard in relation to any undisclosed particulars of the complaint.

Please do not hesitate to contact my office on 07 3737 4100 if you would like to discuss this matter in more detail.

Kind regards,



Michael Berkman MP

**Submissions on matter of privilege referred by the Speaker to the Ethics Committee -
alleged contempt of Parliament by the Member for Maiwar**

1. Introduction and summary

1. These submissions are made in respect of the matter referred by the Speaker to the Ethics Committee (**the Committee**) under Standing Order 268(2), following the speaker's statement in Parliament on 26 March 2019¹ (**Speaker's Statement**), which raised the possibility that the Member for Maiwar, Mr Michael Berkman, may have committed a contempt of Parliament.
2. The Speaker's Statement was forwarded to the Committee on 4 April 2019, along with a Parliamentary Security and Attendant Services Incident Report (**Incident Report**), and a Facebook post of Mr Berkman.
3. Through a series of correspondence between the Committee and Mr Berkman, the Committee has sought to deny Mr Berkman any further hearing before the Committee in respect of the allegations of contempt. These submissions will address Mr Berkman's entitlement to be further heard before making submissions on the allegations of contempt.
4. In summary:
 - a. This committee has denied Mr Berkman procedural fairness by failing to provide him with an opportunity to be heard.
 - b. On the facts before the Committee, Mr Berkman's conduct cannot reasonably be described as "disorderly";
 - c. In any event, and more fundamentally, the facts before the Committee do not rationally permit the conclusion that Mr Berkman's conduct amounted to, or was intended or likely to amount to, any interference (let alone an improper one) with the free exercise by the Assembly of its authority or functions.
 - d. It follows that the Committee should withdraw its recommendation, consider the matter afresh and conclude that there has been no contempt.

2. Entitlement to be heard - SO 270

5. The relevant procedural requirements for the Committee under the Standing Orders (**SO**) are set out in SO 270:

¹ Queensland, *Parliamentary Debates*, Legislative Assembly, 26 March 2019, p605 (Curtis Pitt MP, Speaker).

270. Procedures of the ethics committee

(1) Where a matter is referred to it, the committee:

- (a) may summarily dispose of the matter if it believes it is trivial, technical or vexatious or does not warrant further attention by the committee; or
- (b) shall, if the matter is not disposed of under (a), request any person the subject of complaint in the matter to provide a written explanation of any allegations contained in the complaint; and
- (c) shall, if the person the subject of complaint disputes the allegation:
 - (i) give the person the opportunity to be heard; and
 - (ii) give any persons that the person nominates the opportunity to be heard; and
- (d) may obtain information from such other persons, and make such inquiries, as it thinks fit.

...

(6) The ethics committee must not, in any report, make a finding that is adverse to any person unless it has given the person:

- (a) full particulars of the complaint; and
- (b) the opportunity to be heard in relation to the complaint.

6. The Committee is required under SO 270(1)(b) to request a written explanation of any allegations and, as SO 270(1)(c)(i) makes clear, if the person disputes the allegation, they are required to be given the opportunity to be heard.
7. The sequence of events described in SO 270 is relatively straightforward and involves a number of discrete steps. First, the Committee decides whether to summarily dispose of the matter and, if it doesn't do so, it is required to request a written explanation. If the person disputes the allegation, SO 270(1)(c) requires that the person or their nominee be given the opportunity to be heard.
8. It is clear from the structure of the standing order that the written explanation and the opportunity to be heard are distinct and sequential, and each of these is a mandatory obligations on the Committee, as indicated by the word 'shall' in each of SO 270(1)(b) and (c). The written explanation, as required to be requested under SO 270(1)(b), is the first procedural opportunity for the person to dispute the allegation, and it is this disputation that triggers the obligation under SO270(1)(c). Additionally, the opportunity to be heard in relation to the disputed allegations extends to a nominee of the person, which reinforces that these are separate steps in the process.
9. Mr Kelly's letter of 26 April 2019 (**Committee's First Letter**) was the first correspondence between the Committee and Mr Berkman on this matter. The Committee's First Letter both invited Mr Berkman "to provide a submission which

specifically addresses the above elements of the contempt”, and stressed that “the committee has **not yet resolved to proceed to investigate this matter.**”²

10. While the Committee’s First Letter requested ‘a submission’, this can only be sensibly understood as a request under SO 270(1)(b) for a written explanation of any allegations contained in the complaint.
11. Mr Berkman’s letter of 10 May 2019 (**the First Reply**) reflected this, in that it predominantly provided additional factual information explaining the circumstances that led to the Speaker’s referral of the Matter to the Committee. Mr Berkman made clear in the First Reply that he disputes the allegations contained in the Committee’s First Letter, and his willingness and expectation to engage further with the Committee if it decided to pursue the process set out in SO 270.³ Beyond this point the Committee became obligated under SO 270(1)(c) and (6) to give Mr Berkman or his nominee the opportunity to be heard before making any adverse finding.
12. Mr Kelly’s letter of 25 October 2019 (**Committee’s Second Letter**) advised Mr Berkman of the Committee’s conclusion that he had in fact committed a contempt of Parliament. The Committee’s advice, and its purported decision, are premature. Under SO 270, the Committee is obligated to give Mr Berkman the opportunity to be heard, subsequent to his First Reply, in which he first disputed the allegations, and before making any adverse finding.
13. The Committee’s Second Letter invited Mr Berkman “to provide a final submission in relation to penalty in the matter of disorderly conduct on the parliamentary precinct”, rather than the required opportunity to be heard on the allegations more generally. The limited nature of this invitation was reinforced by Mr Kelly in his letter dated 1 November 2019 (**Committee’s Third Letter**), which states:

“There is no Standing Order which requires the committee to extend an invitation to a member to make a submission on penalty. This has been provided in the interests of affording additional procedural fairness”.

² Emphasis from Committee’s First Letter.

³ Mr Berkman’s First Reply states:

In short, I believe the facts and circumstances clearly don’t support either one of the elements of contempt. With all due respect to the Speaker, the Committee, the parliamentary staff involved and the process with which I’m now engaged, in light of all the circumstances, I submit to the Committee that this matter is a triviality that should be summarily disposed of under standing order 270(1)(a). While I don’t believe this issue warrants the investment of any more of the Committee’s time or effort, I’m happy to assist should you decide to take it further. Please don’t hesitate to contact me or my office if you do.

14. The Committee has clearly not given Mr Berkman the opportunity to be heard, as it is required to do under SO 270. The submissions below are made pursuant to this entitlement.

3. Submissions on Contempt

15. The Committee's First Letter, in inviting Mr Berkman to make submissions on the allegation of contempt, states:

"The elements to establish this contempt are as follows:

- i. Did the member engage in disorderly conduct on the parliamentary precinct?
- ii. Did the conduct amount to, or was intended to amount to, an improper interference with the free exercise by the Assembly of its authority or functions?"

16. This statement is an ill-defined amalgam of select parts of s37 of the *Parliament of Queensland Act 2001*⁴ (POQA) and an earlier ruling of the Members' Ethics and Parliamentary Privileges Committee, specifically "A Report on a Matter of Privilege - Matter Concerning the Disorderly Conduct by Members of Parliament Within the Parliamentary Precinct"⁵ (Ethics Committee Report 41), which is considered in more detail below.

17. The Committee's Second Letter sets out the following findings (the Committee's Findings):

"Having received all of the material before it, the committee has concluded that [Mr Berkman] committed a contempt of Parliament by engaging in disorderly conduct on the parliamentary precinct on 15 March 2019 by:

- accessing the Porte Cochere and waving at the crowd; and
- displaying a political banner, sign or other thing associated with a political campaign."

Legislative Context

18. The POQA sets out at s37 the elements of contempt of the Assembly as follows:

⁴ Available online at <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2001-081>

⁵ Available online at:

<https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2000/4900T3892.pdf>

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.

19. The notes to s37 of the POQA, along with SO 266, set out a number of examples of contempt, none of which is pertinent or analogous to the conduct alleged to be the basis of contempt in this instance.

3.1. Element one - Did the member engage in disorderly conduct on the parliamentary precinct?

20. As is noted in the Speakers Statement, s13 of the *Parliamentary Service By-law 2013 (By-law)*, made under s50 of the *Parliamentary Service Act 1988 (PSA)*, prohibits certain conduct in the parliamentary precinct:

13 Other prohibited conduct or behaviour

- (1) A person on the parliamentary precinct must not engage in behaviour or conduct that constitutes, or is likely to constitute—
 - (a) intimidation or harassment of a member of the Legislative Assembly or another person on the precinct; or
 - (b) a danger to a person on the precinct; or
 - (c) a disruption of the proceedings of the Legislative Assembly or any of its committees.
- (2) Also, a person on the parliamentary precinct must not, without the permission of the Speaker or an authorised officer, display a banner, sign or other thing that is, or contains matter, associated with a political cause or campaign.
- (3) In this section—

display includes display on an item of clothing in a conspicuous way.

21. Importantly, the Speaker's statement notes that under s50(7) of the PSA, the By-law does not apply to members of the Legislative Assembly in the conduct of their parliamentary business and, as a consequence, any allegation that conduct is contemptuous cannot be dealt with under the By-law.

Ethics Committee Report 41

22. The Speaker's Statement referred to the following single passage from Ethics Committee Report 41, which is relied on to establish the principle that disorderly conduct may be the basis of a finding of contempt:

"There is no doubt that it is a contempt of Parliament for members or strangers to involve themselves in disorderly conduct on the parliamentary precinct".

23. Rather than simply adopting and applying this as a general principle, the Committee must consider the facts and circumstances in the present matter in relation to those that were the basis for considering the Members' conduct disorderly, and thereby contemptuous, in the case of Ethics Committee Report 41.

24. Some of the most pertinent observations about the conduct of the relevant Members and findings outlined in Ethics Committee Report 41 include:

- a. The Members found to have committed contempt "carried a milk can onto the parliamentary precincts and emptied its contents outside the front entrance of Parliament House under the Porte Cochere."
- b. This incident occurred on a Parliamentary sitting day.
- c. The Committee "viewed film footage taken of the incident which gives the appearance of the incident [the milk can being emptied under the Port Cochere] being staged for the benefit of cameras." That is, the Committee rejected the Members' justification for tipping out the milk and found that it was a deliberate act.
- d. The Committee noted that "had a member of the public committed the actions taken by the members for Tablelands and Barambah they would most probably have been arrested by police and perhaps charged with an offence. **It is vital that this House take strong action against its own members in circumstances where members of the public would have also been severely dealt with.**"⁶
- e. The Committee also observed: "Parliament House has a unique place in the history of this State and is one of our most significant and historic public buildings. What message does the defilement of Parliament House by members of the House send to the young people of our State?"

25. Mr Berkman's conduct and the circumstances, as described in the Speaker's Statement, the Parliamentary Incident Report and Mr Berkman's First Reply, bear no

⁶ Emphasis original.

resemblance or even a remote equivalence to the conduct of the Members whose conduct was found to be contemptuous on the basis that it was disorderly.

26. By contrast, as set out in the factual material before the Committee:

- a. Mr Berkman entered the precinct for entirely innocuous reasons,⁷ with his two small children (one of whom was carrying the Greens triangle), and was initially waylaid to assist the Clerk of the Parliament, the First Clerk Assistant and Parliamentary security staff, each of whom are authorised officers empowered under the By-law to either remove or give permission to display a banner, sign or other thing that is, or contains matter, associated with a political cause or campaign.⁸
- b. The allegedly disorderly conduct took place on a non-sitting day. No other member was present in the vicinity of the conduct at the time.
- c. Committee's Findings rely only on conduct described as "accessing the Porte Cochere and waving at the crowd; and displaying a political banner, sign or other thing associated with a political campaign."
- d. Had a member of the public taken the actions described in the Committee's Findings, in which case the By-law would apply, **there is no prescribed penalty or consequence**. This is the case notwithstanding that s50(2A) of the PSA provides that the By-law can prescribe penalties of up to ten penalty units.
- e. The conduct did nothing to defile Parliament House or send a message of disrespect or indifference to the young people of our state, and particularly those present at the rally outside parliament. On the contrary, Mr Berkman's actions immediately prior to the allegedly disorderly conduct were to assist the Parliamentary staff to ensure there was no damage to the precinct or injury to the attendees of the rally.

27. While the Ethics Committee Report 41 gives no useful guidance on what it means by disorderly conduct, the Macquarie dictionary defines disorderly as:

adjective

1. characterised by disorder; irregular; untidy; confused.
2. unruly; turbulent; tumultuous.

⁷ Mr Berkman's First Reply states:

"The Committee may be aware that there was a huge turnout at the the School Strike for Climate Action, with attendance estimates of 3,000 to 5,000 people. I attended not only so my children could take part but also to support everyone who participated and made the following policy demands that align with Greens policy:

1. Stop the Adani coal mine;
2. No new coal, oil and gas projects; and
3. 100% renewable energy by 2030.

I decided to take the opportunity to go to the Level B balcony, both to show my children the scale of the crowd and to take some photos and video footage of what was, by any measure, a very impressive turnout."

⁸ *Parliamentary Service By-law 2013*, ss9 and 13.

3. Law violating, or opposed to, constituted order; contrary to public order or morality.
28. The conduct in question – i.e. a member of Parliament accessing the Porte Cochere and waving at a crowd, accompanied by a small child holding a small sign associated with a political campaign – cannot, when considered in all the circumstances be considered disorderly.
29. In short, there is no basis to conclude that Mr Berkman’s conduct was disorderly within the normal meaning of the word. Mr Berkman’s conduct bears no resemblance to the conduct that is the only apparent example of the Legislative Assembly previously finding contempt of Parliament on the basis of disorderly conduct on the Parliamentary precinct, and any conduct not consistent with the inapplicable By-law appears to be nothing more than an inadvertence.
30. No reasonable observer would consider the conduct outlined in the Committee’s Findings to have been disorderly, and the first element is not supported by the evidence.
- 3.2. Element two - Did the conduct amount to, or was intended to amount to, an improper interference with the free exercise by the Assembly of its authority or functions?**
31. Even if the first element of contempt is satisfied (which is disputed), there can be no contempt unless the allegedly contemptuous conduct amounts, or is intended or likely to amount, to **an improper interference with the free exercise by the Assembly of its authority or functions.**
32. It is inconceivable that any interference with the free exercise by the Assembly of its authority or functions could have occurred by this conduct at all, and certainly not on a non-sitting day, and in circumstances remote from the exercise of any authority or functions by the Assembly.
33. There is no connection at all between the impugned conduct and the exercise by the Assembly of its authority or functions, leaving no possibility of any improper interference.
34. The committee ought ask itself the question “in what way did Mr Berkman’s conduct interfere with the free exercise of any authority or functions of the assembly?”. The only rational answer is that it did not. The inability to articulate any way in which it could or did is a complete answer to this question.

35. Additionally, research provided by the Parliamentary Library (attached to this submission) referring to the Standing Orders, previous Speaker's rulings, Ethics Committee Reports, reported judicial decisions and publications on general parliamentary procedure from other jurisdictions does not support the finding that the allegedly disorderly conduct constitutes interference with the free exercise by the Assembly of its authority or functions.
36. There is literally not a single example in this or any equivalent legislature of conduct of this kind being found to be a contempt.
37. I draw the Committee's attention to the following passage from a 1998 report of the Members' Ethics and Parliamentary Privileges Committee, which instructive in terms of the importance of establishing this second element.

"Of course, the list above is not exhaustive and a contempt may be found even where there is no precedent. However, in past inquiries the committee has accepted that in order to establish a contempt it must be demonstrated that the performance of the functions of the Legislative Assembly, a committee or a member was, was likely to be, or was intended to be obstructed or impeded. **This is a vital element.** If this element is not established as a precedent for finding a contempt, then the power of adjudging contempt could become despotic".⁹

38. A finding that the second element is satisfied in the circumstances of this matter would realise the kind of decision-making warned against in this passage. It would risk the perception that the Ethics Committee, whose power in Queensland's unicameral Parliament is well recognised, is prepared to find a contempt when its factual holdings cannot permit that conclusion. This risk extends well beyond members of Parliament, to any Queensland residents interested and willing to engage with the Queensland Parliament, and such a finding would be to the detriment of Queenslanders' faith in the institution of Parliament.

4. Submissions on penalty

39. As the above submissions make clear, there should not have been a finding of contempt without an opportunity for Mr Berkman to be heard. Accordingly, there is no warrant for Mr Berkman to make submissions as to penalty.

⁹ Queensland. Members' Ethics and Parliamentary Privileges Committee, [*Report on a Matter of Privilege: Alleged Contempt by the Attorney-General for failing to resign his ministerial office following a vote of no confidence in him by the Legislative Assembly—Matter referred to the Committee on 2 September 1997*](#), Report No 15, 8 April 1998

40. Further, these submissions make it plain that under the test that the committee has itself set, the facts as found by the committee are rationally incapable of satisfying it. It follows that there has been no contempt and that there should be no penalty.

A handwritten signature in blue ink, consisting of three vertical strokes followed by a horizontal line extending to the right.

Saul Holt QC

Counsel for Michael Berkman MP

7 November 2019



Research Brief

Research and Information Service

For Mr Michael Berkman MP

Request Contempt of Parliament

Date 5 November 2019

Thank you for your request for information as set out in your email:

I have an urgent research request in relation to s37(2) of the Parliament of Queensland Act - the elements of contempt of Parliament.

Specifically, I need help to find any relevant caselaw or committee decisions that provide guidance on what kind of conduct amounts to an improper interference with the free exercise by the Assembly or a committee of its authority or functions. Any examples of where conduct has been found to do so would be very helpful, in addition to the reasoning or principles applied in determining that the conduct amounts to an improper interference. I'm particularly interested in conduct that interferes with the exercise by the Assembly of its authority or functions, but any relevant precedent in relation to the Committees may be helpful.

I'm aware of the earlier ruling of the Members' Ethics and Parliamentary Privileges Committee – Report No 41 "A Report on a Matter of Privilege - Matter Concerning the Disorderly Conduct by Members of Parliament Within the Parliamentary Precinct", and do not require any further consideration of this report.

Additionally, and particularly if there is limited relevant material in response to the above question, can you please provide any relevant legislation or caselaw on what falls within the definition of the Authority or functions of the Assembly. I understand, in broad terms, that these are set out in the Parliament of Qld Act (noting s9 of the Constitution of Queensland 2001) but, as above, any specific case law or committee consideration around this point would be most helpful.

Prepared at client request. The responsibility for the use of the contents of this report or its further distribution either in whole or part lies with the Member. This paper has been prepared to support the work of the Queensland Parliament using information publicly available at the time of production. The views expressed do not reflect an official position of the Queensland Parliamentary Library, nor do they constitute professional legal opinion.

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Legislation

Section 37 of the [Parliament of Queensland Act 2001 \(Qld\)](#) (POQA) provides:

- (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.*

Examples of contempt—

- 1. assaulting, obstructing or insulting a member—*
 - (a) in the member's coming to or going from the Assembly or a meeting of a committee; or*
 - (b) anywhere else because of the member's performance of his or her parliamentary duties*
- 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*
- 3. sending a threat to a member because of the member's performance of his or her parliamentary duties*
- 4. sending a challenge to fight a member*
- 5. the offering of a bribe to or attempting to bribe a member*
- 6. creating or joining in any disturbance in the Assembly or before a committee or in the Assembly's or a committee's vicinity while it is sitting that may interrupt its proceedings*
- 7. contravention of section 29(1), 30(1) or (4), 31(3), 32(2) or (6), 33(2) or (8) or 69B(1), (2) or (4)*
- 8. preventing or attempting to prevent a person from complying with section 29(1), 30(1) or (4), 31(3), 32(2) or (6), 33(2) or (8) or 69B(1), (2) or (4)*
- 9. improperly influencing, or attempting to improperly influence, a person, in relation to any evidence to be given by the person to the Assembly or a committee*
- 10. treating a person adversely and without lawful authority, or attempting to do so, because of evidence given by the person to the Assembly or a committee or because of a belief or suspicion about that evidence.*

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Queensland

Information about what constitutes improper interference with the free exercise of authority or functions by the Queensland Legislative Assembly or a committee is set out below.

Parliamentary Procedures Handbook

According to the Parliamentary Procedures Handbook:

Every breach of privilege is, strictly speaking, a contempt of Parliament - although many such breaches are not reported to or actioned by the House. However, the term "contempt of Parliament" is much wider because it includes any offence against the dignity of the House or interference with its process where no established privilege has previously existed.

Whilst the very nature of the offence of contempt means that all contempts may not be definitively listed, matters found by the House of Commons to be a contempt include:

- *Misconduct in the presence of the House or its committees;*
- *Interrupting or disturbing the proceedings of the House or a committee;*
- *A witness persistently misleading a committee;*
- *Acting in a riotous, tumultuous or disorderly manner in order to hinder or promote legislation;*
- *Disobedience to rules or orders of the House or committees (including refusal to attend as a witness, be sworn, answer questions or produce evidence);*
- *Destruction of evidence;*
- *Refusing an order to withdraw from the House;*
- *Presenting a forged or falsified document to the House or a committee;*
- *Abusing the right to petition by submitting a petition which contains false, scandalous or groundless allegations or inducing persons by fraud to sign a petition;*
- *Deliberately misleading the House;*
- *Corruption by offering bribes to Members, and Members by receiving bribes;*
- *Advocacy by Members of matters in which they have been concerned in a professional manner for a fee;*
- *The acceptance of a fee by Members for services connected with their parliamentary duties;*
- *Wilful misrepresentation of debates;*
- *Premature disclosure of committee proceedings or evidence;*

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- *Other indignities such as fighting in the lobby, using the badge of the House on an unofficial publication, and serving a writ on a Member in the precincts without the leave of the Speaker;*
- *Obstructing Members in the discharge of their duties;*
- *Molesting or insulting Members attending, coming to, or going from the House;*
- *Attempted or actual intimidation of Members, including publishing threatening posters regarding Members voting in a forthcoming debate;*
- *Molesting Members on account of their conduct in Parliament, for example by inciting newspaper readers to telephone a Member to complain of a question a Member had tabled;*
- *Obstructing officers of the House while in the execution of their duty; and*
- *Obstructing witnesses or punishing witnesses for evidence given by them to a committee.*

Standing Orders

The [Standing Rules and Orders](#) of the Queensland Legislative Assembly provide the following guidance:¹

266. Examples of contempt

Without limiting the power of the House, it may treat as a contempt any of the following:

- (1) breaching or interfering with any of the powers, rights and immunities of the House;*
- (2) deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) (See also s.57 Criminal Code);*
- (3) serving legal process or causing legal process to be served within the precincts of Parliament, without the authority of the House or the Speaker;*
- (4) removing, without authority, any documents or records belonging to the House;*
- (5) falsifying or altering any documents or records belonging to the House;*
- (6) as a member, receiving or soliciting a bribe to influence the member's conduct in respect of proceedings in the House or a committee;*
- (7) as a member, accepting fees for professional services rendered by the member in connection with proceedings in the House or a committee;*

¹ Legislative Assembly of Queensland, [Standing Rules and Orders of the Legislative Assembly](#), Chapter 43, Standing Order 266, (accessed on 5 November 2019) (as amended at 14 June 2019).

(8) offering or attempting to bribe a member to influence the member's conduct in respect of proceedings in the House or a committee (see also Example 5 s.37 Parliament of Queensland Act and ss.59 and 60 Criminal Code);

(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 (see also Example 2 s.37 Parliament of Queensland Act);

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

(11) misconducting oneself in the presence of the House or a committee;

(12) divulging the proceedings or the report of a committee or a subcommittee contrary to Standing Orders;

(13) publishing a false or misleading account of proceedings before the House or a committee;

(14) failing to attend before the House or a committee after being summoned to do so by the House or the committee;

(15) intimidating, preventing or hindering a witness from giving evidence or giving evidence in full to the House or a committee (see also Example 9 s.37 Parliament of Queensland Act);

(16) refusing to answer a question or provide information required by the House or a committee except as permitted by the House's rules or statute;

(17) assaulting, threatening or disadvantaging a member on account of the member's conduct in the House or a committee (see also Example 2 s.37 Parliament of Queensland Act);

(18) assaulting, threatening or disadvantaging a person on account of evidence given by that person to the House or a committee (see also Examples 9 and 10 s.37 Parliament of Queensland Act);

(19) assaulting, obstructing or insulting a member coming to or going from the House or a committee proceeding (see also Example 1 s.37 Parliament of Queensland Act);

(20) sending to a member a threatening letter on account of the member's conduct in the House or a committee (see also Examples 2 and 4 s.37 Parliament of Queensland Act);

(21) sending a challenge to fight a member (see also Example 4 s.37 Parliament of Queensland Act);

(22) wilfully disobeying an order of the House or disrupting the orderly conduct of the business of the House or a committee;

(23) except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general;

(24) contravening the requirements and orders imposed by operation of the Parliament of Queensland Act (see also Examples 7 and 8 s.37 Parliament of Queensland Act and s.58 Criminal Code);

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(25) a member or officer involving themselves in planning or executing a disruption of a proceeding of the Legislative Assembly or its committee; and (For the purpose of (25), "officer" includes Parliamentary Service or Ministerial Service officers or any other permanent parliamentary precinct pass holder with privileged access to the precinct)

(26) making public statements (either orally or in writing) inciting or encouraging disruption of the Legislative Assembly by bringing the proper proceedings of the Legislative Assembly or its committees into disrepute.

Speaker's rulings

The following Speaker's rulings relate to contempt of Parliament:

- F Simpson, '[Speaker's statements: Matters of Privilege](#)', Queensland, *Debates*, 11 September 2012, p 1768:

Honourable members, in recent weeks I have received a large number of complaints of matters of privilege or contempt. I have come to the conclusion that I need to remind all honourable members that the privileges of this Assembly are very important and the processes set in place by standing orders and the Code of Ethical Standards should not be misused for base political reasons or trivialised by making tenuous, trivial or unsubstantiated complaints.

Standing orders and the practice of the Assembly require me to determine if matters of privilege or contempt that are raised with me are worthy of further consideration by the Ethics Committee. I make it very clear that I need to be assured of a number of matters from the information forwarded by a complainant before I will refer a matter to the Ethics Committee.

Firstly, I need to be assured that the complaint relates to a matter of privilege or contempt; that is, it is not something esoteric or unrelated to the proceedings of the Assembly. It must be clearly demonstrated to be a breach of the powers, rights or immunities of the Assembly, its members or committees. Conduct, including words, is not contempt of the Assembly unless it amounts or is intended or is likely to amount to an improper interference with the function or authority of the Assembly or a committee or the free performance by a member of the member's duties. I refer to section 37 of the Parliament of Queensland Act 2001.

Secondly, I need to be assured that there has been no unreasonable delay in forwarding the matter. I refer to standing order 269(2). Thirdly, where a known contempt such as deliberately misleading the House is alleged, the complaint must provide evidence of each element required for a breach of privilege or contempt. For example, it is not sufficient to say that the statement is misleading; there needs to be evidence that it was deliberately misleading.

Fourthly, I must be convinced that the matter has a degree of importance and is not technical or trivial and is deserving of further consideration by the committee and the House. I refer to standing order 269(4). Lastly, I can take into account whether or not there has been an adequate apology, explanation or correction made in respect of the matter. I refer to standing order 269(4).

It is important to note that it is up to the complainant to justify the referral in their complaint. It would be rare for me to write back to the complainant seeking further information, even though I am entitled to by standing orders. I refer to standing order

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269(5). I am entitled to write to the person the subject of the complaint to seek their explanation or views on a matter of privilege or contempt raised with me; however, I will generally only do this if there appears to be some evidence of a breach of privilege or contempt on the face of the complaint. I will generally not write to the person against whom a complaint has been made where I am not satisfied by the material before me of the matters above.

With all of the above in mind, I now wish to deal with a number of complaints that have been forwarded to me in recent times.

- F Simpson, '[Privilege: Alleged Contempt of Parliament by the Premier](#)', Queensland, *Debates*, 20 March 2013, p 754:

Honourable members, on 12 March 2013 the Leader of the Opposition wrote to me alleging that the Premier had attempted to interfere with the deliberations of the Parliamentary Crime and Misconduct Committee. The Leader of the Opposition claims that the Premier has committed a contempt by prejudging issues that are currently the subject of that committee's inquiry and attempting to threaten the current members of the PCMC and to unduly influence their conduct in relation to that current inquiry. Under standing order 268(1) a committee of the House may report that a matter involving its proceedings has arisen and recommend that the matter be referred to the Ethics Committee, in which case the matter stands referred to the Ethics Committee. Accordingly, the standing rules and orders of this House contemplate that a committee will refer any alleged contempt or breach of privilege that relates to its proceedings directly to the Ethics Committee. In other words, standing orders do not provide a role for the Speaker with respect to such an allegation whilst the committee is still in existence.

I note that the chairperson of the PCMC has, in a media release on 9 March and in her opening statements to the public hearing for this inquiry of 13 March 2013, referred to public speculation and commentary on the committee's proceedings. I understand from the chairperson's statements that the committee has resolved not to report on the comments referred to in the Leader of the Opposition's correspondence and refer the matter to the Ethics Committee. I also note that in the chairperson's statement of 13 March she makes the committee's position clear when she says '... any improper interference with the free exercise by this committee of its authority or functions will in future, be actioned'. Accordingly, I will not be referring the matter to the Ethics Committee. I table the correspondence from the Leader of the Opposition in this matter.

Tabled paper: Letter, dated 12 March 2013, from the Leader of the Opposition, Ms Anastacia Palaszczuk MP, to the Speaker, Hon. Fiona Simpson, regarding alleged contempt of interference with the Parliamentary Crime and Misconduct Committee [2294].

- F Simpson, '[Speaker's statements: Alleged Unauthorised Release of Committee Proceedings](#)', Queensland, *Debates*, 6 May 2014, pp 1154-5:

Honourable members, I advise that I received a complaint from the member for Mulgrave about the alleged unauthorised release of material from the Committee of the Legislative Assembly. In accordance with established procedures, a complaint about the unauthorised release of material from a committee should be referred back to the relevant committee for the committee to determine whether the disclosure is significant enough to justify further inquiry.

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Given this process, I will refer this matter to the Committee of the Legislative Assembly. I have circulated in my name a statement explaining this process and seek leave for that statement to be incorporated into the Record of Proceedings.

Leave granted.

I advise that I received a complaint from the Member for Mulgrave about the alleged unauthorised release of material from the Committee of the Legislative Assembly.

Standing Orders 211 and 211A deal with the unauthorised release of information about committee proceedings. These Standing Orders were significantly changed as part of the overall change to the Committee system in 2011. The predecessor of these standing orders was SO 197.

Members' Ethics and Parliamentary Privileges Committee Report 42—the Unauthorised Release of Correspondence between a Committee and Ministers is the leading source of parliamentary procedure on the topic.

That report recommended that the Legislative Assembly affirm the following as being the appropriate procedure upon an unauthorised disclosure of a committee's proceedings:

- 1. The committee concerned should seek to identify all possible sources of the disclosure.*
- 2. The committee concerned should decide whether the disclosure is significant enough to justify further inquiry.*
- 3. If the committee concerned considers that further inquiry is warranted, the Chair of the committee concerned should then write to all persons who had access to the proceedings. The Chair's letter should request an indication from each person as to whether the person was responsible for the disclosure or if they are able to provide any information that could be of assistance in determining the source of the disclosure.*
- 4. If the source of the disclosure is identified, the committee concerned should then decide whether to report accordingly to the Legislative Assembly.*
- 5. If the source of the disclosure has not been identified, the committee concerned should consider whether the matter merits further formal investigation by the MEPPC.*
- 6. In considering (4) and (5) above, the committee concerned should take the matters below into account and balance the worth of further inquiry.*
 - (a) How serious was the disclosure and is there a public interest in pursuing the matter? (Was the disclosure a substantial interference, or the likelihood of such, with the work of the committee, with the committee system or the functions of the Legislative Assembly?)*
 - (b) If the source of the disclosure has been discovered, was the breach inadvertent or deliberate, mischievous or benign?*
 - (c) If the source of the disclosure has not been discovered, what is the likelihood of discovering the source of the disclosure? (How many people had access to the proceedings? Were the proceedings in the possession of persons outside Parliament, such as public officers?)*

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(d) Is the disclosure an isolated occurrence, or is it one instance of a larger problem? Has there been a pattern of such disclosures?

(e) What is the likelihood of a disclosure reoccurring?

7. If the committee concerned comes to the conclusion that the matter merits further investigation by the MEPPC, the committee concerned should write to the Speaker accordingly detailing the action it has taken in respect of the above steps.

On 16 April 2002 the Committee's recommendations were adopted by the Assembly.

Even though the scope of SO 211A is different to former SO 197, the principles and procedure remain.

Ethics Committee

In the time available, the Parliamentary Library conducted a search of the current and past inquiries of the [Ethics Committee](#) (dating back to 1996).

The following reports make reference to conduct amounting to an improper interference with the free exercise by the Assembly or a committee of its authority or functions, including but not limited to:

- what conduct might amount to improper interference
- reasoning or principles applied in determining if conduct was improper interference.

Please note that this list is not exhaustive, and includes some reports in which a finding of contempt was not made.

Queensland. Members' Ethics and Parliamentary Privileges Committee, [Report on a matter of privilege: Matter referred to the committee on 22 September 1997](#), Report No 13, 22 September 1997, p 13.

- addressed the question of whether Mr Beattie MP committed a contempt by misleading the House (it was found he had not)
- included the following:

There is no standing order, rule of the House or statute dealing with deliberately misleading the House. Therefore, recourse must be had to the precedents set by the House of Commons.

Erskine May (at page 119) under the general heading of Contempt—Misconduct of Members or Officers, provides that:

The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963 the House resolved that in making a personal statement which contained words which he later admitted not to be true, a Former Member had been guilty of a grave contempt.

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David McGee in his book *Parliamentary Practice in New Zealand* (at pages 447-448) states that there are two elements to be established where it is alleged that a member has committed the contempt of deliberately misleading the House:

- firstly, the statement must, in fact, have been misleading; and
- secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect and that, in making it, the member intended to mislead the House.

McGee also notes that the standard of proof demanded is a civil standard of proof on a balance of probabilities but requiring proof of a very high order having regard to the serious nature of the allegations.

McGee points out that recklessness, whilst reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.

McGee also states (at page 448) that:

The misleading of the House must not be concerned with a matter of little or no consequence such that it is too trivial to warrant the House dealing with it. Misunderstandings of this nature should be cleared up on a point of order.

The standard of proof on the balance of probabilities simply means that the tribunal must be satisfied that it is more probable than not that the defendant committed the act or omission alleged. It has also been expressed as the "preponderance of probabilities".

*McGee's statement that to succeed in establishing such a contempt a very high order of proof is required is 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 cautious and responsible tribunal will naturally vary in accordance with the seriousness and importance of the issue.

In summary, the more serious the consequences, the higher the standard of proof required. There are few contempts as serious as deliberately misleading the House.

Queensland. Members' Ethics and Parliamentary Privileges Committee, [Report on a Matter of Privilege: Alleged Contempt by the Attorney-General for failing to resign his ministerial office following a vote of no confidence in him by the Legislative Assembly—Matter referred to the Committee on 2 September 1997](#), Report No 15, 8 April 1998

- Mr Beanland MP was found to not be in contempt after he refused to resign as Attorney-General, following a vote of no confidence (please note there was also a dissenting committee opinion which found that he was in contempt)
- Including the following conclusion:

Of course, the list above is not exhaustive and a contempt may be found even where there is no precedent. However, in past inquiries the committee has accepted that in order to establish a contempt it must be demonstrated that the performance of the functions of the Legislative Assembly, a committee or a member was, was likely to be, or was intended to be

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obstructed or impeded. This is a vital element. If this element is not established as a precedent for finding a contempt, then the power of adjudging contempt could become despotic.

...

The advice from Professor Carney had this to say on the matter:

As previously observed, a matter of privilege is raised only if the conduct of the Attorney violates an immunity or power of the House or otherwise constitutes contempt of the House. In this case, there is no immunity of the House adversely affected by the Attorney's refusal to resign. Nor in the light of the discussion of issues (1) and (2), is there any power of the House adversely affected. The only basis on which the Attorney's refusal to resign from the ministry might raise a matter of privilege is if that refusal constitutes contempt of the House. That will be the case only if the Attorney's refusal to resign has obstructed or impeded the House in the performance of its functions.

It should be noted that if it were argued that the Attorney's refusal to resign constitutes an affront to the dignity of the House, this alone would not necessarily constitute contempt of the House. An affront to the dignity of the House is not a separate ground of contempt - the conduct concerned must still satisfy the definition of contempt.

Apart from the specific concerns raised by Mr Foley in issues (1) and (2) which are insufficient to ground contempt, there is no other evidence to support any finding of contempt of the House. The Legislative Assembly is not obstructed or impeded, directly or indirectly, in the performance of its functions by the refusal of a minister to resign after the passing of a no confidence motion. This conclusion is reinforced by the very nature of a no confidence motion passed by a lower House against a minister.

Queensland. Members' Ethics and Parliamentary Privileges Committee, [Report on a matter of privilege – alleged obstruction of a Parliamentary Committee's inquiry by officers of a government owned corporation](#), Report No 39, December 1999, p 3.

- related to an allegation that employees of Queensland Rail had deliberately misled or withheld evidence from the Travelsafe Committee (allegation was not substantiated)
- including the following:

In summary, to constitute a contempt the behaviour complained of must obstruct or impede, or have a tendency directly or indirectly to obstruct or impede, the House (including a committee of the House) in the performance of its functions.

The withholding of evidence, or deliberately delaying the provision of evidence, to a parliamentary committee could severely impede the committee in its inquiry, and consequently the House in the performance of its functions, and thus satisfies the essential element of contempt.

Similarly, the threat of punitive action against a person who provides evidence to a committee (a witness) has a tendency to obstruct or impede the committee in its inquiry,

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and consequently the House in the performance of its functions (by deterring persons from providing evidence) and thus also satisfies the essential element of contempt.

Queensland. Integrity, Ethics and Parliamentary Privileges Committee, [*Matter of Privilege referred by the Speaker on 11 June 2010 relating to the discharge of a Member from a Parliamentary Committee*](#), Report No 110, September 2010.

- provided guidance in relation to what might constitute ‘improper interference’ under s 37 of the POQA:

41. The Speaker in his ruling on 11 June 2010, states that whilst:

[the actions of the Leader of the Opposition] certainly affected the member in his role and duties as a member ...

...

Whether the Leader of the Opposition’s actions were improper or not I think involves complex questions and issues that deserve full consideration and which should be investigated and considered by the Integrity, Ethics and Parliamentary Privileges Committee in detail given the significance of the issues both now and into the future.

The test for ‘improper’

42. In order to define ‘improper’, we first look to the relevant Act pursuant to s. 32 of the Acts Interpretation Act 1954 (AIA). There is no definition of ‘improper’ or ‘improper conduct’ in the Standing Orders or Parliament of Queensland Act 2001.

43. Pursuant to s. 14B of the AIA, in the absence of an express definition, the ordinary meaning is to be preferred and the use of extrinsic materials is permitted in relation to words that may be ambiguous.

44. The Butterworth’s Legal Dictionary defines ‘Improper Conduct’ as:

Behaviour which in all the circumstances of a case is an inappropriate or incorrect way of discharging duties, obligations and responsibilities. Conduct may be improper regardless of whether it is conscious or unconscious. Improper conduct is a breach of the standards of behaviour which would be expected of a person by reasonable people with knowledge of that person’s duties, powers and authority and the circumstances of the case: R v Byrnes (1995) 125 183 CLR 501; 130 ALR 529. The term ‘improper’ is not a term of art, but simply refers to conduct which is inconsistent with the proper discharge of the person’s duties, obligations, and responsibilities: Willers v R (1995) 125 FLR 22 at 225; Corporations Law (repealed) s 229; Southern Resources Ltd v Residues Treatment & Trading Co Ltd (1990) 56 SASR 455.

45. Applying the terms of the dictionary definition of improper conduct the test is whether the actions of the Leader of the Opposition were an inappropriate or incorrect way of discharging his right to nominate that Mr McLindon be discharged from the committee.

46. In order to assess whether the exercise of the rights of the Leader of the Opposition were inappropriate or incorrect, we can turn to the principles in the Code of Ethical Standards for Members for guidance.

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47. *The Code of Ethical Standards (the Code) states that members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of parliament and avoid any action which may diminish its standing authority or dignity.*

48. *In addition, the Code states that members are elected to act in the public interest and to make decisions solely in terms of the public interest.*

Queensland. Ethics Committee, [Matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged intimidation of a member by a legal firm](#), Report No 142, March 2014:

- related to correspondence from a law firm to the then Leader of the Opposition, who complained that the correspondence sought to intimidate or threaten her in her role as a member

- included the following conclusion:

37. *Having considered the material before it, the committee finds that a reasonable person, fully informed, could consider that Gilshenan & Luton's letter of 29 October 2012 was a threatening or intimidating letter on account of the Leader of the Opposition's conduct in the House.*

38. *The committee finds, however, that there is insufficient evidence before it to conclude that the words in Gilshenan & Luton's letter of 29 October 2012 amount to, or were intended to or likely to amount to, an improper interference of the Leader of the Opposition's duties as a member.*

39. *Accordingly, the committee recommends the House finds that Gilshenan & Luton are not guilty of a contempt.*

- included the following in relation to contempt:

12. *To attempt to intimidate a member in his or her parliamentary conduct by threats of legal action has been held by the United Kingdom House of Commons and the Parliament of Victoria, Legislative Assembly Privileges Committee to be a contempt.*

13. *Erskine May in Parliamentary Practice states:*

Attempts by improper means to influence Members in their parliamentary conduct may be considered contempts. Conduct not amounting to a direct attempt improperly to influence Members in the discharge of their duties, but having a tendency to impair their independence in the future performance of their duties may be treated as a contempt.

14. *The Clerk of the Australian Senate has previously advised the Senate Committee of Privileges that:*

[t]he taking or threatening of legal action can constitute a contempt of Parliament or a contempt of court if the effect or tendency is to interfere with the conduct of proceedings in Parliament or court proceedings.

15. *The former Select Committee of Privileges of the Queensland Parliament noted in its report on the alleged intimidation of a member that:*

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It is important to note that merely attempting to intimidate or threaten is of itself not necessarily a breach of privilege. The alleged threat or attempted intimidation are a contempt only if they constitute "improper means to influence Members in their parliamentary conduct".

Queensland. Ethics Committee, [*Inquiry into matter of privilege referred by the Parliamentary Crime and Corruption Committee on 17 August 2015 relating to alleged unauthorised disclosure of committee proceedings*](#), Report No 162, February 2016.

- Ann Leahy MP was found to be in contempt for making an unauthorised disclosure of committee documents
- found, in relation to what constitutes 'improper interference':

62. The committee then considered whether the interference amounted to an improper interference.

63. The committee noted that it was aware, through the course of its investigations that the inclusion of the Premier and her offices in the e-mail was not in line with the advice that the Member for Warrego had received from the Clerk in relation to the matter.

64. The Member for Warrego argued that she lacked confidence in the current PCCC, that it was dysfunctional and she was concerned that they may not have acted appropriately and that she may have faced further accusations in relation to having the documents in the safe, and therefore she alerted the Premier to the security breach.

65. The Member for Warrego also argued that any breach on her part was technical and not serious, and that if there was a breach it was innocent and benign.

66. There is no definition of 'improper' or 'improper conduct' in the Parliament of Queensland Act 2001 or the Standing Orders.

67. Pursuant to Section 148 of the Acts Interpretation Act 1954, in the absence of an express definition, the ordinary meaning is to be preferred and the use of extrinsic materials is permitted in relation to words that may be ambiguous.

68. In 2010, the Integrity, Ethics and Parliamentary Privilege Committee looked at this issue in its Report No. 110. That committee noted that Butterworth's Legal Dictionary defined 'improper conduct' as:

Behaviour which in all the circumstances of a case is an inappropriate or incorrect way of discharging duties, obligations and responsibilities. Conduct may be improper regardless of whether it is conscious or unconscious. Improper conduct is a breach of the standards of behaviour which would be expected of a person by reasonable people with knowledge of that person's duties, powers and authority and the circumstances of the case: R v Byrnes (1995) 125 183 CLR 501; 130 ALR 529. The term 'improper' is not a term of art, but simply refers to conduct which is inconsistent with the proper discharge of the person's duties, obligations, and responsibilities: Willers v R (1995) 125 FLR 22 at 225; Corporations Law (repealed) s 229; Southern Resources Ltd v Residues Treatment & Trading Co Ltd (1990) 56 SASR 455.

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69. The committee had regard to the above dictionary definition of 'improper', and considered that the test to be applied was whether a reasonable person with knowledge of the circumstances of the case would find the behaviour and actions of the Member for Warrego were inappropriate in discharging her duties, obligations and responsibilities.

70. The PCCC had not seen the correspondence from the Member for Warrego regarding the contents of her safe, and therefore the committee had not had the opportunity to consider the matter.

71. The committee considered that a reasonable person with knowledge of the members duties as a member of that committee and the circumstances of the case may expect that the matter be given due process in accordance with the orders of the House and procedures of the PCCC, rather than be shared with someone outside the PCCC at the same time the PCCC is made aware of the matter.

72. The committee therefore considered that the inclusion of the Premier's generic and electorate office email addresses amounted to an improper interference with the free exercise of the PCCC's authority and functions.

Queensland. Ethics Committee, [Matters of Privilege referred by the Speaker on 17 March 2016 relating to an alleged threatening and disadvantaging of a member and on 21 April 2016 relating to an alleged intimidation and threatening of a member and an alleged deliberate misleading of the House](#), Report No 167, May 2016:

- related to allegations that the Deputy Premier, Minister for Infrastructure, Local Government and Planning, Minister for Trade and Investment and Member for South Brisbane threatened and disadvantaged the Member for Cairns and the Minister for Housing and Public Works and Member for Springwood intimidated and threatened the Member for Cairns
- included the following conclusion:

On the information before the committee it considered that, in the absence of any evidence of a threat by the Member for South Brisbane, or any involvement by the Member for South Brisbane with the withdrawal of the speaking slot, that there was no evidence to support any of the elements of the alleged contempts against the Member for South Brisbane, and therefore this was not a matter that warranted further attention by the committee.

- included the following in relation to contempt:

24. David McGee in *Parliamentary Practice in New Zealand* states:

The House regards as most serious any improper attempt to prevent, dissuade or inhibit anyone (member, officer witness or petitioner) from participating fully in its proceedings.

...

Interferences or obstructions of members or officers may be overt or covert: consisting of an assault, a threat or other form of intimidation or otherwise of an obstructing or molesting of a member or officer.

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Conduct not amounting to a direct attempt to improperly influence Members in the discharge of their duties, but having a tendency to impair their independence in the future performance of their duties may be treated as a contempt. In any case, if the action occurs in the discharge of the member's or officer's duties, it may be treated as a contempt.

...

26. The Privileges Committee also stated that: *It is important to note that merely attempting to intimidate or threaten is of itself not necessarily a breach of privilege. The alleged threat or attempted intimidation are a contempt only if they constitute "improper means to influence Members in their parliamentary conduct".*

Queensland. Ethics Committee, [Matter of privilege referred by the Agriculture and Environment Committee on 20 April 2016 relating to an alleged unauthorised disclosure of committee proceedings and an alleged deliberate misleading of a committee](#), Report No 168, June 2016.

- found that Stephen Bennett MP was in contempt for making an unauthorised disclosure of committee proceedings, resulting in an improper interference with the committee's authority and functions
- included the following consideration of the meaning of 'improper':

40. *In its consideration of this element, the committee found that the unauthorised disclosure of a proceeding of the AEC was contrary to Standing Order 211, and therefore it would amount to an interference with the authority of the AEC.*

41. *However, the question before the committee was whether the unauthorised disclosure of committee proceedings amounted to an improper interference with the AEC's authority in the circumstances.*

42. *There is no definition of 'improper' or 'improper conduct' in the Parliament of Queensland Act 2001 or the Standing Orders.*

43. *Pursuant to Section 148 of the Acts Interpretation Act 1954, in the absence of an express definition, the ordinary meaning is to be preferred and the use of extrinsic materials is permitted in relation to words that may be ambiguous.*

44. *In 2010, the Integrity, Ethics and Parliamentary Privileges Committee (IEPPC) looked at this issue in its Report No. 110. In that report the IEPPC noted that Butterworth's Legal Dictionary defined 'improper conduct' as:*

Behaviour which in all the circumstances of a case is an inappropriate or incorrect way of discharging duties, obligations and responsibilities. Conduct may be improper regardless of whether it is conscious or unconscious. Improper conduct is a breach of the standards of behaviour which would be expected of a person by reasonable people with knowledge of that person's duties, powers and authority and the circumstances of the case: R v Byrnes (1995) 125 183 CLR 501; 130 ALR 529. The term 'improper' is not a term of art, but simply refers to conduct which is inconsistent with the proper discharge of the person's duties, obligations, and responsibilities: Willers v R (1995) 125 FLR 22 at 225; Corporations Law (repealed) s 229; Southern Resources Ltd v Residues Treatment & Trading Co Ltd (1990) 56 SASR 455.

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45. The committee had regard to the above dictionary definition of 'improper', and considered that the test to be applied was whether a reasonable person with knowledge of the circumstances of the case would find the behaviour and actions of Mr Bennett were inappropriate in discharging his duties, obligations and responsibilities.

46. The committee in considering this element also had regard to the Standing Orders as set down by the House to govern the conduct of business and proceedings in the House and, by extension, committees.

47. Standing Order 266(12) provides that an example of a contempt includes divulging the proceedings or the report of a committee or a subcommittee contrary to standing orders, with Standing Order 211 stating that the proceedings of a portfolio committee that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported those proceedings to the House or otherwise published the proceedings.

48. The committee also had regard to statements made by previous ethics committees, who have stressed that "any unauthorised disclosure of committee proceedings represents an attack on the integrity of the Parliament".

49. While the Member for Burnett argues that the document he emailed to the committee members and secretariat was part of a broader discussion and the final report may not have changed considerably, the committee considered that a reasonable person with knowledge of the Member for Burnett's duties, powers and authority and the circumstances of the case would expect that the Member for Burnett would keep the report confidential until published as required under Standing Order 211, and not share the draft recommendations with one particular stakeholder who had made a submission on the bill and appeared as a witness at the public hearing for comment, prior to the AEC reporting or publishing those proceedings.

50. By disclosing the Chair's draft report recommendations to the QRC without the AEC's authorisation and prior to the AEC reporting or publishing those proceedings, the committee considered that the Member for Burnett breached Standing Order 211, resulting in an improper interference with the authority and functions of the Assembly and/or the AEC.

Queensland. Ethics Committee, [Matter of Privilege referred by the Speaker on 15 November 2018 relating to an alleged contempt of Parliament](#), Report No 186, May 2019:

- related to email circulated to LNP members concerning the vote on the *Termination of Pregnancy Bill 2018 (Qld)* that was alleged to constitute a contempt (an attempt to intimidate LNP members of the Legislative Assembly) as well as to disadvantage those members because of their conduct in the House
- including the following conclusion:

51. The committee finds that Mr Patrick Collins did threaten LNP Members of the House in the email he sent to them on 16 October 2018; and that this behaviour constituted an attempt to improperly interfere with the freedom of members of the parliament to perform their duties. However, the committee considers the extenuating circumstances identified by Mr Collins, and his apology, as mitigating factors. The committee recommends no further action be taken.

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- included the following in relation to contempt:

11. In a 1993 Privileges Committee Report on a Matter of Privilege - Alleged intimidation of a Member, the committee noted that merely attempting to intimidate or threaten is of itself not necessarily a breach of privilege, that the threat or intimidation will only be contempt if it constitutes an improper means to influence members in their parliamentary conduct.

12. In addition, Erskine May states:

Conduct not amounting to a direct attempt improperly to influence a Member in the discharge of their duties but having a tendency to impair their independence in the future performance of their duty may be treated as a contempt.

13. McGee notes, however, 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 exaggerated nature that it goes beyond an attempt to influence the members and becomes an attempt to intimidate.

14. The former Select Committee of Privileges of the Queensland Parliament noted, in its report on the alleged intimidation of a member, that the tendency to impair independence referred to in Erskine May "is not to be merely coincidental. It must be precisely what the person accused of contempt intended by their conduct."

Reported decisions

No decisions in relation to s 37(2)(a) were located in the following databases:

- Queensland CaseLaw
- Austlii
- LawCite

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General parliamentary procedure

In the time available we have set out below some general information about contempt that consists of improper interference with the free exercise of a Parliament or a committee (in the Westminster system).

Erskine May

In relation to parliamentary privilege generally, Erskine May states:²

Parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute.

Certain rights and immunities such as freedom from arrest or freedom of speech are exercised primarily by individual Members of each House. They exist in order to allow Members of each House to contribute effectively to the discharge of the functions of their House. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members. The Speaker has ruled that parliamentary privilege is absolute.

*When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament. Each House also claims the right to punish contempts. These are actions which, while not necessarily breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers. The power to punish for contempt or breach of privilege has been judicially considered to be inherent in each House of Parliament not as a necessary incident of the authority and functions of a legislature (as might be argued in respect of certain privileges) but by virtue of their descent from the undivided High Court of Parliament and in right of the *lex et consuetudo parliamenti*.*

In relation to what might constitute a contempt, Erskine May states:³

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of their duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, as Parliamentary privilege is a 'living concept'.

² UK Parliament, [Erskine May Online - What constitutes privilege](#), (accessed on 5 November 2019).

³ UK Parliament, [Erskine May Online – Introduction to contempts and how Parliament deals with complaints](#), (accessed on 5 November 2019).

Although certain broad principles may be deduced from a review of the kinds of misconduct which in the past either House has punished as a contempt, it should be borne in mind that in 1978 the House of Commons resolved to exercise its penal jurisdiction as sparingly as possible, and only when satisfied that it was essential to do so (see para 15.32). Thus many acts which might be considered to be contempts are either overlooked by the House or resolved informally. For example, in 2010 the Committee on Standards and Privileges concluded that a firm of solicitors was in contempt of the House when it threatened a Member with legal proceedings if he were to repeat in Parliament statements he had made outside. In the light of the apology given to the House and the Member, the Committee made no recommendation for further action.

Australian House of Representatives

The Parliament of Australia publishes the [House of Representatives Practice](#), which in relation to contempt of the federal parliament provides (references removed):⁴

By virtue of section 49 of the Constitution, the House has the ability to treat as a contempt:

... any act or omission which obstructs or impedes ... [it] ... in the performance of its functions, or which obstructs or impedes any Member or officer ... in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results ... even though there is no precedent of the offence.

Whilst the House thus has a degree of flexibility in this area, section 4 of the Parliamentary Privileges Act imposes a significant qualification:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

This provision should be taken into account at all stages in the consideration of possible contempts. It is important also to recognise that the Act does not codify or enumerate acts or omissions that may be held to constitute contempts.

The only example given in relation to improper interference with the free exercise of the authority or functions of the House is:⁵

- interference with the administration of the Parliament:

On 24 October 1919 the Speaker drew to the attention of the House a matter concerning the Economies Royal Commission 'as it affected the privileges of Parliament'. The Royal Commission proposed to investigate expenditure in connection with parliamentary services and the Speaker said that as it had no authority from the Parliament to interfere in any way with the various services of Parliament, it was his duty to call attention to the proposed

⁴ Parliament of Australia, [Acts constituting breaches of privilege and contempts](#), (accessed on 5 November 2019).

⁵ Parliament of Australia, [Acts constituting breaches of privilege and contempts](#), (accessed on 5 November 2019).

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serious encroachment on the rights and privileges of Parliament by a tribunal to inquire into matters over which the legislature had absolute and sole control. The Government gave an assurance that no privileges of the Parliament would be in any way infringed by the operation of the Royal Commission.

New Zealand Parliament

Guidance in relation to the issue of contempt in the New Zealand Parliament is provided by *Parliamentary Practice in New Zealand* (David McGee):⁶

Under the Parliamentary Privileges Act 1865, the House could punish persons who breached its privileges or committed contempts, without having to turn to the courts for protection.

...

There is no formal legal definition of a contempt. Ultimately, the House is the judge of whether a set of circumstances constitutes a contempt. This open-ended understanding of contempt has prompted criticism of the lack of certainty for persons whose conduct the House might regard as objectionable. In 1996 the House sought to define more clearly the types of conduct that it might decide constituted contempts. The House adopted a general definition of contempt,^[9] together with a long list of examples of the types of conduct that might fall within the general definition.^[10] It was emphasised that these examples were illustrative rather than exhaustive, and that new situations might arise that the House might wish to treat as contempts.^[11] Its right to do so is declared in the Standing Orders to remain undiminished.^[12]

The House based its general definition of contempt on Erskine May, which is the authoritative treatise on parliamentary law and practice in the United Kingdom. The House may treat as a contempt:^[13]

... any act or omission which—

- (a) obstructs or impedes the House in the performance of its functions, or*
- (b) obstructs or impedes any member or officer of the House in the discharge of the member's or officer's duty, or*
- (c) has a tendency, directly or indirectly, to produce such a result.*

This definition refers expressly to the House, members and officers; but contempt may also embrace conduct involving other persons, such as witnesses before select committees and persons who petition the House, or strangers who obstruct or impede the House in discharging its functions. An action that produces, or tends to produce, this result may constitute a contempt of Parliament.

The general definition provides a template for the House to adjudge whether or not a contempt has occurred. However, the specific examples of the types of conduct that may constitute a contempt stand in their own right, as presumed obstructions or impediments to the House, or its members or officers. These examples do not create a two-stage test for contempt. Conduct that falls within an

⁶ New Zealand Parliament, *Parliamentary Practice in New Zealand – Chapter 46 Contempt*, (accessed on 5 November 2019).

enumerated example will constitute a contempt, but conduct falling outside the examples may still constitute a contempt under the general definition.^[14]

...

The types of contempt recognised by the House are discussed below under several broad headings:

- *breach of privilege*
- *attendance of members*
- *pecuniary contempts*
- *records and reports*
- *disobedience to the rules or orders of the House*
- *interference or obstruction*
- *misconduct*
- *punishing parliamentary contributions*
- *reflections*
- *other contempts.*

Please do not hesitate to contact us if we can be of any further assistance.

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Michael Berkman MP
For Maiwar ▲

13 December 2019

Ethics Committee

Queensland Parliament

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

Matter of privilege referred by the Speaker to the Ethics Committee on 4 April 2019

Dear Mr Kelly,

I refer to your letter of 6 December 2019 and earlier correspondence in relation to this matter.

The Committee's findings and recommendation on contempt allegations

In your most recent correspondence, you note the Committee holds "the preliminary view that it should recommend to the Assembly that a contempt be found", whereas your earlier letter of 25 October stated unequivocally that the Committee had "concluded that [I] committed a contempt of Parliament".

I remain of the view, as set out in my letter and submissions provided on 8 November 2019, that:

1. on the facts before the Committee, my conduct cannot reasonably be described as "disorderly";
2. in any event, and more fundamentally, the facts before the Committee do not rationally permit the conclusion that my conduct amounted to, or was intended or likely to amount to, any interference (let alone an improper one) with the free exercise by the Assembly of its authority or functions.

As Mr Holt put it, in relation to s37(2) of the Parliament of Queensland Act 2001:

The committee ought ask itself the question "in what way did Mr Berkman's conduct interfere with the free exercise of any authority or functions of the assembly?". The only rational answer is that it did not. The inability to articulate any way in which it could or did is a complete answer to this question.

I encourage the Committee to abandon what your most recent letter describes as its 'preliminary view' and conclude instead that there has been no contempt. To find my conduct was a contempt of Parliament in these circumstances would, in my view, be baseless and irrational, and risk the public perception that the Committee's recommendation is politically motivated.

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Submissions on penalty

If, despite this, the Committee maintains its preliminary view and recommends to the Assembly that I be found in contempt, the Committee should recommend that the Assembly take no further action in respect of the matter.

There is clear precedent for such a recommendation in the "Members' Ethics and Parliamentary Privileges Committee Report on a Matter of Privilege – Matter Referred to the Committee on 25 March 1999" (Ethics Committee Report 31), which pertained to the service of a subpoena on the parliamentary precinct. The conclusions and recommendations in Ethics Committee Report 31 include the following:

The Committee recognises that Mr Sharples, Mr Briggs and Mrs Pratt were all unaware at the time that it was not appropriate and a contempt to serve a summons on the Parliamentary precincts when the House was sitting.

In the circumstances, the committee recommends that the Assembly take no further action in respect of the matter.

The Committee also recommended that better notification and education for members on this aspect of parliamentary privilege would be an appropriate response.

As was the case in the circumstances considered in the Ethics Committee Report 31, I was unaware that any of my conduct on 15 March 2019 could possibly be considered a contempt of Parliament. Putting aside my view that this conclusion is not rationally open to the Committee, I was not aware at the time that s13 of the Parliamentary Service By-law 2013 prohibited such conduct on the precinct, or the fact that the By-laws don't apply to members of the Legislative Assembly in the conduct of their parliamentary business. Additionally, noting my engagement on that day with parliamentary staff (as described in my letter of 10 May 2019), nothing in my encounter with Mr Laurie, Ms Honeyman or Mr Kolic suggested there was any problem with my being on the precinct while wearing the T shirt in question.

A recommendation that the Assembly take no further action in respect of the matter is also appropriate given that the relevant (but inapplicable) section of the Parliamentary Service By-law 2013 carries no penalty whatsoever. This is the case notwithstanding that s50 of the Parliamentary Service Act 1988 provides for the by-laws to prescribe penalties of up to 10 penalty units.

The Speaker, in making the By-Law, appears to have formed the view that no penalty is appropriate for analogous conduct by a member of the public. It follows that the most appropriate recommendation, if the Committee somehow finds my conduct is a contempt of Parliament, is that the Assembly impose no penalty and take no further action.

Please don't hesitate to contact me if I can offer any further assistance.

Kind regards,



Michael Berkman MP

EXTRACT OF MINUTES –**MATTER REFERRED BY THE SPEAKER ON 26 MARCH 2019
RELATING TO AN ALLEGED CONTEMPT OF THE HOUSE BY
A MEMBER****Ethics Committee**

Meeting No. 19A

Friday, 26 April 2019, 10:03AM

Room 5.30, Parliamentary Annexe

Present Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Mr John-Paul Langbroek MP (substitute for Mr Mark McArdle MP under SO 202)
Ms Leanne Linard MP
Ms Melissa McMahon MP (substitute for Ms Nikki Boyd MP under SO 272)
Mr Ray Stevens MP

Apologies Mr Mark McArdle MP

In attendance Ms Bernice Watson, Committee Secretary
Ms Natasha Mitchenson, Assistant Committee Secretary

Inquiry 11: Matter of Privilege referred by the Speaker on 26 March 2019 (Berkman)**Resolved**

That the committee seek additional information from the Member for Maiwar in order to determine whether to proceed to an investigation.

Moved: Mr Kelly Seconded: Mr Nicholls

EXTRACT OF MINUTES –**MATTER REFERRED BY THE SPEAKER ON 26 MARCH 2019
RELATING TO AN ALLEGED CONTEMPT OF THE HOUSE BY
A MEMBER****Ethics Committee**

Meeting No. 21

Thursday, 16 May 2019, 1:08PM

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Mr John-Paul Langbroek MP (substitute for Mr Mark McArdle MP under SO 202)
Ms Leanne Linard MP
Ms Melissa McMahon MP (substitute for Ms Nikki Boyd MP under SO 202)
Mr Ray Stevens MP

Apologies

Mr Mark McArdle MP
Ms Nikki Boyd MP

In attendance

Ms Bernice Watson, Committee Secretary
Ms Natasha Mitchenson, Assistant Committee Secretary

Inquiry 11: Matter of Privilege referred by the Speaker on 26 March 2019 (Berkman)Noted

That the Member for Maiwar had provided a submission and briefing material updated accordingly would be provided for the committee's next meeting.

EXTRACT OF MINUTES –**MATTER REFERRED BY THE SPEAKER ON 26 MARCH 2019
RELATING TO AN ALLEGED CONTEMPT OF THE HOUSE BY
A MEMBER****Ethics Committee****Ethics Committee**

Meeting No. 28

Thursday, 17 October 2019, 1:06pm

Committee Room 1, Parliamentary Annexe

Present	Mr Joe Kelly MP, Chair Mr Tim Nicholls MP, Deputy Chair Ms Nikki Boyd MP Mr John-Paul Langbroek MP (substitute for Mr Ray Stevens MP under SO 202) Mr Mark McArdle MP Ms Leanne Linard MP
Apologies	Mr Ray Stevens MP
In attendance	Ms Bernice Watson, Committee Secretary Ms Rebecca Meehan, Assistant Committee Secretary

Inquiry no. 11 – Berkman matterDiscussion ensued.The committee requested the secretariat to prepare a draft report for consideration by the committee at its next meeting.

EXTRACT OF MINUTES –**MATTER REFERRED BY THE SPEAKER ON 26 MARCH 2019
RELATING TO AN ALLEGED CONTEMPT OF THE HOUSE BY
A MEMBER****Ethics Committee**

Meeting No. 29

Thursday, 24 October 2019, 1:08pm

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair

Mr Tim Nicholls MP, Deputy Chair

Ms Nikki Boyd MP

Mr John-Paul Langbroek MP (substitute for Mr Ray Stevens MP under SO 202)

Mr Mark McArdle MP

Ms Leanne Linard MP

Apologies

Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary

Ms Rebecca Meehan, Assistant Committee Secretary

Inquiry no. 11 – Berkman matterDiscussion ensued.**Resolved**

That the committee makes a preliminary finding of contempt based on the material before it, and that the committee send the draft letter, as amended, to the Member for Maiwar inviting a submission on penalty.

Moved: Mr Kelly

Seconded: Mr Nicholls

EXTRACT OF MINUTES –**MATTER REFERRED BY THE SPEAKER ON 26 MARCH 2019
RELATING TO AN ALLEGED CONTEMPT OF THE HOUSE BY
A MEMBER****Ethics Committee**

Meeting No. 30

Thursday, 31 October 2019, 2.31pm

Room 5.30A, Parliamentary Annexe and Teleconference

Present

Mr Joe Kelly MP, Chair (*in person*)
Mr Tim Nicholls MP, Deputy Chair
Ms Nikki Boyd MP
Ms Leanne Linard
Mr Mark McArdle MP

Apologies

Mr Ray Stevens MP

In attendance

Mr Neil Laurie, Clerk of the Parliament (*in person*)
Ms Bernice Watson, Committee Secretary (*in person*)
Ms Rebecca Meehan, Assistant Committee Secretary (*in person*)

Inquiry no. 11 – Berkman matterDiscussion ensued.**Resolved**

That the committee respond to the Member for Maiwar's correspondence in the terms discussed.

Moved: Mr Nicholls Seconded: Mr Kelly

EXTRACT OF MINUTES –**MATTER REFERRED BY THE SPEAKER ON 26 MARCH 2019
RELATING TO AN ALLEGED CONTEMPT OF THE HOUSE BY
A MEMBER****Ethics Committee**

Meeting No. 32

Thursday, 28 November 2019, 1.14pm

Committee Room 1, Parliamentary Annexe

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

In attendance

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

Inquiry No. 11 – Berkman matter

Discussion ensued.

Resolved

That the committee rescind the previous preliminary finding of contempt and reconsider the matter taking into consideration the submission from the Member for Maiwar on 8 November 2019.

Moved: Mr Kelly Seconded: Mr Nicholls

Discussion ensued.

Resolved

That the committee makes a preliminary finding of contempt on the material before it, in accordance with SO 270, and the committee send a letter, as agreed, to the Member for Maiwar inviting a submission on penalty.

Moved: Mr Kelly Seconded: Mr Nicholls

EXTRACT OF MINUTES –**MATTER REFERRED BY THE SPEAKER ON 26 MARCH 2019
RELATING TO AN ALLEGED CONTEMPT OF THE HOUSE BY
A MEMBER****Ethics Committee**

Meeting No. 33

Thursday, 19 December 2019, 10.35am
Committee Room 1, Parliamentary Annexe**Present**Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Ms Nikki Boyd MP
Mr Mark McArdle MP**Apologies**Ms Leanne Linard MP
Mr Ray Stevens MP**In attendance**Ms Bernice Watson, Committee Secretary
Ms Rebecca Meehan, Assistant Committee Secretary**Inquiry No. 11 – Berkman matter**Discussion ensued.**Resolved**

That the committee adopt the Chair's draft report in the terms agreed to and authorises its tabling.

Moved: Mr Kelly Seconded: Mr Nicholls

Extracts certified correct on 6 February 2020

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

Joe Kelly MP
Chair