



MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 84

Matter Referred by the Speaker on 11 October 2007 Relating to the Procedures for Considering Requests to Refer Complaints to the Committee

Introduction and background

1. The Members' Ethics and Parliamentary Privileges Committee (the MEPPC or the Committee) is a statutory committee of the Queensland Parliament established under the *Parliament of Queensland Act 2001* (the POQA or the Act). The current Committee was appointed by resolution of the Legislative Assembly on 11 October 2006.
2. Section 93 of the POQA provides that the MEPPC's area of responsibility includes the powers, rights and immunities (parliamentary privilege) of the Legislative Assembly its committees and members. The Committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House, and inquires into and reviews other significant issues regarding parliamentary privilege.
3. On 11 October 2007, the Speaker referred to the Committee an allegation of deliberately misleading an estimates committee and also asked the Committee to consider the procedures for considering requests to refer complaints to the MEPPC. This report addresses the second matter.

The reference

4. On 11 October 2007 the Speaker referred the following matter to the MEPPC:

"...Secondly, I would like to refer to the committee the deficiency in standing orders which do not explicitly give the Speaker the right to provide natural justice to a member accused of a breach of privilege by seeking their response before making a decision. I would ask that the committee consider the procedures and make recommendations to remedy this defect."¹

¹ Queensland, Legislative Assembly, *Parliamentary Debates (Hansard)*, 11 October 2007, at 3429.

Procedures for raising and considering complaints

5. Chapter 40 of the *Standing Rules and Orders of the Legislative Assembly* (the Standing Orders) set out the procedures for raising and considering complaints relating to alleged breaches of privilege or contempt.² Standing Order 269 provides that – other than matters of privilege suddenly arising, matters reported by committees, or Speaker’s initiative – the procedure for raising a complaint is as follows:

269. Procedure for other matters

- (1) In circumstances other than outlined in SO 267 and SO 268, the procedure in this Standing Order shall be followed.
- (2) A member should write to the Speaker at the earliest opportunity stating the matter and requesting that the matter be referred to the ethics committee.
- (3) A member must formulate as precisely as possible the matter, and where a contempt is alleged, enough particulars so as to give any person against whom it is made a full opportunity to respond to the allegation.
- (4) In considering whether the matter should be referred to the committee, the Speaker shall take account of the degree of importance of the matter which has been raised and whether an adequate apology or explanation has been made in respect of the matter. No matter should be referred to the ethics committee if the matter is technical or trivial and does not warrant the further attention of the House.
- (5) The Speaker in considering the matter may request further information **from the complainant**. [Emphasis added]
- (6) The Speaker is to inform the House either:
 - (a) that the matter stands referred to the ethics committee; or
 - (b) that no matter arises or that it is technical, trivial or vexatious and the Speaker is not going to refer the matter to the ethics committee.
- (7) If the Speaker makes a determination in accordance with 6(b) and informs the House, a member may immediately move that the matter be referred to the ethics committee.
- (8) If a motion is moved in accordance with (7), the Speaker must put the question immediately without amendment or debate.

6. Where a matter is referred, Standing Order 270 provides the following procedures for the MEPPC:

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.
- (2) The ethics committee shall hear any evidence in a private hearing, unless the ethics committee determines that it is in the public interest to hold the hearing in public.
- (3) Witnesses shall be heard by the ethics committee on oath or affirmation.

² *Standing Rules and Orders of the Legislative Assembly: Effective 31 August 2004* (as amended 26 May 2005, 30 March and 30 June 2006, 8 February 2007, 1 May 2007 and 24 May 2007).

(4) The ethics committee must make a report to the House in respect of any matter referred to it, if any person concerned:

(a) disputes the allegation the subject of the complaint in the matter – on completion of its consideration of the complaint;

(b) confirms the allegation the subject of the complaint – on receiving notice to that effect;

(c) does not, within a reasonable period, respond to a request given to them under (1)(b) – on the expiration of the period.

(5) The ethics committee must, with the report, recommend the action that should be taken.

(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.

7. These procedures were adopted by resolution of the House on 8 August 2001³ in response to MEPPC Report No. 36 *Report on Procedures for Raising and Considering Matters of Privilege or Contempt and the Definition of Contempt*⁴, which recommended written procedures for dealing with complaints of a breach of privilege or contempt be adopted, and that the procedures be incorporated into the Standing Orders.

8. The procedures were included in the new Standing Orders adopted by the House on 18 June 2004 (effective from 31 August 2004), recommended by the Standing Orders Committee as part of the most comprehensive change to Standing Orders in the history of the Legislative Assembly.⁵

Role of the Speaker considering requests to refer complaints to the MEPPC

9. The Committee considers that, where a member requests that the Speaker refer a complaint to the MEPPC, the role of the Speaker is to determine whether or not the matter gives rise to a question of privilege. Standing Orders provide for the Speaker to take account of the degree of importance of the matter and whether an adequate apology or explanation has been made in respect of the matter. These issues can be determined by reference to the material provided by the complainant and, if necessary, reference to the records of the House.

10. At this stage the Speaker is determining only whether the matter gives rise to a question of privilege, and is not required to assess the degree of guilt either way. The Standing Orders do not therefore provide for the Speaker to afford natural justice to the person the subject of complaint by seeking their response to the allegations made.

11. Where a matter is referred to the Committee, and is not disposed of,⁶ the procedures of the MEPPC set out in Standing Order 270 provide natural justice for the person the subject of complaint as follows:

- by the Committee providing to the person the subject of complaint full particulars of the complaint, and an opportunity to provide a written explanation in response to the allegations;

³ Queensland, Legislative Assembly, *Votes and Proceedings*, No. 24, 8 August 2001, p 232.

⁴ Members' Ethics and Parliamentary Privileges Committee, Report No. 36: *Report on procedures for raising and considering matters of privilege or contempt and the definition of contempt*, Queensland Legislative Assembly, Brisbane, 1999.

⁵ Queensland, Legislative Assembly, *Votes and Proceedings*, No. 19, 18 June 2004, p 181.

⁶ Standing Order 270(1)(a) (Procedures of the ethics committee).

- if the person disputes the allegations, by the Committee providing to the person the subject of complaint the opportunity to be heard; and
- by the Committee providing to the person the subject of complaint the opportunity to nominate other persons to be heard.

Current practice concerning requests to refer complaints to the MEPPC

12. The Committee notes that a practice has evolved where members rise on a matter of privilege and provide full particulars of a complaint to the House, prior to writing to the Speaker in accordance with Standing Order 269. Often the person the subject of the complaint then writes to the Speaker with a written explanation in response to the allegations. The Committee notes this inconsistency in information being provided to the Speaker.

Conclusion

13. The Committee commends the Speaker for his commitment to ensuring that persons the subject of complaint are afforded natural justice.
14. The Committee is satisfied with the current procedures which provide for the Speaker to determine whether a matter gives rise to a question of privilege and, if so, to refer the matter to the MEPPC to investigate, and provide natural justice for the person subject of a complaint.
15. The Committee does not propose any changes to the procedures for considering requests to refer complaints of a breach of privilege or contempt to the MEPPC.
16. The Committee takes this opportunity to remind all Honourable Members of the procedures for raising complaints, as set out in Standing Order 269.

Conclusion: the Committee is satisfied with the current procedures for considering requests to refer complaints of a breach of privilege or contempt to the MEPPC.

Recommendation: The committee recommends that the House take no action in relation to the matter.

Annastacia Palaszczuk MP

Chair

November 2007

Membership—52nd Parliament

Ms Anastacia Palaszczuk MP,⁷ Chair (from 1 November 2006)
Member for Inala

Mr Mike Horan MP, Deputy Chair
Member for Toowoomba South

Mr Phil Gray MP
Member for Gaven

Mrs Linda Lavarch MP⁸ (from 6 February 2007)
Member for Kurwongbah

Mrs Jo-Ann Miller MP
Member for Bundamba

Mrs Dorothy Pratt MP
Member for Nanango

Mr Lawrence Springborg MP
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⁷ Mr Stirling Hinchliffe MP, Chair, *Member for Stafford*, to 1 November 2006.

⁸ Hon Dean Wells MP, *Member for Murrumba*, to 1 November 2006; Ms Rachel Nolan MP, *Member for Ipswich*, to 6 February 2007.