



## INTEGRITY, ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

### Report No. 106

#### *Matter of Privilege Relating to the Tabling of Documents by Members*

##### ***Introduction and background***

1. The Queensland Legislative Assembly has a liberal approach to the tabling of documents by members. The Speaker has noted that this approach is more liberal as compared to other houses of parliament. In particular, the Speaker notes that members have an almost unfettered right to table documents, at least in the first instance.
2. The Speaker states that most other houses of parliament limit the tabling of documents to particular classes of documents or tablings by Ministers of the Crown unless Leave of the House or the Chair is first sought and given. The Speaker notes other jurisdictions such as the UK House of Commons and Australian House of Representatives have placed restrictions on the tabling of documents.
3. The process of tabling documents effectively transfers the privileges that members enjoy in their speeches to the documents tabled in the House.
4. The Speaker states that it is not his intention to infringe on the rights and privileges of members in the House, but he is concerned about the number of documents tabled that must be archived forever and the nature of some documents that are tabled in the House. The Speaker is particularly concerned about documents that contain information or words that may not be allowed in verbal speeches or documents that contain inferences, imputations and reflections that would have to be withdrawn if made verbally in the House.
5. Consequently, as this matter affects the rights of members, on 17 September 2009 the Speaker referred the issue of tabling documents in the House to the IEPPC for its consideration and report.
6. The Committee undertook further research by detailing the number of documents tabled in 2008, broken down by who tabled (i.e. Minister, backbencher), and the reason for tabling (statutory requirement, committee report, general tabling etc...). The Committee also considered the practice of some other jurisdictions within Australia and overseas. The research raised a number of issues for consideration.
7. In early 2010, the Committee finalised a Discussion Paper on the issues and in March 2010, the Committee distributed copies of the Discussion Paper to all members and the Clerk of the Parliament for comment.

## ***Issues considered***

8. In relation to the tabling of documents by members the three main issues considered are:
- *Whether the current liberal approach to the tabling of documents is appropriate?*
  - *If not, should the tabling of documents be limited in some way?*
  - *If yes, how should the tabling of documents be limited?*

### **Is the current approach to tabling of documents in Queensland appropriate?**

9. In addressing this issue the Committee found it helpful to examine the rationale behind the tabling of documents. Essentially the reason why members seek to have documents tabled in the House is to place those documents on the public record. As McGee states:

“The main purpose of presenting papers is to make them known to the world in the most public manner possible. The requirement that regulations and reports be presented to the House undoubtedly helps draw them to the attention of members and of others who observe and report parliamentary proceedings so that they can be examined and put to use.” (McGee 2005, 3<sup>rd</sup> Ed, p. 540)

10. The Committee took the view that tabling is essentially a public information function. The Committee considered that if this premise is accepted, then it is difficult to argue that the liberal approach taken in Queensland Parliament, whereby members have an almost unfettered right to table documents, is inappropriate. The Committee argues that the greater the public access to information which comes into the possession of members, the more effective the Parliament is in performing its functions of debating matters of public importance and airing of grievances.
11. The Committee also acknowledges that, as with any right or privilege, there remains the need to ensure that such privileges are not abused or used in a way that could be contrary to the public interest. As Mr Speaker noted in referring this matter to the committee, one of the key potential disadvantages of the liberal approach to tabling is that documents containing material that would otherwise not be able to be introduced into the House under the Standing Orders may find their way onto the public record.
12. Anecdotal evidence indicates that most attempts to table documents containing sub judge material or documents identifying a child or children have been detected by the Clerks and brought to the Speaker’s attention. However, the current liberal approach to tabling leaves the door open for offending documents to potentially slip through the safety net.
13. In addition, the liberal approach to tabling can lead to the receipt of documents that have little or no public information value, documents that can be publicly accessed elsewhere, and in some cases multiple copies of the same document being tabled at different points in time. This all has the effect of creating an additional administrative burden on the Table Office in having to index and archive all such documents for time in memoriam.
14. However, a statistical breakdown of the papers tabled in 2008, indicates that documents that are easily obtainable from another source represented a very small proportion of papers tabled in that year (see **Appendix A**). The statistics indicate that of the 2191 papers tabled in that year 407 (18.5%) were discretionary tablings (i.e. not required or authorised under statute or standing orders or related to a Bill). Of those only 16 (0.007%) fell in the category of documents that were easily obtainable from another source. Accordingly, while the practice

of tabling documents with little or no public information value should not be encouraged, the extent of the problem would appear not to be statistically significant.

15. The Committee found that while the liberal approach to tabling has some clear advantages in promoting the effectiveness of Parliament's function of debating matters of public importance and airing grievances, the question as to whether it is possible to introduce some checks and balances on the largely unfettered right to table documents without substantially interfering with the performance of Parliament's function should be further explored.

### **Should the tabling be limited in some way?**

16. The Committee notes that other jurisdictions have sought to limit the right of members to table documents in a number of ways. One method of limiting the right to table documents is to allow only Ministers to table documents and only where relevant to the administrative competence of government and where the document is suitable for permanent preservation with the records of parliament. This practice is followed in the United Kingdom House of Commons, resulting in a significant limitation to the rights of members to table documents.
17. Another method is to limit the tabling of documents to members with Leave of the House. This occurs in a number of jurisdictions including New Zealand and the Legislative Assemblies of New South Wales and Victoria. The Committee notes that in the New South Wales Legislative Assembly, leave is only granted in very unusual circumstances. In New Zealand, the unanimous Leave of the House is required.
18. The New Zealand Speaker recently provided a ruling in relation to the tabling of documents which further limits tabling to those documents not readily available to members. This prevents the tabling of documents such as Hansard, media reports from major daily newspapers, parliamentary papers etc... While the Committee agrees with the reduction of unnecessary tabling, the Committee queries whether members and others would be able to readily access media reports some time after the event if these documents are not tabled.
19. The Committee also notes that some other jurisdictions such as Canada, the Australian House of Representatives and the Senate allow Ministers and the Speaker or President to table documents where it is relevant, in addition to allowing members to table with the unanimous Leave of the House. The rationale in the Senate is that the President and Ministers have a duty to inform the Senate. In the case of Senators tabling, leave is usually granted if the senator shows the document to a Minister & Party Leader or Whip present in the chamber. The House of Representatives follows a similar convention where the government will not grant leave unless it is shown the document first.
20. In Queensland, the tabling of documents is not limited to Ministers or the Chair; members do not require Leave of the House; the types of documents are not limited to those that are not readily available to members (such as in New Zealand); and documents are not required to be suitable for preservation with records of parliament (such as in the United Kingdom). The Committee concludes that Queensland's method of allowing the tabling of almost any document (with the exception of documents identifying a child or children (SO35)) is a very liberal practice when compared with other like jurisdictions.

### **Findings**

- 1. Analysis of papers tabled in 2008, indicate that the largely unfettered right to table documents is not being misused by members in a statistically significant way.**

**2. However, given the concerns raised by the Speaker and the evidence of limitations in other like jurisdictions it would be prudent for the Legislative Assembly to consider introducing some checks and balances on the right to table, as long as this does not substantially interfere with the performance of Parliament's functions.**

### **How should the tabling of documents be limited?**

The committee considered the following methods of limiting tabling:

#### Limiting the right to table to Ministers

- (i) The Committee is of the view that limiting the right to table to Ministers and the Speaker would appear to be overly restrictive. Taking away the right for backbench members from tabling would be counter productive to the performance of Parliament's function of debating matters of public importance and airing grievances.

#### Requiring Leave to Table

- (ii) The Committee considered that requiring leave to Table a document leaves open the possibility of a government majority using its numbers to prevent the tabling of a document which does not otherwise offend standing orders in any way. The Committee was also of the view that such a limitation would be counter productive to the performance of Parliament's functions of debating matters of public importance and airing of grievances.

#### Screening by the Speaker or Clerk

- (iii) A variation on the requiring Leave of the House approach is to establish an arrangement (perhaps codified in Standing Orders) whereby leave to table is routinely granted if the document has been shown to the Speaker or the Clerk prior to tabling. A similar process already exists (by convention) with respect to members seeking leave to incorporate the remainder of their speeches. Such a process would still allow a relatively unfettered right to table but would also allow a screening process to ensure that tabled documents do not contain material that offends standing orders including inferences, imputations and reflections that would have to be withdrawn if made verbally in the House. The Committee was of the view that to require this screening process for every potential tabling may be difficult to administer in the cut and thrust of parliamentary debate particularly given the speed with which documents reach members via modern technology.

#### Clearly define an attempt to table offensive material as a contempt

- (iv) The Committee was of the view that consideration should be given to include in Standing Orders a provision that clearly states that members commit a contempt of the House should they seek to table a document that they know contains material that would otherwise offend standing orders. The Committee has previously made this recommendation to the Standing Orders Committee in Report No. 103. In that report the Committee specifically recommended a deliberate attempt to table documents which would otherwise offend standing orders to the list of examples of conduct that can be treated as a contempt at Standing Order 266.<sup>1</sup>

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<sup>1</sup> See Recommendation No. 2 from IEPPC Report No. 103 *Matter of Privilege Referred by the Speaker Relating to an Alleged Unauthorised Release of Committee Documents*, tabled 25 March 2010, at 7.

## Prohibiting tabling of documents readily available to members and the public

- (v) The Committee considered recommending amendments to Standing Orders, similar to the New Zealand Speaker's recent ruling which further limits tabling to those documents not readily available to members and members of the public, and excludes documents such as *Hansard*, media reports from major daily newspapers that have no historical value (except regional and interstate), parliamentary papers and documents readily available on departmental websites.

However, Members were of the view that with respect to documents readily available to members and the public, there was no evidence of systematic abuse by members. The consensus view of members was that this was not a situation requiring an amendment to Standing Orders.

The committee noted that Mr Speaker has the power to deal with any emerging abuse of the right to table documents by way of Speaker's ruling.

### **Findings**

- 1. The committee endorses alternative (iv) canvassed above to further strengthen the House's ability to prevent the tabling of offensive material.**
- 2. The committee did not find any evidence of systematic abuse by members seeking to table documents which have little or no public information value. The committee finds that the Speaker has sufficient powers to deal with any emerging abuse without the need to amend Standing Orders.**

### ***Additional issue***

21. On 14 April 2010, the Speaker made a statement in the House bringing an additional issue to the attention of the Committee, in relation to the tabling of electronic material or documents.<sup>2</sup> The crux of the issue being the difficulty for the Speaker and the Clerks at the Table to ensure that electronic material or documents that are tabled do not contain material that offends Standing Orders.
22. The Committee is of the view that whilst electronic material or documents provide many advantages, they should only be freely tabled if the information on them can be instantaneously and widely disseminated in the chamber. The technology to allow for this is not currently available in the Legislative Assembly. Accordingly, the Committee recommends a screening process be required as per option (iii) above, whereby electronic material or documents should only be tabled with prior approval from the Speaker or Clerk. The Committee welcomes revisiting this issue once technology has progressed to a stage which will allow for the instantaneous and wide dissemination of information contained on electronic material or documents, at a cost effective level.

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<sup>2</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 14 April 2010, at 1321.

## **Finding**

The Committee recommends that the Standing Orders Committee consider an amendment to Standing Orders restricting members from tabling electronic material or documents without the prior approval of the Speaker or Clerk, until such time as the information on the devices can be instantaneously and widely disseminated in the Chamber of the Legislative Assembly, at a cost effective level.

## **RECOMMENDATION 1**

The Committee recommends that the Standing Orders Committee endorse the following amendment to Standing Orders—

Insert, after Standing Order 266(23):

*“(24) a member seeks to table a document that they know contains material that would otherwise offend standing orders.”*

## **RECOMMENDATION 2**

The Committee recommends that the Standing Orders Committee consider an amendment to Standing Orders restricting members from tabling electronic material or documents without prior approval of the Speaker or Clerk, until such time as information on the devices can be instantaneously and widely disseminated in the Chamber of the Legislative Assembly, at a cost effective level.

Kerry Shine MP  
**Chair**  
June 2010

## **Membership — 53rd Parliament**

Mr Kerry Shine MP, Chair  
*Member for Toowoomba North*

Mr Tim Nicholls MP, Deputy Chair  
*Member for Clayfield*

Mr Glen Elmes MP  
*Member for Noosa*

Hon Margaret Keech MP  
*Member for Albert*

Ms Carolyn Male MP  
*Member for Pine Rivers*

Mr Curtis Pitt MP  
*Member for Mulgrave*

Dr Mark Robinson MP  
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## Tabled Papers 1 January to 31 December 2008

	Statute*	Bills related**	Standing Orders and other***	Discretionary tabling****		TOTALS
					Hansard or easily obtainable from other source	
<b>SITTING DAYS</b>						
Premier/Minister	131	216	26	152	8	525
Member	0	27	227	236	8	490
Speaker/Acting Speaker	20	20	11	1	0	52
Committee Chair/Acting Committee Chair	55	0	0	0	0	55
Clerk	528	6	0	0	0	534
<b>SUB TOTAL</b>	<b>734</b>	<b>269</b>	<b>264</b>	<b>389</b>	<b>16</b>	<b>1656</b>
<b>TOTAL TABLED PAPERS SITTING DAYS</b>	<b>1656</b>					
	Statute*	Bills related**	Standing Orders and other***	Discretionary tabling****		
					Hansard or easily obtainable from other source	
<b>NON SITTING DAYS</b>						
Premier/Minister	302	10	154	18	0	484
Member	0	0	0	0	0	0
Speaker/Acting Speaker	9	0	3	0	0	12
Committee Chair/Acting Committee Chair	39	0	0	0	0	39
Clerk	0	0	0	0	0	0
<b>SUB TOTAL</b>	<b>350</b>	<b>10</b>	<b>157</b>	<b>18</b>	<b>0</b>	<b>535</b>
<b>TOTAL TABLED PAPERS NON SITTING DAYS</b>	<b>535</b>					
<b>TOTAL ALL PAPERS TABLED 1/1/08-31/12/08</b>	<b>2191</b>					

\*Statutory requirement or authorised under statute. Example: Annual reports, committee reports and papers. \*\* Includes bills, explanatory notes, amendments, second reading speeches, assent letters, etc. \*\*\* Required or authorised under Standing Orders, ministerial guidelines, Speaker's guidelines, Members' Entitlements Handbook, etc. Example: Petitions and responses, overseas travel reports. \*\*\*\*Allowed under standing orders. Example: Correspondence, articles, government papers, non-conforming petitions.

Prepared by: Chamber & Procedural Services - Updated: 03/02/2010