



## ETHICS COMMITTEE

### Report No. 132

#### *Matter of privilege referred by the Speaker on 29 November 2012 relating to an alleged contempt of removal of documents from members' desks in the Chamber*

#### **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 or the Act). The current committee was appointed by resolution of the Legislative Assembly on 17 May 2012.
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.<sup>1</sup> The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House.
3. The matter in this report concerns an allegation by the member for Mt Isa, Mr Rob Katter MP, that documents were removed from the seats of four members in the Chamber during a division on 27 November 2012.
4. In accordance with Standing Order 269, the member for Mt Isa wrote to the Speaker on 28 November 2012, asking that the Speaker refer the matter to the committee.
5. On 29 November 2012, the Speaker referred the matter to the committee for its consideration.

#### **The referral**

6. On 29 November 2012, the Speaker referred the matter to the committee and made the following statement to the House:<sup>2</sup>

*On 30 October 2012 I made a statement about the confidentiality of members' papers and I reminded all members, their staff and others that members have individual rights and immunities—privileges—regarding documents prepared for members for a parliamentary proceeding and, in some circumstances, a document being used by members for parliamentary proceedings. The rights may include the right of confidentiality in respect of a document. A breach of that right to confidentiality may constitute a breach of privilege and a contempt. Yesterday I received correspondence from the member for Mount Isa alleging that material was removed from his desk and the desks of other members during a division. I am very concerned*

---

<sup>1</sup> S.104B *Parliament of Queensland Act 2001*.

<sup>2</sup> Queensland Legislative Assembly, *Record of Proceedings (Hansard)*, 29 November 2012, at 2946.

*about the issue of confidentiality of members' papers. I have referred the matter to the Ethics Committee for its consideration.*

### **Requests for further information**

7. Upon receipt of the referral by the Speaker, the committee resolved to seek further information before determining whether to investigate the alleged contempt.
8. In correspondence to the Speaker, Mr Katter identified that documents were removed from his seat and the seats of three other members (Mr Shane Knuth MP; Mr Ray Hopper MP; and Mr Peter Wellington MP).
9. The committee invited submissions from the members involved. The committee received a submission from the member for Nicklin, Mr Peter Wellington MP on 3 December 2012, and from the member for Mt Isa, Mr Rob Katter MP on 7 January 2013.

### **The allegation**

10. The member for Mt Isa, in his submission to the committee, alleged that the documents removed from the seats of four members in the Chamber during a division on 27 November 2012 were speaking lists prepared as a guide for the upcoming debate in the Chamber.
11. The member for Nicklin, in his submission to the committee, also alleged that a 'roster sheet' had disappeared from his desk in the Chamber after the division.

### **Committee Membership**

12. On 29 November 2012, the member for Nicklin advised the committee in accordance with Standing Order 272(1) of his intention to stand down from the committee for consideration of this matter.
13. On 12 December 2012, the Speaker advised the committee in accordance with Standing Order 272(2), that the member for Gladstone, Mrs Liz Cunningham MP would replace the member for Nicklin during consideration of this matter.

### **Definition of contempt**

14. 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.**  
[Emphasis added]

### **Removal of members' documents from the Chamber**

15. The Standing Orders do not provide the removal of members' documents as a specific example of contempt. Regardless, section 37 of the POQA provides that any conduct that amounts, or is intended or likely to amount to an improper interference with the free performance of a member of the member's duties may be a contempt.

16. The removal of members' documents may be considered a breach of privilege and possible contempt as the act would likely fall within the definition of contempt provided by section 37 of the POQA (i.e. interfering with a member's ability to contribute to debate in the Chamber).
17. Erskine May also provides support for this proposition by stating that, 'any act or omission which obstructs or impedes the House in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his 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.'<sup>3</sup>

### Precedents

18. The committee could not identify any precedents in Australian parliamentary law and practice in relation to this matter. Although not strictly comparable with the matter before the committee, the committee considered a precedent from the United Kingdom Privileges Committees which commented on the removal of papers belonging to the House.
19. The United Kingdom (UK) Joint Committee on Parliamentary Privilege considered that 'removing, without authority, papers belonging to the House as a contempt of parliament.'<sup>4</sup> This matter concerned the removal of a members' draft notes and whether parliamentary privilege attached to preparatory drafts and notes of a members' speech.
20. The UK Joint Committee considered that, 'drafts and notes frequently precede speeches and questions, and members often need assistance and advice in preparing them. By necessary extension, immunity accorded to a speech or question must also be available for preparatory drafts and notes, provided these do not circulate more widely than is reasonable for the member to obtain assistance and advice, for instance from a research assistant. It would be absurd to protect a speech but not the necessary preparatory material.'

### **Consideration**

21. The issues that the committee considered in relation to this allegation of contempt were—
  - were the documents removed, and by whom?; and
  - did the removal of members' documents constitute an improper interference with the free performance by a member of the member's duties as a member?

### Were the documents removed, and by whom?

22. The member for Nicklin advised in his submission to the committee that on the morning of 27 November 2012, the roster sheet disappeared from his Chamber desk after the first division. Mr Wellington's submission did not identify whom may have taken the document.
23. The member for Mt Isa advised in his submission to the committee that upon returning from his Chamber desk after the division, his speaking list had been removed. Mr Katter's submission did not identify whom may have taken the document.
24. The committee viewed an enhanced version of the chamber footage of the division. The committee was not able to clearly identify which members were sitting in the relevant cross bench seats during the division, nor did the committee identify any evidence of members removing papers from members' desks.

---

<sup>3</sup> Limon, D & McKay, W (Editors), *Erskine May Parliamentary Practice, 22<sup>nd</sup> Edition*, Butterworths, London 1997 at 108.

<sup>4</sup> United Kingdom Joint Committee on Parliamentary Privilege, *Parliamentary Privilege – First Report*, Ordered to be printed 30 March 1999, Chapter 6, para. 264.

25. On the basis of the information before the committee, it cannot be established that a document belonging to members, the 'speaking list', was removed from the desks of members.
26. While there is no evidence before the committee to satisfy the first element, for completeness the committee examined the second element, outlined below.

*Does the removal of members' documents constitute an improper interference with the free performance by a member of the member's duties as a member?*

27. The committee was of the view that one may consider that the removal of a speaking list from a member's desk in the chamber creates disorganisation and interferes with a member's ability to contribute to debate in the House, and thereby constituting a contempt.
28. In his submission to the committee, Mr Katter stated that, 'I would ask that this matter be considered in light of the mistrust it may create in the House. The documents involved may not be considered politically sensitive. However, the fact that an unauthorised person/s was observing and handling material on another Member's desk during a division raises serious concerns over the integrity of some Members of the House.'
29. There is no evidence before the committee in this case to suggest that the removal of the speaking list from the members' desks constituted any substantial interference with the free performance of the members' duties in the House.

**Conclusions**

30. On the information before the committee, the committee found insufficient evidence of a *prima facie* case of breach of privilege or contempt and resolved to dismiss the matter in accordance with Standing Order 270(1)(a).<sup>5</sup>
31. The committee recommends that the House take no further action.
32. The committee notes that the removal of members' documents from the Chamber is a serious matter which may constitute a contempt of parliament. The committee cautions all members against removing any documents from a member's desk in the Chamber at any time and particularly when crossing the floor during divisions

---

<sup>5</sup> Standing Order 270(1)(a) provides that where a matter is referred to it, the committee may summarily dispose of the matter if it believes it is trivial, technical or vexatious or does not warrant the further attention by the committee.

**Conclusion 1**

On the information before the committee, there is insufficient evidence of a *prima facie* case of breach of privilege or contempt.

**Conclusion 2**

The committee resolved to dismiss the matter under Standing Order 270(1)(a).

**Recommendation 1**

The committee recommends that the House take no further action.

**Recommendation 2**

The committee strongly reminds all members that the removal of documents from members' desks in the Chamber is a serious matter that may constitute a contempt. The committee cautions all members against removing any documents from a member's desk in the Chamber at any time and particularly when crossing the floor during divisions.

A handwritten signature in black ink, appearing to read 'Peter Dowling', written in a cursive style.

**Peter Dowling MP**  
Chair

April 2013

### **Membership — 54<sup>th</sup> Parliament**

Mr Peter Dowling MP, Chair  
*Member for Redlands*

Mrs Jo-Ann Miller MP, Deputy Chair  
*Member for Bundamba*

Mr Ian Berry MP<sup>6</sup>  
*Member for Ipswich*

Mrs Liz Cunningham MP<sup>7</sup>  
*Member for Gladstone*

Mr Ian Kaye MP  
*Member for Greenslopes*

Mr Michael Pucci MP<sup>8</sup>  
*Member for Logan*

Mr Curtis Pitt MP<sup>9</sup>  
*Member for Mulgrave*

Ms Jackie Trad MP  
*Member for South Brisbane*

Mr Peter Wellington MP<sup>10</sup>  
*Member for Nicklin*

### **Secretariat**

Mr Michael Ries, *Research Director*

Ms Erin Pasley, *Principal Research Officer*

Ms Andrea Musch, *Executive Secretary*

Ms Tamara Vitale, *Acting Executive Secretary*

### **Contact**

Telephone: 07 3406 7586

Facsimile: 07 3406 7691

E-mail: [ethics@parliament.qld.gov.au](mailto:ethics@parliament.qld.gov.au)

Internet: [www.parliament.qld.gov.au/ethics](http://www.parliament.qld.gov.au/ethics)

---

<sup>6</sup> Until 12 February 2013.

<sup>7</sup> On 12 December 2012, the Speaker advised the committee that the member for Gladstone would replace the member for Nicklin during consideration of this matter in accordance with Standing Order 272(2).

<sup>8</sup> From 12 February 2013.

<sup>9</sup> On 14 February 2013, the Leader of the Opposition appointed the member for Mulgrave to replace the member for South Brisbane and the member for Mackay to replace the member for Bundamba for the duration of the meeting held on 14 February 2013, in accordance with Standing Order 202.

<sup>10</sup> On 29 November 2012, the member for Nicklin advised the committee of his intention to stand down from consideration of this matter in accordance with Standing Order 272(1).