



ETHICS COMMITTEE

Interim Report No. 134

Proceeding with suspended matters -

Matter of privilege referred by the Registrar on 19 March 2013 relating to an alleged failure to register an interest in the Register of Members' Interests; and Matter of privilege referred by the Speaker on 4 June 2013 relating to an alleged deliberate misleading of the House by a member; and other suspended matters

Introduction

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.¹
3. The committee has a number of current matters before it that it has resolved to suspend on the basis that the matters are related to parallel criminal investigations being conducted by the Crime and Misconduct Commission (CMC) and/or the Queensland Police Service (QPS).
4. In its initial consideration of these current matters, the committee had determined to suspend investigation of any alleged contempt, exercising an abundance of caution approach which has been the custom and practice of past Ethics Committees. A departure from this established precedent is considered significant by committee members.
5. The committee has subsequently resolved by majority decision to reconsider its decision to suspend some of the suspended inquiries and has sought advice from the CMC as well as independent expert legal advice.
6. Under Standing Order 215, the committee is empowered to provide a progress (interim) report to the House in relation to its deliberations prior to its final report on the matter. This report is an interim report to draw these matters to the attention of the House and the general public in relation to the status of the suspended inquiries.

¹ S.104B *Parliament of Queensland Act 2001*.

Background to the matter of privilege referred by the Registrar on 19 March 2013 relating to an alleged failure to register an interest in the Register of Members' Interests (Driscoll No.1)

7. By letter to the Registrar dated 19 March 2013, the Leader of the Opposition, Ms Anastacia Palaszczuk MP, raised the allegation that the Member for Redcliffe, Mr Scott Driscoll MP, failed to declare interests in the Register of Members' Interests.
8. On 19 March 2013, the Registrar wrote to the committee referring the complaint to the committee in accordance with section 14 of Schedule 2 of the Standing Orders.
9. On 20 March 2013, the Speaker announced to the House that the matter had been referred to the committee.²
10. On 28 March 2013, the then Acting Chairperson of the CMC, Mr Warren Strange, wrote to the Chair of the committee regarding complaints received by the CMC in relation to Mr Driscoll MP. Mr Strange noted the hypothetical possibility that if a CMC investigation were to proceed contemporaneously with an Ethics Committee investigation into similar conduct the overlap in the two may potentially result in a contempt of Parliament. Mr Strange sought the committee's advice on these matters.
11. On 10 April 2013, the committee resolved to suspend its current inquiry whilst the assessment of the allegations relating to Mr Driscoll MP and any potential investigation by the CMC or QPS are on foot in accordance with past Ethics Committee abundance of caution approach and advised the then Acting Chairperson of the CMC the same.
12. On 2 May 2013, the committee advised the Speaker, for her information and for the information of the House, that it had suspended its inquiry in relation to this matter. The Speaker advised the House accordingly on 21 May 2013.³
13. Also on 2 May 2013, the committee noted the correspondence from the Acting Chairperson of the CMC dated 23 April 2013 and CMC media release advising of a joint investigation into Mr Driscoll MP by the CMC and QPS.
14. On 3 June 2013, the Premier wrote to the committee requesting the committee reconsider its decision to suspend its inquiry. As far as the committee has been advised, a request from executive government to the Ethics Committee to consider re-commencing a suspended inquiry is unprecedented in Queensland.
15. As a direct result of the request of the Premier, the committee resolved to reconsider its decision to suspend its inquiry relating to Mr Driscoll and on 4 June 2013, the committee wrote to the Acting Chairperson of the CMC to seek his views on the issue.
16. On 5 June 2013, the Acting Chairperson of the CMC, Dr Ken Levy provided further correspondence to the committee in relation to allegations against Mr Driscoll. Dr Levy also met with the committee on 5 June 2013 to discuss the matters.
17. Due to the unprecedented nature of the request to reconsider suspending its inquiry on 13 June 2013, the committee resolved that Mr Peter Davis QC be engaged to provide the committee with expert independent legal advice on this issue.
18. Mr Davis QC's advice was received on 18 June 2013 and Mr Davis QC provided an oral briefing to members on 19 June 2013.

² Queensland Parliament, Record of Proceedings, 20 March 2013, at 754.

³ Queensland Parliament, Record of Proceedings, 21 May 2013, at 1530.

Dealing with contempt proceedings which may also be criminal proceedings – past practice

19. Mr Davis QC considered the past practice of the Ethics Committee to suspend matters where there is a CMC or QPS investigation on foot.
20. With respect to the allegations relating to an alleged misleading of Estimates Committee D by Mr Gordon Nuttall in 2005, the Members' Ethics and Parliamentary Privileges Committee's (MEPPC) Report No. 72 noted that the committee's established procedure when dealing with allegations of contempt which may also be a possible criminal offence is to take no action in relation to the possible contempt until any actions in relation to the alleged criminal offence have been finalised.
21. The MEPPC noted that any investigation of an Ethics Committee could prejudice the prospect of any possible criminal proceedings and/or a person's defence to those proceedings. Of particular issue is the fact that any evidence taken by the committee may not be used in legal proceedings due to Section 8 of the *Parliament of Queensland Act 2001*. Section 8 provides that the freedom of speech and debates and proceedings in the Assembly cannot be impeached or questioned in any court or place out of the Assembly.
22. A similar approach was taken in relation to the subsequent matter pertaining to Mr Nuttall's failure to register payments received from business people on the Register of Interests following correspondence from the then Chairperson of the CMC via Speaker Reynolds.

Expert independent legal advice – Peter Davis QC

23. In his advice to the committee, it was the view of Mr Davis QC that "the starting position ought to be that the Ethics Committee should, notwithstanding any investigations by any other law enforcement bodies, proceed with its investigation unless there is some reason it ought not to do so".
24. In coming to this position, Mr Davis QC considered the case of Gordon Nuttall where contempt proceedings were contemplated to be heard by the Parliament at a time very close to a trial. Mr Davis QC concluded that the Nuttall case involved 'quite special circumstances' such that it was appropriate for the committee to avoid taking action which could compromise judicial proceedings.
25. Mr Davis QC advised that in the case of Nuttall, contempt proceedings were likely to be heard at a time very close to trial which would cover at least one factual issue which had to be proved by the Crown in the criminal trial. Nuttall's second trial was to follow shortly afterwards. Mr Davis QC stated:

There was then a real risk of prejudice to the criminal trials and a danger perhaps even of disruption to those trials caused by media reports of the contempt proceedings. The Parliament should, and did in Nuttall's case, avoid taking action which could compromise judicial proceedings.

26. In relation to the Driscoll matters, Mr Davis QC considered no such special circumstances or other reasons existed and he could not see any reason why the committee would not resolve to proceed with its inquiries.
27. Mr Davis QC noted that previous cases have indicated that publicity concerning contempt proceedings taken over a year before a criminal trial are not likely to impact upon criminal proceedings.⁴ Further, Mr Davis QC advised that proper directions by a judge could in those

⁴ *Knight & Ors v The Queen* [2013] QCA 144; *The Queen v Patel* [2012] QSC 419 at [40].

circumstances, address potential prejudice caused by a jury becoming aware of the outcome of contempt proceedings in Parliament.

28. Mr Davis QC also addressed the committee's concerns regarding privilege in relation to evidence taken by the committee which is privileged and cannot be used in legal proceedings. Mr Davis QC stated:

In my view, this does not raise a concern. It is now quite common for legislation to overcome common law privilege (for example the privilege against self-incrimination) and require a person to speak, but then impose a qualified privilege prohibiting the use of that information in later proceedings.

If Mr Driscoll chooses to make submissions or address either the Ethics Committee or the House, what he says cannot be used by the CMC or the police in any proceedings. However, the fact that Mr Driscoll has made the submission or the statements does not preclude the CMC or the QPS from leading other, admissible, evidence against him.

29. The material before Mr Davis QC included both the committee's inquiry information and certain details of the CMC and QPS investigations. On the material and facts before the expert independent legal advisor, Mr Davis QC:

...could see no real risk that any action taken by Parliament would compromise any actions which may be taken by the CMC or the QPS through the courts. There is nothing to suggest that any investigations would be compromised.

Committee consideration

30. The committee carefully considered the advice from the CMC as to the likelihood that proceeding with their inquiry would interfere with the CMC/QPS investigation and the detailed advice from Mr Davis QC.

A new test

31. The committee resolved to apply a new test in determining whether or not to proceed with an inquiry in circumstances where there are related investigations by law enforcement bodies.
32. The committee accepted Mr Davis QC's advice that the starting position for the committee should be that, notwithstanding any investigations by any other law enforcement bodies, the committee should proceed with its investigation unless there is some reason it ought not to do so.
33. The committee also accepted that it should undertake an assessment of whether there is any real risk of interference or prejudice with investigations or any potential proceedings on a case by case basis.
34. The committee resolved that as a first step upon becoming aware of a related investigation by law enforcement body it should seek advice from the relevant law enforcement body as to the likely risk of interference or prejudice to the investigation at that point in time.
35. The committee was also advised by Mr Davis QC, that in the event contempt and criminal investigations overlap in a re-commenced matter, the committee should reconsider suspension and consequently reserves its right to seek such advice from the relevant law enforcement body at any subsequent significant points in the committee's inquiry.
36. The committee resolved that the second step it should consider is the timing of public processes of a contempt matter (e.g. reporting to the House) and any potential impact those processes might have on a jury trial.

Applying the facts of this matter to the new test

37. In applying the facts of this matter (Driscoll No.1) the committee had regard to the following factors:
 - (a) The CMC has advised of a remote chance of interference; and
 - (b) The CMC is yet to report on its investigation; no criminal charges have been laid; and any publicity arising from any contempt proceedings is unlikely to be sufficiently proximate to a potential trial date.
38. Accordingly, the committee has by majority decision resolved to recommence its inquiry in relation to this matter.

Status of first Driscoll inquiry

The committee has resolved to recommence its inquiry into the matter of privilege referred by the Registrar on 19 March 2013 in relation to the alleged failure of a member to declare an interest in the Register of Members' Interests.

Background to the matter of privilege referred by the Speaker on 4 June 2013 relating to an alleged deliberate misleading of the House by a member (Driscoll No.2)

39. The matter concerns an allegation that the Member for Redcliffe, Mr Scott Driscoll MP, deliberately misled the House on 19 March 2013 in statements made during a personal explanation (Driscoll No.2).
40. The Deputy President of the Queensland Industrial Relations Commission, Mr Adrian Bloomfield wrote to the Speaker on 31 May 2013 raising the allegation.
41. On 4 June 2013, after examining the information before her, the Speaker referred the matter to the committee.
42. On 6 June 2013, the committee wrote to Mr Driscoll MP to advise that the committee was taking advice on the issue of whether to suspend its inquiry into this matter whilst the joint CMC and QPS investigation into related matters is ongoing.

Applying the facts of this matter to the new test

43. In applying the facts of this matter the committee had regard to the following factors:
 - (a) the CMC has advised that there is a remote possibility of interference with this investigation; and
 - (b) The CMC is yet to report on its investigation; no criminal charges have been laid; and any publicity arising from any contempt proceedings is unlikely to be sufficiently proximate to a potential trial date.
44. Accordingly, the committee has resolved to commence its investigation in relation to this matter.

Status of second Driscoll inquiry

The committee has resolved to commence its inquiry into the matter of privilege referred by the Speaker on 4 June 2013 relating to an alleged deliberate misleading of the House by a member.

Other matters: (Caltabiano related)

45. There are also three other currently suspended matters before the committee relating to Mr Michael Caltabiano as detailed below:
 - i. Matter of privilege referred by the Speaker on 25 October 2012 relating to an alleged deliberate misleading of an Estimates Committee by a Chief Executive Officer (Caltabiano).
 - ii. Matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged deliberate misleading of the House by a Minister or, in the alternative, a Chief Executive Officer of a Committee (Emmerson & Caltabiano).
 - iii. Matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged intimidation of a member by a legal firm (Gilshenan & Luton).
46. In light of the independent expert legal advice and the committee's recommencement of the two suspended Driscoll matters, the committee is also considering whether or not to recommence these three matters and is seeking further advice. Should the committee resolve to recommence these matters the committee flags that it may table a second interim report in relation to these matters.



Mr Peter Dowling MP
Chair

July 2013

Membership — 54th Parliament

Mr Peter Dowling MP, Chair
Member for Redlands

Ms Jackie Trad MP, Acting Deputy Chair
Member for South Brisbane

Mrs Jo-Ann Miller MP,⁵
Member for Bundamba

Mr Ian Kaye MP⁶
Member for Greenslopes

Mr Tim Mulherin MP
Member for Mackay

Mr Michael Pucci MP
Member for Logan

Mr Peter Wellington MP
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⁵ By Order of the House on 21 May 2013, Mr Mulherin MP replaced Mrs Miller MP for three months.

⁶ In accordance with SO 202(1) Mr Steve Davies MP, Member for Capalaba, replaced Mr Ian Kaye MP for the Ethics Committee meeting of 26 July 2013.