



ETHICS COMMITTEE

REPORT NO. 203

MATTER OF PRIVILEGE REFERRED BY THE TRANSPORT AND PUBLIC WORKS COMMITTEE ON 12 AUGUST 2020 RELATING TO ALLEGED UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS

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 Transport and Public Works Committee (TWPC) regarding a possible unauthorised disclosure of committee proceedings.

The referral

4. On 12 August 2020, the Chair of the Transport and Public Works Committee (TPWC) and Member for Kurwongbah, Mr Shane King MP, wrote to the committee raising a potential breach of SO 211.
5. Standing Order 211 reads:

Confidentiality of proceedings for Portfolio Committees and the Committee of the Legislative Assembly

(1) The proceedings of a portfolio committee, the Committee of the Legislative Assembly or a select committee or a subcommittee of any of those committees 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.

(2) Paragraph (1) does not prevent—

(a) the disclosure, by a committee in (1) or by a member of the committee or an officer of the committee, of proceedings to a member of Parliament or to the Clerk or another officer of the House in the course of their duties;

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

(b) the disclosure, by a member of the committee or an officer of the committee, to an electorate officer, opposition officer or ministerial officer engaged to assist a member of the committee;

(c) a public servant or an officer of a public entity informing their immediate supervisor, Director General or Chief Executive Officer, or responsible Minister of the evidence they have provided to a committee in (1) or evidence sought by a committee; and

(d) the disclosure of proceedings otherwise in accordance with these Standing Orders.

(3) Despite (2), a committee in (1) may resolve that some or all of its proceedings relating to an inquiry or report remain confidential to the committee, its members and officers until the committee has reported those proceedings to the House or otherwise published the proceedings.

(4) Despite (2), no member shall in the House refer to any proceedings of a committee in (1) until the committee has reported those proceedings to the House or otherwise published the proceedings.

(5) A committee in (1) may authorise a submission to it to be published at any time after receiving it.

(6) A submission in (5), if not already authorised to be published, is deemed authorised to be published on the committee hearing oral evidence from the witness who made the submission subject to any express resolution of the committee to the contrary.

(7) Paragraph (1) does not prevent the release of a submission by the person who submitted it.

6. The Chair provided the following context for the referral:

At the Transport and Public Works Committee meeting on Monday 15 June 2020 the committee discussed Technical Scrutiny Secretariat advice regarding Subordinate Legislation No 57 (Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020). That advice related to the fact that the subordinate legislation had not been tabled within 14 days as required by the COVID-19 Emergency Response Act 2020 which has the effect that the regulation ceased to have effect. The committee agreed to report on the issue recommending that the Minister for Housing and Public Works; Minister for Digital Technology; and Minister for Sport take action to rectify this issue as a matter of urgency. The committee's report no 40 was tabled on Friday 19 June 2020.

Subsequent to the meeting, Minister de Brenni's office called me to advise they had received a call from the media asking about the subordinate legislation which was discussed during the committee's meeting that day.

7. Included in the referral to the committee was an article from The Courier Mail dated 17 June 2020, 11.30pm, by Jack McKay titled 'Tenancy laws protecting renters amid pandemic invalid for weeks'.
8. The referral provided statements from all those present at the meeting on 15 June 2020 (TPWC members, the TPWC secretariat and the Technical Scrutiny Secretariat) that they were not responsible for disclosing committee proceedings to any third party, and that they were unaware of the source of any disclosure.
9. The referral by the TPWC was made 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.

Definition of contempt

10. 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.*
11. 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.
6. The *Parliament of Queensland Act 2001*, section 9 defines Proceedings in the Assembly:
 - (1) *Proceedings in the Assembly include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.*
 - (2) *Without limiting subsection (1), proceedings in the Assembly include—*
 - ...
 - (b) *evidence given before the Assembly, a committee or an inquiry;*
 - (c) *presenting or submitting a document to the Assembly, a committee or an inquiry; and*
 - (d) *a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry.*
12. Section 9(1) of the POQA defines ‘Proceedings in the Assembly’ as:

...all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly of a committee.
13. As noted in paragraph 5, SO 211 maintains the confidentiality of committee proceedings until such a time that the committee reports on the matter.
14. This rule is designed to promote the better functioning of the committee process.² It also affirms the principle that the House is entitled to receive the first advice as to the deliberations of its own committees.
15. Previous Ethics Committees have stressed that “any unauthorised disclosure of committee proceedings represents an attack on the integrity of the Parliament”.³
16. There are three elements to be established where it is alleged that a member has committed the contempt of unauthorised disclosure of committee proceedings:
 - (1) Was there disclosure of a proceeding of a committee?
 - (2) Was the disclosure unauthorised?
 - (3) Did the unauthorised disclosure amount to an improper interference with the free exercise of a committee’s authority or functions?

The committee’s proceedings

² David McGee, *Parliamentary Practice in New Zealand* (4th ed, Online) [p 324](#).

³ Members’ Ethics and Parliamentary Privileges Committee (MEPPC), Report No. 42, *Report on a matter of privilege—Unauthorised release of correspondence between a committee and ministers*, Queensland Legislative Assembly, [p 1](#); MEPPC, Report No. 48, *Report on a Matter of Privilege—Unauthorised Disclosure of Committee Proceedings*, [p 2](#).

12. 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.
13. When investigating this matter, the committee reviewed the material provided by the TPWC, including the responses of the TPWC members, secretariat and Technical Scrutiny Secretariat (TSS) in denying they were the source of the disclosure.
14. The committee found that it had enough material to assess the allegation.

Element 1: Was there a disclosure of a proceeding of a committee?

15. On 15 June 2020, the TPWC was briefed by the TSS in relation to the fact that because the relevant Minister had not tabled the Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020 within 14 days as required by the *COVID-19 Emergency Response Act 2020*, the regulation ceased to exist.
16. The committee determined that this briefing by the TSS was a proceeding of the committee in accordance with the statutory definition at section 9(1) of the POQA.
16. The committee also noted that the information that the TSS referred to was already in the public domain. The *COVID-19 Emergency Response Act 2020* is a publicly available document that specifies the tabling requirements. The date the regulation was notified (24 April 2020), and the date it was subsequently tabled (19 May 2020) was also published on the Queensland Parliament's webpage.
17. However, it appeared to the committee that the failure to comply with the 14 day requirement to table subordinate legislation made under that Act, went unnoticed until the day of the TPWC meeting where the TSS provided advice on this exact matter.
18. The Chair of the TPWC alerted the TPWC members and secretariat that Minister de Brenni's office had advised him *'they had received a call from the media asking about the subordinate legislation which was discussed during the committee's meeting that day.'*
19. Notwithstanding the public nature of the information, due to the timing of the media enquiry, the committee considered that the first element had been met, and that there was a disclosure of a proceeding of the TPWC.

Element 2: Was the disclosure unauthorised

20. There was no evidence put forward by the Chair of the TPWC in the referral to the committee that would indicate any potential disclosure was authorised. Rather, the Chair noted in his referral:

The committee agreed that disclosure of committee proceedings in this manner is breach of trust and should be viewed seriously.
21. Therefore, the committee considered that it was not contested that any alleged disclosures were unauthorised disclosures, and that the second element was met.

Element 3: Did the unauthorised disclosure amount to an improper exercise with the free exercise of a committee's authority or functions?

22. The referral provided by the Chair of the TPWC made no reference as to whether the TPWC believed the alleged unauthorised disclosure amounted to an improper interference with the free exercise of the TPWC's authority or functions, except to advise that the committee had resolved that the matter be reported to the Assembly under Standing Order 268, and that the matter be referred to the committee.
23. Noting that an unauthorised disclosure of the TPWC proceedings was a breach of Standing Order 211, the committee considered that it would amount to both an interference with the authority of the TPWC and the Assembly in making such an order.

24. The committee then considered whether the unauthorised disclosure of committee proceedings amounted to an improper interference with the TPWC's authority.
25. There is no definition of 'improper' or in the POQA or the Standing Orders.
26. Pursuant to Section 14B 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.
27. In 2010, the Integrity, Ethics and Parliamentary Privilege Committee looked at this issue in Report No. 110.⁴ 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. [Emphasis added].*
28. The committee considered that a reasonable person with knowledge of the circumstances of the case would consider the unauthorised disclosure of a confidential briefing was not a proper discharge of the duties, obligations and responsibilities of any member or officer who was in attendance at the TPWC proceedings.
29. Noting that the third element can be made out, the committee then considered whether the issue required the further investigation by the committee.
30. Report No. 42 of the Members' Ethics and Parliamentary Privileges Committee (MEPPC) *Report on a Matter of Privilege – Unauthorised Release of Correspondence between a Committee and Ministers*⁵ was relevant during considerations. In Report No. 42, the MEPPC recommended the procedure that should be followed when there is an unauthorised disclosure of committee proceedings.
31. The Report notes that the committee involved (in this case, the TPWC) should make an effort to identify all possible sources. The committee considered the referral from the TPWC, noting that each member of the TPWC, the secretariat and the TSS had all denied being the source of the leak when directly asked by the Chair of the TPWC. Each person also stated that they were unable to provide any information that could be of assistance in determining the source of the disclosure
32. The report went on to provide guidance in relation to what should be considered in determining whether a formal investigation is required. The following considerations are relevant to the current matter:
 - a. How serious the disclosure was and whether there is 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. What is the likelihood of discovering the source of the disclosure?

⁴ Integrity, Ethics and Parliamentary Privilege 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, [p.6](#).

⁵ Members' Ethics and Parliamentary Privileges Committee, [Report No. 42](#), *Report on a Matter of Privilege – Unauthorised Release of Correspondence between a Committee and Ministers*.

- c. Is the disclosure an isolated occurrence?
 - d. What is the likelihood of the disclosure reoccurring?
33. In relation to how serious the disclosure was, the committee notes that the information was already within the public sphere. While unquestionably inappropriate, the release of such information did not appear to amount to a substantial interference with the work of the TPWC. Notwithstanding the disclosure, the TPWC was still able to deliberate and report on the matter at hand in a timely manner.
34. Considering the denials obtained by the TPWC, the committee noted that the likelihood of uncovering the potential source of any unauthorised disclosure was limited.
35. The committee also noted this appeared to have been an isolated incident with a low likelihood of further unauthorised disclosures.
36. However, the committee considers that the confidentiality of committee proceedings is an extremely important safeguard which ensures open and fulsome committee deliberations. The committee emphasises to each member of Parliament the significant responsibility that committee membership brings, and reminds all members and Parliamentary officers that disclosing unauthorised committee proceedings is a particularly serious contempt of Parliament.

Conclusion

37. On the basis that it was unlikely the committee was going to identify the source of disclosure and that the alleged unauthorised disclosure appeared to be an isolated occurrence, the committee determined to dismiss the matter on the basis this was not a matter that warranted further attention by the committee.

Conclusion

On the basis that it was unlikely the committee was going to identify the source of disclosure and that the alleged unauthorised disclosure appeared to be an isolated occurrence, the committee determined to dismiss the matter in accordance with Standing Order 270(1)(a) on the basis this was not a matter that warranted further attention by the committee.

Recommendation

The committee recommends that the matter of privilege referred by the Transport and Public Works Committee on 12 August 2020 relating to an alleged unauthorised disclosure of committee proceedings does not warrant the further attention of the House.



Joe Kelly MP

Chair

September 2020

Membership — 56th Parliament

Mr Joe Kelly MP, Chair
Member for Greenslopes

Mr Tim Nicholls MP, Deputy Chair
Member for Clayfield

Ms Leanne Linard MP
Member for Nudgee

Mr Mark McArdle MP
Member for Caloundra

Mr Ray Stevens MP
Member for Mermaid Beach

Mr Chris Whiting MP
Member for Bancroft

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EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE TRANSPORT AND PUBLIC WORKS COMMITTEE ON 12 AUGUST 2020 RELATING TO ALLEGED UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS



Ethics Committee

Meeting No. 48
Thursday, 10 September 2020, 4.05pm
Committee Room 1, Parliamentary Annexe

Present	Mr Joe Kelly MP, Chair Mr Tim Nicholls MP, Deputy Chair Mr Ray Stevens MP Mr Chris Whiting MP
Apology	Ms Leanne Linard MP Mr Mark McArdle MP
In attendance	Ms Bernice Watson, Committee Secretary Ms Rebecca Meehan, Assistant Committee Secretary

2. Declarations of interest

Ms Watson declared a potential conflict of interest in relation to Inquiry 18 - the TPWC matter. In her role as First Clerk Assistant (Committees), Ms Watson had had knowledge of some of the matters subject to the alleged unauthorised disclosure. Ms Watson excused herself from any deliberations on this matter, and advised that Michael Ries, Deputy Clerk would stand in as committee secretary in relation to this matter.¹

¹ The committee requested Ms Watson depart following this declaration and the deliberations that occurred in her absence are contained in separate minutes.

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE TRANSPORT AND PUBLIC WORKS COMMITTEE ON 12 AUGUST 2020 RELATING TO ALLEGED UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS



Ethics Committee

Meeting No. 48

Thursday, 10 September 2020, 4.10pm

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Mr Ray Stevens MP
Mr Chris Whiting MP

Apology

Ms Leanne Linard MP
Mr Mark McArdle MP

In attendance

Ms Rebecca Meehan, Assistant Committee Secretary

3. Inquiry No. 18 – TPWC matter

Discussion ensued.

Resolved

That the committee summarily dispose of the matter under standing order 270(1)(a) because it does not warrant the further attention of the committee, and that Ms Meehan and the Deputy Clerk draft a report in the terms discussed.

Moved: Mr Kelly

Seconded: Mr Nicholls

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE TRANSPORT
AND PUBLIC WORKS COMMITTEE ON 12 AUGUST 2020
RELATING TO ALLEGED UNAUTHORISED DISCLOSURE OF
COMMITTEE PROCEEDINGS**



Ethics Committee

Meeting No. 50
Monday, 28 September 2020, 2.30pm
Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Ms Leanne Linard MP
Mr Mark McArdle MP
Mr Ray Stevens MP
Mr Chris Whiting MP

In attendance

Mr Michael Ries, Deputy Clerk, Acting Committee Secretary
Ms Rebecca Meehan, Assistant Committee Secretary

3. Inquiry No. 18 – TPWC matter

Discussion ensued.

Resolved

That the committee adopt the Chair's report and authorises its tabling.

Moved: Mr Kelly Seconded: Mr Nicholls

Extracts certified correct on 1 October 2020

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

**Joe Kelly MP
Chair**