



QUEENSLAND PARLIAMENT

Ethics Committee

REPORT NO. 217, 57TH PARLIAMENT

**Matter of privilege referred by the Speaker on 16 March
2023 relating to an allegation against the
Member for Maiwar
of misconducting oneself in the presence of the House or
reflecting on the Chair**

October 2023

Ethics Committee

Chair	Ms Jennifer Howard MP, Member for Ipswich
Deputy Chair	Mr Andrew Powell MP, Member for Glass House
Members	Mr Linus Power MP, Member for Logan
	Mr Daniel Purdie MP, Member for Ninderry
	Ms Kim Richards MP, Member for Redlands
	Mr Ray Stevens MP, Member for Mermaid Beach

Functions and procedures

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 committee of the 57th Parliament was appointed by resolution of the Legislative Assembly on 26 November 2020.

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. The committee considers and reports on matters of privilege and possible contempts of parliament referred to it internally by the Speaker, the Registrar, a committee, or the House. This is an important element of the Parliament's exclusive cognisance over its own affairs, which enables it to fulfil its functions.

The committee has established procedures and practices for dealing with referrals 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 the instructions regarding witnesses contained in Schedule 3 of the Standing Orders.

The committee applies the civil standard of proof, on the balance of probabilities, in making a finding of contempt. This is a lower standard than the 'beyond reasonable doubt' standard required for criminal matters. However, proof of a very high order is required to make a finding of contempt, consistent with the test applied in relation to misconduct charges at common law.

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BACKGROUND

1. This report concerns allegations the Member for Maiwar, Mr Michael Berkman MP, misconducted himself in the presence of the House or reflected on the actions or decisions of the Chair.
2. On 15 March 2023, during debate on the Strengthening Community Safety Bill, the Leader of the House (LoTH) took a point of order on the grounds of personal offence under Standing Order (SO) 234 in relation to interjections made by the Member for Maiwar.
3. The Temporary Speaker in the chair at the time asked the Member for Maiwar to withdraw the offending words, in accordance with SO 234. The Member for Maiwar left his seat and moved towards the doors of the chamber.
4. The Temporary Speaker advised the Member that he had asked him to withdraw the offending words and that in refusing to comply with the Temporary Speaker's request, he was being disorderly. The Temporary Speaker ordered that the Member withdraw from the chamber for 1 hour under SO 253A. Accordingly, the Member withdrew from the chamber.
5. On 24 March 2023, the Speaker wrote to the committee, alleging that the Member for Maiwar's refusal to withdraw the offending words may constitute the following examples of contempt set out in SO 266:

(11) misconducting oneself in the presence of the House or a committee;

(23) except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general;

CONTEMPT OF PARLIAMENT

6. Section 37 of the *Parliament of Queensland Act 2001* (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.

7. SO 266 states in part:

Examples of contempt

Without limiting the power of the House, it may treat as a contempt any of the following:

...

(11) misconducting oneself in the presence of the House or a committee;

...

(23) except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general;

8. While some types of conduct have been identified as potential contempts, the term 'contempt of parliament' may include any offence to the dignity of the House or interference with its processes where no established privilege has previously existed. As detailed in Erskine May's *Parliamentary Practice*:

Each House also claims the right to punish as contempts actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against

*its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers...*¹

9. Accordingly, a contempt may be committed if the conduct in question amounts to an act or an omission that offends the authority or dignity of the House or a breach of a duty legitimately imposed by the House upon its members.

The committee's proceedings

10. The committee has established procedures and practices for dealing with referrals which ensure procedural fairness is afforded to all parties. These procedures are set out in chapters 44 and 45 of Standing Orders.
11. On 19 April 2023, the committee wrote to the Member for Maiwar requesting further information in relation to the allegations. The Member responded on 3 May 2023.
12. On 24 May 2023, the committee wrote to the Member for Maiwar seeking a submission in response to the allegations. The Member responded on 31 May 2023.
13. On 14 June 2023, the committee wrote to the Member for Maiwar requesting his attendance at a private hearing to provide him a further opportunity to be heard in respect of this and another separate matter referred by the Speaker. The committee held the private hearing on 31 July 2023 which the Member for Maiwar attended and responded to questions asked by the committee in relation to this matter.
14. On 29 August 2023, the committee sought a submission from the Member in respect of its preliminary finding of contempt. The Member responded on 12 September 2023.
15. In his correspondence to the committee, the Member for Maiwar has consistently argued that the committee has not provided him the 'full particulars' of the allegations against him in accordance with SO 270(6)(a); and that this has prevented him from providing a detailed submission in response to the allegations. Therefore, the Member considers, 'the committee has neither received nor considered any submission from me, beyond the questions posed by committee members at the hearing of 31 July 2023.'²
16. The committee has responded to the Member for Maiwar's complaint at the conclusion of this report (see Committee Comment, paragraph 98).
17. The examples of contempt of Parliament provided in the POQA and in the Standing Rules and Orders of the Legislative Assembly, are not a series of separate 'offences' with which a member might be charged. They are examples of the sort of conduct that may constitute contempt, if the definition of contempt of Parliament in section 37 of the POQA (see paragraph 6) is satisfied. Thus, they offer a benchmark and precedents against which to assess the conduct in question against the definition of contempt.
18. The committee's initial assessment against the specific examples in the Speaker's referral led the committee to conclude that the Member for Maiwar's conduct may amount to contempt. Therefore, the committee has used the examples provided by SO 266(11) and (23) to aid its assessment of whether a finding of contempt under section 37 of the POQA, should be made.

SO 266(11): misconducting oneself in the presence of the House or a committee

19. A breach of this specific example of contempt has only once been considered by the Ethics Committee.³
20. The committee first considered whether the Member for Maiwar's conduct constituted misconduct in the presence of the House, and then whether that misconduct amounted to, or was intended or likely

¹ CJ Boulton (ed), *Erskine May's Treatise on the Law, Privileges, Proceedings and usages of Parliament*, 22nd Edition, Butterworths, London, 1997, p 65.

² Correspondence from the Member for Maiwar to the Ethics Committee dated 12 September 2023, p 2.

³] Ethics Committee Report No. 216, *Matter of privilege referred by the Speaker on 1 December 2022 relating to an allegation of wilfully or recklessly disrespecting rulings of the Speaker*.

to amount to, an improper interference with the free exercise by the Assembly of its authority or functions.

21. The elements required to establish this example of contempt are:
- Element 1: Did the Member for Maiwar misconduct himself in the presence of the House?
 - Element 2: If yes, did this misconduct amount to, or was it intended or likely to amount to, an improper interference with the free exercise by the Assembly of its authority or functions?

Element 1: Did the Member for Maiwar misconduct himself in the presence of the House?

22. The first element concerns whether the Member for Maiwar's conduct amounts to misconduct in the presence of the House.
23. The Macquarie Dictionary defines 'misconduct' as 'improper conduct; wrong behaviour'.⁴
24. McGee also notes that misconduct in the presence of the House may take the form of interruption or disturbance to the proceedings of the House, for example people causing a disturbance in the gallery. McGee also states with reference to this contempt:

*Members who **conduct themselves in a disorderly way** while transacting parliamentary business may themselves be punished for contempt... The Standing Orders do not displace the inherent power of the House to discipline members and strangers who cause disruption to its proceedings.*⁵ [Emphasis added]

25. The Macquarie Dictionary defines 'disorderly' as, 'unruly' and 'violating, or opposed to, constituted order'.⁶
26. On 15 March 2023, during debate on the Strengthening Community Safety Bill the LoTH took a point of order on the grounds of personal offence under SO 234, in relation to interjections made by the Member for Maiwar.⁷
27. An excerpt of the Record of Proceedings provides the following exchange:

Mrs D'ATH: Thank you, Mr Deputy Speaker. We also need to make sure that we are doing what we can to deal with those who are committing the most serious offences and who are committing 50 per cent of the crimes which only makes up 17 per cent of those young offenders. That is why these laws have been specifically targeted towards those serious repeat offenders to try to change the direction in which their future is heading. For the Greens to take their position ignores all of the investment this government has made and continues to make to try to change the direction of these young kids' lives going forward. What is really important is not just the time they spend in detention but what we do to support them through the process while they are in detention and those wrap around supports as they leave detention as well. That is what we need to be doing. That is what this government is doing—investing in those diversionary programs and those supports.

Mr Berkman: While proudly locking up more children!

Mrs D'ATH: It was the Palaszczuk government—

Mr Berkman: Proudly!

Mr DEPUTY SPEAKER: Member for Maiwar, you are warned under the standing orders. Your interjections are not being taken. I asked you to cease them. You are now warned under the standing orders.

...

⁴ The Macquarie Library Pty Ltd, *Macquarie Dictionary 3rd Edition*, p 1220.

⁵ David McGee, *Parliamentary Practice in New Zealand* (2017, 4th Edition), p 777, <https://www.parliament.nz/media/4113/parliamentary-practice-in-nz-final-text.pdf>.

⁶ The Macquarie Library Pty Ltd, *Macquarie Dictionary 3rd Edition*, p 574.

⁷ Record of proceedings, 15 March 2023, p 480, https://documents.parliament.qld.gov.au/events/han/2023/2023_03_15_WEEKLY.pdf.

Mrs D'ATH: *I did take personal offence to the comments that the member for Maiwar made and I ask that they be withdrawn.*

Mr DEPUTY SPEAKER: *Member for Maiwar, the member for Redcliffe has taken personal offence at the comments that you made and I ask that you withdraw.*

Mrs D'ATH: *He's ignored the ruling, Mr Deputy Speaker.*

Mr DEPUTY SPEAKER: *Member for Maiwar—*

Honourable members interjected.

Mr DEPUTY SPEAKER: *Member for Maiwar—*

Honourable members interjected.

Mr DEPUTY SPEAKER: *Pause the clock. You have been asked to withdraw comments, not withdraw from the chamber.*

Mr Berkman interjected.

Mr DEPUTY SPEAKER: *Member for Maiwar—*

Mrs D'ATH: *Mr Deputy Speaker, I—*

Mr DEPUTY SPEAKER: *Member for Maiwar, I ask you to withdraw from the chamber under standing order 253A for an hour.*

Whereupon the honourable member for Maiwar withdrew from the chamber at 4.46 pm.⁸

28. The parliamentary broadcast shows (15 March 2023, 4.45pm) that when the Temporary Speaker asked the Member for Maiwar to withdraw the offending words, the Member for Maiwar stood up, turned his back and went to exit the Chamber.
29. The Member for Maiwar turned and bowed to the Temporary Speaker indicating his intention to exit the Chamber. The Temporary Speaker called twice to the Member for Maiwar who then stood in front of the Chamber doors, and clarified that the Member was not asked to withdraw from the Chamber, but to withdraw the offending words. The Temporary Speaker then ordered the Member for Maiwar to withdraw from the Chamber for 1 hour in accordance with SO 253A.
30. The Member for Maiwar submits:
 - that his comments were directed to the Government and its actions, and that there was no basis for the LoTH to take personal offence under Standing Order 234, or, therefore, for him to withdraw his comments.
 - that he did not withdraw his comments, as directed by the Temporary Speaker, and instead opted to leave the Chamber because *'this seemed at the time, and in hindsight, the least disruptive way to respond to the situation other than to offer a disingenuous withdrawal that wasn't justified under Standing Orders'*.⁹

Consideration

31. The question before the committee was whether refusing to follow a Speaker's direction, and instead withdrawing oneself from the Chamber, amounts to 'misconduct'. In accordance with McGee, the committee may consider whether such conduct is 'disorderly' (ie opposed to constituted order).
32. The Members Code of Ethical Standards provides that:

⁸ Record of Proceedings, 15 March 2023, p 480,
https://documents.parliament.qld.gov.au/events/han/2023/2023_03_15_WEEKLY.pdf.

⁹ Correspondence from the Member for Maiwar to the Ethics Committee dated 3 May 2023, p 3.

*The Standing Rules and Orders of the Legislative Assembly (the Standing Orders) govern conduct in the Parliament. Members are to conduct themselves in an appropriate and orderly manner in the Parliament and comply with any lawful direction by the Speaker or the House.*¹⁰

33. In correspondence to the committee, the Member accepts he did not follow the Temporary Speaker's direction because he did not consider the LoTH had reasonable grounds for her claim of offence under Standing Order 234.¹¹
34. In effect, he 'disagreed' with the direction given to him by the Temporary Speaker.¹²
35. When the Member for Maiwar did not withdraw his comments, including after the Temporary Speaker clarified his direction for the benefit of the Member, the Temporary Speaker ordered that the Member withdraw from the Chamber for 1 hour, under SO 253A. The Member complied with this direction.
36. However, the Member has confirmed that he was in the process of withdrawing from the Chamber as an alternative to following the Speaker's direction to withdraw the offending comments.
37. In considering the Member for Maiwar's state of mind at the time, the committee asked the Member for Maiwar whether he understood that he had been given a direction by the Temporary Speaker.¹³
38. The Member for Maiwar confirmed to the committee that he had in fact, heard the words of the Temporary Speaker, and that he did not think it was a direction that was validly given under standing orders given he did not consider he had infringed on SO 234.¹⁴
39. As regards his state of mind at the time, the Member for Maiwar told the committee:

*My state of mind, if I might respond—and I have said it before in this session—I felt, and it remains my view, that there was little to be gained in trying to argue the point with the Deputy Speaker in the chair at the time and I was strongly disinclined to withdraw comments that did not fall afoul of the standing order.*¹⁵
40. In accordance with SO 249(2), it was open to the Member at the time to raise a point of order in response to the LoTH's point of order regarding personal offence, that the comment was not personal but directed towards the government.¹⁶ He did not do so.
41. The committee finds that in failing to comply with the Temporary Speaker's direction in circumstances where the Member knew the appropriate course of action was to withdraw the offending words as required by SO 234(2), irrespective of his belief about the LoTH's basis for her claim, the Member for Maiwar's conduct was contrary to the good order of the House and constitutes 'disorderly' behaviour amounting to misconduct.¹⁷ Therefore, element 1 is made out.

Element 2: Did any misconduct amount to, or was it intended or likely to amount to, an improper interference with the free exercise by the Assembly of its authority or functions?

42. As to whether an interference was 'improper': there is no definition of 'improper' or 'improper conduct' in the POQA or the Standing Orders.¹⁸

¹⁰ Legislative Assembly of Queensland, *Code of Ethical Standards together with the Guide to the Code of Ethical Standards and Rules Relating to the Conduct of Members*, p 14, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2018/5618T894.pdf>.

¹¹ Submission from the Member for Maiwar to the Ethics Committee dated 3 May 2023, pp 1-3.

¹² Private hearing transcript, Brisbane, 31 July 2023, p 10.

¹³ Private hearing transcript, Brisbane, 31 July 2023, p 9.

¹⁴ Private hearing transcript, Brisbane, 31 July 2023, p 9.

¹⁵ Private hearing transcript, Brisbane, 31 July 2023, p 9.

¹⁶ Standing Order 249(2) states that in considering a point of order, the Speaker may also hear the opinion of any other members on the point of order or other matter.

¹⁷ Standing Order 234(2) states that if the offended member objects to the words used the words must be withdrawn by the offending member without qualification or further comment.

¹⁸ 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.

43. In 2010, the Integrity, Ethics and Parliamentary Privilege Committee looked at this issue in Report No. 110.¹⁹ 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].*

Consideration

44. The question before the committee was whether the Member's conduct in turning to leave the Chamber rather than following the Temporary Speaker's direction to withdraw his remarks, was a) an interference with the Assembly's free exercise of its authority or functions; and b) if it was, whether it was improper.
45. The following excerpt from the private hearing transcript is evidence that the Member for Maiwar knowingly refused to follow a Speaker's direction, which the Member considered at the time to be for the purposes of maintaining order in the House:

Mr POWER: *You said that the Deputy Speaker was making an extempore, on-the-spot, in-the-moment ruling in attempting to maintain order of the House.*

Mr Berkman: *Yes.*

Mr POWER: *But at that point you refused to withdraw your interjection, knowing that?*

Mr Berkman: *That it was disorderly?*

Mr POWER: *Yes, and that you had been given an order by the Speaker.*

...

Mr Berkman: *Indeed, and I was ejected from this chamber. All of us have probably conducted ourselves in the House in ways that, on reflection, are maybe not the highest standard of behaviour. However, what we are talking about here is whether my conduct in choosing not to argue with the Speaker but instead to leave the House is a contempt of parliament.²⁰*

46. In correspondence to the committee, the Member for Maiwar argued that he considers it is beyond question that the Temporary Speaker determined at the time what the appropriate consequences for his conduct, and he complied with the Temporary Speaker's direction to withdraw from the Chamber for 1 hour.
47. The Members Code of Ethical Standards is unequivocal about the role of the Speaker in maintaining orderly conduct in the House and members' obligations to follow any lawful directions of the Speaker. It states:

The Speaker of the Legislative Assembly (the Speaker) is the representative of the Assembly in its powers, proceedings and dignity, and presides over the sittings of the House.

...

¹⁹ Integrity, Ethics and Parliamentary Privilege Committee, Report No. 110, *Matter of Privilege Referred by the Speaker on 11 June 2010 Relating to the Discharge of a Member from a Parliamentary Committee*, p 6, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2010/5310T2940.pdf>.

²⁰ Private hearing transcript, Brisbane, 31 July 2023, p 11.

*Members shall comply with the Speaker's directions.*²¹

48. This is to ensure the House can fulfil its functions effectively, in the interests of the people it represents. In accordance with SO 234(2), it is standard and regular practice that members withdraw remarks made which cause personal offence to another member, when so directed by the Speaker, in the interests of that objective.²²
49. The Member did not consider there was a reasonable basis for a claim under SO 234, and considers the Temporary Speaker dealt with his conduct at the time of the incident. However, these arguments are not relevant to the question of whether a contempt was committed in the first place.
50. The committee finds that in knowingly refusing to comply with the Temporary Speaker's direction, which the Member was obliged to follow in spite of his personal views about the direction, the Member for Maiwar's misconduct disrespects the role of the Speaker in maintaining the order of the House and amounted to, or was intended or likely to amount to, an improper interference with the free exercise of the Assembly's authorities or functions. Therefore, element 2 is made out.

Conclusion

51. On the matter of whether the Member for Maiwar's actions amounted to misconduct in the presence of the House, the committee finds that despite his personal views about the Temporary Speaker's direction, or the basis on which the LoTH claimed personal offence, in knowingly refusing to follow a Speaker's direction, the Member for Maiwar has disrespected the Temporary Speaker, and intentionally interfered with the House's ability to control its proceedings.
52. In having established both elements 1 and 2, the committee finds that the Member has misconducted himself in the presence of the House and has made a finding of contempt.

SO 266(23): except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general

53. Instances of reflecting on the Chair have been considered multiple times by predecessor Ethics Committees.²³ Ethics Committee Report No. 90 states:

*In Queensland, and in many other jurisdictions based on the Westminster system, it is a recognised principle of parliamentary privilege that the character or actions of the Chair (the Speaker, Deputy Speaker and Acting Speakers) may not be criticised by any member except on a substantive motion. There are numerous authorities that support this principle. The principle is based on respect for the institution of Parliament—the Chair being the embodiment of the power, authority and integrity of the Parliament.*²⁴

54. In considering the Speaker's referral, the committee gave consideration to the meaning of contempt of the Assembly set out in section 37(2) of the *Parliament of Queensland Act 2001*:

(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—

(c) the free exercise by the Assembly or a committee of its authority or functions; or

²¹ Legislative Assembly of Queensland, *Code of Ethical Standards together with the Guide to the Code of Ethical Standards and Rules Relating to the Conduct of Members*, p 14, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2018/5618T894.pdf>.

²² Standing Order 234(2) states that if the offended member objects to the words used the words must be withdrawn by the offending member without qualification or further comment.

²³ See paras 26-37 in Ethics Committee Report No. 133: *Matter of privilege referred by the Speaker on 28 November 2012 relating to an alleged reflection on the Chair*, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2013/5413T2566.pdf>; See for example Ethics Committee Reports Nos. 54, 71, 73, 90 and 133.

²⁴ Members' Ethics and Parliamentary Privileges Committee, Report No. 90, *Matter of Privilege Referred by the Deputy Speaker on 28 February 2008 Relating to Alleged Reflections on the Speaker*, p 4, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2008/5208T3662.pdf>.

(d) *the free performance by a member of the member's duties as a member.*

[Emphasis added]

55. The committee determined it would expand on the previously established elements applied by former Ethics Committees to clarify when considering alleged contempts in accordance with Standing Order 266(23), that consistent with s 37(2) it is conduct, including words, that can amount to a reflection on the Chair. The elements are as follows:

- Element 1: Did the Member make the statements or display the conduct attributed to him?
- Element 2: Do the statements or conduct amount to a reflection on the Chair?
- Element 3: Do the statements or conduct constitute an improper interference with the free exercise by the Assembly of its authority or functions?

Element 1: Did the Member make the statements or display the conduct attributed to him?

56. Paragraphs 26 – 29 above set out the details of the Member for Maiwar's conduct in the House on 15 March 2023. In summary, the Member for Maiwar refused to comply with a direction of the Temporary Speaker to withdraw words said during debate that the LoTH found to be personally offensive under SO 234.

57. In correspondence to the committee, the Member for Maiwar has not disputed his conduct (ie that he chose not to comply with a direction given by the Temporary Speaker on 15 March 2023).²⁵

58. Therefore, the committee finds that the Member for Maiwar engaged in the conduct attributed to him, and therefore element 1 is made out.

Element 2: Do the statements or conduct amount to a reflection on the Chair?

59. As set out above, the parliamentary broadcast shows that when the Temporary Speaker asked the Member for Maiwar to withdraw the offending words, the Member for Maiwar stood up, turned his back and went to exit the chamber.

60. The Temporary Speaker called twice to the Member for Maiwar who then stood in front of the Chamber doors, and clarified that the Member was not asked to withdraw from the Chamber, but to withdraw the offending words.

61. The Member for Maiwar did not comply with the Temporary Speaker's direction.

62. The Temporary Speaker then ordered the Member for Maiwar to withdraw from the Chamber for 1 hour in accordance with SO 253A.

63. In correspondence to the committee, the Member for Maiwar does not dispute that he chose not to comply with the Temporary Speaker's direction. The Member submitted that he instead opted to leave the Chamber because *'this seemed at the time, and in hindsight, the least disruptive way to respond to the situation other than to offer a disingenuous withdrawal that wasn't justified under Standing Orders'*.²⁶

64. When asked to explain how his conduct does not amount to a reflection on the Temporary Speaker, the Member for Maiwar told the committee, 'It reflects a disagreement with the Speaker's decision at that point.'

65. The committee is satisfied that the Member for Maiwar's conduct was an intentional reflection on the decisions or actions of the Temporary Speaker when he directed the Member for Maiwar to withdraw the offending words.

66. The committee considers this is further supported by the following excerpt from the private hearing transcript:

Mr POWER: *So you are agreeing that it is reflecting on the decisions or actions of the Deputy Speaker at that point?*

²⁵ Correspondence from the Member for Maiwar to the Ethics Committee dated 3 May 2023.

²⁶ Correspondence from the Member for Maiwar to the Ethics Committee dated 3 May 2023, p 3.

Mr Berkman: *I was reacting to circumstances where I disagreed with the ruling. In all the circumstances, as I have said, it genuinely seemed to me to be the least disruptive way, rather than picking a barney with the member for Scenic Rim, who was in the chair at that point in time. I am sure I would not be the first person here to disagree with a ruling of the Speaker.*²⁷

67. The Member for Maiwar submitted that the Temporary Speaker determined at the time what the appropriate consequences were for any alleged misconduct or disorderly conduct in relation to this incident, and that he complied with the Temporary Speaker's direction to withdraw from the Chamber without question.
68. The committee does not consider the Member for Maiwar's arguments (ie that there were no grounds for a claim of personal offence; and that the Temporary Speaker dealt with his conduct at the time) relevant to the question of whether a contempt was committed in failing to comply with a Speaker's direction.
69. Nor does it dispute the Member's comment that he would not be the first person to disagree with a ruling of the Speaker. This is why there are established avenues for resolving such disagreements. The Member did not pursue any of these.
70. The Member for Maiwar has admitted that he chose not to comply with the Temporary Speaker's direction to withdraw the offending words in accordance with Standing Order 234, because he did not agree with the Temporary Speaker's direction.
71. Accordingly, the committee finds that the Member for Maiwar's conduct amounts to an intentional reflection on the decisions and actions of the Chair, and therefore element 2 is made out.

Element 3: Do the statements or conduct constitute an improper interference with the free exercise by the Assembly of its authority or functions?

72. Standing Order 266(23) provides that an example of contempt includes, 'except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general'.
73. This principle of parliamentary law is also reflected in SO 115(d) which provides that questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may only be challenged by substantive motion and SO 250, which provides that dissent from a ruling of the Speaker should be by way of a motion on notice.
74. The effect of these Standing Orders is that the Legislative Assembly has prescribed that for its proper functioning, any reflection on the decisions or actions of the Chair must be by way of substantive motion.²⁸
75. The committee also notes from time to time, members may write to the Speaker seeking guidance or clarification as to procedural matters or directions that have arisen in the course of business in the House.
76. As part of its deliberations in this matter, the committee considered former Ethics Committee Report No. 133, which concerned an allegation that the former Member for Bundamba reflected on the Chair in a statement made in the House.
77. In that matter, the former Member for Bundamba stated in the House, '*Madam Speaker, I have been vilified by you in this parliament for the last six months*'. The Speaker subsequently ordered the Member to withdraw from the Chamber for 1 hour in accordance with SO 253A.²⁹

²⁷ Private hearing transcript, Brisbane, 31 July 2023, p 10.

²⁸ Ethics Committee Report No. 133, *Matter of privilege referred by the Speaker on 28 November 2012 relating to an alleged reflection on the Chair*, p 6.

²⁹ Ethics Committee Report No. 133, *Matter of privilege referred by the Speaker on 28 November 2012 relating to an alleged reflection on the Chair*, p 2.

78. The former Ethics Committee considered this was a reflection on the Chair, but that an argument could be made that the former Member for Bundamba's comments were brief and dealt with quickly by the Speaker by way of SO253A.³⁰
79. However, the committee was of the view:
- ...that such an argument only goes to show that an interference with the House's function was brief, not that there wasn't interference at all. The committee believed the brief nature of the interference should be given weight in considering the issue of what an appropriate penalty might be, but not the issue of whether a contempt has been committed.*³¹
80. In this matter, the committee concurs with the former Ethics Committee's view, and considers that while the Member for Maiwar's interference with the House's function was brief, and sufficiently dealt with by the Temporary Speaker at the time, it is evidence of an interference.
81. The committee also considers that reflections on the Chair, by words or by conduct, outside of the process set down by the House is, by its very nature, an improper interference with the free exercise of the Assembly's functions.
82. The committee finds that through his conduct, the Member for Maiwar clearly reflected on the decisions and actions of the Temporary Speaker, challenging the Assembly's authority in an improper manner, and interfering, albeit briefly, with the free exercise of the Assembly's functions, and element 3 is made out.

Conclusion

83. On the matter of whether the Member for Maiwar's conduct amounted to a reflection on the decisions or actions of the Chair, the committee finds the Member's reflection on the Temporary Speaker's decision an intentional, albeit brief, interference with the free exercise of the Assembly's functions, based on the Member's own admission that he chose not to comply with the Temporary Speaker's direction to withdraw the offending words because he did not agree with the Temporary Speaker, and instead chose to withdraw from the Chamber.

CONCLUSION

84. Based on the information before the committee, the committee finds that all elements necessary to establish the following examples of contempt:
- (1) misconducting oneself in the presence of the House or a committee; and
 - (2) reflecting on the actions or decisions of the Chair, whether relating to actions inside the House or the character of the Chair in general.
85. Therefore, the Member for Maiwar's conduct constitutes a contempt of Parliament.

PENALTY

86. SO 270(5) provides that a committee must with its report recommend the action that should be taken.
87. In accordance with the principles of procedural fairness, on 29 August 2023, the committee wrote to the Member for Maiwar to advise of its preliminary finding of contempt and to seek a submission on possible penalty.
88. On 12 September 2023, the Member for Maiwar responded that he remains of the view that his conduct does not amount to contempt, and that the committee should consider the following 'mitigating factors': the LoTH had no basis for her claim of personal offence; he left the chamber in an effort to minimise disruption; and that any other course of action at that time may have been taken as

³⁰ Ethics Committee Report No. 133, *Matter of privilege referred by the Speaker on 28 November 2012 relating to an alleged reflection on the Chair*, p 6.

³¹ Ethics Committee Report No. 133, *Matter of privilege referred by the Speaker on 28 November 2012 relating to an alleged reflection on the Chair*, p 6.

dissent to the Temporary Speaker's 'ruling', which could itself be deemed not in accordance with SO 250, or even a contempt of Parliament under SO 266(23).³²

Precedents for penalties for reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general

89. The committee notes there is no precedent penalty for misconducting oneself in the presence of the House or a committee.
90. With respect to the contempt of reflecting on the actions or decision of the Chair, the committee took into account predecessor Ethics Committee Report Nos. 90 and 133.
91. Report No. 90 considered allegations that the former Member for Nicklin reflected on the Chair on numerous occasions both inside and outside the House. In that matter, the committee recommended that the former Member unreservedly apologise to the House and the Speaker; and, that the former Member be suspended from the services and precincts of the House for 21 days.
92. Report No. 133 considered an allegation that the former Member for Bundamba reflected on the Chair in a statement made in the House. In that matter, the committee considered the contempt to be at the lower end of the scale, and did not warrant a recommendation for suspension from the Assembly. However, the former Member for Bundamba was also a member of the predecessor Ethics Committee that considered the matter.
93. The committee determined that because the Ethics Committee sits in judgement of allegations against its peers relating to their conduct in the House, the former committee was of the view that, should the House accept its recommendation that the member for Bundamba be found guilty of contempt, that it would be appropriate that the member be suspended from the membership of that committee for a period of time.
94. In that matter, the committee unanimously recommended that the House suspend the former Member for Bundamba from the Ethics Committee for a period of 3 months from the date the committee's recommendation was considered by the House.
95. In this matter, the committee considers the Member for Maiwar's conduct on the lower end of the scale, noting that while his conduct interfered with the House's function, this interference was brief and sufficiently dealt with by the Temporary Speaker at the time.
96. On this basis, the committee took the view that the Member for Maiwar should take it upon himself at the earliest opportunity to apologise to the House and the Speaker, on the floor of the House.
97. The committee recommends that if the House considers the apology tendered is adequate, that the House accept the Member for Maiwar's apology as the appropriate and final penalty.

COMMITTEE COMMENT

98. During the committee's inquiry the Member for Maiwar raised concerns about the committee's process and procedural fairness, including that he considers he did not receive adequate 'particulars' of the allegations against him in accordance with SO 270(6) and was therefore not in a position to make a submission to the committee.
99. The committee advised the Member the particulars are the facts of the matter. The committee's correspondence tabled with this report shows the Member has been provided with the facts in this matter on a number of occasions. It has also described the criteria against which the conduct in question – the particulars – would be assessed.³³
100. The committee cannot comprehend what further information the Member would require to make a submission as to why he considers his conduct does not amount to contempt. The member's correspondence suggests the particulars should include why the committee considers his conduct does

³² Correspondence from the Member for Maiwar to the Ethics Committee dated 12 September 2023, p 2.

³³ See for example Ethics Committee correspondence to Mr Michael Berkman MP dated 24 May 2023 and 14 June 2023.

constitute contempt. That would be to pre-empt the committee's deliberations, which the Member was invited to inform by way of a submission.

101. The Member for Maiwar submitted that he requested clarification on the following issues:
- whether the committee had considered the LoTH's basis for a point of order under SO 234; or intended to hear from the Member for Scenic Rim, as the Temporary Speaker in the chair at the time of the alleged contempt.
 - the committee's expansion of the elements to establish contempt in accordance with SO 266(23) to include 'conduct'.
102. The Member for Maiwar was advised that the Speaker's referral does not concern the conduct of any other member.³⁴ The basis of the LoTH's point of order is not relevant to the question of whether the Member for Maiwar's conduct could amount to contempt for failing to comply with a Speaker's direction.
103. In respect of personal reflections on members, SO 234(2) provides that if the offended member objects to the words used, the words must be withdrawn by the offending member without qualification or further comment. Irrespective of the basis of a claim of personal offence, it is routine for members to withdraw when directed by the Speaker, even in circumstances where the claim of personal offence is contested. The Speaker will from time to time remind Members who contest claims of personal offence, that it would assist the House to function effectively if the comments were withdrawn (ie to maintain order).³⁵ There are proper avenues for protesting against Speaker's rulings as described above.
104. The committee notes the Member considers he has been denied his right to have the committee hear from the relevant Temporary Speaker in accordance with SO 270(1)(c)(ii). The committee wishes to clarify that the intention of SO 270(1)(c)(ii) is to provide persons who are the subject of a referral to the committee, the opportunity to nominate someone the committee may hear from for the purposes of procedural fairness (ie in support of their case). The committee sees no rationale for compelling a Temporary Speaker to provide evidence as to their state of mind when issuing a direction. That is not relevant to whether a direction was disobeyed: the rightness or otherwise of a Speaker's direction is not the question at hand. Further, a conflict of interest would have arisen for the Temporary Speaker in the chair at the time, if the committee were to hear from him in the capacity intended by SO 270(1)(c)(ii).
105. In relation to the committee's expansion of the elements to establish contempt in accordance with SO 266(23) to include 'conduct', the Member was advised that section 37(2) of the POQA defines the meaning of contempt as 'conduct, including words'. The committee also advised the Member that while the committee considers the precedent of former ethics committees, contempts, and the elements required to establish them, are not fixed and the examples in SO 266 are not exhaustive. The committee engaged in this correspondence with the Member in good faith, to provide all reasonable information to support the Member in making a submission.
106. The committee considers it difficult not to conclude that the Member's refusal to make a submission until further particulars were provided, was seeking to obfuscate and delay its processes. The committee provided responses to the Members request, explaining its processes. It also advised him, at the private hearing to which he was invited, that it was open to him to seek further procedural advice from the secretariat. The secretariat has advised the committee it was not contacted by the Member for advice at any point. Nevertheless, the Member was 'heard' on this relatively straightforward matter, in accordance with SO 270(1)(c)(i), multiple times. He argued that a contempt ought not to be found because, in part, he did not consider the Speaker's direction was given on valid grounds, and suggested that the committee 'hear' from the Temporary Speaker, perhaps in an attempt to establish this. However, the basis of the direction is not a matter before the committee, nor is the committee one of the avenues for challenging a direction of the Speaker. The simple question here

³⁴ Ethics Committee correspondence to Mr Michael Berkman MP dated 14 June 2023, p 1.

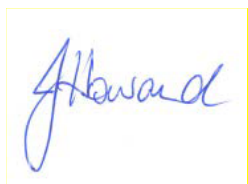
³⁵ See for example, Deputy Speaker (Mr James Lister MP), Record of Proceedings, 24 August 2023, p 2445, https://documents.parliament.qld.gov.au/events/han/2023/2023_08_24_WEEKLY.pdf.

was whether a contempt was committed by the Member for Maiwar when he refused to follow a Speaker's direction.

107. The committee wishes to address the Member for Maiwar's statement that the committee 'directly verballed' him in correspondence when it stated *'In your correspondence you acknowledge that, contrary to the Deputy Speaker's direction and Standing Orders, you did not withdraw the offending words'*.³⁶
108. This correspondence was not intended to infer the Member had made an admission as to having breached a Deputy Speaker's direction and Standing Orders. The committee wishes to clarify that the Member for Maiwar did not acknowledge his behaviour was 'contrary to a Deputy Speaker's direction or Standing Orders'. The wording was intended to convey to the Member that his admitted conduct was in fact a breach of the Speaker's direction and standing orders: in essence, providing a further 'particular' of the matter as the Member had requested.
109. The committee considers it timely to remind all members of their obligations in accordance with the Standing Orders and the Members Code of Ethical Standards, in particular that members are to conduct themselves in an appropriate and orderly manner in the Parliament and comply with any lawful direction by the Speaker or the House.³⁷

RECOMMENDATIONS

110. The committee recommends:
 - (1) a finding of contempt be made against the Member for Maiwar for misconducting oneself in the presence of the House or a committee and reflecting on the actions or decisions of the Chair.
 - (2) the Member for Maiwar should take it upon himself as soon as practicable to apologise unequivocally to the House and the Speaker, on the floor of the House, for his conduct.

A handwritten signature in blue ink, appearing to read 'J Howard', enclosed in a yellow rectangular border.

Ms Jennifer Howard MP
Chair
October 2023

³⁶ Ethics Committee correspondence to Mr Michael Berkman MP dated 24 May 2023, p 2.

³⁷ Legislative Assembly of Queensland, *Code of Ethical Standards together with the Guide to the Code of Ethical Standards and Rules Relating to the Conduct of Members*, p 14.

ETHICS COMMITTEE PROCEEDINGS

Standing Order 211B(3) provides that when the Ethics Committee makes its final report to the House on a matter, the committee shall at the same time, table in the House:

- (a) The minutes of its proceedings relevant to the matter; and
- (b) Any submissions received or evidence taken in respect of the matter (including transcripts of hearings) unless the committee resolves that some or all of its proceedings remain confidential.

The relevant minutes and evidence in respect of this matter are attached to this report.

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 16 MARCH 2023 RELATING TO AN ALLEGATION AGAINST THE MEMBER FOR MAIWAR OF MISCONDUCTING ONESELF IN THE PRESENCE OF THE HOUSE OR REFLECTING ON THE CHAIR



Ethics Committee

Meeting No. 43

Wednesday, 19 April 2023, 1.15pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

Ms Jennifer Howard MP, Chair
Mr Andrew Powell MP, Deputy Chair
Mr Linus Power MP
Mr Dan Purdie MP (from 1.18pm)
Ms Kim Richards MP
Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary
Dr Amanda Beem, Legal and Compliance Officer

Inquiry 10 – Alleged misconduct in the presence of the House or reflecting on the Chair (Maiwar)

Discussion ensued.

Resolved

That the committee write to the Member for Maiwar in the terms of the draft letter provided, and requests from Hansard any additional audio clips or video footage of the Chamber at the time of the incident that might assist in its deliberations.

Moved: Mr Powell

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 16 MARCH 2023 RELATING TO AN ALLEGATION AGAINST THE MEMBER FOR MAIWAR OF MISCONDUCTING ONESELF IN THE PRESENCE OF THE HOUSE OR REFLECTING ON THE CHAIR



Ethics Committee

Meeting No. 45

Wednesday, 24 May 2023, 1.17pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

Ms Jennifer Howard MP, Chair
Mr Andrew Powell MP, Deputy Chair
Mr Linus Power MP
Mr Dan Purdie MP
Ms Kim Richards MP
Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary
Dr Amanda Beem, Legal and Compliance Officer

Inquiry 10 – Alleged misconduct in the presence of the House or reflecting on the Chair (Maiwar)

Discussion ensued.

Resolved

That the committee resolves to investigate allegations 1 and 2 and writes to the Member for Maiwar in the terms of the draft letter provided.

Moved: Mr Power

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 16 MARCH 2023 RELATING TO AN ALLEGATION AGAINST THE MEMBER FOR MAIWAR OF MISCONDUCTING ONESELF IN THE PRESENCE OF THE HOUSE OR REFLECTING ON THE CHAIR



Ethics Committee

Meeting No. 47

Wednesday, 14 June 2023, 1.17pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

Ms Jennifer Howard MP, Chair
Mr Andrew Powell MP, Deputy Chair
Mr Linus Power MP
Mr Dan Purdie MP
Ms Kim Richards MP

In attendance

Ms Bernice Watson, Committee Secretary
Dr Amanda Beem, Legal and Compliance Officer

Apologies and welcome

Mr Stevens is an apology.

Inquiry 10 – Alleged misconduct in the presence of the House or reflecting on the Chair (Maiwar)

The committee noted the Member for Maiwar's correspondence dated 31 May 2023 in relation to this matter.

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 16 MARCH 2023 RELATING TO AN ALLEGATION AGAINST THE MEMBER FOR MAIWAR OF MISCONDUCTING ONESELF IN THE PRESENCE OF THE HOUSE OR REFLECTING ON THE CHAIR



Ethics Committee

Meeting No. 49

Wednesday, 23 August 2023, 1.15pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

Ms Jennifer Howard MP, Chair
Mr Andrew Powell MP, Deputy Chair
Mr Dan Purdie MP
Ms Kim Richards MP
Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary
Dr Amanda Beem, Legal and Compliance Officer

Apologies and welcome

Mr Power is an apology.

Inquiry 10 – Alleged misconduct in the presence of the House or reflecting on the Chair (Maiwar)

Discussion ensued.

Resolved

That the committee:

- make a preliminary finding of contempt against the Member for Maiwar for misconduct in the presence of the House and reflecting on the Chair
- write to the Member for Maiwar seeking a submission in relation to penalty, and
- request the secretariat prepare a draft report to the House for the committee's consideration.

Moved: Mr Stevens

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 16 MARCH 2023 RELATING TO AN ALLEGATION AGAINST THE MEMBER FOR MAIWAR OF MISCONDUCTING ONESELF IN THE PRESENCE OF THE HOUSE OR REFLECTING ON THE CHAIR



Ethics Committee

Meeting No. 50

Wednesday, 13 September 2023, 1.13pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

Ms Jennifer Howard MP, Chair
Mr Andrew Powell MP, Deputy Chair
Mr Dan Purdie MP
Mr Linus Power MP
Ms Kim Richards MP
Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary
Dr Amanda Beem, Legal and Compliance Officer

Inquiry 10 – Alleged misconduct in the presence of the House or reflecting on the Chair (Maiwar)

Discussion ensued.

The committee noted that the Chair's draft report will be provided for consideration at the committee's next meeting.

EXTRACT OF MINUTES –

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 16 MARCH 2023 RELATING TO AN ALLEGATION AGAINST THE MEMBER FOR MAIWAR OF MISCONDUCTING ONESELF IN THE PRESENCE OF THE HOUSE OR REFLECTING ON THE CHAIR



Ethics Committee

Meeting No. 51

Wednesday, 11 October 2023, 1.17pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

Ms Jennifer Howard MP, Chair
Mr Andrew Powell MP, Deputy Chair
Mr Dan Purdie MP
Mr Linus Power MP
Ms Kim Richards MP
Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary
Dr Amanda Beem, Legal and Compliance Officer

Inquiry 10 – Alleged misconduct in the presence of the House or reflecting on the Chair (Maiwar)

Discussion ensued.

Resolved

That the committee adopts the Chair's draft report as a report of the committee and authorises it for tabling in the House.

Moved: Ms Howard

Extracts certified correct October 2023

A handwritten signature in blue ink, appearing to read "J Howard".

Jennifer Howard MP
Chair



Ethics Committee

Ethics Committee

Parliament House
George Street
Brisbane Qld 4000

Ph: 61 7 355 36610

Fax: 61 7 355 36614

email: ethics@parliament.qld.gov.au
www.parliament.qld.gov.au/ethics

Ref: A1078611

19 April 2023

Member for Maiwar

Mr Michael Berkman MP

By email: Michael.Berkman@parliament.qld.gov.au

Dear Mr Berkman

On 24 March 2023, the Ethics Committee (the committee) received a referral from Mr Speaker relating to an allegation that you misconducted yourself in the presence of the House and reflected on the decisions or actions of the Chair. The Speaker made a ruling with respect to these allegations on 16 March 2023. The referral letter and Speaker's Ruling are **attached** for your reference.

The material before the committee alleges that during the debate on the Strengthening Community Safety Bill, you made statements that the Leader of the House found personally offensive and in refusing to withdraw these when directed by the Deputy Speaker in accordance with Standing Order (SO) 234(2), your conduct may amount to contempt. The allegations relate to proceedings recorded at page 480 of the Record of Proceedings on [15 March 2023](#).

For your information, the *Parliament of Queensland Act 2001* (POQA) and the *Standing Rules and Orders of the Legislative Assembly* (the Standing Orders) set out the relevant rules relating to contempt.

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.*

Standing Order 266 (Examples of contempt) provides that the House may treat as a contempt—

(11) *misconducting oneself in the presence of the House or a committee;*

...

(23) *except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general;*

The committee invites you to provide any information which addresses the allegations raised by the Speaker discussed above.

The committee has established procedures 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 the Standing Orders. The committee also observes the instructions to committees regarding witnesses contained in Schedule 3 to the Standing Orders. The Standing Orders can be read [here](#).

Please note that Standing Order 211B(1) prohibits disclosure of the committee's proceedings, which includes this correspondence:

The proceedings of the Ethics Committee or a subcommittee of that committee on a matter before the Committee that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported to the House or otherwise published the proceedings.

Standing Order 211B does not prevent you from seeking legal advice in relation to the matter. However, your legal representative will also be bound by the same confidentiality requirement.

For your information, Standing Order 211B(3)(b) provides that when the Ethics Committee makes its final report to the House on a matter the committee shall at the same time table any submissions received or evidence taken in respect of the matter, unless the committee resolves that some or all of its proceedings remain confidential.

The committee would appreciate if any additional information could be provided by **COB 3 May 2023**.

Should you have any queries regarding these matters or require further information, please contact our Committee Secretary, Ms Bernice Watson (email: ethics@parliament.qld.gov.au; telephone: 3553 6610).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Howard', is positioned above the printed name.

Ms Jennifer Howard MP

Chair

Enc.



Our ref: your ref: 230324-OUT-Ethics Committee (Maiwar)

24 March 2023

Ms Jen Howard MP
Chair of the Ethics Committee
Parliament House
George Street
BRISBANE QLD 4000

By E-mail: ethics@parliament.qld.gov.au

Dear Jen

I refer to my ruling of 16 March 2023 which is enclosed.

During debate on the Strengthening Community Safety Bill on 15 March 2023 (Hansard pg 480), the member for Redcliffe took a point of order on the grounds of personal offence under Standing Order 234 in relation to interjections made by the Member for Maiwar.

The Temporary Speaker in the chair at the time asked the Member for Maiwar to withdraw the offending words, in accordance with that standing order. The Member for Maiwar left his seat and moved towards the doors of the chamber.

The Temporary Speaker advised the member that he had asked him to withdraw the offending words and, in refusing to comply with the Temporary Speaker's request, he was being disorderly and ordered that he withdraw from the chamber for one hour under Standing Order 253A. The member withdrew from the chamber, in accordance with the Temporary Speaker's order.

I consider the Member for Maiwar's refusal to withdraw the offending words may be a Contempt of House. Specifically, I refer to the following examples of contempt set out in Standing Order 266;

(11) misconducting oneself in the presence of the House or a committee;

(23) except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general;

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Accordingly, under Standing Order 268 (2), I formally refer the Member for Maiwar to the Ethics Committee to consider whether the Member has committed a Contempt of the House.

Yours sincerely

A handwritten signature in blue ink, appearing to read "C. Pitt", is positioned above the printed name.

HON CURTIS PITT MP
Speaker of the Legislative Assembly

Enc.

(MR SPEAKER)

**SPEAKER'S RULING – CONTEMPT OF PARLIAMENT,
MISCONDUCTING ONESELF IN THE HOUSE AND REFLECTION
ON THE CHAIR**

MR SPEAKER Honourable members,

Yesterday evening in the debate on the Strengthening Community Safety Bill, the Member for Redcliffe took a point of order on the grounds of personal offence in Standing Order 234.

The Deputy Speaker in the Chair at the time asked the Member for Maiwar to withdraw the offending words in accordance with that Standing Order.

The Member for Maiwar left his seat and moved towards the doors of the chamber. The Deputy Speaker advised the Member that he had asked him to withdraw the offending words and in refusing to comply with the Deputy's Speaker's request he was being disorderly and ordered that he withdraw from the chamber for 1 hour under SO 253A.

The Member withdrew from the chamber in accordance with the Deputy Speaker's order.

All members have a right to express their views during privileged debate in the House. However, members must do so in accordance with the Standing Rules and Orders.

I will be referring the member for Maiwar's refusal to withdraw the offending words for the further consideration of the House via the Ethics

Committee as to whether he has committed the contempt of misconducting oneself in the presence of the House under SO 266(11) and whether his conduct amounted to a reflection on the actions of the Chair under SO 266(23).

I remind members that Standing Order 271 now applies and members should not refer to this matter in the House.



Michael Berkman MP
For Maiwar ▲

3 May 2023

Jennifer Howard MP
Chair, Ethics Committee
Queensland Parliament
By email: ethics@parliament.qld.gov.au

Dear Ms Howard

I refer to your letter of 19 April 2023, sent in your capacity as chair of the Ethics Committee (Committee), and the attachments:

- Mr Speaker's ruling of 16 March 2023 (the Speaker's Ruling); and
- Mr Speaker's referral letter dated 24 March 2023 (Referral Letter).

Thank you for the invitation to provide any information that addresses the allegations raised by the Speaker.

It seems that there is once again very little additional information I can provide beyond the facts already before or readily available to the Committee, but I'll endeavour to assist the Committee by highlighting the relevant information as I understand it.

I infer from your letter that the Committee has not made any determination under SO 270(1)(a) whether to summarily dispose of the matter, and I look forward to further advice from the Committee in this respect.

To avoid any doubt, I dispute the allegation that my conduct amounts to contempt of Parliament and believe this matter does not warrant the further consideration of the Committee.

1 Speaker's Ruling and Referral Letter

The facts set out in Mr Speaker's Ruling and the Referral letter are uncontentious, specifically in relation to my actions and those of the Member for Redcliffe and the Deputy Speaker in the Chair at the time.

The Hansard record and the standing orders relied on at that point in the debate, which you may have already considered, provide important additional context for Mr Speaker's allegations.

1.1 Standing Order 234. Personal reflections on members

As the Committee is aware, SO234 addresses personal reflections on members, in the following terms:

(1) Imputations of improper motives and all personal reflections on members shall be considered highly disorderly and a member shall not use unbecoming or offensive words in reference to another member of the House.

(2) If the offended member objects to the words used the words must be withdrawn by the offending member without qualification or further comment.

(3) The offended member must take objection to the words at the time they are spoken.

(4) A member who is called to order must resume their seat but may again rise to withdraw their words and then continue their speech.

The terms of SO234 (and, I understand, previous Speakers' rulings) make clear that the comments in question must be directed at or refer to the member personally, not to the government or opposition, or some other group of people, at large.

I have never used SO234 to claim personal offence or to call for other members' remarks to be withdrawn, but I understand that this rule has been invoked and comments withdrawn more than 450 times since I took my seat as the Member for Maiwar in the 56th Parliament. I'm of the view that members routinely overuse and abuse the rule, to the point that neither the oft feigned personal offence nor the subsequent, disingenuous withdrawal serve any purpose other than to further undermine the (limited) value of debate in the house, and to make the members involved look foolish.

1.2 Comments were not a personal reflection

Considering the constraint imposed by SO234(3), it appears the Member for Redcliffe claimed to have taken personal offence on the basis of the following interjections:

Mrs D'ATH: ... What is really important is not just the time they spend in detention but what we do to support them through the process while they are in detention and those wrap around supports as they leave detention as well. That is what we need to be doing. That is what this government is doing— investing in those diversionary programs and those supports.

Mr Berkman: While proudly locking up more children!

Mrs D'ATH: It was the Palaszczuk government—

Mr Berkman: Proudly!

Mr DEPUTY SPEAKER: Member for Maiwar, you are warned under the standing orders. Your interjections are not being taken. I asked you to cease them. You are now warned under the standing orders.

Importantly, the transcript makes clear that both the Member for Redcliffe and I (in my interjections) were referring to the Government and its actions, and I made no comment about the Member personally. On that fact alone, there was no basis for the Member to take personal offence under SO234 or for me to be required to withdraw my comments.

In circumstances where the Deputy Speaker has apparently not heard the detail of my interjections, which is entirely understandable given the distance in the chamber between me and the chair, arguing

the point against the Deputy Speaker's ruling may have been taken as my dissent to the same, which could itself be deemed not in accordance with the Standing Orders (i.e. SO250), or even a contempt of Parliament (SO266(23)).

As the Speaker's Ruling and Referral Letter note, and in light of the spurious basis for the Member for Redcliffe's point of order, I did not withdraw the comments and instead opted to leave the chamber. This seemed at the time (and in hindsight) the least disruptive way to respond to the situation, other than to offer a disingenuous withdrawal and one that wasn't justified under Standing Orders.

Further to this, the SO235(2)(b) makes clear that a retraction is not unreserved or unqualified, as required by SO235(1) (similar to SO234(2)), if it is phrased in a manner that does not accept that the words were offensive. The fact that my comments were not *personally* offensive in the manner contemplated by SO234 creates something of a quandary within the standing orders – should I have deliberately misled the house by expressing false contrition?

1.3 Consequences already decided and suffered

It seems to me beyond question that the Deputy Speaker determined at the time what the appropriate consequences were for any alleged misconduct or disorderly conduct, and I complied with the Deputy Speaker's ruling without question. Indeed, the Speaker's Ruling recognises explicitly that I was ordered to withdraw from the chamber for 1 hour under SO 253A, and that I did so in accordance with the Deputy Speaker's order.

In short, the issue was dealt with at the time, and it remains entirely unclear to me why the Speaker deemed it necessary to occupy both the Committee's and my time by referring this matter for further consideration.

2 Conclusion

The Speaker's Ruling makes the following observation:

"All members have a right to express their views during privileged debate in the House. However, members must do so in accordance with the Standing Rules and Orders."

I hope it's clear on the facts that the Member for Redcliffe's request for withdrawal was not made "in accordance with the Standing Orders" – it was just one more instance in a long series of ambit claims from over-sensitive Members that devalue SO234 and, in my view, damage the standing of Parliament more generally. Conversely, it is entirely unclear how I should have responded in all the circumstances and in accordance with Standing Orders, other than to simply capitulate to the Member's unfounded (one might say 'disorderly') request that I withdraw my comments – a course of action that itself risks deliberately misleading the Parliament and runs up against uncomfortable ethics of disingenuously expressing contrition.

Thanks again for the opportunity to provide this additional information. I look forward to receiving your earliest possible advice with respect to any determination of the Committee under SO 270(1)(a) and, should the Committee resolve to further investigate this allegation, full particulars of any alleged contempt.

To reiterate, I don't believe this matter warrants further consideration of the Committee and it is my hope that the Committee sees fit to summarily dispose of the matter under SO 270(1)(a), especially in light of the additional information above.

Please don't hesitate to contact my office on 07 3737 4100 or by reply email if I can provide any more detail or assistance with this matter.

Kind regards,

A handwritten signature in black ink, appearing to read 'M Berkman', with a stylized, flowing script.

Michael Berkman MP



Ethics Committee

Ethics Committee

Parliament House
George Street
Brisbane Qld 4000

Ph: 61 7 355 36610

Fax: 61 7 355 36614

email: ethics@parliament.qld.gov.au
www.parliament.qld.gov.au/ethics

Ref: A1103317

24 May 2023

Member for Maiwar

Mr Michael Berkman MP

By email: Michael.Berkman@parliament.qld.gov.au

Dear Mr Berkman

Matter of privilege referred by the Speaker on 16 March 2023

Further to the committee's correspondence of 19 April 2023, I write to inform you that the committee has resolved to investigate the allegations referred by Mr Speaker as to whether your conduct on 15 March 2023 could amount to the following examples of contempt set out in Standing Order (SO) 266 (Examples of contempt):

(11) misconducting oneself in the presence of the House or a committee;

...

(23) except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general;

Request for further submission

In accordance with SO 270(1)(b), the committee invites you to provide a submission in relation to the particulars of the complaint against you and which addresses each of the elements of the alleged contempts set out below.

The *Parliament of Queensland Act 2001* (POQA) and the *Standing Rules and Orders of the Legislative Assembly* set out the relevant rules relating to contempt.

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.*

As to what constitutes an 'improper' interference, Butterworth's Legal Dictionary defines '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.

Particulars of complaint:

- On 15 March 2023, during debate on the Strengthening Community Safety Bill, the Leader of the House took a point of order on the grounds of personal offence under SO 234, in relation to interjections made by you.
- The Deputy Speaker in the chair at the time asked you to withdraw the words to which the Member had taken offence. The record of proceedings shows that you did not withdraw the offending words.¹ Your advice to the committee confirmed this.
- The parliamentary broadcast shows (15 March 2023, 4.45pm) that when the Deputy Speaker asked you to withdraw the offending words, you immediately stood up, turned your back and moved toward the Chamber doors. You proceeded to turn and bow to the Deputy Speaker, indicating your intention to exit the Chamber.
- The Deputy Speaker called on you twice as you stood in front of the Chamber doors, and clarified that you were not asked to withdraw from the Chamber, but to withdraw the offending words. Your response is inaudible in the broadcast footage. The Deputy Speaker then ordered you to withdraw from the Chamber for one hour in accordance with SO 253A.
- In your correspondence you acknowledge that, contrary to the Deputy Speaker's direction and Standing Orders, you did not withdraw the offending words: *'I did not withdraw the comments and instead opted to leave the chamber. This seemed at the time (and in hindsight) the least disruptive way to respond to the situation, other than to offer a disingenuous withdrawal and one that wasn't justified under Standing Orders.'*

Allegation 1: alleged breach of SO 266 (11): misconducting oneself in the presence of the House or a committee

The elements the committee will consider to establish an allegation of contempt are:

- Element 1: Did the Member for Maiwar misconduct himself in the presence of the House?
- Element 2: If yes, did this misconduct amount to, or was it intended or likely to amount to, an improper interference with the free exercise by the Assembly of its authority or functions?

Allegation 2: alleged breach of SO 266 (23): reflecting on the decisions or actions of the Chair

The elements to establish an allegation of contempt are:

- Element 1: Did the Member make the statements or display the conduct attributed to him?
- Element 2: Do the statements or conduct amount to a reflection on the Chair?
- Element 3: Do the statements constitute an improper interference with the free exercise by the Assembly of its authority or functions?

The committee invites you to provide a submission addressing each of the elements of the alleged contempts by **COB 9 June 2023**.

Procedures of the Ethics Committee

As outlined in previous correspondence to you, the committee has established procedures 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 the Standing Orders. The committee also observes the

¹ Record of Proceedings, [15 March 2023](#), pp 479 – 480.

instructions to committees regarding witnesses contained in Schedule 3 to the Standing Orders. The Standing Orders can be read [here](#).

Please note that Standing Order 211B(1) prohibits disclosure of the committee's proceedings, which includes this correspondence:

The proceedings of the Ethics Committee or a subcommittee of that committee on a matter before the Committee that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported to the House or otherwise published the proceedings.

Standing Order 211B does not prevent you from seeking legal advice in relation to the matter. However, your legal representative will also be bound by the same confidentiality requirement.

For your information, Standing Order 211B(3)(b) provides that when the Ethics Committee makes its final report to the House on a matter the committee shall at the same time table any submissions received or evidence taken in respect of the matter, unless the committee resolves that some or all of its proceedings remain confidential.

Should you have any queries regarding these matters or require further information, please contact our Committee Secretary, Ms Bernice Watson (email: ethics@parliament.qld.gov.au; telephone: 3553 6610).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Howard'.

Ms Jennifer Howard MP

Chair



MICHAEL BERKMAN MP

Member for Maiwar ▲

31 May 2023

Jennifer Howard MP
Chair, Ethics Committee
Queensland Parliament
By email: ethics@parliament.qld.gov.au

Dear Ms Howard

I refer to your letter of 24 May 2023 inviting me to make a submission, and I write to seek clarification on a few issues to assist me in doing so.

The first issue pertains to the particulars set out in your letter.

You'll recall that my previous letter of 3 May 2023 considered SO 234 and that the Member for Redcliff's point of order was not justified under standing orders, given that my interjections made no personal reference to the Member. The particulars you've provided make no mention of this, and simply note that the Member took a point of order in relation to my interjections.

Is there a reason this factual background isn't included in the particulars outlined by the Committee? This omission raises some concern for me about how the Committee might consider any submissions that refer to or rely on that fact. Does the Committee dispute the veracity of the information I've provided in my earlier letter or consider on some other grounds that the Member's point of order had a basis in the standing orders?

The second issue relates to the elements set out in respect of allegation two.

In previous correspondence from the Committee (on a separate matter) the elements required to establish contempt under SO 266(23) were provided:

The elements to establish an allegation of contempt are:

- *Element 1: Did the Member make the statements attributed to him?*
- *Element 2: Do these statements amount to a reflection on the Chair?*
- *Element 3: Do the statements constitute an improper interference with the free exercise by the Assembly of its authority or functions?*

The most recent letter instead refers to statements or 'conduct', despite there being no reference to conduct in SO 266(23).

What is the basis for the Committee to expand the elements to establish contempt under SO 266(23) in this way? Has the Committee taken account of other inquiries or precedent where conduct, rather than words, have been taken to amount to reflection on the Chair, or has the Committee decided the detail of these elements ad hoc?

The final issue relates to the views of the Deputy Speaker in the Chair at the time.

Has the Committee heard (or does it intend to hear) from the Member for Scenic Rim in relation to the allegations?

I look forward to your earliest possible reply to these questions. I will endeavour to provide a submission as soon as possible after receiving a reply, and before 9 June if possible.

Contact Us

Tel: (07) 37374100

maiwar@parliament.qld.gov.au

www.michaelberkman.com.au

Visit Us

1/49 Station Road, Indooroopilly

Open: Monday to Friday 9am - 5pm

Please don't hesitate to contact my office on 07 3737 4100 or by reply email if I can provide any more detail or assistance with this matter.

Kind regards,

A handwritten signature in black ink, appearing to read 'MB', with a stylized flourish extending to the right.

Michael Berkman MP



Ethics Committee

Ethics Committee

Parliament House
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Ref: A1115073

14 June 2023

Member for Maiwar

Mr Michael Berkman MP

By email: Michael.Berkman@parliament.qld.gov.au

Dear Mr Berkman

Matter of privilege referred by Mr Speaker on 12 December 2022

On 4 May 2023, the committee wrote to you seeking a submission with respect to allegations that when making statements on 30 November 2022 and 8 December 2022, your conduct could amount to the following examples of contempt set out in SO 266 (Examples of contempt):

(23) except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general;

...

(26) making public statements (either orally or in writing) inciting or encouraging disruption of the Legislative Assembly by bringing the proper proceedings of the Legislative Assembly or its committees into disrepute.

On 19 May 2023, you submitted that the facts in respect of the allegations are uncontested, however that in your view, they do not meet the threshold for contempt; and that to make any adverse finding in the circumstances would deny you procedural fairness.

Matter of privilege referred by the Speaker on 16 March 2023

On 24 May 2023, the committee wrote to you seeking a submission with respect to allegations that on 15 March 2023 your conduct could amount to the following examples of contempt set out in Standing Order (SO) 266 (Examples of contempt):

(11) misconducting oneself in the presence of the House or a committee;

...

(23) except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general;

In response to your correspondence dated 31 May 2023, the committee wishes to make clear that the Speaker's referral does not concern the conduct of any other Member.

Allegation 2: alleged breach of SO 266(23): reflecting on the decisions or actions of the Chair

Your correspondence queried the below elements required to establish a contempt in this matter:

- Element 1: Did the Member make the statements or display the conduct attributed to him?

- Element 2: Do the statements or conduct amount to a reflection on the Chair?
- Element 3: Do the statements constitute an improper interference with the free exercise by the Assembly of its authority or functions?

As previously advised, the *Parliament of Queensland Act 2001* (POQA) and the *Standing Rules and Orders of the Legislative Assembly* set out the relevant rules relating to contempt.

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.*

SO 266 makes clear, that without limiting the power of the House, the House may treat any of the examples included within the standing order as contempt. While the committee considers the precedent of former ethics committees, contempts, and the elements required to establish them, are not fixed and the examples in SO 266 are not exhaustive. It remains a matter for the committee as to how it determines its process for examining matters of privilege, which, includes providing a persons against whom any adverse finding may be made, the opportunity to be heard.

Request to attend private hearing

To provide you with further opportunity to be heard in respect of both of these matters, the committee requests that you attend a private hearing scheduled for **1.00pm on Monday 31 July 2023** at **Committee Room 3, Level 6, Parliamentary Annexe**, to provide evidence under oath or affirmation. The committee will also put to you additional questions that go to whether your conduct in these matters could amount to a contempt.

For your information, Schedule 3 of the Standing Orders sets out Instructions to Committees Regarding Witnesses. Please note you may request to be accompanied by a legal adviser.

The committee asks that you advise by return email of the following by **COB 30 June 2023**:

- a) your preference for an oath or affirmation in accordance with Standing Order 270(3); and
- b) if you are to be accompanied by a legal adviser as per Schedule 3 of Standing Orders.

Procedures of the Ethics Committee

As outlined in previous correspondence to you, the committee has established procedures 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 the Standing Orders. The committee also observes the instructions to committees regarding witnesses contained in Schedule 3 to the Standing Orders. The Standing Orders can be read [here](#).

Please note that Standing Order 211B(1) prohibits disclosure of the committee’s proceedings, which includes this correspondence:

The proceedings of the Ethics Committee or a subcommittee of that committee on a matter before the Committee that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported to the House or otherwise published the proceedings.

Standing Order 211B does not prevent you from seeking legal advice in relation to the matter. However, your legal representative will also be bound by the same confidentiality requirement.

For your information, Standing Order 211B(3)(b) provides that when the Ethics Committee makes its final report to the House on a matter the committee shall at the same time table any submissions received or evidence taken in respect of the matter, unless the committee resolves that some or all of its proceedings remain confidential.

Should you have any queries regarding these matters or require further information, please contact our Committee Secretary, Ms Bernice Watson (email: ethics@parliament.qld.gov.au; telephone: 3553 6610).

Yours sincerely

A handwritten signature in blue ink that reads "J Howard". The signature is written in a cursive style with a large initial 'J'.

Ms Jennifer Howard MP

Chair



MICHAEL BERKMAN MP

Member for Maiwar ▲

28 June 2023

Jennifer Howard MP
Chair, Ethics Committee
Queensland Parliament
By email: ethics@parliament.qld.gov.au

Dear Ms Howard

I refer to your letter of 14 June 2023 and the Committee's request that I attend a private hearing at 1.00pm on Monday 31 July 2023.

This request is ostensibly to provide me with a further opportunity to be heard in respect of both of the matters currently before the Committee, and your letter specifically anticipates that I might provide further evidence (in this instance, under oath or affirmation) and to answer additional questions from the committee that go to whether my conduct in these matters could amount to contempt.

In this context, I simply reiterate for the Committee that my concerns in respect of procedural fairness relate to the inadequate particulars provided by the Committee thus far, and the consequential effect on my right to a hearing in relation to the fully particularised complaint, in light of the requirement in Standing Order 270 (Procedures of the ethics committee) that:

(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.

At this stage, and unless the Committee intends to brief counsel for the purpose of the hearing, I do not intend to be accompanied by my own counsel. I would appreciate your earliest possible advice if the Committee intends to call on its own legal assistance, and will advise the Committee of any change to my position ahead of the hearing.

I will take an affirmation.

Please don't hesitate to contact my office on 07 3737 4100 or by email if I can provide any more detail or assistance with this matter.

Kind regards,

Michael Berkman MP

Contact Us

Tel: (07) 37374100

maiwar@parliament.qld.gov.au

www.michaelberkman.com.au

Visit Us

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Open: Monday to Friday 9am - 5pm



Ethics Committee

Ethics Committee

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email: ethics@parliament.qld.gov.au
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Ref: A1147430

29 August 2023

Member for Maiwar

Mr Michael Berkman MP

By email: Michael.Berkman@parliament.qld.gov.au

Dear Mr Berkman

Matter of privilege referred by the Speaker on 16 March 2023

I refer to the letters to you, dated 19 April 2023 and 24 May 2023, inviting you to make a submission regarding the allegation that you misconducted yourself in the presence of the House or reflected on the Chair, and your submissions on this matter dated 3 and 31 May 2023, and your oral evidence provided at a private hearing on 31 July 2023.

Having considered all of the material before it, the committee has made a preliminary finding of contempt of Parliament against you for misconducting oneself in the presence of the House or a committee (Standing Order (SO) 266(11)); and, except by a substantive motion of censure, commenting or reflecting on the decisions or actions of the Chair, whether relating to actions inside the House or the character of the Chair in general (SO 266(23)).

The committee considers your conduct constitutes disobedience of a Speaker's direction, made under the House's exclusive cognisance to regulate its own affairs, which amounts to an improper interference with the free exercise of its authority or functions:

- On 15 March 2023, during debate on the Strengthening Community Safety Bill 2023, the Leader of the House took a point of order on the grounds of personal offence under SO 234, in relation to interjections made by you;
- When directed by the Deputy Speaker in the chair at the time to withdraw the offending words, on your own admission, you refused to comply with the Deputy Speaker's direction because you disagreed with it, and you chose instead to withdraw from the Chamber.

The next step is for the committee to provide a report to the Parliament on this matter. In its report, the committee is required to recommend the action to be taken by the Parliament in relation to any finding of contempt. This will inform the Parliament's consideration of any penalty in relation to the contempts.¹

The committee invites you to provide it with your views in relation to the action to take. To assist with your submission, **enclosed** is a schedule of sanctions for contempt of Parliament recommended by previous ethics committees.

¹ Section 39 of the [Parliament of Queensland Act 2001](#).

A breach of SO 266(11) has not previously been considered by the Ethics Committee or its predecessors. However, the committee draws your attention to previous matters in which a contempt finding was made for reflections on the Chair, specifically Ethics Committee [Report No. 90](#) and Ethics Committee [Report No. 133](#).

The committee has requested that your submission be provided to the committee by **COB 12 September 2023**.

Please note that this correspondence is confidential to the committee under Standing Order 211B. This means that it cannot be disclosed to any other person, other than your legal representative.

Please further note that the committee, when making its final report to the House on a matter will publish the minutes of its proceedings and any submissions received or evidence taken, unless the committee resolves that some of its proceedings will remain confidential.

If you have any queries regarding this matter or require further information, please contact our Committee Secretary, Ms Bernice Watson (email: Ethics@parliament.qld.gov.au; telephone: 3553 6610).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Howard'.

Ms Jennifer Howard MP

Chair

Enc.

CONTEMPT - PENALTIES TABLE

Title		Complaint	Penalty and/or action
Select Committee of Privileges – Report No. 15	Matter referred by the Legislative Assembly on 7 June 1990	Media release by the Leader of the Opposition bringing into question the impartiality of the Speaker. In media release Mr Cooper said the Speaker was “got at” and “forced into a backflip”	<p>Finding of contempt.</p> <p>The committee noted that similar breaches had attracted penalties in the order of 7 days. The committee left the question of penalty to the House.</p> <p>The member was suspended for the remainder of the sitting day.</p>
Select Committee of Privileges – Report No. 22	A Forged Submission to a Parliamentary Committee dated 18 December 1991	Concluded that presenting a submission to a parliamentary committee under a fictitious signature, in circumstances likely to mislead the committee, constituted contempt. Mr Amprimo summonsed and attended a private hearing of the committee. Mr Amprimo was guilty of contempt of Parliament but tendered a sincere apology to the House and showed remorse and accepted responsibility for his contempt.	<p>Finding of contempt.</p> <p>Committee recommended no further action be taken due to his sincere apology tendered to the House, remorse and acceptance of responsibility for his contempt.</p>
MEPPC – Report No. 31	Report on a Matter of Privilege — Matter Referred to the Committee on 25 March 1999	Mr Sharples served a subpoena on Mrs Pratt within Parliamentary precincts on 3 March 1999. Mr Sharples was assisted by Mr Briggs.	<p>Finding of contempt against Mr Sharples.</p> <p>Committee recognised that Mr Sharples, Mr Briggs and Mrs Pratt were all unaware at the time that it was not appropriate and a contempt to serve a summons on the Parliamentary precincts when the House was sitting.</p> <p>In the circumstances, the committee recommended that the Assembly take no further action in respect of the matter.</p>

Title		Complaint	Penalty and/or action
MEPPC – Report No. 35	Report on a Matter of Privilege — A Member Making Deliberately Misleading Statement in a “Dissenting Report”	Member for Ipswich West, Mr Paff committed contempt of the House by making a deliberately misleading statement in a “Dissenting Report” tabled on 11 March 1999.	<p>Finding of contempt.</p> <p>Admonished for his conduct, and that the Speaker on behalf of the House deliver the admonishment to the member standing in his place.</p> <p>Suspension from the services and the precincts of the House for 21 days.</p> <p>MEPPC and the Speaker strongly recommended that Mr Paff apologise.</p>
MEPPC — Report No. 40	Report on a Matter of Privilege — Matter Referred to the Committee on 3 December 1999	On the balance of probabilities, Mr Wood fraudulently misrepresented himself as the consultant to the Legal, Constitutional and Administrative Review Committee in relation to its inquiry into the consolidation of the Queensland Constitution, and in so doing committed a contempt of the Parliament.	<p>A finding of contempt.</p> <p>Following the tabling and publication of the committee’s report, the House resolved that the Speaker on behalf of the House forward copies of the committee’s report to a number of associations, commissions and an individual, including the Law Society of Qld, Bar Association of Qld and Mr Wood’s current and past employers.</p>
MEPPC – Report No. 41	Report on a Matter of Privilege – Matter Concerning the Disorderly Conduct by Members of Parliament within the Parliamentary Precinct	Member for Tablelands and Member for Barambah committed a contempt of the Parliament by engaging in disorderly and disrespectful conduct in the precincts of the Parliament while it was in session and behaving in a manner not befitting members of Parliament.	<p>Finding of contempt.</p> <p>Both members suspended from the services of the precincts of the House for 28 days.</p> <p>That the House discharge the Member for Tablelands from membership of the MEPPC.</p> <p>MEPPC recommended that both members not permitted to take their seat in the House until they undertake to the Speaker that they are prepared to unreservedly apologise to the House for their actions and they actually apologise in the House at the first</p>

Title		Complaint	Penalty and/or action
			opportunity.
MEPPC – Report No. 72	Matter of Privilege Referred by the Speaker on 24 August 2005 Relating to the Alleged Misleading of Estimates Committee D	Inquiry into allegations that Member for Sandgate had deliberately mislead Estimates Committee D. The alleged contempt, at the time, could be considered both a contempt of Parliament and an offence against the <i>Criminal Code</i> .	<p>The House resolved to deal with the matter as a contempt and to accept the Member for Sandgate's resignation as a minister and a member of the Executive Council, and his apology to the Parliament as an appropriate penalty.</p> <p>As a result, there was no longer a matter for the MEPPC to consider and the committee resolved to consider the reference closed.</p>
MEPPC – Report No. 90	Matter of Privilege Referred by the Deputy Speaker on 28 February 2008 Relating to Alleged Reflections on the Speaker	Matter concerned allegations that the Member for Nicklin has adversely reflected upon the Chair on numerous occasions both inside and outside the House.	<p>Finding of contempt for reflections on the Chair made outside the House.</p> <p>MEPPC recommended that:</p> <ul style="list-style-type: none"> ▪ the Member for Nicklin unreservedly apologise to the House and the Speaker; and ▪ that the Member for Nicklin be suspended forthwith from the services and precincts of the House for 21 days.
IEPPC – Report No. 105	Matter of Privilege Referred by the Speaker on 13 November 2006 Relating to the Alleged Failure by a Former Member to Register a Payment Received in the Register of Members' Interests.	Matter concerned allegations that the former Minister failed to disclose 36 payments received from Mr Talbot (35) and Mr Shand (1), in the Register of Interests.	<p>The committee recommended the House impose a fine of \$2000 for each of the 36 separate occasions of contempt for non-disclosure of the payments received from Mr Talbot (35) and Mr Shand (1).</p> <p>The House adopted this recommendation.</p>
IEPPC – Report No.	Matter of Privilege Referred by the Registrar on 18 November 2010	Matter concerned allegations that the former Minister failed to disclose payments received	The committee recommended the House impose a fine of \$2000 for each of the 5 separate occasions of

Title		Complaint	Penalty and/or action
114	Relating to the Alleged Failure by a Member to Register an Interest in the Register of Members' Interests	from Mr McKennariey on the Register of Interests on 5 separate occasions.	contempt for non-disclosure of the payments received from Mr McKennariey. The House adopted this recommendation.
Ethics Committee – Report No. 118	Matter of Privilege referred by the Speaker on 26 May 2011 relating to alleged insufficient care being taken by a Member when tabling documents and on 10 June 2011 relating to an alleged breach of the sub judice rule by a member when tabling documents & Matter of privilege referred by the Speaker on 18 August 2011 relating to an alleged contempt of impugning the Assembly's ethics processes and by pre-judging an inquiry outcome impugning the Ethics Committee's processes and deliberations	Matter concerned allegations that the Member for Burnett, Mr Rob Messenger MP breached Standing Orders relating to tabling documents by failing to redact the names of children under protection and breach the sub judice rule. A secondary matter concerned allegations that the Member made reflections on the Speaker and pre-empted the outcome of the committee's inquiry.	The committee made a finding of contempt in relation to two breaches of Standing Orders (Standing Order 233 and 35) and recommended Mr Messenger be suspended from the precinct for two sitting days for breach of SO35 and three sitting days for breach of SO233 to be served cumulatively. The committee found no prima facie case in relation to the second matter and recommended the House take no further action. The House agreed to the committee's recommendations.
Ethics Committee – Report No. 133	Matter of privilege referred by the Speaker on 28 November 2012 relating to an alleged reflection on the Chair	The matter concerned an allegation that the member for Bundamba, Mrs Jo-Ann Miller MP reflected on the Chair in a statement made in the House on 28 November 2012. <i>Mrs MILLER: Madam Speaker, I have been vilified by you in this parliament for the last six months.</i>	The committee found the member's contempt to be at the lower end of the scale, and in the circumstances did not warrant a recommendation for suspension from the Assembly. However, as the Ethics Committee sits in judgement of allegations against its peers relating to their conduct in the House, the committee was of the view that should the House accept its recommendation that the member for Bundamba be found guilty of contempt, that it would be appropriate that the member be suspended

Title		Complaint	Penalty and/or action
			<p>from the membership of the ethics committee for a period of time.</p> <p>The committee unanimously recommended that the House suspend the member for Bundamba from the Ethics Committee for a period of three (3) months from the date the committee's recommendation is considered by the House.</p>
Ethics Committee – Report No. 139	On 19 November 2013, the Ethics Committee tabled its report in relation to allegations that the former Member for Redcliffe had failed to register interests in the Register of Members' Interest and Register of Related Persons' Interest and deliberately misled the House.	The Ethics Committee found that the former Member for Redcliffe was required to register 14 different interests in the Register of Members' Interest and Register of Related Persons' Interest on 48 occasions.	<p>The committee concluded that the former Member for Redcliffe knowingly failed to register the 14 interests in the appropriate timeframe, and had therefore committed a contempt of Parliament. The committee recommended:</p> <ul style="list-style-type: none"> • no penalty be imposed in relation to two counts on the basis that the former Member for Redcliffe took steps to rectify the situation prior to the allegation being made; • a fine of \$1,000 in relation to four counts of contempt related to the Register of Related Persons' Interest on the basis that no steps were taken by the former Member for Redcliffe to rectify the situation even after he took steps to declare his own role in an organisation; and • a fine of \$2,000 be imposed in relation to 42 counts of contempt on the basis that they were significant and the House should follow the precedent in the matters relating to the former Member for Sandgate (see above) to reflect the gravity of each offence and to send a strong message to Members and the public about the level of accountability expected of Members of Parliament.

Title		Complaint	Penalty and/or action
			<p>The Ethics Committee considered the cumulative effect of the findings of contempt, including the contempt of deliberately misleading the House (see above), specifically with respect to the common issue of the former Member for Redcliffe's role with QRTSA and the potential conflict of his private interests with his role as a Member of Parliament. The Ethics Committee concluded that the House retained the power to expel a member by virtue of its link to the UK House of Commons.</p> <p>The Ethics Committee recommended that the former Member for Redcliffe be expelled from the House in order to protect the honour and dignity of the House and that the seat of Redcliffe be declared vacant.</p> <p>The former Member for Redcliffe subsequently resigned as a Member of Parliament. The former member was called to address the House from the Bar on 21 November 2013 to explain his actions. The former Member for Redcliffe was provided with 45 minutes to address the House from the Bar. The House passed a motion to accept the Ethics Committee's recommendations and the former member was fined \$90,000. The House also endorsed the Ethics Committee finding that the cumulative effect of the conduct would warrant expulsion from the Legislative Assembly.</p>
Ethics Committee Report No. 162	Inquiry into Matter of Privilege referred by the Parliamentary Crime and Corruption Committee on	On 17 February 2016, the Ethics Committee tabled its report in relation to allegations of unauthorised disclosure of PCCC proceedings to	The committee was unable to make a finding on the unauthorised release of PCCC proceedings to the

Title		Complaint	Penalty and/or action
	17 August 2015 relating to alleged unauthorised disclosure of committee proceedings	<p>the media by persons unknown, and in relation to allegations that the Member for Warrego made unauthorised disclosures of PCCC proceedings and deliberately misled the PCCC and Ethics Committee.</p> <p>The matter concerned allegations that a person/s unknown had disclosed PCCC proceedings to the media.</p> <p>The matter also concerned an allegation that the Member for Warrego had made an unauthorised disclosure of PCCC proceedings in an email sent to the PCCC members, secretariat and the Premier's generic email addresses on 12 July 2015</p> <p>In the process of investigating the matters above, the Ethics Committee also initiated investigations into the possible contempts by the Member for Warrego of unauthorised disclosure of PCCC proceedings to Mr Jake Smith, Chief of Staff to the Leader of the Opposition in the preparation of the email sent on 12 July 2015, and deliberately misleading the PCCC and the Ethics Committee by not mentioning Mr Smith's involvement during their investigations.</p>	<p>media by person/s unknown.</p> <p>The Ethics Committee concluded that the Member for Warrego made unauthorised disclosures of committee proceedings of the PCCC by including the Premier's generic and electorate office email addresses in her email of 12 July 2015 and by involving Mr Jake Smith in the preparation of the email to the PCCC of 12 July 2015.</p> <p>The committee also concluded that the Member for Warrego deliberately misled the PCCC and Ethics Committee by not disclosing the assistance provided by Mr Jake Smith, Chief of Staff to the Leader of the Opposition, in the preparation of the email sent to the PCCC members, secretariat and the Premier's generic email addresses on 12 July 2015.</p> <p>The Ethics Committee recommended that:</p> <ul style="list-style-type: none"> the House suspend the Member for Warrego from all committees for a period of six (6) months from the date the committee's recommendation is considered by the House. The committee noted that this recommendation if accepted will involve a financial impost on the member in terms of foregoing the additional salary component payable to members who undertake committee duties. the Member for Warrego be admonished for that conduct and that the Speaker on behalf of the House deliver the admonishment to the member standing in her place.

Title		Complaint	Penalty and/or action
			The committee also concluded that the Member for Warrego should not be appointed to the PCCC for the remainder of the 55th Parliament, but didn't make a specific recommendation on this conclusion.
Ethics Committee Report No. 168	Matter of Privilege referred by the Agriculture and Environment Committee on 20 April 2016 relating to an alleged unauthorised disclosure of committee proceedings and an alleged deliberate misleading of a committee.	<p>On 17 June 2016, the Ethics Committee tabled its report on an allegation that the Member for Burnett made an unauthorised disclosure of committee proceedings and an alleged deliberate misleading of a committee.</p> <p>The matter concerned allegations referred by the Agriculture and Environment Committee on 20 April 2016 relating to:</p> <ol style="list-style-type: none"> 1. an unauthorised disclosure of Agriculture and Environment Committee (AEC) proceedings by providing the Chair of the AEC, Mr Glenn Butcher MP, Member for Gladstone's (Chair of the AEC) draft report recommendations on the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 (the bill) to officers of the Queensland Resources Council (QRC); and 2. deliberately misleading the AEC in his email to the members and secretariat of the AEC which included a document containing proposed edits to the Chair's draft recommendations 	<p>The committee found that by disclosing the Chair's draft report recommendations to the QRC without the AEC's authorisation and prior to the AEC reporting or publishing those proceedings, the Member for Burnett's actions resulted in an improper interference with the AEC's authority and functions.</p> <p>The Ethics Committee recommended that a finding of contempt be made and the appropriate penalty for the Member for Burnett was to make an unqualified apology to the House and the AEC for the contempt of unauthorised disclosure of committee proceedings.</p> <p>On the matter of the Member for Burnett deliberately misleading the AEC, the committee found there was no evidence that the member was aware that his email was misleading as he believed the author details of those drafting and modifying the document were clear to the members of the AEC, and therefore he did not intend to mislead the AEC.</p>
Ethics Committee Report No. 189	Matter of Privilege referred by the Speaker on 12 October 2018 relating to an alleged contempt of Parliament by the Premier and	On 22 October 2019 the Ethics Committee tabled its report on the actions of the Premier in withdrawing resources from the Katter Australia Party (KAP) when they would not denounce	The committee found that on the allegations of threatening/intimidating a member, molestation of a member and compulsion by menace no contempts

Title		Complaint	Penalty and/or action
	Minister for Trade.	<p>comments made by Senator Fraser Anning in his 'final solution' speech in the Senate.</p> <p>There were four allegations of contempt: threatening/intimidating a member, molestation of a member, compulsion by menace and improper interference with KAP members.</p>	<p>were made out.</p> <p>The committee found that the Premier was in contempt for actions which amounted to an improper interference with the free performance of the KAP members of their duties as members. Her actions were:</p> <ul style="list-style-type: none"> ▪ Threatening to withdraw parliamentary resources from KAP members unless they made a statement to the Premier's satisfaction condemning Senator Anning's speech in the Senate; and ▪ Withdrawing parliamentary resources from KAP members on the basis that they failed to make a statement to the Premier's satisfaction condemning Senator Anning's speech in the senate. <p>The committee recommended that the Premier apologise to the House, on the floor of the House, as soon as practicable for her actions in seeking to improperly influence KAP members.</p> <p>And, after an apology is tendered, and if the House believes the apology is adequate, the House should resolve that the Premier is in contempt.</p> <p>The committee considered several mitigating factors when it decided on penalty.</p>
Ethics Committee Report No. 197	Matter of privilege referred by the Speaker on 26 March 2019 relating to alleged contempt by a Member.	<p>On 18 February 2020, the Ethics Committee tabled its report the actions of the Member for Maiwar during a climate change protest on 15 March 2019. The member wore a t-shirt with a political slogan, and waved to the crowd from the Porte Cochere.</p> <p>The allegation was that these actions amounted to disorderly conduct on the parliamentary</p>	<p>While the committee did find that the Member for Maiwar was in contempt of Parliament, his behaviour was distinguished from another matter that considered disorderly conduct on the parliamentary precinct.</p> <p>The committee determined that the Member for Maiwar's conduct was in a similar class, but of a differing degree of severity when comparing to the previous matter. Therefore, a finding of contempt was</p>

Title		Complaint	Penalty and/or action
		precinct and were a contempt of parliament.	made, but no other penalty was recommended.
Ethics Committee Report No. 200	Matter of privilege referred by the Speaker on 21 February 2019 relating to an alleged contempt by a Member.	On 11 August 2020, the Ethics Committee tabled its report on the allegations that the Member for Everton had breached Standing Order 271, and that this breach also amounted to wilfully disobeying an order of the House under SO 266(22).	<p>The committee found that the Member for Everton had breached SO 271, and was therefore guilty of contempt.</p> <p>However, the committee felt that the Member for Everton lacked the requisite intent to warrant a finding of wilfully disobeying the House (breach SO 266(22)).</p> <p>The committee found that rather than intentionally breaching SO 271, the Member for Everton was acting under a mistaken belief that his question did not enliven the standing order because it related to matters of procedure, rather than substantive matters.</p> <p>The committee recommended that the Member for Everton apologise to the House, on the floor of the House, as soon as practicable for breaching SO 271.</p>
Ethics Committee Report No. 206	Matter of privilege referred by the Speaker on 13 August 2020 relating to the alleged behaviour of a visitor signed into the parliamentary precinct by a member, and the failure of the member to adequately supervise that visitor.	<p>On 27 May 2021, the Ethics Committee tabled its report on the following allegations:</p> <ol style="list-style-type: none"> 1. That the Member for Mirani did not adequately supervise Mr Troy Thompson, a guest that the said member signed for access into the Parliament Precinct. 2. That Mr Thompson sought to intimidate the Member for Thuringowa by (a) taking photos of the Member for Thuringowa's office door and office sign without the permission of the Member for Thuringowa; (b) interfering with the personal office sign of the Member for Thuringowa with political material without the 	<p><u>Member for Mirani</u></p> <p>In relation to allegations 1 and 4 made against the Member for Mirani, the committee found the elements necessary to establish a contempt of disorderly conduct on the parliamentary precinct could not be satisfied. Therefore the Member for Mirani was not found guilty of a contempt.</p> <p><u>Mr Thompson</u></p> <p>In relation to allegation 3 concerning disorderly conduct on the parliamentary precinct, the committee found that both elements necessary to establish a contempt were met. Therefore, Mr Troy Thompson</p>

Title		Complaint	Penalty and/or action
		<p>permission of the Member for Thuringowa; and</p> <p>c. publishing photos of the acts referred to in (a) and (b) above on a Facebook page attributable to Mr Thompson.</p> <p>3. The allegation that Mr Thompson carried an item which conveyed a political message into the Parliamentary Precinct in breach of the Speaker's Direction dated 19 April 2018 and published photos of the same on a Facebook page attributable to Mr Thompson and by doing so acted contrary to the dignity of the Assembly; and</p> <p>4. The allegation that the Member for Mirani did not take any steps to prevent a breach of the Speaker's Direction dated 19 April 2018 by Mr Thompson.</p>	<p>was found guilty of a contempt.</p> <p>The committee considered that Mr Thompsons's behaviour, whilst immature, was at the lower end of the scale and therefore, the committee did not consider a financial penalty appropriate. However, the committee considered Mr Thompson's demonstrates he cannot uphold the standards of behaviour required of a visitor to preserve the dignity of the Parliament.</p> <p>The committee recommended that the House take no further action and that the Speaker ban Mr Troy Thompson from the parliamentary precinct under section 50 of the <i>Parliamentary Service Act 1988</i>.</p> <p>In relation to allegation 2 concerning intimidation of a member, the committee found that the elements necessary to establish a contempt could not be established. Therefore, Mr Thompson was not found guilty of a contempt.</p>
Ethics Committee Report No. 208	Matter of privilege referred by the State Development and Regional Industries Committee on 27 May 2021 relating to an alleged unauthorised disclosure of committee proceedings	<p>On 26 October 2021, the Ethics Committee tabled its report on the following allegations:</p> <ol style="list-style-type: none"> 1. The Member or Burleigh allegedly disclosed unauthorised committee proceedings when he referred to a confidentiality clause within an Indigenous land use agreement (ILUA). The ILUA had been provided as part of a submission to the committee and was not made public. 2. The Member for Burleigh, in the House, discussed how the committee had voted with respect to a motion that was moved to 	<p>In its Report No. 208, the Ethics Committee made a finding of contempt concerning the unauthorised disclosure of committee proceedings by a member. The Ethics Committee recommended:</p> <ul style="list-style-type: none"> • that the House make a finding of contempt against the member for the unauthorised disclosure of committee proceedings • that the member take it upon himself as soon as practicable to unreservedly apologise to the House, on the floor of the House, for the unauthorised disclosure of committee proceedings, and • if the House considers the apology tendered is

Title		Complaint	Penalty and/or action
		publish the ILUA, thus disclosing confidential committee proceedings.	adequate, that the House accept the member's apology as the appropriate and final penalty in accordance with section 39 of the <i>Parliament of Queensland Act 2001</i> .



MICHAEL BERKMAN MP

Member for Maiwar ▲

12 September 2023

Jennifer Howard MP
Chair, Ethics Committee
Queensland Parliament
By email: ethics@parliament.qld.gov.au

Dear Ms Howard

I refer to your letter of 29 August 2023, regarding the matter of privilege referred by the Speaker on 16 March 2023, which:

- indicated that the Committee has made a preliminary finding of contempt of Parliament against me; and
- invited me to provide my views in relation to what action the Committee should recommend Parliament take in response.

Submissions on penalty

I remain of the view that my conduct does not constitute a contempt of Parliament and I encourage the Committee to reconsider and rescind its preliminary view. In this light, should the Committee maintain its preliminary view that I have committed a contempt, I submit that no further action is appropriate.

In attempting to make any more detailed submissions on potential further action, I note that the Committee's conduct of the inquiry has made it very difficult to prepare relevant, useful submissions to assist the Committee. I've set out in some detail below my concerns in this respect, but I note in particular that I don't believe the Committee has provided adequate particulars in respect of each allegation, as it is required to do under SO 270(6).

The Committee's failure to provide full particulars in respect of the two complaints is especially pertinent since:

- As noted in your most recent correspondence, breach of SO 266(11) has not previously been considered by the Ethics Committee or its predecessors, and so there is no precedent or relevant findings to compare or refer to; and
- I'm aware of no other circumstance in which conduct (as opposed to a written or oral statement) has been considered a reflection on the speaker, so there is once again no precedent or relevant findings that deal with analogous circumstances.

As is detailed among my more general concerns below, the Committee has provided me no detail as to how my conduct is alleged to have breached the Standing Orders and the Parliament of Queensland Act, which severely hampers my ability to prepare submissions regarding either the alleged commission of a contempt of Parliament or the seriousness of any alleged breach.

Contact Us

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That said, at a very general level, any potential further action or consequences considered by the Committee should reflect that the impugned conduct resulted in very minimal (I would argue no) improper interference with the free exercise of the Assembly's authority or functions. This is evident in the fact that the business of the house carried on unabated after the Speaker made his ruling under SO 253A and I left the chamber.

Further to this, as I've addressed in previous correspondence, the Deputy Speaker in the chair at the time already made a ruling on my conduct that he clearly deemed appropriate in all the circumstances. It's noteworthy that the Member for Scenic Rim did not opt to impose the more serious consequences available to him under SO 252 or SO 253, by ejecting me from the House for a longer period. Nor did he exercise powers under SO 254, which were available to him had he considered my conduct was obstructing the business of the House. I submit that the decision of the Deputy Speaker at the time evinces the reality that there was very little (if any) improper interference with the free exercise by the Assembly of its authority or functions, and so any further action or penalties considered by the Committee should reflect that fact.

Further mitigating factors for the Committee's consideration include:

- The Member for Redcliffe's point of Order had no basis under SO 234, since my comments made no personal reflection on the Member;
- In this context, as I've indicated to the Committee on a number of occasions, I left the chamber in an effort to minimise disruption, rather than argue the point with the Speaker at the time, and in circumstances where he apparently did not hear the substance of my interjections;
- Any other course of action at that point in time may have been taken as my dissent to the Deputy Speaker's ruling, which could itself be deemed not in accordance with SO 250, or even a contempt of Parliament under SO 266(23).

I submit that all the above factors, when considered in light of the precedents provided by the Committee with its most recent correspondence, all suggest that a recommendation of no further action is appropriate. My conduct did not meaningfully disrupt the business of the house to any greater extent than routine rulings under SO 253A that a member withdraw from the house. My conduct was certainly not deliberately in contravention of the Standing Orders and, as I've outlined in more detail below, it remains unclear how the Committee believes I've acknowledged that my not withdrawing certain unspecified words contravened Standing Orders.

Ongoing concerns about process and procedural fairness

In its consideration and conduct of this matter, I submit that the Committee has shown a concerning disregard for procedural fairness, despite its consistent assertions that Chapters 44 and 45 of the Standing Orders "ensure procedural fairness and natural justice is afforded to all parties."

I have no reason to expect that the Committee will have any greater regard for submissions made or concerns raised at this point, but I will nonetheless take the opportunity to ensure these concerns are at least communicated to the Committee and on the record in this matter.

Refusal to answer questions or provide basic information

In my letter of 31 May 2023, I asked some basic questions of the Committee, which I hoped could inform the preparation of a submission that the Committee requested in its letter of 24 May 2023. The Committee offered no response to these queries, and instead simply requested that I attend a private hearing, which took place on 31 July 2023. Similarly, you explicitly refused my request at the conclusion of

that hearing to ask any questions of the committee, at which point I had hoped to seek clarification on these same issues.

The issues raised in that letter include:

- A request for clarification around the factual background taken into account by the Committee, and specifically whether the immediate context for my conduct (i.e. that the Member for Redcliffe's point of order had no basis under SO 234) was disputed by the Committee. I sought this simple factual clarification to inform the preparation of submissions, given its direct relevance to the allegations against me and, at very least, to the Committee's consideration of the seriousness of the conduct and recommendations around the appropriate consequences or further action by the Parliament.
- A request for any further information on the basis for the Committee to have expanded the elements to establish contempt under SO 266(23) to include "conduct" rather than "statements", and specifically whether the Committee took account of any other inquiries or other precedent that treated conduct (rather than statements) as capable of being a reflection on the Speaker. This seems an integral piece of information in preparing submissions, since SO 266(23) makes no mention of "conduct" that might be considered a reflection on the speaker, nor have I been able to identify any precedent or authority to that effect in previous Queensland Committee reports or in Erskine May's 'Treatise on the Law, Privileges, Proceedings and Usage of Parliament'. Any relevant authority I've been able to locate deals only with statements - written or oral - that are critical of the Speaker's actions or character. While I recognise that the Committee is not limited to the examples of contempt listed in SO 266, it is near impossible to prepare a submission that usefully addresses the Committee's new, expanded elements (i.e. conduct as a basis for contempt under SO 266(23)) without some precedent or indication of the Committee's rationale.
- A request for clarification as to whether the committee had heard (or intended to hear) from the Member for Scenic Rim, as the Deputy Speaker in the chair at the time of the alleged contempt. I had a direct interest in this question so I could consider whether to exercise my right under SO 270(1)(c)(ii) to have the Committee hear from the Member. I now know from my own inquiries that the Committee had not heard from the Member for Scenic Rim before making its preliminary finding of contempt, but I have apparently been denied the right for him to be heard as part of the Committee's inquiry.

I trust it is clear to the Committee that these requests were made in a genuine attempt to understand specific aspects of its inquiry and allow me to prepare submissions that presented my full position and would be of most use to any impartial, genuinely deliberative Committee. I remain surprised that the Committee, in its rush to find me in contempt, has simply refused to answer such basic questions or to await any written submission from me.

No submission received

The Committee no doubt considers it has satisfactorily met its obligations under 270(1)(c)(i), based on its correspondence of 24 May 2023 (which invited me to make a submission) and the time-limited, private hearing held on 31 July 2023, which addressed this matter and one other referral in only an hour. However, what should also be clear to the Committee is that I sought the above-mentioned information to inform my submission, and had hoped and intended to provide the Committee a written submission as soon as possible after receiving that information. It was not made clear at the conclusion of the hearings that I would not be afforded another opportunity to make submissions, despite me asking a specific question to this effect.

As it stands, the Committee has neither received nor considered any submission from me, beyond the answers to the questions posed by Committee members at the hearing of 31 July.

Committee has not received review of transcript

You'd be aware that the Committee provided me with a copy of the transcript of the hearing on Friday 18 August 2023, and a deadline of Friday 25 August for me to provide any corrections. On Friday 25 August I sought an extension to review the transcript, given unforeseen events in the intervening parliamentary sitting week, and a copy of the audio recording, without which I didn't feel able to identify any inconsistency between what I said and what was recorded by Hansard.

The Committee, in what again seems like undue haste to find me in contempt, didn't even await my review of the transcript before sending the correspondence notifying me of your preliminary view that I have committed a contempt. I can only assume from this point that the Committee has no interest (and presumably never had any interest) in any review or corrections to the transcript.

Committee has not provided "full particulars"

As you're aware, SO 270(6) provides that the Committee cannot make an adverse finding unless I've been provided full particulars of the complaint. Without putting detailed case law before the Committee, I trust it is uncontentious that the purpose of particulars in litigation is to provide context behind general allegations or pleadings.

As was discussed in the hearing, matters before the Ethics Committee are not, strictly speaking, 'legal proceedings' and the Committee is clearly not a court. It follows that there are no formal 'pleadings' to particularise, but there is no alternative meaning for the term 'particulars' that might inform the Committee's obligation under SO 270(6) to provide (and my corresponding right to receive) "full particulars of the complaint" before making an adverse finding.

The inadequacy of the particulars is particularly clear when one considers that the Committee is, in fact, dealing with two complaints within the one referral - specifically, that I have committed contempt by way of breaching two separate standing orders in SO 266(11) and SO 266(23). Yet the Committee has provided only one set of particulars - only five dot points - that are supposed to constitute "full particulars" in respect of the two separate complaints.

The five dot points headed "Particulars of complaint" in the Committee's letter of 24 May go no way to addressing either of the individual complaints, let alone providing "full particulars" of each. They are barely more than a restatement of uncontested facts, mostly taken directly from the Speaker's referral, that provide no context or detail as to how the Committee might establish the elements of contempt relevant to each allegation.

The notable exception to this is the fifth dot point, where the Committee has directly verbed me by stating "In your correspondence you acknowledge that, contrary to the Deputy Speaker's direction and Standing Orders, you did not withdraw the offending words". At no point have I acknowledged, nor do I acknowledge now, that my actions were "contrary to ... Standing Orders". I have explicitly disputed that I used any "offending words" in the context of SO 234, yet the Committee apparently refuses to engage with my queries as to the validity of the Member for Redcliffe's point of order.

It is particularly troubling to me that the only additional particulars provided by the Committee assert some concession on my part (one that I dispute), but that it has failed to even provide sufficiently detailed particulars here to identify which Standing Order is referred to, the basis of the Committee's assertions regarding "offending words", or how I'm alleged to have acknowledged that I acted contrary to an unspecified Standing Order.

In summary, the “Particulars of complaint” set out in your letter of 24 May raise more questions than they do provide context or assist in clarifying details of the general allegations. Surely, the requirement under SO 270(6) to provide full particulars must at least provide sufficient information to answer the threshold question under the Parliament of Queensland Act: “in what way did my conduct improperly interfere (or was it likely to improperly interfere) with the free exercise of any authority or functions of the assembly?”

The position conveyed by the Committee seems to be that providing any more than the articulated “particulars of complaint” would be to divulge the Committee’s deliberations, and that the Committee is not required to do that. I submit that this cannot be the case in this matter. However, if the Committee maintains that it is under no obligation to provide further information or contextual detail as to its consideration of the allegations, then it should at very least refrain from any further false assertion that it has afforded me “procedural fairness and natural justice”.

Concluding comments re process and procedural fairness

I don’t anticipate that the Committee will revisit any of the process to date, or revert to an earlier step in that process, but I hope that by raising these concerns the Committee can come closer to honouring its routine assertion that Standing Orders “ensure procedural fairness and natural justice is afforded to all parties.”

Pushing back against what appear to me quite glaring procedural failings in the Ethics Committee processes is time consuming and, frankly, something I would prefer not to do. I have, however, seen small but significant improvements in the Committee’s processes since my first referral in 2019, which appear to reflect issues I’ve previously raised.

The Committee is no doubt aware that the Queensland public and media are closely watching the activity of Queensland Parliament and its Committees, and have recently criticised both the use of referrals to the Ethics Committee and the process, describing it as “like a star chamber”.¹ My hope in raising these issues is that they will assist the Committee in continuing to improve its processes, the public’s perception of the same, and, ultimately, the function of Queensland Parliament.

Publication of all proceedings

As the Committee has indicated in previous correspondence, your letters to me are proceedings of the Committee. You’ve also noted, as per SO 211B(3), that minutes, submissions and evidence in a matter are required to be published, unless the Committee resolves that some or all of its proceedings remain confidential, based on strictly limited circumstances set out in SO 211B(4):

- (a) Publication of the proceedings is not in the public interest;
- (b) Publication of the proceedings would be procedurally unfair to any person; or
- (c) Publication of the proceedings is irrelevant to the matter.

My past experience with the Committee is that it has not published its own correspondence to me in the final report to the house, even in circumstances where the Committee’s minutes show that it did not resolve to maintain the confidentiality of any proceedings.

¹ Des Houghton, “Parliament is coming perilously close to limiting free speech”, The Courier Mail (online, 28 August 2023)

<<https://www.couriermail.com.au/news/opinion/des-houghton-parliament-is-coming-perilously-close-to-limiting-free-speech/news-story/dad050038b62f301676991e525ffd64e>>.

In this matter, it is difficult to imagine any legitimate basis under SO 211B(4) for the Committee resolve to keep any proceedings confidential. Importantly, I believe it is not possible to properly understand my submissions, my correspondence or the evidence without the full record of correspondence from the Committee to me.

I submit that it would enhance public confidence in the Ethics Committee, and it is consequently in the public interest, to publish all correspondence such that all proceedings in this matter can be properly understood in their full context.

Perhaps more importantly, in the interests of procedural fairness, members of the Legislative Assembly should have the benefit of reviewing and understanding all proceedings in context before they are asked to take any further action on the basis of the Committee's recommendations. The publication of all proceedings in the Committee's reports seems the only sensible way to achieve this.

Against this backdrop, I respectfully request that the Committee publish all correspondence in this matter, subject to any (hopefully minor) redaction for the purpose of maintaining confidentiality within the limits of SO 211B(4),

Please do not hesitate to contact my office on 07 3737 4100 if you would like to discuss this matter in more detail.

Kind regards,

A handwritten signature in black ink, appearing to read 'Michael Berkman', with a stylized flourish at the end.

Michael Berkman MP

This is a transcript of private and confidential evidence taken before the committee and should not be copied or republished in any way without the express authority of the committee.

Any unauthorised publication of this Hansard may constitute a contempt of Parliament. If the transcript becomes the subject of any request under the Right to Information Act, the committee should be notified.



ETHICS COMMITTEE

Members present:

Ms JR Howard MP—Chair

Mr AC Powell MP

Mr LP Power MP

Mr DG Purdie MP

Ms KE Richards MP

Mr RA Stevens MP (virtual)

Staff present:

Ms B Watson—Committee Secretary

Dr A Beem—Legal and Compliance Officer

PRIVATE HEARING—ALLEGATION OF CONTEMPT (MR MICHAEL BERKMAN MP)

TRANSCRIPT OF PROCEEDINGS

(Private)

Monday, 31 July 2023

Brisbane

MONDAY, 31 JULY 2023

The committee met in private at 1.02 pm.

BERKMAN, Mr Michael, Member for Maiwar, Parliament of Queensland

CHAIR: Good afternoon, member for Maiwar. As you know, my name is Jennifer Howard and I am the chair of the Ethics Committee. This hearing relates to two inquiries arising from referrals from the Speaker, on 12 and 14 December 2022 and on 16 March 2023, each raising allegations of contempt, and I am calling this private hearing of the Ethics Committee open. The committee conducts this hearing pursuant to the relevant provisions of the Parliament of Queensland Act 2001, the standing orders and the resolutions of the Queensland Legislative Assembly that appointed its members. This committee is required to deal with complaints about the ethical conduct of particular members and deal with alleged breaches of parliamentary privilege by members of the Assembly and other persons.

This hearing was called to investigate the following allegations of contempt: that on 30 November 2022 you incited or encouraged the disruption of the Legislative Assembly and on 8 December 2022 you reflected on the chair; and that on 15 March 2023 you misconducted yourself in the presence of the House and reflected on the chair. Standing order 270(2) requires the Ethics Committee to hear any evidence in private unless we determine it is in the public interest to hold the hearing in public. This hearing is to be held in private.

Here with me today are the following committee members: Mr Andrew Powell, the member for Glass House and the deputy chair; Mr Linus Power, the member for Logan; Mr Dan Purdie, the member for Ninderry; Ms Kim Richards, the member for Redlands; and Mr Ray Stevens, the member for Mermaid Beach, who is on the phone. In attendance is Bernice Watson, the First Clerk Assistant (Committees), in her capacity as Ethics Committee secretary and Dr Amanda Beem, assistant committee secretary.

The proceedings here today are lawful proceedings of the parliament and subject to the Legislative Assembly's standing rules and orders. As you are aware, deliberately misleading a committee is identified in the standing orders of the Legislative Assembly as an example of contempt of parliament. In addition, knowingly giving a false answer to a question by the committee under examination may be an offence in accordance with section 57 of the Criminal Code Act 1899. You have been provided with the instructions to committees regarding witnesses in schedule 3 of the standing orders adopted by the Legislative Assembly which the committee is bound to follow. Have you read those instructions?

Mr Berkman: I have read them previously, not specifically in preparation for today.

CHAIR: Okay. Under the instructions and sections 33 and 34 of the Parliament of Queensland Act 2001, you may object to answering a question put to you on two grounds only: first, that the question is of a private nature and does not affect the subject of inquiry; and, second, that giving the answer may tend to incriminate you in criminal proceedings and you would have a claim of privilege against self-incrimination in a Supreme Court action if you were asked to give the answer. For clarity, the matter referred to the committee is not criminal in nature.

Recording of today's proceedings, except by Hansard, is not permitted. The committee will provide you with a copy of the transcript from today's hearing and an opportunity for you to request any necessary corrections. The committee will use the transcript of this hearing when making determinations regarding the matters before it. Standing orders provide that the committee will publish the transcript with its report to the House unless it resolves to keep it confidential on the basis that publication is not in the public interest, would be procedurally unfair to any person or is irrelevant to the matter.

Standing order 270(3) requires the Ethics Committee to hear witnesses on oath or affirmation when considering contempt matters. We understand that you have indicated a preference to take an affirmation. Ms Watson, can you please administer the affirmation to the witness?

Witness was affirmed—

CHAIR: Thank you. The format of the hearing will involve the committee asking several questions based on the information that you have provided the committee in your correspondence already on these matters. For the record, in respect of the referrals of 12 and 14 December 2022 the committee has received correspondence from you dated 30 January 2023, 26 April 2023 and 19 May 2023. In respect of the referral of 16 March 2023 the committee has received correspondence from you dated 3 May 2023, 31 May 2023 and 28 June 2023.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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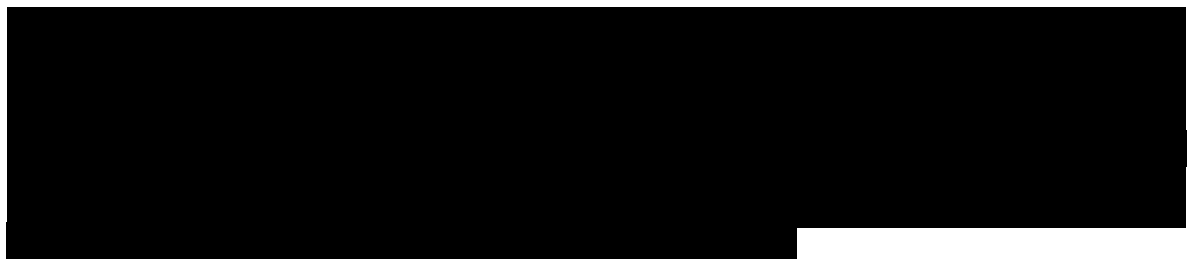
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[REDACTED]

[REDACTED]



CHAIR: Moving on to the next allegation of contempt, which was referred on 16 March 2023, the committee would like to note the following particulars in this matter as set out in correspondence dated 24 May 2023: that on 15 March 2023 the Leader of the House took a point of order on the grounds of personal offence in response to comments made by you and when directed by the Deputy Speaker to withdraw those comments you chose instead to exit the chamber. The committee also wishes to note that in your correspondence dated 3 May 2023 you advised the committee that you did not withdraw your comments and opted to leave the chamber because it seemed at the time, and in hindsight, the least disruptive way to respond to the situation. We understand from your correspondence on the same date that you took this action on the basis that your comments related to the government as a whole and that therefore there was no reasonable grounds for a member to claim personal offence. Would you like to respond to that?

Mr Berkman: Sure. I think, as it was stated in the letter, standing order 234 is pretty clear about the nature of personal reflections and how that standing order operates. We periodically see it play out in the chamber where there is a dispute about whether it was a personal reflection or not. I think it is clear on the transcript—and, again, I am interested to know if there is any factual dispute about this from the committee's perspective because I can only, as I have done, put forward my counterfactual understanding of what happened and if that is disputed by the committee or not I am none the wiser unless and until a decision comes down—again, one of the reasons I am interested in any further particulars that can be provided. I do not know, does that answer your question?

CHAIR: That is fine. I will move to the member for Ninderry for his question.

Mr PURDIE: My question we have already flushed out in all your responses today in that you have been asking for us to provide more information and we have highlighted this morning where we are not in a position to divulge our deliberations, but is there anything specifically that you need to answer or respond to the allegations that your conduct may amount to contempt in accordance with section 266—not just in broad terms you want to know what our thinking is, but is there anything specifically we could provide you with that would help you answer that question?

Mr Berkman: To this second matter, I suppose my response is largely the same as the previous response. The chair's response earlier when I was discussing with the deputy chair is that the committee is not making a case and, okay, I accept that as a fair observation in the sense that you are the adjudicator here, but there is no-one making the case beyond the deliberations of the committee. If I were in any other kind of adversarial or disciplinary process, as I have experienced them in the past in a previous legal career, I would be provided with a more detailed not just presentation of facts as they are agreed or disputed but also an application of those facts to the circumstance to understand the legal argument, the rationale, that goes into that decision that the committee will make or the decision as to whether it will recommend that threshold for contempt has been met or has not. It is an unusual circumstance where the committee is both responsible for the interpretation and, on occasion, the expansion of the standing orders with respect to what conduct can satisfy contempt but is also playing an adjudicative role. Yes, ultimately that rests with the House, but the committee is adjudicating whether or not to recommend that my conduct satisfies contempt. It is that application of the facts, again as agreed or disputed—there is not a great deal in dispute here—but application of the facts to the rules context, be they standing orders or legislative context.

Mr POWELL: Just to clarify some of what you have just shared, the case is put to us through the referral.

Mr Berkman: On very minimal terms.

Mr POWER: Could we just have the question?

Mr Berkman: That is the dilemma.

Mr POWELL: You may say that is on minimal terms. What I was going to add is: the grounds on which we have to make a consideration are, as you say, against the standing orders and against legislation. The Parliament of Queensland Act goes into quite detailed explanation of what contempt

is, so my suggestion is, if you are looking for more detail, to refer back to the original referral and to the legislative definitions of contempt and that then provides you some idea of what we as a committee have to deliberate.

Mr Berkman: I guess I just want to convey to you that I have looked at the legislation and I think maybe for me one of the more instructive parts of the framework—and I have referred to this in the correspondence—is that that requirement in section 37 of the Parliament of Queensland Act, that contempt cannot be found unless the conduct was intended to or did or was likely to interfere with the functions, authority, so on and so forth—you are familiar with the section. What I have tried to convey, and continue to try to convey, is that without some indication of how the facts relate to that statutory framework—and that is set out in the Parliament of Queensland Act as a hard limit; contempt cannot be found unless this is satisfied—without having any understanding of how the committee is seeking to draw the link between the facts and that threshold, I am left with very little I can say in terms of submissions I can provide in the context of a counterargument. I have kind of exhausted my opportunities at this point without something further back from the committee.

Mr STEVENS: Are you aware that in the standing orders there is the capacity, if you disagree with a Speaker—and we will call the Deputy Speaker as he is in the chair for his time the Speaker—there is the opportunity for you to move a motion of disagreement with the Speaker without just disagreeing in your own mind and walking out? Are you aware of that?

Mr Berkman: Absolutely, but my understanding of the standing orders is that notice of such a motion needs to be given within one day of the decision. Another issue is that I have been told previously when I have spoken to the Clerk about certain issues that an extempore, if we want to use the legal term—an in-the-moment—decision of the Speaker is not necessarily a decision that can be challenged by way of a dissent motion, and beyond that the Deputy Speaker in the chair at the time disciplined me by way of an ejection from the chamber for an hour. As far as I was aware—

Mr STEVENS: Following his interpretation of your argument with his direction by not withdrawing and actually withdrawing. That is all I am saying. As long as you are aware of the opportunities you had to disagree with the Deputy Speaker's direction then I am clear on your modus operandi.

Mr Berkman: I am sorry; I am not entirely sure—we could be talking at cross-purposes, member for Mermaid Beach. I do not know, because I am not—I did not catch what you said in response to my comment then.

Mr STEVENS: As long as you are aware of processes, member for Maiwar, then I am well aware now that the actions you took at the particular time were quite deliberate and in terms of you know your direction. There is no issue in my mind in terms of the answers to the questions that we are seeking from you here today.

CHAIR: Member for Glass House, did you have something further?

Mr POWELL: I was just going to close the loop on the process of the committee. We get the referral. We have the legislation and standing orders to make our deliberations. Just to pick up on what the chair said, at the end of the day, our report to the House for their final decision is a recommendation only. That is when you are provided the full details of our deliberations and the grounds on which we have made that recommendation and that is the opportunity that you then get to respond to that recommendation. Following your response, the House makes a decision as to whether they agree with our recommendation or not. I guess part of what you are looking for, I understand, is in advance of the process and does not occur until our report comes back to the parliament with a recommendation. Just to clarify, I think what you are looking for is our final report, which we cannot give until we feel that we have all the information we possibly can from you.

Mr Berkman: I understand what you are saying. I suppose the difficulty with that is the position of a respondent is that this is a dialectic process. The exchange of correspondence between the committee and myself notionally allows for some conversation. I think each of us knows as well as the other that any debate on a motion in the House that reflects the decisions of the committee is going to involve far less opportunity for a considered dialogue. Maybe I am asking for more than the committee can offer, but I am simply trying to do my best to provide the information I can in the context within the confines of this process.

Mr POWER: You seem to be asking us to make a decision and a deliberation ahead of hearing from you, and our process is to hear from you and your view on the standing orders and your own actions before we actually make a deliberation and a final report. That is the process. We are giving you the opportunity to respond.

Mr Berkman: And I assume you are saying that in the context of the committee has said—in fact, it says in every bit of correspondence that I have ever received from the Ethics Committee, both in this parliament and the previous parliament, ‘The committee has established procedures for dealing with privilege references which ensure procedural fairness and natural justice is afforded to all parties.’ Putting aside the fact that procedural fairness and natural justice are in fact the same thing—interchangeable terms, as I understand it—I do not think chapters 44 and 45 of the standing orders in any meaningful way provide for procedural fairness. I think some of these difficulties that we have encountered in the conversation here today around when I might get further information as the respondent about how the committee is thinking about the process of joining those dots between the factual and the standing orders and legal framework—the process leaves really significant gaps in terms of laying out the case to which I am supposed to respond and conventional understandings of natural justice. It is an assertion that obviously the committee is entitled to make, but I do not think it is one that would stand up on any more detailed analysis of natural justice or what procedural fairness would ordinarily require.

CHAIR: It has been standing us in good stead for quite a long time. We might move on to the next question.

Mr PURDIE: Madam Chair, if I can close the loop on the question that I asked about extra information and just to close what we are talking about there. In relation to natural justice, you know what the facts are and the allegations are; you know what the charges are and the elements of the charges and, in the interests of natural justice, what the questions are. Now is your opportunity to provide us with information to negate each element of the charges that at the end of today we will be deliberating on and then writing a report to the parliament on. I know that you have made submissions on those dates. You have given full, frank and open oral evidence to us this afternoon. If you have anything that can further negate the elements of the charges we are looking at—you obviously know what they are—now is the opportunity to do it.

CHAIR: I think we might keep moving on with the questions because we are going backwards and forwards a bit here. Going back to your opportunity to negate some of those things, I would appreciate some feedback from you on the correspondence that you sent to us in May where you advised us at the time that you chose not to withdraw your comments as you were directed to do by the Deputy Speaker because you did not consider your comments were a personal reflection and you did not want to make a disingenuous withdrawal. You left the chamber and you saw that as the least disruptive way to deal with the situation. I want to hear from you if you consider refusing to follow a Speaker’s direction disorderly or a case of misconduct, and if you do not consider what you did to be those things can you explain to the committee why?

Mr Berkman: The difficulty comes back to standing order 234. It is going to bring us back in the same loop, but I do not see on the *Hansard* record how there is any real space for dispute that the comments—while every interjection is disorderly; we all know that—were not disorderly in the sense that they were a personal reflection on the member that can be compelled for withdrawal. Certainly the member for Redlands knows how distant we are in the nosebleed section from the Speaker and at that point in the debate from the Leader of the House. It would have been, in my mind at the time, a completely futile exercise to try to get into a *tete-a-tete* with the Speaker about whether it was actually commentary that should be withdrawn under the standing orders.

Ms RICHARDS: Actually, you would be surprised, member for Maiwar: the Speaker has quite a clear line of sight to us in those elevated back-row seats.

Mr Berkman: Sure. He knew I was interjecting—there is no doubt about that—but had he heard the words as they are recorded in *Hansard*, there would not have been any question that they did not fall afoul of the standing orders. The exchange between the member for Redcliffe and myself was very clearly about what the government was doing. I feel like it is about that simple. Getting in a dispute with the Speaker at the time about a decision he has made clearly runs the risk of dissenting from a Speaker’s ruling or making a reflection on the chair in real time. I hope it is clear—and it certainly felt this way to me at the time—that I was a bit damned if I do, damned if I don’t. I do not know if this means anything to the committee, but I am deeply disinclined to make a disingenuous withdrawal in circumstances where members routinely in the House—and I have mentioned this in the submissions, too. It is like, as sure as the sun is going to rise, each session in there we are going to have someone take personal offence and someone is going to say, ‘I withdraw,’ and it does not mean anything anymore. I have never called on that standing order and asked for someone to withdraw offensive comments because I think it is degrading of the process. There are many elements of the way proceedings of the House are conducted that I think demean the process and take it to a

place where the public's confidence in it is more likely to be undermined, and that is just one of those, so I do not engage in that. That is all I can offer you about what was going on in my mind at that point in time.

CHAIR: Going back to the comments that you were asked to withdraw on that day, with the interjection that you made, can you tell us what you actually said?

Mr Berkman: The Leader of the House, the member for Redcliffe, was talking about all the things that the government had done—'I do not know why the Greens are running this down. Here are the things the government has done: investing in diversionary programs'—and my comments were, maybe if not word for word, basically 'while proudly locking up children'. I think that is entirely defensible and quite apparent on the government's public record, the media releases that have been put out, and commentary that has been in the press about how many additional children have been detained as a consequence of youth justice law reform that the government has pursued and legislated.

CHAIR: We will stick with this. We will go to the member for Logan.

Mr POWER: I want to make clear: you seem to say that you disagree with the standing order about a member taking personal offence and that the member, when requested, withdraws. You disagree with that as a standing order?

Mr Berkman: No. I am saying that I do not think it applied at the time because my comments were not a personal reflection.

Mr POWER: Previously, though, in that answer you said that you disagreed with it as a standing order, full stop. You made comment that you did not think it brought anything to the House, or something to that effect.

Mr Berkman: No. What I said and what I intended to say is that it is misused by members routinely. A point of order is—

Mr POWER: I put it to you that you went further than that in your answer.

Mr Berkman: You can put it to me, but I am saying I did not. What I intended to say, and as I have said in one of my many letters to the committee, is that I think the way members use that standing order in the House tends to render it almost meaningless. In the course of robust debate, which we like to talk about in the House routinely, members will take any opportunity, even in countless circumstances where there are not personal reflections made, to stand up and say, 'I withdraw,' just so the process keeps rolling on.

Mr POWER: So you disagree with the process in which it is administered in the House?

Mr Berkman: I disagree with the way members use the standing order.

Mr POWER: When this was then applied to you, you understood that an order was given to you to withdraw by the Speaker, Acting Speaker or Deputy Speaker? Did you understand that in the moment?

Mr Berkman: Yes, I heard his words, yes.

Mr POWER: Your response then was to walk out of the chamber and to disregard the direction of the Speaker, Acting Speaker or Deputy Speaker?

Mr Berkman: Are you asking for rhetorical effect? It is very clear in the correspondence that, yes, that is precisely—

Mr POWER: I am trying to get to your state of mind as to whether you understood that you had been given a direction by the deputy chair, and you are agreeing that you had and you were—

Mr Berkman: I do not think it was a direction that was validly given under standing orders given that I had not infringed on that primary subsection of standing order 234.

Mr POWER: At that point where you disagreed with it being valid, you walked out of the chamber instead of following the direction of the chair?

Mr Berkman: Again, are you asking for rhetorical effect? That is beyond you—

Mr POWER: With respect, I am attempting to give you a chance to explain what your state of mind was at the time you walked out of the chamber. All right—

Mr Berkman: My state of mind, if I might respond—and I have said it before in this session—I felt, and it remains my view, that there was little to be gained in trying to argue the point with the Deputy Speaker in the chair at the time and I was strongly disinclined to withdraw comments that did not fall afoul of the standing order.

Mr POWER: I see. In your correspondence on 31 May 2023 you queried our basis for extending the elements to establish a contempt under standing order 266(23) to include the consideration of conduct in elements (1) and (2). On 24 May 2023 and on 14 June 2023 the committee provided you with advice about its processes including that the matters of contempt and the elements required to establish them are not fixed. The Parliament of Queensland Act and the standing rules of the Legislative Assembly set out the relevant rules relating to contempt—

Mr Berkman: Where is this in the committee's correspondence that you are referring to?

Mr POWER: If I could grab it—maybe the secretary could assist me. I am reading to you now that the Parliament of Queensland Act—

Ms RICHARDS:—24 May and 14 June.

Mr POWER:—and the standing rules and orders of the Legislative Assembly set out the relevant rules—I might be rhetorical, but I am giving you the opportunity—relating to contempt, the ultimate test being in accordance with section 37 of the act that—

- (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 ...
 - (b) the free performance by a member of the member's duties as a member.

There is obviously a history of what constitutes improper interference. At that point the committee also provided you with *Butterworths Australian Legal Dictionary* definition of 'improper conduct', which states in part—

Behaviour which in all the circumstances of a case is an inappropriate or incorrect way of discharging duties, obligations and responsibilities. ... 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 ...

I wanted to give you that frame. With that in mind, could you elaborate on why you consider that the conduct in the House at that point in refusing to follow the Deputy Speaker's direction and choosing instead to exit the chamber, to walk out of the chamber, does not reflect or amount to a reflection on the Deputy Speaker's actions or decisions at that point?

Mr Berkman: It reflects a disagreement with the Speaker's decision at that point.

Mr POWER: So you are agreeing that it is reflecting on the decisions or actions of the Deputy Speaker at that point?

Mr Berkman: I was reacting to circumstances where I disagreed with the ruling. In all the circumstances, as I have said, it genuinely seemed to me to be the least disruptive way, rather than picking a barney with the member for Scenic Rim, who was in the chair at that point in time. I am sure I would not be the first person here to disagree with a ruling of the Speaker.

Mr POWER: I humbly suggest that you are not. It is the behaviour and actions that we take that might reflect on the actions or directions of the Deputy Speaker that we are examining here today.

Mr Berkman: Sure. As I said before, for me to engage in a live debate with the Speaker in the chair at the point in time—that is arguably a reflection on the chair as well. Whether I took the action of leaving the chamber or of engaging in the dispute with the member for Scenic Rim, they both reflect a disagreement with his decision. However, to be perfectly honest, in the circumstances it seemed least disruptive and most sensible to just remove myself from the chamber. He was clearly not happy with my conduct; he made a ruling; he ejected me from the chamber; I was disciplined at the time for that conduct and yet we are here, anyway.

Ms RICHARDS: If you were in disagreement, the alternative is that you could have withdrawn and indicated to the House that you would be writing to the Speaker on the matter.

Mr Berkman: As I said before, I have come up against this before where extempore, in-the-moment rulings, incidental rulings of the Speaker, have not been considered. I have spoken to the Clerk about this before where I have considered trying to take decisions of either committee chairs or the Speaker in the chair at a point in time and seek to dissent from those rulings and the advice has been that not everything a Speaker decides or rules in the chair is a decision of the Speaker that can be the subject of a disallowance motion.

CHAIR: I think there have also been occasions where members have stood and said that it was not a personal reflection when they have been accused of it.

Mr Berkman: Absolutely. Again, as I indicated before, I am a very long way from the Speaker. The *Hansard* record is clear that I am not reflecting personally on the member for Redcliffe. The only working assumption that I could take there was that the Deputy Speaker had not heard the content of my interjections.

Mr POWER: You said earlier that all interjections are unparliamentary and against the standing orders. If the Deputy Speaker, even in your view extempore in trying to control the House, had made an incorrect ruling in your view, you still refused to withdraw for the good order of the House?

Mr Berkman: Sorry, I do not understand the question, member for Logan.

Mr POWER: You said earlier that interjections were not within the standing orders.

Mr Berkman: Indeed. They are all disorderly, yes, and run-of-the-mill business.

Mr POWER: You said that the Deputy Speaker was making an extempore, on-the-spot, in-the-moment ruling in attempting to maintain order of the House.

Mr Berkman: Yes.

Mr POWER: But at that point you refused to withdraw your interjection, knowing that?

Mr Berkman: That it was disorderly?

Mr POWER: Yes, and that you had been given an order by the Speaker.

Mr Berkman: Interjections in and of themselves are not required to be withdrawn. It hangs off that requirement in standing order 234 that it is a personal reflection.

Ms RICHARDS: Interjections can be taken in a number of ways and they can have you ejected from the chamber.

Mr Berkman: Indeed, and I was ejected from this chamber. All of us have probably conducted ourselves in the House in ways that, on reflection, are maybe not the highest standard of behaviour. However, what we are talking about here is whether my conduct in choosing not to argue with the Speaker but instead to leave the House is a contempt of parliament. I put it to the committee for your deliberations that this is not a serious infringement on the operations of the Assembly. If we get to the point where referrals to the Ethics Committee for contempt and recommendations around the finding of contempt are handed out like lollies at the Ekka, it means nothing. Similar to the operation of standing order 234, if this confected offence is just thrown around like it is nothing else and there is a point of order, there is an objection, there is a withdrawal, it is just rote business; it does not mean anything. I think that broadly takes away from the parliament.

Mr POWER: On that basis, would it be your recommendation to other members that when given a direction by the chair they all walk out of the House?

Mr Berkman: I am not in the business of giving recommendations to other members, member for Logan.

CHAIR: You made the interjection about locking children up, the member took personal offence and you were asked to withdraw. The *Record of Proceedings* states that you made another interjection following the Deputy Speaker's clarification that he asked you to withdraw the offending comments, not withdraw from the chamber. What was that interjection?

Mr Berkman: I have looked back at this—and I do not know if it is worth anything—but I have said here, 'Don't think I commented here.' At that point, I was standing at the back of chamber, the Speaker was addressing me directly and I was not at my microphone. As far as I am aware, we cannot address the Speaker out of our seats. I did not say anything at that point, as far as I recall; I just nodded. There was no further interjection, on my recollection of the events.

CHAIR: Does anyone have any more questions for the member?

Mr Berkman: Is it possible for me to ask a couple of quick questions?

CHAIR: No. Today is solely about us hearing from you to help us with our deliberations. As we have said a few times now, this is really to help inform us so that we can do our job properly. We will certainly take into account what you have said today in our deliberations and in our report. Thank you for your time today.

Mr Berkman: At a very broad level, can I ask whether there is any further opportunity for submissions or hearing beyond this point, as far as the committee is concerned?

CHAIR: We will write to you if there is.

Mr Berkman: Am I able to contact the committee with some procedural questions beyond this point?

CHAIR: I would have to find out about that and let you know. It is a possibility through the secretariat perhaps for those questions to be asked. The committee secretariat can help you with procedural questions.

Mr Berkman: Sure.

CHAIR: Thank you for your time. Thank you to Hansard for assisting us today. Thank you to all members who came. Thank you, member for Maiwar. I declare the hearing closed.

The committee adjourned at 2.02 pm.

PRIVATE