



QUEENSLAND PARLIAMENT
Ethics Committee

REPORT NO. 221, 57TH PARLIAMENT

**Matter of privilege referred by the Speaker on
12 December 2022 relating to an allegation of inciting or
encouraging disruption of the Legislative Assembly**

March 2024

Ethics Committee

Chair	Mr Stirling Hinchliffe MP, Member for Sandgate
Deputy Chair	Mr Andrew Powell MP, Member for Glass House
Members	Mr John-Paul Langbroek MP, Member for Surfers Paradise
	Mr Linus Power MP, Member for Logan
	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 that the Member for Maiwar, Mr Michael Berkman MP, incited or encouraged disruption of the Legislative Assembly and is in contempt of Parliament.
2. On 30 November 2022 at 10:22am a protest occurred in the Public Gallery of the Legislative Assembly. Twelve activists chanted in the Public Gallery and unfurled banners. Proceedings were immediately suspended by the Speaker. Two additional protesters, seated in the Speaker's Gallery opposite the Public Gallery, filmed the protest and 'livestreamed' the footage to the Extinction Rebellion Facebook page. The Speaker ordered those filming to cease immediately and ordered the Sergeant-at-Arms to clear the Public Gallery. Proceedings resumed at 10:25am.
3. A full account of the protest will be included in a report of the committee's review of the incident. However the committee will not publish that report while court proceedings are underway.
4. Following the protest, at 11:17am on 30 November 2022, the Member for Maiwar made a post on his Facebook page that included the words, 'so to those who took a stand today, I just want to say: you are absolutely right'.
5. A link to the live stream of the protest on the Extinction Rebellion Facebook page was included in a comment made to the Member's Facebook post by a member of the public. The Member for Maiwar 'liked' this comment.
6. The video on the Extinction Rebellion site has been viewed over 4,000 times and 'liked' 330 times.
7. The Member for Maiwar also 'liked' two other comments by members of the public that stated: 'we can no longer not be held accountable, as the supplier of a toxic and deadly substance' and 'thank you brave rebels'.
8. On 1 December 2022 the Speaker made a ruling in respect of the protest and the subsequent social media posts by the Member for Maiwar which stated in part:

The right to protest in a free society is an important part of our democracy. We welcome protest at the Speaker's corner and we, as an Assembly, have passed laws to facilitate and protect proper lawful protest.

The protest that occurred in the Assembly today was not a lawful or peaceful protest. It was a protest that attempted to disrupt our primary democratic institution. The protestors attempted to shout down democracy by being the loudest voice in the chamber and disrupting this Assembly's process.

Protestors, located in the public gallery above members, caused fear to some members in their place of work.

It is unacceptable for our members to participate, incite or encourage such protest.

...

After the protest yesterday, the Member for Maiwar posted on his facebook page a statement that, amongst other things, stated "so those who took a stand today, I just want to say you are absolutely right".

A live stream of the protest taken by accomplices to the protest is attached to the Members Facebook page.

Accordingly, I will be referring the member for Maiwar and his facebook post for the further consideration of the House via the Ethics Committee.

9. On 7 December 2022 nine individuals were charged with an offence under Section 56 of the *Criminal Code 1899* relating to Disturbing the Legislature. Five other individuals were subsequently charged with the same offence. Two of the individuals were also charged with a separate offence of failing to comply with a direction. Proceedings are ongoing. The Ethics Committee holds no view as to the legal ramifications of the conduct of the protestors. No such inferences should be read into this report.

10. On 8 December the Member for Maiwar participated in a radio interview on ABC Radio Brisbane. In his interview the Member stated:

So um, you know, it was a disruptive and a very effective protest in terms of what they hope to achieve and they have now as I understand it, been charged with an offence that hasn't been rolled out since the Joh era. You know with potentially up to 3 years imprisonment as a penalty.

That's what's happened. I think it's pretty shocking to be honest, that we are digging up these very rarely used laws around, you know, the disruption of the Assembly and to think that Queensland Labor now is, you know, they are taking an approach to climate protestors that is reminiscent of how the Joh Government, decades ago approached disruptive protest.

I think it's a really scary indicator of where we are up to and it's a pretty shocking indictment on the government's disregard for people's, you know, right to protest and their, I guess, their willingness to clamp down on people's civil liberties in this way, it shouldn't be going in that direction.

11. On 12 December 2022 the Speaker wrote to the Ethics committee alleging that the Member for Maiwar's conduct in relation to his social media posts arguably falls within the example of contempt set out in SO 266:

(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.

12. On 14 December 2022 the Speaker wrote to the Ethics committee alleging that the Member for Maiwar's conduct in relation to his ABC interview arguably falls within the example of contempt set out in 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.

CONTEMPT OF PARLIAMENT

13. 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.

14. 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:

(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.

15. An alleged contempt by virtue of this example has not previously been considered by the Ethics Committee or its predecessors.

16. There is no commentary on this specific example of contempt in the two leading parliamentary authorities of McGee and Erskine May and therefore consideration by the committee will form the basis of precedent.
17. In deliberating as to whether a contempt is found, the committee applies the civil standard of proof, on the balance of probabilities. As the committee's report introduction states, 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.
18. As a point of comparison, McGee states, in relation to the contempt of deliberately misleading Parliament, that the standard of proof demanded is of a very high order having regard to the serious nature of the allegations.¹
19. Given the arguably increased seriousness of the contempt of inciting a disruption of the Legislative Assembly, proof of a very high order indeed is required to make a finding of contempt.
20. SO 266 also states in part:

Examples of Contempt

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

21. Instances of reflecting on the Chair have been considered multiple times by predecessor Ethics Committees.² 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.

THE COMMITTEE'S PROCEEDINGS

22. 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.
23. On 13 January 2023, the committee wrote to the Member for Maiwar requesting further information in relation to the allegations. The Member responded on 30 January 2023.
24. On 7 March 2023 the committee provided the Member with further information regarding the procedures of the Ethics Committee.
25. On 29 March 2023, the committee wrote to the Member for Maiwar seeking a submission in response to the allegation the Member's conduct may amount to contempt in accordance with SO 266(23) and SO 266(26). The Member provided his submission on 26 April 2023.
26. On 4 May 2023, in line with SO 270(1)(b) the Committee wrote to the Member seeking a further submission in relation to the full particulars provided on 29 March 2023 addressing each of the

¹ Ethics Committee Report No. 185, *Matter of privilege referred by the Speaker on 9 August 2017 relating to alleged deliberate misleading of the house*, p 7, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2019/5619T735.pdf>.

² 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*.

elements of the alleged examples of contempts [SO 266(23) and SO 266(26)]. The Member provided his submissions on 19 May 2023.

27. The Member attended a private hearing with the committee on 31 July 2023.
28. 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, if the definition of contempt of Parliament in section 37 of the POQA is satisfied, a member may be found in contempt for. Thus, they offer a benchmark and precedents against which to assess the conduct in question against the definition of contempt.

SO 266(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.

29. As described above (paragraphs 15-16) this contempt has not previously been considered by the Ethics committee and there is no commentary on such an example of contempt among the leading authorities.
30. To support our consideration, the elements to be satisfied in order to make out this example of contempt have been extrapolated as:
 - Element 1: Did the member make a public statement?
 - Element 2: If yes, did this statement incite or encourage disruption of the Legislative Assembly such that its proper proceedings were brought into disrepute?
 - Element 3: If yes, did the public statement 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 make a public statement?

31. On 30 November 2022, the Member for Maiwar published a statement on a public Facebook page attributed to him, which reads:

I wasn't allowed to take photos from the chamber, but climate activists just staged an action in Queensland Parliament calling on the government to stop coal and gas.

They were sitting in the gallery during Question Time, then unfurled banners and began chanting "STOP COAL. STOP GAS". Security and the Clerk cleared the gallery, confiscated devices used to film the protest, then resumed proceedings.

What no one did was acknowledge that this Labor Government plans to keep opening new coal and gas mines, mining and exporting coal well beyond 2050.

It is an undeniable fact that this breaches our Paris Agreement obligations, will tip us well beyond 2 degrees of warming, and would mean more frequent and severe floods, fires and extinction events.

So to those who took a stand today, I just want to say: you are absolutely right. We need to stop coal and gas. And we need to keep saying it until the major parties start listening.

32. By publishing the above statement on Facebook, it is clear that the Member for Maiwar made a public statement.
33. In correspondence to the committee, the Member for Maiwar does not dispute that he made the statements attributed to him.³
34. Therefore, the committee is satisfied that the Member for Maiwar made a public statement, and that element 1 is made out.

³ Mr Michael Berkman MP, submission dated 19 May 2023, p 1.

Element 2: Did this statement incite or encourage disruption of the Legislative Assembly such that its proper proceedings were brought into disrepute?

35. The Speaker's referral stated that on 30 November 2022, the Member for Maiwar posted on his Facebook page a statement that, amongst other things, stated *'so to those who took a stand today, I just want to say you are absolutely right.'*
36. The Member for Maiwar has argued that there is an important factual distinction between his support for, and agreement with, the substance of the message brought by the protesters and endorsing, inciting, or encouraging the kind of action by which the protestors sought to convey it.⁴
37. The Member argues his statement in no way endorses the disruptive protest action, nor does it incite or encourage disruption of the Legislative Assembly. Rather, the post provided a factual account of what happened in the Chamber, and a statement of agreement with the message that he believes the protesters sought to convey.
38. In correspondence to the committee, the Member for Maiwar argued that the excerpt highlighted by the Speaker in his referral leaves his words open to misinterpretation.⁵
39. In the Member's view, the complete paragraph below, makes clear that he is agreeing with the substance of the issues raised in the protest, and says nothing of the protest itself or the nature of the action (i.e. the disruption of the Legislative Assembly):
- So to those who took a stand today, I just want to say: you are absolutely right. We need to stop coal and gas. And we need to keep saying it until the major parties start listening.*
40. At a private hearing, the Member for Maiwar told the committee that stopping coal and gas is *'a policy position that I have long held and that we [The Greens] as a party have long held. I expressed it before that protest; I have expressed it since that protest.'*
41. At that hearing, when asked directly about the statement *'So to those who took a stand today, I just want to say: you are absolutely right'*, and whether this is supportive of the message of the protestors, or the protest action itself, the Member advised:
- ... The message is: 'No coal. Stop coal. Stop gas.' That is the message that I am saying is absolutely right. I would have thought, again, we are referring back to those first two paragraphs, but the interceding two paragraphs are squarely about that policy question of how the government is addressing climate change and our ongoing resource extraction and the message that the protesters brought to parliament.'*⁶

Consideration

42. The question before the committee is whether the Member for Maiwar's statements amount to 'inciting' or 'encouraging' the disruption of the Assembly, such that its proceedings were brought into disrepute.
43. The Macquarie dictionary defines 'incite' as, 'to urge on: to stimulate, or prompt action'. Given that the Member's statements were after the protest event and there have not been subsequent protest events, 'incitement' is not further considered.
44. 'Encourage' is defined as, 'to inspire with courage, spirit or confidence; to stimulate by assistance, approval'.⁷
45. 'Disrupt' is defined as 'to interrupt the continuity of', or 'to cause disorder'.⁸
46. The Member argues his post provides a factual account of the events that occurred in the Chamber at the time of the protest activity (paragraphs 1 and 2); and articulates his views on the Queensland Government's coal and gas policy (paragraphs 3 and 4).

⁴ Mr Michael Berkman MP, submission dated 30 January 2023, p 3.

⁵ Mr Michael Berkman MP, submission dated 30 January 2023, p 3.

⁶ Private hearing transcript, Brisbane, 31 July 2023, p 5.

⁷ The Macquarie Library Pty Ltd, *Macquarie Dictionary 3rd Edition*, p 959; p 622.

⁸ The Macquarie Library Pty Ltd, *Macquarie Dictionary 3rd Edition*, p 549.

47. Paragraph 5 however, directly addresses the protestors:
- So to those who took a stand today, I just want to say: you are absolutely right. We need to stop coal and gas. And we need to keep saying it until the major parties start listening.*
48. These words could be taken to imply that the Member for Maiwar supports both the message of the protestors, and their conduct in ‘taking a stand’.
49. However, the Member is correct that consideration should be given to the broader context of the Member’s Facebook post. The Member’s Facebook post included an attached article published by *The New Daily*, titled ‘Qld coal exports omitted from climate plan’.
50. That article discusses the Queensland Government’s position on coal, and cites quotes from a climate change action group which discusses the negative impacts of Queensland’s coal industry on the environment. The article also referred to a recommendation of the Queensland Land Court for the government to refuse a proposed coal mine due to ‘unacceptable climate impacts’.
51. The article, when read together with the Member for Maiwar’s statement, supports the Member’s argument that his post expresses a long-held policy position that the Queensland Government should ‘stop coal, stop gas’.
52. At the same time, as part of consideration of the wider context of the Member’s Facebook post, it is relevant to examine the comments and reactions that were elicited by the post itself. This is because, unlike traditional publication, social media posts are not intended to be static or singular event but part of an evolving and shared conversation (hence ‘social’ media).
53. The post by the Member prompted 13 comments posted by members of the public. These mostly expressed views about coal and gas.
54. Two of these comments, however, indicate support for the protest itself and not merely agreement with the policy of stopping coal and gas: (*‘There’s some footage available here - [link removed] - thanks to the brave activists for taking a stand!’*) and (*‘Thank you brave rebels!’*).
55. The post by the Member also generated 21 ‘emojis’. An emoji has been defined as a ‘small digital image or icon used to express and idea, emotion, etc. in electronic communications.’⁹ Courts in both New South Wales and the United Kingdom have held that, as the meaning of emoji’s can be widely inferred by social media users, defendants are liable for their use in cases of defamation.¹⁰
56. The Member for Maiwar ‘liked’ the 2 comments referred to above using the red heart emoji.
57. The website Emojipedia, which was used as the authoritative source for the meaning of emojis in *Burrows v Houda* (NSW), states that the ‘red heart’ is ‘used for expression of love and romance.’¹¹
58. The use of the red heart emoji on comments supportive of the protestors and protest actions would appear to be a clear example of ‘encouraging’ (*‘to stimulate by assistance, approval’*) the disruption of the Legislative Assembly.
59. When read in its full context, the Member for Maiwar’s statement and subsequent engagement on Facebook, while including support for the message of the protest nonetheless also supports their conduct in ‘taking a stand’ (i.e. by way of protest). Indeed, this is how at least two social media users understood the post; an understanding that was subsequently affirmed by the Member for Maiwar through the use of an emoji.
60. In determining whether the statement by the Member encouraged disruption of the Legislative Assembly the committee is mindful of the need to balance protecting the dignity of the House – important to promote confidence in parliamentary democracy – with a Members right to free expression. The Member’s statement was not made in the House and as such the protections afforded in the *Parliament of Queensland Act 2001* do not apply.¹² Nonetheless, as a private citizen, free

⁹ P Singh, ‘Can an Emoji Be Considered as Defamation? A Legal Analysis of *Burrows v Houda* [2020] NSWDC 485’, *Potchefstroom Electronic Law Journal*, vol 24, 2021, p 1.

¹⁰ *Burrows v Houda* (2020) NSWDC 485; *Lord McAlpine of West Green v Bercow* (2013) EWHC 1342 (QB).

¹¹ Emojipedia, ‘Red Heart’, <https://emojipedia.org/red-heart>.

¹² *Parliament of Queensland Act 2001*, s 8(1).

expression is guaranteed through the *Human Rights Act 2019* and the implied freedom of political communication contained within the Australian Constitution.¹³

61. As a result, the committee believes that it is necessary to determine if a member intended to encourage the disruption of the Legislative Assembly.
62. To inform its consideration as to when a Member's 'intent' can be established, the committee drew for guidance on David McGee in *Parliamentary Practice in New Zealand*. Examining the contempt of deliberately misleading the House, McGee states:

*...there must be something in the nature of the incorrect statement that indicates an intention to mislead. Remarks made off the cuff in debate can rarely fall into this category, nor can matters about which the member can be aware only in an official capacity. But where the member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality (for example, by way of personal explanation), a presumption of an intention to mislead the House will more readily arise.*¹⁴

63. The committee is also informed by the Members Code of Ethical Standards which provides examples of where intention to mislead has been found, which demonstrate that a very high standard of proof, on the balance of probabilities, is required – that is, where an intention to mislead is 'the only logical finding'.¹⁵
64. The committee has therefore considered the circumstances in which the Member for Maiwar made his statement.
65. The Member's statement was made 57 minutes after the incident in the Chamber occurred. The statement was made on social media. The small amount of time which had elapsed following the incident and the lack of formality of statements on social media, suggest that the post was a poorly thought out response to a contemporaneous event rather than a considered judgement.
66. The Member for Maiwar has consistently argued that he did not intend to encourage disruption of the Legislative Assembly (see paragraphs 35-41).
67. His failure to have removed the post or moderated the comments some 16 months later is irresponsible and reflects poorly upon the Member's judgement. However, given the posts themselves are not sufficiently proven to indicate an intent to encourage disruption of the Assembly, it is difficult to conclude that the lack of action is indicative of such intent.
68. While the threshold for establishing that the Member 'encouraged' disruption may not have been satisfied, there is no doubt that the Member's statements celebrated the efforts of the protestors. This was reckless in the extreme.
69. Ultimately, as there is no direct evidence such as to amount to proof of a very high order to suggest that the Member intended to encourage disruption of the Legislative Assembly the committee finds the second element of this example of contempt is not made out.

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.

70. As described above (paragraph 21) this contempt has been considered multiple times by predecessor Ethics Committees.
71. The established elements to be made out when considering this contempt are:
 - Element 1: Did the Member make the statements attributed to him?

¹³ Human Rights Act 2019, s 21(2); *Nationwide News Pty Ltd v Wills* [1992] HCA 46; (1992) 177 CLR 1 (30 September 1992); *Australian Capital Television Pty Ltd v Commonwealth* [1992] HCA 1; (1992) 104 ALR 389; (1992) 66 ALJR 214 (15 January 1992)

¹⁴ D McGee, *Parliamentary Practice in New Zealand*, Dunmore Publishing Ltd, 2005, p 654.

¹⁵ Committee of the Legislative Assembly, Code of Ethical Standards together with The Guide to the Code of Ethical Standards and Rules relating to the conduct of members, pp 16-17, <https://documents.parliament.qld.gov.au/assembly/procedures/CodeOfEthicalStandards.pdf>.

- 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?

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

72. On 8 December 2022, the Member for Maiwar participated in a publicly broadcast ABC Radio interview.
73. By engaging in a publicly broadcast radio interview, it is clear that the Member for Maiwar has made a public statement.
74. In correspondence to the committee, the Member for Maiwar does not dispute that he made the statements attributed to him.¹⁶
75. Therefore, the committee finds that the Member for Maiwar made the public statements attributed to him, and that element 1 is made out.

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

76. During the radio interview, the Member was asked about the protest incident which occurred in the Legislative Chamber on 30 November 2022.
77. The Speaker's referral alleges that during the interview the Member for Maiwar questioned his actions as Speaker and on one view, implies that charges were pressed by the Speaker as a political tactic and at the direction of the Government.
78. The Speaker identifies the following excerpt from the interview transcript:

*So um, you know, it was a disruptive and a very effective protest in terms of what they hope to achieve and they have now as I understand it, been charged with an offence that hasn't been rolled out since the Joh era. You know with potentially up to 3 years imprisonment as a penalty. That's what's happened. I think its pretty shocking to be honest, that we are digging up these very rarely used laws around, you know, the disruption of the Assembly and to think that Queensland Labor now is, you know, they are taking an approach to climate protestors that is reminiscent of how the Joh Government, decades ago approached disruptive protest. I think it's a really scary indicator of where we are up to and its a pretty shocking indictment on the government's disregard for people's, you know, right to protest and their, I guess, their willingness to clamp down on people's civil liberties in this way, it shouldn't be going in that direction.*¹⁷
79. The Speaker advised the committee that, 'whilst similar unfounded and uninformed comments have been made by journalists, it is beyond acceptable for a Member for the Assembly to make such commentary'.¹⁸
80. In correspondence to the committee, the Member for Maiwar argues that it is clear from the transcript that his comments do not explicitly refer to Mr Speaker, or his decisions or actions.
81. The Member for Maiwar states that the Queensland Police Service laid charges against the protestors, as they are empowered to do in the circumstances.
82. The Member for Maiwar submits that his comments were a criticism of the Government's 'concerted crackdown on disruptive protest in the last term of Parliament'; and that it would 'be a matter of grave concern' if the committee treated such criticism of the executive branch as a reflection on the Speaker as part of the legislature.¹⁹

¹⁶ Mr Michael Berkman MP, submission dated 19 May 2023, p 1.

¹⁷ ABC Brisbane, *Mornings with Rebecca Levingstone*, Thursday 8 December 2022.

¹⁸ Speaker of the Legislative Assembly, correspondence to the Ethics Committee dated 14 December 2022, p 2.

¹⁹ Mr Michael Berman MP, submission dated 30 January 2023, pp 4-5.

83. The Member for Maiwar also considers the assertion that the Member is implying the charges were pressed by the Speaker as a political tactic is not borne out by the facts. Irrespective of other media on the protest, the Member made no reference to any such reports.
84. In reference to a letter from the committee dated 13 January 2023, the Member for Maiwar told the committee at a private hearing:

You have said here that I reflected on the chair by ‘implying that the decision to pursue charges was a political tactic, done at the direction of the government’. That is not an implication that was intended. On the transcript of the interview, I do not think it is an implication that can be reasonably drawn. The Speaker does not lay charges.

... the Queensland Police Service is responsible for pressing charges. I am critical of the use of those charges. I am broadly critical of the government’s approach to limiting rights to protest but, again, I think there is a very clear distinction in the transcript of that interview.²⁰

Consideration

85. To establish element 2, the committee needs to be satisfied that the Member for Maiwar’s public statements on 8 December 2022 amount to commenting or reflecting on the decisions or actions of the Chair.
86. On 30 November 2022, after the protest activity occurred in the Chamber, the Speaker made the following statement:

*... I wish to make some comments related to the disturbance in the Legislative Assembly this morning during question time. The proceedings of the Assembly were intentionally disrupted by protestors. I immediately cleared the public gallery and the protestors were immediately removed from the precinct. The protestors brought protest material into the gallery hidden under clothes—skirts, shawls et cetera. In a particularly despicable act, cameras to film and live-stream the protest were brought in by accomplices using disabled access facilities for a wheelchair, thus avoiding metal detectors. **Section 56 of the Criminal Code provides that any person who disturbs the Assembly or commits any disorderly conduct in the immediate view and presence of the Assembly intending to interrupt its proceedings commits a misdemeanour.***

*The security of the parliamentary precinct is a matter of utmost importance. Parliamentary Security is investigating this matter with all of the means at its disposal to obtain all necessary evidence in this matter. **I intend to request that the Queensland Police Service charge the offenders who disturbed the Assembly today.***²¹ [Emphasis added]

87. The Speaker presides over the Parliament, and in his role as Speaker, he advised the House that section 56 of the *Criminal Code Act (1899)* provides that any person who disturbs the Assembly or commits any disorderly conduct in the immediate view and presence of the Assembly intending to interrupt its proceedings commits a misdemeanour; and accordingly, he intends to request the Queensland Police Service lay charges against the protestors.²²
88. In this context, at the private hearing the committee asked the Member for Maiwar to explain how comments directed at the Labor Government do not amount to a comment or reflection on Chair, the Chair (i.e. the Speaker) having made the request to the Queensland Police Service.
89. The Member for Maiwar’s initial response to the radio interviewer’s question concerning the protest provides a description of the incident, before stating that the protestors have ‘*been charged with an*

²⁰ Private hearing transcript, Brisbane, 31 July 2023, p 4.

²¹ Record of Proceedings, 30 November 2022, p 3775.

²² Hon Curtis Pitt MP, Record of Proceedings, 30 November 2022, p 3775.

*offence that hadn't been rolled out since the Joh era, you know, with potentially up to three years imprisonment as a as a penalty...'*²³

90. The Member argued that when talking about persons having been charged with offences, 'by that point we are clearly past any involvement of the Speaker'.²⁴
91. The Member went on to say:
- I think it's pretty shocking to be honest that we're digging up these, you know, these very rarely used laws around, you know, around disruption of the assembly and to think that QLD Labor now is you know they're they're taking an approach to climate protesters that's reminiscent of how the Joh Government decades ago approached disruptive protest.*
- I think it's a really scary indicator of where we are up to and its a pretty shocking indictment on the government's disregard for people's, you know, right to protest and their, I guess, their willingness to clamp down on people's civil liberties in this way, it shouldn't be going in that direction.*²⁵
92. In the Member's statement of concern that 'we' are 'digging up ... very rarely used laws around ... disruption of the assembly', the 'we' in that context would seem to be a reference to the people of Queensland generally (perhaps the Parliament). There is no direct reference to the Speaker being the party responsible for 'digging up' the laws.
93. With respect to his above comments about Queensland Labor, the Member for Maiwar asserted in his submission that the *Summary Offences and Other Legislation Amendment Act 2019* criminalised certain forms of disruptive, peaceful protest; and that it is his understanding this is the first time government has constrained the right to protest in Queensland since the Bjelke-Petersen era.²⁶
94. The Members adds that his comments are simply a continuation of this critique of government, which is a fundamental part of his work as a Member of Parliament.
95. The Member for Maiwar added at the private hearing:
- Again, I have not referred to the Speaker. If an imputation can be drawn in circumstances where I have, I think, clearly made no reference to the Speaker, I find that worrying. What other public commentary that we might make about government action could be taken as a reflection on the Speaker if something has happened in a separate context?*²⁷
96. It is uncontested that Mr Speaker is not directly named, nor referred to by title in the Member for Maiwar's statement.
97. The Speaker argued that on one reading, the Member's statement implies that charges were pressed by the Speaker as a political tactic, done at the direction of the Government.
98. Irrespective of any request from Mr Speaker to the Queensland Police Service in relation to this incident, it remains a decision and an action of the Queensland Police in terms of whether they proceed to charge persons for an alleged offence under the Criminal Code.
99. In this regard, and in the absence of any mention of the Speaker's request to the Queensland Police Service in relation to this incident, the committee does not consider an unequivocal inference can be drawn that the Member for Maiwar's statements are concerned with the Speaker, who has no jurisdiction in 'pressing charges'.
100. The Member has instead expressed his views about the rights of people to peacefully protest, under a government that has previously legislated against certain forms of disruptive, peaceful protest. His

²³ ABC Brisbane, *Mornings with Rebecca Levingstone*, Thursday 8 December 2022.

²⁴ Private hearing transcript, Brisbane, 31 July 2023, p 4.

²⁵ ABC Brisbane, *Mornings with Rebecca Levingstone*, Thursday 8 December 2022.

²⁶ Mr Michael Berman MP, submission dated 26 April 2023, p 3.

²⁷ Private hearing transcript, Brisbane, 31 July 2023, p 4.

reference to the laws about disruption to the Assembly, are a lead-in to discussion of the government's policy as expressed in amendments made to the Summary Offences Act in 2019.

101. While the committee acknowledges that some media articles reporting on the protest incident incorrectly conflated the jurisdiction of the Speaker with the Queensland Police Service in relation to the charges laid against the protestors, it is the committee's view that the Member for Maiwar's statement does not have this effect.
102. Therefore, the committee finds that in making public statements which critique the pursuit of charges against the protestors under the Criminal Code, which is the jurisdiction of the Queensland Police Service, the Member's statements do not amount to a reflection on the decisions or actions of the Chair, and element 2 is not made out.
103. As element 2 has not been established, this matter has not been considered further.

CONCLUSION

104. On the matter of the Member for Maiwar 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, the committee finds that there is an absence of direct evidence of an intention to encourage disruption, and therefore has not recommended the House make a finding of contempt.
105. On the matter of the Member for Maiwar 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 finds that the Member's statements do not amount to a reflection on the decisions or actions of the Chair, and therefore has not recommended the House make a finding of contempt.
106. Nonetheless, in relation to the Member's social media posts, we emphasise that the Member's conduct falls well short of the standards expected of a Member of Parliament. As former Speaker Reynolds ruled in 2007 following a protest on the parliamentary precinct:

*...members have a higher duty [than members of the public] to maintain the dignity of this House and its precinct. Members should use their best endeavours to ensure no indignity to the House or precinct occurs and not sit idly by waiting for an opportunity to gain politically.*²⁸
107. The Member would have been aware that his comments could be interpreted as encouragement of the protestors' conduct in the Legislative Assembly Chamber. That conduct was an affront to democracy. The Legislative Assembly is the site of discussion, debate, and deliberation. It is where laws are made, and where all the people of Queensland expect to be represented, not just those who shout the loudest.
108. The protestors' conduct reflects a complete lack of regard for the rights and viewpoints of other members of the community, and the right of their representatives to feel safe in their place of work, the Legislative Assembly Chamber. Such conduct is immature and more common in the realm of student politics. It has no place in a Chamber of a parliament of an advanced democracy.
109. We wish to clearly and unequivocally state that the committee supports peaceful protest. But the gallery of the House is not the place for that protest. The House has established processes which ensure the views of all Queenslanders can be aired and debated in a manner that ensures democratic principles of participation, representation, equality and respect are upheld.
110. For a Member of the Parliament to be seen to celebrate such conduct is disgraceful and reflects poorly on their judgement and maturity.
111. The rights and liberties of all individuals, including Members, are ultimately guaranteed by our parliamentary democracy. Commenting on a disruption of parliament in such a way as to celebrate that disruption is deeply injurious to the health and strength of a core democratic institution.

²⁸ Record of Proceedings, 5 June 2007, p 1775.

112. The effect on democracy of celebrating such behaviour, such as that which occurred when protestors stormed the US Capitol building on 6 January 2021, is all too easy to see. While the Member, no doubt, would be aghast to have his behaviour compared to those Congressmen, who celebrated a violent disruption in their own House of Assembly, in reality his actions were little better. Naivety is not a sufficient excuse.
113. With the committee making its views clear on this matter in this report, let there be no doubt amongst all Members that 'intent' will from hereon be more readily shown in the event of any future conduct which may be seen to celebrate disruption of the business of the House.

RECOMMENDATION

114. On the matter of the Member for Maiwar 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, the committee recommends no finding of contempt be made against the Member for Maiwar, and that the House take no further action in relation to this allegation.
115. On the matter of the Member for Maiwar 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 recommends no finding of contempt be made against the Member for Maiwar, and that the House take no further action in relation to this allegation.



Mr Stirling Hinchliffe MP
Chair

March 2024

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
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 35
Friday, 13 January 2023, 9.30am
Teleconference

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	Mr Michael Ries, Acting Clerk Ms Rebecca Meehan, Legal and Compliance Officer

Inquiry 9 – Alleged inciting or encouraging disruption of the Legislative Assembly referred to the committee on 12 December 2022

Discussion ensued.

Resolved

That the committee:

(a) write to the Member for Maiwar in the terms of the letter provided seeking further information on the allegations under SO 270(1)(b) to inform a decision as to whether to proceed to an investigation; and

(b) write to the Clerk of the Parliament in the terms of the letter provided, with amendments as discussed, seeking further information in accordance with SO 270(1)(d).

Moved: Mr Powell

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 36

Wednesday, 22 February 2023, 1.18pm

Committee Room 3 and Room L6.04, 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 (from 1.19pm)
Mr Ray Stevens MP

In attendance

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

Inquiry 9 – Alleged inciting or encouraging disruption of the Legislative Assembly referred to the committee on 12 December 2022 (Maiwar)

Discussion ensued.

Resolved

That the committee wait until it reviews the entire protest incident (the other part of the Speaker's referral of this matter) to make a decision in relation to the allegations against the Member for Maiwar.

Moved: Ms Howard

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 38

Tuesday, 7 March 2023, 1.31pm

Teleconference and L6.04, 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 9 – Alleged inciting or encouraging disruption of the Legislative Assembly referred to the committee on 12 December 2022 (Maiwar)

Discussion ensued.

Resolved

That the committee writes to the Member for Maiwar in the terms of the draft letter provided.

Moved: Mr Purdie

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 39

Wednesday, 15 March 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
Mr Linus Power MP
Ms Kim Richards MP (from 1.34pm)
Mr Ray Stevens MP

In attendance

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

Inquiry 9 – Alleged inciting or encouraging disruption of the Legislative Assembly referred to the committee on 12 December 2022 (Maiwar)

Discussion ensued.

Resolved

That the committee write to the Member for Maiwar advising that the committee is investigating two of three allegations referred by the Speaker and seeks a submission in respect of those allegations in accordance with SO 270(1)(c).

Moved: Mr Powell

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 41

Wednesday, 29 March 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
Mr Linus Power MP
Ms Kim Richards MP
Mr Ray Stevens MP

In attendance Ms Bernice Watson, Committee Secretary

Via teleconference Dr Amanda Beem, Legal and Compliance Officer

Inquiry 9 – Alleged inciting or encouraging disruption of the Legislative Assembly referred to the committee on 12 December 2022 (Maiwar)

Discussion ensued.

Resolved

That the committee write to the Member for Maiwar and Members of the Legislative Assembly in the terms of the respective draft letters, each amended as discussed.

Moved: Mr Stevens

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 44

Thursday, 4 May 2023, 12.00pm

Teleconference & Committee Room 3, Level 6, Parliamentary Annexe

Via teleconference Ms Jennifer Howard MP, Chair
Mr Andrew Powell MP, Deputy Chair (until 12.28pm)
Mr Linus Power MP
Mr Dan Purdie MP
Ms Kim Richards MP
Mr Ray Stevens MP (from 12.02pm)

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

Inquiry 9 – Alleged inciting or encouraging disruption of the Legislative Assembly referred to the committee on 12 December 2022 (Maiwar)

Discussion ensued.

Resolved

That the committee write to the Member for Maiwar in the terms of the draft letter provided.

Moved: Mr Stevens

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



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 9 – Alleged inciting or encouraging disruption of the Legislative Assembly referred to the committee on 12 December 2022 (Maiwar)

Discussion ensued.

The committee noted the secretariat's suggestion that the committee reports on the Speaker's request to review the entire protest incident in a separate report, to be tabled concurrently with the report on Inquiry 9.

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



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 9 – Alleged inciting or encouraging disruption of the Legislative Assembly referred to the committee on 12 December 2022 (Maiwar)

Discussion ensued.

Resolved

That the committee write to the Member for Maiwar in respect of inquiries 9 and 10 in the terms of the draft letter provided, as amended.

Moved: Mr Powell

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 48

Monday, 31 July 2023, 12.45pm

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

Via teleconference Mr Ray Stevens MP

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

Inquiry 9: Alleged inciting or encouraging disruption of the Legislative Assembly & Inquiry 10: Alleged misconduct in the presence of the House or reflecting on the Chair

Members noted the briefing paper prepared in relation to the above matters.

Discussion ensued.

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



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

Inquiry 9: Alleged inciting or encouraging disruption of the Legislative Assembly & Inquiry 10: Alleged misconduct in the presence of the House or reflecting on the Chair

The committee agreed to hold consideration of this agenda item over to its next meeting.

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



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 9: Alleged inciting or encouraging disruption of the Legislative Assembly (Maiwar)

The committee agreed to hold consideration of this agenda item over to its next meeting.

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 52

Wednesday, 25 October 2023, 1.14pm

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 Kit Kowol, Legal and Compliance Officer

Inquiry 9 – Alleged inciting or encouraging disruption of the Legislative Assembly (Maiwar)

Discussion ensued.

The committee agreed to write to the Clerk requesting an oral briefing on questions relating to the third element of the example of contempt, and advice on the committee's assessment of the available evidence.

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 53

Wednesday, 15 November 2023, 1.11pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

Mr Linus Power MP, Acting Chair
Mr Andrew Powell MP, Deputy Chair
Ms Joan Pease MP, substitute for Ms Jennifer Howard MP
Mr Dan Purdie MP
Ms Kim Richards MP
Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary
Dr Kit Kowol, Legal and Compliance Officer
Mr Neil Laurie, The Clerk of the Parliament (until 1:55pm)

Apologies and welcome

Ms Howard was an apology.

Inquiry 9 – Alleged inciting or encouraging of disruption of the Legislative Assembly (Maiwar)

The committee received a briefing from The Clerk on questions relating to the third element of the example of contempt, and advice on the committee's assessment of the available evidence.

Discussion ensued.

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 54

Wednesday, 29 November 2023, 1.20pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

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

In attendance

Ms Bernice Watson, Committee Secretary
Dr Kit Kowol, Legal and Compliance Officer

Inquiry 9 – Member for Maiwar: Alleged inciting or encouraging disruption of the Legislative Assembly

Discussion ensued.

Resolved

That the secretariat prepare a briefing paper, as discussed, for the committee's consideration.

Moved: Mr Powell

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 55

Wednesday, 14 February, 1.17pm

Committee Room 3, Level 6, Parliamentary Annexe

Present	Mr Stirling Hinchliffe MP, Chair Mr Andrew Powell MP, Deputy Chair Mr John-Paul Langbroek MP Mr Linus Power MP Ms Kim Richards MP (until 1:55pm) Mr Ray Stevens MP (until 1:55pm)
In attendance	Ms Bernice Watson, Committee Secretary Dr Kit Kowol, Legal and Compliance Officer

Inquiry 9 – Member for Maiwar: Alleged inciting or encouraging disruption of the Legislative Assembly

Discussion ensued.

Resolved

That the secretariat prepare two draft reports as discussed and strengthen the condemnation of the disruption where possible.

Moved: Mr Powell

EXTRACT OF MINUTES –

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
12 DECEMBER 2022 RELATING TO AN ALLEGATION OF
INCITING OR ENCOURAGING DISRUPTION OF THE LEGISLATIVE
ASSEMBLY**



Ethics Committee

Meeting No. 56

Wednesday, 6 March, 1.15pm

Committee Room 3, Level 6, Parliamentary Annexe

Present

Mr Stirling Hinchliffe MP, Chair
Mr Andrew Powell MP, Deputy Chair
Mr John-Paul Langbroek MP
Mr Linus Power MP
Ms Kim Richards MP (until 1:32pm)
Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary
Dr Kit Kowol, Legal and Compliance Officer
Ms Erin Hastie, Committee Secretary

Inquiry 9 – Member for Maiwar: Alleged inciting or encouraging disruption of the Legislative Assembly

Discussion ensued.

The committee noted copy-editing amendments to the Chair's Draft Report titled 'Report on a matter of privilege referred by the Speaker on 12 December 2022'.

Resolved

That the Chair's Draft Report titled 'Report on a matter of privilege referred by the Speaker on 12 December 2022' be adopted as a report of the committee with the inclusion of the previously noted copy-editing amendments.

Moved: Mr Hinchliffe

The committee agreed to write to the Speaker updating him on the progress of matters referred to the committee.

Extracts certified correct on 7 March 2024

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

Stirling Hinchliffe MP

Chair



Michael Berkman MP
For Maiwar ▲

30 January 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 13 January 2023, sent in your capacity as chair of the Ethics Committee (Committee), and the attachments:

- Mr Speaker's statement of 30 November 2022 (the Speaker's Statement);
- Mr Speaker's referral letter dated 12 December 2022 (Referral Letter); and
- Mr Speaker's second referral letter dated 14 December 2022 (Second Referral Letter).

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

I believe there is very little in the way of additional information (i.e. factual material) that I can provide beyond the facts already before or readily available to the Committee. That said, I will certainly endeavour to assist and address any factual inaccuracy or mischaracterisations that are apparent in the material you have provided me.

I will first seek to clarify my understanding of the process that may follow, should the Committee decide to investigate the allegations against me, to ensure I have an opportunity to take legal advice if necessary and to make substantive submissions regarding the allegations, in addition to the information I'll provide below in response to the Committee's current request.

1 Process – Chapter 44 of the Standing Orders

As you've identified in your letter, Chapters 44 and 45 of the Standing Orders (SO) set out the established procedures that are intended to "ensure procedural fairness and natural justice is afforded to all parties."

I've set out below my understanding of Chapter 44, based on a plain reading of the relevant SOs. I have not addressed Chapter 45, as I understand it is of little concern unless and until the Committee decides to investigate the allegations, concludes this investigation, and reports to the Assembly on its investigation.

1.1 Determination under SO 270(1)(a)

I note your advice, as stressed in your letter, that the Committee's "invitation for a submission is a preliminary step seeking further information", and that "[the] committee has not determined whether to investigate the allegations against [me], nor made any other determinations concerning the matters."

It is clear from your advice that the Committee has not made any determination under SO 270(1)(a) whether to summarily dispose of the matter, which might be done on the basis that the matter is trivial, technical or vexatious or does not warrant further attention by the committee. I look forward to further advice from the Committee as to whether it will investigate the allegations, in line with its determination under SO 270(1)(a).

It is my hope that, especially with the benefit of the additional information below, the Committee sees fit to summarily dispose of the matter. To avoid any doubt, I believe this matter does not warrant the further consideration of the Committee.

1.2 Potential further steps under SO 270(1)(b) and (c)

Should the Committee choose not to dispose of the matter under SO 270(1)(a), I understand SO 270(1)(b) requires the Committee to request that I provide a written explanation of the allegations.

The Standing Orders quite clearly establish this as a separate step, subsequent to the Committee's determination under SO 270(1)(a), and it is not my intention that this response to your letter be taken as a written explanation of the allegations, for the purpose of SO 270(1)(b).

To avoid any doubt, and should the Committee choose to investigate the allegations, I take this opportunity to clarify that I dispute the allegations. In this light, I understand that:

- SO 270(1)(c) requires the Committee to give me (or any person I nominate) an opportunity to be heard; and
- Any such hearings will ordinarily be heard in private, subject to a contrary determination of the Committee under SO 270(2); and
- I or any other witness will be heard on oath or affirmation, as per SO 270(3), which, together with SO 270(2), I take to imply that SO 270 provides for an oral hearing.

I would appreciate your earliest possible advice if the Committee holds a different view in respect of the process stipulated and the rights afforded to me under Standing Orders, and particularly SO 270, such that I can seek timely legal advice if necessary.

2 Speaker's Statement and Referral Letter

The facts around my Facebook post are relatively straightforward, and clear on the face of the screenshots attached to the Referral Letter, but I take this opportunity to address the mischaracterisation of this material by Mr Speaker in two important respects.

2.1 Incomplete statements taken out of context

First, the text excerpt included in both the Speaker's Statement and the Referral Letter is incomplete, which leaves it open to misinterpretation. Even the complete paragraph, had Mr Speaker included it, makes clear that I am agreeing with the substance of the issues raised in the protest, and says nothing of the protest itself or the nature of the action (i.e. the disruption of the Legislative Assembly):

"So those who took a stand today, I just want to say: you are absolutely right. We need to stop coal and gas. And we need to keep saying it until the major parties start listening."

There is an important factual distinction between my supporting and agreeing with the substance of the political message brought by the protesters and endorsing, inciting or encouraging the kind of action by which they sought to convey it. The Facebook post clearly did the former but not the latter.

As a matter of fact, in deciding whether to investigate the allegations, I'd suggest that the Committee read and understand the excerpt in the context of the entire Facebook post.

2.2 Live stream of the protest

The Speaker's Statement and Referral Letter both state that "a live stream of the protest taken by accomplices to the protest is attached to the said Members Facebook post." Again, while the screenshots in the Referral Letter make it self-evident to anyone familiar with Facebook, it's important to note that this is not an attachment.

Mr Speaker can only be referring to a URL posted in the comments by a third party. His suggestion that the "live stream ... is attached" to my post is prone to misinterpretation and tends to suggest that I "attached" the URL to the post, which is not the case.

3 Second Referral Letter

Similar to the Facebook post, the content of the radio interview transcript, as a piece of information for the Committee's consideration, is clear in the attachment to the Referral Letter, but I put to the Committee that Mr Speaker's allegations in respect of the radio interview have no basis in fact.

3.1 Standing Order 266(23) – reflecting on the Chair

It is clear from the transcript that my comments do not explicitly refer to Mr Speaker or his decisions or actions, nor can they be sensibly read as implicitly doing so.

As I understand it, the Queensland Police Service laid charges against the protesters, as they are empowered to do in these circumstances, and in this light the meaning of Mr Speaker's statement in the Second Referral Letter that "charges were pressed by me [Mr Speaker]" is not clear. Whatever other media reporting has been done around Mr Speaker's request for QPS to lay charges, I made no reference to such reporting and my comments did not refer to him or his actions, let alone 'question his actions as Speaker', as he has asserted.

Similarly, in relation to my comments about Queensland Labor, the Committee would be aware of the Palaszczuk Government's concerted crackdown on disruptive protest in the last term of Parliament.

Queensland Labor introduced and legislated the *Summary Offences and Other Legislation Amendment Act 2019*, which criminalised certain forms of disruptive, peaceful protest. I understand that, in doing so, this Government actively constrained Queenslanders' right to protest for the first time since the Bjelke-Petersen era.

It is, frankly, baffling that Mr Speaker has read these comments as a reflection on his character, his actions or his decisions. His interpretation of my comments is a matter for him, but it would be a matter of grave concern if the Committee considered itself at liberty to treat such criticism of the Government or an arm of the executive as a reflection on the Chair.

3.2 Standing Order 266(26) – inciting or encouraging disruption of the Legislative Assembly

In the radio interview I was asked, in relation to the protest, “what happened?” While it’s not entirely clear from the Second Referral Letter, your letter appears to focus on one aspect of my response in relation to Mr Speaker’s earlier allegations of contempt under SO 266(26).

It is a slight distinction, but my response is slightly mis-transcribed, and should read “it was a disruptive and a very effective protest in terms of what they hope[d] to achieve”.

To elaborate on this statement, it was a statement of fact that:

1. The protest was disruptive; and
2. Measured against what I assume the protesters hoped to achieve (i.e. to disrupt Parliament with a message of “no coal, no gas”, and to get media coverage of that action), I believe they would have considered it a successful or effective direct action.

In short, my statement was a factual observation about the incident that took place the preceding week, which I offered in response to a direct question.

Whether that statement can sensibly be considered a statement “inciting or encouraging disruption of the Legislative Assembly by bringing the proper proceedings of the Legislative Assembly or its committees into disrepute” is a matter for later submissions, should the Committee choose to investigate.

4 Ethics Committee review of the entire incident – SO 266(25) – planning or executing a disruption of a proceeding of the Legislative Assembly

It is not clear from your letter or any of Mr Speaker’s correspondence how the Committee’s review of the entire incident, as referred to the Committee in the Referral Letter, relates to Mr Speaker’s referral of allegations around my conduct.

Nor is it clear whether he alleges, in addition to the allegations considered above, that I’ve committed contempt under SO 266(25).

I would appreciate the Committee’s earliest possible advice as to:

1. Whether the Committee’s review of the entire event is in any way related to its consideration of the Speaker’s referral regarding my conduct; and

2. Does the Committee consider that the Speaker's referral regarding my conduct includes a referral in respect of contempt under SO 266(25).

Despite this ambiguity, and given the false assumptions built into Mr Speaker's other allegations, I'll respond to your request for information as though such an allegation is implied.

To remove any doubt, I was in no way involved in planning or executing the protest.

4.1 Speaker's request to talk to members

Mr Speaker, in the Second Referral Letter, requested that the Committee "talk to members that were in the Chamber at the time of the protest, and ascertain as to whether the actions of the protestors gave rise to fear and apprehension." I assume that this will at least to some extent coincide with the Committee's review of the entire incident, and will necessarily be by way of formal proceedings, such as a hearing or hearings.

I am more than willing to assist the Committee with this in any way possible. Given the apparent antipathy of Government and Opposition members to disruptive protest, I'd encourage you to ensure you make an opportunity to engage with me on this issue, and any other members who don't share this antipathy.

Can you please advise when and in what forum the Committee will 'talk to Members', in line with Mr Speaker's request, and whether I might be invited to participate?

5 Conclusion

Thanks again for the opportunity to provide this additional information. I look forward to your earliest possible advice with respect to the Committee's determination under SO 270(1)(a), whether the Committee disagrees with my understanding of my procedural rights, as set out above, and whether the Committee's review of the entire incident overlaps with its consideration of the allegations against me.

To reiterate, I believe this matter does not warrant the 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 do not 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,



Michael Berkman MP



Michael Berkman MP
For Maiwar ▲

26 April 2023

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

Dear Ms Howard

I refer to your letters of 7 March and 29 March 2023, and my previous correspondence of 30 January 2023.

Your letter of 29 March invites me to make a submission in respect of the two allegations set out in that letter. I have endeavoured to do so below but will preface these submissions with my concerns about the inadequate particularisation of the allegations.

Read together with your letter of 7 March, which states that the Committee may “write to [me] inviting a submission in response to the full particulars of the allegations in accordance with SO 270(1)(c)”, I infer that the Committee considers the allegations as articulated in the most recent letter to be “the full particulars” of these allegations.

The allegations provided in that letter are essentially a restatement of a very limited number of uncontested facts, that provide no particulars of **how** the Committee considers the relevant conduct or factual background “could amount to contempt” under the relevant Standing Orders or meet the threshold for contempt set out in the Parliament of Queensland Act 2001 (POQ Act).

You’d be aware that the SO 270(6) requires that any report in relation to these matters cannot make an adverse finding unless I have been given full particulars of the complaint and the opportunity to be heard in relation to the same.

Assuming the particulars provided in your letter of 29 March 2023 are the full particulars of the allegations, I’d first like to convey my surprise that the Committee has chosen to further investigate this matter. It seems clear on the available information that there is no reasonable basis for a finding of contempt in these circumstances.

Your letter of 7 March 2023 makes clear that the Committee may decide at any point in its investigation to dismiss a matter under SO 270(1)(a), and I respectfully submit that this is the only sensible course of action available to the Committee in light of the facts and circumstances.

1 Allegation 1

As I indicated in my previous correspondence, the Facebook post in question conveys my support for and agreement with the substance of the message brought by the protesters – that is, I agree that Queensland needs to stop producing and exporting coal and gas.

This is a policy position the Greens and I have held and routinely communicated in recent years. The Committee would be aware that I have since introduced a Private Member's Bill to directly pursue this policy position, which stands as a further indication of my longstanding position on these issues. In short, my support of this position, as expressed in the Facebook post, shouldn't come as a surprise to anyone.

As I've previously communicated to the Committee, I believe there is an important factual distinction between my supporting and agreeing with the substance of the message brought by the protesters and endorsing, inciting, or encouraging the kind of action by which they sought to convey it. The Facebook post in no way endorses the disruptive protest action, nor does it incite or encourage disruption of the Legislative Assembly. Rather, the post overall was a very high-level, factual account of what happened in the chamber, and a statement of agreement with the message that I believe the protesters sought to convey.

The statement made in the Facebook post is, in my submission, clearly not of the character contemplated in SO 266(26).

I submit that the same is true of the third-party comment on the post that included a link to footage of the protest. The Committee appears to accept that this is not my statement, but your most recent letter conspicuously notes that the comment remains published at the time of writing. While I don't routinely remove or interfere with public discourse on my social media publications, I'd appreciate your advice if you consider there is some action I should take in respect of that particular third-party comment.

1.1 POQ Act threshold

Additionally, as your letter sets out, the POQ Act defines "contempt" of the Assembly and imposes a firm threshold on any finding of contempt. In particular, s37(2) of the POQ Act states that:

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.

I submit that the conduct that is the subject of Allegation 1, as particularised in your letter of 29 March, simply cannot constitute an improper interference (nor is it likely to amount to an improper interference) with the free exercise by the Assembly of its authority or functions, or with the free performance by a member of their duties as a member. I believe there is little room for dispute that the protest itself interfered with the function of the Assembly, but it is entirely unclear how a social media post, published after the fact, could be characterised as such.

To remove any doubt, it was not my intention to improperly interfere with either the Assembly or a member in any way.

If the Committee is inclined to the view that the conduct in question does somehow meet the threshold set out in s37(2) of the POQ Act, I submit that I have not yet been afforded an opportunity to make a submission in response to the full particulars of the allegations in accordance with SO 270(1)(c), and I respectfully request that you provide further particulars of:

1. What conduct the Committee considers amounts to, or is likely to amount to, an improper interference with the free exercise by the Assembly of its authority or functions, or the free performance by a member of their duties as a member;
2. What authority or functions of the Assembly, or duties of a Member, the Committee considers have been improperly interfered with;
3. The nature of the interference;
4. In what ways the Committee considers that interference was improper.

2 Allegation 2

While your letter refers to SO 266(24) in respect of Allegation 2, I'll proceed on the understanding that this is intended to refer to SO 266(23).

As I indicated in my earlier correspondence, the comments referred to in Allegation 2 make no mention of Mr Speaker and I am surprised that he has read these comments as a reflection on his character, his actions or his decisions.

To reiterate my earlier observations to the Committee, I understand the Queensland Police Service laid charges against the protesters, as they were empowered to do in the circumstances. Mr Speaker's assertion that "charges were pressed by [him]" suggests that he has personalised my comments in a way that isn't borne out by the facts. Whatever other media reporting was done around Mr Speaker's request for QPS to lay charges, I made no reference to such reporting and my comments did not refer to him or his actions, let alone 'question his actions as Speaker', as he has asserted.

Similarly, in relation to my comments about Queensland Labor, the Committee would be aware of the Palaszczuk Government's concerted crackdown on disruptive protest in the last term of Parliament. Queensland Labor introduced and legislated the Summary Offences and Other Legislation Amendment Act 2019, which criminalised certain forms of disruptive, peaceful protest. I understand that, in doing so, this Government actively constrained Queenslanders' right to protest for the first time since the Bjelke-Petersen era.

I have been publicly critical of the current Labor Government's response to disruptive protest on several occasions since being elected to the Queensland Parliament, in respect of both the legislative and executive arms of government. The comments referred to in Allegation 2 are simply a continuation of this critique of the Government, which is a fundamental part of my work as an MP.

Mr Speaker's interpretation of my comments is a matter for him, but it would be a matter of grave concern if the Committee considered itself at liberty to treat such criticism of the Government or QPS as a reflection on the Chair.

2.1 POQ Act threshold

As is the case for Allegation 1, I am concerned that the particulars of Allegation 2 in your letter provide no basis for the Committee to find that my conduct meets the threshold in s37(2) of the POQ Act.

If the Committee is inclined to the view that the conduct particularised in Allegation 2 does meet the threshold set out in s37(2) of the POQ Act, I again submit that I have not yet been afforded an opportunity to make a submission in response to the full particulars of the allegations in accordance with SO 270(1)(c) and respectfully request that you provide further particulars of:

1. What conduct the Committee considers amounts to, or is likely to amount to, an improper interference with the free exercise by the Assembly of its authority or functions, or the free performance by a member of their duties as a member;
2. What authority or functions of the Assembly or duties of a Member the Committee considers have been improperly interfered with;
3. The nature of the interference;
4. In what ways the Committee considers that interference was improper.

3 Conclusion

In summary, I remain of the view that these matters do not warrant the further attention of the Committee, and that the Committee should summarily dispose of both allegations under SO 270(1)(a).

Both allegations, as articulated in your letter of 29 March, fail to adequately particularise the way(s) in which my conduct is alleged to constitute a contempt of the Assembly under the Standing Orders and the POQ Act. Rather, the allegations are essentially a restatement of a very limited number of uncontested facts, with no particulars of how the Committee considers the relevant factual background might constitute contempt or satisfy the threshold set out in the POQ Act.

For the Committee to make any adverse finding in the circumstances would be to deny me procedural fairness and natural justice, and breach the requirement of SO 270(6).

I am happy to continue to participate in whatever way is most convenient for you, but I anticipate there is little more I can offer by way of assistance without further and better particulars of the allegations.

Should the Committee choose to proceed with its investigation, I would appreciate your earliest possible response to my request for further particulars. 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,



Michael Berkman MP



MICHAEL BERKMAN MP

Member for Maiwar ▲

19 May 2023

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

Dear Ms Howard

I refer to your letters of 7 March, 29 March and 4 May 2023, and my previous correspondence of 26 April 2023.

Your letter of 4 May invites me to provide a further submission addressing each of the elements of the two allegations of contempt. As I foreshadowed in my letter of 26 April, I believe there is little more I can offer by way of assistance without further and better particulars of the allegations. I'll address the elements of each allegation to the extent I'm able, although this is largely a restatement of my previous submissions, and I ask that these submissions are read alongside my earlier observations and submissions.

At the outset, I note the Committee's observation that I "have been provided with the full particulars in relation to allegations 1 and 2." On this basis, and in the absence of any additional facts or particulars the Committee considers are available to it, I make the general submission that the "full particulars" relied on by the Committee cannot sensibly be considered to establish contempt of parliament. I remain of the view that the Committee should dismiss this matter under SO 270(1)(a).

Allegation 1

Regarding Element 1, there's no dispute that I made a public statement by way of a post on Facebook. As I understand the Committee's previous correspondence, there appears to be no dispute that the comment referred to in your letter was left by a member of the public, and so was not a public statement made by me.

The particulars provided by the Committee in all your previous correspondence go no further than establishing Element 1 – i.e. that I made a statement in a public Facebook post, as quoted in the particulars provided, and a member of the public commented on that post, as described. In relation to Element 2, as I've previously indicated, my public statement (i.e. the Facebook post) in no way endorses the disruptive protest action, nor does it incite or encourage disruption of the Legislative Assembly. Rather, as I've submitted previously, the post comprised a very high-level, factual account of what happened in the chamber, and a statement that agreed with and restated the message that I believe the protesters sought to convey – a policy position I've expressed a number of times previously and since.

I submit, as I have previously, that the facts simply don't establish Element 2. If the Committee is of an alternative view, I again request that you provide the relevant supporting particulars. For example, does the Committee consider my account of the protest was sufficient to "incite or encourage disruption of the Legislative Assembly such that its proper proceedings were brought into disrepute?" Or, is the Committee's view that my statement of a policy position agreeing with the message put forward by the

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protest was sufficient to “incite or encourage disruption of the Legislative Assembly such that its proper proceedings were brought into disrepute?”

Without further particulars that support or establish Element 2, I can only submit, once again, that it is unsupported by the facts.

Similarly, in relation to Element 3, I can only repeat that there is no factual basis to conclude that my statement could “amount to, or was intended or likely to amount to, an improper interference with the free exercise by the Assembly of its authority or functions”. Again, if the Committee is of a different view, I’d need further supporting particulars to provide any further submissions.

Allegation 2

Like Allegation 1, there appears to be no dispute around Element 1 of Allegation 2, but I submit that the particulars provided by the Committee in all your previous correspondence go no further than establishing Element 1. That is, the facts establish that I made the statements attributed to me.

As I’ve indicated at every opportunity in this process, the comments referred to in Allegation 2 make no mention of Mr Speaker. In the absence of any additional particulars the Committee may be considering, I can only submit that my comments cannot fairly be taken as a reflection on Mr Speaker when they do not refer to him.

Once again, if the Committee is of a different view, I’d need further supporting particulars in relation to Elements 2 and 3 to provide any further submissions to assist the Committee.

Conclusion

To reiterate, I submit that the facts as particularised by the Committee do not and cannot support a finding of contempt in respect of either allegation and that the Committee should dismiss the matter under SO 270(1)(a).

I maintain the view that, absent any further particulars the Committee considers relevant, to make any adverse finding in the circumstances would necessarily involve such leaps of logic or factual assumptions as to deny me procedural fairness and natural justice, and breach the requirement of SO 270(6).

Kind regards,



Michael Berkman MP

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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.

The committee will first ask questions relating to the allegations of contempt referred on 12 and 14 December 2022. Before doing so, the committee would like to note the following particulars in this matter as set out in correspondence dated 4 May 2023: that on 30 November 2022 you made a public Facebook post which provided an account of the protest activity that occurred in the Legislative Assembly public gallery on that day which in part stated—

So to those who took a stand today, I just want to say: you are absolutely right. We need to stop coal and gas. And we need to keep saying it until the major parties start listening.

and that on 8 December 2022 you participated in a radio interview during which you discussed the protest activity. That is a summary of those things. I will go to the member for Glass House for the first question.

Mr POWELL: Good afternoon, member for Maiwar. During the committee's inquiry into this matter you have raised concerns about being provided the 'full particulars of the complaint'. Can I ask what further information you consider you require to respond to the allegations (a) that your statement on the Facebook page on 30 November 2022 incited or encouraged the disruption of the Legislative Assembly such that its proper proceedings were brought into disrepute and (b) that your statements on 8 December 2022 during a radio interview could amount to a reflection on the chair? Just to reiterate, the question is about what further information you consider you require to respond to those allegations.

Mr Berkman: Thank you for the question, Deputy Chair. I presume at least that the committee are familiar with the correspondence that I provided to the committee of 26 April where I have further, in respect of each of the allegations, specified some questions that I think would be helpful in understanding the particulars, as opposed to the bare factual basis of the allegations. More broadly, the question that I am struggling to understand—and to assist the committee with submissions—is how the committee considers that relevant conduct amounts to contempt and satisfies each of those elements and, secondly, how it satisfies the legislative threshold set out in section 37 of the Parliament of Queensland Act.

Mr POWELL: Member for Maiwar, you need to be aware that some of what you are asking would involve us providing you the deliberations of the Ethics Committee as we determine some of those things ourselves, and it is not our responsibility to do that. We need to be provided with the facts from you so that we can deliberate and make a decision.

Mr Berkman: Okay. Is that a question?

Mr POWELL: That is more a reflection on what you have asked and some of the questions you have provided. What you would be asking us to do is to provide you with our deliberations. We are not required to do that. In fact, that would in many ways jeopardise our discussion and forming an opinion on the outcome.

Mr Berkman: What I would say in response, Deputy Chair, is that these are unique proceedings. As has been made clear by the chair, they are not criminal proceedings. They are not legal proceedings even, as the broader term might suggest. I am in a position where I am effectively a respondent to complaints. In my experience of civil matters that are broadly analogous, there is a detailed process of exchange of particulars so that the parties understand properly what case is being made by the other side. For me as a respondent, I know what happened. We all know what happened. There is no misunderstanding about that. It is very difficult, dare I say impossible, for me to actually respond to the case that the committee is making against me if I do not understand what that case is. My intention is not to be argumentative but simply to understand the view that the committee brings to this so that I can provide perhaps a broader submission or interpretation of those facts as they apply to the standing orders and the legislative backdrop.

CHAIR: The committee is not making a case. We are here today to hear from you in relation to the allegations against you—basically, why you feel that it has not been an act of contempt in the parliament—and other questions, which we will get to. The House will make a decision at the end of the day and our committee will do the deliberation. We just need to hear from you. I guess today is

not really about you understanding how the committee works or what we are thinking; today is about hearing from you in response to those allegations and why you think those allegations do not apply to you.

Mr Berkman: I appreciate that. I think I understand the setting as well as I can. The point I was trying to make to the deputy chair is—and I think I have said quite explicitly a few times in the correspondence—given how little dispute there is about the very narrow factual basis of the allegations, there is very little more that I can provide to the committee to make a case either way without understanding the reasoning and the rationale that the committee seeks to apply. I say this in a context where, again, the most recent correspondence from the committee has made clear that in fact the classes of conduct that might constitute contempt are not limited. I need to be realistic in accepting that even the standing orders and the legislation as it is set out currently in no way constrain the ways that the committee might find my behaviour to have reached those thresholds for contempt. I am left with no option but to try to fish for more information to understand where you are coming from and how I can respond and assist in these deliberations. Again, without some more useful particulars than what the committee has provided, I am left with little more that I can offer.

CHAIR: I think in the best interests of our deliberations, we should just persist with our questions and you can just do your best to answer them, just to help us understand.

Mr Berkman: I hope that is what I have been doing so far, because that is certainly my intention.

CHAIR: All right. We might move to the member for Redlands.

Ms RICHARDS: Both the chair's and deputy chair's questions and comments stated that we have not provided the particulars and we have expressed that we do not provide the deliberation process. We are not in that at the moment. To assist the committee in our deliberations, could you elaborate on why you consider that your conduct does not amount to contempt in accordance with standing orders 266(26) and 266(23) specifically; why your statement on the Facebook page on 30 November 2022 did not incite or encourage disruption of the Legislative Assembly such that its proper proceedings were brought into disrepute; and why your comments during a radio interview on 8 December 2022 are not a reflection on the actions or the decisions of the chair? Is it your position that the Speaker acted at the behest of the government?

Mr Berkman: There is a lot in that question.

Ms RICHARDS: There is a lot in that question.

Mr Berkman: It is okay; I think I understand all of the different elements of the question.

Ms RICHARDS: Three elements.

Mr Berkman: Again—

Ms RICHARDS: Let's go to the Facebook one first.

Mr Berkman: I have addressed this explicitly in my correspondence to the committee. The Facebook post, as I read it, was a very bland, factual statement of what happened in the chamber. There was a protest. I set that out. As to the words the Speaker has taken issue with—'So to those who took a stand, I just want to say: you are absolutely right'—as I have said, that is a statement of agreement with the message they brought, with the underlying policy that they were trying to communicate. That is a policy position that I have long held and that we as a party have long held. I expressed it before that protest; I have expressed it since that protest. I think there is a very clear—

Ms RICHARDS: Are you suggesting that your Facebook post was supporting the message and not the actions of the protesters?

Mr Berkman: I thought that was clearly enough communicated in the letter. I hope it was. I apologise if it was not. Yes, I said nothing about the actions and the mode of communication. I did quite directly—and continue to—support the message that they sought to convey.

Ms RICHARDS: The second part to that is: in a later interview on 8 December, how is it that you think that is not a reflection on the actions or the decisions of the chair?

Mr Berkman: Again, I have set out in the letter that that interview made absolutely no reference to the Speaker. What I hoped the committee might be able to provide back to me is some suggestion about how, in the absence of any words, any inference—the Speaker said in his referral that he thinks I infer certain things about his conduct or his decisions. I do not see that inference. I did not talk to the actions, the decisions or anything the Speaker had done. I did not mention him. We can get into the weeds of it more if you would like, but in his referral, if I recall, he talked about how I had—I will

read from the Ethics Committee's letter. You have said here that I reflected on the chair by 'implying that the decision to pursue charges was a political tactic, done at the direction of the government'. That is not an implication that was intended. On the transcript of the interview, I do not think it is an implication that can be reasonably drawn. The Speaker does not lay charges. He might have engaged with QPS or the public prosecutor about that. It state—

... questioned my actions as Speaker and ... implies that charges were pressed ... as a political tactic.

Again, I just did not do that and all I can do is assert the counterfactual. If there is a way for the words of the transcript to be interpreted differently, I am open to hear that and to respond to the committee's view on it. But the chair—the Speaker—does not press charges; the Queensland Police Service is responsible for pressing charges. I am critical of the use of those charges. I am broadly critical of the government's approach to limiting rights to protest but, again, I think there is a very clear distinction in the transcript of that interview. It is clear enough in my mind that it is quite surprising that the Speaker has blurred those distinctions and taken them somehow as a reflection on him and his actions around that.

Mr POWELL: May I ask a supplementary, Chair?

CHAIR: Yes.

Mr POWELL: If I may just refer to your actual statements in that radio interview—

Mr Berkman: Yes, sure.

Mr POWELL: It states—

I think it's pretty shocking, to be honest, that we are digging up these very rarely used laws around, you know, the disruption of the Assembly and to think that Queensland Labor now is, you know—they are taking an approach to climate protestors that is reminiscent of how the Joh Government decades ago approached disruptive protest.

If I jump down a little further—

I think it's a really scary indicator of where we are up to and it's a pretty shocking indictment on the government's disregard for people's, you know, right to protest and their, I guess, their willingness to clamp down on people's civil liberties in this way. It shouldn't be going in that direction.

I think where we are needing your assistance is explaining—whilst you have directed those comments at Queensland Labor, those decisions were decisions of the Speaker in his running of parliament. That is where we need you to explain how just referring to Queensland Labor does not necessarily take that away from being directed at the Speaker.

Mr Berkman: Sure, okay. We can start at the top—and maybe this is useful context as well. This was not an interview that I went on expecting to be talking about the protest, but it happened. I do not recall exactly what the window was, but I think I was on talking about some other topic. I could not find the transcript. It is not online anymore as far as I could find, or that recording. I was not prepped to talk about this particular issue.

My initial response is about the protest in the House. That is clear. But talking about 'they've been charged with offences'—by that point we are clearly past any involvement of the Speaker. It is a decision of QPS to charge the protestors with these rarely used offences. Again, I have not referred to the Speaker. If an imputation can be drawn in circumstances where I have, I think, clearly made no reference to the Speaker, I find that worrying. What other public commentary that we might make about government action could be taken as a reflection on the Speaker if something has happened in a separate context? I get that there may be a closer line drawn because it is in the context of an interview—a single interview—but my comments were not directed at the Speaker. That is all I can say.

CHAIR: Member for Redlands, did you have a follow-up question?

Ms RICHARDS: Yes. I want to come back to the Facebook page, because you said it was about the message and not the actions. In re-reading the Facebook post, it says—

I wasn't allowed to take photos from the chamber, but climate activists just staged an action in Queensland Parliament calling on the government to stop coal and gas.

They were sitting in the gallery during Question Time, then unfurled banners and began chanting "STOP COAL. STOP GAS". Security and the Clerk cleared the gallery, confiscated devices used to film the protest, then resumed proceedings.

What no one did was acknowledge that this Labor Government plans to keep opening new coal and gas mines, mining and exporting coal well beyond 2050.

It is an undeniable fact that this breaches our Paris Agreement obligations, will tip us well beyond 2 degrees of warming, and would mean more frequent and severe floods, fires and extinction events.

So to those who took a stand today, I just want to say: You are absolutely right. We need to stop coal and gas. And we need to keep saying it until the major parties start listening.

So are you still saying that it is the message and not the actions?

Mr Berkman: Yes. To assist me in answering the question, can you point specifically to what paragraph or what part of that post you say or you consider does support the actions?

Ms RICHARDS: The first two paragraphs and then, when it is read in the entire context, your very last paragraph—

Mr POWELL: The last sentence even.

Ms RICHARDS: The last sentence. That is, I guess, what I am trying to get to.

Mr Berkman: The first two paragraphs, on my reading of them—and, again, obviously it is open to the committee to take a different view—are very bland, factual statements about what has happened. I mean ‘wasn’t allowed to take photos from the chamber’ is just what the standing orders say.

Ms RICHARDS: You are not allowed to unfurl banners and chant, either, in the gallery.

Mr Berkman: And there is no question as to whether or not I did that; am I correct?

Ms RICHARDS: No, I am not saying you did it.

Mr Berkman: But, again, I am just stating in the post: this is a factual reporting of what happened in the chamber for anyone who was not there.

Ms RICHARDS: It is not a promotion of it?

Mr Berkman: No. We make all sorts of observations on our social media as elected representatives and local members. I will include content that I vehemently disagree—

Ms RICHARDS: But this—

Mr Berkman: I could finish the answer if you are interested. I do not always disagree with all of the messages that I put up but I include material that I think is in the public interest. Given the restriction on reporting around what happened in the gallery that day, I consider there is a public interest in giving that very—it is a straight-bat, factual report of what happened in there.

Ms RICHARDS: I do not doubt that those first two paragraphs are not factual about what occurred, but it is the first sentence in the last paragraph—

So to those who took a stand today, I just want to say: you are absolutely right.

That is where I am trying to differentiate between message and action or message delivery.

Mr Berkman: Okay. If I was talking about the protest in the gallery, I would have thought it would be clearer than that. The message is: ‘No coal. Stop coal. Stop gas.’ That is the message that I am saying is absolutely right. I would have thought, again, we are referring back to those first two paragraphs, but the interceding two paragraphs are squarely about that policy question of how the government is addressing climate change and our ongoing resource extraction and the message that the protesters brought to parliament.

I do not know what else I can say here. If the committee wants to draw a link between that and that and disregard my very clear statement that it is support for the message and not the action and that that was what was intended in the post, I do not know that I can offer anything more to counter that.

Mr POWER: I noticed at a later point a video was appended to your post that was recorded in the House. Were you aware of that?

Mr Berkman: That the comment had been added or that the video had been taken?

Mr POWER: No, that the video had been added to your post.

Mr Berkman: Not until well after the fact, no.

Mr POWER: But at some point you were aware of it?

Mr Berkman: Yes.

Mr POWER: Are you aware that on your own Facebook page you can hide or remove or make comment on an addition?

Mr Berkman: Yes. I am broadly familiar with how Facebook operates. I did address that in one piece of correspondence to the committee where I think, without going to the trouble of finding it and reading it out verbatim for you, I made the observation that this is clearly something that is on the

committee's mind. I am not in the practice of intervening in any of the commentary on my Facebook page. If you have a look at it there will be plenty of detractors on there, commenting. I let that play out without cutting across the public conversation that happens within our social media. I did, in fact, ask directly if the committee had any particular advice about what it thought I should do in respect of that comment. I was more than happy to hear it, but I have not heard anything more on that. It is clearly not my publication. It is not a statement that I have made. It is not my conduct in taking the video or putting it up there. Again, if the committee is of the view that it should be taken down, I would appreciate hearing that and I would be more than happy to comply.

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.