

Your ref: 1562772  
Our ref: PL8/PRE052/1856/HUR  
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Department of  
Justice and Attorney-General

8 April 2011

**QFCI**

Date: 11/4/11 JM

Ms Jane Moynihan  
Executive Director  
Queensland Floods Commission of Inquiry  
Level 30, 400 George Street  
BRISBANE QLD 4000

Exhibit Number: 13

By email: [REDACTED]

Dear Ms Moynihan

**Hon Stephen Robertson MP – Claim of Parliamentary Privilege  
Requirement 1562772**

I refer to Requirement 1562772 served on the Honourable Stephen Robertson MP, Minister for Energy and Water Utilities on 25 March 2011.

The Minister respectfully declines to comply with the requirement insofar as it relates to proceedings in Parliament.

Paragraph 34 of the Minister's statement refers to the existence of Parliamentary briefing notes. The Parliamentary briefing notes are documents prepared to inform the Minister of matters relevant to potential questions or issues expected or anticipated to be raised in Parliament. The category includes those documents commonly known as possible parliamentary questions.

In the Minister's respectful submission, such documents constitute "proceedings in the Assembly" because they are documents prepared for the purposes of, or incidental to, transacting business of the House (see s.9 of the *Parliament of Queensland Act 2001*, and *Rowley v O'Chee* [2000] 1 Qd R 207 @ 220-221).

Yesterday, the *Commissions of Inquiry (Queensland Floods Inquiry – Evidence) Regulation 2001* was made. That regulation, made pursuant to s.5(2A) of the *Commissions of Inquiry*

*Act 1950*, declares a chairperson's writing to take precedence over any provision "of an Act that is a provision that might afford reasonable excuse for not complying with the writing".

Section 5(2A) relevantly provides:

- "2A Where a Regulation has declared that a Chairperson's writing made under subsection (1) is to take precedence over any oath taken, affirmation made, or provision of an Act, which oath, affirmation or provision might afford reasonable excuse for not complying with any writing of a chairperson made under subsection (1) –
- (a) the obligation to Act in accordance with the oath or affirmation, or with the provision shall not constitute such reasonable excuse; and
  - (b) the person bound by the oath or affirmation, or by the provision shall not be taken –
    - (i) to have breached the oath or affirmation; or
    - (ii) to have committed an offence against the provision; or
    - (iii) to have rendered the person liable to disciplinary action;by reason of the person complying with the Chairperson's writing."

In my submission, a regulation under s.5(2A) of the Act cannot have the effect of abrogating parliamentary privilege.

A regulation under s.5 may protect a person from the consequences of failing to act in accordance with an oath or affirmation or failure to comply with a provision of an Act, in circumstances where compliance with the requirement in the chairperson's writing would otherwise have the consequence that the person:

- breached the oath or affirmation;
- committed an offence against the provision; or
- is rendered liable to disciplinary action.

Section 5(2A) does not protect a person (including the Minister) from the consequences of breaching parliamentary privilege, which may (depending on the circumstances) amount to a contempt of the Assembly (s.37 of the *Parliament of Queensland Act*; cf Harris, *IC House of Representatives Practice* 5<sup>th</sup> ed, at 707 – 708).

For completeness, I note s.13B of the *Acts Interpretation Act 1954* ("the AI Act") which provides:

- 13B Acts not to affect powers, rights or immunities of Legislative Assembly except by express provision**
- (1) An Act enacted after the commencement of this section affects the powers, rights or immunities of the Legislative Assembly or of its members or committees only so far as the Act expressly provides.
  - (2) For subsection (1), an Act affects the powers, rights or immunities mentioned in the subsection if it abolishes any of the powers, rights or immunities or is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.

(3) In this section—  
*rights* includes privileges.

Section 13B of the AI Act was inserted by the *Justices and Other Legislation (Miscellaneous Provisions) Act 2000*, which commenced operation on 17 November 2000. Section 5(2A) of the Act commenced operation on 25 August 1988. (See *Commissions of Inquiry Act and Other Acts Amendment Act 1988*).

Because s.13B of the AI Act only applies to an Act enacted after its commencement (ie 17 November 2000) it does not apply to s.5(2A).

I note that s.13B does apply to statutory instruments (see s.14 and Schedule 1, *Statutory Instruments Act 1992*) and therefore a regulation, which is a statutory instrument, (see s.7(3) of the *Statutory Instruments Act*). Furthermore, as the regulation was only made yesterday, s.13B applies to it. In my submission, as the regulation does not expressly provide that it affects parliamentary privilege, it does not so affect the privilege.

In these circumstances, the Minister regrets that he is not able to comply with the requirement in respect of proceedings in Parliament.

Yours faithfully



Rob Hutchings  
Assistant Crown Counsel  
for Crown Solicitor