



ETHICS COMMITTEE

Report No. 120

Matter of privilege referred by the Speaker on 27 October 2011 relating to an alleged deliberate misleading of the House by a minister

Introduction and background

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 16 June 2011.
2. The committee's area of responsibility includes dealing with complaints about the ethical conduct of particular members and dealing with alleged breaches of parliamentary privilege by members of the Assembly and other persons.¹ The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House.
3. The matter in this report concerns an allegation by the Leader of the Opposition, Jeff Seeney, member for Callide, that the Minister for Main Roads, Fisheries and Marine Infrastructure, Hon Craig Wallace, deliberately misled the House in an answer to a question without notice on 8 September 2011 in relation to the Broadwater at the Gold Coast.
4. In accordance with Standing Order 269, Mr Seeney wrote to the Speaker on 26 September 2011, asking that the Speaker refer the matter to the committee.
5. Standing Order 269(5) provides that, in relation to the procedures for raising and considering complaints, the Speaker may request information from the member the subject of the complaint. Accordingly, the Speaker sought further information from the minister regarding Mr Seeney's complaint. The Speaker subsequently received a submission from the minister on 19 October 2011.
6. On 27 October 2011, after examining the information before him, the Speaker referred the matter to the committee for its consideration.
7. The committee invited both parties to provide a supplementary submission to the committee. The committee received a submission from the minister on 23 November 2011.

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

The referral

8. When referring two complaints to the committee on 27 October 2011, Speaker Mickel emphasised that the referral of a complaint to the Ethics Committee should not be viewed as establishing that a complaint is substantiated. Further, he specifically cautioned against such a view being formed or expressed. The Speaker's statement detailing reasons for the referral was incorporated into the parliamentary record as follows:²

...

Standing Order 266 states in part:

Examples of contempt

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

...

(2) deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) ...

It is well established that there are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House: first, the statement must, in fact, have been misleading; secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and thirdly, in making it, the member must have intended to mislead the House.

Further, I note that comments made by the Members' Ethics and Parliamentary Privileges Committee in its report Number 2 which are relevant to both of the matters considered below:

At this juncture it is worth noting that the Committee does not believe that the statements made have to be necessarily false before a contempt could be proved. The term "misleading" is wider than "false" or "incorrect". The Committee considers it possible, although rare and unlikely, that a technically factually correct statement could also be misleading.

For example, the deliberate omission of relevant information could make an otherwise factually correct statement misleading.

Standing Order 269(4) states:

In considering whether the matter should be referred to the committee, the Speaker shall take account of the degree of importance of the matter which has been raised and whether an adequate apology or explanation has been made in respect of the matter. No matter should be referred to the ethics committee if the matter is technical or trivial and does not warrant the further attention of the House.

Matter 1—Leader of the Opposition's complaint against the Minister for Main Roads, Fisheries and Marine Infrastructure

On 8 September 2011 the Minister for Main Roads, Fisheries and Marine Infrastructure, in answer to a question by the Member for Broadwater, alleged that the Leader of the LNP had released a policy for the Broadwater on the Gold Coast whereby dredging works on the Broadwater would be paid for by way of a toll. The Minister then tabled a document which he said had been "circulating on the Gold Coast".

By letter dated 26 September 2011, the Leader of the Opposition wrote to me contending that the Minister for Main Roads, Hon. Wallace deliberately misled the House by the tabling of the document.

Although not the words used by the Leader of the Opposition in his complaint, the basic contention of the Leader of the Opposition is that the Minister by tabling the document created the impression that the document was a document of the LNP when it was in fact not an LNP document. In this way it is claimed that the Minister deliberately misled the House.

The Minister contends, essentially, that at no time did he actually claim the document was an LNP document. However, the Minister does concede that the document was "an industry document that has been circulating on

² Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 27 October 2011, at 3473.

the Gold Coast for some time". Furthermore, the Minister concedes that fax header and summary at the bottom of the document had been removed in his office prior to tabling.

There does not appear to be dispute on the facts about the status of the document. It was clearly not an LNP document. However, it is open to interpret the Minister's answer to the question as creating the impression that the document was an LNP document and thereby misleading. The Minister at no stage disclosed that the document was an industry document and not an LNP document. In other words, there is sufficient evidence to satisfy the first element of the offence.

This matter comes down to what the Minister knew and intended and I believe it appropriate that issues of intention and credibility be determined by the Ethics Committee.

Accordingly, I will be referring the matter to the Ethics Committee.

Definition of contempt

9. Section 37 of the POQA defines the meaning of "contempt" of the Assembly as follows:
- (1) "Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.
 - (2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—
 - (a) the free exercise by the Assembly or a committee of its authority or functions; or
 - (b) the free performance by a member of the member's duties as a member.

Nature of the contempt of deliberately misleading the House

10. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (the Standing Orders) provide that the Legislative Assembly may treat deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) as a contempt.³
11. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House:
 - First, the statement must, in fact, have been misleading;
 - Secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and
 - Thirdly, in making it, the member must have intended to mislead the House.⁴
12. The ethics committee of the 48th Parliament held that the term misleading is wider than "false" or "incorrect". That committee considered it "...possible, although rare and unlikely, that a technically factually correct statement could also be misleading..." by, for example, the deliberate omission of relevant information.⁵
13. The *Code of Ethical Standards: Queensland Legislative Assembly* emphasises to members that "... misleading is a wider concept than making incorrect statements. A totally factually correct statement can still be misleading."⁶

³ Standing Order 266(2).

⁴ McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

⁵ MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 10.

⁶ Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, as amended 30 June 2006, 9 February 2009, 11 May 2009, at 25.

14. Previous ethics committees, and David McGee in *Parliamentary Practice in New Zealand*, have noted that the standard of proof demanded in cases of deliberately misleading parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations. Recklessness, whilst reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.⁷

Matter referred to the committee

15. On 8 September 2011 the member for Broadwater, asked the Minister for Main Roads, Fisheries and Marine Infrastructure a question without notice in relation to the Broadwater at the Gold Coast. The question and answer in its entirety is included at **Appendix 1**.
16. The Leader of the Opposition wrote to the Speaker on 26 September 2011 and alleged that the minister misled the House in his answer to the question without notice and by tabling a document claimed to be Liberal National Party (LNP) policy. The core of Mr Seeney's complaint is that, the minister by making the statements below, and tabling the document, created an impression that this was LNP policy.
17. The minister's statements that are the subject of Mr Seeney's complaint are listed below.
 - (a) 'Indeed, talk is rife on the Gold Coast that Newman will fund any works on the Broadwater as only Campbell Newman knows how to—through a toll. I table a document which has been circulating on the Gold Coast.' A copy of the document is at **Appendix 2**.
 - (b) 'The proposal reportedly under consideration is for an annual fee to be applied to all residential waterfront properties if they want to continue to access the water. All properties will be paying a fee if they want to continue to access the water. That is Campbell Newman's plan for the Broadwater.'
 - (c) 'The member for Broadwater and the Bligh Government will fight Campbell Newman every step of the way as he attempts to tax the people living on the Broadwater.'
18. The committee notes that the proposal referred to in (b) above is reflected in the tabled document, that is, 'all waterfront homes should have an annual fee to use the waterway adjacent to their property to allow them to install a pontoon/jetty system and in turn moor vessels in front of their properties. (this fee should be collected by an authority local to each area)...'⁸

Establishing a prima facie case of possible contempt

19. The committee has established procedures for dealing with privileges references, which ensure procedural fairness and natural justice is afforded to all parties. These procedures are set out in Chapters 44 and 45 of the Standing Orders. The committee is also bound by the *Instructions to committees regarding witnesses* contained in Schedule 3 of the Standing Orders.
20. The committee found that it had sufficient material before it from all parties to deliberate on the matter. This material included both parties' correspondence to the Speaker (including an earlier letter to the Speaker from the minister on 9 September 2011) and a supplementary submission to the committee received from the minister on 23 November 2011.

⁷ Note 8, at 654; MEPPC, *Matter of Privilege – The Alleged Misleading of the House by a Minister on 20 October 1998*, Report No. 27, Goprint, Brisbane, 1999 at 2.

⁸ See Appendix 2, dot point 3, *Potential Revenue Sources (over and above current income for Queensland Transport)*.

21. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are listed below.
- Do the minister's statements contain any apparent or proven factually incorrect matter?
 - Were any of the minister's statements misleading?
 - (If yes), did the minister know at the time the statements were made that they were misleading, and was it the minister's intention to mislead the House?

Do the minister's statements contain any apparent or proven factually incorrect matter?

22. The issue for the committee to determine in this element is: at the time the question was asked, had the Liberal National Party (LNP) or Mr Campbell Newman announced a policy to fund dredging works on the Broadwater through a toll or annual fee?
23. In his correspondence to the Speaker on 9 September 2011 the minister stated, 'the claim that I made was founded on the fact that Mr Newman has stated publicly that he would legislate for a Gold Coast Waterways Authority to be reconstituted,' and, 'as can be seen from the article in the Gold Coast Bulletin, Mr Newman states that he is yet to cost the proposal.'
24. The minister provided a Gold Coast Bulletin news article from 27 August 2011 titled, 'Marine industry joy over Newman news', to support his claims.⁹ The article commented on Mr Newman's announcement that he would create a Gold Coast Waterways Authority if elected as Premier. The concerns around funding were raised in the article by a Marine Action Group spokesperson and a Local Councillor. Mr Newman was not quoted in the article.
25. There is no evidence to suggest that at the time the question was asked, that the LNP or Mr Newman had announced a policy to fund dredging works on the Broadwater through a toll or annual fee.
26. On the face of the information before the committee, there have been no public announcements in relation to funding work on the Broadwater through a toll. Accordingly, the committee finds that the minister's statements in relation to funding works on the Broadwater through a toll or annual fee, factually incorrect.

Were any of the minister's statements misleading?

27. The issue for the committee to determine in this element is: did the minister, in statements made and by tabling the document create an impression that the LNP or Campbell Newman had announced a policy to fund dredging works on the Broadwater through a toll or a fee?
28. In correspondence to the Speaker, Mr Seeney stated that the tabled document was, '...not, and has never been, LNP or Campbell Newman policy.'
29. Mr Seeney argues that, "having regard to the Ministers [sic] comments and the subsequent tabling of the unidentified document, it is reasonable to suggest that one might, on the face of it, consider the content of that document to be LNP related. Indeed, the Minister didn't leave it to assumption, he specifically stated it as 'Campbell Newman's plan.'"

⁹ Gold Coast Bulletin, 27 August 2011, 'Marine industry joy over Newman news'.
http://www.goldcoast.com.au/article/2011/08/27/344425_gold-coast-news.html.

30. In response, the minister stated, ‘... this document is an industry proposal which has been circulating on the Gold Coast for some time. A review of Hansard confirms that at no time did I claim the document in question was created by the LNP and hence, the statement was not misleading.’
31. The committee notes that *Hansard* records confirm that the minister did not state that the document was LNP policy. The committee also notes that the document does not include any details which could identify it as LNP policy.
32. The status of the tabled document is not at dispute, however the minister did not explain the nature of the document he tabled nor did he provide any other information to identify it. The way in which the minister described the document in the House was that it was a document that had been ‘circulating on the Gold Coast for some time’.
33. The committee is of the view that a reasonable person reading the minister’s statements in their entirety together with the tabled document without any explanation or identifying information, may gain an impression that it was the policy of the LNP or Mr Newman.
34. On the face of the information before the committee, the committee finds that the tabled document and the minister’s statements created an impression that it was the policy of the LNP or Mr Newman to fund works on the Broadwater through a toll or annual fee, and was misleading.

(If yes), did the minister know at the time the statements were made that they were misleading, and was it the member’s intention to mislead the House?

35. On 11 October 2011 the Leader of the Opposition tabled a document which identified the minister’s tabled document as being extracted from a ‘Discussion paper for: Minister of Transport Hon Paul Lucas’ dated ‘25th July 2007’.¹⁰ A copy of the tabled document is at **Appendix 3**.
36. In his correspondence to the Speaker, Mr Seeney submitted that, ‘the Original Document was doctored by the Minister and his office to deliberately mislead Parliament and the Minister used words in the Parliament and in one media report to further support that impression.’
37. The minister advised the Speaker on 9 September 2011 that the document was provided to him indirectly by an external third party and that the identifying details including a fax header and summary at the end of the document were removed by his office prior to tabling.
38. In his correspondence to the Speaker on 19 October 2011 the minister stated that, ‘at no time did I attempt to or intend to mislead the House, I simply tabled a document which as I told the House was circulating on the Gold Coast.’
39. As mentioned above, previous ethics committees and David McGee, the former Clerk of the New Zealand House of Representatives, in his book *Parliamentary Practice in New Zealand*,¹¹ have noted that the standard of proof demanded in cases of deliberately misleading Parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations.
40. Accordingly, on the information before the committee, the committee finds no compelling evidence that the minister intended to mislead the House in his answer to the question without notice.

¹⁰ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 11 October 2011, at 2974.

¹¹ McGee, D, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, at 653-655.

Other issues

Tabling of Documents

41. The committee notes the following Speaker's statement made on 17 September 2009 in referring the issue of tabling documents to the Ethics Committee:¹²

The Queensland Legislative Assembly has a very liberal approach to the tabling of documents by members. It is certainly much more liberal as compared to other houses of parliament. The particular distinction in this House is that members have an almost unfettered right to table documents, at least in the first instance. In most other houses of parliament the tabling of documents is limited to particular classes of documents or tablings by ministers of the Crown unless the leave of the House or the chair is first sought and given... Of course, with such a right also comes risk and responsibility. The same privileges that members enjoy in their speeches in the House are effectively also transferred to documents tabled by them in the House.

42. The committee acknowledges through the previous ethics committee and reminds the minister and all members of the privileges in relation to tabling documents and the need to ensure that such privileges are not abused or used in a way that could be contrary to the public interest.¹³

Conclusions

43. On the information before the committee, the committee finds that the minister's statements together with the tabled document without identification or explanation were misleading.
44. On the information before the committee, the committee finds no compelling evidence to indicate that the minister intended to mislead the House, and therefore finds no breach of privilege or contempt.

¹² Queensland, Legislative Assembly, *Parliament Debates (Hansard)*, 17 September 2009, at 2393.

¹³ Integrity, Ethics and Parliamentary Privileges Committee, *Matter of Privilege Relating to the Tabling of Documents by Members*, Report No. 106, Goprint, Brisbane, 2010 at 2.

Conclusion 1

On the information before the committee, the committee finds that the minister's statements together with the tabled document without identification or explanation were misleading.

Conclusion 2

On the information before the committee, the committee finds no compelling evidence to indicate that the minister intended to mislead the House, and therefore finds no breach of privilege or contempt.

Recommendation 1

The committee recommends that the House take no further action in relation to the matter.

Recommendation 2

The committee reminds the minister and all members of the privileges in relation to tabling documents and the need to ensure that such privileges are not abused or used in a way that could be contrary to the public interest.



Mr Evan Moorhead MP

Chair

February 2012

Membership — 53rd Parliament

Mr Evan Moorhead MP, Chair, *Member for Waterford*

Dr Alex Douglas MP, Deputy Chair, *Member for Gaven*

Ms Grace Grace MP, *Member for Brisbane Central*

Mr Vaughan Johnson MP, *Member for Gregory*

Mr Mark Ryan MP, *Member for Morayfield*

Mr Peter Wellington MP, *Member for Nicklin*

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8 September 2011¹⁴

Ms CROFT: My question is to the Minister for Main Roads. Can the minister update the House on what the Bligh government is doing to ensure a positive future for the Gold Coast's favourite waterway, the Broadwater? Can the minister also advise if there are any alternative plans for the Broadwater?

Mr WALLACE: I can. I thank the member for Broadwater for her question. I am pleased to announce here today that, following continuous and unrelenting representations from the member for Broadwater, the Bligh government will commit to a partnership with the Gold Coast City Council to develop a master plan for the Broadwater on the Gold Coast. My Department of Transport and Main Roads will contribute \$750,000 to the cost of the plan as an equal partner with the Gold Coast City Council. The master plan will be carried out under the auspices of the Gold Coast Waterways Steering Committee—another initiative that has been championed by the member for Broadwater. This partnership comes on top of our nearly \$7 million worth of dredging works to the Broadwater that are in the pipeline or have been recently completed. These dredging works are jointly funded through a partnership between the state, the council and industry, getting on with the job on that Broadwater.

But this funding is under threat. Like the member for Broadwater, I was shocked to find out recently that Campbell Newman has released his policy for the Broadwater, and his answer for the Broadwater is to set up another bureaucracy. All the money that we have committed to real projects and real dredging will be funnelled into more red tape and more committees. That is his answer—not dredging but red tape and committees. But that is not all this Newman has been up to on the Gold Coast. Indeed, talk is rife on the Gold Coast that Newman will fund any works on the Broadwater as only Campbell Newman knows how to—through a toll. I table a document which has been circulating on the Gold Coast.

Tabled paper: Document in relation to dredging of the Gold Coast Broadwater and Main Channel to Moreton Bay, Brisbane [5274].

The proposal reportedly under consideration is for an annual fee to be applied to all residential waterfront properties if they want to continue to access the water. All properties will be paying a fee if they want to continue to access the water. That is Campbell Newman's plan for the Broadwater. He has form. Let us not forget that it was this Newman who promised everything to the people of Brisbane and all he gave them was a bankrupt tunnel, the baking-hot King George Square and council rates that have gone through the roof. Now he wants to tax the people living on the Broadwater to fund some dredging. He has his sights set on the Gold Coast. Just as he jacked up the rates for people living in the CBD of Brisbane, he wants to jack up the rates for people living on the Gold Coast.

¹⁴ Queensland, Legislative Assembly, *Parliament Debates (Hansard)*, 8 September 2011, at 2917.

	Paper No.: 53117 5274
	Date: 8/4/1
	Member: Ron Wallace
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Dot points for the dredging of the Gold Coast Broadwater & "Main Channel" to Moreton Bay Brisbane.

- These channels need to be seen and viewed by all points of government as major arterial roads / highways for the entire boating fraternity.
- The Gold Coast to Brisbane "main channel" must be dredged to 3.50 m at LAT (lowest astronomical tide) with a minimum of 50 m width with proper navigational marks for the safe navigation of all vessels between Brisbane and the Gold Coast.
- Main arterial channel from Gold Coast Seaway to the Gold Coast Marine Precinct must be kept at a safe and navigable depth of 3.5 m at LAT (lowest astronomical tide)
- The Gold Coast Marine precinct was located in Coomera by the Gold Coast City Council and QLD State Governments alike with the view of a 3.5 m LAT (lowest astronomical tide) channel ensuring safe and navigable access at all times for all vessels (also to fulfill the flood mitigation requirements)

Potential Revenue Sources (over and above current income for Queensland Transport.)

- The sale of a small percentage of the sand from the sand bypass system located at the Main Beach / spit
- The sale of sand from ongoing maintenance dredging of the Broadwater and main channel to Brisbane. (This may be an ongoing contract for one / several sand supplier / concrete companies for a long-term tenure to allow the initiation of infrastructure for ongoing extraction of sand & material)
- All waterfront homes should have an annual fee to use the waterway adjacent to their property to allow them to install a pontoon/jetty system and in turn moor vessels in front of their properties. (this fee should be collected by an authority local to each area) (Similar to Raby Bay / Aquatic Paradise residents)
- All commercial and residential waterfront properties paying rates should see the local council submitting 10% of the value of those rates collected to an independent authority for the ongoing maintenance and use of all public waterways. (The difference in rates collected between a dry block versus a waterfront block is approximately 60% waterfront to 40% dry block)
- A surcharge should apply for all vessels that exceed 8 m LOA by way of their registrations through Queensland transport for maintenance dredging of channels as they simply draw more water than the smaller pleasure craft. (i.e. Deep drafted vessels)

11/10/11 5477

Discussion paper for: Minister of Transport Hon Paul Lucas

25th July 2007

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- These channels need to be seen and viewed by all points of government as major arterial roads / highways for the entire boating fraternity.
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- A surcharge should apply for all vessels that exceed 8 m LOA by way of their registrations through Queensland transport for maintenance dredging of channels as they simply draw more water than the smaller pleasure craft. (i.e. Deep drafted vessels)

Safe Havens & Anchorages

- The Broadwater needs to be designed with a series of "SAFE HAVENS" for the wide array of different types & size vessels. The increase of vessels & the larger size of these vessels simply mean they require more "destinations". Future reclaimed islands & deep water channels are a necessity to ensure the increasing number of vessels can use the waterways safely.
- The "Gold Coast Broadwater & Community Marine Master Plan" highlights the method of removing / relocating sand to formulate these new "Safe Havens, Bays & Protected areas" for the many different types of vessels. The Broadwater will fast become a reputable destination for superyachts. With 7000 Superyachts worldwide the Gold Coast has the potential to become the hub for cruising the Southern Hemisphere.
- Without dredging the Broadwater we jeopardize the Queensland Boat Building & Marine industries. If destinations & safe navigable channels and suitable marinas are not available to boat owners the rapid onset of the marine industry we have seen over the past 10 years could have an about face & decline in similar fashion.

Summary:

The basic concept of the above dot points each to initiate a fair and equitable way of the user paying to use the Broadwater and associate waterways. If the required infrastructure is sourced by simply taxing super yachts as has been suggested then it will fail.

A20 year master plan should be drafted and adhered to by whatever government of the day is in power. Taking into account major dredging, maintenance dredging, navigation, parklands and recreational areas, safe haven moorings & future infrastructure. On this basis and initial grant from the Federal Government, State Government, Council & private enterprise for this 20 year master plan should be sourced. By grouping all funds as one it would easily benefit the entire community rather a series of one off & piecemeal projects.

Suggested plan for helicopter trip. Gold Coast City Marina, to Sanctuary Cove, tracking down Coomera river, over Sovereign Islands, tracking down western side of Broadwater to Southport Bridge, across to Marina Mirage, tracking the eastern side of Broadwater, over Trawler Wharf, then Seaworld, to Marine Stadium, over seaway & sand bypass system, tracking North up the main channel, to Couran Cove, then through measured Mile, to Jumpin Pin Bar, rounding main channel across to Cabbage tree point then over Horizon Shores & Calypso Bay developments, to the Cross Over's, tracking south to the North arm of the Coomera River then following Coomera river to the GCCM site. Trip Concludes. (Major Points of interest can be circuted for discussion)