

**ETHICS COMMITTEE****REPORT NO. 168****MATTER OF PRIVILEGE REFERRED BY THE AGRICULTURE AND ENVIRONMENT COMMITTEE ON 20 APRIL 2016 RELATING TO AN ALLEGED UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS AND AN ALLEGED DELIBERATE MISLEADING OF A COMMITTEE****Introduction and background**

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the Parliament of Queensland Act 2001 (the POQA). The current committee was appointed by resolution of the Legislative Assembly on 27 March 2015.
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 allegations that the Member for Burnett, Mr Stephen Bennett MP (Member for Burnett):
 1. made an unauthorised disclosure of Agriculture and Environment Committee (AEC) proceedings by providing the Chair of the AEC, Mr Glenn Butcher MP, Member for Gladstone's (Chair of the AEC) draft report recommendations on the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 (the bill) to officers of the Queensland Resources Council (QRC); and
 2. deliberately misled the AEC in his email to the members and secretariat of the AEC which included a document containing proposed edits to the Chair's draft recommendations.
4. On 15 March 2016, Hon Dr Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, introduced the bill to the House, which was referred to the AEC for consideration with a reporting date of 15 April 2016.
5. On 13 April 2016, the Chair's draft report was emailed by the Research Director of the AEC secretariat to the members of the committee for their consideration.

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

6. The following day on 14 April 2016, the Deputy Chair of the AEC, the Member for Burnett, sent an email from his personal parliamentary email account to AEC members and the secretariat prior to the start of an AEC meeting. The email indicated that the attached five-page Word document, titled 'Draft recommendations response', was for discussion at the meeting.
7. Upon receipt and review of the document, the Research Director to the AEC noted that four sections of text in blue type were marked as 'Deleted by Alan and Frances, 13 April 2016 19:26:00' or 'Deleted by Alan and Frances, 13 April 2016 19:27:00'.
8. In a phone conversation with the Member for Burnett prior to the start of the committee's meeting on 14 April 2016, the Research Director asked about Alan and Frances who were shown as involved in the document. The Member for Burnett replied that they were his staff.
9. The committee then met and agreed to a number of changes to the report, and agreed to meet again to complete its consideration of the report on 15 April 2016.
10. Following the meeting on 14 April 2016, the Research Director checked the properties of the member for Burnett's document and noticed that the 'related people' listed for the document were 'Author Leanne Bowie' and 'Last modified by Steve Burnett'. Ms Leanne Bowie appeared with Ms Frances Hayter as a witness for the QRC at the committee's public hearing on 5 April 2016 as part of the inquiry into the bill.
11. The Research Director then brought the matter to the attention of the Chair of the AEC.
12. At the meeting on 15 April 2016, the committee adopted the report for tabling, and it was tabled later that day.
13. On 20 April 2016, at the committee's next meeting, the Chair of the AEC brought the matter to the committee's attention and tabled a copy of the document showing the authors of the edits to the document. The Chair asked the Member for Burnett whether he had provided a draft to report to the QRC.
14. The Member for Burnett conceded that he had provided the recommendations from the draft report to the QRC for their comment.
15. The committee subsequently resolved to report the matter to the House.
16. Following the meeting, at the resumption of Parliament, the Member for Burnett rose in the House on a Matter of Privilege and stated:

It was brought to my attention today in the Agriculture and Environment Committee that I had supposedly breached standing orders relating to the confidentiality of committee business. As I said to my fellow committee members and I say now to the House, if my actions are in breach of standing orders I acknowledge and unreservedly apologise to the House.
17. The matter was referred by the Chair of the AEC immediately after the Member for Burnett's apology.

The referral

18. On 20 April 2016, the Chair of the AEC made the following statement in the House:

I rise as chair of the Agriculture and Environment Committee to report that at this morning's meeting the committee resolved to refer to the Ethics Committee the apparent breach of standing order 211 by the deputy chair, the member for Burnett, by providing a draft report of the committee on the Environmental Protection (Chain of Responsibility) Amendment Bill 2016, or sections of it, to officers of the Queensland Resources Council.

Committee proceedings

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. Following the referral by the AEC, the committee invited the Member for Burnett to provide further information on the alleged contempts of an unauthorised disclosure of committee proceedings and deliberately misleading the House. The Member responded via two submissions.
21. The committee then found that it had sufficient material before it to deliberate on the allegations.

Definition of contempt

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

Standing Order 211 – Unauthorised disclosure of a committee proceeding

23. Standing Order 266(12) provides that an example of a contempt includes:

Divulging the proceedings or the report of a committee or a subcommittee contrary to Standing Orders.
24. Section 9(1) of the POQA defines Proceedings in the Assembly as:

all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.

which includes

 - (f) *preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and*
 - (g) *a document (including a report) prepared, made or published under the authority of the Assembly or a committee.*
25. Standing Order 211 provides that:

The proceedings of a portfolio committee, the Committee of the Legislative Assembly Committee or a select committee or a subcommittee of any of those committees that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported those proceedings to the House or otherwise published the proceedings.
26. The Standing Order is one expression of a greater principle of parliamentary law and practice: the proceedings of parliamentary committees are confidential until the committee reports those proceedings to the House or otherwise orders their release or publication. This rule is designed to promote the better functioning of the committee process and to affirm that the House is entitled to the first advice of the conclusions of its committees.²
27. Previous Ethics Committees have stressed that "any unauthorised disclosure of committee proceedings represents an attack on the integrity of the Parliament".³
28. There are three elements to be established where it is alleged that a member has committed the contempt of unauthorised disclosure of committee proceedings:

² McGee, D. *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington

³ Members' Ethics and Parliamentary Privileges Committee (MEPPC), Report No. 42, *Report on a matter of privilege—Unauthorised release of correspondence between a committee and ministers*, Queensland Legislative Assembly, Brisbane, 2000 (tabled on 7 June 2000) p.1; MEPPC, Report No. 48, *Report on a Matter of Privilege—Unauthorised Disclosure of Committee Proceedings*, p. 2.

- 1) Was there disclosure of a proceeding of a committee?
- 2) Was the disclosure unauthorised?
- 3) Did the unauthorised disclosure amount to an improper interference with the free exercise of a committee's authority or functions?

Element 1 – Was there disclosure of a committee proceeding?

29. In considering this element, the committee noted that the POQA defines 'preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee' and a 'document (including a report) prepared, made or published under the authority of the Assembly or a committee' as proceedings of a committee.
30. The committee judged that the AEC's draft report on the bill represents a document that was prepared by the committee under its authority, as the Assembly had referred the bill to the AEC for consideration and report by 15 April 2016, and therefore the draft report was a proceeding of the committee.
31. The committee considered that the information provided by the Chair of the AEC regarding the 'author' details of the document showing that someone from outside the committee was privy to the contents of the draft report, along with the Member for Burnett's admission that he provided a copy of the draft report's recommendations to representatives of the QRC, showed there was a disclosure of a proceeding of the AEC.
32. In his submissions, the Member for Burnett did not deny that he disclosed the report to staff of the QRC.
33. The Member for Burnett explained that he requested "further advice from external sources to the committees [sic] draft recommendations in an attempt [to] frame a contribution to the final drafting of the committee report".

Consideration

34. The committee considered that the draft report recommendations, which were a proceeding of the AEC, were disclosed to the QRC, and therefore the first element had been met.

Element 2 – Was the disclosure unauthorised?

35. On the information before the committee, there was no evidence that the AEC authorised the Member for Burnett to provide a copy of the recommendations from the draft report to the QRC for its comments.
36. The Member for Burnett did not address this element in his submission.

Consideration

37. The committee considered that, as there was no evidence that the AEC authorised the Member for Burnett to provide a copy of the recommendations from the draft report to the QRC, the disclosure was unauthorised.
38. Therefore, the committee considered the second element had been met.

Element 3 - Did the unauthorised disclosure amount to an improper interference with the free exercise of the AEC's authority or functions?

39. In his submission to the committee, the Member for Burnett stated that his motivation was to "establish good policy" and that his actions did not result in an improper interference with the committee's authority or function:

...I clearly and openly circulated the information without concealment to all Committee Members and Research Staff from my Parliamentary e-mail before our planned meeting to ensure that I was not misleading the committee, or providing interference with the free exercise of the committee's authority or functions.

The Chairs [sic] draft recommendations that I forwarded for additional advice (word attachment titled 'Draft recommendations response') did not in my analyse [sic] inhibit;

- (a) The free exercise by the Assembly or a committee of its authority or functions;
- or
- (b) The free performance by a member of the member's duties as a member.

As all the committee members and staff all had the information prior to our final meeting, all had fair and free discussion about the final report recommendations, and the final report recommendations did not differ significantly from the original draft recommendations, effectively no influence on the fellow committee members 'rights or immunities', appears to have occurred.

Consideration

40. In its consideration of this element, the committee found that the unauthorised disclosure of a proceeding of the AEC was contrary to Standing Order 211, and therefore it would amount to an interference with the authority of the AEC.
41. However, the question before the committee was whether the unauthorised disclosure of committee proceedings amounted to an improper interference with the AEC's authority in the circumstances.
42. There is no definition of 'improper' or 'improper conduct' in the *Parliament of Queensland Act 2001* or the Standing Orders.
43. Pursuant to Section 14B of the *Acts Interpretation Act 1954*, in the absence of an express definition, the ordinary meaning is to be preferred and the use of extrinsic materials is permitted in relation to words that may be ambiguous.
44. In 2010, the Integrity, Ethics and Parliamentary Privileges Committee (IEPPC) looked at this issue in its Report No. 110. In that report the IEPPC noted that Butterworth's Legal Dictionary defined 'improper conduct' as:

*Behaviour which in all the circumstances of a case is an **inappropriate or incorrect way of discharging duties, obligations and responsibilities**. Conduct may be improper regardless of whether it is conscious or unconscious. Improper conduct is a **breach of the standards of behaviour which would be expected of a person by reasonable people with knowledge of that person's duties, powers and authority and the circumstances of the case**: R v Byrnes (1995) 125 183 CLR 501; 130 ALR 529. The term 'improper' is not a term of art, but simply refers to **conduct which is inconsistent with the proper discharge of the person's duties, obligations, and responsibilities**: Willers v R (1995) 125 FLR 22 at 225; Corporations Law (repealed) s 229; Southern Resources Ltd v Residues Treatment & Trading Co Ltd (1990) 56 SASR 455. [Emphasis added].*
45. The committee had regard to the above dictionary definition of 'improper', and considered that the test to be applied was whether a reasonable person with knowledge of the circumstances of the case would find the behaviour and actions of Mr Bennett were inappropriate in discharging his duties, obligations and responsibilities.
46. The committee in considering this element also had regard to the Standing Orders as set down by the House to govern the conduct of business and proceedings in the House and, by extension, committees.
47. Standing Order 266(12) provides that an example of a contempt includes divulging the proceedings or the report of a committee or a subcommittee contrary to standing orders, with Standing Order 211 stating that the proceedings of a portfolio committee that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported those proceedings to the House or otherwise published the proceedings.
48. The committee also had regard to statements made by previous ethics committees, who have stressed that "any unauthorised disclosure of committee proceedings represents an attack on the integrity of the Parliament".

49. While the Member for Burnett argues that the document he emailed to the committee members and secretariat was part of a broader discussion and the final report may not have changed considerably, the committee considered that a reasonable person with knowledge of the Member for Burnett's duties, powers and authority and the circumstances of the case would expect that the Member for Burnett would keep the report confidential until published as required under Standing Order 211, and not share the draft recommendations with one particular stakeholder who had made a submission on the bill and appeared as a witness at the public hearing for comment, prior to the AEC reporting or publishing those proceedings.
50. By disclosing the Chair's draft report recommendations to the QRC without the AEC's authorisation and prior to the AEC reporting or publishing those proceedings, the committee considered that the Member for Burnett breached Standing Order 211, resulting in an improper interference with the authority and functions of the Assembly and/or the AEC.
51. Hence, the committee finds that, on the information before the committee, the third element has been met.

Conclusion

52. On the matter of the Member for Burnett making an unauthorised disclosure of AEC proceedings, on the information before the committee, it finds that the Member for Burnett made an unauthorised disclosure of AEC proceedings by disclosing the Chair's draft report recommendations to the QRC without the AEC's authorisation and prior to the AEC reporting or publishing those proceedings, resulting in an improper interference with the AEC's authority and functions.

Penalty

53. Section 15(1) of Schedule 2 of the Standing Orders sets out that the committee must, with its report, recommend the action that should be taken.
54. The committee noted that the Member for Burnett had apologised to the House upon the issue being raised with him in the AEC meeting on 20 April 2016, stating that "if my actions are in breach of standing orders I acknowledge and unreservedly apologise to the House".
55. The committee also noted that in the submissions from the Member for Burnett he again apologised for breaching Standing Order 211, stating that "I accept that I am responsible, I unreservedly apologise and assure the Members of the Legislative Assembly to my respect for and to my future actions in relation to Parliamentary standing orders".

Precedents for penalties for unauthorised disclosure

56. The committee was cognisant of findings of contempt being made against the Member for Warrego for unauthorised disclosure in the current Parliament.
57. In Report No. 162 the committee found that the Member for Warrego made two unauthorised disclosures of committee proceedings. However, in terms of penalty, the Member for Warrego was also found to have committed additional contempts, and therefore the committee decided to make a cumulative recommendation for penalty in regard to all the matters concerning the Member for Warrego, making it difficult to apply the precedent to this matter.
58. However, the committee noted that in Report No. 162 it was stated that the two contempts of unauthorised disclosure ordinarily would have been at the lower end of the penalty scale.

Conclusion regarding penalty

59. The committee took into account the Member for Burnett's submissions that the breach did not appear to have significantly impact on the AEC's reporting process, his early admission of the breach and the apologies already provided by the Member for Burnett to the House and the committee.

60. Accordingly, the committee recommends that the Member for Burnett make an unqualified apology to the House for the contempt of unauthorised disclosure of committee proceedings.
61. The committee would also like to stress to all members of the House the importance of abiding by Standing Order 211 to ensure the confidentiality of all committee proceedings, which includes draft documents prepared for deliberation and communication within the committee.

Conclusion 1

On the matter of the Member for Burnett making an unauthorised disclosure of Agriculture and Environment Committee (AEC) proceedings, on the information before the committee, it finds that the Member for Burnett made an unauthorised disclosure of AEC proceedings by disclosing the Chair's draft report recommendations to the QRC without the AEC's authorisation and prior to the AEC reporting or publishing those proceedings, resulting in an improper interference with the AEC's authority and functions.

Recommendation 1

The committee recommends a finding of contempt be made against the Member for Burnett.

Recommendation 2

The committee recommends that the appropriate penalty is for the Member for Burnett to make an unqualified apology to the House and the AEC for the contempt of unauthorised disclosure of committee proceedings.

The committee would also like to stress to all members of the House the importance of abiding by Standing Order 211 to ensure the confidentiality of all committee proceedings, which includes draft documents prepared for deliberation and communication within the committee.

Nature of the contempt of deliberately misleading the House.

62. Standing Order 266(12) provides that an example of a contempt includes:
*Deliberately misleading the House or a committee (by way of submission, statement, evidence or petition).*⁴
63. 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.⁵
64. The Ethics Committee of the 48th Parliament stated that the term 'misleading' is wider than 'false' or 'incorrect'. The committee considered it "possible, although rare and unlikely, that a technically

⁴ Standing Order 266(2), Standing Rules and Orders of the Legislative Assembly, available at <http://www.parliament.qld.gov.au/work-of-assembly/procedures>

⁵ McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

factually correct statement could also be misleading”—for example, by the deliberate omission of relevant information.⁶

65. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House:
- firstly, 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.⁷

Element 1 - Were the Member for Burnett's statements misleading?

66. In this matter, the committee considered that the email from the Member for Burnett to the AEC members and secretariat, which included the attached document containing a response to the draft report recommendations, represents a statement made by the Member for Burnett.
67. The first limb of this element is whether the person's statement contained factually or apparently incorrect material.
68. The email from the Member for Burnett to the AEC members read "Good Morning for todays [sic] discussions, Steve" and had attached the document titled 'Draft recommendations response'.
69. The committee considered that there was nothing in this message that could be considered factually or apparently incorrect.
70. The second limb of this element is whether the statement itself was misleading. The committee considered it possible that, by sending the document with amendments from his personal parliamentary email account, and no reference as to who made the amendments, the Member for Burnett's email might have given the impression that the amendments in the document were his alone.
71. If so, the committee considered that the email could be misleading by omission, as a reasonable person might have been misled into thinking that the amendments had all been made by the Member for Burnett as it was sent under his name.
72. In his submission, the Member for Burnett stated that:
- ...in circulating openly and allowing free and fair committee discussion, I do not accept that this equates to claiming ownership. It is clear that drafting and modifications were made by several authors including myself to establish ease of dissemination of information and discussion by the committee, and for everyone to see correspondence prior to the final teleconference meeting of the Agriculture and Environment Committee.*
- ...
- I have no recollection that I claimed the e-mail circulated was all my own drafting, in allowing this clear dissemination of information it is difficult to understand this assumption.*
73. However, while the Member for Burnett claims that it was clear that drafting and modifications were made by several authors, the Chair of the AEC advises in his letter that when the document was opened and printed directly from the email, the edits in the document were marked with boxes in the right margin, but not the names of the authors of the edits.

⁶ MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 10.

⁷ McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653-655.

Consideration

74. On the balance of probabilities, the committee considered that it remained arguable that the email could be considered misleading by omission.

Element 2 - Did the Member for Burnett know at the time he made the statements they were misleading?

75. The Member for Burnett stated that he disagreed that he knew the statement was misleading and "It is clear that drafting and modifications were made by several authors including myself to establish ease of dissemination of information and discussion by the committee" and that he has "no recollection that I claimed the e-mail circulated was all my own drafting, in allowing this clear dissemination of information it is difficult to understand this assumption".

Consideration

76. The committee considered that while it was not known whether the Member for Burnett knew that the author details associated with the edits were not immediately shown upon opening or printing the document, his response indicated that he thought the authors of the modifications were able to be seen in the document by committee members.
77. Therefore, on the evidence before the committee, the committee found that the Member for Burnett did not know that his email might have been misleading by omission, and the second element had not been met.

Element 3 - If yes, did the Member for Burnett intend to mislead the House?

78. David McGee in *Parliamentary Practice in New Zealand* states that for a misleading of the House to be deliberate:

...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.⁸

79. The committee noted that the Member for Burnett sent the document via email, and therefore the statement cannot be considered to have been made off the cuff or something he was only aware of in an official capacity. Hence, the presumption of an intention to mislead could more readily arise
80. In his submission, the Member for Burnett again referred to his argument that "It is clear that drafting and modifications were made by several authors including myself to establish ease of dissemination of information and discussion by the committee" and that he has "no recollection that I claimed the e-mail circulated was all my own drafting, in allowing this clear dissemination of information it is difficult to understand this assumption".

Consideration

81. The committee considered that it was possible that, by sending the document with amendments under his name, and no reference as to who made the amendments, that the Member for Burnett gave the appearance that the amendments in the document were his alone.
82. However, the committee also considered that, there was no evidence that the Member for Burnett intended to mislead the committee.

⁸ McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

83. The committee therefore found that the third element had not been met.

Conclusion

84. On the matter of the Member for Burnett deliberately misleading the AEC, on the information before the committee, it finds that there was no evidence that the member was aware that his email was misleading as he believed the author details of those drafting and modifying the document were clear to the members of the AEC, and therefore he did not intend to mislead the AEC.

Conclusion 1

On the matter of the Member for Burnett deliberately misleading the AEC, on the information before the committee, it finds that there was no evidence that the member intended to mislead the AEC.

Recommendation

The committee recommends no finding of contempt be made against the Member for Burnett and that the House take no further action in relation to this allegation.



Don Brown MP
Chair

June 2016

Membership — 55th Parliament

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