

**ETHICS COMMITTEE****REPORT NO. 190****MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 28 FEBRUARY 2019
RELATING TO ALLEGED DELIBERATE MISLEADING OF THE HOUSE BY A MEMBER****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 15 February 2018.
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. This report concerns allegations the Member for Burleigh, Mr Michael Hart MP deliberately misled Parliament.

The referral

4. On 21 November 2018, the Minister for Innovation and Tourism Industry Development and Minister for the Commonwealth Games, Hon Kate Jones MP (the Minister), wrote to the Speaker alleging that the Member for Burleigh deliberately misled Parliament on 30 October 2018, 1 November 2018 and 15 November 2018.
5. The matter relates to statements that the Member for Burleigh made about the Minister, the Member for Keppel, the Member for Rockhampton and the former Member for Rockhampton, Hon Robert Schwarten, in the context of broader statements about government involvement with the company JM Kelly Builders.
6. On 30 October 2018, during Matters of Public Interest, the Member for Burleigh made a speech about the central Queensland based company JM Kelly Builders. As part of that speech, the Member for Burleigh made the following statements:

...

As I said, JM Kelly (Building Projects) changed to JM Kelly Builders. If that is not phoenixing, I am not sure what is. For the benefit of members, I point out that phoenixing is the term used for when a company with a similar name or similar directors emerges from a company that may have been liquidated to avoid paying its debts. Although the investigation needs to take place, I submit that a much bigger and murkier story needs to be scrutinised fully, and that is

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

the collapse of JM Kelly Builders and why this Labor government did nothing while the company ripped off small subcontractors and suppliers. In fact, in 2016, the government seems to have supported the phoenixing of JM Kelly and allowed 21 contracts that it had with JM Kelly to be transferred to a related company, JM Kelly Builders, via a deed of novation signed by David Sullivan on behalf of the department of education and training. I table an article from last week's Sunshine Coast Daily that covers that event really well.

Members may well ask why the Department of Education allowed this to happen. I decided to do some investigation. Members can imagine my surprise when a reliable source on the ground in Central Queensland informed me that the previous Labor minister, Rob Swarten, had approached the LNP while we were in government saying, 'We have to give JM Kelly some hospital work. They only make money from hospital work.' No luck there, so I kept digging. There are also rumours around Rockhampton that JM Kelly built faults into government projects in order to ensure future work referrals. Surely that cannot be true. Perhaps that needs investigating.

Could it really have something to do with the member for Keppel's mentor, the former minister for housing, Rob Swarten? Surely not, although he is apparently best mates with John Murphy, the group director of JM Kelly. Interestingly, Rob Swarten worked on the member for Cooper's campaign in Ashgrove. The member for Cooper was a media adviser in Rob Swarten's office before entering parliament. She was also the minister for education in 2016. That is a coincidence, is it not? Could that be it?

Of course, let us not forget Rob Swarten is on the board of the Queensland Building and Construction Commission. Is it making sense? But wait, there is more! The new member for Rockhampton was the former regional director in Central Queensland for Housing and Public Works. Another coincidence. Perhaps he could be helpful on the background of JM Kelly, their activities and what he knows about the deed of novation signed by the Department of Education and if he discussed this with the Department of Education before it was signed.

Maybe it has something to do with the member for Keppel, who is now the Assistant Minister for Education. I table a report from last week's paper about the interesting take that the member had on it.

I note that the member for Keppel's husband worked for JM Kelly and then he worked for Hutchinson Builders. A lot of members might not know the story there. That did not end well. Oh, what a tangled web they weave when they practise to deceive.²

7. On 1 November 2018, in a Private Member's Statement, the Member for Burleigh made the following statements:

...Since I spoke on Tuesday, further information has been received from multiple sources that deserves to be raised here today. I urge anybody with information about this issue to contact me. I raised these issues on Tuesday. The minister and the members for Keppel and Rockhampton have had an opportunity to rebut in this House what I had to say but they have not. That tells me that we are on the money.

The people who have contacted me have raised some very concerning issues in addition to the ones I raised on Tuesday. What action was taken by HPW to inform other state and local government agencies about the issues with JM Kelly builders? Why did state government agencies such as the Department of Education and Training choose to ignore the risk and award this company major projects while Housing and Public Works was investigating it? What financial assurances were given by JM Kelly builders during the tender process? Were these thoroughly checked before it was awarded government contracts? What role did members like the member for Keppel play in this sorry saga?

² Queensland Parliament, Record of Proceedings, 30 October 2018, pp 3105-3106.

...

Of real concern is the allegation that Rob Schwarten had major renovations done to his Rockhampton houses by JM Kelly in 2009 and 2011. In particular, I am told that a JM Kelly contractor painted his Kinka Beach house, known around Rockhampton as the beach hospital, and the cost of that contracting work—about \$26,000—was not paid by Schwarten but was added as a variation to a government contract. I have heard this from a number of credible people in Central Queensland and both the government and Mr Schwarten have some very serious questions to answer about this. These questions are deserving of a thorough and rigorous examination to get to the bottom of things.³

8. Also on 1 November 2018, in his contribution to debate on the Crime and Corruption and Other Legislation Amendment Bill, the Member for Burleigh stated:

... Since I spoke on this matter on Tuesday, I have been inundated by emails and phone calls from various people in Central Queensland telling me exactly what may have gone on in that area. The sort of information that is flowing through there is quite disturbing. With the widening of this definition as per this clause, we may well be starting to look at issues around collusive tendering. As I said today, it is really worrying. It appears that we may have some former members of parliament and current members of parliament who may be involved, even on the sidelines, in the tendering process and there may have been favours given by JM Kelly in Rockhampton. These are things that we seriously need to look at. It may be something that the Crime and Corruption Commission needs to—

...

Mr HART: I do not know whether corrupt conduct may be in the fact that somebody lends you money and you do not talk about it for quite a while and then it appears on your register of interests. That could be a real issue.

Mrs LAUGA: Madam Deputy Speaker, I rise to a point of order. I take personal offence to the imputations that the member is making and I ask him to withdraw.

Madam DEPUTY SPEAKER: Member, you have been asked to withdraw your comments.

Mr HART: I withdraw.⁴

9. On 15 November 2018, during a Private Member's Statement about the JM Kelly building companies and allegations that the collapse of these companies left subcontractors and suppliers unpaid, the Member for Burleigh made the following statements:

... Questions also arise about the extent of the knowledge of the involvement of the member for Keppel in this debacle. What is the nature of the loan she has received for her home from a building company her husband was forced to resign from and where does this sit with Labor's developer donation laws? Furthermore, what is the extent of the involvement of the former member for Rockhampton with the JM Kelly group of companies? Were there any private dealings and what were the circumstances leading to the appointment to the QBCC? Was this just another example of jobs for Labor mates or something far more sinister?

... The former member [Hon Rob Schwarten] responded with a statutory declaration that did not correspond with the questions outlined in my speeches from the last sitting. The years he provided information on were different. I point out the former member has a number of houses that have had major renovations. The question remains how were those renovations paid for and ultimately by whom?

When I first raised these matters in the parliament it was on the basis of information that had been provided to me by concerned citizens in Central Queensland. As part of my legislative

³ Queensland Parliament, Record of Proceedings, 1 November 2018, pp 3305-3306.

⁴ Queensland Parliament, Record of Proceedings, 1 November 2018, pp 3338-3339.

responsibilities I felt duty-bound to raise these concerns so that these matters could be appropriately examined.⁵

10. In the Minister's correspondence to the Speaker raising the allegations, the Minister argues that the Member for Burleigh knowingly misled Parliament and in doing so, defamed the Minister, the former Member for Rockhampton the Hon Robert Schwarten, and the current Members for Keppel and Rockhampton. The Minister states that the Member for Burleigh had produced no evidence to substantiate the claims he made in Parliament and that these claims were false and misleading.
11. On 5 December 2018, the Member for Burleigh wrote to the Speaker responding to the allegations made by the Minister. The Member for Burleigh advised the Speaker that the issues he raised in Parliament were based on reports by a number of concerned citizens from central Queensland and that, due to the nature and extent of the information supplied, he felt duty-bound as a Member to raise these issues in Parliament.
12. The Speaker sought further information from the Member for Burleigh regarding the allegations, in particular whether the Member was in possession of information from members of the community that related to the Minister and current Members for Keppel and Rockhampton, as well as information relating to the Hon Robert Schwarten. The Member for Burleigh responded on 29 January 2019.
13. On 28 February 2019 the Speaker referred the matter to the committee, ruling:

Honourable members, on 21 November 2018 the Minister for Innovation and Tourism Industry Development and Minister for the Commonwealth Games wrote to me alleging that the member for Burleigh deliberately misled the House during statements made on 30 October, 1 November and 15 November 2018. The matter relates to statements that the member for Burleigh made about the minister, the member for Keppel, the member for Rockhampton and the former member for Rockhampton, the Hon. Robert Schwarten, and the involvement of JM Kelly Builders in contracts awarded by the government. In her letter to me, the minister contended that the member for Burleigh's statements alleged corruption on the part of the Hon. Robert Schwarten and that the minister was aware of this alleged corruption, and that the statements were deliberately false and misleading.

I sought further information from the member for Burleigh about the allegations made against him in accordance with standing order 269(5). The member for Burleigh advised that the issues he had raised in parliament were based on reports to him by a number of concerned citizens from Central Queensland and that, given the nature and extent of the information received, he felt duty-bound to raise these matters in the House. I note and emphasise that there is insufficient evidence before me to enable an assessment of the veracity of the various allegations. The member has assured me that the allegations are based on information he has received, but I am not in possession of that information. The member in his various statements has qualified that he is repeating information provided to him.

Having considered the claims and counterclaims, I am of the view that there is considerable examination of fact required in order to determine this matter. I wish to emphasise that I have formed no view as to whether there has been a breach of privilege but, rather, that there are sufficient issues in play to warrant the further consideration of the House via the Ethics Committee. On this basis, I have decided that the matter does warrant the further attention of the House via the Ethics Committee, and I therefore refer the member for Burleigh under standing order 269 to the Ethics Committee for allegedly deliberately misleading the House. I remind members that standing order 271 now applies, and members should not refer to these matters in the House.⁶

⁵ Queensland Parliament, Record of Proceedings, 15 November 2018, pp 3636-3637.

⁶ Queensland Parliament, Record of Proceedings, 28 February 2019, pp 513-514.

Definition of contempt

14. 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

15. Standing Order 266(2) provides that an example of contempt includes:

Deliberately misleading the House or a committee (by way of a submission, statement, evidence or petition).⁷

16. The Ethics Committee considers that deliberately misleading the House or a committee 'consists of the conveying of information to the House or a committee that is inaccurate in a material particular and which the person conveying the information knew at the time was inaccurate or at least ought to have known was inaccurate.'⁸
17. The standard of proof demanded in cases of deliberately misleading parliament is a civil standard or 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.⁹
18. 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 factually correct statement could also be misleading' – for example, by the deliberate omission of relevant information.¹⁰

Role of the committee

19. The role of the ethics committee is to consider alleged breaches of parliamentary privilege. Freedom of speech is one of the most important privileges afforded to Members of Parliament. It is fundamental to the ability of the Parliament to fulfil its function as a place for fully and freely raising and discussing matters of importance, and conducting investigations without interference. It allows Members to bring forward matters without fear of personal legal repercussions. With this privilege comes an obligation to use it responsibly.
20. In this matter, the question before the committee is whether the Member for Burleigh breached parliamentary privilege, and thus committed a contempt of Parliament, by deliberately misleading the House in statements he made to the House.
21. The committee has carefully considered the scope of its inquiry and identified that the key question before it in determining whether prima facie, the Member for Burleigh deliberately misled the Parliament was whether the Member had, as he claimed, received information that he assessed to be credible, from members of the public, and on which he based his statements in the House. This question underlies assessment of each element of the alleged contempt.
22. In the context of the rationale behind the privilege of freedom of speech, the veracity of any such information, in itself, is not relevant to the committee's considerations as to whether a breach of privilege has occurred.

⁷ Standing Order 266(2), Standing Rules and Orders of the Legislative Assembly, available at <https://www.parliament.qld.gov.au/documents/assembly/procedures/StandingRules&Orders.pdf>

⁸ McGee, David, Parliamentary Privilege in New Zealand, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653.

⁹ McGee, David, Parliamentary Privilege in New Zealand, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

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

The committee's proceedings

23. The committee has established proceedings 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 Standing Orders. The committee is also bound by instructions regarding witnesses, at Schedule 3 to Standing Orders.
24. On determining to proceed with the inquiry into this referral, the committee wrote to the Minister, inviting submissions which addressed the elements to be established in considering the alleged contempt of deliberately misleading the House. The Minister did not respond to the committee's invitation to make a submission and so the committee relied on the information contained in the Minister's correspondence to the Speaker.
25. The committee similarly wrote to the Member for Burleigh, inviting submissions which addressed the relevant elements and also requesting evidence to support the Member's claims that he had received information from members of the community on which he relied when making his statements in the House. The Member for Burleigh responded to the committee and agreed to provide the evidence in the manner requested by the committee. (This would, if satisfactory, substantiate the existence of the information on which the Member for Burleigh claimed to rely in making the statements about the Hon Robert Schwarten).
26. The committee then found it had sufficient information to deliberate on the allegations.
27. The committee applied the 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.¹¹
28. If all three elements are made out in relation to this alleged breach of privilege, then it will be clear that the elements of section 37 as outlined at paragraph 14 above have been met; that is, the *conduct 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.*

Element 1 – The statement must have been misleading

29. The first limb of this element is whether the person's statement contained factually or apparently incorrect material. The second limb of this element is whether the statement was misleading.

Statements in regard to the Hon Robert Schwarten

30. In regard to the former Member for Rockhampton, the Hon Robert Schwarten, the Member for Burleigh made the following statements:

Could it [i.e. the novation of contracts from JM Kelly (Building Projects) to JM Kelly Builders] really have something to do with the member for Keppel's mentor, the former minister for housing, Rob Schwarten? Surely not, although he is apparently best mates with John Murphy, the group director of JM Kelly.¹²

Of real concern is the allegation that Rob Schwarten had major renovations done to his Rockhampton houses by JM Kelly in 2009 and 2011. In particular, I am told that a JM Kelly contractor painted his Kinka Beach House, known around Rockhampton as the beach hospital, and the cost of that contracting work – about \$26,000- was not paid by Schwarten but was

¹¹ McGee, David, Parliamentary Privilege in New Zealand, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653-655.

¹² Queensland Parliament, Record of Proceedings, 30 October 2018, p. [3106](#)

*added as a variation to a government contract. I have heard this from a number of credible people in Central Queensland and both the government and Mr Schwarten have some very serious questions to answer about this. These questions are deserving of a thorough and rigorous examination to get to the bottom of things.*¹³

*It appears that we may have some former members of parliament and current members of parliament who may be involved, even on the sidelines, in the tendering process and there may have been favours given by JM Kelly in Rockhampton.*¹⁴

Furthermore, what is the extent of the involvement of the former member for Rockhampton with the JM Kelly group of companies? Were there any private dealings and what were the circumstances leading to the appointment to the QBCC? Was this just another example of jobs for Labor mates or something far more sinister?

*The former Member [Hon Rob Schwarten] responded with a statutory declaration that did not correspond with the questions outlined in my speeches from the last sitting. The years he provided information on were different. I point out the former member has a number of houses that have had major renovations. The question remains how were those renovations paid for and ultimately by whom?*¹⁵

31. In her correspondence to the Speaker, the Minister argued that the statements made by the Member for Burleigh were untrue and that the Member has produced no evidence to show otherwise. The Minister further argued that the Hon Robert Schwarten has stated publicly that the allegations are untrue.
32. The Minister also provided a statutory declaration from Mr Bruce McAlister which stated that his company, McAlister & Burford, was contracted by Mr Paul Forrest to perform painting work at the Hon Robert Schwarten's home in late 2002 and that Mr Forrest paid him for the works in full.
33. Further, the Minister stated that as a former ministerial advisor in the office of Minister Schwarten, she knows that Minister Schwarten did not involve himself in any financial matters with the Department of Public Works aside from the budget and estimates process.
34. In his correspondence to the Speaker in response to the allegations, the Member for Burleigh contends that the Minister's reference to a statement from the Hon Robert Schwarten that the 'allegations are completely untrue' is irrelevant. Additionally, the Member for Burleigh notes that the statutory declaration provided by the Minister in relation to the painting work is irrelevant because it describes painting work carried out in 2002 whereas the allegations he raised were in relation to painting work carried out in 2009 and 2011.
35. The Member for Burleigh stated that the issues he raised on 30 October 2018, 1 November 2018 and 15 November 2018 were instigated as a result of contact he had had directly with various residents of central Queensland. The Member explained that he was careful to indicate this to the House when he raised the issues, using language such as 'allegation', 'I am told', and 'I have heard this from a number of credible people'.
36. The Member for Burleigh further stated:

Given the nature and extent of the information (supplied to me via telephone and emails) I felt duty-bound, as part of my Parliamentary responsibilities, to raise them in Parliament.
37. The Member for Burleigh's statements relating to the Hon Robert Schwarten were all either prefaced with a statement that he had received advice to the effect of the content of his statement, or framed as speculative questions.
38. Thus, in assessing this element, whether the statements made by the Member for Burleigh and the subject of the referral were factually or apparently incorrect and misleading relates to whether the

¹³ Queensland Parliament, Record of Proceedings, 1 November 2018, p. [3305](#)

¹⁴ Queensland Parliament, Record of Proceedings, 1 November 2018, p. [3338](#)

¹⁵ Queensland Parliament, Record of Proceedings, 15 November 2018, p. [3636](#)

Member for Burleigh was or was not in possession of information on which he based his statements. Whether the content of that information was factual is not the subject of the committee's inquiry.

39. As noted at paragraph 25 above, the Member for Burleigh agreed to provide evidence to the committee in a manner requested by the committee which took account of the Member's concerns about confidentiality for the citizens who had provided information to the Member. This would, if satisfactory, substantiate the existence of the information on which the Member for Burleigh claimed to rely in making the statements about the Hon Robert Swarten.
40. The committee is satisfied that the Member for Burleigh was in receipt of information from members of the public that formed the basis of his statements about the Hon Robert Swarten. The committee has determined it is not in the public interest to provide specific details about this information; and nor has it given any consideration to the veracity or otherwise of the information.
41. The committee notes that the Member for Burleigh prefaced his statements in the House with language such as 'allegation', 'I am told' and 'I have heard' and advised at the time that the statements he was making were based on information received from members of the community (for example 'Since I spoke on Tuesday, further information has been received from multiple sources that deserves to be raised here today').
42. As the committee has been satisfied that the Member for Burleigh was in receipt of information that did make allegations about the former Member, the committee finds that the first element of the alleged contempt cannot be established. In other words, it was not misleading for the Member for Burleigh to state in the House that he had received information from members of the community about the Hon Robert Swarten and to outline that information in the House. The committee is satisfied that the Member did receive such information.

Conclusion

43. On the information before it the committee finds that in relation to the matter of privilege of the Member for Burleigh deliberately misleading the House, the element of the statements being misleading is not made out.

Statements in regard to the Minister

44. The Member for Burleigh made the following statement in regard to the Minister:

Interestingly, Rob Swarten worked on the member for Cooper's campaign in Ashgrove. The member for Cooper was a media adviser in Rob Swarten's office before entering parliament. She was also the minister for education in 2016. That is a coincidence, is it not? Could that be it?¹⁶
45. In her correspondence to the Speaker, the Minister states that the Member for Burleigh in making this statement implies that she was aware of alleged corruption on the part of the Hon Robert Swarten, but argues that the Member for Burleigh has produced no evidence to substantiate these allegations concerning the Hon Robert Swarten.
46. In his initial correspondence to the Speaker in response to the allegations, the Member for Burleigh argues that he has not directly implied wrongdoing by the Minister in his statements, and was merely questioning if the Minister was aware of these allegations and if so, what action was undertaken. The Member for Burleigh states that this is particularly relevant given the Minister's former role as Minister for Education and the work undertaken by JM Kelly on several projects undertaken by the Department of Education.
47. In response to the Speaker's request for further information, the Member for Burleigh advised that he received information from members of the community that raised questions about the extent of the involvement of the Minister in the issues relating to JM Kelly Builders, in particular surrounding the level of knowledge the Minister had about these matters and what actions were taken as a result.

¹⁶ Queensland Parliament, Record of Proceedings, 30 October 2018, at pg. [3106](#)

48. In regard to the first limb of this element (whether the statement is factually correct), the committee notes the statement made by the Member for Burleigh in relation to the Minister's official role in the office of the Hon Robert Swarten is factually correct. Further, it is public information that the Minister was previously the Minister for Education in 2016.
49. In regard to the second limb (whether the statement was misleading), the committee notes that the former 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 factually correct statement could also be misleading' - for example, by the deliberate omission of relevant information.¹⁷ Technically correct statements could be misleading because of the context in which they are made.
50. Although it is possible for factually correct statements to be considered misleading, the committee does not consider that the Member for Burleigh's statements referencing the Minister fall within this category. As noted earlier in this report, the question for the committee in considering this element was whether the Member for Burleigh had received information from members of the community to the effect of, and on which he based, his statements in the House. In response to the Speaker's request for clarification that the Member for Burleigh had received information from members of the community who questioned the involvement of the Minister specifically, the Member for Burleigh confirmed that he had been provided such information. Once the committee was able to satisfy itself that the Member for Burleigh had received such information, it could not find that the statements by the Member concerning the Minister were misleading as they were based on information provided to him, as he had claimed.

Conclusion

51. On the information before it the committee finds that in relation to the matter of privilege of the Member for Burleigh deliberately misleading the House, the element of the statements being misleading is not made out.

Statements in regard to the Member for Keppel

52. The Member for Burleigh made the following statements in regard to the Member for Keppel:

30 October 2018

Maybe it has something to do with the member for Keppel, who is now the Assistant Minister for Education.... I note that the member for Keppel's husband worked for JM Kelly and then he worked for Hutchinson Builders. A lot of members might not know the story there. That did not end well.¹⁸

1 November 2018

The people who have contacted me have raised some very concerning issues in addition to the ones I raised on Tuesday. What action was taken by HPW to inform other state and local government agencies about the issues with JM Kelly builders? Why did state government agencies such as the Department of Education and Training choose to ignore the risk and award this company major projects while Housing and Public Works was investigating it? What financial assurances were given by JM Kelly builders during the tender process? Were these thoroughly checked before it was awarded government contracts? What role did members like the member for Keppel play in this sorry saga? I table an email showing that she knew all about this issue.¹⁹

53. The Member for Burleigh also made the below statement in regard to the Member for Keppel on 1 November 2018, however it was immediately withdrawn following an objection by the Member for Keppel and will not be considered further by the committee.

¹⁷ MEPPC, Alleged Misleading of the House by a Minister on 14 November 1996, Report No 4, Goprint, Brisbane, 1997, at 10.

¹⁸ Queensland Parliament, Record of Proceedings, 30 October 2018, at pg. [3106](#)

¹⁹ Queensland Parliament, Record of Proceedings, 1 November 2018, at pg. [3305](#)

*I do not know whether corrupt conduct may be in the fact that somebody lends you money and you do not talk about it for quite a while and then it appears on your register of interests. That could be a real issue.*²⁰

54. In her correspondence to the Speaker, the Minister states that the Member for Burleigh in making these statements is implying guilt on the part of the Member for Keppel and that his claims are unsubstantiated.
55. In his initial correspondence to the Speaker in response to the allegations, the Member for Burleigh argues that he has not directly implied wrongdoing by the Member for Keppel in his statements, and was merely questioning if the Member was aware of these allegations and if so, what action was undertaken.
56. In response to the Speaker's request for clarification, the Member for Burleigh advised that he received information from members of the community that raised questions about the extent of the involvement of the Member for Keppel in the issues relating to JM Kelly Builders, in particular surrounding the level of knowledge the Member had about these matters and what actions were taken as a result.
57. In regard to the statement of 30 October 2018, the committee has no evidence before it to suggest that the Member for Burleigh's statement was factually incorrect or misleading: the Member for Keppel has not raised any contradiction of the claim that her husband worked for JM Kelly or Hutchinson Builders, or the Member for Burleigh's remark about the latter 'not ending well'. The Minister has not provided evidence to establish that the statement was factually incorrect, either in her complaint to the Speaker, or by taking an opportunity to make a submission to the committee.
58. In regard to the statement of 1 November 2018, the committee notes that the Member for Burleigh prefaced his statements with the phrase 'the people who have contacted me have raised some very concerning issues in addition to the ones I raised on Tuesday'.
59. In response to the Speaker's request for clarification that the Member for Burleigh had received information from members of the community who questioned the involvement of the Member for Keppel specifically, the Member for Burleigh confirmed that he had been provided such information. The committee has also been able to satisfy itself that the Member for Burleigh received such information. The committee has determined it is not in the public interest to provide specific details about this information, nor has it judged the veracity of this information.
60. Given that the committee has been satisfied that the Member for Burleigh was in receipt of information that raised concerns about the Member for Keppel's involvement in the matters concerning the JM Kelly companies, the committee finds that the first element of the alleged contempt cannot be established. In other words, it is not misleading for the Member for Burleigh to state in the House that he has received information from members of the community about the Member for Keppel's involvement in these matters and to outline that information in the House, because the committee is satisfied that the Member did receive such information.
61. The committee finds that the statements made by the Member for Burleigh concerning the Member for Keppel were not misleading and this element is not made out.

Conclusion

62. On the information before it the committee finds that in relation to the matter of privilege of the Member for Burleigh deliberately misleading the House, the element of the statements being misleading is not made out.

Statements in regard to the Member for Rockhampton

63. The Member for Burleigh made the following statement on 30 October 2018 referencing the Member for Rockhampton:

²⁰ Queensland Parliament, Record of Proceedings, 1 November 2018, at pg. [3338](#)

But wait, there is more! The new member for Rockhampton was the former regional director in Central Queensland for Housing and Public Works. Another coincidence. Perhaps he could be helpful on the background of JM Kelly, their activities and what he knows about the deed of novation signed by the Department of Education and if he discussed this with the Department of Education before it was signed.²¹

64. In her correspondence to the Speaker, the Minister states that the Member for Burleigh in making the statement on 30 October 2018 was implying guilt on the part of the Member for Rockhampton; and that the Member for Burleigh's claims are unsubstantiated.
65. In his initial correspondence to the Speaker in response to the allegations, the Member for Burleigh argues that he has not directly implied wrongdoing by the Member for Rockhampton in his statements, and was merely questioning if the Member was aware of these allegations and if so, what action was undertaken.
66. In response to the Speaker's request for clarification, the Member for Burleigh advised that he received information from members of the community that raised questions about the extent of the involvement of the Member for Rockhampton in the issues relating to JM Kelly Builders, in particular surrounding the level of knowledge the Member had about these matters and what actions were taken as a result. The committee notes that it was able to satisfy itself that the Member for Burleigh had received information that raised concerns about the matters he raised generally.
67. The Member for Burleigh did not claim to have received information relating to the Member for Rockhampton's role in the matters concerning the JM Kelly companies. However the Member for Burleigh was not making an allegation or a statement of fact. He asked a question about whether the Member for Rockhampton had information to shed light on the broader matters raised, given the latter's previous occupation as regional director of the Department of Housing and Public Works. The question was asked in the context of statements which implied wrongdoing on the part of the former Member for Rockhampton.
68. As noted at paragraph 47 above, a statement can be factually correct but also misleading. The first part of the Member's statement, that the Member for Rockhampton was the former regional director in central Queensland for Housing and Public Works, is factually correct. While the Member for Burleigh's remark 'Another coincidence' could possibly be an insinuation that there was some impropriety on the part of the Member for Rockhampton, there is recourse available in the House for Members who consider they have been impugned such as asking for a withdrawal (standing order 234), or making a personal explanation or private members' statement. The committee does not consider that the statement by the Member for Burleigh which questions the Member for Rockhampton's involvement in the matters concerning JM Kelly, is sufficient to satisfy both limbs of the first element.
69. The committee finds that the statements made by the Member for Burleigh concerning the Member for Rockhampton were not misleading.

Conclusion

70. On the information before it the committee finds that in relation to the matter of privilege of the Member for Burleigh deliberately misleading the House, the element of the statements being misleading is not made out.
71. While it was not necessary for the committee to continue on and examine whether the statements were deliberately misleading, or whether the Member for Burleigh intended to mislead the House, for completion, the committee did not find any prima facie evidence that either of those elements were made out.
72. Consequently, the committee has not made a finding of contempt against the Member for Burleigh.

²¹ Queensland Parliament, Record of Proceedings, 30 October 2018, p [3106](#).

Committee comment

73. Freedom of speech is one of the most important privileges afforded to Members of Parliament. It is fundamental to the ability of the Parliament to fulfil its function as a place for fully and freely raising and discussing matters of importance, and conducting investigations without interference. It allows Members to bring forward matters without fear of personal legal repercussions.
74. Importantly, privilege does not provide complete immunity to Members for their words in the House. The House has always possessed the power to order a Member to correct any statements made if those statements are inaccurate, or to punish for any deliberate misleading of the House as a contempt.
75. The committee reminds all Members of their obligation, also outlined in the Members Code of Ethical Standards, to use the privilege of freedom of speech responsibly and apply due diligence in preparing speeches or documents so as to avoid allegations of abuse of privilege.
76. Further, the committee encourages Members who are in receipt of information from constituents which they assess as containing credible allegations of wrongdoing, to consider at the earliest possible time whether a referral should be made to a body specifically tasked with investigating such allegations.
77. The role of the Ethics Committee is to consider, on referral, whether privilege has been breached, and make recommendations to the House accordingly.
78. In this matter, the committee found that the statements made by the Member for Burleigh and subject of the Minister's complaint, were made on the basis of information provided to the Member in the context of his role as a Member of Parliament; and were made in the course of the Member properly exercising his responsibilities. Therefore there was no breach of parliamentary privilege.
79. The Ethics Committee encourages Members who feel that they have been impugned or misrepresented in the course of the House fulfilling its functions, to use avenues available for objecting to such conduct, such as asking for the statement to be withdrawn, or making a personal explanation or private members' statement. The committee's role is to consider alleged breaches of parliamentary privilege, and it is unable to provide redress in circumstances where allegedly misleading statements fall short of meeting the threshold that is required for the serious contempt of deliberately misleading the House.

Conclusion

On the information before it the committee finds that on the matter of privilege in relation to the Member for Burleigh, that the allegations of contempt are not made out.

Recommendation 1

The committee recommends no finding of contempt be made against the Member for Burleigh and that the House take no further action in relation to these allegations.



Joe Kelly MP
Chair

October 2019

Membership — 56th Parliament

Mr Joe Kelly MP, Chair
Member for Greenslopes

Mr Tim Nicholls MP, Deputy Chair
Member for Clayfield

Ms Nikki Boyd MP²²
Member for Pine Rivers

Mr John-Paul Langbroek MP²³
Member for Surfers Paradise

Mr Mark McArdle MP
Member for Caloundra

Mrs Melissa McMahon MP²⁴
Member for Macalister

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²² The Member for Macalister, Mrs Melissa McMahon MP, was appointed to the committee under Standing Order 202 as a substitute member of the committee for Ms Nikki Boyd MP from 25 March 2019 to 6 September 2019.

²³ The Member for Surfers Paradise, Mr John-Paul Langbroek MP was appointed to the committee under Standing Order 202 as a substitute member of the committee for Mr Ray Stevens MP for the meeting on 19 September 2019.

²⁴ The Member for Macalister, Mrs Melissa McMahon MP, was appointed to the committee under Standing Order 202 as a substitute member of the committee for Ms Leanne Linard MP for the meeting on 19 September 2019.

LEGISLATIVE ASSEMBLY OF

Queensland

EXTRACT OF MINUTES –**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
28 FEBRUARY 2019 RELATING TO AN ALLEGED
DELIBERATE MISLEADING OF THE HOUSE BY A MEMBER****Ethics Committee**

Meeting No. 19A

Friday, 26 April 2019, 10:03AM

Room 5.30, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Mr John-Paul Langbroek MP (substitute for Mr Mark McArdle MP under SO 202)
Ms Leanne Linard MP
Ms Melissa McMahan MP (substitute for Ms Nikki Boyd MP under SO 272)
Mr Ray Stevens MP

Apologies

Mr Mark McArdle MP

In attendance

Ms Bernice Watson, Committee Secretary
Ms Natasha Mitchenson, Assistant Committee Secretary

Inquiry 10: Matter of Privilege referred by the Speaker on 28 February 2019 (Hart)**Resolved**

That the committee seek additional information from the Minister for Innovation and Tourism Industry Development and the Member for Burleigh in order to determine whether to proceed to an investigation.

Moved: Mr Kelly Seconded: Mr Nicholls

EXTRACT OF MINUTES –**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
28 FEBRUARY 2019 RELATING TO AN ALLEGED
DELIBERATE MISLEADING OF THE HOUSE BY A MEMBER****Ethics Committee**

Meeting No. 20A

Thursday, 2 May 2019, 1:05PM

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Ms Leanne Linard MP
Mr Mark McArdle MP
Ms Melissa McMahon MP (substitute for Ms Nikki Boyd MP under SO 272)
Mr Ray Stevens MP

Apologies Nil

In attendance

Ms Bernice Watson, Committee Secretary
Ms Natasha Mitchenson, Assistant Committee Secretary

Inquiry 10: Matter of Privilege referred by the Speaker on 28 February 2019 (Hart)

Noted

That the committee is awaiting submissions from the Members.

EXTRACT OF MINUTES –**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
28 FEBRUARY 2019 RELATING TO AN ALLEGED
DELIBERATE MISLEADING OF THE HOUSE BY A MEMBER****Ethics Committee**

Meeting No. 23

Thursday, 13 June 2019, 1:08PM

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Ms Leanne Linard MP
Mr Mark McArdle MP
Ms Melissa McMahon MP (substitute for Ms Nikki Boyd MP under SO 202)
Mr Ray Stevens MP

Apologies

Ms Nikki Boyd MP

In attendance

Mr Neil Laurie, Clerk of the Parliament
Ms Bernice Watson, Committee Secretary
Ms Natasha Mitchenson, Assistant Committee Secretary

Inquiry 10: Matter of Privilege referred by the Speaker on 28 February 2019 (Hart)Discussion ensued.

EXTRACT OF MINUTES –**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
28 FEBRUARY 2019 RELATING TO AN ALLEGED
DELIBERATE MISLEADING OF THE HOUSE BY A MEMBER****Ethics Committee**

Meeting No. 24

Thursday, 22 August 2019, 1:05PM

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Ms Leanne Linard MP
Mr Mark McArdle MP
Ms Melissa McMahon MP (substitute for Ms Nikki Boyd MP under SO 202)
Mr Ray Stevens MP

Apologies

Ms Nikki Boyd MP

In attendance

Ms Bernice Watson, Committee Secretary
Ms Natasha Mitchenson, Assistant Committee Secretary

Inquiry 10: Matter of Privilege referred by the Speaker on 28 February 2019 (Hart)

Discussion ensued.

Resolved that the committee report on the matter on the evidence available to the committee.

Moved: Mr Stevens Seconded: Ms McMahon

EXTRACT OF MINUTES –**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON
28 FEBRUARY 2019 RELATING TO AN ALLEGED
DELIBERATE MISLEADING OF THE HOUSE BY A MEMBER****Ethics Committee**

Meeting No. 27

Thursday, 19 September 2019, 1:06pm

Committee Room 1, Parliamentary Annexe

Present

Mr Joe Kelly MP, Chair
Mr Tim Nicholls MP, Deputy Chair
Ms Nikki Boyd MP
Mr John-Paul Langbroek MP (substitute for Mr Ray Stevens MP under SO 202)
Mr Mark McArdle MP
Ms Melissa McMahon MP (substitute for Ms Leanne Linard MP under SO 202)

Apologies

Ms Leanne Linard MP
Mr Ray Stevens MP

In attendance

Ms Bernice Watson, Committee Secretary
Ms Natasha Mitchenson, Assistant Committee Secretary

Inquiry 10: Matter of Privilege referred by the Speaker on 28 February 2019 (Hart)Resolved

That the committee adopts the report and authorises its tabling.

Moved: Mr Kelly Seconded: Mr Nicholls

Extracts certified correct on 17 October 2017

Handwritten signature of Joe Kelly in black ink.

Joe Kelly MP
Chair