



## ETHICS COMMITTEE

### REPORT NO. 160

# INQUIRY INTO MATTER OF PRIVILEGE REFERRED BY THE PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE ON 17 AUGUST 2015 RELATING TO ALLEGED FAILURE BY A MEMBER TO FOLLOW AN ORDER OF THE PREVIOUS PCCC AND ALLEGED UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS

## 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.<sup>1</sup> 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 the following allegations:
  1. Failure to comply with the rules adopted by the former Parliamentary Crime and Misconduct Committee (PCMC) in relation to confidentiality of its proceedings (Member for Bundamba);
  2. Deliberately misleading the Parliamentary Crime and Corruption Committee (PCCC) on 20 April 2015 by signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC (Member for Bundamba);
4. The remaining allegations referred by the PCCC on 17 August 2015 will be incorporated in a separate report.

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 104B.

### The referral

5. On 17 August 2015, the PCCC made the following resolution:

*Resolution 1 (Part A):*

*That pursuant to Standing Order 268(1) the Committee recommends:*

*That the Member for Bundamba be referred to the Ethics Committee for:*

- i. failing to follow an order of the previous PCCC regarding the procedures to be followed in respect of the destruction or hand over of documents; and*
- ii. signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC and was prima facie deliberately misleading.*

*Resolution 1 (Part B):*

*That pursuant to Standing Order 268(1) the Committee recommends:*

*That the alleged unauthorised disclosure of committee proceedings (in contravention of SO 211A), namely the disclosure of the email from the Member for Warrego on Sunday 12 July 2015, be referred to the Ethics Committee.*

### Committee membership

6. On 15 September 2015, the Speaker advised that in accordance with Standing Order 272 the Member for Morayfield would stand aside from consideration of this matter as he is a member of the PCCC that referred the matters on 17 August 2015 and that the Member for Bulimba would replace the Member for Morayfield during the committee's consideration of this matter in accordance with Standing Order 272(2).

### Committee proceedings

7. 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.
8. Following the referral by the PCCC, the committee invited the Member for Bundamba to provide further information on the alleged contempts of failing to comply with the rules adopted by the former PCMC and deliberately misleading the PCCC by intentionally signing an incorrect statement in September 2015. The member responded in early October 2015 to both allegations.
9. The committee also sought information from relevant parliamentary staff to assist with compiling a full chronology of events in relation to the safe.
10. The Member for Bundamba was then invited to appear before the committee, with the hearing occurring in late October.
11. The committee found that it had sufficient material before it to deliberate on the allegation. This material included information provided by the PCCC, a submission from the Member for Bundamba, evidence provided by the Member for Bundamba at a private hearing and information gained from parliamentary staff.

**Definition of contempt**

12. 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.*

***Allegation 1 – Nature of the contempt of failing to comply with the rules adopted by the former Parliamentary Crime and Misconduct Committee (PCMC) in relation to confidentiality of its proceedings***

13. The first allegation is that the Member for Bundamba, as an outgoing member of the former PCMC, failed to comply with the rules adopted by the former PCMC in relation to the confidentiality of its proceedings by not emptying her PCCC electorate office safe or returning the safe's keys to the secretariat.
14. Standing Order 211A refers to the confidentiality of proceedings for the Parliamentary Crime and Corruption Committee and Ethics Committee. Standing Order 211A(4) provides that the PCCC may elect for this Standing Order to not apply to a particular proceeding or a particular inquiry of the committee, and adopt its own rules in relation to the confidentiality of its proceedings for that proceeding or inquiry.
15. Accordingly, failure to comply with the above rules set by the former PCMC in relation to the confidentiality of its proceedings might amount to a contempt if it also falls within the definition of contempt in Section 37 of the POQA (i.e. an improper interference with the free exercise of a committee's authority).
16. Accordingly, elements to be established for this particular contempt are:
  - Was the member aware of the rules adopted by the former PCMC in relation to the confidentiality of its proceedings?
  - Did the member fail to comply with these rules?
  - If yes, did the failure to comply amount to an improper interference with the free exercise of the committee's authority?
17. The minutes of a PCMC meeting held on 13 September 2013 show that an issue was discussed in relation to the possible disclosure of Committee proceedings during the removal of a safe from the Redlands Electorate Office to the Coomera Electorate Office. The Member for Bundamba was a member of the PCMC at that time.
18. The Member for Bundamba moved a motion, which agreed that outgoing PCMC Members must confirm in writing that their electorate office safe is empty and that it would consider an information sheet on this matter at its next meeting.
19. In the minutes of the PCMC meeting held on 18 October 2013, PCMC members (including the Member for Bundamba) were provided with an updated information sheet detailing confidentiality requirements and requirements regarding members' safes. The members noted the information sheet. The requirements included the following:
  - *Upon cessation of your Committee membership the following steps must be taken:*
    - *both your Parliamentary and Electorate Office safes must be emptied;*

- *all confidential and other Committee materials must be returned to the Secretariat or shredded;*
  - *the keys for both your safes must be returned to the Secretariat;*
  - *Members must provide written advice to the Secretariat confirming that both safes have been emptied, and that both safe keys have been returned to the Secretariat.*
  - *When these steps have been completed, the safes may be relocated by the Secretariat as required.*
20. The committee finds the effect of the two relevant motions was that the former PCMC adopted its own rules relating to the confidentiality of its proceedings in accordance with SO 211A.
21. It is alleged that, by failing to comply with the rules adopted by the PCMC relating to the confidentiality of its proceedings as outlined above, the Member for Bundamba committed a contempt, that is, improperly interfering with the free exercise of a committee's authority.

#### Factual circumstances

22. On the information before the committee, the following facts have been established in relation to the Member for Bundamba's actions regarding her PCMC electorate office safe:
- The Member for Bundamba was told by the Premier on Saturday 14 February 2015 that she was to be appointed Minister for Police, Fire and Emergency Services and Minister for Corrective Services. The Member for Bundamba then attended the Parliamentary Annexe and handed the keys for her PCCC electorate office and Parliament House safes to the Security Building Control Officer (BCO).
  - On Sunday 15 February 2015, the announcement was made that the Member for Bundamba was to be sworn in as the Minister for Police, Fire and Emergency Services and Minister for Corrective Services, with the swearing-in occurring at Government House on 16 February 2015.
  - On 4 March 2015, the first request was issued by the PCCC secretariat to outgoing PCCC members to return their safe keys.
  - On 8 April 2015, the Research Director of the PCCC secretariat wrote to the Member for Bundamba advising that her Parliament House safe had been emptied and the keys needed to be returned, and advising the attached statement needed to be signed confirming treatment of documents in the electorate office safe, and return of the keys.
  - On 14 April 2015, the Bundamba electorate office forwarded the email from the Research Director regarding the safes to the Minister's Office requesting the office ask the Member for Bundamba to look at the email and advise on keys and sign paperwork.
  - The Member for Bundamba signed the statement on 20 April 2015 confirming that the appropriate steps had been taken regarding any confidential and other committee materials kept in the electorate office safe.
  - On 29 April 2015, the PCCC secretariat received an email from the Property Services of the Parliamentary Service advising that the Bundamba Electorate Office had contacted the Ministerial Office to locate the electorate office safe keys.
  - Between 4 – 6 May 2015, the Member for Bundamba advised the PCCC secretariat she had returned the keys to her electorate office safe to the BCO on duty, and the electorate office safe keys were retrieved by the PCCC secretariat from the BCO area.

#### Element One – Was the member aware of the rules adopted by the former PCMC?

23. In her submission to the committee and at the private hearing, the Member for Bundamba confirmed that she was aware of the rules set by the former PCMC at the time of that

committee's resolution that outgoing members must confirm in writing that their electorate office safe is empty, and the committee's noting of the information sheet, but states that she was not cognisant of the rules at the time of her ministerial appointment in February 2015.

24. The Member for Bundamba also argued that noting the information sheet is not the same as approving the information sheet.
25. The Member for Bundamba explained that she was not cognisant of the rules at the time she returned the keys to the BCO because it was her practice to hand back her committee papers, or place them in the safe for the secretariat to remove them, and therefore she did not retain the information sheet from October 2013.
26. The Member for Bundamba also stated that it is her understanding that the manual, provided to her when she commenced with the committee, was never updated with the rules on the information sheet. The member advised that it was the manual that she consulted before handing in her safe keys.
27. The PCCC secretariat advised that they had no record of Mrs Miller being provided with an updated manual subsequent to the former PCMC adoption of the rules for confidentiality in September/October 2013.
28. In addressing this element in her submission, the Member for Bundamba stated that:  
*My conduct was, I believe, in keeping with the earlier guidelines of the PCMC as set out in the Committee Members Manual dated 17 May 2012. Notwithstanding the changes made in September 2013, these are the procedures that I believed, at that time, applied to documents in my possession. However, if the Committee were to find that different procedures actually applied, I concede that I did not comply with those procedures.*
29. In her submission, the Member for Bundamba acknowledged that she should:  
*"... have ensured I was cognisant of the guidelines that were applicable. For this I apologise to the PCMC. However, I did not intentionally fail to adhere to the guidelines adopted by the former PCMC."*
30. The Member for Bundamba concluded her submission by stating that *"I was aware of the rules at the time they were adopted. However, at that particular point in time, I was intent on ensuring there could be no conflict of interest"*.

#### *Consideration*

31. The committee considered that, as the mover of the motion which established the rules applying to outgoing members on 13 September 2013, the Member for Bundamba was clearly aware of the rules in September and October 2013.
32. The committee also considered that, despite the Member for Bundamba's argument that noting the information sheet was not the same as approving the information sheet, the effect of the motion to consider the information sheet and the subsequent noting of that sheet was to establish the rules for confidentiality of documents to be followed by PCMC and subsequently PCCC members.
33. The committee considered that the fact that the manual was not updated with the information sheet does not alter the rules which applied to PCCC members in February 2015. However, the committee noted that this fact went towards providing an explanation as to why the Member for Bundamba was not able to recall the precise steps to be followed in February 2015, as did the member's practice of returning committee papers to the secretariat at the end of the meeting.
34. The committee finds that the Member for Bundamba was previously aware of the rules regarding confidentiality of PCMC documents as resolved by that committee in September and

October 2013, and therefore finds element one, that the member was aware of the rules adopted by the former PCMC, is satisfied.

*Element Two – Did the member fail to comply with the rules?*

35. In considering this element the committee separated the rules into two parts, the first relating to the treatment of documents contained in the safe and the second to the return of the keys.

*Electorate office safe not emptied, nor were committee materials returned to secretariat or shredded*

36. In her written submission to the committee, the Member for Bundamba advised that she was unaware whether there were any documents contained within the electorate office safe.

37. The Member for Bundamba contended that she:

*... was not an outgoing PCMC member as outlined in the resolution of the Committee on 13 September 2013. Nor had my Committee membership ceased, as envisaged by the Information Sheet noted by the PCCC on 18 September 2013.*

*Mine was a unique set of circumstances wherein I remained a member of the PCCC pursuant to the legislation, and it would have been inappropriate for me to retain access to the confidential Committee documents.*

38. The committee considered that while it is true that the Member for Bundamba remained a member of the PCCC until a new committee was appointed, that the member's circumstances were contemplated by the very broad term "outgoing" in the PCMC resolution of 13 September 2013.

39. At the hearing, the Member for Bundamba detailed the circumstances of 14 February 2015, the day when she was informed by the Premier that she was to be appointed as Minister for Police, as follows:

*"... I was in a unique position in this Queensland Parliament. To the best of my knowledge, no member, let alone a deputy chair or even as an acting chair, as I may have been at the time, has ever been put in the position of going from the PCCC to becoming the Minister for Police. There is no precedent... Also I could not seek advice in relation to that.*

*What I did was, when I had that discussion with the Premier, I walked immediately from the Premier's office down here to Parliament House. The safes were always locked. The keys were not on the ninth floor. The keys were up in my bedroom. I immediately took those keys and handed them to the Building Control Officer and requested the Building Control Officer to advise the secretariat that I had handed the keys to them.*

*As the deputy chair of the PCCC, at all times I ensured that those document were locked in safes. I took the extra precaution of not having the keys to the safes on the ninth floor or in my electorate office... they were upstairs in my bedroom at Parliament House."*

40. The Member for Bundamba referred to the information supplied by the Member for Warrego's email to PCCC members of 12 July 2015 that the documents in the safe included a list of people's names who had been (or were being) investigated, as evidence that there could have been a conflict of interest between her role as a PCCC member and the Minister for Police.
41. The Member for Bundamba also contended that her conduct was in keeping with the earlier guidelines of the PCMC as set out in the Committee Members Manual dated 17 May 2012, which she (incorrectly) believed applied at the time to documents she had in her possession.
42. The Member for Bundamba also stated that she believed (mistakenly) the safes from the electorate offices would be returned to the secretariat and the documentation removed before being forwarded onto another electorate office.

*Keys not returned to the secretariat*

43. In her evidence at the private hearing, the Member for Bundamba advised she returned the keys to the Building Control Officer (BCO) on Saturday 14 February 2015, requesting that they be returned to the secretariat. The Member for Bundamba also stated at the hearing that she thought she had telephoned the secretariat to advise that the keys had been returned to the BCO.
44. The evidence before the committee indicates that the Research Director of the PCCC secretariat wrote to the Member for Bundamba on 8 April 2015 requesting the keys be returned as they had not yet been received by the secretariat. A parliamentary staff member followed up with the Member for Bundamba's electorate office on the location of the keys on 29 April 2015.
45. The evidence also shows that in the period 4-6 May 2015, the Member for Bundamba advised the PCCC secretariat she had returned the keys to her electorate office safe to the BCO on duty, and the keys were eventually retrieved by the PCCC secretariat from the BCO area in the time period 4-6 May 2015.

*Consideration*

46. In considering this element, the committee noted that the Member for Bundamba conceded that she failed to comply with the rules adopted by the former PCMC in September and October 2013, along with her argument that her concern about a conflict of interest had led to her not to check or empty her electorate office safe.
47. The committee also noted the Member for Bundamba's (incorrect) understanding that her electorate office safe would be returned to the secretariat and the documents removed, and her contention that her attempt to return the keys to the secretariat via the BCO was the only option given it was a Saturday.
48. However, in light of the evidence before the committee, the committee finds that the Member for Bundamba failed to comply with the rules set by the former PCMC in that she did not empty her electorate office safe, not return the materials to the secretariat or shred them, nor did she return the keys to the secretariat, and therefore element two is satisfied.

*Element Three – Did the failure to comply amount to an improper interference with the committee's authority?*

49. The Member for Bundamba argued that there was no intention to interfere with the committee's authority, and that her unique situation of being a PCCC member and an incoming Minister for Police, which she believed could have led to a conflict of interest, coupled with the guidance available to her at the time via the manual, led her to take the actions she took.
50. The Member for Bundamba further stated that "any inadvertent non-compliance on my part in relation to the PCMC procedures cannot be reasonably held to amount to improper interference with the free exercise of the Committee's authority".
51. The Member for Bundamba advises she took these actions as a matter of principle because:  
*It would have been inappropriate for me to have had access to any documents of a sensitive nature, given I was about to be sworn in as the Police Minister, and still held the position of Deputy Chair of the PCCC, a position which, pursuant to Section 301 of the Act, I maintained after the election.*  
*I held the view, and still do, that it would have been a conflict of interest to have had access to sensitive documents of this nature, given the dual roles.*
52. The committee noted the Member for Bundamba's submission regarding attempts on her part to ensure the substance of the rules set by the former PCMC were complied with (i.e. that the

confidentiality of the documents in her electorate office safe was maintained) in the circumstances.

53. Some of the committee members were of the view that, given the Member for Bundamba's extensive experience in parliament and on committees and her involvement in moving the resolution that led to the rules, the Member for Bundamba had not provided a sufficient explanation as to why she had not complied with the rules, and felt that her explanation was a construction of convenience after the fact.
54. These members also argued that the circumstances were not so extenuating that would prevent the Minister from attending the PCCC secretariat to return the keys on the Monday morning of 16 February 2015 prior to being sworn in as Minister.
55. Other members noted that the announcement of the Minister's impending appointment as Police Minister was to be made on Sunday 15 February 2015, potentially causing a conflict of interest from that date onwards. Hence, waiting until Monday to return the keys was seen as untenable, making it imperative that the keys were returned on the Saturday 14 February 2015.

#### *Consideration*

56. In its consideration of this element, the committee found that by adopting its own rules with respect to the confidentiality of documents, the PCMC was exercising its authority. By logical extension, the committee deemed that any failure to comply with those rules could amount to an interference with the free exercise of the committee's authority.
57. However, the difficult question before the committee was whether the failure to comply amounted to an improper interference with the PCCC's authority in the circumstances.
58. There is no definition of 'improper' or 'improper conduct' in the *Parliament of Queensland Act 2001* or the Standing Orders.
59. 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.
60. 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].*
61. 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 the Member for Bundamba were inappropriate in discharging her duties, obligations and responsibilities.
62. Some members made an argument that a reasonable person might not find that the Member for Bundamba's conduct was consistent with the proper discharge of her duties, obligations and responsibilities.



63. However, those members also accepted that, a reasonable person might also consider the actions taken by the Member for Bundamba were not inappropriate given the circumstances that the soon to be Minister found herself in.
64. All committee members accepted that the failure to follow the precise proceedings as set down by the former PCMC did not result in any actual harm as the documents were passed onto another member of the PCCC under the same obligations of confidentiality.
65. The committee reached the consensus view that the Member for Bundamba's actions were arguably appropriate in the circumstances, and therefore did not amount to an 'improper' interference with the authority of the PCCC in accordance with the test outlined above.
66. In summary, the committee found that while the failure of the Member for Bundamba to comply with the rules as set by the former PCMC amounted to an interference with the authority of that committee the steps taken by the member were not inappropriate in the circumstances and therefore the third element of this allegation of contempt was not made out.

***Allegation of contempt of deliberately misleading the PCCC on 20 April 2015 by signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC***

67. The second matter before the committee was the allegation that the Member for Bundamba signed an incorrect statement in relation to the destruction of documents that were in her PCCC electorate office safe, with the signed statement then tendered to the PCCC.
68. 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.<sup>2</sup>
69. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading a parliamentary committee:
  - 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.<sup>3</sup>
70. The Ethics Committee of the 48<sup>th</sup> 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.<sup>4</sup>
71. The *Code of Ethical Standards: Legislative Assembly of Queensland* emphasises to members that "... misleading is a wider concept than making incorrect statements. A totally factually correct statement can still be misleading."<sup>5</sup>
72. 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

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

<sup>3</sup> McGee, David, *Parliamentary Privilege in New Zealand*, 3<sup>rd</sup> Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653-655.

<sup>4</sup> Members' Ethics and Parliamentary Privileges Committee, *Report No. 4 - Alleged Misleading of the House by a Minister on 14 November 1996*, Goprint, Brisbane, 1997, p.10.

<sup>5</sup> 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, p.25, available at <http://www.parliament.qld.gov.au/work-of-assembly/procedures>

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.<sup>6</sup>

73. The committee found that it had sufficient material before it to deliberate on this allegation. This material included information provided by the PCCC, a submission from the Member for Bundamba, evidence provided by the member for Bundamba at a private hearing and information gained from parliamentary staff.
74. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are listed below.
- Was the Member for Bundamba's signed letter misleading?
  - Did the Member for Bundamba know at the time she signed the document advising she had emptied the safe that the document was misleading?
  - (If yes), did the Member for Bundamba intend to mislead the committee?

#### *Factual Circumstances*

75. On the information before the committee, the following facts were established in relation to the Member for Bundamba signing the document:
- On 8 April 2015, the Research Director of the secretariat for the PCCC wrote to Ms Miller advising that Ms Miller's electorate office safe needed to be relocated for an incoming PCCC member. Ms Miller was asked to confirm that the appropriate steps had been taken regarding any confidential and other committee materials kept in the safe by signing an attached document;
  - The Bundamba Electorate Office forwarded the email from the Research Director regarding the safes on 14 April 2015 to the Minister's Office requesting that the office ask the Member for Bundamba to look at the email and advise on keys and sign paperwork;
  - On 20 April 2015, the Member for Bundamba signed the statement confirming that the appropriate steps had been taken regarding any confidential and other committee materials kept in the electorate office safe; and
  - The signed statement was emailed to the Bundamba Electorate Office from the Minister's Office on 22 April 2015 and returned to the secretariat by the Minister's office on 29 April 2015.

#### *Element one – Was the Member for Bundamba's signed document misleading?*

76. The first limb of this element is whether the Member for Bundamba's signed document contained factually or apparently incorrect material.
77. The statement signed by the Member for Bundamba clearly specified the steps that needed to be taken when safes were to be emptied and keys returned. The statement reads:

*I advise that both my Parliamentary and Electorate Office safes have been emptied and all confidential and other committee materials have been either returned to the Secretariat or shredded.*

*I have returned all safe keys to the secretariat.*

<sup>6</sup> McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654. Members' Ethics and Parliamentary Privileges Committee, *Report No. 27 - Report on a Matter of Privilege – The Alleged Misleading of the House by a Minister on 20 October 1998*, Goprint, Brisbane, 1999, p.2.

78. The email from the Member for Warrego indicates that the electorate office safe had not been emptied and the confidential and committee materials had not been returned or shredded.
79. The committee noted that there was no evidence before the committee to indicate that the contents of the safe were discovered by anyone other than the Member for Warrego (a PCCC Member herself under the same obligations of confidentiality).
80. The committee considered that the Member for Bundamba's signed statement was factually incorrect, as she had not emptied the safe or returned all confidential and other committee materials to the secretariat or shredded them.
81. The second limb of this element is whether the statement itself was misleading.
82. On the issue as to whether her signing of the document was misleading, the Member for Bundamba contended that her staff advised her of the direction of the PCCC Secretariat to sign and return the pro forma document, and that her understanding of her obligations at that time was that she was required to comply with the requirements as set out in the Members Induction Manual which she had been presented in 2012. She stated that "I signed the document in the understanding that I was correctly complying with my obligations pursuant to the Manual. I signed this document in good faith".
83. The Member for Bundamba's response does not contend that the signed statement was not factually incorrect or misleading.

#### *Consideration*

84. The committee considered that a reasonable person may have been misled by the Member for Bundamba's signed statement into believing she had undertaken the steps outlined in the statement. Therefore, the committee found that the first element, that the signed document was misleading, was satisfied.

*Element two – Did the Member for Bundamba know at the time she signed the document advising she had emptied the safe and returned the keys to the secretariat that the document was misleading?*

85. Following the email sent by the Member for Warrego on 12 July 2015, and subsequent media reports on the issue on 13 July 2015, Ms Miller wrote to the Clerk of the Parliament on 14 July 2015. The letter stated that she had returned the keys to the PCCC safes in the days before she was sworn in as Minister for Police, Fire and Emergency Services and Minister for Corrective Services to the Building Control Officer (BCO) on the third floor of the Parliamentary Annexe and requested they be sent to the Secretariat of the PCCC.
86. The Member for Bundamba does not make any reference in her letter of 14 July 2015 to having advised the secretariat that papers still remained in the safe, only that she had advised the secretariat on a number of occasions that the keys had been handed to the BCO. The Member for Bundamba has subsequently advised that she believes she rang the secretariat to inform them she had returned the keys to the BCO.
87. The Member for Bundamba also contended that she did not look inside either of the safes before returning them, and therefore was unaware whether there were any documents in either of those safes.
88. In the Member for Bundamba's response in relation to this element, she stated that:

*At the time that I signed the document, I believed it had been prepared by the PCMC Secretariat in accordance with that I thought to be the prevailing rules that pertained to the PCMC. Therefore, I believed I was signing a document that was accurate and did not believe that the statement was inaccurate or misleading in any respect.*

89. In its consideration, the committee had difficulty reconciling this statement with the fact that the nature of the document was a declaration by a member of certain factual matters that could only be in the knowledge of the member. However the committee also recognised that the response provided evidence of a lack of knowledge by the member of the contents of the document that she signed.
90. The committee considered that, given the document in this instance was a signed statement relating to material that was in her possession it might be inferred that that the Member for Bundamba had personal knowledge of the stated facts in the formal document.

#### *Consideration*

91. The committee considered that the Member for Bundamba should have known at the time she signed the document that the document was misleading in that she had not emptied the safes or returned all confidential and other committee materials to the secretariat or shredded them. However, the committee considered that there was evidence that the member didn't know what she was signing, but signed it anyway at the behest of her staff and therefore finds that the second element was not made out.
92. Nonetheless the committee considered that the Member for Bundamba was reckless in signing the document if she was not cognisant of the contents.

#### *Element three – (If yes), did the Member for Bundamba intend to mislead the House?*

93. In her submission, the Member for Bundamba stated that at no time did she intend to mislead the House, that she believed the statement she made was true and in accordance with her obligations to the PCMC and the Parliament, and that there is no evidence she intended to mislead the House or the Committee.

#### *Consideration*

94. The committee considered that the Member for Bundamba's action of signing the document without ensuring she knew the contents of the statement she was signing was reckless. However, the committee also considered that there was no evidence before the committee to support an intention on the part of the Member for Bundamba to mislead the PCCC.
95. The committee was conscious of the fact that 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.<sup>7</sup>
96. Therefore, the third element was not satisfied.
97. In the absence of evidence in relation to the third element, the committee could not find contempt in relation to this matter.

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<sup>7</sup> McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.  
Members' Ethics and Parliamentary Privileges Committee, *Report No. 27 - Report on a Matter of Privilege – The Alleged Misleading of the House by a Minister on 20 October 1998*, Goprint, Brisbane, 1999, p.2.

**Conclusions regarding allegations one and two**

98. On the matter of the Member for Bundamba failing to comply with the rules adopted by the former Parliamentary Crime and Misconduct Committee (PCMC) in relation to confidentiality of its proceedings in accordance with Standing Order 211A, the committee found that it was arguable that a reasonable person may consider the actions taken by the Member for Bundamba were appropriate in the circumstances, and therefore did not amount to an improper interference with the authority of the PCCC.
99. On the matter of the Member for Bundamba deliberately misleading the Parliamentary Crime and Corruption Committee (PCCC) on 20 April 2015 by signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC, the committee found there was no evidence the Member for Bundamba intended to mislead the Committee.
100. However, while the two allegations have been addressed separately and no finding of contempt has been made on either allegation, the committee believes the combination of the two allegations and the evidence before the committee, demonstrates a pattern of reckless conduct by the Member for Bundamba firstly in the performance of her duties as a former member of the PCCC and secondly as a Minister of the Crown.
101. Therefore, while the committee considered that the technical elements of contempt were not made out on either of the allegations against the Member for Bundamba, the member's conduct fell short of the standards that the citizens of Queensland would expect of a Member of the Legislative Assembly performing those roles.
102. The Committee notes that the Members Code of Ethical Standards encourages members to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and avoid any action which may diminish its standing, authority and dignity.
103. The Committee finds the combined effect of the Member for Bundamba's conduct in not following the rules set by the former PCMC in relation to maintaining the confidentiality of documents and then incorrectly signing a statement that she had followed the rules is to diminish the standing of Members of Parliament in the eyes of the public.
104. Accordingly, in the interests of maintaining standards for conduct of Members of the Assembly, the committee recommends that the Member for Bundamba, at the earliest opportunity, make a statement in the Assembly acknowledging that her conduct was not of the standard expected of a Member of Parliament and of a Minister of the Crown, and apologising for not complying with the rules adopted by the former PCMC in relation to the confidentiality of its proceedings and for signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC.

**Conclusions – Allegations 1 and 2**

On the information before the committee, it finds that:

- (a) on the matter of failing to comply with the rules adopted by the former Parliamentary Crime and Misconduct Committee (PCMC) in relation to confidentiality of its proceedings, that it is arguable that a reasonable person with knowledge of the circumstances could find that the actions of the Member for Bundamba were not inappropriate in the circumstances, and therefore they did not amount to an improper interference with the authority of the PCCC.
- (b) on the matter of deliberately misleading the Parliamentary Crime and Corruption Committee (PCCC) on 20 April 2015 by signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC, the committee found there was no evidence the Member for Bundamba intended to mislead the Committee.

**Recommendations**

The committee recommends no finding of contempt be made against the Member for Bundamba for failing to comply with the rules adopted by the former Parliamentary Crime and Misconduct Committee (PCMC) in relation to confidentiality of its proceedings in accordance with Standing Order 211A.

The committee also recommends no finding of contempt be made against the Member for Bundamba for deliberately misleading the Parliamentary Crime and Corruption Committee (PCCC) on 20 April 2015 by signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC.

However, the committee notes that despite their finding that the technical elements of contempt were not made out in respect to each allegation the evidence before the committee across the two allegations demonstrates a pattern of reckless conduct on behalf of the Member for Bundamba.

The Committee notes that the Members Code of Ethical Standards encourages members to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and avoid any action which may diminish its standing, authority and dignity.

The Committee finds the combined effect of the Member for Bundamba's conduct is to diminish the standing of Members of Parliament in the eyes of the public. In this regard, the Committee notes that the Member for Bundamba:

- Did not follow the rules set by the former PCMC in relation to maintaining the confidentiality of documents, despite moving the original motion which established those rules – specifically that she did not empty her Parliamentary and Electorate Office safes and either return these papers to the Secretariat or shred them; and that she did not return the keys for both safes directly to the Secretariat; and
- Incorrectly signed a statement that she had followed the rules.

Accordingly, in the interests of maintaining standards for conduct of Members of the Assembly, the committee recommends that the Member for Bundamba, at the earliest opportunity, make a statement in the Assembly acknowledging that her conduct was not of the standard expected of a Member of Parliament and of a Minister of the Crown, and apologising for not complying with the rules adopted by the former PCMC in relation to the confidentiality of its proceedings and for signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC.



Di Farmer MP  
Acting Chair

1 December 2015

**Membership — 55<sup>th</sup> Parliament**

Ms Di Farmer MP, Acting Chair  
*Member for Bulimba*

Mr Glen Elmes MP, Deputy Chair  
*Member for Noosa*

Ms Nikki Boyd MP  
*Member for Pine Rivers*

Mr Jim Madden MP  
*Member for Ipswich West*

Mr Matt McEachan MP  
*Member for Redlands*

Dr Mark Robinson MP  
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