



Legal, Constitutional and Administrative Review Committee

PUBLICATION OF COMMITTEE PROCEEDINGS DATED 22 FEBRUARY 2005

REPORT NO. 48, MARCH 2005

1. INTRODUCTION

The committee met with the Premier and the Attorney-General at 11.45am on 22 February 2005 regarding the then proposed appointment of Ms Cathi Taylor as Information Commissioner.

In accordance with s 61(2) of the *Freedom of Information Act 1992*, the appointment of Ms Taylor was the subject of an address to the Governor in Council, moved and debated in the House later that day.

There have been a number of subsequent media reports regarding Ms Taylor's appointment. One of these reports led some members of the committee to raise the issue of a possible breach of the Standing Orders of the Legislative Assembly.

2. ISSUES

On 7 March 2005 an article appeared in the *Courier-Mail* titled "Beattie stands firm on FOI decision". The article stated in part:

The spokesman said the multi-party Legal, Constitutional and Administrative Review Committee had been briefed on Ms Taylor's appointment before it was announced "and no-one objected about the person appointed". And he claimed the appointment had been approved by State Parliament without dissent.

Standing Order 209 is titled "Reference to proceedings and disclosure of evidence and documents" and relevantly provides that:

(2) The evidence taken by a committee or sub-committee and documents presented to it, and proceedings and reports of it, which have not been reported to the House, shall not, unless authorised by the House or the committee, be disclosed or published to any person other than a member or officer of the committee.

Standing Order 209(4)(f) provides that for the standing order, "proceedings" include private deliberations of the committee and the records of those proceedings.

The apparent disclosure of the committee's proceedings revealed in the above *Courier-Mail* article, has also raised the question of the accuracy of the report of the proceedings for some members of the committee.

A particular problem for individual committee members is their inability to respond to the media account of the committee's proceedings, without themselves breaching the Standing Order.

3. APPROPRIATE PROCEDURE FOLLOWING AN ALLEGED UNAUTHORISED DISCLOSURE

In report no 42 of the Members' Ethics and Parliamentary Privileges Committee (MEPPC) titled "Report on a matter of privilege – unauthorised release of correspondence between a committee and ministers", the MEPPC made the following observation:

Any unauthorised (or premature) release of a committee proceeding may be treated as a contempt. An unauthorised (or premature) release is a serious matter and may warrant further and full investigation after all the circumstances of the release are considered.

That committee recommended a procedure to be followed in the case of an unauthorised release of a committee's proceedings, namely:

1. The committee concerned should seek to identify all possible sources of the disclosure.
2. The committee concerned should decide whether the disclosure is significant enough to justify further inquiry.
3. If the committee concerned considers that further inquiry is warranted, the Chair of the committee concerned should then write to all persons who had access to the proceedings.

The Chair's letter should request an indication from each person as to whether the person was responsible for the disclosure or if they are able to provide any information that could be of assistance in determining the source of the disclosure.

4. If the source of the disclosure is identified, the committee concerned should then decide whether to report accordingly to the Legislative Assembly.
5. If the source of the disclosure has not been identified, the committee concerned should consider whether the matter merits further formal investigation by the MEPPC.
6. In considering (4) and (5) above, the committee concerned should take the matters below into account and balance the worth of further inquiry.
 - (a) How serious was the disclosure and is there a public interest in pursuing the matter? (Was the disclosure a substantial

interference, or the likelihood of such, with the work of the committee, with the committee system or the functions of the Legislative Assembly?)

- (b) If the source of the disclosure has been discovered, was the breach inadvertent or deliberate, mischievous or benign?
 - (c) If the source of the disclosure has not been discovered, what is the likelihood of discovering the source of the disclosure? (How many people had access to the proceedings? Were the proceedings in the possession of persons outside Parliament, such as public officers?)
 - (d) Is the disclosure an isolated occurrence, or is it one instance of a larger problem? Has there been a pattern of such disclosures?
 - (e) What is the likelihood of a disclosure reoccurring?
7. If the committee concerned comes to the conclusion that the matter merits further investigation by the MEPPC, the committee concerned should write to the Speaker accordingly detailing the action it has taken in respect of the above steps.

This committee followed the procedure as recommended by the MEPPC by first writing to the Premier in an attempt to identify the source of the alleged unauthorised disclosure.

In response, the Premier confirmed that the spokesperson referred to in the *Courier-Mail* article of 7 March 2005 was his Principal Ministerial Media Advisor, Steve Bishop.

A copy of the Premier's response is attached as **appendix A**.

4. CONCLUSION

Having considered all circumstances surrounding the media article of 7 March 2005, including the procedure recommended by the MEPPC, the range of possible interpretations of the article, and the response of the Premier, the committee concluded that the most appropriate course of action was to:

- authorise the publication of the minutes of the committee's meeting at 11.45am on 22 February 2005 concerning the appointment of the Information Commissioner (attached as **appendix B**);
- release all participants from the confidentiality of that proceeding; and
- report on the matter to the Legislative Assembly.

Dr Lesley Clark MP
Chair

COMMITTEE MEMBERSHIP

51ST PARLIAMENT

CHAIR:	Dr Lesley Clark MP Member for Barron River
DEPUTY CHAIR:	Miss Fiona Simpson MP Member for Maroochydore
MEMBERS:	Mr Andrew Fraser MP Member for Mount Coot-tha
	Mr Ronan Lee MP Member for Indooroopilly
	Mr Mark McArdle MP Member for Caloundra
	Mr Andrew McNamara MP Member for Hervey Bay
	Mr Ian Rickuss MP Member for Lockyer

SECRETARIAT

RESEARCH DIRECTOR: Ms Kerry Newton

A/PRINCIPAL

RESEARCH OFFICER: Ms Julie Copley

COMMITTEE CONTACT DETAILS

Copies of this report and other Legal, Constitutional and Administrative Review Committee publications are available on the Internet via the Parliament's home page at: www.parliament.qld.gov.au/committees/legalrev.htm.

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STATEMENT OF RESERVATION

The article in the *Courier-Mail* of 7 March 2005 purported to relate the internal proceedings of a Legal, Constitutional and Administrative Review Committee meeting which would be a clear breach of the standing order which only allows such a release with the committee's approval.

The non-government members believe that not only was this a prima facie breach but it was aggravated by a deliberate misrepresentation of proceedings by the omission of key facts. The non-government members believe that the article, allegedly quoting the Premier's spokesman, did not reflect the strong concerns about the appointment of the new Information Commissioner, Ms Cathi Taylor, which were raised in the meeting. The non-government members believe that the alleged comments of the Premier's spokesman were provided to the media with the intention to paint LCARC as having endorsed the government's decision to appoint Ms Taylor despite the fact the committee has no formal role in accepting or rejecting the appointment.

During the committee meeting, non-government members raised strong concerns about the selection process for the new Information Commissioner, as it did not follow the same process of selection as that applied for the previous appointment of the combined Ombudsman/Information Commissioner role. Non-government members also raised strong concerns about how Ms Taylor would deal with issues of perceived conflict of interest in regard to matters concerning the Department of Education and the Arts and her husband as the Director-General. Furthermore, it was stressed to the Premier that LCARC was in no way a rubber stamp for a government decision which had already been made.

As a result of concerns over the article in the *Courier-Mail*, the committee members resolved to write to the Premier seeking advice as to the source of those alleged comments.

In response, the Premier provided a copy of advice from his Principal Ministerial Media Advisor, Steve Bishop, about what he claims were his comments to the media.

In that advice, Mr Bishop denies the comments attributed to him in the *Courier-Mail*.

As a result, this leads to only two conclusions: either Mr Bishop is telling the truth and the *Courier-Mail* has not reported his comments correctly and no contempt of the committee has occurred through a breach of its confidentiality; or Mr Bishop is not telling the truth and he is responsible for the breach which is a contempt of committee proceedings.

The non-government members find Mr Bishop's version of what he allegedly said to the *Courier-Mail* to be rather incredulous. However, as they do not have a tape recording of his conversation with the media he allegedly briefed, this means his record of events will have to be challenged in the forum of public opinion.

Miss Fiona Simpson MP
Deputy Chair

Mr Mark McArdle MP

Mr Ian Rickuss MP



**Queensland
Government**

Premier of Queensland
and Minister for Trade

9 March 2005

Dr Lesley Clark
Chair
Legal, Constitutional and Administrative Review Committee
Parliament House
BRISBANE 4000

RECEIVED

09 MAR 2005

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Dear Lesley

Thank you for your letter of 9 March 2005.

I advise as follows. Steve Bishop from my Office briefed the media on my behalf on Sunday, March 8, 2005, on issues relating to the appointment of the Information Commissioner. I have consulted with him and he has given me a note dealing with his advice to the media. Mr Bishop's note is attached.

In addition, I believe that it would be wrong for me to hide any information from the public in relation to this matter.

I refer to you the recommended procedures in Report No 42 of the Members' Ethics and Parliamentary Privileges and, in particular, section 5.2 paragraph 2, which says *'the Committee concerned should decide whether the disclosure is significant enough to justify further inquiry'*.

Clearly, in relation to the above, this clause applies.

I might also point out to the Committee that it is accountable to the whole Parliament and Parliament has actually debated this issue and made a decision.

Every Member of Parliament, including the Committee members, had an opportunity to express their view, including the Deputy Chair.

For the record, I note, having perused the minutes of the Committee that no Member objected to the appointment of the Information Commissioner.

Thank you for your correspondence.

Yours sincerely

[Original Signed]

**PETER BEATTIE MP
PREMIER AND MINISTER FOR TRADE**

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MEMO

To: Premier

From: Steve Bishop

Date: March 9, 2005

On Sunday, March 8, I received phone calls from The Courier-Mail and from ABC 612 regarding the appointment of the Information Commissioner and seeking a response from you.

The calls followed the one-sided campaign by The Courier-Mail attacking the appointment and including quotes from the Opposition complaining about various aspects of the appointment.

Because you were interstate and not available for comment, I did not approach you on this matter but responded on your behalf.

I considered it was necessary to put the matter into context for the two reporters and point out to them that although this appointment had been dealt with in Parliament on February 22 there had been – from memory - no criticism until The Courier-Mail started its campaign on March 2.

On this basis I explained that on February 22 the Premier had briefed the Legal, Constitutional and Administrative Review Committee on the morning of the 22nd before the address was presented to Parliament but that this had not resulted in anyone from the National Party complaining to the media about the candidate.

The candidate had then been debated by the entire Parliament in the afternoon and not only did all National Party MPS vote in favour of the appointment, not one of them had complained about the appointment in the media.

These were the points I mentioned to the reporters and at no time did I refer to the proceedings of the committee.

I cannot see how my comments could be construed as: revealing evidence taken by the committee; or documents presented to it; nor can I see how my comments could be construed as disclosing or publishing proceedings and reports of the committee.

[Original Signed]

- M I N U T E S -

Minutes of a meeting of the Legal, Constitutional and Administrative Review Committee held in the Ministers' Meeting Room on Thursday, 22 February 2005 at 11.45 am

Present:

Dr Lesley Clark MP (Chair)
Miss Fiona Simpson MP (Deputy Chair)
Mr Andrew Fraser MP
Mr Ronan Lee MP
Mr Mark McArdle MP
Mr Andrew McNamara MP
Mr Ian Rickuss MP

Apologies:

Nil

In attendance:

Hon Peter Beattie MP, Premier and Minister for Trade
Hon Rod Welford MP, Attorney-General and Minister for Justice
Mr Steve Bishop, Principal Ministerial Media Advisor
Ms Kerry Newton, Research Director

**Appointment of
Information
Commissioner:**

The Premier advised the committee that the person proposed to be appointed as Information Commissioner was Ms Cathi Taylor. The Premier outlined Ms Taylor's work experience and informed the committee that her partner was Ken Smith, the Director-General of the Department of Education and the Arts.

The Premier further outlined:

- the composition of the selection panel and his discussion with the Deputy Chair in this regard prior to the panel convening;
- the number of shortlisted applicants (four) and the fact that the current Deputy Information Commissioner was fourth in that list.

The Attorney-General:

- provided further detail about the selection process and the competitiveness for the position, particularly between the first two short-listed applicants;
- advised that he would be moving a motion in Parliament later today or tomorrow regarding the appointment which would then go to Governor in Council;
- provided the committee with a copy of Ms Taylor's resume and advised the committee that while Dr Keliher was listed as a referee for Ms Taylor, he was not used as a referee by the selection panel.

The Chair, who was a member of the selection panel, confirmed the Attorney-General's comments regarding the selection process.

The Deputy Chair stated that while she appreciated the courtesy of a meeting regarding the appointment, it was in effect not even a 'rubber stamp' as the decision had already been made.

Composition of selection panel

The Deputy Chair reiterated her view that if the Deputy Chair had been included on the selection panel, the appointment would be seen to be truly bi-partisan. The Deputy Chair asked that the inclusion of the Chair and Deputy Chair on selection panels for such offices be considered for future appointments.

The Chair stated that she shared this view.

The Premier explained that the difficulty was that the recent appointments of the Auditor-General and Chair of the Crime and Misconduct Commission only included the Chair of the relevant parliamentary committee on the selection panel. However, the Premier stated that he will further consider this matter.

Committee role regarding the Information Commissioner

The Chair noted that the committee had various functions with respect to the Ombudsman and would seek to have the same functions regarding the Information Commissioner now that the offices are separate.

The Premier advised that he supported the committee having the same functions with respect to the Information Commissioner as it has regarding the Ombudsman.

Protocols to avoid possible conflicts of interest

The Deputy Chair raised the issue of whether there were any protocols for situations where a family member of a statutory office holder is also a senior public servant. In particular, it was noted that the Information Commissioner will need to review decisions concerning the Department of Education and the Arts.

The Premier:

- stated that the committee should address such issues as part of its 'monitor and review' role;
- in any case, undertook to discuss with his Director-General the drafting of an appropriate protocol; and

- invited Miss Simpson to raise the issue in Parliament.

Time and date of next meeting:

To be held on Tuesday, 22 February 2005 at 1.00pm in room 5.04 of the Parliamentary Annexe.

Adjournment:

There being no further business, the meeting closed at 12.07 pm.

Confirmed this

day of

2005

Dr Lesley Clark MP
Chair