



## ETHICS COMMITTEE

### Report No. 119

#### *Matter of Privilege Referred by the Speaker on 12 October 2011 Relating to an 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 the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 16 June 2011.
2. The committee is established under section 102 of the POQA. Section 104C of the POQA provides that 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.
3. The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House, and inquires into and reviews other significant issues regarding parliamentary privilege.
4. The matter before the committee concerns an allegation by the Minister for Government Services, Building Industry and Information and Communication Technology, Hon Simon Finn that the Member for Mudgeeraba, Ms Ros Bates, deliberately misled the House on 2 August 2011.
5. In accordance with Standing Order 269, the Minister wrote to the Speaker on 8 August 2011, asking that the Speaker refer the matter to the committee.
6. Standing Order 269(5) provides that, in relation to the procedures for raising and considering complaints, the Speaker may request information from the member the subject of the complaint. Accordingly, the Speaker sought further information from the member regarding the Minister's complaint. The Speaker subsequently received a submission from the member on 7 September 2011.
7. On 12 October 2011, after examining the information before him, the Speaker referred the matter to the committee for its consideration.
8. The committee invited both parties to provide a supplementary submission to the committee. The committee received a submission from the Member for Mudgeeraba on 8 November 2011 and from the Minister on 15 November 2011.

## ***The referral***

9. On 12 October 2011, Speaker Mickel made the following statement in referring the matter of privilege to the committee:<sup>1</sup>

### **Matter 5—Hon Finn’s complaint against Ms Bates**

By letter dated 8 August 2011, Hon Finn wrote to me contending that Ms Bates deliberately misled the House on 2 August 2011 when referring to the removal of asbestos containing material at Mackay TAFE by stating as follows:

**Ms BATES:** To add insult to injury, on 13 July, in a cynical effort to cover his tracks, the minister instructed his department to issue this tender to remove the asbestos wall sheeting from A block in the very same area he personally declared safe and depicted in the exact same photographs I had previously tabled in Mackay, which I again table...

The Minister states that ‘At no time did I personally request the work to be done’.

In her response of 7 September 2011, Ms Bates argues that the tender for the removal of the asbestos wall sheeting from A Block was issued after she raised the matter in Parliament. However she does not present any evidence to support her statement that the Minister personally instructed the department to issue the tender.

On the face of the material before me, prima facie there is a suggestion that the first element of the contempt of deliberately misleading the House could be established in that the statement ‘the minister instructed his department to issue this tender’ may have been misleading.

Hon Finn also alleges that Ms Bates misled the House by further alleging that the Minister denied there were ongoing asbestos rectification works at Mackay TAFE by stating as follows:

**Ms BATES:** At the time I asked the minister to table the report which substantiated this claim that there was no asbestos present, which he failed to provide. If that is the case and everything is safe, why has a tender document gone out to replace all external asbestos sheeting from A block at Mackay TAFE?

In her response of 7 September 2011, Ms Bates argues that she did not say ‘that he denied there was going to be any ongoing asbestos work at Mackay TAFE’ and sought to clarify that her question was in relation to when—not if—will dangerous asbestos containing materials be replaced at that institution.

Again, on the face of the material before me, prima facie there is a suggestion that the first element of the contempt of deliberately misleading the House could be established in that the statement ‘I asked the minister to table the report which substantiated this claim that there was no asbestos present’ may have been misleading.

Hon Finn also alleges that Ms Bates misled the House by claiming he ‘reassured all by issuing a personal guarantee in a ministerial statement saying there was no asbestos contained in the material tested and there was no safety risks to students and staff’ by stating—‘I also table A block test results regarding external wall sheeting which came back positive’.

In her response of 7 September 2011, Ms Bates argues that the statements made in Parliament regarding these matters assuring the safety of the campus amount to personal guarantees.

It is clear from the transcript of the Minister’s statements at the regional sitting in Mackay that he did not use the term ‘personal guarantee’. Whether describing his statements as such is misleading is an arguable point.

Again, on the face of the material before me, prima facie there is a suggestion that the first element of the contempt of deliberately misleading the House could be established in that the statement ‘given a personal guarantee to the Mackay Parliament that material at Mackay TAFE did not contain asbestos’ may have been misleading.

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<sup>1</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 12 October 2011, at 3097.

Hon Finn further alleges that Ms Bates misled the House by claiming that a 'gerni mark' on the wall of A Block at the Mackay TAFE was proof of a breach in Workplace Health and Safety regulations by stating—'According to workplace health and safety regulations it is illegal to water blast asbestos material. It is not done under any circumstances as the practice is so dangerous there is a specific ban on water blasting asbestos containing materials'.

Both the Minister's and Ms Bates' letters seek to argue the facts of what occurred with respect to water blasting on the site.

However, Ms Bates' statement in the House merely states that to water blast asbestos material would be contrary to regulations.

No evidence has been put forward to contest the accuracy of such a statement.

On the face of the material before me, there is no clear evidence that demonstrates the first element of contempt, that is, that the statement 'According to workplace health and safety regulations it is illegal to water blast asbestos material. It is not done under any circumstances as the practice is so dangerous there is a specific ban on water blasting asbestos containing materials' was misleading, let alone the other two elements. However, I am satisfied that there are sufficient potentially incorrect or misleading statements in this matter, detailed above, for the matter to be referred to the Ethics Committee, so that appropriate further enquiries can be made.

#### **Matter 6—Ms Bates' complaint against Hon Finn**

By letter dated 23 August 2011, Ms Bates wrote to me contending that Hon Finn had deliberately misled the House on 4 August 2011 by alleging that the Minister made the following improper, inappropriate and factually incorrect statements:

'... the member for Mudgeeraba made serious but unfounded allegations.'

'The Member made a serious of allegations that are completely false.'

'The allegations of the member are completely untrue.'

'This is also completely untrue.'

These allegations of untruth in the Ministerial Statement of 4 August 2011 essentially all relate to the matter of privilege which Hon Finn subsequently raised with me in writing on 8 August 2011 (i.e., the matter raised in above).

While it would have been preferable for the Minister to raise this matter when matters of privilege are called for as opposed to using a Ministerial Statement, the Minister has followed the correct procedure in writing to the Speaker under Standing Order 269.

It would make a nonsense of the process of raising matters of privilege if every member who was the subject of an allegation of deliberate misleading raised another matter of privilege that the original allegation was also deliberately misleading.

In practical terms, the referral of the previous matter to the Ethics Committee means that the issues raised by Ms Bates will in effect also be determined.

#### ***The Minister's complaint***

10. In summary, the Minister's four allegations as outlined in correspondence to the Speaker on 8 August 2011 are listed below:
  - (a) that the Member misled the House by claiming that the Minister instructed his department to issue a tender by stating, 'to add insult to injury, on 13 July, in a cynical effort to cover his tracks, the Minister quietly instructed his department to issue this tender to remove the asbestos wall sheeting from A block in the very same area he personally declared safe and depicted in the exact same photographs I had previously tabled in Mackay, which I again table.';

- (b) that that Member misled the House by claiming that the Minister denied there were ongoing asbestos rectification works at Mackay TAFE by stating, 'At the time I asked the Minister to table the report which substantiated this claim that there was no asbestos present, which he failed to provide. If that is the case and everything is safe, why has a tender document gone out to replace all external asbestos sheeting from A block at Mackay TAFE?';
  - (c) that the Member misled the House by claiming that the Minister had given a personal guarantee to the Mackay Parliament that material at Mackay TAFE did not contain asbestos by stating, 'I also table A block test results regarding external wall sheeting, which came back positive.'; and
  - (d) that the Member misled the House by claiming a gerni mark on the wall of A Block at Mackay TAFE was proof of a breach in Workplace Health and Safety regulations by stating, 'According to workplace health and safety regulations, it is illegal to water blast asbestos material. It is not done under any circumstances as the practice is so dangerous and there is a specific ban on water blasting asbestos containing materials.'
11. The events leading up to the complaint involve ongoing debate in the House from 25 May 2011 until 4 August 2011 on the issue of asbestos at Mackay TAFE. To provide context to the matter before the committee, the relevant extracts from *Hansard* are included at **Appendix 1**.

### ***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.

### ***Nature of the contempt of deliberately misleading the House***

13. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (the Standing Orders) provide that the Legislative Assembly may treat deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) as a contempt.<sup>2</sup>
14. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House:
- First, the statement must, in fact, have been misleading;
  - Secondly, it must be established that the Member making the statement knew at the time the statement was made that it was incorrect; and
  - Thirdly, in making it, the Member must have intended to mislead the House.<sup>3</sup>
15. 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

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<sup>2</sup> Standing Order 266(2).

<sup>3</sup> McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

technically factually correct statement could also be misleading...” by, for example, the deliberate omission of relevant information.<sup>4</sup>

16. The *Code of Ethical Standards: Queensland Legislative Assembly* emphasises to members that “... misleading is a wider concept than making incorrect statements. A totally factually correct statement can still be misleading.”<sup>5</sup>
17. 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>6</sup>

### ***Establishing a prima facie case of possible contempt***

18. 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.
19. The committee found that it had sufficient material before it from all parties to deliberate on the matter. This material included both parties’ correspondence to the Speaker and supplementary submissions to the committee.
20. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are listed below.
  - Do the Member’s statements contain any apparent or proven factually incorrect matter?
  - Were any of the Member’s statements misleading?
  - (If yes), did the Member know at the time the statements were made that they were misleading, and was it the Member’s intention to mislead the House?

### ***Do the Member’s statements contain any apparent or proven factually incorrect matter?***

#### ***Statement (a)***

*To add insult to injury, on 13 July, in a cynical effort to cover his tracks, **the Minister quietly instructed his department to issue this tender** to remove the asbestos wall sheeting from A block in the very same area he personally declared safe and depicted in the exact same photographs I had previously tabled in Mackay, which I again table. [Emphasis added]*

21. The fact to establish in determining whether the Member’s statement contains any incorrect matter is as follows: did the Minister instruct his department to issue the tender?
22. The Minister, in his correspondence to the Speaker of 8 August 2011 stated, ‘I unequivocally deny the Member’s claim that I “quietly instructed” my department to issue a tender to remove asbestos wall sheeting at Mackay TAFE. At no time did I personally request the work to be undertaken’, and ‘the work was publically listed on an online register prior to the Member

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<sup>4</sup> MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 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, at 25.

<sup>6</sup> Note 8, at 654; MEPPC, *Report on a Matter of Privilege – The Alleged Misleading of the House by a Minister on 20 October 1998*, Report No. 27, Goprint, Brisbane, 1999 at 2.

raising the issue on 2 August.' The Minister substantiated his claim about when the work was listed on the register by tabling an extract of an asbestos register which he claimed was as of 9 May 2011.

23. The Member, in response argues in correspondence to the Speaker on 7 September 2011 that the tender for the removal of the asbestos wall sheeting from A Block was issued *after* she raised the matter in Parliament on 25 May 2011 indicated by the date of the document which Ms Bates tabled. The committee notes the document tabled was an invitation to offer dated 13 July 2011.
24. In further correspondence to the committee on 8 November 2011 the Member explains that her statement was also made with the assumption of the doctrine of responsible government whereby the instructions of a department to issue a tender amount to instructions of the relevant Minister.
25. Regardless of when the tender was issued, that the Member has not provided any evidence to date which may support a claim that the Minister personally instructed his department to issue the tender.
26. On the face of the material before the committee, the committee finds that the Member's statement that the 'Minister quietly instructed his department to issue a tender' is factually incorrect.

#### **Statement (b)**

***At the time I asked the Minister to table the report which substantiated this claim that there was no asbestos present, which he failed to provide. If that is the case and everything is safe, why has a tender document gone out to replace all external asbestos sheeting from A block at Mackay TAFE?*** [Emphasis added]

27. The Minister's complaint as outlined above, is that by making this statement, the Member claimed that he denied there were ongoing asbestos rectification works at Mackay TAFE.
28. In his correspondence to the Speaker of 8 August 2011 the Minister stated that, 'in the Mackay Parliament on 26 May I told the house that further works have been listed for A Block at Mackay TAFE.' The committee notes that the Minister's statement corresponds with *Hansard* records.<sup>7</sup>
29. Ms Bates refutes the Minister's complaint by stating in correspondence to the Speaker on 7 September 2011 that she did not say that the Minister denied there were ongoing works at Mackay TAFE and that her question was in relation to 'when—not if—will dangerous asbestos containing materials be replaced at that institution.'
30. It is difficult to substantiate the Minister's complaint from the subject statement. The committee notes that the *Hansard* records from 2 August 2011 indicate that the Member did not say that the Minister denied there were ongoing works listed for Mackay TAFE. The committee cannot, on the basis of the Minister's complaint, satisfy this element.

#### **Statement (c)**

***...reassured all by issuing a personal guarantee during a ministerial statement saying there was no asbestos contained in the material tested... I also table A block test results regarding external wall sheeting, which came back positive.*** [Emphasis added]

31. The fact to establish in determining whether the Member's statement contains any incorrect matter is as follows: did the Minister issue a personal guarantee?

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<sup>7</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 26 May 2011, at 1693.

32. The Minister, in his letter to the Speaker of 8 August 2011 refutes the Member's claim that he gave a 'personal guarantee' at the Mackay Parliament and stated that, 'this is completely untrue. Hansard records indicate that I stated my advice was that two cracks were found in pebble aggregate, exposing fibro sheeting and that these crack (sic) were sealed.'
33. In her submission to the Speaker on 7 September 2011 Ms Bates argues that the Minister's statements made in the House assuring the safety of the campus amount to personal guarantees. In her subsequent submission to the committee on 8 November 2011 Ms Bates stated that, 'in the absence of any evidence I took the Minister's statement [on 26 May 2011] to therefore represent his personal but mistaken guarantee as to the absence of asbestos.'
34. The committee notes that *Hansard* records from 26 May 2011 indicate that the Minister did not use the words 'personal guarantee' in statements made to the House.<sup>8</sup>
35. On the face of the material before the committee, the Member's statement that the Minister 'issued a personal guarantee' is factually incorrect.

#### **Statement (d)**

*According to workplace health and safety regulations it is illegal to water blast asbestos material*

36. The fact to establish in determining whether the Member's statement contains any incorrect matter is as follows: is it illegal to water blast asbestos material?
37. In his correspondence to the Speaker on 8 August 2011 the Minister claimed that, 'I informed the House on 4 August...' that the '...mark was made by a single overspray of a gerni cleaning the concrete wall below to the area referred to. The overspray occurred on aggregate coating, not on exposed asbestos as claimed by the Member' and further stated that, 'the Member for Mudgeeraba failed to provide any evidence to support her claim that a breach of WH&S regulations had occurred.'
38. Ms Bates in her correspondence to the Speaker on 7 September 2011 argues that, '... there is no concrete wall featured at that location. It is all fibro sheeting, containing asbestos material, covered by a thin coat of pebble aggregate.'
39. The Minister and the Member both argue the facts of what occurred with respect to water blasting on the site. Neither the Member nor the Minister alleged that the wall was directly gernied. Irrespective of what each party believed occurred at the site, the subject statement merely refers to the fact that it is illegal to water blast asbestos containing material, which would be contrary to the *Workplace Health and Safety Regulation 2008*.
40. On the face of the material before the committee, the committee finds that the Member's statement that 'it is illegal to water blast asbestos material' is merely restating the regulation and therefore it is factually correct.

#### **Were any of the Member's statements misleading?**

41. The committee acknowledges that while factually correct statements can also be misleading, it does not consider statements (b) and (d) to be misleading in this case and has therefore not addressed the second or third elements in relation to those statements.
42. On the face of the information before the committee, the committee considers that two of the Member's statements (statements (a) and (c)) contained factually incorrect matter. The issue to determine, is whether they are misleading.

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<sup>8</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 26 May 2011, at 1693.

### **Statement (a)**

43. Based on the information before the committee, it is clear to the committee that one reading the statement that the Minister 'quietly instructed his department to issue the tender' would acquire a false impression that the Minister had acted improperly by attempting to conceal the issue of the tender process in relation to the Mackay TAFE.
44. The committee notes that the Member has not provided any supporting evidence with her claim. In correspondence to the Speaker and to the committee in relation to this matter, Ms Bates argues, as outlined above, that because the Minister is responsible for the Department of Public Works, he personally instructed the tender to be issued. The committee considers that Ms Bates' argument is drawing a long bow with the doctrine of responsible government.
45. On the information before the committee, the committee finds that an unqualified statement of this nature is highly misleading.

### **Statement (c)**

46. A person reading the statement in its entirety, that the Minister 'reassured all by issuing a personal guarantee during a ministerial statement saying there was no asbestos contained in the material tested... I also table A block test results regarding external wall sheeting, which came back positive', may be falsely led to believe that the Minister did issue his personal guarantee which cannot be relied on.
47. The specific issue of whether a Minister's statement amounts to a personal guarantee is arguable. It is Ms Bates' position that an assurance of safety given by a Minister *is* a personal guarantee. Ms Bates states in correspondence to the Speaker on 7 September 2011 that 'I do not accept that these statements are not personal guarantees.'
48. The committee is of the view that it is more reasonable to suggest that a statement of personal guarantee would be specifically stated as such. As noted above, *Hansard* records indicate that the Minister did not use the words 'personal guarantee' in regards to the absence of asbestos.
49. On the information before the committee, the committee finds that the Member's statement that the Minister issued a 'personal guarantee' is misleading.

### **(If yes), did the Member know at the time the statements were made that they were misleading, and was it the Member's intention to mislead the House?**

50. Previous ethics committees have noted David McGee, the former Clerk of the New Zealand House of Representatives, in his book *Parliamentary Practice in New Zealand*,<sup>9</sup> has 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, while reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.
51. In correspondence to the committee on 15 November 2011 the Minister stated that, 'given the statements made by the Member for Mudgeeraba were made after my statements to the House and were also included in media releases by the Member on the same day, I can only conclude that the Member intended to mislead.'

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<sup>9</sup> McGee, D, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, at 653-655.



52. In relation to statement (a) in her submission to the committee of 8 November 2011 Ms Bates stated that, '...it was not my relevant intention at the time of making the statement or any time thereafter to mislead the House.'
53. Similarly, in relation to statement (c) in her submission to the committee of 8 November 2011 Ms Bates stated that, 'I relied upon this information [local contractors] in making all statements about the state of disrepair and danger occasioned by the asbestos at the subject site. My statements were not made with any intention to mislead the House at any time.'

### **Conclusions**

54. The committee considers that the Member acted recklessly in making unqualified statements. Such recklessness is deeply concerning to the committee. However, recklessness while reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House. In this case there was insufficient evidence before the committee to indicate an intention on the part of Ms Bates to mislead the House.
55. On the information before the committee, the committee finds that the Member for Mudgeeraba's statements to the House on 2 August 2011, included two statements ((a) and (c)) that were factually incorrect and misleading.
56. The committee accepts the Member's assurances that her statements were not intended to mislead the House. There is therefore no *prima facie* case of a breach of privilege or contempt and no finding of contempt.
57. The committee acknowledges through the members' *Code of Ethical Standards* that: 'Members may sometimes make incorrect or misleading statements in the House without actually intending to mislead the House. Recklessness by a member resulting in incorrect or misleading statements to the House is in itself a serious matter. Members have a duty to correct the official record in the House as soon as it becomes apparent that their statements were incorrect or could be misleading.'<sup>10</sup>

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<sup>10</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, at 25.

**Conclusion 1**

On the information before the committee, the committee finds that the Member made two statements to the House on 2 August 2011 which were factually incorrect and misleading.

**Conclusion 2**

On the information before the committee, the committee finds no *prima facie* case of breach of privilege or contempt and therefore no finding of contempt.

**Recommendation 1**

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

**Recommendation 2**

The committee strongly reminds all members of the privilege afforded to members in making statements in the House. This privilege needs to be balanced with the responsibility of members to refrain from acting recklessly by making unqualified statements.

**Recommendation 3**

The committee requests the Member for Mudgeeraba correct the record at the next opportunity and apologise to the House.

Mr Evan Moorhead MP  
**Chair**

December 2011

**Membership — 53rd Parliament**

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

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

Ms Grace Grace MP, *Member for Brisbane Central*

Mr Vaughan Johnson MP, *Member for Gregory*

Mr Mark Ryan MP, *Member for Morayfield*

Mr Peter Wellington MP, *Member for Nicklin*

**Secretariat**

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Ms Leanne Clare, *Research Director (from 31 October 2011)*

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25 May 2011

58. On 25 May 2011 the Member asked the Minister the following question without notice:<sup>11</sup>

**Ms BATES:** My question without notice is to the Minister for Government Services, Building Industry and Information and Communication Technology. I refer to the removal of asbestos in Mackay schools last year, which the former minister and member for Rockhampton admitted was inappropriate. I table photos taken yesterday of dangerous asbestos situations at the Mackay State High School and the Mackay TAFE.

Can the minister explain why, after the asbestos debacle in Mackay schools last year, those asbestos health risks still exist today in two local educational facilities here in Mackay?

59. In answering the question the Minister stated:

**Mr FINN:** I thank the honourable member for the question. At the outset, I would say that the issue of diseases related to asbestos is a very serious matter and that the profile of disease as a result of asbestos product has not yet peaked in this nation. It is a very serious issue. I am aware of the Mackay West State School issue. QBuild had a couple of jobs—

...

**Mr FINN:** At the Mackay West State School, QBuild was undertaking some work that involved a painting job and vinyl floor replacement. That work was done last year. One of the contractors for QBuild noticed some work he was concerned about in relation to the removal of asbestos. That person is a class A asbestos removalist. He is doing quite a bit of work in asbestos. Recently, he briefed QBuild on some proposals that he has for modern-day removal of asbestos. I welcome that work. Whilst he was at the school, he observed some work that he thought was not being done appropriately. He brought that matter to the attention of the QBuild regional staff and requested that it be investigated. He did some media on the matter as well.

The shadow minister quite rightly acknowledges that this matter was raised with the former minister in the portfolio that I now represent. What did the former minister do? The former minister referred it to the CMC. The CMC investigated the matters and made some recommendations to the department in relation to—

...

**Mr FINN:** The question relates to asbestos in schools and a matter in Mackay. The matters raised that were brought to this government's attention have been dealt with. They were referred to the CMC.

The CMC made recommendations regarding—

**Ms BATES:** I rise to a point of order. The question directly related to Mackay State High School and the Mackay TAFE, not Mackay West primary school.

...

60. During the second reading (cognate) debate on the *Work Health and Safety Bill*; *Safety in Recreational Water Activities Bill* the Member for Mudgeeraba made the following statements:<sup>12</sup>

...Today it is appropriate that I again bring to the attention of the House a very serious local issue in Mackay which is putting the students of both Mackay TAFE and Mackay State High School at risk of a daily dose of asbestos. Yesterday, I was shocked to visit these two educational facilities—

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<sup>11</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 25 May 2011, at 1623.

<sup>12</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 25 May 2011, at 1664-65.

Yesterday, as I said, I was shocked after visiting these two educational facilities in Mackay, where it is clear that QBuild and the Department of Public Works continue to ignore this deadly problem. At the Mackay TAFE there is an imminent risk of asbestos sheeting plummeting to the ground from metres above, where the sheets are dangerous and have been disregarded by contractors.

...

I again ask the minister today to urgently investigate the asbestos at the Mackay TAFE and the Mackay State High School not only for the students but for the workers involved in the removal of asbestos. ...

## 26 May 2011

61. In a Ministerial Statement on 26 May 2011 the Minister made the following statements:<sup>13</sup>

... Yesterday in the parliament the shadow minister for government services, building industry and ICT tabled photos that she claimed were evidence of unsafe asbestos situations at the Mackay TAFE and the Mackay State High School. The shadow minister also made media statements in which she claimed these were dangerous. The claims of the shadow minister are misleading and her statement simply advances fear on what is a very emotive issue.

This morning I visited both of the sites and inspected the areas contained in the photos tabled by the shadow minister. Firstly, in relation to the Mackay TAFE site, the section of the A block building in the photograph shows fibro sheeting coated by an exposed aggregate. The white marking on the wall circled in the photo is not crumbling aggregate or asbestos-containing material, as some may presume, but rather a gurney mark.

...

... QBuild inspections found two cracks in the aggregate in that area which exposed fibro sheeting, and these cracks have been sealed. It should be noted that there was no broken asbestos and it is not a safety risk to people on the TAFE site. There is no imminent risk of asbestos sheeting plummeting to the ground, as the shadow minister claimed in her statement. Further, there has been some rectification work on A block and continued work is listed for other parts of this block. This work was not undertaken—

...

There are some facts, however, that the shadow minister failed to advise the House. Most important of these is that the member assured the House during debate on the health and safety bill that the fibro sheets were definitely made from asbestos-containing materials. This was an assumption. The building photographed is an older building which has suffered wear and tear over many years. Recently one of the fibro sheets was broken and the material was subsequently tested and found to not contain asbestos. The tests came back negative. This does not mean that other product used in the building is not asbestos. What we do know is that the fibro panel from the same wall, presumably installed at the same time as all the other panels, tested negative for asbestos. Obviously when QBuild works with asbestos it treats any fibro sheeting like it may contain asbestos. So I do not say that there is no asbestos in the building, but a fibro panel from the same wall that the member photographed was found to be negative for asbestos.

...

## 2 August 2011

62. On 2 August 2011 in matters of public interest, the Member for Mudgeeraba made the following statements:<sup>14</sup>

... On 25 May when I first raised my now-proven claims about Mackay TAFE, I was accused by the minister for the building industry of being misleading and running a reckless scare campaign. The

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<sup>13</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 26 May 2011, at 1693.

<sup>14</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 2 August 2011, at 2234-35.

education minister also joined in the attack, calling me dishonest in the extreme and my claims offensive.

In response to my question without notice, the minister for the building industry quickly got on the front foot, personally inspecting the campus the very next day and reassured all by issuing a personal guarantee during a ministerial statement saying there was no asbestos contained in the material tested and there was no safety risk to students and staff. At the time I asked the minister to table the report which substantiated this claim that there was no asbestos present, which he failed to provide. If that is the case and everything is safe, why has a tender document gone out to replace all external asbestos sheeting from A block at Mackay TAFE? I table the tender.

I also table A block test results regarding external wall sheeting, which came back positive. I ask the minister to table his negative report. I also request the ID test number, including all the site photographs attached to that report.

In response to the photographs of A block I tabled during the regional sitting of parliament in Mackay, which featured suspicious looking marks on an external wall, in his trademark supercilious manner the minister said that it was not 'asbestos-containing material, as some may presume, but rather a gerni mark.' According to workplace health and safety regulations, it is illegal to water blast asbestos material. It is not done under any circumstances as the practice is so dangerous and there is a specific ban on water blasting asbestos containing materials.

...

To add insult to injury, on 13 July, in a cynical effort to cover his tracks, the minister quietly instructed his department to issue this tender to remove the asbestos wall sheeting from A block in the very same area he personally declared safe and depicted in the exact same photographs I had previously tabled in Mackay, which I again table.

#### **4 August 2011**

63. On 4 August 2011 the Minister made the following statements in the House:<sup>15</sup>

...On Tuesday the member for Mudgeeraba made a number of serious but unfounded allegations. The member spoke of the Mackay TAFE asbestos rectification works and falsely claimed an imminent danger from dangerous asbestos and included allegations of a cover-up. To be clear, asbestos is dangerous when fibres are exposed. There was no evidence of this at the Mackay TAFE. In fact, when asbestos-containing material was assessed it was given a BEMIR rating, which is the asbestos register rating, of 34. This means it can be managed in situ and poses a low hazard. The asbestos removal at Mackay TAFE was being undertaken under the Department of Education and Training's asbestos removal program. If there was dangerous asbestos it would have been removed immediately.

The member made a series of allegations that are completely false. First, the member claimed that I had quietly instructed my department to issue a tender to remove asbestos wall sheeting at Mackay TAFE. This is completely untrue. At no time did I personally request the work be undertaken. I can assure the House that all due process and procedures for tendering building rectification work were correctly followed.

The works currently being tendered for the Mackay TAFE were listed on the asbestos register BEMIR well before the Mackay sitting of parliament. The Department of Education and Training identified the work to be undertaken at the TAFE and had the building assessed and placed on the register. This information can be found on the Department of Education and Training's website, and I table an extract from the register as at 9 May.

The Department of Public Works was requested by DET to put the project out to tender as a priority job for the new financial year. To be clear, DET requested the work. The suggestion that I directed the tender is a complete fabrication. It is a serious allegation, however, and I will be writing to the Speaker requesting referral to the Ethics Committee.

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<sup>15</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 4 August 2011, at 2415.

Secondly, the member for Mudgeeraba claimed that I denied there were ongoing asbestos rectification works at Mackay TAFE. This is also completely untrue. I told the parliament on 26 May that further works had been listed for A block. Thirdly, the member also stated that I had given a personal guarantee to the Mackay sitting of parliament that material at Mackay TAFE did not contain asbestos. This is also completely untrue. *Hansard* records that I stated my advice was that two cracks were found in pebble aggregate, exposing fibro sheeting, and that these cracks were sealed.

Fourthly, the member for Mudgeeraba claimed that a gervi mark on the wall of A block of Mackay TAFE was proof of a breach of workplace health and safety regulations. That claim is also untrue. This mark was made by a single overspray of a gervi cleaning the concrete wall below the area referred to. The overspray occurred on aggregate coating, not on exposed asbestos as claimed by the member. The allegations of the member are completely untrue and I reject them out of hand.