

**ETHICS COMMITTEE****REPORT NO. 170****MATTER OF PRIVILEGE REFERRED BY THE TRANSPORTATION AND UTILITIES COMMITTEE ON 31 AUGUST 2016 RELATING TO AN 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. The matter in this report concerns an allegation that a person/persons unknown have made an unauthorised disclosure of a proceeding of the Transportation and Utilities Committee (TUC).
4. On 27 July 2016 at 9:52am, the Hon Stirling Hinchliffe MP, Minister for Transport and the Commonwealth Games (the Minister), emailed to the TUC parliamentary email address a document containing responses to the Questions on Notice asked by the members of the TUC as part of the estimates process, as required under Standing Order 182(3).
5. The TUC secretariat then emailed electronic copies of the document provided by the Minister to the personal and electorate office parliamentary email addresses of the members of the TUC at 10:50am on 27 July 2016, and the nominated officers of the Leader of the House and the Leader of the Opposition at 10:51am, on 27 July 2016.
6. On 27 July 2016 at 3:01pm, the Minister's office received a media enquiry from an ABC journalist concerning the answer provided by the Minister to the TUC to Question on Notice No. 13. The media enquiry was received by email and had attached a copy of the answer to the Question on Notice.

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

7. On 28 July 2016, the TUC received a letter from the Minister advising of the contact made by the ABC journalist and the potential for there having been an unauthorised release of the TUC's proceedings.
8. On 1 August 2016, the Chair of the TUC, Mr Shane King MP (the Chair), wrote to TUC members seeking a written response from each member on whether they were responsible for the disclosure, or if they were able to provide any information that could be of assistance in determining the source of the disclosure. Each member of the committee responded advising they were not responsible for the disclosure, nor were they able to provide any further information on the matter, except for the Member for Redlands whose response advising the same came from his Electorate Officer.
9. Having been unable to identify the source of the disclosure, on 4 August 2015, the TUC unanimously resolved the matter warranted further formal investigation by the Ethics Committee.
10. On 31 August 2016, the TUC unanimously resolved that the Chair should report to the House recommending that the matter be referred to the Ethics Committee, and the Chair subsequently rose in the House to refer the matter.

### **The referral**

11. On 31 August 2016, the Chair of the TUC made the following statement in the House:

*I rise as chair of the Transportation and Utilities Committee to report that the Transportation and Utilities Committee has: considered an unauthorised disclosure of confidential committee proceedings by persons unknown relating to the early publication of the Minister for Transport and Commonwealth Games's estimates prehearing answer to question on notice; and unanimously resolved to recommend that the matter be referred to the Ethics Committee as an apparent breach of standing order 211.<sup>2</sup>*

### **Committee Membership**

12. On 15 September 2016, the Speaker advised that in accordance with Standing Order 272 the Member for Logan would stand aside from consideration of this matter as he was a member of the TUC that referred the matter to the Ethics Committee, and that the Member for Townsville would replace the Member for Logan during the committee's consideration of this matter in accordance with Standing Order 272(2).

### **Definition of contempt**

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

### **Standing Order 211 – Unauthorised disclosure of a committee proceeding**

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

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

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<sup>2</sup> Queensland Parliament, Record of Proceedings, 31 August 2016, p 3197.

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

which includes

*(d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry.*

16. Standing Order 211 provides that:

*The proceedings of a portfolio committee, the Committee of the Legislative Assembly Committee or a select committee or a subcommittee of any of those committees that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported those proceedings to the House or otherwise published the proceedings.*

17. The Standing Order is one expression of a greater principle of parliamentary law and practice: the proceedings of parliamentary committees are confidential until the committee reports those proceedings to the House or otherwise orders their release or publication. This rule is designed to promote the better functioning of the committee process and to affirm that the House is entitled to the first advice of the conclusions of its committees.<sup>3</sup>

18. Previous Ethics Committees have stressed that “any unauthorised disclosure of committee proceedings represents an attack on the integrity of the Parliament”.<sup>4</sup>

19. In considering the matter referred to it, the committee had regard to the three elements to be established where it is alleged that a member has committed the contempt of unauthorised disclosure of committee proceedings:

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

*Element 1 – Was there disclosure of a committee proceeding?*

20. In considering this element, the committee noted that the POQA includes a ‘document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry’ as a proceeding of a committee.
21. The committee considered that the document containing the written responses to the TUC members’ Questions on Notice provided by the Minister was a document submitted to the TUC as part of the estimates process under Standing Order 182(3), and therefore, was a proceeding of the committee.
22. The committee also noted that the letter from the Chair of the TUC advised that the answers to the pre-hearing Questions on Notice were authorised to be published following the commencement of the TUC’s estimates hearing at 9:00am on 28 July 2016.
23. However, the letter of 28 July 2016 from the Minister to the TUC advised that the Minister’s office received a media enquiry from the ABC via email at 3:01pm on 27 July 2016 about the answer provided to the TUC to Question on Notice No. 13, and had attached a copy of the answered question on notice.

<sup>3</sup> McGee, D. *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington.

<sup>4</sup> Members’ Ethics and Parliamentary Privileges Committee (MEPPC), Report No. 42, *Report on a matter of privilege—Unauthorised release of correspondence between a committee and ministers*, Queensland Legislative Assembly, Brisbane, 2000 (tabled on 7 June 2000) p.1; MEPPC, Report No. 48, *Report on a Matter of Privilege—Unauthorised Disclosure of Committee Proceedings*, p. 2.

*Consideration*

24. The committee considered that, as the document provided by the Minister was a proceeding of the TUC, and that document appeared to have been provided to a third party external to the TUC leading to the ABC journalist's enquiry, there was a disclosure of a committee proceeding, and therefore the first element had been met.

*Element 2 – Was the disclosure unauthorised?*

25. As noted above, the committee noted that the letter from the Chair of the TUC advised that the answer to Question on Notice No. 13 was authorised to be published following the commencement of the TUC's estimates hearing at 9:00am on 28 July 2016.

*Consideration*

26. The committee considered that, on the information before the committee, there was no evidence that the TUC authorised the publication of the answers to the Questions on Notice prior to the TUC's estimates hearing on 28 July 2016.
27. Therefore, the committee considered the second element had been met.

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

28. The information provided by the Chair of the TUC made no particular reference as to whether the TUC believed the unauthorised disclosure amounted to an improper interference with the free exercise of the AEC's authority or functions, except to advise that the members of the TUC unanimously resolved the matter warranted further formal investigation by the committee.

*Consideration*

29. In its consideration of this element, the committee found that the unauthorised disclosure of a proceeding of the TUC was contrary to Standing Order 211, and therefore it would amount to an interference with the authority of the TUC and the Assembly in making such an order.
30. The committee then went on to consider whether the unauthorised disclosure of committee proceedings amounted to an improper interference with the TUC's authority in the circumstances.
31. There is no definition of 'improper' or 'improper conduct' in the *Parliament of Queensland Act 2001* or the Standing Orders.
32. 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.
33. 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 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].*

34. 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 consider the disclosure by a person/s unknown as inappropriate in discharging his/her duties, obligations and responsibilities.

35. The committee considered that a reasonable person with knowledge of the circumstances of the case would consider the premature release of the document was not a proper discharge of the duties, obligations and responsibilities of any person who had access to the document.
36. The committee then considered whether the improper interference was of such a nature as to require further investigation by the committee. In doing so, the committee had regard to Report No. 42 of the Members' Ethics and Parliamentary Privileges Committee (MEPPC), *Report On A Matter Of Privilege—Unauthorised Release Of Correspondence Between A Committee And Ministers*, in which the MEPPC recommended that the following procedure be followed for an unauthorised disclosure of a committee's proceedings:
  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.*
37. The committee noted the steps taken by the TUC to attempt to ascertain the source of the disclosure. Specifically, the Chair of the TUC wrote to members of the TUC seeking a written response from each member on whether they were responsible for the disclosure, or if they were able to provide any information that could be of assistance in determining the source of the disclosure. This process did not reveal the source of the disclosure.

38. The committee also considered the seriousness of the disclosure and whether it substantially interfered with the functioning of the TUC.
39. The committee considered that, while the answers to the Questions on Notice appear to have been published by a person unknown prior to the time the TUC had authorised publication, the answers were due to be, and were subsequently published as required by Standing Orders, the following morning on the TUC's website, making the information publicly available.
40. In addition, in accordance with the factors to be taken into account identified in MEPPC Report No. 42, the committee considered that the disclosure appeared to be an isolated occurrence, and that there was no evidence of a pattern of such disclosure relating to estimates proceedings.

### **Conclusion**

41. On the basis that the answers to the Questions on Notice were due to be, and were subsequently published, the following morning on the committee's website, making the information publicly available, and that the disclosure appeared to be an isolated occurrence, the committee considered that the unauthorised disclosure did not substantially interfere with the work of the TUC. Hence, in accordance with Standing Order 270(1)(a), the committee determined to dismiss the matter on the basis that this was not a matter that warranted further attention by the committee.
42. However, the committee noted a number of recent incidences in relation to unauthorised disclosures of committee material and resolved to write to all Members of Parliament in relation to this issue. A copy of the letter to members is at Appendix A.

#### **Conclusion 1**

**On the basis that the answers to the Questions on Notice were due to be, and were subsequently published, the following morning on the committee's website, making the information publicly available, and that the disclosure appeared to be an isolated occurrence, the committee considered that the unauthorised disclosure did not substantially interfere with the work of the TUC. Hence, in accordance with Standing Order 270(1)(a), the committee determined to dismiss the matter on the basis that this was not a matter that warranted further attention by the committee.**

#### **Recommendation 1**

**The committee recommends that the matter of privilege referred by the Transportation and Utilities Committee on 31 August 2016 relating to an alleged unauthorised disclosure of committee proceedings does not warrant the further attention of the House.**

#### **Committee Comment 1**

**However, the committee noted a number of recent incidences in relation to unauthorised disclosures of committee material and resolved to write to all Members of Parliament in relation to this issue. A copy of the letter to members is at Appendix A.**

Don Brown MP  
**Chair**

October 2016



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

Mr Don Brown MP, Chair  
*Member for Capalaba*

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

Mr Craig Crawford MP  
*Member for Barron River*

Mr Linus Power MP<sup>5</sup>  
*Member for Logan*

Mr Scott Stewart MP<sup>6</sup>  
*Member for Townsville*

Mr Jeff Seeney MP  
*Member for Callide*

Mr Trevor Watts MP  
*Member for Toowoomba North*

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<sup>5</sup> On 12 September 2016, the Member for Logan wrote to the Speaker advising of his intention to stand down from consideration of this matter in accordance with Standing Order 272(1).

<sup>6</sup> On 15 September 2016, the Speaker advised the committee that the Member for Townsville would replace the Member for Logan during consideration of this matter in accordance with Standing Order 272(2).

## Ethics Committee

## Ethics Committee

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Our Ref: 11.1.12

23 September 2016

«title\_» «first\_» «last\_»  
«electorate»  
«portfolio»  
«address\_»

Dear «salutation\_»

I write to you on behalf of the Ethics Committee in relation to an apparent increase in the number of unauthorised disclosures of committee proceedings in contravention of Standing Orders 211 and 211A.

Standing Order 211 provides that:

*The proceedings of a portfolio committee, the Committee of the Legislative Assembly Committee or a select committee or a subcommittee of any of those committees that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported those proceedings to the House or otherwise published the proceedings.*

Standing Order 211A provides that:

*The proceedings of the Parliamentary Crime and Corruption Committee and the Ethics Committee or a subcommittee of those committees that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported those proceedings to the House or otherwise published the proceedings.*

These Standing Orders are one expression of a greater principle of parliamentary law and practice: the proceedings of parliamentary committees are confidential until the committee reports those proceedings to the House or otherwise orders their release or publication. This rule is designed to promote the better functioning of the committee process and to affirm that the House is entitled to the first advice of the conclusions of its committees.

Previous Ethics Committees have stressed that "any unauthorised disclosure of committee proceedings represents an attack on the integrity of the Parliament".

The current Speaker also made a statement on this matter on 1 September 2016, and the Ethics Committee would also like to stress to all members the importance of adhering to these two Standing Orders.

Disregard of these Standing Orders has the potential for a member to be found to have committed a contempt of the Assembly under Standing Order 266, as well as being damaging to the reputation of the Parliament and the respect accorded to members by the community.

In considering any future referral of the unauthorised disclosures of committee proceedings, the Ethics Committee will take into consideration that this advice has been given to all members.

Yours faithfully



**Don Brown**  
Chair