



## ETHICS COMMITTEE

## REPORT NO. 171

**MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 15 SEPTEMBER 2016  
RELATING TO AN ALLEGED DELIBERATE MISLEADING OF THE TRANSPORTATION  
AND UTILITIES COMMITTEE****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 allegations that the Member for Glass House, Mr Andrew Powell MP (Member for Glass House) deliberately misled the Transportation and Utilities Committee (TUC) during the TUC Estimates hearing on 28 July 2016.
4. During the Estimates hearing, the following exchange took place (emphasis added):

**Mr POWELL:** ...Can the director-general detail what work has been done on the impact Cross River Rail will have during construction on rail freight paths through Brisbane, particularly the Exhibition line?

**Mr Scales:** For the benefit of the committee, this is on a 2013 basis. The business case for Cross River Rail was obviously completed by Building Queensland. Therefore, this graph might not relate to where we are in terms of the business case produced by BQ. As far as the impacts on the freight is concerned, that work when modelled would have been done by BQ as well in the business case.

**Mr POWELL:** Questions were put early on in estimates to the Deputy Premier and her staff regarding this and we were referred to the Minister for Transport and his staff and now we have been referred back to the Deputy Premier and Building Queensland; is that correct?

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

**Mr Scales:** I am saying that the work was done by Building Queensland as part of the government's policy.

**Mr POWELL:** Can someone please decide who has done the work. It would certainly assist us in asking—

**CHAIR:** The director-general is answering the question you asked.

**Mr Scales:** Anything over \$100 million is referred to Building Queensland.

**Mr POWELL:** Clearly someone has misled the estimates hearing.

**CHAIR:** The director-general is not able to answer that question.

**Mr POWELL:** I not suggesting the director-general has, but the Deputy Premier when asked several questions along these lines—

**CHAIR:** You can surmise what you will out of it.

**Mr POWELL:** I think you have surmised, too, Chair.

**CHAIR:** I have not surmised anything.

**Mr POWELL:** We were directed to ask these questions of the Department of Transport and Main Roads and now that we are we are being redirected back to Building Queensland.

**CHAIR:** Do you have another question?

**Mr POWELL:** Thank you, I will leave it for now.<sup>2</sup>

5. In accordance with Standing Order 269, on 5 August 2016 the Deputy Premier, Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment, Hon Jackie Trad MP (Deputy Premier) wrote to the Speaker alleging that the Member for Glass House had deliberately misled the Parliament during the estimates hearing on 28 July 2016 in his comment regarding the Deputy Premier referring questions about the Cross River Rail project to the Minister for Transport, and subsequently making reference to someone having misled the TUC.
6. After examining the information before him, the Speaker made a ruling on the Matter of Privilege raised by the Deputy Premier, referring the matter to the committee.

### The referral

7. On 15 September 2016, the Speaker made the following statement in the House:

**Mr SPEAKER:** Honourable members, on 5 August 2016 the Deputy Premier, Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment wrote to me alleging that the member for Glass House deliberately misled parliament during the estimates hearing on 28 July 2016 after asking a question about the Cross River Rail project when he stated—

*Questions were put early on in estimates to the Deputy Premier and her staff regarding this and we were referred to the Minister for Transport and his staff and now we have been referred back to the Deputy Premier and Building Queensland; is that correct?*

*In her letter to me the Deputy Premier contended that the statement made by the member for Glass House was deliberately misleading because she did not refer any questions about the Cross River Rail project to the Minister for Transport and Main Roads during her estimates hearing, at which he was in attendance, and therefore there was a prima facie case that the statement made by the member for Glass House was deliberately misleading. I sought further information from the member for Glass House about the allegations made against him in accordance with standing order 269(5). The member for Glass House disputed the Deputy Premier's allegation and*

<sup>2</sup> Legislative Assembly of Queensland, Estimates Record of Proceedings, 28 July 2016, p.52.

*contended that his statement was a logical extension of the principles the Deputy Premier had previously outlined regarding ministerial project responsibility for the Townsville Eastern Access Rail Corridor and that it was his intention to highlight the ambiguity in responsibility for the Cross River Rail project.*

*Standing order 269(4) requires me to take account of the degree of importance of the matter which has been raised and whether an adequate apology or explanation has been made in respect of the matter. On the information before me, I am of the view that there are sufficient arguments with respect to the elements of the contempt and that further examination of questions of fact is required to determine the matter. I also note that the member has declined the opportunity to correct the record. Accordingly, I have decided to refer the matter to the Ethics Committee. In doing so, I wish to emphasise that I have formed no view as to whether there has been a breach of privilege but rather that there are sufficient issues in play to warrant the further consideration of the House via the committee. I remind members that standing order 271 now applies and members should not refer to this matter in the House.*

### Committee proceedings

8. 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.
9. Following the referral by the Speaker, the committee invited the Member for Glass House and the Deputy Premier to provide further information on the alleged contempt of deliberately misleading the House. The Member for Glass House provided a short submission on 10 November 2016. The Deputy Premier did not respond.
10. The committee considered that it had sufficient material before it to deliberate on the allegations.

### Definition of contempt

11. 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.*

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

*Deliberately misleading the House or a committee (by way of submission, statement, evidence or petition).<sup>3</sup>*
13. David McGee, in *Parliamentary Practice in New Zealand*, states that deliberately misleading the House or a committee 'consists of the conveying of information to the House or a committee that is inaccurate in a material particular and which the person conveying the information knew at the time was inaccurate or at least ought to have known was inaccurate'.<sup>4</sup>

<sup>3</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>4</sup> McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653.

14. Previous ethics committees, and David McGee, 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>5</sup>
15. The committee applied the three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House:
  - firstly, the statement must, in fact, have been misleading
  - secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect, and
  - thirdly, in making it, the member must have intended to mislead the House.<sup>6</sup>

Element 1 – Was the Member for Glass House’s statement misleading?

16. The first limb of this element is whether the person’s statement contained factually or apparently incorrect material.
17. The committee considered the statement in question was ‘Questions were put early on in estimates to the Deputy Premier and her staff regarding this and we were referred to the Minister for Transport and his staff and now we have been referred back to the Deputy Premier and Building Queensland; is that correct?’.
18. In her letter to Mr Speaker of 5 August 2016, the Deputy Premier contended that the statement made by the Member for Glass House was untrue. The Deputy Premier stated that:

*An inspection of the record of my estimates hearing will confirm that at no stage did I refer any questions regarding Cross River Rail project to the Minister for Transport and Main Roads and the subsequent assertion that I had misled the House through my answers is therefore untrue.*

19. In his response to the allegation, the Member for Glass House referred Mr Speaker to an extract of the Hansard transcript from the Estimates hearing of the Infrastructure, Natural Resources and Planning Committee on 20 July 2016 (emphasis added by the Member for Glass House):

**Ms TRAD:** *Mr Chair, I thank the member for Nanango for the question and I will repeat myself so that she is clear. The Department of Transport and Main Roads is the responsible portfolio agency in relation to TEARC. They have provided \$3 million to get the business case up and running and are seeking assistance from the federal government to progress—*

**Mrs FRECKLINGTON:** *I will refer you back to your glossy document where it is clearly, as you stated before, within your ambit.*

**Ms TRAD:** *Yes, Building Queensland is an agency that is under my area of responsibility, and they are commencing the preliminary evaluation phase. For the benefit of the member for Nanango, this is a process that needs to be gone through before a detailed business case, which is a significant cost. As the member might be aware because of a response from the CEO of Building Queensland to a question that she put to him earlier, business cases are costly and before agencies embark on business cases a preliminary evaluation must be developed. That evaluation is being undertaken by the agency under my portfolio responsibility, Building Queensland.*

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<sup>5</sup> McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

<sup>6</sup> McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653-655.

Funding is in the DTMR budget under the transport systems planning budget, and I refer the shadow infrastructure minister to that SDS.

20. The committee noted the question asked by the Member for Nanango that led to the Deputy Premier's response above, which was as follows:

*Mrs FRECKLINGTON: When will the business case for the Townsville eastern access corridor be released? You have no funding in your budget for it. You have just said it is such a priority project for you. Why did you not put any funding in your budget for this—in your words—very important project for Queensland?*

21. Hence, the Member for Nanango was specifically asking about the TEARC project when the Deputy Premier gave her response referring to the Department of Transport and Main Roads.

22. The Member for Glass House went on to argue that:

*The Deputy Premier's allegation goes to the heart of the confusion within the community, indeed, within the government, surrounding which Minister is responsible for the Cross River Rail project.*

*Cross River Rail is mentioned nine times in the 2016/17 Transport and Main Roads Service Delivery Statement (TMR SDS) and \$50 million worth of funding for Cross River Rail is listed as a key program on page 3.*

*As the Deputy Premier outlined in her estimates hearing, the funding for the Townsville Eastern Access Rail Corridor is within the Department of Transport and Main Roads and therefore a responsibility of the Minister for Transport and the Commonwealth Games. I believe it is logical to extend this principle for the Cross River Rail project which is funded by the Department of Transport and Main Roads and referenced in the TMR SDS.*

*I note the government announced the establishment of Cross River Rail Delivery Authority and at the point of commencement the Deputy Premier will take full responsibility for the Cross River Rail project.*

*As the Authority has not yet been established, the division of responsibility for Cross River Rail remains ambiguous.*

*I believe my statement was not misleading as it was a logical extension of the principles the Deputy Premier has previously outlined regarding Ministerial project responsibility.*

23. In the exchange during the estimates hearing on 28 July 2016, the Member for Glass House stated that the Deputy Premier and her staff were asked questions regarding 'this' on 20 July 2016 and that members were referred to the Minister for Transport and his staff.
24. This statement was made following the Member for Glass House's question, which specifically related to the impact of construction of the Cross River Rail project on rail freight paths through Brisbane.
25. While the Member for Glass House argued that he was extending the principles from the TEARC project to the Cross River Rail project, the committee considered that the statement, on the face of it, appeared to be made in the context of the Cross River Rail project.
26. Accordingly, the committee considered the statement was factually incorrect as the Deputy Premier's response to the Member for Nanango's question regarding asking the Minister for Transport was in relation to the TEARC project, not the Cross River Rail project.
27. The second limb of this first element is whether the statement itself was misleading.
28. The committee considered that a reasonable person could have been misled by the Member for Glass House's statement that members at the Infrastructure, Natural Resources and Planning Committee's estimates hearing had been referred to the Minister for Transport on 'this', as the statement appears to refer to the Cross River Rail project, while the original referral to the Minister for Transport had actually been made in relation to the TEARC project.

*Consideration*

29. On the balance of probabilities, the committee considered that the first element had been met as the statement was factually incorrect and a reasonable person could have found the statement to be misleading.

Element 2 - Did the Member for Glass House know at the time he made the statement it was misleading?

30. In her letter to Mr Speaker, the Deputy Premier stated that:

*I submit that the Member knew that the statements he was making were incorrect as he had attended my estimates hearing in person as an observer and participant in certain sections. The Member therefore would have been personally aware of the proceedings and would have known that his statements were incorrect.*

31. In his letter of response to Mr Speaker, the Member for Glass House reiterated that he believed his statement to be true 'based on a logical extension of the facts and the Deputy Premier's previous comment'.

32. The Member for Glass House also stated in his submission:

*I concede the wording of my statement could have been clearer to recognise the reference to the Deputy Premier's previous comments about project funding. I did not intend my statement to the Estimates hearing to be misleading, I was attempting to highlight the ambiguity in responsibility for the Cross River Rail project.*

*Consideration*

33. On the evidence available, the committee considered that the Member for Glass House should have known that his statement did not reflect the context of the Deputy Premier's response to the Member for Nanango's question, given the Member for Glass House had been in attendance at both hearings and should have been aware of the context in which the Deputy Premier's statement was made.
34. However, the committee also noted that the Member for Glass House contended that he was extending the principles that the Deputy Premier had previously outlined regarding Ministerial project responsibility and conceded that the wording of his statement could have been clearer to recognise the reference to the Deputy Premier's previous comments about project funding.
35. In addition, the committee took into account the Member for Glass House's written submission that at the time of making the statements that form the basis of the referral he believed them to be true.
36. On the information before the committee, the committee considered that on the balance of probabilities the Member for Glass House did not know that his statements were misleading at the time he made them as his statements appear to have been following his line of thinking about project responsibility following the Director-General's response, rather than a direct follow-on from his initial question. Therefore, the committee considered the second element had not been met.

Element 3 - If yes, did the Member for Glass House intend to mislead the House?

37. David McGee in Parliamentary Practice in New Zealand states that for a misleading of the House to be deliberate:

*...there must be something in the nature of the incorrect statement that indicates an intention to mislead. Remarks made off the cuff in debate can rarely fall into this category, nor can matters about which the member can be aware only in an official capacity. But where the member can be assumed to have personal knowledge of the stated facts and made the statement in a*

*situation of some formality (for example, by way of personal explanation), a presumption of an intention to mislead the House will more readily arise.<sup>7</sup>*

38. The committee noted that the Member for Glass House's statement was made in response to the answer given by the Deputy Premier as part of the estimates hearing, and therefore considered that the statement could not be described as a statement given in a situation of some formality.
39. However, the committee also noted that the Member for Glass House should have had personal knowledge of the facts as he had attended the estimates hearing on 20 July 2016 when the exchange between the Deputy Premier and the Member for Nanango took place.
40. The Deputy Premier submitted in her letter that 'the Member intended to mislead the house by deliberately making a statement that he knew to be untrue and using it to make a political argument by claiming that I had misled the House through my answer'.
41. As mentioned in the consideration of the previous element, the Member for Glass House stated that:

*I concede the wording of my statement could have been clearer to recognise the reference to the Deputy Premier's previous comments about project funding. I did not intend my statement to the Estimates hearing to be misleading, I was attempting to highlight the ambiguity in responsibility for the Cross River Rail project.*

#### **Consideration**

42. The committee considered that while the Member for Glass House had personal knowledge of the facts, there was no evidence that the Member for Glass House intended to mislead the committee.
43. The committee therefore found that the third element had not been met.

#### **Conclusion**

44. Having considered all the evidence before the committee, it finds that on the balance of probabilities the Member for Glass House did not know that his statements were misleading at the time he made them, and therefore there is no evidence the Member for Glass House intended to mislead the TUC, and therefore does not recommend a finding of contempt.
45. However, as incorrect statements were made, the committee recommends the Member for Glass House make a brief statement, at the next possible opportunity, correcting the record in the House.

#### **Committee Comment**

46. As part of the committee's consideration of the matter, it considered the contempt of deliberately misleading the House in the context of parliamentary privilege and a member's right to free speech and where the two concepts intersect.
47. The committee noted that in Queensland, parliamentary privilege generally refers to two parts of the law relating to Parliament:
  1. the privileges and immunities relating to the Legislative Assembly and its committees, and
  2. the powers of the Legislative Assembly to regulate itself to allow for the free performance of its functions and to protect itself, particularly through its power to punish contempts.
48. The main privilege or immunity of Parliament is that set out in Article 9 of the *Bill of Rights (UK)*:

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<sup>7</sup> McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

*That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.<sup>8</sup>*

49. Article 9 is part of the law of Queensland and is elucidated by section 8 of the POQA.<sup>9</sup> Section 9(1) of the POQA sets out matters included in proceedings in the Assembly which are unable to be 'impeached or questioned':
- (1) *"Proceedings in the Assembly" include 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.*
50. Hence the committee acknowledged in its considerations that a member's right to freedom of speech is an important privilege which enables the House to function properly.
51. However, the committee also acknowledged that while the POQA confirms the exemption of members from legal action stemming from what they say during proceedings, it does not exempt them from their responsibility to appropriately exercise that right. If members' freedom of speech is to be respected by the community, then members must exercise responsibility when they draw on that privilege, that is, the privilege needs to be balanced with the responsibility of members to ensure the accuracy and clarity of their statements in the House, to avoid making potentially misleading statements.
52. The committee wishes to remind all members that they are 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 or dignity. In so doing, members need to balance the privilege afforded to them in making statements in the House with the responsibility to take care in making statements in the House.
53. At the same time, a statement made in the Assembly or its committees which might be considered misleading does not necessarily amount to a contempt.
54. The committee is of the view that it is regrettable that a matter such as the subject of this report has come before the Ethics Committee.
55. The committee wishes to remind all members that in making an allegation against another member of deliberately misleading the House or its committees they need to substantiate their allegations against the elements of the contempt of deliberately misleading. In particular, for the Ethics Committee to make a finding of contempt it would need to be presented with evidence to satisfy the second and third elements that the member knew the statement to be incorrect at the time and intended to mislead the House.
56. The committee wishes to reiterate the statement made by the Speaker on 16 February 2016 of the need for members making allegations of contempt to substantiate their allegation.
57. The Speaker noted, and the committee agrees, that an allegation of contempt is a serious matter, and making unsubstantiated allegations may not only bring the member making the allegation into disrepute but also harm the reputations of others and bring the House generally into disrepute.
58. In addition, the committee wishes to re-enforce the statement made by the Speaker on 15 September 2016 reminding members that Standing Order 269(4) requires the Speaker considering whether a matter should be referred to this committee to take into account whether an adequate explanation or apology has been made.
59. Mr Speaker warned that if members who make incorrect or misleading statements in the House or committee fail to correct the record, then Mr Speaker has little option but to refer those matters to this committee in accordance with Standing Order 269. The committee encourages members to provide an

<sup>8</sup> <http://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction>

<sup>9</sup> This was previously included in the now repealed *Parliamentary Papers Act 1992*.



explanation or apology to the House if they become aware that their statement was, or had the potential to be, misleading in order to avoid an unnecessary referral to the committee.

**Conclusion**

Having considered all the evidence before the committee, it finds that on the balance of probabilities the Member for Glass House did not know that his statements were misleading at the time he made them, and therefore there is no evidence the Member for Glass House intended to mislead the Transportation and Utilities Committee.

**Recommendation 1**

The committee recommends no finding of contempt be made against the Member for Glass House and that the House take no further action in relation to this allegation.

**Recommendation 2**

The committee recommends that the Member for Glass House make a brief statement, at the next possible opportunity, to correct the record in the House.

**Committee Comment**

The committee wishes to remind all members that in making an allegation against another member of deliberately misleading the House or its committees they need to substantiate their allegations against the elements of the contempt of deliberately misleading. In particular, for the Ethics Committee to make a finding of contempt it would need to be presented with evidence to satisfy the second and third elements that the member knew the statement to be incorrect at the time and intended to mislead the House.

The committee wishes to remind all members that in making an allegation against another member of deliberately misleading the House or its committees they need to substantiate their allegations against the elements of the contempt of deliberately misleading.

The committee wishes to reiterate the statement made by the Speaker on 16 February 2016 of the need for members making allegations of contempt to substantiate their allegation.

In addition, the committee wishes to re-enforce the statement made by the Speaker on 15 September 2016 reminding members that Standing Order 269(4) requires the Speaker considering whether a matter should be referred to this committee to take into account whether an adequate explanation or apology has been made.

The committee encourages members to provide an explanation or apology to the House if they become aware that their statement was, or had the potential to be, misleading in order to avoid an unnecessary referral to the committee.



Don Brown MP

**Chair**

December 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 Duncan Pegg MP<sup>10</sup>  
*Member for Stretton*

Mr Jeff Seeney MP  
*Member for Callide*

Mr Trevor Watts MP  
*Member for Toowoomba North*

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<sup>10</sup> On 29 November 2016, the Member for Stretton, replaced the Member for Logan as member of the committee.