



## ETHICS COMMITTEE

### Report No. 167

# MATTERS OF PRIVILEGE REFERRED BY THE SPEAKER ON 17 MARCH 2016 RELATING TO AN ALLEGED THREATENING AND DISADVANTAGING OF A MEMBER AND ON 21 APRIL 2016 RELATING TO AN ALLEGED INTIMIDATION AND THREATENING OF A MEMBER AND AN ALLEGED DELIBERATE MISLEADING OF THE HOUSE

## Introduction

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 18 February 2016.
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 matters in this report concern allegations of:
  - i. the Deputy Premier, Minister for Infrastructure, Local Government and Planning, Minister for Trade and Investment and Member for South Brisbane, Hon Jackie Trad (Member for South Brisbane) threatening and disadvantaging the Member for Cairns, Mr Rob Pyne (Member for Cairns);
  - ii. the Minister for Housing and Public Works and Member for Springwood, Hon Mick de Brenni (Member for Springwood) intimidating and threatening the Member for Cairns; and
  - iii. the Member for Cairns deliberately misleading the House.
4. This report has been divided into three parts to address each of the three allegations.

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

## Background

5. Between 15 December 2015 and 23 February 2016, Mr Jason Ward, a colleague of the Member for Cairns, corresponded with the Treasurer, the Clerk of the Parliament and the Speaker regarding allegations that the members for South Brisbane and Springwood threatened, intimidated and bullied the Member for Cairns. Mr Ward was advised that there is no procedure for the Speaker to accept and consider complaints directly from the members of the public.
6. However, the correspondence culminated in Mr Ward writing to the Speaker on 23 February 2016 with a statutory declaration regarding his allegations and supporting documentation stating that the Member for Cairns had been "threatened and disadvantaged" due to his plan to table documents and make a personal explanation.
7. On 10 March 2016, the Speaker wrote to Mr Ward again advising that there is no procedure for the Speaker to accept and consider complaints directly from the members of the public. The Speaker also noted that most of the matters were based on hearsay or Mr Ward's suppositions based on his observations, and that he would not be referring the matter to the Ethics Committee.
8. On 15 March 2016, the Member for Cairns tabled in the House the statutory declaration and supporting documentation sent by Mr Ward to the Speaker on 23 February 2016.
9. On 17 March 2016, the Member for South Brisbane raised a Matter of Privilege in the Legislative Assembly, requesting that the Speaker refer the matter to the Ethics Committee to be investigated. The Speaker then ruled that it be referred to the committee.
10. Subsequent to the Speaker's referral, the Member for Cairns rose in the House and tabled correspondence on two matters of privilege on 19 April 2016. The Member for Cairns stated:

*On 17 March a matter of privilege was referred to the Ethics Committee and I am not speaking about that issue. Section 266 of the standing orders gives a clear definition and, in fact, for clarity, lists examples of contempt of the Assembly. Yet this is exactly the behaviour that has gone on here. What I have experienced is covered by no fewer than seven of the examples, including but not limited to assaulting, intimidating or obstructing a member in the discharge of the member's duty and obstructing a member coming to or going from the House.*

*Mr Speaker, I ask that you refer this matter in its entirety to the Ethics Committee so that the member for South Brisbane and the member for Springwood are allowed procedural fairness. The standard we walk past is the standard we accept and this is not acceptable in any workplace.*
11. That afternoon, the Speaker made a Speaker's Ruling regarding the Member for Cairns' statement and tabling of documents that morning. The Speaker ruled that all three documents that the member for Cairns sought to table referred to the matter that was currently before the Ethics Committee and the tabling of those documents would breach standing order 271. The Speaker also ruled that those documents no longer be considered tabled and any reference to them in the Record of Proceedings and the Tabled Papers database be removed, and advised that he would forward a copy of the correspondence that the member sought to table to the Ethics Committee for its deliberation.
12. The Speaker advised the House that, with respect to the allegations regarding the Member for Springwood, he would consider them in accordance with standing order 269 and report back to the House in due course.

13. That evening, the Member for Cairns rose again on a Matter of Privilege, stating "I unreservedly apologise to the House for this mistake in potentially breaching section 271 by seeking to table documents that contained information previously provided in this place".
14. Following this statement, the Speaker advised the House "Members, as a result of the member for Cairns' prompt and unreserved apology, I will now vacate my earlier referral of the member to the Ethics Committee".
15. On 20 April 2016, the Member for South Brisbane wrote to Mr Speaker alleging that the Member for Cairns had deliberately misled the House via "inaccuracies" contained in the documents he had tabled (and that were subsequently withdrawn from being tabled by the Speaker), and which the Speaker had advised he would be providing to the Ethics Committee as part of its consideration of the matter.
16. On 21 April 2016, the Speaker followed up his ruling of 19 April 2016, advising the House he was referring both the Member for Springwood and the Member for Cairns to the Ethics Committee.
17. On 12 May 2016, legal representatives for the Member for Springwood wrote to the Chair of the Committee in reference to the complaint made by the Member for Cairns. The letter submitted that the matter "ought to be disposed of summarily" on the basis that "The complaints are objectively trivial, vexatious, at times overly technical and some have no basis in fact...".

### The referrals

18. On 17 March 2016, the Speaker rose in the House and made the following Speaker's Ruling:

*Honourable members, this morning I received correspondence from the Deputy Premier in relation to a statutory declaration by Mr Jason Ward tabled by the member for Cairns. The Deputy Premier requested that I refer the allegations of intimidation and improper conduct by her towards the member to the Ethics Committee.*

*Honourable members, the material tabled by the member for Cairns had been forwarded to me by Mr Ward some time ago. I sought Mr Ward's consent to me raising the matters referred to in his correspondence with the member for Cairns. Mr Ward refused and to date the member for Cairns has not raised any of these matters with me.*

*I note that there is no procedure for the Speaker to accept and consider complaints about matters of privilege directly from members of the public. Speakers have long held that a complaint must be made by a member of the House. That being said, after reviewing Mr Ward's material I note that most of the serious matters alleged were based on hearsay—that is, Mr Ward was not a party to the relevant conversations, but was restating matters he had allegedly been told, and some of the matters alleged were based on supposition based on his observations. I informed Mr Ward that in all the circumstances I intended to take no further action in relation to the matter.*

*I stress that if a member of parliament wants to raise any matter with me they are free to approach me directly. I received no such approach. I would normally not refer a matter raised in such an unorthodox manner—that is, the tabling of hearsay allegations. That is, in effect, a complaint of privilege by proxy. However, now that I have been asked by the Deputy Premier to refer the allegations I have decided to refer the matter to the Ethics Committee.*

19. On 21 April, the Speaker rose in the House and made the following Speaker's Ruling:

*Honourable members, on 19 April the member for Cairns sought to table documents in the House which led to subsequent rulings by me on that day. The documents that the member for Cairns sought to table included letters to me making formal allegations of contempt regarding the member for South Brisbane and the member for Springwood. In my first ruling in relation to these matters on 19 April I advised that I will forward a copy of the correspondence in relation to the allegations about the conduct of the member for South Brisbane to the Ethics Committee for that committee to consider in relation to a matter already before that committee. I also advised that, in respect of the allegations regarding the member for Springwood, I will consider them in accordance with standing order 269 and report back to the House.*

*I have now considered the allegations made by the member for Cairns regarding the member for Springwood and I have decided that, as these allegations will require examination of questions of fact and as the allegations are so closely linked with the matter regarding the member for South Brisbane already before the Ethics Committee, the allegations should be referred to the Ethics Committee for their consideration.*

*On 20 April this year, the Deputy Premier and member for South Brisbane wrote to me regarding the comments made by the member for Cairns in the House on 19 April this year. In her letter the Deputy Premier has made an allegation that the documents sought to be tabled by the member for Cairns contain inaccuracies that could constitute a deliberate misleading of the House by the member for Cairns. Again, as that allegation will require examination of questions of fact and as the allegation is so closely linked with the matter already before the Ethics Committee, I have decided to also refer that matter to the Ethics Committee. In relation to both of these referrals, I emphasise that I have formed no view as to whether there has, in fact, been a breach of privilege or contempt, but rather that there are sufficient issues in play to warrant the further attention of the House via the committee.*

*In relation to the referral of the member for Cairns, I make it clear that this referral is not in respect of the breach of standing order 271, which was dealt with by the member's apology and my vacating of that referral.*

### **Committee Membership**

20. On 20 April 2016, the Speaker advised that in accordance with Standing Order 272 the members for Capalaba (Chair), Barron River and Logan were excluding themselves from consideration of these matters.
21. The Speaker appointed the Member for Ferny Grove as a replacement for the Member for Capalaba as Chair, and appointed the members for Nudgee and Thuringowa as replacements for the members for Barron River and Logan during the committee's consideration of this matter in accordance with Standing Order 272(2).

### **Definition of contempt**

22. 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.

## PART ONE – THREATENING AND DISADVANTAGING A MEMBER

*Nature of the contempts*

23. The Member for Cairns alleged the Member for South Brisbane committed the following contempts under the Standing Orders:

1. *assaulting, threatening or intimidating a member or an officer of the House acting in the discharge of the member's or the officer's duty (SO 266(9));*
2. *assaulting, threatening or disadvantaging a member on account of the member's conduct in the House or a committee (SO 266(17)); and*
3. *assaulting, obstructing or insulting a member coming to or going from the House or a Committee proceeding (SO 266(19)).*

24. David McGee in *Parliamentary Practice in New Zealand* states<sup>2</sup>:

*The House regards as most serious any improper attempt to prevent, dissuade or inhibit anyone (member, officer witness or petitioner) from participating fully in its proceedings.*

...

*Interferences or obstructions of members or officers may be overt or covert: consisting of an assault, a threat or other form of intimidation or otherwise of an obstructing or molesting of a member or officer.*

*Conduct not amounting to a direct attempt to improperly influence Members in the discharge of their duties, but having a tendency to impair their independence in the future performance of their duties may be treated as a contempt. In any case, if the action occurs in the discharge of the member's or officer's duties, it may be treated as a contempt.*

25. The former Select Committee of Privileges of the Queensland Parliament noted in its report on the alleged intimidation of a member, that the tendency to impair independence "is not to be merely coincidental. It must be precisely what the person accused of contempt intended by their conduct."<sup>3</sup>

26. The Privileges Committee also stated that:

*It is important to note that merely attempting to intimidate or threaten is of itself not necessarily a breach of privilege. The alleged threat or attempted intimidation are a contempt only if they constitute "improper means to influence Members in their parliamentary conduct".<sup>4</sup>*

**Background to the alleged contempts**

27. In his statutory declaration of 23 February 2016, Mr Ward referred to two incidents concerning the Member for South Brisbane which he believed "threatened and disadvantaged Pyne on the basis of his conduct in the house [sic] which was the planned tabling of documents and then the intention to make a Personal Explanation".

28. The Member for Cairns' letter to the Speaker also referenced the same two incidents outlined in Mr Ward's statutory declaration.

<sup>2</sup> McGee, David, 2005, *Parliamentary Practice in New Zealand*, 3rd Edition, p. 651

<sup>3</sup> Privileges Committee, Report on A Matter of Privilege – Alleged Intimidation of a Member, 12 November 1993, p.7

<sup>4</sup> *Ibid*

First Incident

29. The first incident described was a meeting between the Member for South Brisbane and the Member for Cairns in the sitting week beginning 13 October 2015.
30. The Member for Cairns' referred to a scheduled Matter of Public Interest (MPI) statement for the Parliamentary sitting week commencing Tuesday 13 October 2015 as being cancelled, and a subsequent meeting with the Member for South Brisbane. The Member for Cairns provided the following information:

*I had applied for a Matter of Public Interest speaking slot which had been approved for the October sitting week. My speech was prepared and finalised.*

*This MPI approval was later improperly withdrawn under protest from myself.*

*During the October 2015 sitting week Deputy Premier (Trad) entered my office and spoke to me in relation to my local government concerns. It was in the afternoon of 13 October 2015. This was not a scheduled meeting. Ms Trad was angry, threatening and intimidating and not happy with my interest in local government issues. Ms Trad said that it was bad timing as she was doing something with the LGAQ the next day around an MOU...The Deputy Premier was angry, threatening and intimidating ...The Deputy Premier was swearing during this exchange and her behaviour was like she was ranting abuse.*

Second Incident

31. The Member for Cairns in his letter to the Speaker, provided the following information:

*Monday evening, 30th November 2015 Chris Whiting MP stopped by my office. While he was there someone rang his mobile phone. Chris Whiting MP answered his phone and said to the effect that 'I am with him now, or I am with him in his office now.'*

*Chris Whiting MP put his phone on loud speaker and Hon Jackie Trad MP, Deputy Premier spoke.*

32. The Member for Cairns' letter alleges it was a:

*...completely improper and unacceptable expletive laden attack by a Deputy Premier, Minister and Member for Parliament. I believe I was intimidated and bullied by the Deputy Premier. It was full on abuse which then became a verbal attack on me personally...The Deputy Premier was very angry, threatening and intimidating and the way she expressed this for the duration of the phone call was totally improper. I was also insulted by the swearing of Deputy Premier...*

Test for the alleged contempts

33. There are two elements to be established where it is alleged that a member has committed the above contempts—
1. Did the conduct of the Member for South Brisbane amount to any one of the following:
    - a) assaulting, threatening or intimidating a member or an officer of the House acting in the discharge of the member's or the officer's duty;
    - b) assaulting, threatening or disadvantaging a member on account of the member's conduct in the House or a committee; or
    - c) assaulting, obstructing or insulting a member coming to or going from the House or a committee proceeding?

2. If yes, did the conduct of the Member for South Brisbane amount to, or was it intended to or likely to amount to, an improper interference with the free performance of the Member for Cairns' duties as a member?

### Consideration

34. In considering the material before it, the committee had regard to the following statement by David McGee<sup>5</sup>:

*A distinction must be drawn, however, between members or outside persons properly seeking to influence other members, and attempts to influence members' actions which are intimidatory and may be held to be contempts...There is no contempt in respect of attempts to influence members, even by bringing pressure to bear on them (such as to withdraw support from them at the next election), unless there is a threat to do something which is improper in itself or which is of such an extraordinary or exaggerated nature that it goes beyond an attempt to influence the member and becomes an attempt to intimidate (emphasis added).*

35. The committee considered that there was no evidence before the committee of a threat to do something by the Member for South Brisbane. Furthermore, the committee found there was no evidence of conduct by the Member for South Brisbane which was improper in itself or which was of such an extraordinary or exaggerated nature that it went beyond an attempt to influence the member and became an attempt to intimidate.
36. In addition, the committee found there was no evidence presented that the Member for South Brisbane was in any way linked to the withdrawal of the Matter of Public Interest speaking slot.
37. Therefore, the committee considered that on the material presented there was no evidence of an improper interference with the free performance of the Member for Cairns' duties as a member of the Legislative Assembly or its committees.
38. Under Standing Order 270(1)(a) when a matter is referred to the committee it may summarily dispose of the matter if it believes it is trivial, technical or vexatious or does not warrant further attention by the committee.
39. On the basis of the above mentioned absence of evidence, the committee determined that this was not a matter that warranted further attention by the committee.

### Conclusion

40. On the information before the committee it considered that, in the absence of any evidence of a threat by the Member for South Brisbane, or any involvement by the Member for South Brisbane with the withdrawal of the speaking slot, there was no evidence to support any of the elements of the alleged contempts against the Member for South Brisbane, and therefore this was not a matter that warranted further attention by the committee.

#### **Conclusion**

**On the information before the committee it considered that, in the absence of any evidence of a threat by the Member for South Brisbane, or any involvement by the Member for South Brisbane with the withdrawal of the speaking slot, that there was no evidence to support any of the elements of the alleged contempts against the Member for South Brisbane, and therefore this was not a matter that warranted further attention by the committee.**

<sup>5</sup> McGee, David, 2005, *Parliamentary Practice in New Zealand*, 3rd Edition, p. 652

**Recommendation**

The committee recommends that the matter of privilege referred by the Speaker on 17 March 2016 relating to an alleged threatening and disadvantaging of the Member for Cairns by the Member for South Brisbane does not warrant the further attention of the House.

**PART TWO – INTIMIDATING AND THREATENING A MEMBER*****Nature of the contempts***

41. The Member for Cairns alleged the Member for Springwood had committed the following contempts under the Standing Orders:
1. *assaulting, threatening or intimidating a member or an officer of the House acting in the discharge of the member's or the officer's duty (SO 266(9));*
  2. *obstructing or molesting a member or an officer of the House in the discharge of the member's or officer's duty (SO 266(10));*
  3. *misconducting oneself in the presence of the House or a committee (SO 266(11));*
  4. *assaulting, threatening or disadvantaging a member on account of the member's conduct in the House or a committee (SO 266(17));*
  5. *assaulting, obstructing or insulting a member coming to or going from the House or a Committee proceeding (SO 266(19));*
  6. *sending a challenge to fight a member (SO 266(21)); and*
  7. *wilfully disobeying an order of the House or disrupting the orderly conduct of the business of the House or a Committee (SO 266(22)).*

***Background to the alleged contempts***

42. In his letter to the Speaker, the Member for Cairns referred to four incidents concerning the conduct of the Member for Springwood which he alleged resulted in contempts of Parliament during the Member for Springwood's time as the Chief Government Whip.
43. The Member for Cairns also made reference to the "improper withdrawal" of his scheduled MPI, stating that the MPI application "was made by online application to the then Whip Mick de Brenni MP".

**First Incident**

44. The Member for Cairns described the first incident as occurring on 1 December 2015, prior to his scheduled media conference about an inquiry into local government in Queensland, as follows:

*Mick deBrenni MP had verbally intimidated me that morning to not go ahead with the media event. Mr deBrenni MP had stood directly in front of me and said "You got a media conference at 1pm, I can tell you now that's not going to happen" referring to my scheduled media event and statement. I said "Your [sic] not going to get in my way." Mick said "Yes I am" and I had to*



*divert my wheelchair around Mick deBrenni MP because he had physically blocked my path and he was not moving.*

#### Second Incident

45. The second incident raised by the Member for Cairns also occurred prior to the scheduled media event:

*It was the big bash [sic] cricket launch on the Speakers Green that day and they were giving out cricket paraphernalia including cricket bats. On the verandah near the Media room Mick deBrenni MP was walking towards me and he had a cricket bat in his hand. It is my in principle position to never ever let a bully see they are having any effect so I said to Mr deBrenni MP "you going to hit me are you?" Mr deBrenni MP replied to me "I feel like it sometimes". Mr de Brenni MP then asked me if I done [sic] the media statement yet. I said no, not yet. Jason Wards [sic] diary notes are word perfect on this matter because he had started a recording device for the imminent media statement.*

#### Third Incident

46. The third incident raised by the Member for Cairns allegedly occurred after his media conference, on the resumption of Parliament after dinner on 3 December 2015. The Member for Cairns states that:

*The Deputy Premier made a Ministerial Statement. This is evidenced in Hansard. I was not able to be on the floor for about half of this Ministerial Statement because Mr Mick deBrenni MP was physically blocking the entry to the House. I was going down the hallway to enter the House. My wife (and care assistant) was with me because, being a quadriplegic I need someone to open the large swinging doors at the entrance to the house [sic]. Mr Mick deBrenni MP physically blocked my entrance to the House while the Deputy Premier was making a Ministerial Statement about local government and the issues I had raised. Mr deBrenni stood in front of me, directly in front of my wheelchair. Mr Mick deBrenni MP knew the Deputy Premier was talking about me and my Local Government issue because he said, "You might not want to go in there". I asked Him [sic] "Why?" Mick deBrenni MP replied "the Deputy Premier is talking about you." I said to Mick deBrenni MP "I am rostered on and if that's the case I definitely want to be in there". I moved my wheelchair forward leaving Mr deBrenni MP no option but to move out of my way and my wife Jenny opened the doors for me.*

*To be very clear about this, I had to force my way past Mr deBrenni MP in my wheelchair and he had to then get out of my path.*

*I have reviewed the Hansard and can reliably advise that I eventually forced my way past Mr Mick de Brenni MP to enter the house [sic] and hear approximately the last half of the Deputy Premiers [sic] Ministerial Statement.*

#### Fourth Incident

47. The fourth and final incident raised by the Member for Cairns allegedly occurred on the morning of 4 December 2015:

*Friday morning was when a blatant Contempt of the Legislative assembly [sic] occurred. This has become known as the 'microphone issue'.*

...

*In relation to the concert of improper verbal intimidation, bullying and direct improper interference with my properly activated microphone I have requested a copy of the video recordings of both sides of the house [sic] taken on Friday 4th December 2015...In the meantime I rely on the evidence provided in the Statutory Declaration of Mr Jason Ward.*

*Mr Ward captures the key facts that we had a prior agreement that I would look at him and nod or gesture relevant to the circumstances in [sic] found myself in. While on the floor of the House I was improperly verbally intimidated by Mr deBrenni MP not to make a personal explanation. In summary on this aspect, Mr deBrenni MP improperly verbally deterred me from exercising my rights and improperly interfered with my microphone after I had properly activated it to speak.*

48. The committee subsequently received a submission on the matter from legal representatives acting on behalf of the Member for Springwood. In the submission it was argued that the complaints were "objectively trivial, vexatious, at times overly technical and that some have no basis in fact".

#### **Test for the alleged contempts**

49. The elements to be considered in establishing whether the allegations, on the face of it, give rise to a contempt are—

1. Did the conduct of the Member for Springwood amount to any one of the following:
  - a) assaulting, threatening or intimidating a member or an officer of the House acting in the discharge of the member's or the officer's duty;
  - b) obstructing or molesting a member or an officer of the House in the discharge of the member's or officer's duty;
  - c) assaulting, threatening or disadvantaging a member on account of the member's conduct in the House or a committee;
  - d) assaulting, obstructing or insulting a member coming to or going from the House or a Committee proceeding; and
  - e) sending a challenge to fight a member?
2. if yes, did the conduct of the Member for Springwood amount to, or was it intended to or likely to amount to, an improper interference with the free performance of the Member for Cairns' duties as a member?

50. The committee again had regard to the advice and statements made by David McGee, the former Select Committee of Privileges of the Queensland Parliament and the Integrity, Ethics and Parliamentary Privilege Committee when considering the evidence from the Member for Cairns and the Member for Springwood.

#### **Consideration**

51. The committee considered that, on the information presented, the first two incidents did not relate to the Member for Cairns' free performance of his duties, as they occurred in relation to media conferences and not his duties as a member in the Assembly or its committees.
52. The committee also considered that there was no evidence presented of a threat to do something which was improper in itself or which was of such an extraordinary or exaggerated nature that it went beyond an attempt to influence the member and became an attempt to intimidate.
53. With respect to the third and fourth incidents, the committee examined the new footage from the Broadcast of Parliament. The footage did not support the allegations with respect to those incidents.
54. The committee also considered that, as the Member for Cairns was ultimately not prevented from entering the Chamber or making his Personal Explanation, it could not find that the

Member for Springwood interfered with the free performance of the Member for Cairns' duties as a member of the Legislative Assembly or its committees.

55. Under Standing Order 270(1)(a) when a matter is referred to the committee it may summarily dispose of the matter if it believes it is trivial, technical or vexatious or does not warrant further attention by the committee.
56. On the basis of the above findings, the committee determined that this was not a matter that warranted further attention by the committee.

### Conclusion

57. On the information before the committee, there is no evidence that the conduct of the Member for Springwood interfered with the free performance of the Member for Cairns' duties as a member of the Legislative Assembly or its committees and therefore the committee considered this was not a matter that warranted the further attention by the committee.

### Conclusion

On the information before the committee, there is no evidence that the conduct of the Member for Springwood interfered with the free performance of the Member for Cairns' duties as a member of the Legislative Assembly or its committees and therefore the committee considered this was not a matter that warranted the further attention by the committee.

### Recommendation

The committee recommends that the matter of privilege referred by the Speaker on 21 April 2016 relating to an alleged intimidation and threatening of the Member for Cairns against the Member for Springwood does not warrant the further attention of the House.

## PART THREE – DELIBERATELY MISLEADING THE HOUSE

### *Nature of the contempt of deliberately misleading the House or a committee*

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

*Deliberately misleading the House or a committee (by way of submission, statement, evidence or petition).<sup>6</sup>*

59. Previous ethics committees, and David McGee in Parliamentary Practice in New Zealand, have noted that the standard of proof demanded in cases of deliberately misleading parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations. Recklessness, whilst reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.<sup>7</sup>

<sup>6</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>7</sup> McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

**Background to the allegation of deliberately misleading the House**

60. In the letter from the Speaker to the committee, the Speaker referred the Member for Cairns on two potential contempts of deliberately misleading the House. The first related to comments by the Member for Cairns when tabling documents on 19 April 2016 that he was not speaking about the issue which was the Matter of Privilege referred on 17 March 2016.
61. The second alleged contempt of deliberately misleading the House related to the content of the documents the Member for Cairns sought to table on 19 April 2016. The documents allegedly contained inaccuracies regarding the Member for South Brisbane.
62. The documents were initially tabled at 9.32am on 19 April 2016 and made available through the Tabled Papers database. At 2.30pm the Speaker made his ruling regarding the documents being withdrawn, leaving a brief period in which members and the public could access the documents.

**Test of deliberately misleading the House**

63. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House or the committee:
  - a) the statement must have been misleading;
  - b) the member making the statement knew at the time the statement was made that it was incorrect; and
  - c) in making the statement the member intended to mislead the committee.<sup>8</sup>

**Consideration**

64. The committee considered that, as it had determined to summarily dispose of the allegations against the members for South Brisbane and Springwood, and the allegations against the Member for Cairns' statements to the House were linked to those matters being before the Ethics Committee, the committee similarly found that this was not a matter that warranted further attention by the committee.
65. In addition, as the alleged deliberate misleading of the House in the documents sought to be tabled by the Member for Cairns were only publicly available for a brief time, the committee also determined that this was not a matter that warranted further attention by the committee.
66. Hence, the committee agreed to summarily dispose of these matters under Standing Order 270(1)(a).

**Conclusion**

67. The committee found that, as it had determined to summarily dispose of the allegations against the members for South Brisbane and Springwood, and the allegations against the Member for Cairns' statements to the House were linked to those matters being before the Ethics Committee, this was not a matter that warranted further attention by the committee.
68. The committee also found that, as the alleged deliberate misleading of the House in the documents sought to be tabled by the Member for Cairns were only publicly available for a brief time, this was not a matter that warranted further attention by the committee.

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<sup>8</sup> McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653-655.

**Conclusion**

The committee found that, as it had determined to summarily dispose of the allegations against the members for South Brisbane and Springwood, and the allegations against the Member for Cairns' statements to the House were linked to those matters being before the Ethics Committee, this was not a matter that warranted further attention by the committee.

The committee also found that, as the alleged deliberate misleading of the House in the documents sought to be tabled by the Member for Cairns were only publicly available for a brief time, this was not a matter that warranted further attention by the committee.

**Recommendation**

The committee recommends that the matter of privilege referred by the Speaker on 21 April 2016 relating to an alleged deliberate misleading of the House by the Member for Cairns does not warrant the further attention of the House.



Mark Furner MP  
**Acting Chair**

May 2016

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

Mr Mark Furner MP, Acting Chair<sup>9</sup>  
*Member for Ferny Grove*

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

Mr Aaron Harper MP<sup>10</sup>  
*Member for Thuringowa*

Ms Leanne Linard MP<sup>11</sup>  
*Member for Logan*

Mr Jeff Seeney MP  
*Member for Callide*

Mr Trevor Watts MP<sup>12</sup>  
*Member for Toowoomba North*

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<sup>9</sup> On 20 April 2016, the Member for Ferny Grove replaced the Member for Capalaba as Acting Chair for consideration of this matter in accordance with Standing Order 272(2).

<sup>10</sup> On 20 April 2016, the members for Thuringowa and Nudgee replaced the members for Barron River and Logan for consideration of this matter in accordance with Standing Order 272(2).

<sup>11</sup> On 20 April 2016, the members for Thuringowa and Nudgee replaced the members for Barron River and Logan for consideration of this matter in accordance with Standing Order 272(2).

<sup>12</sup> On 10 May 2016, the Member for Toowoomba North replaced the Member for Mudgeeraba as a member of the committee.