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A dilemma of Rights, Powers and Immunities: An inquiry into the power of parliamentary committees to send for the documents of members in the possession or control of third parties.

Mr Michael Ries – Deputy Clerk – Queensland Parliament

Abstract

The parliament's right to enquire draws with it the necessary powers to call for person's documents and things. However, when committees conducting a lawful investigation seek to exercise those powers to call for a search of documents in the possession and control of third party custodians of members' records, the exercise of such powers needs to be balanced against:

- the rights of individual members to be appraised of the searching of their documents; and
- the protection of their documents, this includes matters normally protected by parliamentary privilege, but extends to searching documents irrelevant to the inquiry.

The dilemma then arises between the rights of the member regarding their own documents and the committee's ability to conduct an effective investigation or inquiry.

New protocols recently approved by the Queensland Parliament are designed to strike a delicate balance in an attempt to resolve that dilemma.

Background

By virtue of section 25 of the *Parliament of Queensland Act 2001* (the Act), all Committees of the Queensland Parliament have the power to order a person to attend before the committee and also to produce any document or other thing in the person's possession.

In addition, section 26 of the Act provides that a person (other than a member) who is ordered to attend before a committee must be given a summons issued by the Clerk on the notification by the committee's chairperson. Such summons must state a reasonable time and place for the attendance and if a document or other thing is ordered to be produced – reasonable particulars of the document or other thing.

In February 2016, the Ethics Committee tabled Report No. 162 (**Appendix A**) of its inquiry into a matter of privilege referred by the Parliamentary Crime and Corruption Committee (PCCC) relating to alleged unauthorised disclosure of the proceedings of the PCCC, specifically the disclosure of an e-mail from the Member for Warrego of 12 July 2015 to the media.

During the committee's investigations into the unauthorised disclosure of the Member for Warrego's email of 12 July 2015 to the media, the committee obtained information (presumably by exercising its powers in accordance with section 25 and 26 of the Act) showing email correspondence between the Member for Warrego and the then Chief of Staff of the Leader of the Opposition, which indicated the Chief of Staff's involvement in preparation of the email (see Ethics Committee Report No. 162 at Appendix A).

Subsequent to the tabling of Report No. 162 there was a change to the Membership of the Ethics Committee. In April 2016, the Ethics Committee as newly constituted wrote to the Committee of the Legislative Assembly (CLA) requesting that the CLA consider conducting an inquiry into matters concerning members' documents (including electronic documents) in the possession and control of third party custodians (see Record of Proceedings 25 May 2017 pgs. 1426-27) .

Inquiry process

The CLA conducted an inquiry including surveying Presiding Officers of other Australian jurisdictions to ascertain:

a) whether the documents and records of Members of Parliament within the possession and control of the member and/or third parties is able to be obtained by way of coercive powers exercised by law enforcement agencies, other statutory authorities, litigants in court proceedings or by parliamentary committees conducting lawful investigations into matters of privilege; and

b) what protocols, guidelines and safeguards are in place for persons to follow and implement upon receipt of a formal legal request to search and produce documents in order to ensure the powers, rights and immunities of members of parliament are maintained.

All of the jurisdictions who responded to the survey advised that parliamentary privilege would guide whether access to documents and records of Members of Parliament would be provided under coercive powers.

The results of the survey also showed that, while most jurisdictions either had or were working towards an MOU with external agencies to provide guidance in executing search warrants with regards to parliamentary privilege, none of the jurisdictions had protocols or guidance in relation to parliamentary inquiries, for example by parliamentary privileges or ethics committees.

In addition, the CLA sought advice from the Clerk of the Parliament, Mr Neil Laurie as well as independent legal advice from Mr Bret Walker SC on the specific issue of the ability of parliamentary committee's power to order the conduct searches which may involve members of Parliament's documents in the possession or control of third party entities (see Record of Proceedings 25 May 2017 pgs. 1426-27).

The Dilemma

The dilemma before the CLA was, no doubt, striking an appropriate balance between:

(a) the powers of parliamentary committees to call for persons documents and things and a committee's ability to conduct an effective investigation; and
(b) the rights of individual members to be appraised of the searching of their documents and the protection of their documents, this includes matters normally protected by parliamentary privilege, but extends to searching documents irrelevant to the inquiry.

Powers of Committees

As McGee notes, the power of the House and therefore the power of its committees to inquire into anything that it sees fit has long been held to also imply a power of compulsion to obtain documents necessary to carry out its inquiry (McGee 2005 pg. 427). Hallam in his Constitutional History of England, Vol II states "The right to enquire draws with it the necessary need means, the examination of witnesses, records, papers, enforced by the strong arm of parliamentary privilege" (Hallam 1978, p.307).

In Queensland, this principle has been enshrined in section 26 and 26 of the Act. However, no doubt, one of the key questions before the CLA was whether the power of committees to obtain documents and records of a member should be somehow constrained in a similar way that a place outside of parliament (e.g. a law enforcement body) might be constrained?

In New Zealand, the power to compel the production of people and things in their possession or control is not automatically delegated to all committees with the exception of the Privileges Committee. There is an argument that for an ethics or privileges committee to effectively discharge its duty to investigate alleged contempts it is vital for such committees to have coercive powers at its disposal.

As Grove in his paper to the 2009 ANZACATT Professional Development Seminar noted even though most unauthorised disclosures are likely to be insufficiently serious to warrant an extensive investigation, that "does not remove the real potential that exists for interference with the operations of parliamentary committees if in camera or other confidential material is disclosed" (Grove 2009, pg. 9).

The matters pertaining to the Queensland Ethics Committee Report No.162 provide an example of a set of circumstances where an ethics or privileges committee might consider ordering searches of e-mails in the custody of third parties (i.e. where on the evidence it was clear that there had been an unauthorised release of committee proceedings to the media and all members and staff that were privy to those proceedings had all responded in writing that they could not assist with the inquiry).

Rights of Members

Where documents of a member are in the possession and control of a third party, an argument can be made that there should be a requirement on a committee minded to compel a search of such documents to defer to the Member in relation to access to those records, except where the law prohibits such notification.

This is not a legal argument, but one based on mutual respect among members to give each other an opportunity to provide the documents themselves or object to their own documents being produced to a committee.

Such an argument also needs to be balanced against the possibility that seeking consent to access a member's documents might in some way compromise an investigation by revealing the committee's hand halfway through an inquiry as well as the potential for a member to obfuscate or destroy evidence if the first step is to request they provide the documentation.

Other relevant considerations which might come into play in the consideration of the rights of members the subject of a committee investigation include:

- the consistency in the application of coercive powers in relation to physical documents versus electronic documents (i.e. if a search was conducted of the physical documents of a member's electorate office the member would most likely be aware of the conduct of the search and have the opportunity to object to production of documents);

- concerns regarding the location of opposition documents, which in Queensland are stored on the Ministerial Services Branch servers (i.e. in the possession and control of officers in Executive Government); and
- therefore the need to ensure any searches of electronic documents held by third party custodians are strictly limited by dates, key words and that the member's interests are protected via the appointment of an observer they have confidence in to be present during the search, or, alternatively an independent parliamentary officer.

CLA Recommendations to the House

On 25 May 2017, in moving a motion the Leader of the House advised the Assembly that as a result of its inquiries, the CLA resolved to place before the House, inter alia, the following documents for its endorsement:

a) protocols for the guidance of custodians in possession or control of members' documents; and

b) a new Schedule 10 for Standing Orders containing protocols for committees who find a need or desire to obtain the documents or records of a member (see Record of Proceedings 25 May 2017 pgs. 1426-27 at **Appendix B**).

The protocols for the guidance of custodians in possession or control of members' documents set as a default position that custodians should seek the member's consent before releasing members' documents unless there is a lawful reason for not doing so (e.g. if the notice, summons or court order requires the custodian to not disclose the matter).

The protocols for parliamentary committees who find a need or desire to obtain the documents or records of a member require that committee should only seek to summons documents of a member held by a third party custodian if the committee has already invited the member to provide the documents voluntarily and the member has either refused to provide the documents or the committee suspects on reasonable grounds that there is a risk that its investigation may be compromised in some way.

If the committee proceeds to summons the production of documents in the possession or control of a custodian the committee needs to appoint an observer either nominated by the member or a parliamentary officer to ensure the conduct of the search is within the strict parameters of the summons.

Conclusion

The powers of parliamentary committees to call for person's documents and things and a committee's ability to conduct an effective investigation are important for ethics and privileges type committees, in order to effectively investigate allegations of contempt such as unauthorised release of committee proceedings.

The exercise of those powers, however, needs to be balanced against the rights of individual members of parliament to be appraised if their documents that are in the possession and control of a third party are being searched. In addition, members assert the right to ensure that if any such search is being conducted that any other documents of the member, not relevant to the inquiry, are not able to be accessed.

The protocols recently approved by the Queensland Parliament appear to be designed to strike that delicate balance. Only time will tell if they are successful in doing so.

ETHICS COMMITTEE

REPORT NO. 162

INQUIRY INTO MATTER OF PRIVILEGE REFERRED BY THE PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE ON 17 AUGUST 2015 RELATING TO 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.[1] The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House.

3. This report concerns six matters of privilege, which have been divided into two parts in the report.

4. Part One of the report addresses the following allegations regarding the unauthorised disclosure of committee proceedings to the media:

    1. the email sent by the Member for Warrego to the Parliamentary Crime and Corruption Committee (PCCC) on 12 July 2015 to outside sources by person/s unknown, allowing the information in the email to subsequently be referred to and included in media articles on 13-14 July 2015; and

    2. the letter sent from the Member for Bundamba to the Clerk of the Parliament on 14 July 2015 to outside sources by person/s unknown, allowing the information in the letter to subsequently be referred to and included in media articles on 22 August 2015.

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[1] *Parliament of Queensland Act 2001*, section 104B.

5. Part Two of this report concerns the following allegations regarding the Member for Warrego:

    3. making an unauthorised disclosure of committee proceedings of the PCCC by including the Premier's generic and electorate office email addresses in her email of 12 July 2015 to the PCCC;

    4. making an unauthorised disclosure of committee proceedings of the PCCC by involving Mr Jake Smith in the preparation of the email to the PCCC of 12 July 2015;

    5. deliberately misleading the PCCC in her response to the Acting Chair of the PCCC of 12 August 2015 by not disclosing the assistance provided by Mr Jake Smith, Chief of Staff to the Leader of the Opposition, in the preparation of the email sent to the PCCC members, secretariat and the Premier's generic email addresses on 12 July 2015; and

    6. deliberately misleading the Ethics Committee in her responses to questions at the private hearing on 30 October 2015 by not disclosing the assistance provided by Mr Jake Smith, Chief of Staff to the Leader of the Opposition, in the preparation of the email sent to the PCCC members, secretariat and the Premier's generic email addresses on 12 July 2015.

Committee membership

6. On 15 September 2015, the Speaker advised that in accordance with Standing Order 272 the Member for Morayfield would stand aside from consideration of this matter as he was a member of the PCCC that referred the matters on 17 August 2015 and that the Member for Bulimba would replace the Member for Morayfield during the committee's consideration of these matters in accordance with Standing Order 272(2).

The referral

7. On 17 August 2015, the PCCC made the following resolution:

    Resolution 1 (Part A):

    That pursuant to Standing Order 268(1) the Committee recommends:

    That the Member for Bundamba be referred to the Ethics Committee for:

    i. failing to follow an order of the previous PCCC regarding the procedures to be followed in respect of the destruction or hand over of documents; and

    ii. signing an incorrect statement in relation to the destruction of documents which was tendered to the PCCC and was prima facie deliberately misleading.

    Resolution 1 (Part B):

    That pursuant to Standing Order 268(1) the Committee recommends:

    That the alleged unauthorised disclosure of committee proceedings (in contravention of SO 211A), namely the disclosure of the email from the Member for Warrego on Sunday 12 July 2015, be referred to the Ethics Committee.

8. The referral of the alleged unauthorised disclosure of the email from the Member for Warrego of Sunday 12 July 2015 included two unauthorised disclosure to outsides sources:

    1. to person/s unknown which allowed the information in the email to subsequently be referred to and included in media articles on 13 and 14 July 2015 (addressed in Part One of the report); and

    2. by including the Premier's generic and electorate office email addresses in her email of 12 July 2015 (addressed in Part Two of the report).

9. Following the referral by the PCCC of 17 August 2015, it was identified that there had been another unauthorised disclosure of the PCCC's proceedings pertaining to a letter sent by the Member for Bundamba to the Clerk of the Parliament on 14 July 2015 to outside sources by person/s unknown, allowing the information in the letter to subsequently be referred to and included in a media article on 22 August 2015 (addressed in Part One).

10. The remaining allegations regarding the Member for Warrego (addressed in Part Two of the report) were identified by the Ethics Committee during its investigations of the unauthorised release of her email of 12 July 2015 to the media.

11. The allegations regarding the Member for Bundamba referred by the PCCC on 17 August 2015 were incorporated in a separate report, Ethics Committee Report No. 160 titled, *Inquiry into Matter of privilege referred by the Parliamentary Crime and Corruption Committee on 17 August 2015 relating to alleged failure by a member to follow an order of the previous PCCC and alleged unauthorised disclosure of committee proceedings*, which was tabled on 3 December 2015.

Committee proceedings

12. 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.

13. The committee's proceedings for each of the allegations is outlined along with the committee's finding under each of the allegations.

Definition of contempt

14. 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 unauthorised disclosure of committee proceedings

15. 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.*

16. Section 9(1) of the POQA defines Proceedings in the Assembly as:

> *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

> *(c) presenting or submitting a document to the Assembly, a committee or an inquiry*

17. 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 to the House or otherwise published proceedings.*

18. 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.[2]

19. Previous Ethics Committees have stressed that "any unauthorised disclosure of committee proceedings represents an attack on the integrity of the Parliament".[3]

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

20. 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).*[4]

21. 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.[5]

PART ONE – UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS TO THE MEDIA

Allegation 1 – Unauthorised disclosure of committee proceedings of the email sent by the Member for Warrego on 12 July 2015 to outside sources by person/s unknown, allowing the information in the email to subsequently be referred to and included in media articles on 13-14 July 2015

22. The first allegation reflects a contempt of Standing Order 211(A) as it divulges the proceedings of a committee to the media contrary to the Standing Orders.

23. On 13 July 2015, media articles reported on the contents of the email (including specific matters such as the number of pages of the document) sent by the Member for Warrego to the PCCC members and secretariat and the Premier's generic email addresses on 12 July 2015, despite there being no authorisation by the PCCC for the email to be disclosed.

24. On 22 July 2015, the Acting Chair of the PCCC, Mr Peter Russo MP, wrote to the members of the PCCC, the PCCC secretariat, and the Premier regarding the original email from the Member for Warrego, requesting the recipient advise whether they were responsible for the

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2 McGee, D. Parliamentary Practice in New Zealand, Third Edition, Dunmore Publishing Ltd, Wellington

3 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.

4 Standing Order 266(2), Standing Rules and Orders of the Legislative Assembly, available at http://www.parliament.qld.gov.au/work-of-assembly/procedures

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

disclosure, an explanation for the disclosure if they were responsible, or advice on whether they could provide information that could assist in the determining the source of the disclosure.

25. All of the recipients responded effectively advising they were not responsible for the disclosure and could not provide any assistance in determining the source of the disclosure.

26. As part of the referral from the PCCC, the committee received copies of the above letters from the Acting Chair of the PCCC to the members of the PCCC, the PCCC secretariat, and the Premier regarding the email from the Member for Warrego of 12 July 2015, and their responses.

27. The committee also asked questions of the Member for Warrego regarding this matter during her private hearing on 30 October 2015.

28. Subsequently, the committee obtained information which indicated the Leader of the Opposition's Chief of Staff, Mr Jake Smith, had access to the content of the email, prior to its distribution by the Member for Warrego.

29. The committee summonsed Mr Smith to appear before the committee as a witness on the matter on 13 November 2015.

30. Mr Smith asserted that, while he had assisted the Member for Warrego with the drafting of the email to the PCCC, he did not disclose the contents of the email to the media.

31. Subsequent to Mr Smith's appearance, the committee undertook further investigations into the disclosure of the contents of the email to the media.

32. The Member for Warrego was also invited to appear before the committee for a second time on 8 December 2015 on a number of matters, but provided no further information as to the source of the disclosure to the media.

33. The committee's investigations revealed that, after the Member for Warrego sent her email to the PCCC and the Premier's generic email addresses at 1.07pm, Mr Steve Wardill, a journalist with the Courier Mail, contacted the Premier's media unit at 1.54pm via email regarding matters contained in the email.

34. The committee noted the very short timeframe between when the Member for Warrego's email was sent and contact was made by Mr Wardill.

35. However, despite having thoroughly investigated this allegation, utilising the powers available to the committee the committee was unable to determine the source of the unauthorised disclosure.

36. In the absence of any evidence as to who was responsible for the unauthorised disclosure of the email sent by the Member for Warrego to the PCCC on 12 July 2015 to outside sources, allowing the information in the letter to subsequently be referred to and included in a media articles on 13 and 14 July 2015, the committee is unable to reach a concluded finding in relation to this matter.

Allegation 2 - Unauthorised disclosure of committee proceedings of the letter sent by the Member for Bundamba to the Clerk of the Parliament on 14 July 2015 to outside sources by person/s unknown, allowing the information in the letter to subsequently be referred to and included in a media article on 22 August 2015

37. The second allegation also reflects a contempt of Standing Order 211(A) as it divulges the proceedings of a committee to the media contrary to the Standing Orders.

38. The committee wrote to the members of the PCCC and staff, the Clerk and the Member for Bundamba asking if they were responsible for the disclosure of the letter from the Member

for Bundamba to the Clerk of the Parliament or whether they could provide information that could assist with the source of the disclosure.

39. All recipients of the letter responded effectively advising that they were not responsible for the disclosure and could not provide further assistance in determining the source of the disclosure.

40. Further investigations did not yield any information on the source of the unauthorised disclosure of the Member for Bundamba's letter to the Clerk.

41. In the absence of any evidence as to who was responsible for the unauthorised disclosure of the letter sent by the Member for Bundamba to the Clerk of the Parliament on 14 July 2015 to outside sources, allowing the information in the letter to subsequently be referred to and included in a media article on 22 August 2015, the committee is unable to reach a concluded finding in relation to this matter.

Conclusion 1

In the absence of any evidence as to who was responsible for the unauthorised disclosure of the email sent by the Member for Warrego to the PCCC on 12 July 2015 to outside sources, allowing the information in the letter to subsequently be referred to and included in a media articles on 13 and 14 July 2015, the committee is unable to reach a concluded finding in relation to this matter.

Conclusion 2

In the absence of any evidence as to who was responsible for the unauthorised disclosure of the letter sent by the Member for Bundamba to the Clerk of the Parliament on 14 July 2015 to outside sources, allowing the information in the letter to subsequently be referred to and included in a media article on 22 August 2015, the committee is unable to reach a concluded finding in relation to this matter.

Recommendation 1

The committee recommends that no further action be taken on Allegation 1.

Recommendation 2

The committee recommends that no further action be taken on Allegation 2.

Committee Comment 1

The committee wishes to express its concern at the unauthorised disclosures of PCCC proceedings that have occurred as detailed above. The unauthorised disclosures represent a serious breach of the rules regarding confidentiality of the PCCC's proceedings as laid down by the House in its Standing Rules and Orders.

The PCCC must be able to rely on its members to uphold the rules regarding confidentiality. Unauthorised disclosures risk diminishing the capacity of the PCCC to undertake its role within the Parliament and constitutes a clear improper interference with the performance of that committee's function.

The committee urges the PCCC to review its practices and procedures to as much as is possible to prevent any future such unauthorised disclosure which reflects poorly on the institution of Parliament as a whole.

PART TWO – ALLEGATIONS MADE AGAINST THE MEMBER FOR WARREGO

Allegation 3 – Unauthorised disclosure of committee proceedings by the inclusion of the Premier's generic and electorate office email addresses by the Member for Warrego in her email of 12 July 2015

42. The third allegation to be addressed again reflects a contempt of Standing Order 211(A) as it divulges the proceedings of a committee contrary to the Standing Orders.

43. On 12 July 2015, the Member for Warrego sent an email to the members and secretariat of the PCCC regarding documents she had found in her PCCC electorate office safe that had belonged to the Member for Bundamba. When sending her email, the Member for Warrego also included the Premier's generic and electorate office email addresses as recipients of the email.

44. On 22 July 2015, the Member for Warrego sent an email to PCCC members apologising for the inclusion of the Premier in her email of 12 July 2015, saying that she included the Premier's generic email address in her email because she believed it was a courtesy to inform the Premier, that she believed the inclusion of the Premier was not serious, and that if there was any breach it was innocent and benign. She also advised that as it was her first correspondence with all members of the committee, the matter was isolated and unlikely to occur again.

45. Following the referral by the PCCC, the committee invited the Member for Warrego to provide further information on the alleged contempt of the unauthorised disclosure of committee proceedings by including the Premier's generic and electorate office email addresses in her email of Sunday 12 July 2015.

46. The member responded in early October 2015 to the allegation by referring to the apology she had made to the PCCC, which had been provided to the Ethics Committee by the PCCC as part of the referral.

47. The committee invited the Member for Warrego to appear before the committee, with the hearing occurring on 30 October 2015.

48. The committee found that it had sufficient material before it to deliberate on the allegation. This material included information provided by the PCCC, including the email of apology to the members of the PCCC, and evidence provided by the Member for Warrego at the private hearing.

Test of unauthorised disclosure of committee proceedings

49. There are 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?

Was there disclosure of a proceeding of the committee?

50. The address list on the original email sent by the Member for Warrego to PCCC members and the secretariat shows that it was also sent to both the Premier's generic email address and that of her electorate office.

51. The inclusion of the Premier's generic email and electorate office addresses has not been contested by the Member for Warrego.

52. The Member for Warrego admitted to including the Premier in her email as she apologised for the inclusion.

53. At the private hearing the Member for Warrego reiterated her apology saying that her inclusion of the Premier was a courtesy to inform the Premier that the matters related to the Premier's responsibilities for the conduct of a minister, and it was in the Premier's interest to know that her minister of the Crown had committed a breach of procedure relating to security.

54. In considering this element, the committee noted that the Member for Warrego did not deny including the Premier's email addresses in her email, and had sent an apology to the PCCC members for the inclusion.

55. The committee considered that the inclusion of these email addresses reflects a disclosure of the proceedings of the PCCC to the Premier, and potentially her Ministerial and electorate office staff.

56. Therefore, the committee found that the Member for Warrego did disclose a proceeding of the committee, and the element had been established.

Was the disclosure unauthorised?

57. The email was the first form of correspondence on this matter sent to the PCCC members and secretariat by the Member for Warrego.

58. The email sent by the Member for Warrego was sent to the Premier at the same time as it was sent to the PCCC members. Therefore, it was not possible for the PCCC to have authorised disclosure of the correspondence from the Member for Warrego, as the PCCC had not yet received, and therefore was not aware of, the correspondence.

59. Therefore, the committee considered that the disclosure cannot have been, and was not, authorised by the PCCC.

60. The committee found this element had been established.

Did the unauthorised disclosure amount to an improper interference with the free exercise of the Assembly's or a committee's authority or functions?

61. The committee considered that as the unauthorised disclosure is contrary to Standing Order 211A, it would appear to amount to an interference with the authority of the Assembly and/or the PCCC.

62. The committee then considered whether the interference amounted to an improper interference.

63. The committee noted that it was aware, through the course of its investigations that the inclusion of the Premier and her offices in the e-mail was not in line with the advice that the Member for Warrego had received from the Clerk in relation to the matter.

64. The Member for Warrego argued that she lacked confidence in the current PCCC, that it was dysfunctional and she was concerned that they may not have acted appropriately and that she may have faced further accusations in relation to having the documents in the safe, and therefore she alerted the Premier to the security breach.

65. The Member for Warrego also argued that any breach on her part was technical and not serious, and that if there was a breach it was innocent and benign.

66. There is no definition of 'improper' or 'improper conduct' in the Parliament of Queensland Act 2001 or the Standing Orders.

67. 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.

68. In 2010, the Integrity, Ethics and Parliamentary Privilege Committee looked at this issue in its Report No. 110. That committee 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) 125 183 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].

69. 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 find the behaviour and actions of the Member for Warrego were inappropriate in discharging her duties, obligations and responsibilities.

70. The PCCC had not seen the correspondence from the Member for Warrego regarding the contents of her safe, and therefore the committee had not had the opportunity to consider the matter.

71. The committee considered that a reasonable person with knowledge of the members duties as a member of that committee and the circumstances of the case may expect that the matter be given due process in accordance with the orders of the House and procedures of the PCCC, rather than be shared with someone outside the PCCC at the same time the PCCC is made aware of the matter.

72. The committee therefore considered that the inclusion of the Premier's generic and electorate office email addresses amounted to an improper interference with the free exercise of the PCCC's authority and functions.

73. Hence, the committee considered the third element had been established.

Conclusion regarding contempt

74. The committee considered that, as the evidence showed that the Member for Warrego had included the Premier's generic email addresses on 12 July 2015, the Member for Warrego divulged proceedings of the PCCC to the Premier and potentially her ministerial and electorate office staff in contravention of Standing Order 211A, and in doing so committed a contempt as per Standing Order 266(12) which constitutes an improper interference with the free exercise by the PCCC of its authority in accordance with the definition of contempt in Section 37 of the *Parliament of Queensland Act 2001*.

Penalty

75. Section 15(1) of Schedule 2 of the Standing Orders sets out that the committee must, with its report, recommend the action that should be taken.

76. The committee sought a submission from the Member for Warrego as to penalty for the contempt. In her private hearing of 30 October 2015, the Member for Warrego advised that she included the Premier's generic email address in her email because she believed it was a courtesy to inform the Premier, that she believed the inclusion of the Premier was not

serious, and that if there was any breach it was innocent and benign. She also advised that as it was her first correspondence with all members of the committee, the matter was isolated and unlikely to occur again.

77. The Member for Warrego submitted that she had apologised to the PCCC and that no further action be taken.

Precedents for penalties for unauthorised disclosure

78. There are no previous matters where a finding of contempt was made for the unauthorised disclosure of committee proceedings.

Conclusion regarding penalty

79. The committee considered that this contempt alone was of a technical nature and one which ordinarily would be at the lower end of the penalty scale. However, given the other findings of contempt regarding associated matters, the committee decided to make a cumulative recommendation for penalty in regard to all the matters regarding the Member for Warrego.

Allegation 4 - Unauthorised disclosure of committee proceedings of the PCCC (SO 211A) by involving Mr Jake Smith in the preparation of the email to the PCCC of 12 August 2015.

80. The fourth allegation again reflects a contempt of Standing Order 211(A) as it divulges the proceedings of a committee or a subcommittee contrary to the Standing Orders.

81. During the committee's investigations into the unauthorised disclosure of the Member for Warrego's email of 12 July 2015 to the media by person's unknown, the committee obtained information showing email correspondence between the Member for Warrego and a person outside the committee, Mr Jake Smith (Chief of Staff to the Leader of the Opposition), which showed Mr Smith's involvement in preparing the email that was sent by the Member for Warrego to the PCCC members and secretariat and the Premier's generic email addresses on 12 July 2015.

82. Following the initial private hearing with the Member for Warrego on 30 October 2015, and consideration of subsequent information obtained by the committee, the committee invited Mr Smith to attend a private hearing on 13 November 2015.

83. Following Mr Smith's hearing, the committee wrote to the Member for Warrego inviting her to make a submission on the above allegation and to attend a private hearing on 8 December 2015.

84. The member responded with her submission on 3 December 2015, and appeared before the committee on 8 December 2015.

85. The committee found that it had sufficient material before it to deliberate on the allegations. This material included copies of emails between the Member for Warrego and Mr Smith, evidence provided by Mr Smith at his private hearing, information contained in the Member for Warrego's submission, and evidence provided by the Member for Warrego at her private hearings.

Test of unauthorised disclosure of committee proceedings

86. As mentioned for the previous allegation, there are 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?

Was there disclosure of a proceeding of the committee?

87. The information available from the emails between the Member for Warrego and Mr Smith, and the evidence provided by Mr Smith at the private hearing, show Mr Smith's involvement in preparing the email that was sent by the Member for Warrego to the PCCC members and secretariat and the Premier's generic email addresses on 12 July 2015.

88. In her submission of 3 December 2015, the Member for Warrego argued that "...using support staff to draft a document prior to presenting it to the PCCC cannot be considered to be "proceedings" prior to such a document being submitted and therefore the contempt as particularized cannot be made out." At the private hearing on 8 December 2015, the Member for Warrego further argued "...the drafts were never submitted to a committee...".

89. The committee considered that it is true that Mr Smith's draft e-mail of 12 July 2015 was not the final document that was submitted to the PCCC. Therefore the committee considered whether the preparation of the email was a proceeding of the PCCC under Section 9(1) of the *Parliament of Queensland Act 2001*, as it involves the preparation of a draft of a document which was prepared for the purpose of submission to the PCCC, although a slightly different version of it was ultimately submitted to the PCCC.

90. Section 9(1) of the POQA provides defines Proceedings in the Assembly as:

> *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
>
> *(c) presenting or submitting a document to the Assembly, a committee or an inquiry*

91. At the private hearing on 8 December 2015, the Member for Warrego made the point that there is a definition provision in Schedule 1 of the Standing Orders at page 71 which states:

> *"Proceedings" for Standing Order 211 and 211A includes:*
>
> *(a) evidence taken by the committee by way of hearings;*
>
> *(b) written or oral submission presented to the committee;*
>
> *(c) written briefing papers and other documents prepared for the committee by its Research Director, other expert advisors or departmental advisors;*
>
> *(d) draft reports by the committee;*
>
> *(e) correspondence between the committee and witnesses, departments and Ministers; and*
>
> *(f) private deliberations of the committee and the records of those proceedings.*

92. The Member for Warrego argued that as the definition of 'proceedings' under Standing Orders does not include drafting correspondence prior to submission to the committee, therefore her pre committee drafting process involving Mr Smith is "incapable of being caught by the definition of 'proceedings' in the Standing Orders."

93. The committee considered the Member for Warrego's argument and a number of legal rules regarding statutory interpretation, and concluded that the better view was that the definition of proceedings in Section 9(1) of the POQA should be read together with the definition in the Standing Orders and therefore the draft email prepared by Mr Smith is a proceeding of the PCCC.

94. As a result, the committee found that by seeking Mr Smith's assistance in the preparation of the email, that the Member for Warrego disclosed a "proceeding" of the PCCC to someone outside the committee or parliamentary officers assisting the committee, and thereby considered the first element established.

Was the disclosure unauthorised?

95. The email sent by the Member for Warrego to the PCCC on 12 July 2015 was the first time either the members or the secretariat of the PCCC were made aware of, and received correspondence about, the documents found in the safe.

96. Therefore, it was not possible for the PCCC to have authorised disclosure of the matter of the Member for Warrego finding documents in her PCCC safe or authorised Mr Smith's involvement in the preparation of the email.

97. Therefore, the committee considered that the disclosure cannot have been, and was not, authorised by the PCCC, meaning that the disclosure was unauthorised, and the second element is established.

Did the unauthorised disclosure amount to an improper interference with the free exercise of a committee's authority or functions?

98. As the unauthorised disclosure is contrary to Standing Order 211A, it would appear to amount to an interference with the authority of the Assembly and/or a committee.

99. As detailed earlier, previous Ethics Committees have found that improper conduct is conduct which is inconsistent with 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.

100. The committee considered that the test for improper interference is whether the involvement of Mr Smith in the drafting of the e-mail to the PCCC of 12 July 2015 amounted to a breach of the standards of behaviour expected of a member of the PCCC by a reasonable person with knowledge of the members duties as a member of that committee and the circumstances of the case and whether it was conduct that was inconsistent with the proper discharge of the member's obligations and responsibilities.

101. The committee considered that a reasonable person may expect that the matter be given due process in accordance with the orders of the House and procedures of the PCCC, rather than be shared with someone outside the PCCC before the PCCC is even made aware of the matter.

102. By seeking assistance from Mr Smith (who was not a member of the PCCC or parliamentary staff) in the preparation of the email, the committee considered that the Member for Warrego had increased the number of people cognisant of the matter and the contents of the email, and thereby increasing the risk of further unauthorised disclosure of the email.

103. Therefore, the committee considered that the Member for Warrego's actions amounted to an improper interference with the PCCC's authority and functions and that the third element had been established.

Conclusion regarding contempt

104. The committee considered that, as the evidence showed that the Member for Warrego had involved Mr Smith in the preparation of her email to the PCCC of 12 July 2015, the Member for Warrego divulged proceedings of the PCCC to Mr Smith in contravention of Standing Order 211A, and in doing so committed a contempt as per Standing Order 266(12) which constitutes an improper interference with the free exercise by the PCCC of its authority in accordance with the definition of contempt in Section 37 of the Parliament of Queensland Act 2001.

Penalty

105. As mentioned earlier, section 15(1) of Schedule 2 of the Standing Orders sets out that the committee must, with its report, recommend the action that should be taken.

106. The committee sought a submission from the Member for Warrego as to the penalty. In her submission to the committee, the Member for Warrego argued that to punish her would have the effect of punishing a Member who was attempting to ensure matters of public administration and Ministerial conduct were brought to the attention of the relevant body, and that there was limited public interest in pursuing her further.

107. The Member for Warrego also argued that her conduct can be considered to be an isolated event unlikely to reoccur due to the "extraordinary nature" of the events leading to her circumstances.

108. Ms Leahy contended that it would be unrealistic for the committee to impose significant sanction for contempt on a Member for utilising secretarial assistance in preparation of a document prior to it being provided to a Committee, and that if this were to be the outcome of the matter it would inhibit some Members and Ministers from conducting Committee business.

109. In her summary, the Member for Warrego requested that no further action be taken.

110. The finding of the involvement of Mr Smith as an improper interference will set a precedent and a standard for the conduct of all current and future members of the PCCC and Ethics Committee in involving support persons other than Parliamentary Officers in the preparation of documents to be submitted to those committees.

111. It is considered a likely practical reality that members of both those committees on both sides of the House have sought assistance from party staffers in performing their role and preparing documentation to present to both the PCCC and the Ethics Committee. Also, in the case of the Ethics Committee, it is largely Members of Parliament who are parties to the matters and who legitimately need to seek assistance from other persons (including legal support) in preparing their responses.

112. Due to the practical likelihood of technical breaches of SO 211A occurring the committee recommends that the Committee of the Legislative Assembly consider amend SO 211A to clarify that members should seek the advice of the Clerk or his delegate in relation to matters before those committees in the first instance, however, members may seek external support to the extent that it is necessary to properly discharge their obligations before these committees. In doing so, SO 211A could also clarify that such external persons remain subject to the same strict confidentiality obligations in the Standing Order to not disclose to anyone else until the committee has reported or otherwise authorised publication.

Precedents for penalties for unauthorised disclosure

113. As advised under the previous allegation, there are no previous matters where a finding of contempt was made for the unauthorised disclosure of committee proceedings.

Conclusion regarding penalty

114. The committee concluded that this contempt alone, noting the policy issue the subject of a recommendation to the CLA, would ordinarily be at the lower end of the penalty scale.

115. However, given the other findings of contempt regarding associated matters, the committee decided to make a cumulative recommendation for penalty in regard to all the matters regarding the Member for Warrego.

Allegation 5 - Deliberately misleading the PCCC in her response to the Acting Chair of the PCCC of 12 August 2015 by not disclosing the assistance provided by Mr Jake Smith, Chief of Staff to the Leader of the Opposition, in the preparation of the email sent to the PCCC members, secretariat and the Premier's generic email addresses on 12 July 2015 (SO 266)

116. The fifth allegation reflects concerns of an alleged contempt of Standing Order 266 by the Member for Warrego for deliberately misleading the PCCC by way of omission.

117. Following the disclosure of Ms Leahy's email to the PCCC of 15 July 2015 to the media, the Acting Chair of the PCCC wrote on 22 July 2015 to the members of the PCCC, the PCCC secretariat, and the Premier regarding the original email from the Member for Warrego, requesting the recipient advise whether they were responsible for the disclosure, an explanation for the disclosure if they were responsible, or advice on whether they could provide information that could assist in the determining the source of the disclosure.

118. In the Member for Warrego's response, she advised that she "did not release, to any media, information about her email to the Committee on 12 July 2015 and cannot provide any information".

119. As mentioned previously, during the committee's investigations into the unauthorised disclosure of the Member for Warrego's email of 12 July 2015 to the media, the committee obtained information showing email correspondence between the Member for Warrego and Mr Smith, which showed Mr Smith's involvement in preparing the email that was sent by the Member for Warrego to the PCCC members and secretariat and the Premier's generic email addresses on 12 July 2015.

120. The committee summonsed Mr Smith to appear before the committee on 13 November 2015 as a witness on the matter of the unauthorised disclosure of the Member for Warrego's email of 12 July 2015 to the media, where the committee took the opportunity to question Mr Smith on his involvement in the preparation of the email.

121. On the evening before Mr Smith's appearance before the committee, the Member for Warrego supplied copies of two emails showing Mr Smith's involvement in the preparation of her email of 12 July 2015.

122. These emails, and the additional evidence provided by Mr Smith on his interactions with the Member for Warrego, show that Mr Smith had significant involvement in the preparation of the email of 12 July 2015 prior to it being sent, and held an electronic copy of substantially the same text as that sent by the Member for Warrego.

123. The committee determined that the Member for Warrego's email to the Acting Chair of the PCCC advising that she had no information as to the source of the disclosure to the media potentially deliberately misled the PCCC, and resolved to put that specific allegation of contempt of deliberately misleading the PCCC to the Member.

124. The committee wrote to the Member for Warrego asking her to address the specific allegations of contempt of deliberately misleading the PCCC and invited her to attend another private hearing to answer committee questions in relation to the allegation.

125. On 3 December 2015, the Member for Warrego forwarded her submission, and a private hearing was held with the Member for Warrego on 8 December 2015.

126. The committee found that it had sufficient material before it to deliberate on the allegations. This material included copies of emails between the Member for Warrego and Mr Smith, evidence provided by Mr Smith at his private hearing, information contained in the Member for Warrego's submission, and evidence provided by the Member for Warrego at the private hearing.

Test of deliberately misleading the House or a committee

127. There are 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.[6]

128. The Ethics Committee of the 48th Parliament stated that the term 'misleading' is wider than 'false' or 'incorrect'. The committee considered it "possible, although rare and unlikely, that a technically factually correct statement could also be misleading"—for example, by the deliberate omission of relevant information.[7]

Was the Member for Warrego's advice to the PCCC on 12 August 2015 misleading?

129. The first limb of this element is whether the person's statement contained factually or apparently incorrect material.

130. The email on 12 August 2015 from the Member for Warrego to the Acting Chair of the PCCC was in response to the letter sent by the Acting Chair to all the recipients of the Member for Warrego's email of 12 July 2015 regarding the unauthorised disclosure of the Member for Warrego's email to the media. The letter asked:

> *... I request an indication from you as to whether you were responsible for the disclosure or if you are able to provide any information that could assist in determining the source of the disclosure.*

131. In her email to the Acting Chair, the Member for Warrego stated:

> *Further to my email of 21 July and the Secretariat's letter of the 22 July, I did not release, to any media, information about my email to the Committee on 12 July 2015 and cannot provide any information.*

132. The committee considered that the emails between the Member for Warrego and Mr Smith, and the additional evidence provided by Mr Smith on his interactions with the Member for Bundamba, show that Mr Smith had significant involvement in the preparation of the email of 12 July 2015 prior to it being sent, and held an electronic copy of substantially the same text as that sent by the Member for Warrego.

133. In her submission of 3 December 2015, the Member for Warrego argued that Mr Smith's involvement was not information that could assist in determining the source of the disclosure as Mr Smith is a public servant and therefore subject to strict confidentiality obligations that would prevent him from releasing any information without authority.

134. The Member for Warrego also argued that he was only ever in receipt of a draft of her e-mail and not the final version.

135. However, the committee considered that the involvement of Mr Smith meant there was an additional person outside of members of the committee and parliamentary staff with knowledge of the contents of the email as he had assisted with drafting the email and had access to the text of the PCCC email prior to it being sent.

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[6] McGee, David, Parliamentary Privilege in New Zealand, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653-655.

[7] MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 10.

136. Therefore the committee considered that the Member for Warrego had information that could assist the PCCC in its task of attempting to determine the source of the disclosure, and that the Member for Warrego's statement to the PCCC that she could not provide any information that could assist in determining the source of the disclosure was factually incorrect.

137. The second limb of this element is whether the statement itself was misleading. The committee considered there is a clear presumption that a reasonable person would have been misled by the Member for Warrego's statement that she could not provide any information that could assist in determining the source of the disclosure.

138. Therefore, by omitting Mr Smith's involvement with the email in her response, the committee considered that the Member for Warrego's statement that she could not provide any information was misleading.

139. Accordingly, the committee found that the first element has been established.

Element Two - Did the Member for Warrego know at the time she gave the advice that it was misleading?

140. On the evidence before the committee, the committee considered that the Member for Warrego actively engaged with Mr Smith when seeking advice and in the preparation of the email to the Clerk and to the PCCC on 12 July 2015.

141. The Member for Warrego would also have known that the PCCC were not cognisant of Mr Smith's knowledge of documents being found in the safe, or his involvement in the preparation of the email.

142. On the evidence presented, the committee found that that the Member for Warrego knew at the time she gave the advice that she had information that could assist the PCCC in attempting to determine the disclosure that her response to the Acting Chair was misleading in that she had omitted to advise of the involvement of Mr Smith, despite the fact that she was aware that a person outside of members of the committee and parliamentary staff had knowledge of the contents of the email and access to the text of the email.

143. Therefore, the committee found the second element had been established.

Element Three - (If yes), did the Member for Warrego intend to mislead the committee?

144. 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.*[8]

145. As noted earlier, the Ethics Committee of the 48th Parliament stated that the term 'misleading' is wider than 'false' or 'incorrect'. The committee considered it "possible, although rare and unlikely, that a technically factually correct statement could also be misleading"—for example, by the deliberate omission of relevant information.[9]

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[8] McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

[9] MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 10.

146. The committee considered that the Member for Warrego had personal knowledge of Mr Smith's involvement and that she had prepared a formal response to a request for information from the Acting Chair some three weeks after she received the letter from the Acting Chair, which omitted to mention Mr Smith's involvement.

147. The committee therefore considered whether the Member for Warrego had deliberately misled the PCCC by omission in failing to advise of the knowledge of Mr Smith.

148. In her submission of 3 December 2015, the Member for Warrego argued that she did not consider her correspondence with Mr Smith was relevant to the issue that the PCCC was investigating as she did not "authorise Mr Smith to release any information to the media or any draft information from any draft". In addition, the Member for Warrego asserted that "I did not intend to mislead the PCCC".

149. At the private hearing, the Member for Warrego submitted that she had interpreted the Acting Chair of the PCCC's request to provide "any information that could assist in determining the source of the disclosure" as being confined only to information about the final version of the e-mail and how it made its way into the media and that she had did not have any information in that regard.

150. However, the committee considered that, on balance, the Member for Warrego's submissions and responses at the hearing were not so convincing as to rebut the strong presumption of an intent to mislead the PCCC by omission. Therefore, on the evidence before the committee, the Committee found, on the balance of probabilities, that the Member for Warrego intended to mislead the PCCC and that the third element had been established.

Conclusion regarding contempt

151. The committee found that the Member for Warrego had deliberately misled the PCCC in her response to the Acting Chair of the PCCC of 12 August 2015 when she advised that she had no information that could assist in determining the source of the unauthorised disclosure of her email of 12 July 2015 (SO 266).

Penalty

152. As mentioned earlier, section 15(1) of Schedule 2 of the Standing Orders sets out that the committee must, with its report, recommend the action that should be taken.

153. The committee sought a submission from the Member for Warrego as to the penalty. In her submission to the committee, The Member for Warrego argued that she attempted to deal with the matter "as sensitively and responsibly as possible", and to help her deal with the matter she sought advice from the Clerk as to the content of her response to the PCCC. She advises that the Clerk's advice did not indicate that any secretarial assistance needed to be disclosed by her in her response.

154. The Member for Warrego also contended that, because Mr Smith and all public servants who assist Parliamentarians are under strict confidentiality requirements, when she wrote to the Acting Chair of the PCCC on 12 August 2015 she had no reason to consider that he was either responsible for the disclosure to the media or that she was able to provide any information that could be of assistance in identifying the source.

155. Again, the Member for Warrego submitted that no further action be taken in relation to this allegation.

Conclusion regarding penalty

156. The contempt of deliberately misleading the House or a committee is a serious contempt, which would attract a penalty at the higher end of the scale. However, the committee decided to make a cumulative recommendation for penalty in regard to all the matters regarding the Member for Warrego.

Allegation 6 - Deliberately misleading the Ethics Committee in her responses to questions at the private hearing on 30 October 2015 by omitting the involvement of Mr Jake Smith in the preparation of her email of 12 July 2015 and thus having knowledge of information that could assist in determining the source of the disclosure to the media of that email (SO 266).

157. As mentioned under Allegation 5, the committee obtained information showing email correspondence between the Member for Warrego and Mr Jake Smith, which showed Mr Smith's involvement in preparing the email that was sent by the Member for Warrego to the PCCC members and secretariat and the Premier's generic email addresses on 12 July 2015.

158. On 30 October 2015, the Member for Warrego appeared at a private hearing of the committee to assist with the investigation into the alleged unauthorised disclosure of committee proceedings to the media.

159. At the hearing, the Member for Warrego was asked specific questions about the preparation, treatment and distribution of her email of 12 July 2015.

160. The Member for Warrego did not mention the involvement of Mr Smith in any of her responses to the questions put to her by the committee.

161. The committee determined that the Member for Warrego's responses to the committee's questions at her private hearing of 30 October potentially deliberately misled the committee, and resolved to put the allegation of contempt of deliberately misleading the committee to the member.

162. On the evening of 12 November 2015, at 9.04pm, prior to the private hearing with Jake Smith on the morning of 13 November 2015, the Member for Warrego emailed two documents to the Research Director of the Ethics Committee containing the wording of two emails between herself and Jake Smith, one on 5 July 2015 and the other on 12 July 2015 which show the correspondence regarding the email the Member for Warrego sent on 12 July to the PCCC members, secretariat and the Premier's generic email addresses. In her email, the Member for Warrego said "I have discovered the attached two emails in an Auto Archived folder which may be relevant to the matters of the Committee".

163. Following Mr Smith's appearance before the committee, the committee wrote to the Member for Warrego asking her to address the specific allegations of contempt of deliberately misleading the Ethics Committee and invited her to attend another private hearing to answer committee questions in relation to the allegation.

164. On 3 December 2015, the Member for Warrego forwarded her submission, and a private hearing was held with the Member for Warrego on 8 December 2015.

165. The committee found that it had sufficient material before it to deliberate on the allegations. This material included copies of emails between the Member for Warrego and Mr Smith, evidence provided by Mr Smith at his private hearing, the emails forwarded by the Member for Warrego, information contained in the Member for Warrego's submission, and evidence provided by the Member for Warrego at the private hearing.

Test of deliberately misleading the House or a committee

166. As mentioned earlier, there are 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.[10]

Was the Member for Warrego's evidence given at the private hearing of the Ethics Committee on 30 October 2015 misleading?

167. As mentioned previously, the first limb of this element is whether the person's statement contained factually or apparently incorrect material.

168. At the private hearing on 30 October 2015, the Member for Warrego was asked specific questions regarding whether she had talked to anyone other than the Clerk about finding the documents in her PCCC safe, whether she had shared the email of 12 July 2015 with anyone other than the PCCC members and secretariat and the Premier's generic email addresses prior to or after sending it, and whether she stood by her statement that she had no information that could assist the committee with determining the source of the disclosure of the email to the media. At no stage did the Member for Warrego refer to Mr Smith's involvement in the matter.

169. The following provides excerpts from the hearing to illustrate the questions and responses given:

> ***Miss BOYD:*** *Being shocked and alarmed at finding those documents in the safe, what did you do immediately after finding those documents?*
>
> ***Ms Leahy:*** *What did I do? I sat down and had a think. I had no idea whether I was being set up. I had no idea whether it was purposely left in there. I had no idea whether I got the safe that maybe Jeff Seeney was targeted to get. I had no idea.*
>
> ***Miss BOYD:*** *That would have been something that stuck with you, finding these documents and having that kind of revelation, sitting down and having that think. Did you start to document any kind of information from then? Did you alert anyone straightaway? Was there any immediate action that you took?*
>
> ***Ms Leahy:*** *I had to sit down and think about how would I get these documents back to where they safely should be. Then I started to think about who would be the person to contact, and the person was the Clerk.*
>
> ***Miss BOYD:*** *And you are not sure whether that advice you sought from the Clerk was immediate after finding the documentation?*
>
> ***Ms Leahy:*** *It was very close to, given my diary commitments as well.*
>
> ...
>
> ***ACTING CHAIR:*** *I want to go back to your general concern about being a whistleblower. On finding this material I think you said you were shocked and alarmed—I cannot recall your exact words—and you were concerned about why it was there and divulging that. Did you ever seek any advice from the Clerk or from anyone else about your concerns with what you were to do with this information or why it was there or reporting it?*
>
> ***Ms Leahy:*** *I cannot recall. It was a fair while ago. I cannot recall. I might have made an expletive to my electorate office staff when I discovered it, but I cannot recall.*
>
> ***ACTING CHAIR:*** *Regarding the alleged unauthorised disclosure of committee proceedings to the media, as flagged in this committee's letter to you of 15 October 2015, the committee might also have some questions for you in respect of the related allegation of unauthorised disclosure of your email of 12 July 2015 to the media. I am going to start*

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[10] McGee, David, Parliamentary Privilege in New Zealand, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653-655.

with a few questions and then I will see whether other members also have questions. In the time between when you discovered the documents, you consulted the Clerk regarding his advice and your email of 12 July 2015, did you discuss the matter with anyone else?

Ms Leahy: *I cannot recall. I was exceptionally busy. I cannot recall whom I might have discussed or not discussed it with. I cannot recall.*

ACTING CHAIR: *So a matter which you yourself said shocked or alarmed you—or words similar—you did not discuss with anyone else?*

Ms Leahy: *I cannot recall.*

ACTING CHAIR: *Did you prepare the email of 12 July 2015 yourself?*

Ms Leahy: *Yes, I did have a fair bit to do with that email. I worked my way through trying to prepare that quite steadily, so it took me quite a while to put it together.*

ACTING CHAIR: *When you say you did have a fair bit to do with it, could you please directly answer my question? Did you prepare the email of 12 July 2015 yourself—all yourself?*

Ms Leahy: *Can I ask you to repeat that?*

ACTING CHAIR: *Did you prepare all of the email of 12 July 2015 yourself?*

Ms Leahy: *Can I have you repeat the question?*

ACTING CHAIR: *Did you prepare all of the email of 12 July 2015 yourself?*

Ms Leahy: *No, I actually copied some parts from the advice from the Clerk.*

ACTING CHAIR: *Did you share the email with anyone else other than the members and secretariat of the PCCC and the Premier prior to or after sending the email?*

Ms Leahy: *No.*

ACTING CHAIR: *In your email to the research director of the PCCC of 12 August 2015, you advised that you did not release your email of 12 July 2015 to any media and that you were unable to provide any information that could assist in determining the source of the disclosure. I remind the member that you are under oath. Do you stand by that statement?*

Ms Leahy: *I did not give any information to any media.*

ACTING CHAIR: *There are two elements to the question. You were asked whether you were able to provide any information that could assist in determining the source of the disclosure. I can read that again if you would like me to?*

Ms Leahy: *Yes, please.*

ACTING CHAIR: *Whether you are able to provide any information—any information—that could assist in determining the source of the disclosure?*

Ms Leahy: *I cannot provide any information that could assist in determining the source of the disclosure.*

...

ACTING CHAIR: *Could I go back to your words before—and I will look at Hansard later to be clear on the exact words—when I asked you whether you prepared all of the email of 12 July yourself, you said something to the effect of you were—*

Miss BOYD: *A fair bit.*

ACTING CHAIR: *A fair bit of it or you certainly did most of it.*

Ms Leahy: *I did have input from the Clerk, as well.*

ACTING CHAIR: *That is what you were referring to? It was just you and the Clerk?*

Ms Leahy: *I had input from the Clerk.*

170. However, as referred to previously, the committee obtained copies of emails showing correspondence between the Member for Warrego and Mr Smith regarding the drafting of the email.

171. Furthermore, at the private meeting with Mr Smith on 13 November 2015, Mr Smith advised the committee under oath that:

Mr Smith: *Sometime roughly a fortnight before 12 July the member for Warrego had come to see me, I think in Brisbane. It would have been in Brisbane…She had asked me, as I have worked in politics for a long time, for my view on how this should be handled, who should be advised and whether I knew what the proper process was about this particular issue. I am not putting verbatim words there; I am just talking conceptually about what the discussion was. I said that I really had no idea at all but that I would, with her permission, go and have a one-on-one meeting with the Clerk of the Parliament to get professional advice from the Clerk about the appropriate way to deal with this situation, dealing with confidential documents.*

…

Mr Smith: *I met with the Clerk. He provided advice, which is what I would do professionally. I have then relayed that advice back to the member for Warrego. In doing so I actually drafted—there are two emails I assisted the member for Warrego with. I drafted one on about 5 July…That was the original email for her to send to the Clerk, pointing out, 'This is my situation and this is the course of action I propose to take,' which of course was the recommended course of action from the Clerk in the first place. I assisted drafting that. I never actually saw, that I recall, a final of that. I think I just sent her the draft of that. I think about a week later she looped me in on the Clerk's response later in the week, which said that is the appropriate course of action.*

…

Mr Smith: *As I recall, there was a scheduled PCCC meeting for Monday, 13 July. I then drafted, probably over the weekend of the 11th and the 12th, a text that she might like to send the PCCC members. Again, it was a weekend. Again, I think she was out west and it was a Sunday. But I do not know now whether that is the exact text that ended up actually being sent.*

…

ACTING CHAIR: *Did the member for Warrego ask you to draft the email of 12 July 2015 on her behalf or did you offer to do so?*

Mr Smith: *I am probably doing a bit of guesswork on that, but it would have come out of a discussion, yes.*

…

Mr MADDEN*: Just for clarification, it was not something that she dictated to you that you then typed up—the second letter?*

Mr Smith*: It would have come about in different ways. The first one she is in Darwin. The second one, as I indicated to you, I would have spoken to her about, as I recall, in person*

down here on Saturday. As I said before, we had our annual convention. As I recall, I think on Sunday she had flown back out west. I have not just sat there with a blank sheet of paper and drafted something. It has come out of a conversation with her, when I would have seen her in person on Saturday—remembering, on Friday, it is the first time I am actually advised, that I see that the Clerk has actually said to her that he concurs that this should happen on Monday. So obviously over the weekend, then, I will assist in drafting something.

***Mr MADDEN**: So it is fair to say that with both letters it was a joint effort by you and Ms Leahy?*

***Mr Smith**: Yes, well, I guess because I am actually typing it, yes. Again, I think on that Sunday, if memory serves me correctly, she was not down here anymore; she was out west and she knows that I work all weekend.*

172. Therefore, on the evidence before the committee, the committee found that all of the Member for Warrego's responses to the questions about assistance in the preparation of her email and whether she had information that could assist with identifying the source of the disclosure of committee proceedings on 12 July 2015 as detailed above were factually incorrect.

173. The second limb of this element is whether the statement itself was misleading. Again, the committee considered there is a strong presumption that a reasonable person may have been misled by the Member for Warrego's responses that she alone decided to contact the Clerk; that she could not recall seeking advice from anyone other than the Clerk; that she did not discuss the matter with anyone else; that she alone prepared the e-mail; and that she did not share the email with anyone else other than the members and secretariat of the PCCC and the Premier prior to or after sending the email; and that she could not provide any information that could assist in determining the source of the disclosure.

174. The emails between the Member for Warrego and Mr Smith and the evidence of Mr Smith at the Private Hearing on 13 November 2015, showed the involvement of another external party in the preparation of the email, and that Mr Smith's involvement in drafting the email of 12 July 2015 was information of interest to the committee in its efforts to determine the source of the disclosure.

175. Therefore, the committee considered that the Member for Warrego's responses to the committee's questions were misleading by omission, and that this element had been met.

Did the Member for Warrego know at the time she gave the advice and the evidence that it was misleading?

176. The information before the committee showed the Member for Warrego actively engaged with Mr Smith when seeking advice and in the preparation of the email to the Clerk and to the PCCC on 12 July 2015.

177. In her evidence before the private hearing on 8 December 2015, the Member for Warrego stated "At the time I was answering the questions concerning the preparation of the e-mail I had not recalled Mr Smith's e-mails, and I also did not recall some others that I found in relation to the Clerk's advice as well. After my appearance I discovered the e-mails between myself and Mr Smith in an auto archive folder on the system. I disclosed them at an early stage.".

178. However, the evidence of Mr Smith indicated that there was a great deal more interaction between himself and the Member for Warrego in relation to this matter over a period of time in addition to the two e-mails eventually provided to the committee by the Member for Warrego.

179. The committee found it difficult to accept that at no time during the numerous questions put to the Member for Warrego at the private hearing of 30 October 2015, she did not recall Mr Smith's involvement in the matter and did not contemplate that she might be misleading the committee by omitting to mention his involvement.

180. Therefore, the committee considered on the balance of probabilities that the Member for Warrego knew at the time she gave her responses to the committee they were misleading by omission, and that the element had been met.

(If yes), did the Member for Warrego intend to mislead the committee?

181. The Member for Warrego was asked a number of times whether she had talked to anyone or sought advice about finding the documents in the safe, to which she replied she could not recall. The evidence provided by Mr Smith shows that she sought advice from Mr Smith prior to contacting the Clerk, and also forwarded the Clerk's advice to Mr Smith.

182. The Member for Warrego was also asked whether she had prepared the email herself, with her answers indicating that she had a 'fair bit to do with it' and that she had also had input from the Clerk. The Member for Warrego made no mention of Mr Smith's involvement in the preparation of the email. The emails between the Member for Warrego and Mr Smith clearly show that she had assistance from Mr Smith.

183. When asked if she had shared the email with anyone other than the members of the PCCC and the secretariat, the Member for Warrego replied that she hadn't. Again, the emails between the Member for Warrego and Mr Smith clearly show that she had assistance from Mr Smith with drafting the email to the PCCC sent 12 July 2015.

184. In her written submission of 3 December 2015, the Member for Warrego argued that her responses about the preparation of the e-mail were directed towards the actual authoring of the text of the e-mail rather than the physical act of typing the e-mail, and in effect arguing that Mr Smith merely typed the words that she wanted included in the e-mail which was not part of the preparation of the document.

185. The committee again found it a difficult proposition to accept that the Member would take such an interpretation of what was a simple open and clear question "Did you prepare all of the e-mail of 12 July yourself?".

186. At the hearing, the Member for Warrego asserted that she did not intend to mislead the committee.

187. However, on the evidence before the committee, the committee considered that on the balance of probabilities the Member for Warrego intended to mislead the committee in all of her responses at the private hearing of 30 October 2015 as set out above by omitting to mention the involvement of Mr Smith with her e-mail of 12 July 2015.

Conclusion regarding contempt

188. The committee found that the Member for Warrego had deliberately misled the committee in her responses at her private hearing on 30 October 2015 when she said that she:

- alone decided to contact the Clerk
- could not recall seeking advice from anyone other than the Clerk
- did not discuss the matter with anyone else
- that she alone prepared the e-mail
- did not share the email with anyone else other than the members and secretariat of the PCCC and the Premier prior to or after sending the email, and

- could not provide any information that could assist in determining the source of the disclosure.

Penalty

189. As mentioned earlier, section 15(1) of Schedule 2 of the Standing Orders sets out that the committee must, with its report, recommend the action that should be taken.

190. The committee sought a submission from the Member for Warrego as to the penalty.

191. In her submission to the committee, the Member for Warrego reminded the committee that she provided the draft emails involving Mr Smith to the committee to clarify her answers given at her first private hearing.

192. Again, the Member for Warrego submitted that no further action be taken in relation to this allegation.

Precedents

193. As noted earlier, there are no previous matters where a finding of contempt was made for the unauthorised disclosure of committee proceedings.

194. The committee noted, however, a precedent of a matter where the fitness of a member to perform committee duties was considered as a rationale for the recommended penalty. The matter concerned an allegation that the Member for Bundamba, Mrs Jo-Ann Miller MP reflected on the Chair in the following statement made in the House on 28 November 2012 "Madam Speaker, I have been vilified by you in this parliament for the last six months".

195. In this matter the committee considered that, as the Ethics Committee sits in judgement of allegations against its peers relating to their conduct in the House, the committee was of the view that should the House accept its recommendation that the Member for Bundamba be found guilty of contempt, that it would be appropriate that the member be suspended from the membership of the Ethics Committee for a period of time.

196. The committee unanimously recommended that the House suspend the Member for Bundamba from the Ethics Committee for a period of three (3) months from the date the committee's recommendation was considered by the House.

197. There are four previous matters where the Ethics Committee has made a finding of contempt in relation to deliberately misleading the House or its committees.

198. The first matter related to a Mr Amprimo presenting a submission to a parliamentary committee under a fictitious signature in circumstances likely to mislead the committee (Report No. 2211). The Select Committee on Privileges recommended no further action be taken due to the sincere apology tendered to the House by Mr Amprimo, his remorse and acceptance of responsibility for his contempt.

199. The second matter related to the then Member for Ipswich West, Mr Jack Paff, who was found to make a deliberately misleading statement in a dissenting committee report tabled on 11 March 1999 (MEPPC Report No.3512). The committee recommended he be admonished for his conduct by the Speaker and apologise to the House. In addition, the committee recommended suspension from the services and precincts of the House for 21 days.

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[11] Select Committee of Privileges Report No. 22 *A Forged Submission to a Parliamentary Committee* (tabled 9 September 1994).

[12] Members' Ethics and Parliamentary Privileges Committee Report No. 35, *Report on a matter of privilege – A member making a deliberately misleading statement in a "Dissenting Report"* (tabled 15 September 1999).

200. The third matter related to the former Member for Sandgate Mr Gordon Nuttall who was alleged to have deliberately mislead Estimates Committee D (Report No.7213). Before the committee had finalised its inquiry the House resolved to deal with the matter as a contempt and to accept the Member for Sandgate's resignation as a Minister and Member of the Executive Council, and his apology to the House as an appropriate penalty.

201. The fourth matter related to the then Member for Redcliffe, Mr Scott Driscoll, who was found to have made a deliberately misleading statement in a Personal Statement to the House. The committee recommended the House impose the maximum fine available to it of $2000 to reflect the gravity of the offence and to send a strong message to members and the public about the level of accountability expected of members of parliament.

Conclusion regarding penalty

202. The committee is cognisant that the Code of Ethical Standards states that the public's confidence in the institution of Parliament is essential. Specifically, 'members 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.'

203. The committee takes very seriously its important function in ensuring that high standards are maintained by all members and these standards were considered when making a recommendation as to penalty.

204. The committee notes that previous Ethics Committees have referred to the well-established principle in the general law in relation to bodies which have an obligation to protect professional standards that a sanction imposed is for the purpose of maintaining the standards rather than imposing a 'punishment' in the traditional sense.

205. In particular, the case of Karriaper v Wijesinha, the Privy Council found that sanctions imposed against members of Parliament were designed 'not to punish but to keep public life clean'.

206. The committee noted the Member for Warrego's argument that she is a relatively inexperienced as a Member of Parliament.

207. However the committee also noted that the Member for Warrego has a long experience close to parliament as an Electorate Officer and would have been aware of committee confidentiality requirements and had only recently received an induction by the PCCC secretariat which included information regarding those requirements.

208. Nonetheless, as detailed above, the Committee were of the consensus view that the contempts relating to allegations 3 and 4, on their own, would normally have resulted in a recommended penalty at the lower end of the scale.

209. However, the Committee also considered that the contempts of deliberately misleading the PCCC and the Ethics Committee (allegations 5 and 6) were very serious contempts which had the effect of compounding the original errors of unauthorised disclosure.

210. Accordingly, the Committee resolved that it needed to consider the cumulative effect of all four findings of contempt as they were all interrelated, and made its recommendations for penalty on that basis.

211. The Committee finds the combined effect of the Member for Warrego's conduct reflects a lack of regard for the rules of the PCCC and lack of respect for the role the Ethics Committee performs.

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[13] Ethics Committee Report No. 72, *Matter of Privilege Referred by the Speaker on 24 August 2005 Relating to the Alleged Misleading of Estimates Committee D* (tabled 2 March 2006).

212. The committee was concerned at the way the Member for Warrego conducted herself before the inquiry. Those members noted a disrespectful tone in responding to questions and in advising of her inability to appear before the committee at a scheduled time.

213. More importantly, the committee noted a reluctance on the part of the Member for Warrego to assist the inquiry, particularly as evidenced by the delay in providing the relevant e-mails involving Mr Smith.

214. Furthermore, the committee found that the Member for Warrego's responses at the private hearing regarding her understanding of the role of the Chief of Staff of the Leader of the Opposition tarnished her overall credibility as a witness.

215. In addition, the committee noted that the Member for Warrego demonstrated little remorse for her actions in making her submissions as to penalty.

216. The committee considered that the combined effect of the pattern of conduct of the Member for Warrego across the four recommended findings of contempt calls into question the appropriateness of the Member for Warrego continuing to serve on parliamentary committees.

217. Accordingly, the committee unanimously recommends that the House suspend the Member for Warrego from all committees for a period of six (6) months from the date the committee's recommendation is considered by the House. The committee notes that this recommendation if accepted will involve a financial impost on the member in terms of foregoing the additional salary component payable to members who undertake committee duties.

218. In addition, the committee is of the view that the Member for Warrego should not be appointed to the PCCC for the remainder of the 55th Parliament.

219. Furthermore, the committee unanimously recommends that to appropriately address the gravity of the conduct in deliberately misleading both the PCCC and the Ethics Committee and the member's lack of regard for the rules of the PCCC and lack of respect for the role the Ethics Committee performs, the Member for Warrego be admonished for that conduct and that the Speaker on behalf of the House deliver the admonishment to the member standing in her place.

Conclusion 3

On the information before the committee, it finds that the Member for Warrego made an unauthorised disclosure of committee proceedings of the Parliamentary Crime and Corruption Committee (PCCC) by including the Premier's generic and electorate office email addresses by the Member for Warrego in her email of 12 July 2015 which constituted an improper interference with the authority and functions of the PCCC.

Conclusion 4

On the information before the committee, it finds that the Member for Warrego made an unauthorised disclosure of committee proceedings of the PCCC by involving Mr Jake Smith in the preparation of the email to the PCCC of 12 July 2015 which constituted an improper interference with the authority and functions of the PCCC.

Conclusion 5

On the information before the committee, it finds that the Member for Warrego deliberately misled the PCCC in her response to the Acting Chair of the PCCC of 12 August 2015 by not disclosing the assistance provided by Mr Jake Smith, Chief of Staff to the Leader of the Opposition, in the preparation of the email sent to the PCCC members, secretariat and the Premier's generic email addresses on 12 July 2015.

Conclusion 6

On the information before the committee, it finds that the Member for Warrego deliberately misled the Ethics Committee in her responses to questions at the private hearing on 30 October 2015 by omitting the involvement of Mr Jake Smith in the preparation of her email of 12 July 2015 and thus having knowledge of information that could assist in determining the source of the disclosure to the media of that email.

Recommendation 3

The committee recommends that the Committee of the Legislative Assembly consider amending Standing Order 211A to clarify that members should seek the advice of the Clerk or his delegate in relation to matters before those committees in the first instance, however, members may seek external support to the extent that it is necessary to properly discharge their obligations before these committees. In doing so, SO 211A could also clarify that such external persons remain subject to the same strict confidentiality obligations in the Standing Order to not disclose to anyone else until the committee has reported or otherwise authorised publication.

Recommendation 4

The committee recommends a finding of contempt be made against the Member for Warrego for:

1. **an unauthorised disclosure of committee proceedings of the PCCC by including the Premier's generic and electorate office email addresses by the Member for Warrego in her email of 12 July 2015;**

2. **an unauthorised disclosure of committee proceedings of the PCCC by involving Mr Jake Smith in the preparation of the email to the PCCC of 12 July 2015;**

3. **deliberately misleading the PCCC in her response to the Acting Chair of the PCCC of 12 August 2015 by not disclosing the assistance provided by Mr Jake Smith, Chief of Staff to the Leader of the Opposition, in the preparation of the email sent to the PCCC members, secretariat and the Premier's generic email addresses on 12 July 2015; and**

4. deliberately misleading the Ethics Committee in her responses to questions at the private hearing on 30 October 2015 by omitting the involvement of Mr Jake Smith in the preparation of her email of 12 July 2015.

Conclusion 7

The Committee noted that the contempts of unauthorised disclosure of committee proceedings in allegations 3 and 4, on their own, would normally have resulted in a recommended penalty at the lower end of the scale.

However, the Committee also considered that the contempts of deliberately misleading the PCCC and the Ethics Committee (allegations 5 and 6) were serious contempts which had the effect of compounding the original errors of unauthorised disclosure.

Accordingly, the Committee resolved to consider the cumulative effect of all four findings of contempt, and made its recommendations for penalty on that basis.

The Committee finds the combined effect of the Member for Warrego's conduct reflects a lack of regard for the rules of the PCCC and lack of respect for the role the Ethics Committee performs.

The committee noted a reluctance on the part of the Member for Warrego to assist the inquiry, particularly as evidenced by the delay in providing the relevant e-mails involving Mr Smith.

Furthermore, the committee found that the Member for Warrego's responses at the private hearing regarding her understanding of the role of the Chief of Staff of the Leader of the Opposition tarnished her overall credibility as a witness.

The committee noted that the Member for Warrego has shown little remorse for her actions and the members of the committee were of the view that the Member had demonstrated a lack of respect to the Ethics Committee in her dealings with the committee during the inquiry.

In addition, the committee noted that the Member for Warrego demonstrated little remorse for her actions in making her submissions as to penalty.

The committee found that the Member for Warrego's conduct did not meet the standards required of a member as set out in the Code of Ethical Standards in that she did not conduct herself in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament.

The committee considered that the combined effect of the pattern of conduct of the Member for Warrego across the four recommended findings of contempt calls into question the appropriateness of the Member for Warrego continuing to serve on parliamentary committees.

Recommendation 5

The committee unanimously recommends that the House suspend the Member for Warrego from all committees for a period of six (6) months from the date the committee's recommendation is considered by the House. The committee notes that this recommendation if accepted will involve a financial impost on the member in terms of foregoing the additional salary component payable to members who undertake committee duties.

Furthermore, the committee unanimously recommends that to appropriately address the gravity of the conduct in deliberately misleading both the PCCC and the Ethics Committee and the member's lack of regard for the rules of the PCCC and lack of respect for the role the Ethics Committee performs, the Member for Warrego be admonished for that conduct and that the Speaker on behalf of the House deliver the admonishment to the member standing in her place.

Conclusion 8

The committee was of the view that the Member for Warrego should not be appointed to the PCCC for the remainder of the 55th Parliament.

Di Farmer MP
Acting Chair

17 February 2016

Membership — 55th Parliament

Ms Di Farmer MP, Acting Chair
Member for Bulimba

Mr Glen Elmes MP, Deputy Chair
Member for Noosa

Ms Nikki Boyd MP
Member for Pine Rivers

Mr Duncan Pegg MP
Member for Stretton

Mr Matt McEachan MP
Member for Redlands

Dr Mark Robinson MP
Member for Cleveland

Secretariat

Mr Michael Ries, *Research Director*
Ms Melissa Salisbury, *Principal Research Officer*
Ms Andrea Musch, *Executive Secretary*

Contact

Telephone: 07 3553 6610
Facsimile: 07 3553 6614
E-mail: ethics@parliament.qld.gov.au
Internet: www.parliament.qld.gov.au/ethics
Subscribe: www.parliament.qld.gov.au/subscribe

ETHICS COMMITTEE

Erratum to Report No. 162, 55th Parliament – Inquiry into Matter of Privilege referred by the Parliamentary Crime and Corruption Committee on 17 August 2015 relating to alleged unauthorised disclosure of committee proceedings.

The Ethics Committee has identified an error in Report No. 162, 55th Parliament – Inquiry into Matter of Privilege referred by the Parliamentary Crime and Corruption Committee on 17 August 2015 relating to alleged unauthorised disclosure of committee proceedings at page 10.

Paragraph 82 at page 10 of the report, should read as follows:

Following the initial private hearing with the Member for Warrego on 30 October 2015, and consideration of subsequent information obtained by the committee, the committee summonsed Mr Smith to attend a private hearing on 13 November 2015.

Di Farmer MP
Acting Chair

an opportunity to reflect not only on the past but also to consider, as Queenslanders, the legacy that we want to be remembered for.

MOTION

Amendments to Standing Orders

Hon. SJ HINCHLIFFE (Sandgate—ALP) (Leader of the House) (10.15 am), by leave, without notice: I move—

(1) That the House endorse the Protocol for custodians in the possession or control of members' documents as circulated in my name;

(2) That the Standing Rules and Orders of the Legislative Assembly be amended by inserting a new Schedule 10—Protocols for Committees Regarding the Documents and Records of a Member as circulated in my name and commencing immediately; and

(3) That the Standing Rules and Orders of the Legislative Assembly be amended by inserting a new Standing Order 211B Confidentiality of proceedings—Ethics Committee as circulated in my name and commencing immediately.

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Protocol for custodians in the possession or control of members' documents

Application

This protocol applies to custodians who are in the possession or control of members' documents. ("Applicable custodians")

Who are likely to be "applicable custodians"?

Applicable custodians are likely to include:

- The Clerk of Parliament and their delegates and other Parliamentary staff
- Electorate Office staff
- Ministerial Service Branch staff
- Directors' General and departmental staff

Documents over which applicable custodian likely to have control and possession?

Applicable custodian	*Documents likely to be within control and possession*
The Clerk of Parliament and their delegates and other Parliamentary staff	Electronic communications (emails of/to members on email servers)
	Electorate Office documents on parliamentary servers
	Briefings/advices to members
	Correspondence to and from Members
Electorate Office staff	Correspondence of members
	Research or planning documents
	Other documents created within the Electorate Office
Ministerial Service Branch staff	Electronic communications (emails of/to Leader of the Opposition and Ministers on email servers)
	Ministerial Office and Office of the leader of the Opposition documents on parliamentary servers
Directors' General and departmental staff	Ministerial briefings for parliamentary proceedings (for example, possible parliamentary questions, estimates briefing material, draft ministerial statements, etc.)

The proper approach for custodians

Applicable custodians should not publish or release control or possession of members' documents, without the consent of the member unless it is in accordance with law, for example:

- Right to information applications—in which case the views of the member should be sought in accordance with Chapter 3, Division 3 of the *Right to Information Act 2009*.
- For the purposes of an audit or report required under the *Auditor General Act 2009* and/or the *Financial Accountability Act 2009*.
- Pursuant to a coercive process such as a court order, a notice or a summons.

The proper approach for applicable custodians, should they be summoned by a non-parliamentary body (courts, commission of inquiry, Queensland Police Service, Crime and Corruption Commission) to produce documents is as follows:

Firstly, the custodian should seek the consent of the Member/Minister to release the documents to the investigating body. A custodian should only not seek the consent of the Member/Minister if the court order, notice or summons requires the custodian to not disclose the matter.

Secondly, if the Member/Minister consents, the documents should be provided.[1]

Thirdly, if the Member/Minister does not consent, the summons should be challenged if it appears that the document is a proceeding in parliament[2] and release of the document is likely to infringe the privileges of the member,[3] a committee or the Legislative Assembly. The challenge should be in accordance with the relevant legislation or otherwise in accordance with law. The ultimate claim will be determined by the courts in accordance with the law.

The proper approach for applicable custodians, should they be summoned by a parliamentary body (parliamentary committee or Legislative Assembly), is to comply with the summons and any relevant Standing Order.

In addition, the custodians should consent to the attendance of a committee appointed observer (i.e. either a person nominated by the relevant Member or a senior parliamentary officer) to be present with the custodian or delegate during the conduct of any searches under the summons with a view to ensuring that the conduct of the search complies with the strict search parameters and that there is no interference with the privileges of the Member outside of those strict parameters.

Advice and assistance

Applicable custodians can obtain advice from the Office of the Speaker and/or the Clerk of the Parliament.

The Speaker is the traditional guardian of the privileges of the Legislative Assembly, its committees and members and may in some instances seek to intervene in a matter or appear in a matter as a friend of the court.

SCHEDULE 10—PROTOCOLS FOR COMMITTEES REGARDING THE DOCUMENTS AND RECORDS OF A MEMBER

(1) When the documents and records of a member of the Legislative Assembly are sought by an investigative body 'outside parliament', the protections of parliamentary privilege may apply to the documents and records. Parliamentary privilege does not apply to protect the documents and records against proceedings 'in parliament', such as committee proceedings. These protocols seek to provide protection to the documents or records of a member of the Legislative Assembly from proceedings 'in parliament'.

(2) These protocols apply when, in the course of a committee of the Legislative Assembly's inquiry, there is a need or desire to obtain the documents or records of a member of the Legislative Assembly.

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[1] Note that the provision of the documents to the non-parliamentary body will not affect the protection afforded the documents by s 9 of the Parliament of Queensland Act 2001 as proceedings in the Assembly. That is, if they are a proceeding in parliament they will still not be able to be impeached or questioned in the absence of an overriding statutory provision applying.

[2] In Queensland s 9 of the Parliament of Queensland Act 2001 provides the definition of proceedings in Parliament:

9 Meaning of "proceedings in the Assembly"

(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.

(2) Without limiting subsection (1), "proceedings in the Assembly" include—

(a) giving evidence before the Assembly, a committee or an inquiry; and

(b) evidence given before the Assembly, a committee or an inquiry; and

(c) presenting or submitting a document to the Assembly, a committee or an inquiry; and

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

(e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c); and

(f) preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and

(g) a document (including a report) prepared, made or published under the authority of the Assembly or a committee.

[3] It is important at all times to note the distinction between the use of a document (that is, if it is a proceeding in Parliament) and the release of the document to third parties. Whether a matter is a proceeding in Parliament does not necessarily mean it is protected from an order from a competent tribunal for production – for example, if the document is already public.

(3) The committee shall in the first instance determine whether the documents or records of the member are relevant to the inquiry and likely to assist the committee in its inquiry.

(4) If the committee determines that the documents or records of the member are relevant to the inquiry and likely to assist the committee in its inquiry, the committee should invite the Member to provide the documents and records to the committee within a reasonable time

(5) If the documents or records are owned by a member but are in the possession or control of a third party ("custodian"), the committee should invite the Member to either:

(a) obtain the documents or records from the custodian and provide the documents or records to the committee; or

(b) consent to the custodian to provide the documents or records to the committee.

(6) The committee should only summon the production of the documents or records of a member in the possession or control of a custodian if:

(a) the steps above have been undertaken by the committee and the member or custodian declines to provide the material voluntarily within a reasonable time; or

(b) the committee suspects, based on reasonable grounds that there is a risk to evidence being lost or destroyed; or

(c) the committee suspects, based on reasonable grounds that there has not been a complete disclosure of information.

(7) If the committee decides to summon the production of documents or records of a member in the possession or control of a custodian, the committee shall:

(a) develop specific parameters, such as search terms and dates, with a view to ensuring that documents identified in the search are strictly relevant to the committee's investigation;

(b) appoint an independent observer either nominated by the relevant member (i.e. the member the subject of the search) or, if the member does not nominate an observer in a reasonable period of time, a senior parliamentary officer, with a view to ensuring that the conduct of the search complies with the strict search parameters;

(c) settle any disputes between the custodian undertaking the search and the independent observer as to whether the document or record meets the parameters of the search.

(8) In these protocols "documents or records" include:

(a) any paper or other material on which there is writing or information; and/or

(b) a record of information held by way of a mechanical, electronic or other device.

(9) In these protocols "documents or records of a member" are documents created by or for a member or directed to a member and which would generally be regarded as the property of the member and confidential and includes:

(a) Correspondence, including emails, texts or other messages to and from a member;

(b) Briefings, information papers, draft reports or notes produced by or for a member; and

(c) Possible questions or answers for use in parliamentary proceedings produced by or for a member.

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211B. Confidentiality of proceedings—Ethics Committee

(1) The proceedings of the Ethics Committee or a subcommittee of that committee on a matter before the Committee that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported to the House or otherwise published the proceedings.

(2) No member shall in the House refer to any proceedings of a committee in (1), until the committee has finally reported to the House or otherwise published the proceedings.

(3) When the Ethics Committee makes its final report to the House on a matter, the Committee shall at the same time, table in the House:

(a) The minutes of its proceedings relevant to the matter; and

(b) Any submissions received or evidence taken in respect of the matter (including transcripts of hearings)

unless the committee resolves that some or all of its proceedings remain confidential.

(4) The Ethics Committee shall only resolve that some or all of its proceedings remain confidential if valid grounds exist, such as:

(a) Publication of the proceedings is not in the public interest;

(b) Publication of the proceedings would be procedurally unfair to any person; or

(c) Publication of the proceedings is irrelevant to the matter.

(5) Any member of the committee is able to refer to any proceeding of the committee in a dissenting report or statement of reservation, unless the committee has resolved in accordance with (3).

Mr HINCHLIFFE: By way of explanation, following a letter of referral from the Ethics Committee in April 2016, the CLA has conducted an inquiry into matters concerning members' documents, including electronic documents, in the possession or control of the third-party custodians. The CLA

surveyed presiding officers of other Australian jurisdictions and took advice from the Clerk of the Parliament as well as independent advice from Mr Bret Walker SC on the issue.

As a result of its inquiries, the CLA has resolved to place before the House the following documents for its approval: protocols for the guidance of third-party custodians in possession or control of members' documents; a new schedule 10 for standing orders containing protocols for parliamentary committees who find a need or desire to obtain the documents or records of a member; and a new standing order 211B which provides as a default position the publication of the minutes of the Ethics Committee's proceedings and any submissions received or evidence taken relevant to the matter, including transcripts of hearings, with Ethics Committee reports, unless the Ethics Committee decides otherwise. I urge the House to support the motion.

Question put—That the motion be agreed to.

Motion agreed to.

NOTICE OF MOTION

Vehicle Registration

Mr POWELL (Glass House—LNP) (10.18 am): I give notice that I shall move—

That this House calls on the Palaszczuk government to adopt the LNP's fair rego pledge in the 2017-18 budget.

PRIVATE MEMBERS' STATEMENTS

Youth Detention Centres

Mr WALKER (Mansfield—LNP) (10.18 am): Another week goes by and, as regular as clockwork, we see more drama inside Queensland's youth detention centres with media reports of three more security incidents at the Brisbane Youth Detention Centre at Wacol. It is clear from an article in the *Courier-Mail* on Monday this week that staff inside the centre are at their wits end, and who could blame them. According to the media reports from earlier this week, the three latest incidents include three female youths climbed onto the roof of the horticulture building last Monday, a male youth climbed on top of a roof on Wednesday and damaged property before demanding dinner perks and up to six youths were involved in a violent brawl on Thursday. That may seem relatively minor to some, but add it to the chaos of the last year—kids on the roof in Townsville and Brisbane, valued staff injured, significant property damage—and we have a system in crisis. Monday's *Courier-Mail* article went on to quote a source as saying—

Everyone is petrified because of what's been in the media or of being seen as too hard. Now we've gone completely the opposite way, where guards are standing back and can't do anything.

Guards are losing control due to management putting so many restrictions on them. The whole centre is constantly damaged now. It's just a war zone.

Let us not forget these are centres with detainees as young as 10 years old, clearly being influenced by others who act like they are running the place. What sort of environment has this government created here? These are supposed to be places that help get the lives of these kids back on track so they do not become career criminals, but under Labor what hope have they got? It is clear that management is paralysed in its decision-making, staff are left unsure of what they can and cannot do and the Attorney-General is stuck in review and crisis management mode. On top of all of this, the government is still trying to figure out how they will transition around 50 17-year-olds into the system by November into what is clearly already a highly volatile situation. It will be like pouring kerosene onto an open flame.

The report that was going to fix all of this could not come up with key conclusions about whether kids were being systemically mistreated. It could not come up with conclusions as to whether there was room for 17-year-olds in youth detention centres. One-third of the report was redacted and now the report itself is subject to another review, that is, a review to cover up the bungled release of the report of the initial review. It would be funny if it were not so serious and this is a very serious issue.

Queenslanders have no confidence in this Attorney-General's ability to fix the problems inside our youth detention centres because they happened on her watch. It is time for the Premier to front up to the issue, show some leadership and responsibility and appoint a minister who knows how to fix the problems and can put in place a plan to do just that. We are talking about the future of kids who face