



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Committee of Privileges

Report on Referral regarding a statement by the Member for Blain

October 2021



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The Reference

On Wednesday, 24 February 2021 the Assembly resolved:

that the Assembly refers the following matter to the Committee for Privileges for inquiry and report to the Legislative Assembly by no later than 6 May 2021 pursuant to Standing Order 229, I hereby move that a matter of privilege be for contempt of the Legislative Assembly based upon the following allegations:

1. The Member for Blain made an oral statement to the Legislative Assembly on the evening of Wednesday, 17 February 2021;
2. That statement was materially misleading when the Member for Blain stated that he does “not condone illegal activity”, when text messages released publicly show that he did condone such activity;
3. That statement was materially misleading the nature of the Member for Blain’s relationship with the private citizen in question, stating only that “we exchanged general conversation, banter, jokes and some intimate conversation”, but failing to disclose a physical relationship, which has since been reported widely in the news media; and
4. Stating that he had “the Chief Minister’s support in making this statement”, when the Chief Minister himself said that he did not have his support for altered statement that was delivered on the evening of 17 February 2021.

Conduct of the Inquiry

The Assembly resolved to refer the statement by the Member of Blain to the Committee of Privileges on 24 February 2021.

The Committee met on 3 March 2021 to consider the terms of reference and the inquiry process.

On 24 March 2021 the Independent Commissioner Against Corruption (ICAC) wrote to the Committee to advise that he was investigating a matter that involved the Member for Blain and offered to brief the Committee (**Appendix A**).

On 7 April 2021 the Committee met and considered what witnesses may be required for the inquiry and the Letter from the ICAC.

On 5 May 2021 the Assembly changed the reporting date for the inquiry to by the conclusion of the first Assembly meeting period in 2022.

On 3 September 2021 the Deputy Chief Executive Officer of the Office of the ICAC wrote to the Committee to advise that the ICAC had received an allegation regarding Mr Turner on 19 January 2021 and commenced an investigation (**Appendix B**). That investigation was subsequently suspended as it would not be completed during the term of the then ICAC.

Following the appointment of Commissioner Riches, the ICAC determined that the investigation would be discontinued.

On 13 September 2021, having been advised of the discontinuation of the ICAC investigation, the Committee considered the next steps for its investigation. The Committee agreed to the elements required to be proved to make out the offence of contempt by misleading the Assembly. Having considered the allegations made and the elements of the offence, the Committee determined that the allegations were not capable of amounting to an offence against the Assembly, and even if one took a different view of whether there was a prima facie case, the possibility of proving all three elements was too remote to warrant further investigation. The Committee therefore agreed to discontinue its inquiry and report to the Assembly.

Provisions relating to contempt proceedings

Section 25 of the *Legislative Assembly (Powers and Privileges) Act 1992* (LAPPA) enables the Assembly to impose a penalty of imprisonment or fine for an offence against the Assembly determined by the Assembly to have been committed by the person.

The LAPPA does not define what may be an offence against the Assembly but sets an essential element for all offences:

5 Essential element of offences

Conduct (including the use of words) does not constitute an offence against the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by the Assembly or a committee, of its authority or functions, or with the free performance by a member of the member's duties as a member.

May states:

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.¹

Standing Order 232 requires the Committee of Privileges to observe certain procedures when considering an allegation of contempt, including also following the procedures set out in Standing Order 210.

Having considered the requirements of Standing Orders, the Committee considered the following steps for the conduct of its inquiry:

1. Identify the elements that need to be proved for the alleged contempt to be made out.
2. Identify the extent to which the allegation comprises such an offence and the evidence for the allegation.
3. Notify the person alleged to have committed the contempt of the particulars of the alleged offence (SO 232(1)), provide copies of Standing Orders 210 (SO 210(3)) and 232 (SO 232(12)) and seek submissions from the person (SO 232((2)(a))).
4. Consider the submissions and determine what witnesses and other evidence is to be called.

¹ Quoted in HoR Practice, p 733

5. Invite witnesses (if required) to public hearings (unless required to be private) (SO 232(7)) and invite the accused to also give evidence, examine the witnesses and present other witnesses and evidence (SO 232(2)), either by counsel or in person (SO 232(3)). All witnesses to be examined on oath or affirmation (SO 232(6)) and may be accompanied by counsel (SO 232(4)).
6. Consider evidence and make preliminary findings. If any findings adversely affect any person, provide the person opportunity to make written or oral submissions on those findings (SO 232(10)).
7. Adopt a report and present it to the Assembly.

Step 1: Identify the elements that need to be proved for the alleged contempt to be made out

The Assembly's referral effectively raises three allegations of misleading the Assembly.

The Committee of Privileges in the 13th Assembly, the House of Representatives and other Australian parliaments have followed the guidance given by McGee on how to deal an allegation of misleading the House.²

McGee notes that:

It is a contempt to deliberately mislead (or attempt to mislead) the House or a committee, whether by way of a statement, evidence or a petition...

The contempt can be committed by anyone taking part in parliamentary proceedings. It consists of the conveying of information to the House or a committee that is inaccurate in a material particular and that the perpetrator knew or ought to have known was inaccurate.³

In discussing Members deliberately misleading the House, McGee states:

Most often, allegations of deliberately misleading the House refer to statements made by members in the House. Such statements may be proffered in the course of debate, or by way of personal explanation, or in reply to a question.

There are three elements to be established when an allegation is made against a member regarding the member's statement: the statement must, in fact, have been misleading; the member must have known that the statement was inaccurate at the time the statement was made; and the member must have intended to mislead the House. The standard of proof required is the civil standard of proof on the balance of probabilities. The serious nature of the allegation demands that it be properly established. Recklessness in the use of words in debate, although reprehensible and deserving of censure, falls short of the standard required to hold that a member deliberately misled the House. An allegation will be made out where a member questions a Minister over information given and the same information is repeated and later can be shown as false. The misleading of the House must not be concerned with

² Committee of Privileges of the Legislative Assembly of the Northern Territory, [Report on the Reference from the Legislative Assembly on 25 June 2020 relating to the Office of the Independent Commissioner Against Corruption Investigation into the conduct of the Speaker of the Legislative Assembly – Investigation Report](#), June 2020; *Parliamentary Practice in New Zealand*, pp 775-6; *Report into whether the former Member for Dobell, Mr Craig Thomson, in a statement to the House on 21 May 2012 deliberately misled the House*, House of Representatives Standing Committee of Privileges and Members' Interests

³ McGee, p 775

a matter of no consequence, or such little consequence that it is too trivial to warrant the House's attention. Such a misunderstanding should be cleared up on a point of order or through the asking of further supplementary questions, particularly when the matter is a contestable one.

For a misleading of the House to be deliberate, there must be an indication of an intention to mislead. Remarks made off the cuff in debate can rarely fall into this category, nor can matters of which the member can be aware only in an official capacity. But an inference of an intention to mislead can be drawn where the member can be assumed to have personal knowledge of the stated facts and made the statement in a formal manner or situation, such as by way of personal explanation.

Most instances of deliberate misleading of the House will consist in statements made. However, it is conceivable that members might also mislead the House by their actions. For example, a member might deliberately misuse a voting proxy, or deliver to the Clerk a different document from that which the member obtained leave to table, or might misrepresent an authority to act on behalf of an absent member.⁴

Drawing from this discussion, a three element test has been applied:

1. The statement must, in fact, have been misleading;
2. It must be established that the member making the statement knew at the time the statement was made that it was inaccurate; and
3. In making the statement the member must have intended to mislead the House.⁵

The Committee adopted these three elements as being required to establish the offence of misleading the Assembly.

Step 2. Identify the extent to which the allegation comprises such an offence and the evidence for the allegation

The Committee has been asked to inquire and report on whether the Member for Blain was in contempt of the Assembly for misleading it in his statement on Wednesday, 17 February 2021 by saying:

A. "I do not condone illegal activity",

B. stating only that "we exchanged general conversation, banter, jokes and some intimate conversation" but failing to disclose a physical relationship, or

C. "I have the Chief Minister's support in making this statement".

A copy of the complete statement is at **Appendix C**.

For each of these statements, the three elements to be proved are:

1. Was the statement, in fact, misleading,
2. Did the Member know at the time that the statement was inaccurate, and
3. Did the Member intend to mislead the House?

Allegation A: the Member misled the Assembly by saying "I do not condone illegal activity".

According to the *Macquarie Dictionary*, 'condone' means "1. To pardon or overlook (an offence)".

⁴ McGee, pp 775-6

⁵ McGee, quoted in *Report into whether the former Member for Dobell*, p 43

This statement is pertinent due to the publicly reported alleged mention by a person with whom the Member had a relationship of drug abuse and the Member's alleged response to that statement. The unexpressed implication of the allegation is that the Member did in fact condone illegal drug use by the person and this statement was seen to mislead the Assembly regarding that alleged fact.

For this to comprise deliberately misleading the Assembly, it would first be necessary to prove that the general statement "I do not condone illegal activity" amounted to a specific denial that he had condoned illegal activity in this specific instance. The Committee does not consider that this meaning must necessarily be conveyed, and as a consequence could not amount to the offence of misleading the Assembly.

Allegation B: the Member misled the Assembly by stating only that "we exchanged general conversation, banter, jokes and some intimate conversation", but failing to disclose a physical relationship.

This is an allegation of misleading by failure to disclose. For the offence of deliberately misleading to be made out it would need to be proved that, despite the statement being entirely voluntary and carrying no obligation of 'full disclosure', the omission of the alleged physical relationship was misleading.

Regarding the nature of the relationship, the statement included the words "I accept there were aspects of our friendship in the past that were not appropriate because they were too intimate. It was not illegal. It was consensual and respectful, but not appropriate."

While it is possible that it was only non-physical aspects of the relationship that were not appropriate because they were too intimate, despite being consensual and respectful, such words are suggestive of a physical relationship.

Given that parts of the statement were suggestive of a physical relationship, the Committee does not consider that the omission of reference to a physical relationship in another part of the statement could be misleading in this regard.

Allegation C: the Member misled the Assembly by saying "I have the Chief Minister's support in making this statement".

In the statement the Member said he had been speaking to the Chief Minister and that he had "the Chief Minister's support in making this statement". Subsequently, the Chief Minister noted that although he had discussed making the statement with the Member before it was given there were matters of which he was not aware at that time.

In these circumstances, for the offence of deliberately misleading the Assembly to be made out it would need to be proved that the words "I have the Chief Minister's support in making this statement" had a specific meaning that was misleading.

In the facts as alleged, it appears that the Member had the Chief Minister's support for the act of making a statement regarding the allegations publicly circulating about an unnamed Member but the Chief Minister had not been fully informed about the full content of the statement or the circumstances surrounding it when he gave that support.

Given that the evidence of the allegation shows some kind of support from the Chief Minister in making a statement about the matter, it is difficult to see how the level of any deception of the Assembly involved would reach the threshold required for the offence of misleading the Assembly.

Conclusion

Having considered the details of the allegations made against the Member, and the elements required to be proved for an offence of deliberately misleading the Assembly to be made out, the Committee determined that the allegations were not capable of amounting to an offence against the Assembly, and even if one took a different view of whether there was a prima facie case, the possibility of proving all three elements was too remote to warrant further investigation.

The Committee has therefore decided to discontinue its inquiry and report to the Assembly that the allegations do not warrant further consideration.

A handwritten signature in black ink that reads "NFyles". The letters are cursive and somewhat stylized, with the "N" and "F" being particularly prominent.

NATASHA FYLES
Chair



**Office of the Independent
Commissioner Against Corruption (NT)**
Level 7, 9 Cavenagh Street
DARWIN CITY NT 0800

The Hon. Natasha Fyles MLA
Chair, Privileges Committee
GPO Box 3146
DARWIN NT 0801

Postal address

GPO Box 3750
DARWIN NT 0801

T 08 8999 4015

E Kenneth.fleming@icac.nt.gov.au

Via email: Minister.Fyles@nt.gov.au

File ref: ICAC-CS-000325

Dear Madam Chair,

Re: Progress of investigation – allegations that public officers have engaged in improper conduct

On 24 February 2021, the Member for Blain, Mr Mark Turner MLA, was referred to the Privileges Committee based upon the following allegations:

1. The Member for Blain made an oral statement to the Legislative Assembly on the evening of Wednesday, 17 February 2021;
2. That statement was materially misleading when the Member for Blain stated that he does "not condone illegal activity", when text messages released publicly show that he did condone such activity;
3. That statement was materially misleading the nature of the Member for Blain's relationship with the private citizen in question, stating only that "we exchanged general conversation, banter, jokes and some intimate conversation", but failing to disclose a physical relationship, which has since been reported widely in the news media; and
4. Stating that he had "the Chief Minister's support in making this statement", when the Chief Minister himself said that he did not have his support for altered statement that was delivered on the evening of 17 February 2021.

I am investigating a matter which involves the Member for Blain, Mr Mark Turner MLA. An investigation is conducted to determine exculpatory and inculpatory facts. I do not reach a conclusion until all relevant and available facts are considered. I have taken sworn evidence and collected relevant physical exhibits, which have been referred to the Legislative Assembly because Mr Turner claims that they may attract parliamentary privilege. I do not intend to view any material which may be privileged, but rather to extract material which is not privileged but is necessary to conduct a thorough investigation.

Pursuant to sections 55(2)(a) and s55(3)(c) of the ICAC Act 2017, I am available to brief the Privileges Committee regarding the progress of my investigation. At the conclusion of my investigation section 50(7)(b) of the ICAC Act 2017, requires me to furnish an investigation report to a MLA to the Speaker, who is obliged to table a copy in the Legislative Assembly on the next sitting day.

I am available to brief the Committee from 5 April 2021, except for the date of 21 April 2021.

Yours sincerely

Kenneth Fleming QC
Independent Commissioner Against Corruption

24 March 2021



The Hon Natasha Fyles MLA
Chair
Legislative Assembly Committee of Privileges
GPO Box 3146
DARWIN NT 0801

Via email minister.fyles@nt.gov.au

**Office of the Independent
Commissioner Against Corruption (NT)**
Level 7, 9 Cavenagh Street
DARWIN CITY NT 0800

Postal address
GPO Box 3750
DARWIN NT 0801

T 08 8999 1407
E matthew.grant@icac.nt.gov.au

File ref: ICAC-CS-000443

Dear Madam Chair

On Tuesday 19 January 2021, the Northern Territory Police notified the Office of the Independent Commissioner Against Corruption (OICAC) alleging improper conduct by Mr Mark Turner, Member of the Legislative Assembly, and Mr Kent Rowe, Ministerial Advisor. On the same day former Commissioner Fleming QC authorised an ICAC investigation into the alleged improper conduct.

On 24 February 2021, we became aware that the matter had been referred to the Privileges Committee on similar terms. Prior to 5 July 2021, this Office rationalised the existing matters that were before former Commissioner Fleming, and determined that this investigation would not be finalised during his term. The investigation was subsequently suspended, pending the arrival of Commissioner Riches.

On 6 July Commissioner Riches commenced his term. Commissioner Riches subsequently conducted an assessment of active ICAC investigations and it was determined that this investigation would be discontinued.

On 24 March 2021, a motion was adopted by the Legislative Assembly permitting the ICAC to examine devices in its custody in the presence of the Solicitor-General and the Member for Blain's legal representative on the condition that anything to which parliamentary privilege may attach, would be quarantined from the investigation. Due to the suspension of this investigation, those devices have not been interrogated in any fashion

The ICAC acknowledges the Privileges Committee's ongoing interest in this matter. Absent an order or summons of the Committee, the Commissioner will arrange for the return of items seized from Mr Turner during the investigation.

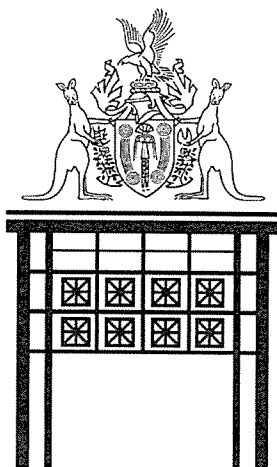
If you have any questions please do not hesitate to contact Matthew Grant on 8999 1407.

Yours sincerely

Matthew Grant
Deputy Chief Executive Officer

03 September 2021

cc Committee Secretariat via email Marianne.conaty@nt.gov.au



Legislative Assembly
of the Northern Territory

Draft Daily Hansard

Wednesday 17 February 2021

This is an uncorrected proof.

Please contact the Hansard Unit with any queries on
(08) 8946 1440 or lahansard@nt.gov.au.

electorate office is and where I live—there is: Barunga School; Wugularr or Beswick School, which is still getting off the ground; Bulman School, which has an amazing garden; Jilkminggan Minyerri Schools, which are new to the Arnhem electorate; Urapunga School; and Ngukurr School. There are brilliant schools and projects out there. Member for Fong Lim, that is right! We are looking for the practical and theoretical sides to be melded together to provide life skills in remote parts of the Arnhem electorate.

I congratulate our electorate officer, Ms Jessie Hillen, who is now on maternity leave after having her third son. He was the first baby born in Katherine on New Year's Day. He was anticipated to arrive on New Year's Day and one of the first babies I have met that was born on the due date. Well done to Jessie, her family, her partner Tyler and the proud big brothers Ziggy and Kade, who are smitten. His name is Silas William Aranui and he was born at 7 am at Katherine Hospital on New Year's Day 2021. Silas weighed in at 10.2 pounds—4.66 kg in the metric system—which was the largest of the boys.

He is a little Buddha baby and a moonface. He is very cute. He is six weeks old and is the same size as Ray-Ray in clothing. I bought him a gorgeous little Bluey top because I quite like watching that show with my daughter and my husband thought I had bought that for our daughter and I said, 'Actually, that is for Silas.' Ray-Ray is very happy to share her clothing; baby Silas is an absolute pleasure. I am really missing Jessie but I am happy to say we have Melina Davison doing the contract while Jessie is on maternity leave. Thank you, Melina, for taking up the role in the Arnhem Electorate Office. Congratulations Jessie and Tyler.

Mr TURNER (Blain): Madam Speaker, I rise tonight to make a personal explanation about untrue rumours circulating online which concern me. It was not my intention to respond to untrue rumours and innuendo. There are untrue things said about every one of us every day.

It is my view that online rumours should stay in the dark corners of the internet and not be dredged up in the parliament for theatre. To do otherwise sets a very dangerous precedent for all of us.

I have been speaking to the Chief Minister this week and I am grateful to him and my Caucus colleagues for their support, their view that untrue rumours should not be given public credibility and their desire to protect my family from public embarrassment.

But, the actions of the Leader of the Opposition in recent days and new media reports tonight have left me with no other choice. The Leader of the Opposition has used her privileged position in this place to take these untrue rumours about me and use them to impugn the character of my colleagues. I will not allow that to continue any longer.

I have the Chief Minister's support in making this statement.

Regarding the private citizen at the centre of these rumours, whose personal information was allegedly stolen, any suggestion that I participated in an illegal activity is categorically false. Regarding the allegedly stolen messages, I can confirm that this person and I have had a friendship in the past. I do not recall the details of every conversation. During this friendship we exchanged general conversation, banter, jokes and some intimate conversation.

I do not condone illegal activity and I do not participate in it. I accept there were aspects of our friendship in the past that were not appropriate because they were too intimate. It was not illegal. It was consensual and respectful, but not appropriate.

This is something I need to deal with and am dealing with privately with my family. I am not a perfect person; nobody is and nobody in the parliament is. I have made mistakes in the past in my personal life, but the rumours and the allegations the Leader of the Opposition is peddling are just plain wrong and not true.

I am deeply embarrassed by all of this and if that was the Leader of the Opposition's goal, she has succeeded. My family's private hurt is now public and if that was the Leader of the Opposition's goal, she has succeeded. A private citizen whose personal information was allegedly stolen has been left traumatised; if that was the Leader of the Opposition's goal, she has succeeded.

Leader of the Opposition, I can only hope that this has been worth it for you. In my public life, I answer to the good people of the Blain electorate. I apologise to them for the distraction this has caused and I will work every day to keep earning their trust.

In my personal life, and for any personal failings, I answer to my family. I unreservedly apologise to them for the hurt and distress this has caused. I am fortunate to have their continued support and will work every day

to repair and strengthen that relationship. I ask that my family be given the privacy we need to do that. I trust that in making this personal statement the matter is resolved and the untrue allegations can now cease once and for all.

Motion agreed to; the Assembly adjourned.

DRAFT

DISSENTING REPORT

PRIVILEGES COMMITTEE: REFERRAL REGARDING A STATEMENT MADE BY THE MEMBER FOR BLAIN

We dissent to the report of the privileges committee and the discontinuance of the inquiry into the Member for Blain as we strongly believe that further evidence and witness testimony is required to properly consider the allegations.

In our view the committee did not have adequate and necessary evidence to properly make a decision to discontinue the inquiry or come to the conclusions that “the allegations were not capable of amounting to an offence against the Assembly” or that “the possibility of proving all three elements was too remote to warrant further investigation.”

The committee did not consider highly relevant evidence such as the comments made by Michael Gunner on 22 February 2021 on Mix 104.9, 5 days after the Member for Blain’s statement in parliament, during which time he said words to the effect “We worked with him around the denial and just before he went into the Chamber to deliver the statement, he made what, in my opinion, were material changes to the statement that took out some very important denials.”

On 3 March 2021 the committee held its first meeting. At that meeting the Committee resolved to limit the scope of the evidence to be considered by the committee solely to the statement made by the Member for Blain to the Assembly on 17 February 2021. We did not support the limitation of evidence. This decision deliberately limits the evidence that could be considered, to only the statement by the Member for Blain on 17 February 2021 despite more evidence being available.

The minutes of the committee proceedings are tabled with the report. You can see from these minutes, numerous attempts by us to have relevant evidence considered or further enquiries made.

In the minutes on 7 April 2021 we attempted to have further oral and written material, including media reports and transcripts from parliament, which we allege could make out the elements of the offence of contempt.

Given the volume of media coverage and commentary over a number of days centred on the Member for Blain, we believe it is prudent that the committee consider conflicting information.

The inquiry into the statement made by the Member for Blain made on 17 February 2021 was flawed and not undertaken in any manner that could be described as a legitimate enquiry whatsoever.



Lia Finocchiaro
Leader of the Opposition
Member for Spillett
28 October 2021



Gerard Maley
Deputy Leader of the Opposition
Member for Nelson
28 October 2021