

Chapter 2 Constitutional and statutory requirements relating to the censure motion, and overseas parliamentary rules and practices relating to Members' communications with witnesses and the act of deliberately misleading the House or a committee

2.1 The allegations against the Member under investigation (i.e. Mr CHOW) as referred to in the Schedule to the censure motion (paragraph 1.1 refers) involve Mr CHOW's improper interference with and obstruction of the Select Committee's inquiry by accepting the request of Mr LEUNG, the former Chief Executive, to amend the Proposed major areas of study of the Select Committee. The proposed amendments to the Proposed major areas of study of the Select Committee (**Appendix 2.1**) (Chinese version only) ("Proposed Amendments") submitted by Mr CHOW were discussed at the open meeting of the Select Committee on 25 April 2017. As alleged in the Schedule to the censure motion, such amendments were in fact made by Mr LEUNG. Mr CHOW also allegedly committed contempt of LegCo for damaging the dignity, autonomy and independence of LegCo, and intentionally and repeatedly made false representations at the said Select Committee meeting over the origin of the Proposed Amendments with the intention to mislead the Select Committee into believing that those Proposed Amendments were genuinely raised by himself. According to the Schedule to the censure motion, the aforementioned behaviour of Mr CHOW amounts to misbehaviour and breach of oath under BL 104.

2.2 In considering whether the alleged facts stated in the Schedule to the censure motion can be established and in forming its views on whether the facts (if any) as established constitute grounds for the censure of Mr CHOW, IC sees it necessary to study the constitutional and statutory requirements relevant to the censure motion, in particular the meaning of "misbehaviour" and "breach of oath". IC also considers it worthwhile to look into overseas parliamentary rules and practices relating to Members' communications with witnesses appearing in parliamentary inquiries and the act of deliberately misleading the House or a committee. IC has found that the experience of overseas Houses of Parliament in other common law jurisdictions in handling cases relating to their Members' misleading the House or a committee has shed light on some relevant principles for IC's reference.

Meaning of "misbehaviour"

No definition under BL or RoP

2.3 BL 79(7) provides that the President shall declare that a Member of LegCo is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of LegCo Members present. Apart from BL 79(7), the word "misbehaviour" also appears in BL 89 which relates to the removal of judges. The word "misbehaviour" is not defined in BL 79(7), BL 89, or anywhere else in BL or RoP. The dictionary meaning of "misbehave" is "behave badly; conduct oneself improperly".²⁷

Previous committees' discussions of the meaning of "misbehaviour"

Views of Committee on Rules of Procedure

2.4 In 1999, the Committee on Rules of Procedure ("CRoP") of the First LegCo considered the types of "misbehaviour" that would be serious enough to warrant disqualifying a Member from office under BL 79(7). CRoP noted that overseas legislatures had not drawn up an exhaustive list of misconduct, and that it was common practice in overseas jurisdictions that the acts in question were related invariably to the conduct of Members of Parliament in the performance of their duties as such. The major consideration was whether the act had brought about such serious disrepute to the House as to constitute contempt. CRoP concluded that it would be more appropriate for the Council of the day to decide what misconduct would warrant taking action under BL 79(7).²⁸

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2.5 In its report of March 2012, the first IC observed that the disqualification of a Member from office is the most severe sanction that may be imposed on an individual Member, which is tantamount to overturning the decision made by voters in an election, and hence prudence must be exercised. In the first IC's view, the sanction of disqualification should only apply when a Member was found to have committed extremely serious misconduct, and improper conduct that

²⁷ *Shorter Oxford Dictionary*, Sixth Edition (2007), Volume 1, p.1795.

²⁸ See LC Paper No. CB(1) 1001/98-99 and LC Paper No. CB(3) 46/09-10.

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failed to live up to the public's expectations on the integrity and ethical standards of a LegCo Member might not be so grave as to warrant disqualification from office. The first IC further noted that no standards for Members' ethical conduct had been laid down in RoP and that it was not easy to formulate clear and explicit criteria for defining "misbehaviour". The first IC was also of the view that while BL 79(7) did not explicitly stipulate that "misbehaviour" should cover only the conduct of Members in the discharge of their duties as Members, the mechanism in question should not be applicable to conduct purely related to a Member's personal or private life, unless such conduct seriously affected the reputation of LegCo as a whole.²⁹

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2.6 In the absence of the definition of "misbehaviour" under BL 79(7), the second IC made reference to the "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" ("Advisory Guidelines") (**Appendix 2.2**)³⁰ in considering whether a particular act of a Member amounts to "misbehaviour". According to the Advisory Guidelines, a Member should "ensure that his conduct must not be such as to bring discredit upon the Legislative Council" and "should conduct himself in such a way as not to place himself in a position which may be contrary to the generally assumed standard of conduct expected of a Member of the [Legislative] Council".³¹ The second IC had also taken into account the view of the first IC that the censure mechanism under BL 79(7) should be applicable to a Member's conduct seriously affecting the reputation of LegCo as a whole. On the above basis, the second IC considered that bringing serious discredit upon LegCo and acting contrary to the generally assumed standard of conduct expected of a LegCo Member

²⁹ See paragraphs 4.47 and 5.6 to 5.8 of the first IC's report.

³⁰ The Advisory Guidelines are issued by the Committee on Members' Interests under RoP 73(1)(d) to all Members (and published on the LegCo website) at the beginning of each term since 2009. The Advisory Guidelines concern how Members should handle their interests and the standard of behaviour expected of Members. The Advisory Guidelines do not provide for any sanctions for contravening any requirements set out therein.

³¹ See paragraphs 1 and 2 of the Advisory Guidelines.

should be the key elements constituting a Member's "misbehaviour" under BL 79(7).³²

Judicial authorities on "misbehaviour"

2.7 While no decided cases on the disqualification of members of a legislature from office on the ground of misbehaviour had been found by IC up to the publication of this Report, IC notes that the following principles laid down in cases³³ on the removal of a person from public office for which specific provision is made in the constitution of other common law jurisdictions may be relevant to the consideration of the meaning of "misbehaviour" under BL 79(7):

- (a) there is no universal meaning of "misbehaviour" when used in a statute or legislative instrument and the meaning of the word will depend entirely on the context in which it is used;
- (b) to constitute misbehaviour by the holder of an office, the conduct concerned need not be criminal and need not occur in the course of the performance of the duties of the office;
- (c) as regards the conduct of an office-holder, the meaning of "misbehaviour" is to be determined by reference to whether the conduct might affect: (i) directly the person's ability to carry out the office and (ii) the perceptions of others in relation to the office, so that any purported performance of the duties of the office will be perceived widely as corrupt, improper or inimical to the interests of the persons or the organization for whose benefit the functions of the office are performed and, in either case, (iii) whether the office itself will be brought into disrepute as a result of the conduct; and
- (d) on determination of the above issues, the tribunal in question should also consider the nature of duties attached to the office concerned, and make findings as to whether the person's conduct so bore on or impaired his capacity to continue to hold the office as to require his removal.

³² See paragraphs 4.45 and 4.46 of the second IC's report.

³³ *Clark v Vanstone* [2004] FCA 1105 at [78] and [85], and *Lawrence v Attorney General* [2007] 1 WLR 1474, [2007] UKPC 18 at [25], [26] and [49].

2.8 IC is mindful that while these cases do not relate to the removal of a member of parliament for misbehaviour, the above common law principles laid down in such cases may be relevant to the consideration of the meaning of "misbehaviour" under BL 79(7), because in interpreting BL, the courts in Hong Kong are bound to apply the common law³⁴ which is maintained in Hong Kong under BL 8.

Meaning of "breach of oath"

2.9 IC notes that while the term "breach of oath" is not defined in BL, the oath in question clearly refers to the one to be sworn under BL 104 as prescribed in section 16(d) of and Part IV of Schedule 2 to the Oaths and Declarations Ordinance (Cap. 11), i.e. the LegCo Oath, which is a promissory oath by a LegCo Member-elect to undertake to "uphold [BL] of [HKSAR] of the People's Republic of China [("PRC")], bear allegiance to [HKSAR] of [PRC] and serve [HKSAR] conscientiously, dutifully, in full accordance with the law, honestly and with integrity".

2.10 IC also notes that the Court has held that the LegCo Oath must be taken solemnly and sincerely. Under common law, taking an oath is a form of attestation by which a person signifies that he is bound in conscience to perform an act *faithfully and truthfully*. Similarly an affirmation in lieu of oath binds a person to live by what he undertakes. In particular, an oath of allegiance or loyalty means that a person promises and binds himself to bear true allegiance to a particular sovereign and government and to support its constitution. The obvious purpose is to ensure a member of legislature makes a commitment to live by the constitutional process; he has to owe allegiance to the constitution, and has to uphold the sovereignty and integrity for the country. It is not a mere formality or empty form of words. It has to be followed in letter and spirit.³⁵

2.11 In paragraph 3 of its interpretation of BL 104 dated 7 November 2016, the Standing Committee of the National People's Congress pronounced that oath-taking under BL 104 "is legally binding... An oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance

³⁴ *Director of Immigration v Chong Fung Yuen* (2001) 4 HKCFAR 211.

³⁵ Au J in *Chief Executive and Secretary for Justice v President of the Legislative Council*, HCAL185/2016, 15 November 2016, at paragraph 32.

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with law.". While section 21 of Cap. 11³⁶ sets out the consequences of any person declining or neglecting to take an oath duly requested of him or her, and section 32 of the Crimes Ordinance (Cap. 200)³⁷ provides for the penalty for wilfully making a false statement on oath, Cap. 11 and Cap. 200 do not appear to contain any provisions on the consequences of a breach of the oath after it has been duly taken. Nor is IC aware of any specific cause of action under common law or in equity giving rise to civil liability based on "breach of oath".³⁸ Under BL 79(7), the President shall declare a Member no longer qualified for the office if the Member is censured for breach of oath by a vote of two-thirds of the Members present, whereupon the Member's office becomes vacant by virtue of section 15(1)(e) of the Legislative Council Ordinance (Cap. 542).

2.12 The dictionary meaning of "breach" includes "the breaking or neglect of a legal or moral bond or obligation".³⁹ Paragraph (4) of the Schedule to the censure motion alleges that Mr CHOW has breached his oath that "he will serve [HKSAR] conscientiously, dutifully, in full accordance with the law, honestly and with integrity, which is a basic duty of a LegCo Member". It is for IC to consider whether the facts alleged in paragraphs (1) to (3) of the Schedule to the censure motion (paragraph 1.1 refers), if established, would constitute a failure or neglect by Mr CHOW to keep his promise to serve HKSAR "conscientiously, dutifully, in full accordance with the law, honestly and with integrity".

³⁶ Under section 21 of Cap. 11, any person who declines or neglects to take an oath duly requested which he is required to take, shall be disqualified from entering on his office or, if he has already entered on it, vacate it.

³⁷ Under section 32 of Cap. 200, if any person being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a material statement which he knows to be false or does not believe to be true, he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for seven years and to a fine.

³⁸ A breach of oath under Cap. 11 is arguably a *breach of statutory duty* which does not, by itself, give rise to any private law cause of action unless it can be shown that the statutory duty was imposed for the protection of a limited class of the public on whom Parliament (i.e. LegCo in the case of HKSAR) intended to confer a private right of action for breach of the duty. Misconduct in breach of oath could also constitute the tort of *misfeasance in public office* if it can be established that public power is exercised for an improper or ulterior motive, or that a public officer in bad faith commits an illegal act that injures the plaintiff: *Clerk & Lindsell on Torts*, 20th Edition (2010) at 9-06 and 14-102.

³⁹ *Shorter Oxford Dictionary*, Sixth Edition (2007), Volume 1, p.286.

Overseas parliamentary rules and practices relating to Members' communications with witnesses

2.13 RoP do not have any provisions governing Members' communications with witnesses. Yet, committees can determine their own practice and procedure subject to RoP, and the practice and procedure may vary among committees. IC's Practice and Procedure has set out clearly the confidentiality requirement for the communications between IC members and non-IC Members, imposing a ban on non-IC Members, the Member under investigation, and Members called or to be called as witnesses, to engage in communications by conversations or in any other form with IC members on any matter relating to the work of IC outside meetings of IC.⁴⁰ IC is aware that such an express prohibition against communications with witnesses, however, does not exist in the practice and procedure of the Select Committee.

2.14 In the overseas Houses of Parliament selected for study by IC ("selected Houses of Parliament"),⁴¹ their Standing Orders do not prescribe any protocol governing Members' communications with witnesses. Committees are generally given the flexibility to define their practice and procedure to facilitate their proceedings, but it appears that such a written protocol is uncommon. Although there may not be any Standing Orders governing Members' communications with witnesses, a Member may be bound by other rules. For instance, the requirements of the Code of Conduct of the House of Commons of the United Kingdom ("UK"), i.e. that Members should always behave with probity and integrity, should always act in the public interest, and should be open about their decisions and actions, might seem to "preclude any unacknowledged collusion between a committee member and a witness being inquired".⁴²

⁴⁰ The same confidentiality requirement is also included in the practice and procedure of the first and second ICs and the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Hon HUI Chi-fung.

⁴¹ The selected Houses of Parliament include the House of Commons in the United Kingdom and Canada, and the House of Representatives in Australia and New Zealand.

⁴² Written reply from the Overseas Office of the Chamber and Committees Team of the UK House of Commons.

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2.15 On the part of witnesses, IC notes that the selected Houses of Parliament have issued guidelines advising witnesses on how they interact with a committee before, during and after giving their views to the committee. These guidelines are usually in the form of written guidance issued by the House or the administrative arm of the House. For instance, the UK House of Commons has issued a "Guide for witnesses giving written or oral evidence to a House of Commons select committee" to advise witnesses appearing before the committee on relevant matters requiring attention. This Guide states that the committee staff is responsible for contacting the witness in preparing the witness's appearance in the committee to give oral evidence. If the witness has agreed to provide further information to the committee, the witness will have to send it to the committee staff.⁴³

Overseas parliamentary rules and practices relating to the act of deliberately misleading the House or a committee

Contempt of Parliament

2.16 IC notes that according to *Erskine May*, "the [House of] Commons may treat the making of a deliberately misleading statement as a contempt".⁴⁴ In 1963, the UK House of Commons resolved that in making a personal statement which contained words which he later admitted not to be true, a former Member had been guilty of a grave contempt.⁴⁵ However, contempt is not an independent ground for disqualification for membership of the House of Commons or the House of Lords.⁴⁶

2.17 IC also notes that according to *Erskine May*, by tradition and precedents, "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 their 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

⁴³ The House of Commons of Canada has also issued a "Guide for witnesses appearing before the House of Commons Committees" and "Guide for submitting briefs", offering guidelines similar to those under the Guide issued by the UK House of Commons.

⁴⁴ *Erskine May Parliamentary Practice*, 25th Edition, at p.307.

⁴⁵ *Erskine May* (ibid.), at p.307.

⁴⁶ *Erskine May* (ibid.), Chapter 3.

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the offence".⁴⁷ The House of Representatives of New Zealand also incorporates this definition in its Standing Orders.

2.18 In Australia, the offence of contempt is set out in the Parliamentary Privileges Act 1987. Section 4 of the Act states that "Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member". This is also regarded as the test to be satisfied for contempt, even if the allegation of deliberately misleading the House or committee is substantiated.⁴⁸

Punishment for contempt

2.19 IC notes that by tradition of regulating its own affairs, each of the four selected Houses of Parliament has penal power over its Members' conduct, and has a range of punishment available.⁴⁹ Most of the available sanctions were not stated in the Standing Orders of the selected Houses of Parliament, and the penal power has rarely been invoked to punish Members for deliberately misleading the House or a committee. Yet, IC notes some examples of sanctions related to contempt adopted by the selected Houses of Parliament, including apology, censure/admonition/reprimand, fine, suspension from the House and expulsion.

2.20 Among the examples noted by IC, IC is aware that expelling a Member from the Parliament is considered as the most extreme form of punishment for offences which may render a Member unfit for parliamentary duties. Such a power is based on precedent and tradition, rather than Standing Orders, and is rarely invoked in modern Parliaments. A UK House of Commons Member Mr Garry ALLIGHAN was expelled from the Parliament in 1947 after he was found guilty of grave contempt

⁴⁷ *Erskine May* (ibid.), at p.289.

⁴⁸ See Hansard of the House of Representatives, 30 August 1995, and Appendix 2.4 to this Report.

⁴⁹ In 1978, the UK House of Commons resolved to exercise its penal jurisdiction as sparingly as possible, and only when satisfied that it was essential to do so. Hence, many acts which may be considered to be contempt are either overlooked by the House or resolved informally. *Erskine May* (ibid.), at p.289.

by lying to the Parliament.⁵⁰ In Australia and New Zealand, the power of the Parliament to expel its Member has been removed by legislation on parliamentary privileges.⁵¹

Cases of deliberately misleading the House or a committee handled by overseas Houses of Parliament

2.21 The act of any person to deliberately mislead the House or a committee is generally considered as contempt of the House by the selected Houses of Parliament. IC notes that of the 25 examples of contempt listed under Standing Order 410 of the House of Representatives of New Zealand, "deliberately attempting to mislead the House or a committee" (by way of statement, evidence, or petition) is one of them which may be treated as contempt by the House. According to a report of the Joint Committee on Parliamentary Privilege of the UK Parliament released in 1999, contempt is broad in scope and a diverse range of activities may constitute contempt. The report listed 19 types of contempt as reference and among the list was also "deliberately attempting to mislead the House or a committee (by way of statement, evidence, or petition)". It is also documented in the parliamentary practices of the Houses of Parliament in Australia and New Zealand that deliberately misleading the House is an example of contempt.

2.22 Among the selected Houses of Parliament, the mechanisms for handling allegations of deliberately misleading the House or a committee are largely the same. In general, a complaint of such allegation may be referred by the House to a committee for further investigation. If the allegation is substantiated, the committee may report and make recommendations to the House.

The test of deliberately misleading the House or a committee

2.23 IC notes that among the selected Houses of Parliament, the House of Representatives of New Zealand has more elaborate descriptions on the criteria for constituting the act of "deliberately

⁵⁰ Mr ALLIGHAN wrote a news article alleging some Members of the House sold for money information about private parliamentary party meetings to a newspaper. It was revealed during the investigation by the Privileges Committee that he and another Member of Parliament were actually the ones who sold such information to the media.

⁵¹ See section 8 of the Australian Parliamentary Privileges Act 1987 and section 23 of the New Zealand Parliamentary Privilege Act 2014.

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misleading the House".⁵² According to the *Parliamentary Practice in New Zealand*, there are three elements to be established in order to substantiate the allegation, including:

- (a) it must be proven that the statement was misleading;
- (b) it must be established that the Member making the statement knew at the time that the statement was incorrect; and
- (c) that in making the statement, the Member intended to mislead the House.⁵³

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 making a statement), "a presumption of an intention to mislead the House will more readily arise". Since it is regarded as a serious offence, the required standard of proof has also been set as high as civil standard of proof on the balance of probabilities.⁵⁴ There was at least one documented application of the test in the New Zealand Parliament in 1982.⁵⁵

2.24 IC notes the following three inquiries into Members' conduct made by the selected Houses of Parliament, which may be of reference value to IC's investigation.

⁵² Reckless use of words in debate and minister's replies to questions shown to be false subsequently may fall short of the required standard to hold a Member deliberately misleading the House. Likewise, misleading of the House must not be concerned with a matter of no consequence, or such little consequence that it is too trivial to warrant the House's attention. See *Parliamentary Practice in New Zealand*, 4th Edition.

⁵³ The three elements were established by the Privileges Committee of the New Zealand Parliament in 1980. The Committee investigated an allegation of a minister misleading the House in a statement to the House found to be untrue. The minister had been embroiled in a public inquiry of government loan offered to a developer of which the minister's daughter and son-in-law had shareholdings.

⁵⁴ It is against the standard of proof in criminal case – beyond reasonable doubt.

⁵⁵ In that case, a Member was cleared of an allegation of misleading the House because the standard of proof was not met.

The Stephen BYERS case in the UK House of Commons

2.25 The Committee on Standards and Privileges ("CSP") of the UK House of Commons adopted a test similar to the test adopted by the House of Representatives of New Zealand in its probe into an allegation against a Member named Mr Stephen BYERS of misleading the House or a committee in 2005-2006.⁵⁶ One of the main focuses of the case was whether the Member-cum-Minister concerned (i.e. Mr BYERS) had wilfully misled the Transport Subcommittee ("TS") of the Select Committee on Transport, Local Government and the Regions⁵⁷ in his reply to a question raised by a Subcommittee member. In that case, CSP had, in determining if a Member had intentionally misled TS, considered whether:

- (a) the statement or evidence was incorrect; and
- (b) there was a deliberate intention to mislead.

In determining whether the Member concerned had a deliberate intention to mislead, CSP considered whether:

- (c) there was an "obvious motive" for the Member to mislead; and
- (d) there would be any political or legal consequences had the Member made an accurate reply then.

CSP concluded that the Member had "no obvious motive" for deliberately misleading TS, because it believed "an accurate reply at the time would have caused no problems either politically or legally". Moreover, CSP did not consider that the Member had a "political agenda" to conceal from TS. Details of the case are set out in **Appendix 2.3**.

⁵⁶ See *Sixth Report of Session 2005-06* of the Committee on Standards and Privileges of the UK House of Commons (<https://publications.parliament.uk/pa/cm200506/cmselect/cmstnprv/854/854.pdf>).

⁵⁷ The Select Committee on Transport, Local Government and the Regions conducted an inquiry into the handling of a private rail company which was in financial difficulty. The Minister was accused of misleading TS by telling TS that he had never discussed a specific contingency plan for the company.

The Craig THOMSON case in the House of Representatives in Australia

2.26 As far as IC is aware, the most recent case of an allegation of a Member misleading the House deliberately occurred in 2012 in the House of Representatives of Australia. In determining if a Member had intentionally misled the House, the Standing Committee of Privileges and Members' Interest ("SCPMI") of the House relied on a similar test adopted by the House of Representatives of New Zealand in its inquiry. In that case, a former Member of the House (i.e. Mr THOMSON), was accused of misleading the House in the course of a statement to the House in relation to an allegation of theft. On the question of whether the statement was factually incorrect, SCPMI drew reference to the court findings. On the elements of whether the Member knew his statement was misleading and whether the Member intended to mislead the House, SCPMI considered whether:

- (a) the Member expressly sought to address the House;
- (b) he had personal knowledge of the matter he raised;
- (c) the formality of the situation in which the statement was made; and
- (d) the time available for him to consider whether to make the statement and the wording of the statement.

In concluding that the Member did mislead the House, SCPMI then moved on to establish if the Member was guilty of contempt. SCPMI was of the view that:

- (e) "the making of misleading statements by a Member tends to obstruct the House in the performance of its functions by diminishing the respect due to the House"; and
- (f) "the deliberate misleading of the House in the circumstances of the case would be likely to amount to an improper interference with the House's exercise of its authority and functions".

2.27 Having considered the principle that the penal power to hold a person in contempt should be exercised "as sparingly as possible" and that Mr THOMSON had undergone difficult personal situations over a sustained period, SCPMI made two recommendations to

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the House: (a) finding the Member guilty of contempt, and (b) recommending a reprimand for his conduct. Details of the case are in **Appendix 2.4**.

The John BOWLER case in the Western Australia Legislative Assembly

2.28 IC also notes that there was a case on an inquiry involving a Member of the Western Australia Legislative Assembly (i.e. Mr BOWLER) who, in 2004, leaked a privileged draft parliamentary committee report to a third party for comments and then misled the committee into believing that the proposed comments on the draft report were made by him. In that case, the "track changes" function of the electronic copy of the amended draft report revealed that some of the amendments appeared to have been made by a third party who had a commercial interest in the direct outcome of the inquiry. The parliamentary officer who discovered these amendments flagged his concern of a possible breach of privilege to the Clerk Assistant of the Legislative Assembly. The matter was referred to the Procedure and Privileges Committee ("PPC") on 28 February 2007. PPC considered that such action represented a serious breach of process and trust, and posed a real risk to the proper working of the committee: "Members source information for debates and amendments in the House and in committee from a broad range of areas. They are not required to say who has drafted those amendments or helped them form their views. In this case however, PPC believes that other members of the EISC [Economics and Industry Standing Committee] were entitled to expect that if Mr BOWLER brought to the Committee the written views of an interested party to the inquiry, especially in the form of proposed amendments to the report, he should have made that clear. It is likely that the proposed amendments would have been scrutinised more closely if the other members were aware of their source.". PPC concluded that the Member's action had led to an opportunity by an interested party to "use the draft in a manner prejudicial" to the committee or other stakeholders.

2.29 PPC was of the view that the Member's actions, including but not limited to the leakage of the draft report,⁵⁸ had the impact of:

- (a) diminishing the standing of the legislature and committees;

⁵⁸ The Committee also looked into an alleged conflict of role of the Member arising from the third party's contribution to the election campaign fund of the Member.

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- (b) reducing the public confidence in the capacity of the Parliament to undertake its work in a fair and impartial manner; and
- (c) undermining the trust in individual Members to properly represent the people of Western Australia.

The Member was eventually found guilty of contempt of the Legislative Assembly in unauthorized disclosure of confidential proceedings and censured for his actions which had diminished public trusts in parliamentary institutions and process. He was also disqualified from any committee membership for the remaining Parliament session; suspended for a period of up to 21 sitting days; and banned from entering the parliamentary precincts during the suspension period. Details of the case are set out in **Appendix 2.5**.