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Privileges Committee

Members
Hon Dr Denis Napthine MP (Chair)
Ms Ann Barker MP (Deputy Chair)
Hon Robert Clark MP
Ms Danielle Green MP
Hon Andrew McIntosh MP
Mr David Morris MP
Mr Don Nardella MP
Hon John Pandazopoulos MP
Hon Peter Walsh MP

Staff
Ms Anne Sargent, Assistant Clerk Committees, Legislative Assembly
Ms Kate Murray, Manager, Procedure Office, Legislative Assembly

Appointment of the Privileges Committee

Extract from the Votes and Proceedings of the Legislative Assembly, Thursday 7 April 2011

5 COMMITTEE MEMBERSHIP

(3) That a Select Committee be appointed to inquire into and report upon complaints of breach of privilege referred to it by the House and right of reply applications referred under SO 227, such Committee to consist of Ms Barker, Mr Clark, Ms Green, Mr McIntosh, Mr Morris, Dr Napthine, Mr Nardella, Mr Pandazopoulos and Mr Walsh and that five be the quorum.
Finding

Upon examination of the complaint, referred to it by the House, that the Member for Mount Waverley deliberately misled the House, the Committee finds that the complaint is not substantiated.

Alleged breaches of privilege

The Speaker informed the House that he had received a letter from the Member for Northcote on 4 July 2011 in relation to a complaint against the Member for Mount Waverley. The Speaker states:

The complaint alleges that the member has committed a contempt of the house by deliberately misleading the house in a personal explanation he gave on Wednesday, 29 June 2011.¹

The member for Northcote’s complaint sets out three allegations.

Allegation 1
Firstly, in the member for Mount Waverley’s personal explanation he said:

I then sought advice from authorised officers at the station on the distribution of that information, because I do not believe it is appropriate for commuters to be approached in this manner by people distributing such information. The officers checked with station officials and advised me that it was inappropriate for the information to be distributed in the station precinct. They also advised me that under Melbourne City Council regulations such distribution is unlawful without an advertised permit.²

However, the member for Northcote says that Metro spokeswoman Geraldine Mitchell stated that:

the ticket inspector told a concerned Mr Gidley the pair were not on ‘Metro land’. Ms Mitchell confirmed that the land was not Metro’s and said the inspector had told Mr Gidley to contact the council if he had other concerns — The Age, 30 June 2011.³

The terms of the allegation and the evidence presented to the Committee did not establish any inconsistency between the facts alleged and the remarks of the Member for Mount Waverley with respect to this matter.

¹ Hansard, 16 August 2011, p 2545.
² Hansard, 29 June 2011, p 2341.
³ Hansard, 16 August 2011, p 2546.
Allegation 2
Secondly, the Member for Mount Waverley said that:

_During my conversation with these people I did not raise my voice or behave in any inappropriate manner._

4

The Member for Northcote says that contrary to this statement by the Member for Mount Waverley, an independent eyewitness offered the following account:

_The encounter was partially witnessed by Channel 7 reporter Brendan Donohoe, who contradicted Mr Gidley’s claim that he did not raise his voice. Donohoe told The Age he was walking up the stairs when he saw Mr Gidley yelling at the pair while waving his mobile phone. ‘He was yelling something like, “I will report you”’, he said. ‘It was quite loud and that’s what drew my attention to it. The girl was shaking’ — The Age, 30 June 2011._

5

The terms of the allegation and the evidence presented to the Committee did not establish any reasonable prospect that the Committee could conclude that the Member for Mount Waverley deliberately misled the House with respect to this matter.

Allegation 3
Thirdly, the Member for Mount Waverley said that:

_she did confirm that she worked for the member for Northcote._

6

The member for Northcote says that ‘the person referred to does not, nor ever has, worked for me’.

7

The terms of the allegation and the evidence presented to the Committee did not establish any reasonable prospect that the Committee could conclude that the Member for Mount Waverley deliberately misled the House with respect to this matter.

Burden of Proof

When considering the evidence the Committee applied the civil standard of proof on the balance of probabilities, but requiring proof of a very high order.

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4 _Hansard_, 29 June 2011, p 2341.
5 _Hansard_, 16 August 2011, p 2546.
6 _Hansard_, 29 June 2011, p 2341.
7 _Hansard_, 16 August 2011, p 2546.
8 As advised by the Clerk: Appendix 3, Correspondence received from the Clerk of the Legislative Assembly on 9 September 2011, p 3; and based on Parliamentary Practice of New Zealand, 3rd ed, 2005, p 654.
Background

Origin of the complaint
1. On 29 June 2011 the Member for Mount Waverley made a personal explanation. See Appendix 1 for the extract from Hansard of the debate.

Consideration of the complaint in the House
2. On 16 August 2011 the Legislative Assembly referred a privilege matter to the Committee for investigation and report. The terms of the resolution were:

   That the complaint made by the Member for Northcote on Tuesday 16 August 2011 be referred to the Privileges Committee for examination and report.9

See Appendix 2 for the extract from Hansard of the debate.

Consideration of the complaint by the Committee
3. The Committee met in private on six occasions.
4. On 31 August 2011 the Committee agreed to write to the Clerk of the Legislative Assembly seeking advice: (a) on the elements it should consider in relation to the contempt of deliberately misleading the House as well as any relevant precedents both in Victoria and other Westminster parliaments; and (b) about its powers and the appropriate processes in relation to witnesses and evidence including CCTV footage. The Clerk’s response is attached at Appendix 3.
5. On 14 September 2011 the Committee agreed to write to the City of Melbourne and Department of Transport and ask them to identify and hold relevant CCTV footage for possible future access by the Committee. See Appendix 4. The City of Melbourne and the Department of Transport advised the Committee that no CCTV footage was available. See Appendix 5.
6. On 14 September 2011, the Committee resolved to hear oral evidence from witnesses in private. The Committee held private hearings on Monday 24 October 2011.
7. On 24 October 2011 the Committee agreed to write to the Member for Mount Waverley asking him not to delete, dispose of or alter the photos he took of Ms Katherine Munt and Mr Jesse Martin on 29 June 2011. In the preparation of this report the Committee did not consider it was necessary to view these photos.
8. On 24 November 2011 the Committee found that the Member for Mount Waverley had not deliberately mislead the House.

Committee Room
6 December 2011

9 Votes and Proceedings, No 30, Tuesday 16 August 2011, p 156.
Appendices

Appendix 1 An extract from Hansard of the personal explanation made by the Member for Mount Waverley on 29 June 2011.

Appendix 2 An extract from Hansard of the debate on the motion to refer the complaint made to the Privileges Committee on 16 August 2011.

Appendix 3 Correspondence received from the Clerk of the Legislative Assembly on 9 September 2011 providing advice — (a) on the elements it should consider in relation to the contempt of deliberately misleading the House as well as any relevant precedents both in Victoria and other Westminster parliaments; and (b) about its powers and the appropriate processes in relation to witnesses and evidence including CCTV footage.

Appendix 4 Correspondence sent to Manager, Engineering Services, City of Melbourne and the Keeper of Evidence, Department of Transport on 21 September 2011 requesting them to identify and hold CCTV footage for possible future access by the Committee.

Appendix 5 Correspondence received from Commercial Branch, DOT Legal Division, Department of Transport on 27 September 2011 and from the Acting Manager, Engineering Services, City of Melbourne on 7 October 2011 advising the Committee that no CCTV footage was available.

Appendix 6 Extracts from the proceedings — 6 December 2011.
PERSONAL EXPLANATION

Member for Mount Waverley

Mr GIDLEY (Mount Waverley) — I seek to make a personal explanation under standing order 123. This morning I travelled to Parliament via train from Glen Waverley. As a resident of Waverley and its local MP, I use public transport regularly. My train arrived at Parliament station at 8.55 this morning, and I proceeded to leave the station complex. On exiting the station I received a brochure from an individual. I then sought advice from authorised officers at the station on the distribution of that information, because I do not believe it is appropriate for commuters to be approached in this manner by people distributing such information. The officers checked with station officials and advised me that it was inappropriate for the information to be distributed in the station precinct. They also advised me that under Melbourne City Council regulations such distribution is unlawful without an advertised permit.

Based on this advice I approached the people distributing the information, at least one of whom was wearing a parliamentary pass. I asked for their names and where they were from. The female person indicated that she was not prepared to provide her name. However, she did confirm that she worked for the member for Northcote. I asked the male person to identify himself, but he also refused to do so. The male person claimed that they were both volunteers, upon which the female person changed her story and claimed she was also a volunteer. The male person asked for my name, which I provided. After I identified myself as a member of Parliament, I again asked these people for their names, which they again declined to provide.

As I was concerned by the fact that the information was being distributed and by the way in which commuters were being approached by these people who had refused to provide their names, I attempted to photograph their faces.

Honourable members interjecting.

The SPEAKER — Order!

Mr GIDLEY — Whilst I attempted to do this, these people did everything they could to shield their appearance and conceal their identities. During my conversation with these people I did not raise my voice or behave in any inappropriate manner. While I remain concerned at the inappropriate distribution of material, I apologise for any offence that may have been taken.

Honourable members interjecting.
PARLIAMENTARY PRIVILEGE

Complaint: misleading the house

The SPEAKER — Order! I inform the house that the member for Northcote lodged with me on 4 July 2011 written notification of a complaint against the member for Mount Waverley. The complaint alleges that the member has committed a contempt of the house by deliberately misleading the house in a personal explanation he gave on Wednesday, 29 June 2011.

The letter from the member for Northcote is as follows:

I write to bring to your attention a serious matter concerning the member for Mount Waverley.

On Wednesday last week, Mr Gidley confronted two people who were handing out material outside Parliament station. His behaviour, witnessed by a number of people, was entirely inappropriate and all the more disappointing given his current role as a member of the Victorian Parliament.

Later that day, Mr Gidley gave a personal explanation to the house. I believe that a prima facia case exists that the member for Mount Waverley has wilfully and deliberately misled the house in this matter.

In particular, I draw your attention to his interaction with Metro staff. In his personal explanation Mr Gidley alleged that:

I then sought advice from authorised officers at the station on the distribution of that information, because I do not believe it is appropriate for commuters to be approached in this manner by people distributing such information. The officers checked with station officials and advised me that it was inappropriate for the information to be distributed in the station precinct. They also advised me that under Melbourne City Council regulations such distribution is unlawful without an advertised permit. (Legislative Assembly Hansard 29 June 2011).
Contrary to Mr Gidley’s account, Metro spokeswoman Geraldine Mitchell stated that:

But Metro spokeswoman Geraldine Mitchell said the ticket inspector told a concerned Mr Gidley the pair were not on ‘Metro land’.

Ms Mitchell confirmed that the land was not Metro’s and said the inspector had told Mr Gidley to contact the council if he had other concerns — the Age, 30 June 2011.

In short, Metro did not in any way suggest that the behaviour was ‘inappropriate’, nor did they advise that council regulations deemed the distribution ‘unlawful’.

Further, in relation to the interaction between Mr Gidley and the persons concerned, in his statement to Parliament Mr Gidley claimed that:

During my conversation with these people I did not raise my voice or behave in an inappropriate manner.

Contrary to Mr Gidley’s statement, an independent eyewitness offered the following account:

The encounter was partially witnessed by Channel 7 reporter Brendan Donohoe, who contradicted Mr Gidley’s claim that he did not raise his voice.

Donohoe told the Age he was walking up the stairs when he saw Mr Gidley yelling at the pair while waving his mobile phone. ‘He was yelling something like, “I will report you”’, he said. ‘It was quite loud and that’s what drew my attention to it. The girl was shaking’ — The Age, 30 June 2011.

Mr Gidley’s account has also been contradicted by those directly involved, who stated that his behaviour was threatening and that he only desisted once it was suggested that the police be called.

In his statement to the Parliament, Mr Gidley also said that:

She [the female person] did confirm that she worked for the member for Northcote.

Again, Mr Gidley’s account has been contradicted by those involved, not surprisingly given that the person referred to does not, nor ever has, worked for me.

It is clear that this demonstrates that a prima facie case exists that the member for Mount Waverley has both wilfully and directly involved, who stated that his behaviour was threatening and that he only desisted once it was suggested that the police be called.

Ms Richardson (Northcote) — I move:

That the complaint raised by the member for Northcote on 16 August 2011 be referred to the Privileges Committee for examination and report.

Firstly, I would like to thank you, Speaker, for considering this matter and concluding that a prima facie case exists for this house to consider. In determining the matter I understand that it was open to you to conclude that the matter had been raised in the Parliament by me and that it perhaps had not come to you at the earliest opportunity, but given how infrequently these matters are brought before the Parliament I appreciate your patience and forbearance. Rest assured that, if in future I ever find myself in this position again, I will heed the advice that you gave to me.

As I said, motions referring a member to the Privileges Committee are extremely rare. Even rarer are motions relating to a member deliberately misleading the house. Since the 1970s in fact there have been only four motions that have been brought before the Parliament relating to a member deliberately misleading the house. Of these four motions that have come here, only one has been referred to the Privileges Committee, so we are dealing here with an event whose severity is underlined by its rarity. Erskine May deals directly with this kind of breach — namely, deliberately misleading the house — stating on page 254 that the House of Commons may treat the making of a deliberately misleading statement as a contempt. Again, that is as it should be.

Each of us here is engaged in some pretty robust debates at times, and the public often despairs at how we conduct ourselves in this place, with the name-calling and the like that goes on, but it is typical of the cut and thrust of parliamentary debate. It is also true to say that more often than not we actually wholeheartedly agree with one another, and again that is perhaps not reported in the media. But whether we are shaking hands or shaking fists at one another, we all rely on a basic principle in this house, and it is simply this: that all members tell the truth. The people of Victoria expect nothing less from us, and in fact the Parliament mirrors and endorses this basic principle.

Indeed when the Speaker determines that such a contempt may have been committed, the whole business of the Parliament is suspended and the motion is debated immediately by the house. This is the seriousness with which such matters are considered.
So what happened? What were the events that preceded the decision of the Speaker that there was a prima facie case that needed to be brought to the attention of the house? During the morning and afternoon peak transport periods of the days from 28 to 30 June Labor volunteers distributed a DL card that highlighted the budget. In particular it highlighted the public transport commitments that were simply not there in the Liberal budget passed in May.

On the morning of Wednesday, 29 June, a female volunteer was approached by the Liberal member for Mount Waverley who, in my view and in the view of others who were present, shouted at and bullied her before chasing her around the forecourt outside Parliament station with his mobile phone camera. She was very clearly shaken by this event. The confrontation was witnessed in part by a journalist, Brendan Donohue, who confirmed the account of events put forward by the volunteer who was chased and by the other volunteer who was present. In response to a members statement made by me the member for Mount Waverley made a personal explanation in the house under standing order 123. Subsequently this statement was contradicted by Metro Trains Melbourne spokespeople, Brendan Donohoe and of course the two volunteers who were present.

I would like to address the detail of the statement the member for Mount Waverley made in the house on that day. In relation to the interaction between him and the two volunteers, in his statement to the Parliament he claimed:

> During my conversation with these people I did not raise my voice or behave in any inappropriate manner.

There is very clearly a contrary account in the *Age* of the following day. It states:

> The encounter was partially witnessed by Channel 7 reporter Brendan Donohoe, who contradicted Mr Gidley’s claim that he did not raise his voice. Donohoe told the *Age* he was walking up the stairs when he saw Mr Gidley yelling at the pair while waving his mobile phone.  
>  
> ‘He was yelling something like “I will report you”’, he said.  
>  
> ‘It was quite loud, and that’s what drew my attention to it.  
>  
> The girl was shaking’.

Brendan Donohoe gave that account on the Channel 7 news report that night. In fact every news service on the night reported Brendan Donohoe’s eyewitness account.

The account of the member for Mount Waverley was also contradicted by those who were involved, and they did that in a variety of ways. In fact they highlighted the fact that the member for Mount Waverley only desisted from his behaviour when they suggested that the police should be called.

The second misleading statement that I want to bring to the attention of the house concerns that which has been contradicted quite clearly by a spokesperson for Metro Trains Melbourne. After describing how he received the brochure from one of the volunteers, the member for Mount Waverley stated:

> I then sought advice from authorised officers at the station on the distribution of that information, because I do not believe it is appropriate for commuters to be approached in this manner by people distributing such information. The officers checked with station officials and advised me that it was inappropriate for the information to be distributed in the station precinct. They also advised me that under Melbourne City Council regulations such distribution is unlawful without an advertised permit.

Again in direct contradiction to the account of the member for Mount Waverley it was reported in the *Age* on the following day that a very different exchange had taken place between the member for Mount Waverley and Metro staff. The report says:

> … Metro spokeswoman Geraldine Mitchell said the ticket inspector told a concerned Mr Gidley the pair were not on ‘Metro land’.  
>  
> Ms Mitchell confirmed that the land was not Metro’s and said the inspector had told Mr Gidley to contact the council if he had other concerns.

In short, Metro staff did not in any way suggest that the behaviour was inappropriate or that the two volunteers needed to be sent off Metro land. They did not advise that council regulations deemed the distribution of the material to be unlawful.

Mr Newton-Brown — On a point of order, Speaker, the member for Northcote has not made it clear whether she is relaying the information as having been directly told to her by Metro staff or whether she is quoting from newspaper reports of the day.

The SPEAKER — Order! Members will come to order. The issue before the house is very serious. I will not have this haranguing going on.

Mr Newton-Brown — On a point of order, Speaker, I ask that the member for Albert Park withdraw that remark.
The SPEAKER — Order! There is no point of order.

Ms RICHARDSON — I reiterate that Metro staff did not in any way suggest that the volunteers had acted inappropriately, they did not advise that council regulations had been breached and nor did they advise that the volunteers were on Metro land. Put simply, it had nothing to do with Metro. Once again the member for Mount Waverley has come into this place and sought to mislead each and every one of us. For the record, though, there is no requirement under Melbourne City Council regulations for a permit to be obtained before distributing this kind of material.

In his personal explanation to the Parliament the member for Mount Waverley also stated that the female volunteer had confirmed that she worked for me — ‘the member for Northcote’ is how he described it. This cannot be believed, because the person in question has not worked for me at any time.

The fact that the member for Mount Waverley took photos of the young volunteers is not in question. The fact that he demanded their names on the basis that he obtained before distributing this kind of material.

In determining whether a member ought to be referred to the Privileges Committee for deliberately misleading the house members in this place have a duty to satisfy themselves that the requirements of two objectives have been met. In order to prove that a member has deliberately misled the house we have to ask ourselves — and answer in the affirmative — ‘Was the statement misleading?’ and ‘Was the misleading statement given deliberately?’ At no time has the member for Mount Waverley given any indication that somehow he got it wrong. He gave the personal explanation, and it was carefully drafted. It was obviously approved in accordance with the requirements of the house. He gave this explanation just hours after the incident. No doubt the morning’s confrontation was still fresh in his mind. There is quite simply no lapse of memory here.

Common sense supports the view that if you stand by the accuracy of a statement, you cannot very well argue that it was made and repeated inadvertently. It is quite the opposite. Almost all the cases that have come here relating to these kinds of concerns have centred around responses in question time and statements given in the heat of the moment. What is extraordinary about the matter before us is that the member for Mount Waverley has misled the house via a personal explanation — as I said, a carefully drafted, crafted and
considered statement. Ordinarily these sorts of statements are of course reserved for correcting the record, not for distorting it. Presumably the member took some time over the statement. Presumably he sought your permission before presenting that statement, Speaker, and presumably in responding to my members statement he chose his words very carefully.

In the time since, the member for Mount Waverley has not made any attempt to imply that he somehow got it wrong on the day. On the contrary he has reproduced his remarks on his website and advertised them via Facebook, and he has also made reference to them on his Twitter account. To this day that still remains the situation. The member for Mount Waverley has clearly used every avenue open to him to advance and stand behind the statements he made on that day in the Parliament. While I cannot predict how the member for Mount Waverley will choose to defend himself, I suggest that any attempt to reverse this position and argue that the misleading statement was somehow given accidentally must fail for this reason alone. Indeed if the member chooses to avail himself of that defence, he would find himself in the unique position of having to argue that he had some rare lapse in memory, given that the statement was made just after the incident itself. To conclude on this point, I say that the evidence presented can clearly lead to only one conclusion, and that is that the member for Mount Waverley has quite deliberately and flagrantly misled this house.

I must confess that the personal explanation made by the member for Mount Waverley angered me at another level and no doubt angered the Premier as well. I understand that the Premier likes it to be known that he holds a particular dislike for bullies and for bullying behaviour, and I applaud him for that. However, immediately following the incident the member for Mount Waverley is reported to have provided the Premier with the same explanation that he provided to the house. Clearly if the house is satisfied that the member for Mount Waverley may have made a deliberately misleading statement in this place worthy of further investigation by the Privileges Committee, it must also follow that he has misled the Premier.

We ought to reflect on this fact. Here we have a man — the member for Mount Waverley — who stands accused of having intimidated a young woman on the street, having misled the Parliament of Victoria and having misled his colleagues and the Premier of Victoria. Given the contempt the member for Mount Waverley has shown to this young woman, to the Parliament and to the colleagues he has here, I feel very sorry for his constituents.

Shortly after this event took place I was advised that the member for Mount Waverley was going to make a personal explanation. In truth I fully expected that he would come into this place and explain that he had lost his cool, that he had behaved inappropriately and that he was going to give an unreserved apology to all those involved. I feel somewhat naive in thinking that now. He could have of course used this statement to send a very powerful message to send a very powerful message to every single one of us who has ever blown a fuse and behaved inappropriately. It would have been a powerful message indeed and no doubt one that would have been backed by the Premier himself, given his views on this kind of behaviour, but sadly this opportunity was lost thanks to the member for Mount Waverley.

Clearly on that occasion the member for Mount Waverley forgot, or perhaps simply does not understand, that the skills he learnt in preselection battles on the ground in the Liberal Party and in internal battles that he has had in the Liberal Party are not the sort of skills that you bring to this place. He did not show the maturity or integrity that is demanded of members of Parliament when they walk into this chamber. We know that it is our responsibility to treat this place with respect and treat other colleagues in this place with respect. We do not come to this Parliament to deceive or do ill; we come because we believe in something and because we value and respect the good work that can be done in public office. That is why when one among us offends against the values that this place represents they have offended against us all. I do not know of any father, brother, son or partner who would conclude that the member for Mount Waverley’s treatment of this young woman in this instance was appropriate, yet that is exactly what the member for Mount Waverley has said — and he has said it on several occasions.

Whatever the outcome of today’s debate I would hope that at the very least the member for Mount Waverley would agree that, despite believing his own actions to be perfectly fine, it certainly is not perfectly fine for him to have misled the Parliament in this way. I also extend my thanks to Channel 7 reporter Brendan Donohoe, who stood by the statements that were made by the people involved in the incident. He came and told the truth about what had happened. I know that the young woman involved was particularly appreciative of the stand he took.

The last thing I would like to talk about in particular is the way in which the member has approached the handling of this debate over the time since the statement was made. He has clearly failed and has tried
to slither away like a snake from these deliberately misleading statements he has made.

Honourable members interjecting.

The SPEAKER — Order! I advise the member for Northcote that up to this point her presentation has been clean. I ask her to keep it that way.

Ms RICHARDSON — Indeed the member for Mount Waverley can really only jump in one of two ways in dealing with this matter: he can walk the noble road and apologise for his deliberately misleading comments, or he can trot out the same bile that got him into this mess, like a dog returning to its own vomit.

Honourable members interjecting.

The SPEAKER — Order! If the member for Northcote continues in that vein, I will sit her down.

Honourable members interjecting.

The SPEAKER — Order! The house will come to order!

Ms RICHARDSON — It is one thing to lose your temper and then apologise unreservedly. It is quite another thing to abuse and harass a young woman and then deliberately mislead the Parliament of Victoria and try to dig your way out of circumstances that you have created for yourself.

Finally I ask all members of the house to consider this: how would they feel had it been their mother, daughter or wife who was involved in this incident, and subsequently how would they feel if the perpetrator, by virtue of his privileged position, was allowed to call his victim a liar? I invite all members to think about the behaviour and statements of the member for Mount Waverley, about which there now remains no question, and how they reflect on all of us and on this place. I commend the motion to the house.

The SPEAKER — Order! Before I call the next contributor I advise the member for Mount Waverley that it is the practice for him to leave the house.

Honourable member for Mount Waverley withdrew from chamber.

Ms HENNESSY (Altona) — I rise to make a contribution on the motion before the house. As we have heard from the member for Northcote, the subject of this motion and the circumstances leading up to it are very serious and ought to be treated as such. I commend all members of the house on the way they have conducted themselves in the course of this debate.

The background and circumstances of the complaint are critical, and they are relevant to the motion about which members have to make a decision when it is put to a vote. The background and circumstances that led to this complaint have been the subject of a personal explanation by the member for Mount Waverley. The circumstances that gave rise to that personal explanation are incredibly serious. A young woman was handing out material at Parliament railway station, and she asserts that she was bullied, harassed and intimidated by a member of this house while doing so.

It seems to me that when it became apparent to this member that this matter was going to become public, he decided to make a personal explanation to the house. It was indeed a personal explanation that the member made. The assertions that were contained in his personal explanation have led to the motion before this house today, which arise from a complaint of a breach...
of privilege. Specifically that breach is of misleading the house and, as the Speaker has outlined, of contempt.

The Speaker determined that the threshold tests in respect of the allegations have been met. The threshold test is not just that a complaint was made to him within a reasonably practicable time frame but whether a prima facie case exists for a possible breach of privilege. Obviously ‘prima facie’ means that on first appearance the facts would bear out the complaint. It essentially means that, unless rebutted, the assertions that have been made that the member for Mount Waverley has misled this house are in fact sufficient to prove a particular proposition or fact. The evidence that is sufficient to prove that he has misled the house is essentially the assertion that the mover of this motion, the member for Northcote, has made, which those on this side of the house certainly support.

The purpose of this motion, then, is to enable the Privileges Committee to consider the matter. This motion is a prerequisite to test those allegations. Let us try to focus on that proper process. An allegation has been made that a member has misled the Parliament. The Speaker has determined that a prima facie case exists, and I would insist that the government should rightly support this motion to enable the Privileges Committee to then test those allegations. The statements made by the member for Mount Waverley which it is alleged are misleading include his assertions that he did not raise his voice and that he did not behave in an inappropriate manner. However, one of the probative issues to do with supporting this resolution is the fact that independent witnesses allege that the member was in fact yelling and behaving aggressively. In fact the victim of this behaviour makes that assertion. The other assertion that is alleged to constitute a misleading statement to the house includes the member’s account of his interactions with Metro and the advice he asserts he was provided by Metro. In public reports Metro has contested both the substance and the accuracy of the member’s assertions.

Just as an aside, and I do note the comments that the member for Mount Waverley made in his brief contribution on this matter, it is indeed important for members to reflect upon whether or not it is their role to go off and attempt to enforce Melbourne City Council by-laws, whether they exist in truth or not. It is important that members of Parliament, even when they see political material being handed out that they contest, do not appoint themselves as the Mars Bar sheriff of the village and go out and attempt to hold innocent citizens to account.

A further statement by the member which is alleged to be misleading goes to the description of his interactions with the young woman concerned. In contradiction to the member’s statement to this house there are direct witnesses who state that the member’s version of events is simply not true. Most important is the voice of the victim herself, those who were with her and independent witnesses. It is their voices that must be heard by the Privileges Committee lest there be any suggestion of a political whitewash. The member will have his opportunity to prove his version of events and attempt to demonstrate the accuracy of the statements that he made to this house. However, it is critical that the Privileges Committee ensure that those who were direct witnesses and can speak to the facts of the matter are also given an opportunity to have their say. As the member for Northcote stated, the existence of closed-circuit television footage may also be instructive in either proving or disproving the assertions of the member for Mount Waverley.

Ultimately it is for the Privileges Committee to make a judgement on the evidence and to make a determination based on that evidence, but it is important that all of the relevant evidence is obtained, excavated and tested. It is also a matter of great disappointment to me that the Premier, despite what has been voiced by the victim, journalists, Metro and independent witnesses, has made a number of public statements, both at a press conference on 29 June and on the Neil Mitchell program, in which he has supported the member’s versions of events. What confidence that is based on I am not sure. I think it is incredibly important to say that when such issues arise again all members of Parliament would do well to go out and test the basis upon which those assertions have been made. We have been waiting for an MPs code of conduct for nine months, and one of the tests of this code of conduct would be how it would apply to these sorts of circumstances.

One question I find deeply troubling is: what would have happened if this incident had not been witnessed by independent parties, particularly a member of the press? What recourse would a young woman have had in exercising her democratic right to express a view about this government’s performance on public transport? What recourse would she have had if she had been bullied, intimidated and subjected to public humiliation? How does a young woman seek recourse against a member of Parliament in such circumstances when those with more power and resources are able to get up and utilise the sanctity of parliamentary privilege to say, “It never happened”?

I wish also to reinforce the importance of this referral as an important check and balance against parliamentary
privilege. Speaker, the purpose of parliamentary privilege, as you are so deeply aware, is that members be able to speak without fear and favour. But it ought not to be abused at the expense of a young woman who has been bullied.

We know that the abuse and bullying of women in society generally is an area in which we are unfortunately overrepresented. There are high degrees of underreporting, and that is simply because so many women feel that the system fails them. Let the system not fail Katherine Munt, because if a young woman wants to stand up and say, ’No, that is not what happened’, if her version of events is corroborated by several witnesses and potentially corroborated by CCTV (closed-circuit television), and if the young woman herself is a credible witness, it is essential that the Privileges Committee be invoked in order to ensure that those assertions can be tested.

A prima facie case has been established. There is a fair opportunity for the member for Mount Waverley to contest the allegations that have been made and to prove his assertions that what he told this house is in fact correct. But the fact that a young woman exercising her democratic rights should not be able to stand on public land and hand out material that is critical of the government without being bullied and intimidated is indeed reprehensible, and I call on all members of this house to hold the member for Mount Waverley to account for his behaviour.

Ms ASHER (Minister for Innovation, Services and Small Business) — I wish to make a number of brief comments in relation to the motion moved by the member for Northcote and indicate what the government’s view is on this matter.

Much of what we do in this house, Speaker, as you are aware, is governed by standing orders, but a lot of what we do follows traditions and practices which have been developed over many years. One of those practices is that, in general, questions relating to privilege matters should be dealt with in a sober and calm manner and dealt with properly by the committee that is appointed by the house to consider them, which is of course the Privileges Committee. It is the role of the Privileges Committee, as established by this Parliament, to consider the evidence that may or may not be presented by various parties.

With that in mind I am happy to advise the house that the government will support the reference of this matter to the Privileges Committee. This does not for one minute mean that the government accepts the allegation made by the member for Northcote in referring this matter. Our rationale is that this place is not the determining body and when you, Speaker, determine that a matter should have precedence, it is appropriate that it should be referred to the Privileges Committee for consideration and report.

The member for Mount Waverley has already indicated in his presentation that he has no objection to this matter being referred by the house to the Privileges Committee. From a personal perspective I believe this reflects well on the member for Mount Waverley. I also believe the fact that the member for Mount Waverley has apologised also reflects well on him.

I note that we, the government, are adopting a very different approach from that which occurred in this place — and I and a number of others were present when this occurred — when the member for Hawthorn, the now Premier, referred a matter relating to a former minister of the Crown in the then Bracks government. In my opinion this was a very clear matter; others may have a different view. In my opinion it was a very clear-cut case, but the Labor government of the day with the support of the Independents used its numbers to vote down that reference via a division. That was in May 2000.

Many of us remember how self-righteous Labor can be in opposition and how little respect it has for the traditions of this chamber when it does not suit it in government. Labor is adopting a completely different approach from the approach it adopted when in government. The coalition is completely different from the ALP in its approach to these matters. We respect the practices and customs that have been built up over the years in this Parliament. We believe the proper course when allegations like this are made is that they should be considered according to the standing orders by the Privileges Committee, and this is the stance the government will support.

Ms ALLAN (Bendigo East) — I rise to make a short contribution on the matter of privilege that the house is being asked by the member for Northcote to consider. I will not go over the particulars of the case because I believe they have been well covered by the member for Northcote. She quite clearly highlighted in many different ways that the member for Mount Waverley’s personal explanation to this place back in June has been severely compromised by a number of contradictory and conflicting statements that have been made by members of the public, a spokesperson for Metro and a journalist.

I would like to make a brief comment on the remarks of the Minister for Innovation, Services and Small
Business about the government’s support for this matter going to the Privileges Committee. In her comments the minister said she thought the member for Mount Waverley’s apology reflected well on him. I hope she has the opportunity to reflect on that support for the member for Mount Waverley, because his personal explanation to this house was barely an apology. He made a statement in which he apologised for any offence that may have been taken.

However, during his contribution in the house the member made a number of misleading statements that have since been contradicted, as has been outlined by the member for Northcote. I do not think it reflects well on any member of this Parliament for a member to think they can walk into this place and make a statement that completely contradicts the facts of an event that happened outside this place. That is cowardly. It is unparliamentary, and it is beneath what Victorians expect of their members of Parliament.

The member for Brighton referred to previous privilege matters brought before this house. Like the member for Brighton, I was here in May 2000 when the house debated a privilege matter brought forward by the member for Hawthorn, now the Premier. The distinctive feature of that debate, as I remember it, was the hysterical case put by the member for Hawthorn. I remember the wild and fanciful claims by the then opposition. Given the way they were going with their conspiracy theories, opposition members had the smoking gun, they had the grassy knoll and they had the poison that killed Phar Lap. The fact is that matter lacked substance. The case brought by the member for Hawthorn in 2000 could not be substantiated in this place and the house did not support his motion. It was not just Labor which did not support that motion; it was the Independent members as well, who independently made up their own minds on it.

If we are going to delve into the history books, we also have to remember that in 1991 by a very similar matter — —

Mrs Fyffe — On a point of order, Speaker, like many members of the house, I am not quite sure of the procedures on a privilege motion such as this, but I ask that you bring the member for Bendigo East back to the matter being debated. There seems to be no relevance in the issues she is raising.

The SPEAKER — Order! I do not uphold the point of order. The issue was raised by the member for Brighton.

Ms ALLAN — I was about to refer to a previous privilege matter brought before this house in 1991 by the then Deputy Leader of the National Party.

An honourable member interjected.

Ms ALLAN — No, it was the then Leader of the National Party, Pat McNamara, who brought a privilege matter against the then Minister for Transport, Peter Spyker. That matter was referred to the Privileges Committee by the then Labor government, so for the member for Brighton to say that Labor hides from and ducks this sort of debate is absolutely erroneous. Where there has been a case of substance, a case that could be validated, then of course it has gone through to the Privileges Committee, as it should.

Obviously we will await the report of the Privileges Committee to this place. This matter will be interesting for the members of the Privileges Committee to debate and report on. I hope that when the members of the Privileges Committee come to consider the matter they will have the following comments at the front of their minds:

I have consistently told those students that the chamber has an adversarial atmosphere because it is the place where truth is tested.

All members, when they stand in the chamber, particularly when they stand at the table adjacent to the mace, have an obligation to observe the forms of the house and the basic premise that all members shall tell the truth.

I hope that all members of the Privileges Committee, government and non-government, follow the lead of the current Premier, who made those comments in this place in 2000 while pleading with the house and making the case that members should tell the truth. In this case, at least on a prima facie basis, we have seen that the house has been misled by the member for Mount Waverley. This is an opportunity for that to be debated by the Privileges Committee. We hope this will not become a debate where the Privileges Committee simply divides on party lines in an effort by government members to protect one of their own.

However, it has been interesting to see how few friends the member for Mount Waverley has had during this debate. The Premier and Deputy Premier have been absent, and many other government members have been absent during the course of this debate.

Honourable members interjecting.

Ms ALLAN — The member for Mount Waverley had the member for Hastings keeping him company there for a while — that is probably good company for the member for Mount Waverley to keep. However, we
have not seen that support from the government at this stage. I hope that reflects that government members are going to take this matter very seriously when it comes to the Privileges Committee and that they will keep at the front of their minds the advice of the Premier that all members of this place must tell the truth.

Many people have made statements that have contradicted the account of the member for Mount Waverley, and there may even be video evidence that will undermine the personal explanation made in this house by the member. Whatever else we think of the behaviour of the member for Mount Waverley, I think there are grave concerns about his performance on that day. I would hope at a bare minimum that the Premier and his Liberal colleagues have counselled the member for Mount Waverley about his behaviour, including the way he approached young people at the train station — particularly a young woman; the way he stood over and spoke to the young woman; the way he chased that person; the way he tried to take photographs of the people; and the way he demanded they tell him who they were because he was a member of Parliament. I hope that sort of behaviour has been condemned within the Liberal Party and that the member has been counselled by his Premier and by the leadership of the Liberal Party, including the deputy leader, and told that this is not the sort of behaviour we would expect from any member of society.

It does not matter whether you are a member of Parliament, a plumber or a cricketer; regardless of occupation no-one should be allowed to behave like this and get away with it. You do wonder, unfortunately, whether the member for Mount Waverley thought he could get away with it by coming into the house and making a statement that would put the case to rest. As we have seen, the case has not been laid to rest. The evidence suggests the member for Mount Waverley has misled the Parliament and has made the matter significantly worse for himself.

Deliberate misleading of this house lets him and his government down. It lets this house down too. We come in here to do our jobs to the best of our abilities, but the performance of the member for Mount Waverley has let the house down. As a result the people of Mount Waverley and the people of Victoria have been badly let down by the member for Mount Waverley’s behaviour on the day of the incident in question and by his subsequent behaviour — coming into this house and misleading it, hoping we would all close our eyes and this would go away.

This will now go to the Privileges Committee. As I said, I hope its members stick to the facts of the matter, follow precedent very closely and rule in an appropriate way, a way that can be borne out by the facts that have been presented, particularly by the member for Northcote.

Mr O’BRIEN (Minister for Gaming) — I move:

That the question be now put.

Mr O’Brien’s motion agreed to.

Motion agreed to.
9 September 2011

The Hon Denis Napthine MP
Chair
Legislative Assembly Privileges Committee
Parliament House
Spring Street
MELBOURNE 3002

Dear Dr Napthine,

I refer to your letter of 1 September 2011 in which you seek advice about the issues and precedents of privilege in relation to the complaint made by the Member for Northcote. My advice is set out below.

Privilege Defined

Parliamentary privilege can be described as the sum of the special rights and immunities which belong to the Houses, their committees and their Members, and which are considered essential for the proper operation of the Parliament. These rights and immunities allow the Houses to meet and carry out their proper constitutional roles, for committees to operate effectively, for Members to discharge their responsibilities to their constituents, and for others properly involved in the Parliamentary process to carry out their duties and responsibilities without obstruction or fear of prosecution.¹

Foundations of Privilege in Victoria

The Victorian Parliament derives its privilege powers and immunities from s 19 of the Constitution Act 1875. That section provides that the Council and the Assembly shall have the privileges, immunities and powers as at 21 July 1855 which were held by the House of Commons.

In effect the privileges applying to the Victorian Parliament are the same as those held by the House of Commons in 1855. These privileges were detailed in the 3rd edition of Erskine May printed in 1855, which contained precedents up to 1854. There has been little change in parliamentary privilege since that time and later editions of May will also provide a good guide to the privileges applying in Victoria.

Origins of the Complaint before the Committee

On Wednesday 29 June 2011, the Member for Northcote, Ms Richardson, during statements by members, informed the House that volunteers from her office had been handing out information relating to the Government’s lack of investment in public transport. Ms Richardson went on to explain that earlier that day two of her

¹ House of Representatives Practice, 5th ed, p 707
volunteers were verbally attacked and bullied at one of the exits of the Parliament station by Mr Gidley, the Member for Mount Waverley. Later that day the Member for Mount Waverley made a personal explanation to the House to correct the record. In his explanation Mr Gidley stated that “During the conversation with these people I did not raise my voice or behave in an inappropriate manner”.

Ms Richardson has raised a complaint of breach of privilege in that Mr Gidley deliberately misled the House by providing information in his personal explanation that was untrue. Her letter of complaint cited a number of inaccuracies in Mr Gidley’s statement, one example being the contradiction of the above statement by an independent witness.

**Application of privilege to this case**

The House of Commons also has the power to punish for contempt. *Erskine May* outlines contempt as:

> 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 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.

In referring to the misconduct of Members and officers *May* states:

> The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963 the House 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.

There is only one instance of this form of contempt being committed in the House of Commons and it is commonly referred to as the *Profumo Case*. It is important to note the circumstances surrounding the decision of the Commons in this case because of the guidance it provides in alleged misrepresentation by members. Jack Profumo, a Member of the House of Commons, made a personal statement in the House to deny the truth of current allegations being made against him. He was later forced to admit that in making his denial he had deliberately misled the House. This led to his resignation as a Member and to the House subsequently finding him guilty of a grave contempt.

The essential elements of this form of contempt are —

- that there must be a misleading statement;
- it must be established that the Member making the statement knew at the time the statement was inaccurate or at least ought to have known it was inaccurate; and
- in making it, the Member must have intended to mislead the House.

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2 24th ed, p 251
3 24th ed, p 254
4 *Parliamentary Practice in New Zealand* 3rd ed, p 653
In the House of Representatives the Speaker has not to date accepted a claim that a Member had deliberately misled the House. Furthermore, I have been unable to find an example of a deliberately misleading claim being upheld in any House across Australia or New Zealand. This may be because of the difficulty of establishing, to the necessary extent, the second two elements of this form of contempt that are mentioned above.

When considering these elements the Committee will need to consider the burden of proof to be applied. The standard applied in other jurisdictions is the civil standard of balance of probabilities, but requiring proof of a very high order. I advise that approach to be entirely appropriate.

This approach has been taken in New Zealand since 1980 in relation to complaints of deliberately misleading the House, and recognises the very serious nature of the allegations:

> The need for such a high measure of proof is emphasised by the fact that there is effectively no right of appeal against the finding of the committee; there can be few situations where a career can be placed in jeopardy without any right of appeal.  

A finding of recklessness or negligence is insufficient. There must be intent to mislead, and the issue must be one of consequence, rather than something trivial.

Queensland privilege committees have adopted the same standard of proof.

The House of Commons has considered the burden of proof in relation to broader allegations of dishonesty against members. In 2000, in investigating a complaint over the use of a House of Commons costs allowance, the Committee of Standards and Privileges concluded they would ‘need to be persuaded [the] allegations were significantly more likely to be true than not to be true’.

Subsequently, in 2003, also in relation to the use of allowances, the Committee agreed to apply the civil law test of the balance of probabilities, but one of a high degree of probability.

**Committee’s power relating to witnesses and evidence**

In relation to the Committee’s powers regarding witnesses and evidence, I draw your attention to Standing Order 214:

> A select committee may send for persons, documents and other things.

This gives the Committee the authority to call any witnesses and to seek any other evidence including CCTV footage that is relevant to the Committee’s inquiry. The Committee’s authority in this regard will be limited by any existing State or Federal

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5. House of Representatives Practice, 5th ed, p 729  
law that might prevent information desired by the Committee being provided for some reason. An example could be privacy or security restrictions.

The Committee should also be aware of Standing Order 217:

1. Unless the House or the select committee otherwise determines, all evidence will be taken in public and may be published immediately.

2. The committee may authorise the publication of any documents, papers and submissions presented to it.

3. The committee may take evidence in private.

4. Evidence not taken in public and any documents, papers and submissions received by the committee which have not been authorised for publication will not be disclosed unless they have been reported to the House.

This Standing Order requires the Committee to take its evidence in open public hearings unless it determines to do otherwise.

Witnesses

As mentioned above the Committee can request submissions or take evidence from any witness it may desire in relation to this inquiry. A witness is not able to be represented by a lawyer when giving evidence before the Committee.\(^{11}\)

However, a witness may be permitted to be accompanied by a support person when they appear before the Committee. The following extract from House of Representatives Practice provides some helpful guidance on this matter:

There are precedents, however, for House of Representatives committees to permit witnesses to have counsel or advisers present in an advisory capacity during hearings. On several occasions the Committee of Privileges has permitted witnesses to be accompanied by, and to confer with, counsel or advisers but, save for seeking clarification on and making submissions concerning their own involvement, counsel have not been permitted to address the committee directly.

Persons permitted to accompany and assist witnesses need not be lawyers—for example, Members appearing before the Committee of Privileges have been accompanied by research assistants. On another occasion a Member appearing before the Committee of Privileges was accompanied by another Member. The role of such persons is emphatically that of adviser rather than representative. Witnesses have been permitted to converse freely with such advisers, but the advisers have not been permitted, for example, to:

- present evidence in support of a witness or the witness’s submission;
- object themselves to procedures or lines of questioning pursued by the committee; or
- ask questions of witnesses.

On one occasion a committee intervened to prevent what it saw as an attempt to avoid these restrictions by the passing of notes to a witness or providing the witness with written responses to questions. These limitations attempt to ensure that the witness answers the questions and presents his or her own evidence while at the same time allowing the witness to readily obtain, for example, advice or help

\(^{11}\) Parliamentary Committees Act 2003 s 27(3)
as to legal or other issues arising in the giving of evidence. Counsel or advisers may be permitted, at the committee’s discretion, to attend a private hearing of a client’s evidence.  

I hope that this information is of assistance to the Committee.

Yours sincerely

Ray Purdey
Clerk of the Legislative Assembly

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12 5th ed p 671
Mr Geoff Robinson  
Manager, Engineering Services  
City of Melbourne  
GPO Box 1603  
Melbourne VIC 3001

21 September 2011

Dear Mr Robinson

RE: Request to identify and hold CCTV footage

The Legislative Assembly Privileges Committee is investigating a possible breach of the privileges of the Parliament of Victoria.

I am writing to ask you to identify and hold any CCTV footage that may assist the Committee in our investigation. At this stage, I am not requesting access to the footage, instead I just ask that the relevant footage not be deleted until I contact you further.

The relevant footage is of the area around the entrance to Parliament Station on the corner of Bourke and Spring Streets, corner of Collins and Spring Streets and the entrance at Gordon Reserve (between Spring and Macarthur Streets) between 8.00 am and 10.00 am on Wednesday 29 June 2011.

Please can you advise me if you have any relevant footage and I will contact you again regarding any further action the Committee decides to take with regard to the footage.

If you have any questions about this request please contact the Committee's secretary,  
Ms Anne Sargent, on 9651 8555.

Yours sincerely

Hon Dr Denis Napthine MP  
Chair, Privileges Committee
Keeper of Evidence  
Department of Transport  
GPO Box 2797  
MELBOURNE VIC 3001

21 September 2011

Dear Sir/Madam

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If you have any questions about this request please contact the Committee's secretary, Ms Anne Sargent, on 9651 8555.

Yours sincerely

[Signature]

Hon Dr Denis Napthine MP  
Chair, Privileges Committee
Ms Anne SARGENT
Legislative Assembly of Victoria
Parliament House
East Melbourne VIC 3002

To Ms SARGENT,

I refer to Hon Denis Napthine’s CCTV data application form dated 21st of September 2011 requesting CCTV evidence in relation to an incident at Parliament Railway Station on the 29th of June, 2011.

Kindly note that search of the evidence database has enclosed there is no footage available for the time period requested in your application, Metro trains also have no CCTV quarantined for the time period and location requested on your application. CCTV on the railway network has a retention period of approximately 30 days.

Therefore I have to advise you that I am not able to assist you with this application.

Yours Sincerely

Robert Williams
Team Leader
Evidence & Transport
Transport Insurance & Risk Management
Commercial Branch, DOT Legal Division
Department of Transport
7 October 2011

The Honourable Dr Denis Napthine MP
Chair, Privileges Committee
Parliament House
EAST MELBOURNE VIC 3002

Dear Minister

REQUEST TO IDENTIFY AND HOLD CCTV FOOTAGE

I refer to your letter of 21 September 2011 requesting that we identify and hold CCTV footage that may potentially assist the Legislative Assembly Privileges Committee investigation.

Council’s Safe City Camera footage is held on the system for 28 days before being automatically overwritten. It is possible to request that footage be identified and held indefinitely pending an investigation but this request must be received within the initial 28 day period to enable this.

Unfortunately we are unable to assist you in this instance as the footage in question is from 29 June 2011.

If you have any queries in relation to this please feel free to contact Craig Buckingham on 9658 9001

Yours faithfully

Craig Stevens
Acting Manager Engineering Services
Telephone 9658 8533
Facsimile 9658 8886
E-mail gcottrobinson@melbourne.vic.gov.au
Website www.melbourne.vic.gov.au

CoM reference #6766052
Extracts from the proceedings — 6 December 2011

Extracts from the proceedings
Motion made and question — That all the divisions which took place during the course of the inquiry be included in the report (Ms Barker, seconded Mr Nardella) — put.

Ayes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.
Noes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.

Question defeated.

Allegation 1
Motion made and question proposed — That the conclusion to allegation 1 be ‘The terms of the allegation and the evidence presented to the Committee did not establish any inconsistency between the facts alleged and the remarks of the Member for Mount Waverley with respect to this matter.’ (Mr Clark, seconded Mr McIntosh).

Amendment proposed — That all the words after ‘That’ be omitted with a view to inserting the words ‘the Committee: (1) to date cannot finally determine this matter; and (2) to enable a final determination on this matter, the Committee will now call the following further witness, Metro spokeswoman Ms Geraldine Mitchell.’ (Ms Barker, seconded Mr Nardella).

Question — That the amendment be agreed to — put.

Ayes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.
Noes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.

Amendment defeated.

Question — That the conclusion to allegation 1 be ‘The terms of the allegation and the evidence presented to the Committee did not establish any inconsistency between the facts alleged and the remarks of the Member for Mount Waverley with respect to this matter.’ — put.

Ayes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.
Noes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.

Question agreed to.

Allegation 2
Motion made and question proposed — That the conclusion to allegation 2 be ‘The terms of the allegation and the evidence presented to the Committee did not establish any reasonable prospect that the Committee could conclude that the Member for Mount Waverley deliberately misled the House with respect to this matter.’ (Mr Clark, seconded Mr McIntosh).

Amendment proposed — That all the words after ‘That’ be omitted with a view to inserting the words ‘the Committee: (1) to date cannot finally determine this matter; and (2) to enable a final determination on this matter, the Committee will now call the following further witnesses, Ms Katherine Munt, Mr Jesse Martin and Mr Brendan Donohoe.’ (Ms Barker, seconded Mr Nardella).

Question — That the amendment be agreed to — put.
Ayes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.
Noes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.

Amendment defeated.

Question — That the conclusion to allegation 2 be ‘The terms of the allegation and the evidence presented to the Committee did not establish any reasonable prospect that the Committee could conclude that the Member for Mount Waverley deliberately misled the House with respect to this matter.’ — put.

Ayes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.
Noes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.

Question agreed to.

Allegation 3
Motion made and question proposed — That the conclusion to allegation 3 be ‘The terms of the allegation and the evidence presented to the Committee did not establish any reasonable prospect that the Committee could conclude that the Member for Mount Waverley deliberately misled the House with respect to this matter.’ (Mr Clark, seconded Mr McIntosh).

Amendment proposed — That all the words after ‘That’ be omitted with a view to inserting the words ‘the Committee: (1) to date cannot finally determine this matter; and (2) to enable a final determination on this matter, the Committee will now call the following further witness, Ms Katherine Munt.’ (Ms Barker, seconded Mr Nardella).

Question — That the amendment be agreed to — put.

Ayes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.
Noes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.

Amendment defeated.

Question — That the conclusion to allegation 3 be ‘The terms of the allegation and the evidence presented to the Committee did not establish any reasonable prospect that the Committee could conclude that the Member for Mount Waverley deliberately misled the House with respect to this matter.’ — put.

Ayes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.
Noes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.

Question agreed to.

Finding
Motion made and question proposed — That the finding be ‘Upon examination of the complaint, referred to it by the House, that the Member for Mount Waverley deliberately misled the House, the Committee finds that the complaint is not substantiated.’ (Mr Clark, seconded Mr McIntosh).

Amendment proposed — That all the words after ‘finds’ be omitted with a view to inserting the words ‘(1) there are contradictions in the evidence given to date; and (2) to enable a final determination of the complaint to be made, the Committee will now call the following further witnesses, Ms Katherine Munt, Mr Jesse Martin and Mr Brendan Donohoe, who were witnesses at the railway station, and Metro spokeswoman Ms Geraldine Mitchell.’ (Ms Barker, seconded Mr Nardella).

Question — That the amendment be agreed to — put.
Ayes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.
Noes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.

Amendment defeated.

Question — That the finding be ‘Upon examination of the complaint, referred to it by the House, that the Member for Mount Waverley deliberately misled the House, the Committee finds that the complaint is not substantiated.’ — put.

Ayes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.
Noes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.

Question agreed to.

Background
Motion made and question — That the names of the witnesses be included in paragraph 6 of the background (Mr Pandazopoulos, seconded Ms Barker) — put.

Ayes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.
Noes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.

Question defeated.

Motion made and question proposed — That the words ‘In the preparation of this report the Committee did not view these photos.’ be inserted the end of paragraph 7 of the background (Mr Pandazopoulos, seconded Mr Nardella).

Amendment proposed — That the words ‘consider it was necessary to’ be inserted after ‘not’ (Mr Clark, Mr Morris) — put.

Ayes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.
Noes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.

Amendment agreed to.

Original question as amended — That the words ‘In the preparation of this report the Committee did not consider it was necessary to view these photos.’ be inserted the end of paragraph 7 of the background — put.

Ayes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.
Noes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.

Question agreed to.

Adoption of report
Motion made and question — That the report as amended be agreed to (Mr Clark, seconded, Mr McIntosh) — put.

Ayes 4: Mr Clark, Mr McIntosh, Mr Morris, Mr Walsh.
Noes 3: Ms Barker, Mr Nardella, Mr Pandazopoulos.

Question agreed to.
Legislative Assembly
Privileges Committee

Report on the Complaint by the Member for Northcote

Minority Report

Submitted by Committee Members
Mrs A Barker, Ms D Green,
Mr D Nardella, Mr J Pandazopoulos

7th December 2011
Determining the matter following advice and evidence -

On Tuesday 16th August 2011, the Speaker informed the Legislative Assembly that a letter had been lodged with him from the Member for Northcote on 4 July 2011 alleging that the member for Mount Waverley deliberately mislead the house in a personal explanation he gave on Wednesday 29th June 2011 and following consideration of that letter, the Speaker stated that he was satisfied that a prima facie case had been established for the matter to be considered by the House in terms of a referral to the Privileges Committee (the Committee) for examination and report.

As detailed in the majority report of the Privileges Committee, the Committee reported on three allegations set out by the Member for Northcote. However, the minority members of the Privileges Committee submit that a final determination of the complaint cannot be made as witnesses to the matter, namely Ms Katherine Munt, Mr Jesse Martin, Mr Brendan Donohoe, who were witnesses at the railway station, and Metro spokeswoman Ms Geraldine Mitchell who could provide further information, were not called to give evidence to the Committee.

In determining to submit that this final determination cannot be made, minority members note the advice of the Clerk which was sought at the beginning of the Committee’s inquiry in that the Committee needed to consider the burden of proof applied. The Clerk advised “the standard applied in other jurisdictions is the civil standard of balance of probabilities, but requiring proof of a very high order.”

Minority members of the Committee agree that in considering whether it is more probable than not that what the person says happened is true but also considering the requirement that proof of a very high order is essential, the Committee should have heard from all witnesses to be able to hear, question and consider all of the evidence, and therefore be able to competently determine which version is more probable.

Minority members further note in the advice of the Clerk that “the House of Commons has considered the burden of proof in relation to broader allegations of dishonesty against members. In 2000, in investigating a complaint over the use of a House of Commons costs allowance, the Committee of Standards and Privileges concluded they would “need to be persuaded (the) allegations were significantly more likely to be true than not to be true.”

Minority members agree that for the Committee to be persuaded that the allegations were significantly more likely to be true than not to be true, all witnesses involved in the matter should have been called to give evidence.

The most cited example of the form of deliberately misleading the House is the Profumo Case with advice on this case being referred to the Privileges Committee by the Clerk. As outlined in the advice from the Clerk, Mr Profumo made a personal statement in the House to deny the truth of allegations made against him by other Members of the House of Commons in the chamber.

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1 Correspondence received from the Clerk of the Legislative Assembly on 9 September 2011, p 3
2 Correspondence received from the Clerk of the Legislative Assembly on 9 September 2011, p 3
3 Correspondence received from the Clerk of the Legislative Assembly on 9 September 2011, p 2
Following that statement, one of the persons referred to by Mr Profumo in his statement who was not a Member of Parliament, disputed the remarks and facts alleged by the Member. This resulted in the Member (Profumo) admitting in a letter to the then Prime Minister that he had to admit that he had misled the House. This admission resulted in his resignation as a Member and to the House subsequently finding him guilty of a grave contempt.

The reason that this finding could be made by the House and the action that was taken by the Member (Profumo) was only because of further information being made available which contradicted the Member’s (Profumo) statement, therefore showing that the Member ought to have known what he was stating was inaccurate.

The Liberal/National majority members of the Committee determined that the allegation proposed by the Member for Northcote could not be substantiated thereby finding that the Member for Mount Waverley, in believing his statement was not inaccurate he did not therefore mislead the House. However, this finding was made without hearing all of the evidence, and by shutting down the inquiry, the Liberal/National majority members of the Committee made sure that any further evidence which may have shown that the Member for Mount Waverley had known that what he was stating was inaccurate was not able to be tested.

That is why minority members of the Committee moved to amend all motions put by the Liberal/National majority members during the adoption of the final report. These amendments to the motions note contradictions in the evidence given to date and that to enable a full and final determination of the complaint the Committee should have called the following further witnesses, Ms Katherine Munt, Mr Jesse Martin, Mr Brendan Donohoe who were witnesses at the station, and Metro spokeswoman Ms Geraldine Mitchell. The amendments proposed by the minority members of the Committee were defeated by the Liberal/National majority members of the Committee.

As well as the decision by the Liberal/National majority members of the Committee that witnesses to the incident and a person who could have provided further information would not be called to give evidence, the final report adopted by the majority Liberal/National members of the Committee notes that in considering the complaint, the Committee agreed to write to the Member for Mount Waverley “asking him not to delete, dispose of or alter the photos he took of Ms Katherine Munt and Mr Jesse Martin on 29 June 2011.” 4

As stated in the debate in the Legislative Assembly on Tuesday 16 August 2011 by the Member for Altona Ms Hennessy, “Ultimately it is for the Privileges Committee to make a judgement on the evidence and to make a determination based on that evidence, but it is important that all of the relevant evidence is obtained, excavated and tested.” 5

While the full Committee determined that the Member for Mount Waverley should be asked not to delete, dispose of or alter the photos he took of Ms Katherine Munt and Mr Jesse Martin on 29 June 2011, the Liberal/National majority members of the Committee did not consider it necessary to view these photos in the preparation of the report. Minority members of the Committee believe that all

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4 Legislative Assembly Privileges Committee Report on the Complaint by the Member for Northcote p 7
5 Hansard, 16 August 2011, p 2551
relevant evidence, which may have persuaded the whole Committee that the allegations were significantly more likely to be true than not to be true, was not obtained or tested.

Learning from past practice –

An allegation of deliberately misleading the Parliament of Victoria and the Legislative Assembly’s referral of that matter to the Privileges Committee is a very serious matter, and members of the Committee must consider in great depth the manner in which the matter is investigated and considered. It is always good practice to consider the manner in which previous Committees may have dealt with both an inquiry into such a serious charge and how their consideration and deliberation was reported back to the House.

An example of this is the Legislative Assembly Privileges Committee Report on Complaint made by the Leader of the National Party October 1991. In this matter, the Speaker examined a letter from the Leader of the National Party raising a number of matters concerning answers by the Minister for Transport, the Hon Peter Spyker, to certain Questions without Notice, and determined that he was of the opinion that precedence should be given to consideration of the complaint alleging that the Minister for Transport deliberately misled the House in respect of one of the matters raised in the letter from the Leader of the National Party. The House subsequently referred the matter to the Privileges Committee.

In examining the matter the Committee took evidence from both the Leader of the National Party and the Minister for Transport and it should be noted that the transcripts of the evidence given were published in the report presented to the Legislative Assembly. Also included in that report were extracts from the Minutes of the Proceedings of the Committee showing the divisions which took place during the course of the inquiry, not just in the final adoption of the report, and a number of documents submitted to support the complaint raised by the Leader of the National Party. (Appendix 1)

Advice from the Clerk of the Parliament received by the Committee in regard to the Committee’s power relating to witnesses and evidence was very clear. As per Standing Order 214, the Committee has the authority to call any witnesses and to seek any other evidence that is relevant to the Committee’s inquiry, and Standing Order 217 which requires the Committee to take evidence in open public hearings unless it determines to do otherwise.

While the Committee as a whole agreed to take evidence in private, the minority members did not consider that the Liberal/National majority members would then shut down the inquiry prior to the Committee hearing evidence from all those who were involved in or witness to the incident at the railway station, and had made statements prior to the referral of the matter to the Committee.

Minority members believed that with such an important matter to be considered by the Privileges Committee, proper process to conduct the inquiry to the best of the Committee’s ability on all the evidence which should have been made available would have been followed. The hearing of all

6 Correspondence received from the Clerk of the Legislative Assembly on 9 September 2011, p 3 and p 4
available evidence, even if presented in private or by the Committee requesting submissions from all
witnesses, should have provided for all members of the Committee to competently establish if there
was any inconsistency between the facts alleged and the remarks of the Member for Mount
Waverley.

Conclusion –

As previously noted, an allegation of deliberately misleading the Parliament of Victoria and the
Legislative Assembly’s referral of that matter to the Privileges Committee is a very serious matter
and members of the Committee must consider in great depth the manner in which the matter is
investigated and considered.

In this important and serious referral from the House, the Liberal/National majority members of the
Committee shut down the inquiry before all witnesses and all evidence could be heard.

The conduct of the Liberal/National majority members of the Committee in denying all members the
opportunity to hear from all witnesses, whether in private evidence or by sending for submissions
from all witnesses, can only result in doubt that proof of a very high order has not been provided in
order to find the complaint is not substantiated.

The Committee could and should have invited Ms Katherine Munt and Mr Jesse Martin who were
directly involved in the incident to give evidence at a hearing.

The Committee had a unique opportunity to hear from a totally independent witness in Mr Brendan
Donohoe who should have been called to ascertain his recollection of the events and to test and
compare his experience to the statement made by the Member for Mount Waverley that he did not
raise his voice or behave in any inappropriate manner. The Liberal/National majority members of
the Committee made a deliberate decision not to hear Mr Donohoe and to test whether the
Member for Mount Waverley, according to Mr Donohoe, was yelling and being aggressive towards
Ms Munt and Mr Martin and whether Mr Donohoe was able to detail if Ms Munt was physically
shaken by the ordeal.

The refusal by the Liberal/National majority members of the Committee to hear from crucial
witnesses, can only be seen as denying a proper process of providing the Committee with the full
facts of what happened and whether those facts show that the allegation by the Member for
Northcote and the statement by the Member for Mount Waverley were significantly tested to
provide proof of a very high order.

As stated in the debate in the Legislative Assembly on Tuesday 16 August 2011 by the Member for
Altona Ms Hennessy7 “In contradiction to the member’s statement to this house there are direct
witnesses who state that the member’s version of events is simply not true. Most important is the
voice of the victim herself, those who were with her and independent witnesses. It is their voices
that must be heard by the Privileges committee lest there be any suggestion of a political

7 Hansard, 16 August 2011, p 2551
whitewash. The member will have his opportunity to prove his version of events and attempt to demonstrate the accuracy of the statements that he made to this house.” And by the Member for Bendigo East Ms Allan⁸ “However, during his contribution in the house the member made a number of misleading statements that have since been contradicted, as has been outlined by the Member for Northcote. I do not think it reflects well on any member of this Parliament for a member to think they can walk into this place a make a statement that completely contradicts the facts of an event that happened outside this place.”

Minority members of the Committee believe there were contradictions in the evidence given to date. The accuracy of the Member for Mount Waverley’s statement and therefore his belief that the statement was accurate could not be tested as direct witnesses, Ms Katherine Munt, Mr Jesse Martin, Mr Brendan Donohoe, who could have spoken to the facts of the matter were not called to give evidence.

It would not be acceptable in any other Investigatory Parliamentary Committee, a court, tribunal, commission or panel in Victoria to have such a truncated and biased process dominated by a powerful majority used to avoid the truth and avoid the testing of statements by shutting down an investigative process, before calling for all witnesses and all evidence.

The Parliament of Victoria and the community of Victoria has been let down by this flawed and irregular process undertaken by the Liberal/National majority members of the Committee who failed to test critical statements and personal attacks lest it expose the truth.

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⁸ Hansard, 16 August 2011, p 2553
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(i) a copy of a letter signed by Mr. Spyker, M.P., Minister for Transport to Mr. John McMillan, Acting Director-General, Ministry of Transport, dated 29 July 1991;

(ii) a copy of a letter signed by Mr. John McMillan, Acting Director-General, Victoria Transport to Mr. Norman Walker, Acting Chief Executive, Public Transport Corporation, dated 29 July 1991;

(iii) a copy of a letter signed by Mr. Jeff Gordon, Industrial Co-ordinator, Ministry of Transport to Mr. Norman Walker, Acting Chief Executive Officer, Public Transport Corporation, dated 30 July 1991; and

(iv) a copy of a letter signed by Mr. Norman Walker, Acting Chief Executive, Public Transport Corporation to Mr. Jeffrey C. Gordon, Abbotsford, dated 1 August 1991.
Appendix E -

Exhibit B - Documents provided by the Leader of the National Party on 9 October 1991.

(i) "Employment Contract" between Mr. Jeffrey Graham Gordon and the Public Transport Corporation 1.0 to 7.0 - 4 pages;

(ii) job description of the Industrial Coordinator, Office of CEO 1 page;

(iii) a copy of a letter signed by Mr. P.C. Spyker, M.P., Minister for Transport to Mr. John McMillan, Acting Director-General, Ministry of Transport, dated 29 July 1991;

(iv) a copy of a letter signed by Mr. John McMillan, Acting Director-General, Victoria Transport to Mr. Norman Walker, Acting Chief Executive, Public Transport Corporation, dated 29 July 1991;

(v) a copy of a letter signed by Mr. Jeff Gordon, Industrial Co-ordinator, Ministry of Transport to Mr. Norman Walker, Acting Chief Executive Officer, Public Transport Corporation, dated 30 July 1991;

(vi) a copy of a handwritten memo from the Principal Solicitor Corporate to Chief Executive re J. Gordon signed by Geraldine Sharman dated 30 July, 1991.

(vii) a copy of a letter signed by Mr. Norman Walker, Acting Chief Executive, Public Transport Corporation to Mr. Jeffrey C. Gordon, Abbotsford, dated 1 August 1991;

(viii) a copy of a cheque for $93,386.00 made payable by V.Line PTC to Mr. J.G. Gordon; and

(ix) a copy of the personal explanation made to the House by Mr. P.C. Spyker, M.P. on 18 September, 1991.

Appendix F -

Exhibit C - A document provided by Mr. Spyker on 10 October 1991. A copy of a letter dated 1 August 1991, signed by Mr. Norman Walker to Mr. Jeffrey C. Gordon, Abbotsford, countersigned by Jeff Gordon with the notation "Payment Received in Full".

Appendix G -

Exhibit D - A document provided by Mr. Spyker on 22 October 1991. A letter signed by Mr. Ian Stoney, Chief Executive, Public Transport Corporation to Mr. Peter Spyker, Minister for Transport dated 16 October 1991.
Appendix H - Exhibit E - A document provided by Mr. Spyker on 22 October 1991. Statutory Declaration of Ian Francis Stoney dated 10 October 1991, together with an Attachment A.

Appendix I - Exhibit F - A document provided by Mr. Spyker on 22 October 1991. A copy of the Personal Explanation made by Mr. Spyker, M.P. in the Legislative Assembly on Tuesday, 22 October 1991.

Appendix J - Exhibit G - A document provided by Mr. Spyker on 22 October 1991. A copy of a document signed by Peter Kirby, Secretary, Department of the Premier and Cabinet to the Premier entitled FTC Contract with Mr. J. Gordon.