



ETHICS COMMITTEE

Report No. 121

Matter of privilege referred by the Speaker on 27 October 2011 relating to an alleged deliberate misleading of the House by a minister

Introduction and background

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 16 June 2011.
2. The committee's area of responsibility includes dealing with complaints about the ethical conduct of particular members and dealing with alleged breaches of parliamentary privilege by members of the Assembly and other persons.¹ The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House.
3. The matter in this report concerns an allegation by the member for Kawana, Mr Jarrod Bleijie, that the Minister for Education and Industrial Relations, Hon Cameron Dick deliberately misled the House on 2 August 2011.
4. In accordance with Standing Order 269, the member for Kawana wrote to the Speaker on 29 August 2011, asking that the Speaker refer the matter to the committee.
5. Standing Order 269(5) provides that, in relation to the procedures for raising and considering complaints, the Speaker may request information from the member the subject of the complaint. Accordingly, the Speaker sought further information from the minister regarding the member's complaint. The Speaker subsequently received a submission from the minister on 26 September 2011.
6. On 27 October 2011, after examining the information before him, the Speaker referred the matter to the committee for its consideration.
7. The committee invited both parties to provide a supplementary submission to the committee. The committee received a submission from the minister on 23 November 2011 and from the member on 7 December 2011.

¹ S.104B *Parliament of Queensland Act 2001*.

The referral

8. When referring two complaints to the committee on 27 October 2011, Speaker Mickel emphasised that the referral of a complaint to the Ethics Committee should not be viewed as establishing that a complaint is substantiated. Further, he specifically cautioned against such a view being formed or expressed. The Speaker's statement detailing reasons for the referral was incorporated into the parliamentary record as follows:²

...

Standing Order 266 states in part:

Examples of contempt

Without limiting the power of the House, it may treat as a contempt any of the following:

...

(2) deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) ...

It is well established that there are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House: first, the statement must, in fact, have been misleading; secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and thirdly, in making it, the member must have intended to mislead the House.

Further, I note that comments made by the Members' Ethics and Parliamentary Privileges Committee in its report Number 2 which are relevant to both of the matters considered below:

At this juncture it is worth noting that the Committee does not believe that the statements made have to be necessarily false before a contempt could be proved. The term "misleading" is wider than "false" or "incorrect". The Committee considers it possible, although rare and unlikely, that a technically factually correct statement could also be misleading.

For example, the deliberate omission of relevant information could make an otherwise factually correct statement misleading.

Standing Order 269(4) states:

In considering whether the matter should be referred to the committee, the Speaker shall take account of the degree of importance of the matter which has been raised and whether an adequate apology or explanation has been made in respect of the matter. No matter should be referred to the ethics committee if the matter is technical or trivial and does not warrant the further attention of the House.

...

Matter 2—The Member for Kawana's complaint against the Minister for Education

This is a complex matter that has been compounded by almost 10 centimetres of papers attached to the complaint, most of which are simply irrelevant to the complaint. Considerable time and effort has been wasted in the assessment of this matter by necessarily reviewing page upon page of irrelevant and extraneous material.

The complaint in simple terms is that the Minister, in his previous portfolio as Attorney-General, deliberately misled the House in answer to a question on notice (QON 2254) in relation to the amount of money owed under the State Penalties Enforcement Registry (SPER). Specifically, the question sought the total amount of monies referred to SPER 'remaining not under compliance'.

Essentially, it is alleged that the Minister in his answer to the question understated the amount owing by approximately \$300 million dollars.

The Minister explains this matter by reference to the four categories of unpaid fines etc. referred to SPER which includes two categories that are "awaiting enforcement" or "under deferral". The Minister argues that these categories include amounts not yet verified by SPER or which are disputed. The Minister argues that some of

² Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 27 October 2011, at 3473-3474.

these fines will be written off or overturned and “in essence, fines within these two categories ... are neither under compliance nor not under compliance”.

The omission of these categories totalling approximately \$300 million from the answer is the heart of the dispute.

The Minister provided an extremely detailed submission addressing the complaint. A large part of the Minister’s submission was spent explaining the nuances of the SPER categories and system.

The Minister appears to be arguing that on the basis that the additional two categories of debt are “not under compliance” then they are also not part of the fine pool being managed by SPER, which while not the precise words of the question asked is at least what a reasonable person would take its subject matter to be. I am not, as a result, convinced that a reasonable person would think that the amounts in these categories should have been omitted in the answer to the question without explanation. Further, by omitting the amounts in these categories, without explanation in the answer, the answer is capable of being seen as misleading.

The amounts essentially disregarded were substantial, not insignificant.

In summary, the Minister may well have provided an answer that he believed to be technically correct, but it still may have been misleading because while the information provided was correct, an omission made it misleading.

In other words, there is sufficient evidence to satisfy the first element of the offence.

In my view this matter comes down to what the Minister knew and intended and I believe it appropriate that issues of intention and credibility be determined by the Ethics Committee.

Accordingly, I will be referring the matter to the Ethics Committee.

The member’s complaint

9. As noted above by the Speaker, the member’s complaint is that the minister, in his previous portfolio as Attorney-General deliberately misled the House in answer to question on notice 2254 (QON) in relation to the amount of money owed under the State Penalties Enforcement Registry (SPER). The question on notice and the minister’s answer are at **Appendix 1**.
10. The question sought to obtain the total amount of monies referred to SPER that remain ‘not under compliance.’ The member has alleged that the minister understated the amount owing by ‘some \$300 million in unpaid fines’.
11. The member attached a significant volume of additional information to his letter of complaint. The committee has reviewed the material and concurs with the Speaker that most of the material is irrelevant to the matter.

Definition of contempt

12. Section 37 of the POQA defines the meaning of “contempt” of the Assembly as follows:
 - (1) “Contempt” of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.
 - (2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—
 - (a) the free exercise by the Assembly or a committee of its authority or functions; or
 - (b) the free performance by a member of the member’s duties as a member.
13. The term ‘contempt of parliament’ may include any offence to the dignity of the House or interference with its processes where no established privilege has previously existed. As detailed in Erskine May’s Parliamentary Practice:

Each House also claims the right to punish as contempts actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its

authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers...³

14. Accordingly, a contempt may be committed if it amounts to an act or an omission that offends the authority or dignity of the House or indeed a breach of a duty legitimately imposed by the House upon its members.

Nature of the contempt of deliberately misleading the House

15. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004* (the Standing Orders) provide that the Legislative Assembly may treat deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) as a contempt.⁴
16. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House:
 - First, the statement must, in fact, have been misleading;
 - Secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and
 - Thirdly, in making it, the member must have intended to mislead the House.⁵
17. The Ethics Committee of the 48th Parliament held that the term misleading is wider than “false” or “incorrect”. That committee considered it “...possible, although rare and unlikely, that a technically factually correct statement could also be misleading...” by, for example, the deliberate omission of relevant information.⁶
18. The *Code of Ethical Standards: Queensland Legislative Assembly* emphasises to members that “... misleading is a wider concept than making incorrect statements. A totally factually correct statement can still be misleading.”⁷
19. Previous ethics committees, and David McGee in *Parliamentary Practice in New Zealand*, have noted that the standard of proof demanded in cases of deliberately misleading parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations. Recklessness, whilst reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.⁸

Establishing a prima facie case of possible contempt

20. The committee has established procedures for dealing with privileges references, which ensure procedural fairness and natural justice is afforded to all parties. These procedures are set out in Chapters 44 and 45 of the Standing Orders. The committee is also bound by the *Instructions to committees regarding witnesses* contained in Schedule 3 of the Standing Orders.

³ CJ Boulton (ed), *Erskine May's Treatise on the Law, Privileges, Proceedings and usages of Parliament*, 22nd edition, Butterworths, London , 1997, at 65.

⁴ Standing Order 266(2).

⁵ McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

⁶ MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No. 4, Goprint, Brisbane, 1997, at 10.

⁷ Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, as amended 30 June 2006, 9 February 2009, 11 May 2009, at 25.

⁸ Note 5, at 654; MEPPC, *Report on a Matter of Privilege – The Alleged Misleading of the House by a Minister on 20 October 1998*, Report No. 27, Goprint, Brisbane, 1999 at 2.

21. The committee found that it had sufficient material before it from all parties to deliberate on the matter. This material included both parties' correspondence to the Speaker and supplementary submissions to the committee.
22. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are listed below.
 - Do the minister's statements contain any apparent or proven factually incorrect matter?
 - Were any of the minister's statements misleading?
 - (If yes), did the minister know at the time the statements were made that they were misleading, and was it the minister's intention to mislead the House?

Do the minister's statements contain any apparent or proven factually incorrect matter?

23. The issue for the committee to consider in this element is: was the information in the minister's answer incorrect?
24. In his submission to the Speaker the minister sought to explain the complexities of the SPER system and the four categories of SPER fines, namely, debts under active compliance; debts under active enforcement; debts under deferral; and debts awaiting enforcement. The minister explained that, fines awaiting enforcement or under deferral are neither under compliance nor not under compliance. This is because in many cases, the fines are either on hold, or the status is subject to verification by SPER, and 'may or may not ultimately be recovered by SPER for the government, authority or entity concerned.'
25. The question on notice specifically asked for the amount remaining 'not under compliance' which is not a specific category under the SPER system.
26. In his submission to the Speaker the minister advised that fines that are 'not under compliance' are those that are under active enforcement. The minister's answer to the QON provided this amount.
27. The minister further explained that only the categories, active compliance and active enforcement, contain accurate and verified information. As such, 'the amounts in each of the two SPER debt categories listed on the response to QON 2254 were accurate and correct.'
28. On the face of the material before the committee, the minister's answer to question on notice 2254 is factually correct.

Were any of the minister's statements misleading?

29. Mr Bleijie's allegation is that the omission of two of the four categories was misleading as it understated the total amount owing to SPER by some \$300 million.
30. The committee acknowledges that although the minister's answer was factually correct, a factually correct statement can still be misleading.
31. The committee is of the view that a person reading the minister's answer without any prior knowledge of the SPER system may assume that the total fine pool being managed by SPER only consisted of the amounts the minister stated in the two categories.
32. The minister acknowledges in correspondence to the Speaker that, '...any consideration and discussion of the total value of registered fines or monetary orders could be potentially misleading or confusing without the nature and context of fines or orders registered with SPER being properly explained.'

33. On the information before the committee, the committee finds that the minister's answer without explanation, was misleading.

If yes, did the minister know at the time the statements were made that they were misleading and was it the minister's intention to mislead the House?

34. The minister stated in his submission to the committee that his answer was provided in the context that the member asking the question (the member for Southern Downs, Mr Lawrence Springborg) had prior knowledge of the SPER system and had asked previous questions on notice in relation to SPER in which the minister outlined the categories of fines in more detail.
35. The minister further stated that, 'I perhaps could have clarified it by making more detailed reference to information put by me in the public domain previously, or by making references to answers to previous questions on notice. I regret if my answer to question on notice 2254 has caused any unnecessary confusion, and apologise if this is the case.'
36. The minister also stated that 'however, it was not, and never will be my intention to mislead the House.'
37. As mentioned above, previous ethics committees and David McGee, the former Clerk of the New Zealand House of Representatives, in his book *Parliamentary Practice in New Zealand*,⁹ have noted that the standard of proof demanded in cases of deliberately misleading Parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations.
38. The committee accepts the minister's explanation of the answer and that it was not his intention to mislead the House.
39. Accordingly, on the information before the committee, the committee finds no compelling evidence that the minister intended to mislead the House in his answer to question on notice 2254.

Conclusions

40. On the information before the committee, it can be established that the minister's answer to question on notice 2254 was factually correct, but without additional explanation was misleading.
41. On the information before the committee, the committee finds no compelling evidence to indicate that the minister intended to mislead the House, and therefore finds no breach of privilege or contempt.

⁹ McGee, D, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, at 653-655.

Conclusion 1

On the information before the committee, the committee finds that the minister's answer to question on notice 2254 without additional explanation was misleading.

Conclusion 2

On the information before the committee, the committee finds no compelling evidence to indicate that the minister intended to mislead the House, and therefore finds no breach of privilege or contempt.

Recommendation 1

The committee recommends that the House take note of the minister's explanation of the answer and apology and take no further action in relation to the matter.

Other matters

42. On 30 November 2011, the Speaker wrote to the committee regarding correspondence received from the Minister for Education and Industrial Relations, the Hon Cameron Dick, in relation to a media statement issued by the member for Kawana on 7 November 2011 and a question without notice asked on 13 October 2011.
43. The minister alleged that the member for Kawana's statements and question without notice constitute contempt of parliament.
44. The Speaker noted the correspondence related to an ongoing matter before the committee and referred it to the committee for its consideration.
45. In accordance with procedures under Standing Order 270, the committee invited the member to provide a submission on the referral. The committee subsequently received a submission from the member for Kawana on 6 January 2012.
46. The committee considered this submission and determined that it had sufficient material before it to determine the matter.

Contempt

47. As referred to in the above matter, section 37 of the POQA defines the meaning of "contempt" of the Assembly as follows:
 - (1) "Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.
 - (2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—
 - (a) the free exercise by the Assembly or a committee of its authority or functions; or
 - (b) the free performance by a member of the member's duties as a member.

Allegations

48. The minister made the following allegations in correspondence to the Speaker on 14 November 2011:
 - the member's comments in a media statement on 7 November 2011 titled, 'Dick sets bad example on Uni accountability', constitute a contempt by attempting to influence the

members of the Ethics Committee in its consideration of the matter referred on 27 October 2011;

- the member's question without notice to the Premier on 13 October 2011 was asked at a time when the Speaker was considering the referral to the Ethics Committee and considers that the member was attempting to influence the Speaker in considering the referral to the committee; and
 - the member disregarded the advice of the Ethics Committee in Report No. 118 in regards to refraining from debating matters in forums outside the House until the committee has reported.
49. The minister also suggested that the Ethics Committee consider the issue of whether and to what extent members can discuss issues of alleged contempt or breaches of privileges outside the House with a view to establishing clear rules.

Consideration

50. The following comments made by the member in the media statement published on the Liberal National Party website were considered by the committee:
- (a) 'Queenslanders haven't forgotten former Attorney-General Mr Dick issued directives for public servants to manipulate public data on his website to obscure the truth, then he leaned on those very public servants when the word got out;'
 - (b) 'Mr Dick's comments have made a fraud out of him and the Bligh Labor Government who have been caught out once again...'
 - (c) '...I was forced to refer Mr Dick to the Speaker of the Parliament over allegations he deliberately misled parliament on the amount of unpaid fines in Queensland.'
 - (d) 'Mr Dick was caught out attempting to conceal unpaid fines topping \$688 million to save his political skin.'
51. In Mr Bleijie's submission to the committee of 6 January 2012 he denied that his statements amount to a contempt and stated, 'my Media Statement amounts to nothing more than a Shadow Minister, and a Member of Parliament, critiquing the performance of a member of the executive government. The publication of the words in my Media Statement do not, in any way, interfere with the free exercise and free performance of those authorities, functions and duties described in section 37 of the Act.'
52. The Standing Orders do not expressly prohibit members from making comments in relation to matters before the Ethics Committee outside of the Parliament. However, in making these statements the member has shown a disregard for the advice of previous ethics committees and this committee that members should not debate matters in forums outside of the House until the committee has reported. It is disappointing that the member for Kawana has chosen to ignore this advice.
53. However, there is no evidence that the member's statements were seeking to pre-empt the outcome of the committee's investigation or impede the committee's processes. Therefore there is no improper interference with the free exercise by the committee of its authority or functions to constitute contempt.
54. The committee notes the minister's suggestion that the broader issue of debating matters of alleged contempt outside of the House should be addressed with a view to establishing rules. Such a matter now falls within the jurisdiction of the Committee of the Legislative Assembly and the minister is at liberty to raise this issue with that committee.

55. In relation to the allegation over the member's question on notice, the committee notes that there is no prohibition on members asking questions in the House on matters before the Speaker.

Conclusion

56. In relation to the statements made by Mr Bleijie in his media statement issued on 7 November 2011 and the question on notice asked on 13 October 2011, the committee finds no prima facie case of contempt.

Conclusion 3

In relation to the statements made by Mr Bleijie in his media statement issued on 7 November 2011 and the question on notice asked on 13 October 2011, the committee finds no prima facie case of contempt.

Recommendation 2

The committee recommends that the House take no further action in relation to the matter.

Recommendation 3

The committee reminds all Members of the Assembly and members of the public that once a matter is referred to the Ethics Committee for investigation that the committee's processes and deliberations are best served if persons refrain from debating the matter in forums outside of the House until such time as the committee completes its investigation and publishes its report.



Mr Evan Moorhead MP
Chair

February 2012

Membership — 53rd Parliament

Mr Evan Moorhead MP, Chair, *Member for Waterford*

Dr Alex Douglas MP, Deputy Chair, *Member for Gaven*

Ms Grace Grace MP, *Member for Brisbane Central*

Mr Vaughan Johnson MP, *Member for Gregory*

Mr Mark Ryan MP, *Member for Morayfield*

Mr Peter Wellington MP, *Member for Nicklin*

Secretariat

Mr Michael Ries, *Research Director (until 31 October 2011)*

Ms Leanne Clare, *Research Director (from 31 October 2011)*

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**Question on Notice
No. 2254
Asked on Tuesday, 23 November 2010**

Mr SPRINGBORG asked the Attorney-General and Minister for Industrial Relations (Mr Dick) -

QUESTION:

With reference to the State Penalties Enforcement Registry (SPER) –

- (1) How many unpaid infringement notices fines, court-ordered monetary fines and offender recover orders were transferred to the SPER for recovery (reported by month for 2008, 2009 and 2010 (to October))?
- (2) Of those referred to in (1), how many matters remain 'not' under compliance as at 23 November 2010?
- (3) What is the total amount of monies referred to SPER remaining not under compliance as at 23 November 2010.

ANSWER:

The State Penalties Enforcement Registry (SPER) performs an important role in Queensland's justice system, recovering unpaid fines from defaulters who refuse to meet their obligations and pay their debts.

From 1 January 2010, the Bligh Government has implemented a range of expanded options to recover unpaid fines from individuals who refuse to meet their obligations.

These expanded options – which received bipartisan support when they were debated in Parliament in 2009 – include a trial of the use of wheel-clamping and seizure-and-sale powers for high-value defaulters who owe more than \$5000. A review of these measures is planned for 2011. The government's tough approach to recovering unpaid fines from defaulters is working.

In the 2009-10 financial year, SPER collected a record annual total of \$166.4 million, an increase of \$22.6 million or 15.7 per cent compared to the previous highest collection achieved in the last financial year.

The improved fine collection total is a direct result of the range of payment options provided to debtors, particularly instalment [sic] plans, and the new raft of enforcement measures that have been brought in by the Bligh Government.

The money collected is used to provide Queenslanders with vital services such as more teachers, doctors and police officers. It is also used for providing vital infrastructure such as roads, schools and hospitals.

The number of matters referred to SPER each year is outlined in the Department of Justice and Attorney-General 2009-10 Annual Report. This report was tabled in Parliament on 30 September 2010. Also contained in the annual report is information about the number of matters finalised. In 2009-10, SPER achieved an annual clearance rate of 78 per cent, exceeding its target of 71 per cent.

As at 23 November 2010, the fine pool being managed by SPER consisted of:

- \$208,004,458 – under compliance
- \$93,429,587 – under active enforcement.