



## MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

### Report No. 87

*Matter of Privilege Referred by the Speaker on 11 October 2007 Relating to the Alleged Deliberate Misleading of Estimates Committee E*

#### ***Introduction and background***

1. The Members' Ethics and Parliamentary Privileges Committee (the MEPPC or the committee) is a statutory committee of the Queensland Parliament established under the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 11 October 2006.
2. Section 93 of the POQA provides that the MEPPC's area of responsibility includes the powers, rights and immunities (parliamentary privilege) of the Legislative Assembly, its committees and members. The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House, and inquires into and reviews other significant issues regarding parliamentary privilege.
3. On 11 October 2007, the Speaker referred to the committee an allegation that a Minister had deliberately misled Estimates committee E.

#### ***The reference***

4. On 11 October 2007, the Speaker referred the following matter of privilege to the MEPPC:

**Mr SPEAKER:** Honourable members, on 6 September the Member for Cunningham wrote to the Acting Speaker alleging that the Minister for Education, Training and the Arts misled Estimates Committee E on 17 July 2007. The Member alleges that the Minister misled the committee in relation to allegations of bullying and assault at the Pacific Film and Television Commission. In support of this allegation, the Member refers to a copy of a Screen Hub news article dated 20 July 2007 titled 'PFTC: Did Minister mislead parliament over bullying and assault?' which appears to contradict the information provided by the Minister to the Committee.

I note that the Member raised the matter in a statement of reservation appended to the Estimates Committee E 2007 report, which was tabled on 3 August 2007. The Member also repeated his concerns during consideration of the Estimates Committee E 2007 report in the House on 8 August 2007 and asked that the Minister investigate the matter.

To date, the Minister has not commented on the matter in the House.

...

I have studied the transcript of the hearing of Estimates Committee E, a copy of the Screen Hub news article, the Estimates Committee E 2007 report and Hansard. On the face of it, there appears to be conflicting accounts relating to allegations of bullying and assault at the Pacific Film and Television

Commission. It may well be that there is a satisfactory explanation for this conflict, but I am restricted by Standing Orders to the extent I can investigate the matter.

In short, I consider the matter warrants further investigation. I will therefore refer those matters to the Members' Ethics and Parliamentary Privileges Committee.<sup>1</sup>

...

- Specifically, the matter referred to the committee concerns an allegation that statements made by the Minister for Education, Training and the Arts,<sup>2</sup> the Hon. Rod Welford MP, in an answer to a question during Estimates Committee E on 17 July 2007 concerning allegations of assault and bullying at the Pacific Film and Television Commission (PFTC), were deliberately misleading.

### ***Chronology of significant events leading up to the complaint***

- Before lunch on 17 July 2007, the Member for Cunningham asked the Minister a question during the hearing of Estimates Committee E to which the Minister responded that he would take the question on notice.

**Mr COPELAND:** I refer to MPS 1-9 which refers to the Pacific Film and Television Commission. I have been advised, and I want you to confirm whether this is true or not, that there have been a number of allegations over the last three years of bullying by a staff member of the PFTC. This has included an incident involving accusations of physical assault as well. I have also been advised that last year WorkCover became involved regarding the treatment of one of the alleged victims. Can you confirm if this is, in fact, the case and if the staff member is still employed at the PFTC?

**Mr WELFORD:** I cannot. I am happy to make further inquiries. There has been no incident of bullying of the kind you have raised—which sounds fairly significant—raised with me. I am not aware of any WorkCover claim arising out of that workplace. To the extent that there are issues in terms of staff conflict there, it has not occurred at a level that it has been drawn to my attention or, to my knowledge, any formal claims.<sup>3</sup>

- Approximately an hour later on 17 July 2007, the Minister responded to the question that he had taken on notice as follows:

**Mr WELFORD:** ... The other matter that I can come back to is your question about the PFTC and whether there were any allegations of assault or bullying. I can report that in 2006 there was an allegation of bullying but no allegation of assault brought by a staff member against a supervisor. An independent person was engaged to investigate the complaint and the complaint was found by that independent investigator to be unsubstantiated. I understand some resolution of the issues raised by the person concerned, the complainant, was undertaken... That is the only incident that we have any record of.<sup>4</sup>

- Subsequently, the Member for Cunningham raised the matter in his statement of reservations appended to the Estimates E 2007 report, which was tabled in the house on 3 August 2007.<sup>5</sup> The Member repeated his concerns during consideration of the Estimates Committee E 2007 report in the House on 8 August 2007, and asked the Minister to investigate the matter.<sup>6</sup>
- As of 11 October 2007, the Minister had not commented on the matter in the House and the Speaker referred the matter to the committee under Standing Order 269(6)(a).

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<sup>1</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 11 October 2007, at 3427.

<sup>2</sup> On 13 September 2006, in accordance with the *Constitution of Queensland 2001*, the Governor appointed Mr Welford as Minister for Education and Training and Minister for the Arts. Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 11 October 2006, at 18-19.

<sup>3</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 17 July 2007, at 26.

<sup>4</sup> Note 3 at 29.

<sup>5</sup> Stuart Copeland, Shadow Minister for Education and Training and Shadow Minister for the Arts, *Statement of Reservations, Estimates Committee E 2007 Report to the Legislative Assembly*, August 2007 at 2.

<sup>6</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 8 August 2007, at 2400.

### **Definition of contempt**

10. Section 37 of the POQA defines the meaning of “contempt” of the Assembly as follows:

- (1) “Contempt” of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.
- (2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—
  - (a) the free exercise by the Assembly or a committee of its authority or functions; or
  - (b) the free performance by a member of the member’s duties as a member.

### **Nature of the contempt of deliberately misleading the House**

11. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004*<sup>7</sup> (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.<sup>8</sup>

12. 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.<sup>9</sup>

13. The MEPPC of the 48<sup>th</sup> 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.<sup>10</sup>

14. 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.”<sup>11</sup>

15. Previous MEPPCs, 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.<sup>12</sup>

### **Establishing a prima facie case of possible contempt**

16. 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 Chapter 40 of the Standing Orders. The committee is also bound by the *Instructions to committees regarding witnesses* contained in Schedule 3 to the Standing Orders.

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<sup>7</sup> As amended on 26 May 2005, 30 March 2006, 30 June 2006, 8 February 2007, 1 May and 24 May 2007.

<sup>8</sup> Standing Order 266.

<sup>9</sup> McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

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

<sup>11</sup> Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, at 25.

<sup>12</sup> Note 9, 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.

17. On 17 October 2007 the Chair advised the committee and the Speaker of her intention to stand down from the committee in accordance with Standing Order 272 for consideration of the matter of privilege relating to the alleged deliberate misleading of Estimates Committee E. The Chair stood aside from considering this matter as she was the Chair of Estimates Committee E at the time of the possible contempt. The Chair, while believing she was not directly concerned in the matter, did not want there to be any perception of a conflict of interests.
18. On 17 October 2007 the committee noted that in line with Standing Order 198(3), the Deputy Chair, the Member for Toowoomba South, would act as Chair for consideration of this matter.
19. On 30 October 2007, in accordance with Standing Order 272(2), the Speaker appointed the Member for Barron River, Mr Steve Wettenhall MP, to replace the Chair on the committee for consideration of the matter.
20. On 31 October 2007, the committee considered the reference from the Speaker. The committee invited written submissions from the Member and the Minister to enable it to determine whether or not the allegation gives rise to a *prima facie* case of breach of privilege or contempt. In accordance with procedure, the committee provided both parties with the relevant Hansard extracts, a copy of the Estimates Committee E 2007 report and the letter dated 6 September 2007 from the Member for Cunningham to the Speaker, enclosing the Screen Hub news article dated 20 July 2007.
21. On 7 November 2007, the Member for Cunningham wrote to the committee providing similar information to the original submission. The member enclosed some additional email correspondence relating to the matter.
22. The Minister provided a written submission to the committee on 9 November 2007. The Minister submits that the committee's assessment of whether there is a *prima facie* case of contempt (breach of privilege) can be readily determined by examining the facts on the face of the Hansard parliamentary record.
23. 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 committee?

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

24. The statements that are allegedly misleading:

...there was an allegation of bullying but no allegation of assault brought by a staff member against a supervisor. An independent person was engaged to investigate the complaint and the complaint was found by that independent investigator to be unsubstantiated. I understand some resolution of the issues raised by the person concerned, the complainant, was undertaken...<sup>13</sup>

25. The Member for Cunningham alleges that the statements were misleading, as there was reportedly an out-of-court WorkCover settlement and police investigation. The Member provides in support of this allegation a copy of a Screen Hub news article dated 20 July 2007 titled 'PFTC: Did Minister mislead parliament over bullying and assault?', which states:

"In a statement to Screen Hub, ... a spokesperson for Arts Queensland said that:  
 ...

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<sup>13</sup> Note 3, at 29.

“WorkCover Queensland attended to the complaint separately and concurrently. The matter is now resolved.”

The department did not deny that a WorkCover settlement had been made.”

26. In his submission the Minister confirms that, as he advised Estimates Committee E, an independent investigator found that the alleged events did not constitute workplace harassment, and that there was no court case or out of court settlement. In relation to the alleged WorkCover settlement, in his submission the Minister confirms that concurrently with the investigation, WorkCover attended to a claim by the complainant. In relation to the alleged police investigation, the Minister states that his Department and PTFC are unaware of any complaint to the police regarding this matter.
27. The fact to establish in determining whether the Minister’s statement contains any incorrect matter is as follows: did the Minister’s office receive notification about the WorkCover claim prior to the Minister’s statement in the Estimates Committee E hearing?
28. In his submission to the committee, the Minister states that:
- As for any WorkCover claim, I do not recall being made aware of such a claim at the time of giving evidence to the [Estimates] Committee.
29. The committee has not received any evidence to demonstrate that the Minister’s office received notification of a WorkCover claim prior to him giving his answer in the Estimates Committee E hearing on the 17 July 2007. Furthermore, the time between the question taken on notice and the answer given by the Minister was approximately one hour. There is no evidence to suggest that during this time the Minister became aware of such a claim. The Screen Hub news article was dated 20 July 2007. It was therefore impossible for the Minister to be aware of Screen Hub’s claims at the time the Minister gave his answer to the question taken on notice.
30. There is no basis from material before the MEPPC that, at the time of the Minister’s answer to the question he took on notice on 17 July 2007, the statement he made was incorrect to his knowledge. On this basis, the committee concludes that the Minister’s parliamentary statement was correct to his knowledge at the time he made the statement and that furthermore the Minister did not intend to mislead Estimates Committee E. Therefore, there is no *prima facie* case of deliberately misleading Estimates Committee E in relation to the statements.

### **Conclusion**

31. The committee is satisfied that there is no *prima facie* case of deliberately misleading Estimates Committee E.

**Conclusion: The committee finds no *prima facie* case of a breach of privilege or contempt in relation to the alleged deliberate misleading of Estimates Committee E by a Minister.**

**Recommendation: The committee recommends that the House take no action in relation to the matter.**

Mike Horan MP  
Acting Chair  
February 2008

### **Membership—52<sup>nd</sup> Parliament**

Ms Anastacia Palaszczuk MP,<sup>14 15</sup> Chair (from 1 November 2006)  
*Member for Inala*

Mr Mike Horan MP, Deputy Chair<sup>16</sup>  
*Member for Toowoomba South*

Mr Phil Gray MP  
*Member for Gaven*

Mrs Linda Lavarch MP<sup>17</sup> (from 6 February 2007)  
*Member for Kurwongbah*

Mrs Jo-Ann Miller MP  
*Member for Bundamba*

Mrs Dorothy Pratt MP  
*Member for Nanango*

Mr Jeff Seeney MP<sup>18</sup>  
*Member for Callide*

Mr Steve Wettenhall MP<sup>19</sup>  
*Member for Barron River*

### **Secretariat**

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<sup>14</sup> Mr Stirling Hinchliffe MP, Chair, *Member for Stafford*, to 1 November 2006.

<sup>15</sup> Ms Anastacia Palaszczuk MP, Chair, stood down for the consideration of this matter in accordance with Standing Order 272.

<sup>16</sup> Mr Mike Horan MP, Deputy Chair, acted as Chair for consideration of this matter in accordance with Standing Order 198(3).

<sup>17</sup> Hon Dean Wells MP, *Member for Murrumba*, to 1 November 2006; Ms Rachel Nolan MP, *Member for Ipswich*, to 6 February 2007.

<sup>18</sup> Mr Lawrence Springborg MP, *Member for Southern Downs*, to 12 February 2008.

<sup>19</sup> Mr Steve Wettenhall MP was appointed to the Committee by the Speaker on 30 October 2007 for consideration of this matter in accordance with Standing Order 272.