



MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 89

*Matter of Privilege Referred by the Speaker on 1 May 2008 Relating to an
Alleged Deliberate Misleading of the House by the Treasurer*

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 1 May 2008, the Speaker referred to the committee an allegation that the Treasurer had deliberately misled the House.

The reference

4. On 1 May 2008, the Speaker made the following statement in the House:

Mr SPEAKER: On 21 April the member for Moggill wrote to me alleging that the Treasurer had misled the House in an answer to a question on notice. In asking question on notice No. 198, the member sought from the Treasurer details of expenditure for the Queensland health services fund. In his answer, the Treasurer stated 'there is no Queensland health services fund'. In support of his allegation, the member provided a copy of an extract from the 2006-07 annual report of the Queensland Gaming Commission, which appears to contradict the statement by the Treasurer. I note that the issue of the accuracy of the answer given by the Treasurer was canvassed in an article in the Courier-Mail on 5 April 2008. To date, the minister has not commented on the matter in the House.

.... I have studied the question on notice, the answer by the Treasurer and the extract from the annual report provided by the member. On the face of that material, the statement by the Treasurer in his answer appears to be incorrect. Whether or not the Treasurer knew the statement was incorrect and whether in making it he was deliberately misleading the House are further issues. It might well be that there is a satisfactory explanation, but I am restricted by standing orders in the extent to which I can investigate the matter. I consider that the matter warrants further investigation and I will therefore refer the matter to the Members' Ethics and Parliamentary Privileges Committee.¹

5. Specifically, the matter referred to the committee concerns an allegation that an answer provided by the Treasurer to question on notice No. 198 of 2008 by the Member for Moggill is misleading.

Chronology of significant events

6. On 27 February 2008 the Member for Moggill, Dr Flegg MP, asked the Treasurer, Mr Fraser MP, question on notice no. 198 of 2008. This question was:

Will he provide a breakdown, listed separately, of expenditure for the Queensland Health Services Fund for the three most recent years available, if possible providing details of when the expenditure was incurred, purpose of the expenditure and geographical location?

7. The Treasurer answered this question on 28 March 2008 by saying:

There is no Queensland Health Services Fund.

8. On Saturday 5 April 2008, an article appeared in *The Courier Mail* which discussed the answer to question on notice no. 198 of 2008 and stated:

... However the Health Services Fund is listed in the annual report of Queensland Gaming Commission which reports to Fraser. There on page eight for all to see is an item headed Health Services Fund. ...²

9. Subsequently, the Member for Moggill wrote to the Speaker stating that he believed that the Treasurer had misled the Parliament because:

... I think the original question was unambiguous and its intent quite clear ...³

10. As of 1 May 2008, the Treasurer had not commented on the matter in the House and the Speaker referred this matter to the MEPPC under Standing Order 269(6)(a).⁴

11. Immediately after the Speaker referred this matter to the MEPPC, the Treasurer rose on a matter of privilege suddenly arising to make a statement regarding this referral:

Hon. AP FRASER: I rise on a matter of privilege suddenly arising in that context to advise the House that there is no health services fund, that the money that is collected from the health services levy goes straight through to Queensland Health—every last cent of it. There is no dedicated fund and the Gaming—

...

Mr FRASER: Mr Speaker, in the context of the limitations of the standing orders that you were referring to, I thought it appropriate at this time to emphasise that in fact there is no health services fund and the money

¹ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 1 May 2008, at 1400.

² Houghton, D. Annual report points way to absent millions, *The Courier Mail*, 5 April 2008 at 65.

³ Flegg, B. *Correspondence to Hon Mike Reynolds AM MP, Speaker of the Legislative Assembly of Queensland*, 21 April 2008 at 1.

⁴ Note 1.

goes straight to Queensland Health, full stop. If the journalist concerned had asked that question, he would have been told that.⁵

12. The Treasurer wrote to the committee on 2 May 2008 and provided the committee with further facts relating to this matter. The Treasurer's letter contained additional information relating to the Member for Moggill's question.⁶

Definition of contempt

13. 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

14. 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 (Standing Order 266(2)).⁷

15. 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.⁸

16. 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.⁹

Establishing a prima facie case of possible contempt

17. The committee has established procedures for dealing with privileges references, which ensure procedural fairness and natural justice is afforded to all parties. These procedures

⁵ Note 1.

⁶ Fraser, A. *Correspondence to MEPPC*, 2 May 2008 at 1-2.

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

⁸ McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

⁹ 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.

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.

18. On 14 May 2008, the committee considered the reference from the Speaker. The committee noted that they had copies of correspondence from both the Member for Moggill and the Treasurer.
19. 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 Treasurer's statements contain any apparent or proven factually incorrect matter?
 - Were any of the Treasurer's statements misleading?
 - (If yes), did the Treasurer 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 Treasurer's statements contain any apparent or proven factually incorrect matter?

20. The Member for Moggill alleges that the statement by the Treasurer in his answer to question on notice no. 198 is misleading:

There is no Queensland Health Services Fund.

21. The Member for Moggill alleges that this statement is misleading because on page 8 of the Queensland Gaming Commission's *Annual Report 2006-07* there is a heading *Health Services Fund*.¹⁰ The member provided a copy of the relevant page of this annual report in support of his allegation.
22. In his correspondence to the committee, the Treasurer clarifies that, while the proceeds of the Health Services Levy are recorded against a separate health services fund account (within Treasury Administered Accounts) for record keeping and accountability purposes, there is not a dedicated 'Health Services Fund' established against which expenditures are incurred.¹¹
23. The committee therefore concludes that the Treasurer's statements were factually correct.

Were any of the Treasurer's statements misleading?

24. The MEPPC 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.¹²

¹⁰ Queensland Gaming Commission, *Annual Report 2006-07*, 2007 at 8.

¹¹ Fraser, A. *Correspondence to MEPPC*, 2 May 2008 at 1-2.

¹² MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 10.

25. 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."¹³
26. Based on the evidence before the committee, the Treasurer's statements were not misleading. However, the committee believes that, in retrospect, it would have been best if the Minister had provided a fuller response to the question on notice asked by the Member for Moggill. The committee notes that the Treasurer has been able to provide this information to the committee as part of his correspondence with them.
27. Given that the committee concludes that the Treasurer's statements were neither apparent or proven factually incorrect or that the Treasurer's statements were misleading, there is no need to address the third component of a contempt of this nature (that the member intended to mislead the House).

Conclusions

28. The committee believes, on the basis of the material before it, that the Treasurer's answer to question on notice No. 198 of 2008 was not misleading. The committee notes that there is no Health Services Fund, despite the use of this heading in the Queensland Gaming Commission's *Annual Report 2006-7*.
29. On this basis, the committee concludes that the Treasurer's statement was correct. Therefore, there is no *prima facie* case of deliberately misleading the House in relation to the answer to question on notice No. 198 of 2008.
30. However, as stated above, with hindsight the committee believes that it would have been best if the Minister had provided a fuller response to the Member for Moggill's question on notice.

Conclusions: The committee finds no *prima facie* case of a breach of privilege or contempt in relation to the alleged deliberate misleading of the House by the Treasurer although the committee believes that, in retrospect, the Treasurer could have provided more detail in his answer to question on notice No. 198 of 2008.

Recommendation 1: The committee recommends that the House take no action in relation to the matter.

Recommendation 2: That for completeness the Treasurer provide the House with a fuller response to the Member for Moggill's question on notice regarding the 'Queensland Health Services Fund'.

Annastacia Palaszczuk MP

Chair

May 2008

¹³ Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, at 25.

Membership—52nd Parliament

Ms Anastacia Palaszczuk MP,¹⁴ Chair (from 1 November 2006)
Member for Inala

Mr Mike Horan MP, Deputy Chair
Member for Toowoomba South

Mr Phil Gray MP
Member for Gaven

Mrs Linda Lavarch MP¹⁵ (from 6 February 2007)
Member for Kurwongbah

Mrs Dorothy Pratt MP
Member for Nanango

Mr Jeff Seeney MP¹⁶ (from 12 February 2008)
Member for Callide

Ms Karen Struthers MP¹⁷ (from 16 April 2008)
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¹⁴ Mr Stirling Hinchliffe MP, Chair, *Member for Stafford*, to 1 November 2006.

¹⁵ Hon Dean Wells MP, *Member for Murrumba*, to 1 November 2006; Ms Rachel Nolan MP, *Member for Ipswich*, to 6 February 2007.

¹⁶ Mr Lawrence Springborg MP, *Member for Southern Downs*, to 12 February 2008.

¹⁷ Mrs Jo-Ann Miller MP, *Member for Bundamba*, to 16 April 2008.