



MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 92

Matter of Privilege Referred by the Speaker on 15 May 2008 Relating to an Alleged Deliberate Misleading of the House by a Member

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 15 May 2008, the Speaker referred to the committee an allegation that the Member for Callide had deliberately misled the House.

The reference

4. On 15 May 2008, the Speaker made the following statement in the House:

Mr SPEAKER: Honourable members, on 1 May 2008 the minister for public works and housing wrote to me alleging that the member for Callide has misled the House in an answer to a question on notice. In answering question on notice No. 587, the member for Callide stated that the Professional Engineers and Other Legislation Amendment Bill contained amendments to the Freedom of Information Act. The minister for public works and housing disputes this claim and alleges that the member has deliberately misled the House by making this claim. The minister for public works and housing claims that the Professional Engineers and Other Legislation Amendment Bill did not contain amendments to the Freedom of Information Act and points to crown law advice and correspondence from the chair of the FOI Independent Review Panel—documents were tabled in the House—which confirms the minister's complaint.

There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House.....It is my belief that in order to establish the second element—that is, to establish that the member making the statement knew at the time the statement was made that it was incorrect—you must be able to establish that the member did not genuinely hold a different opinion, belief or view....

...There are many things which people genuinely believe cannot be scientifically or legally proven. Legal opinions are just that: opinions. Holding a genuinely different belief, although it may in fact or at law be wrong, is not an offence when expressed. Stating a fact in the House that you know to be misleading is an offence.

I have studied the question on notice, the minister's complaint and the supporting documents, including the tabled documents. On the face of the material, the statement by the member for Callide in his answer appears to be legally and/or factually incorrect. Whether or not the member knew the statement was incorrect and whether in making it he was deliberately misleading the House or whether the member genuinely held a different belief or opinion are further issues.

It might well be that there is a satisfactory explanation by the member.....No person should be in contempt for holding a different opinion.

Unfortunately, I am currently restricted by standing orders in the extent to which I can investigate the matter and seek explanation from the member. I consider that the matter warrants further investigation and at least some analysis and comment by the Members' Ethics and Parliamentary Privileges Committee, and I will therefore refer the matter to the committee.¹

Specifically, the matter referred to the committee concerns an allegation that an answer provided by the Member for Callide to question on notice No. 587 of 2008 is misleading.

Chronology of significant events

5. On 17 April 2008, the Member for Yeerongpilly, Mr Finn MP, asked the Member for Callide, Mr Seeney MP, question on notice No. 587 of 2008:

In relation to the Freedom of Information (Open Government—Disclosure of Contracts) Amendment Bill, and noting the Government's FOI review is yet to be completed – Since introducing this Bill has he consulted with the Leader of the Opposition about whether to proceed with the Bill and, if so, will he advise the House whether he is going to proceed?

6. The Member for Callide answered this question on 29 April 2008. In answering question on notice No. 587, the Member for Callide stated that the Professional Engineers and Other Legislation Amendment Bill contained amendments to the *Freedom of Information Act*.
7. The following day, 30 April 2008, the Member for Inala, Ms Anastacia Palaszczuk MP, asked a question without notice in the House of the Minister for Public Works, Housing and Information and Communication Technology, Mr Rob Swarten MP. Ms Palaszczuk asked the minister to advise the House on the accuracy of the answer given by the Member for Callide.
8. The Minister wrote to the Speaker on 1 May 2008 requesting that he consider referring this matter to the Members' Ethics and Parliamentary Privileges Committee for their consideration.
9. The Speaker advised the House on 15 May 2008 that he considered the matter warrants further investigation and at least some analysis and comment by the committee. He therefore advised the House that he would refer the matter to the committee. The Speaker wrote to the committee on 28 May 2008, referring the matter to the committee.²

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.

¹ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 15 May 2008, at 1699-1700.

² Note 1.

Nature of the contempt of deliberately misleading the House

11. 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)).³
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.⁴
13. 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.⁵

Establishing a prima facie case of possible contempt

14. 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.
15. On 4 June 2008, 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 the House. The Chair stood aside from considering this matter as she had asked Minister Schwarten a question without notice relating to the accuracy of the Member for Callide's answer to question on notice No. 587 of 2008. The Chair, while believing she was not directly concerned in the matter, did not want there to be any perception of a conflict of interest.
16. On 4 June 2008, 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.
17. Additionally, on 4 June 2008, the Member for Callide, Mr Seeney MP, advised the committee and the Speaker of his intention to stand down from the committee's consideration of this matter, in accordance with Standing Order 272. This was due to the Member for Callide being directly involved in the matter.
18. On 5 August 2008, in accordance with Standing Order 272(2), the Speaker appointed Mr Peter Lawlor, the Member for Southport, to replace Ms Palaszczuk MP and Mr Stuart Copeland, the Member for Cunningham to replace Mr Seeney MP for consideration of the matter.

³ As amended on 26 May 2005, 30 March 2006, 30 June 2006, 8 February 2007, 1 May and 24 May 2007.

⁴ McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

⁵ Note 4, 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.

19. On 28 August 2008, 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 and a copy of the Speaker's correspondence to the committee dated 28 May 2008, which included details of the allegation by the Minister.
20. The Member for Callide provided a written submission to the committee on 19 June 2008. The Minister submits that he did not intend to mislead the committee.

*At worst it should be considered a mistake in wording rather than attempt to mislead.*⁶

21. The Minister did not provide a submission to the committee.⁷
22. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a *prima facie* case of contempt are listed below.
- Do the Member's statements contain any apparent or proven factually incorrect matter?
 - Were any of the Member's statements misleading?
 - (If yes), did the Member know at the time the statements were made that they were misleading, and was it the Member's intention to mislead the committee?

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

23. In answering question on notice No. 587 of 2008, the Member for Callide stated:

*However, this was rejected by the Premier when she rushed through the Professional Engineers and Other Legislation Amendment Bill which contained amendments to the Freedom of Information Act that widened the scope for secrecy rather than narrowing them.*⁸

24. The Minister alleges in his letter to the Speaker that this is incorrect. He supports his argument by stating that:

During the debate of the Professional Engineers and Other Legislation Amendment Bill, I tabled crown law advice which confirmed that the amendments to the Public Records Act contained in the Bill did not amend the FOI Act. This was also confirmed in a letter from Dr Solomon, Chair of the FOI Review, to the Leader of the Opposition and copied to the Premier for her information.

25. Mr Seeney, in his submission, concedes that the Minister's point is technically correct.⁹
26. The committee believes that the Member's statements were technically, factually incorrect.

Were any of the Member's statements misleading?

27. It could be argued that the Member's answer to the question on notice is factually misleading, given that the Professional Engineers and Other Legislation Amendment Bill contained amendments to the *Public Records Act* rather than the *Freedom of Information Act*.
28. The committee believes that the Member for Callide's statement may have been misleading.

⁶ Seeney, J. *Submission to MEPPC*, 2008, at 2.

⁷ The Minister did not make a further submission to the committee. However, the committee had correspondence from the Minister that had been forwarded by the Speaker at the beginning of the inquiry.

⁸ Answer to question on notice No. 587 of 2008.

⁹ Note 6.

(If yes), did the Member know at the time the statements were made that they were misleading, and was it the Member's intention to mislead the committee?

29. The Minister tabled a copy of a letter, dated 7 April 2008, from Glen Crowell, Principal Lawyer for Crown Law to Mr Brad Lutteral, Legal Officer, Department of Public Works, in relation to the *Public Records Act 2002* (Amendment) and its impact on the *Freedom of Information Act* on 15 April 2008.
30. Mr Finn asked his question on notice two days later, on 17 April 2008. As a result, the Member for Callide may have been aware of this tabled correspondence.
31. The Minister states that Dr Solomon, Chair of the FOI Review, wrote to the Leader of the Opposition, Mr Springborg, confirming that the amendments to the *Public Records Act* contained in the Professional Engineers and Other Legislation Amendment Bill did not amend the *Freedom of Information Act*.¹⁰
32. The Minister is assuming that this correspondence, addressed to the Leader of the Opposition, would be provided to the Member for Callide. There is no evidence that the Member for Callide had *actual* knowledge of this correspondence.
33. The Member for Callide asserts that he did not *intend* to mislead the House. He states in his submission that:

*At worst it should be considered a mistake in wording rather than attempt to mislead.*¹¹
34. The committee has no evidence before it to indicate that the Member *intended* to mislead the House.
35. The committee therefore concludes that there was no *intention* by the Member to mislead the House.

Conclusions

36. The committee believes, on the basis of the material before it, that the Member's statement is factually incorrect and therefore potentially misleading. In the present case there is no evidence before the committee that the Member for Callide had *actual* knowledge, at the time, that his statement was misleading. Regardless of the issue of knowledge, there is no evidence that the Member for Callide, in making his statement, *intended* to mislead the House.
37. On this basis, the third element is not met and the committee concludes that there is no *prima facie* case of deliberately misleading the House in relation to the answer to question on notice No. 587 of 2008.
38. The committee notes that holding a genuinely different belief, although it may in fact or at law be wrong, is not an offence when expressed. However, the committee urges all honourable members to endeavour to ensure the factual correctness of the statements they give in the Legislative Assembly.

¹⁰ Schwarten, R. *Letter to the Speaker*, 2008, attachment 2.

¹¹ Note 6.

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 Member.

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

Mike Horan MP

Acting Chair

September 2008

Membership—52nd Parliament

Ms Anastacia Palaszczuk MP,¹² 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 MP¹³ (from 6 February 2007)
Member for Kurwongbah

Mrs Dorothy Pratt MP
Member for Nanango

Mr Jeff Seeney MP¹⁴ (from 12 February 2008)
Member for Callide

Ms Karen Struthers MP¹⁵ (from 16 April 2008)
Member for Algester

Mr Peter Lawlor MP¹⁶
Member for Southport

Mr Stuart Copeland MP¹⁷
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¹² Mr Stirling Hinchliffe MP, Chair, *Member for Stafford*, to 1 November 2006.

¹³ Hon Dean Wells MP, *Member for Murrumba*, to 1 November 2006; Ms Rachel Nolan MP, *Member for Ipswich*, to 6 February 2007.

¹⁴ Mr Lawrence Springborg MP, *Member for Southern Downs*, to 12 February 2008.

¹⁵ Mrs Jo-Ann Miller MP, *Member for Bundamba*, to 16 April 2008.

¹⁶ Mr Peter Lawlor MP was appointed to the Committee by the Speaker on 5 August 2008 for consideration of this matter in accordance with Standing Order 272.

¹⁷ Mr Stuart Copeland MP was appointed to the Committee by the Speaker on 5 August 2008 for consideration of this matter in accordance with Standing Order 272.