



MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 95

Matter of Privilege Referred by the Speaker on 9 October 2008 Relating to the Alleged Deliberate Misleading of Estimates Committee C

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 9 October 2008, the Speaker referred to the committee an allegation that a Minister had deliberately misled Estimates committee C.

The reference

4. On 9 October 2008, the Speaker referred the following matter of privilege to the MEPPC:

Mr SPEAKER: Honourable members, on 21 August 2008 the member for Cunningham wrote to me alleging that the Minister for Education and Training and the Minister for the Arts, the Hon. Rod Welford MP, has deliberately misled the House in an answer to a question during the hearings of Estimates Committee C on 17 July 2008. The complaint relates to a question relating to arts funding, and the member has requested that I refer the matter to the Members' Ethics and Parliamentary Privileges Committee.

To date, the minister has not commented on the matter in the House. I have studied the question, the answer by the minister, the further reference to the matter by the member for Cunningham in the debate of 28 August, the minutes of Estimates Committee C and the evidence provided.

On the face of the material, there is evidence to suggest the statement was incorrect. Whether in making the statement the minister was deliberately misleading the House is a further issue. It might well be that there is a satisfactory explanation, but I am restricted by standing orders in the extent I can investigate the matter. Accordingly, I consider that the matter warrants further investigation, and I will therefore refer the matter to the Members' Ethics and Parliamentary Privileges Committee.¹

¹ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 9 October 2008, at 3008.

- Specifically, the matter referred to the committee concerns an allegation that statements made by the Minister for Education, Training and the Arts,² the Hon. Rod Welford MP, in an answer to a question during Estimates Committee C on 17 July 2007 concerning arts funding, were deliberately misleading.

Chronology of significant events leading up to the complaint

- The Member for Cunningham asked the following question in the Hearing of Estimates Committee C on 17 July 2008 at page 21 of the transcript:

Mr COPELAND: Minister, another company that has had its funding cut – and I think quite disappointingly – is the Expressions Dance Co., and this has received quite a bit of reporting. Minister it is an internationally renowned company. It has delivered projects in Queensland and right around the world, in Europe and the US. Can you explain the circumstances around the resignations of the two founding directors of that company because it certainly appears as if there has been some sort of agenda against them?

- The answer provided by the Minister for Education and the Arts reads in full:

Mr WELFORD: There is no vendetta against either the general manager or the artistic director of that company. I met with the artistic director of the company, Maggie Sietsma. I indicated to her what I was seeking to achieve from the small to medium funding program and what I expected of companies that competitively bid for that program. They were provided with annual funding. Although the funding was reduced, they have the opportunity to rebuild their application in future years to achieve triennial funding. In the interim, after the meeting with the artistic director I directed that they be given rolling annual funding so that they were guaranteed for at least two years so that they could start to plan and build their business. They had been receiving funding for more than 20 years. For something like 23 or 24 years they have been receiving funding from government. This year they will still receive \$395,000 for their company. It is not a drop in the ocean. In a sense, the fact that they have had some reduction in funding and that they are on rolling annual funding rather than triennial funding is that, compared to other bids in the funding program, they do not have the same level of business growth and they do not have the same level of audience reach that other growing arts organisations are achieving. What they need to do is focus on what their business is, the quality of their product and get more people through the door so they are leveraging our fund better, in which case they will get a better run-up to future allocations of funding in the program.³

- On 21 July 2008 the Cabinet Legislation and Liaison Officer for the Department of Education and the Arts inquired on behalf of the Minister's Office about a change to page 21 of the transcript to remove the reference to "rolling" in relation to the Minister for Education and the Art's answer. However, Estimates Committee C did not approve these changes as detailed in the Minutes of the meeting of 11 August 2008.
- In accordance with Standing Order 269, the Member wrote to the Speaker on 21 August 2008 asking that the Speaker consider referring the matter to the MEPPC.
- In the Record of Proceedings of 27 August 2008 at page 2379 Mr Copeland stated:

The Minister gave quite inaccurate answers to some of the questions that I asked. For example, with regard to the funding of Expressions Dance Co., the minister described the allocated funding as rolling annual funding but that is not correct. It is annual funding, and that is the problem. That is why the two founding directors of that company have resigned—because on annual funding they are not able to plan with certainty into the future. It was a completely wrong answer that the minister gave. As is included in the tabled minutes of the committee, the minister in fact asked for changes to the Hansard to reflect that it was a wrong answer, and the committee did not accede

² 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.

³ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 17 July 2008, at 21.

to that request that that be changed. Any changes to be made to Hansard are simply for typos or clarification, not to fundamentally change the answer itself. I think the committee made the right decision there.

11. Mr Copeland's further letter of 28 August noted:

In today's Estimate's Committee C statements to Parliament, the Minister again failed to correct the record. The Minister is aware of the inaccuracies of his statements, as reflected in his request to the Committee to change comments in page 21 of the transcript (as discussed at the meeting of 11 August 2008). His requested changes would have fundamentally changed the intent of the statements made.

12. Mr Copeland's further letter of 10 September 2008 attached an email from Maggi Sietsma AM, outgoing Artistic Director of Expressions Dance Company. Ms Sietsma's email disputes the accuracy of the Minister's answers at the estimates committee, in particular drawing attention to the fact that the finding for Expressions Dance was not rolling annual funding.

13. As of 9 October 2008, 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).

Definition of contempt

14. 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

15. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004*⁴ (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.⁵

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.⁶

17. 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.⁷

⁴ As amended on 26 May 2005, 30 March 2006, 30 June 2006, 8 February 2007, 1 May, 24 May 2007 and 12 February 2008.

⁵ Standing Order 266.

⁶ McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

⁷ MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 10.

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."⁸
19. 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

Committee membership

20. On 12 November 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 Estimates Committee C. The Chair stood aside from considering this matter as she was a member of Estimates Committee C 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.
21. On 12 November 2008, the committee also 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.
22. Additionally, on 12 November 2008, the Member for Inala, Ms Palaszczuk MP (Chair of Estimates Committee C) and the Member for Gaven, Mr Gray MP (member of Estimates Committee C), advised the committee and the Speaker of their intention to stand down from the committee's consideration of this matter, in accordance with Standing Order 272. On 25 November 2008, in accordance with Standing Order 272(2), the Speaker appointed the Member for Southport, Mr Lawlor MP, the Member for Ashgrove, Ms Jones MP and the Member for Glass House, Ms Male MP, to replace the members that stood down during consideration of the matter.

Establishing a prima facie case of possible contempt

23. 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.
24. On 3 December 2008, the committee found that they had sufficient material before it from both parties to investigate the matter. This material included the Member for Cunningham's comprehensive submission to the Speaker dated 21 August 2008 and further correspondence listed above. A detailed letter, dated 21 October 2008, was received by the committee from the Minister.
25. 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?

⁸ Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, as amended 30 June 2006, at 25.

⁹ Note 6, 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.

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

26. The statements that are allegedly misleading:

*In the interim, after the meeting with the artistic director I directed that they be given **rolling annual funding** so that they were guaranteed for at least two years so that they could start to plan and build their business.*

...

*In a sense, the fact that they have had some reduction in funding and that they are on **rolling annual funding** rather than triennial funding is that , compared to other bids in the funding program, they do not have the same level of business growth and they do not have the same level of audience reach that other growing arts organisations are achieving.¹⁰*

[Emphasis added]

27. The Member for Cunningham alleges that the statements were inaccurate, as Expressions Dance Company was awarded annual funding rather than rolling annual funding.

28. The Minister's letter to the committee acknowledges that the statement was not correct:

"At the Estimates Committee meeting I used the term "annual rolling" to refer to the continuation of funding referred to in my letter, however in this context, "annual rolling" was not technically the appropriate term, as the s2m programme's annual rolling funding category implies a guarantee of funding at the same level in the following year. "

29. The committee finds that the Minister's statements concerning rolling annual funding were factually incorrect.

Were any of the Member's statements misleading?

30. The Minister does not dispute that his statement was misleading in his letter to the committee dated 21 October 2008. As mentioned above in paragraph 28 the Minister admits that his statement was 'not technically the appropriate term'. Furthermore, in the letter the Minister apologises for his mistaken description and regrets that he omitted to correct the record earlier.

I regrettably omitted to correct the record on this matter in Parliament during or subsequent to the debate on the Appropriation Bills and now seek your assistance in ensuring the accuracy of the Parliamentary record in relation to this matter.

I apologise for my mistaken description in my responses to the Estimates Committee Meeting on 17 July 2008 about the nature of the funding awarded to Expressions Dance Company.

The committee finds that the factually incorrect statement was misleading in this instance.

(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?

31. On the material before the committee there is no evidence that the Minister knew his answer to the question on 17 July 2008, was incorrect at the time of the answer. Furthermore, there is nothing before the committee that would indicate that the Minister intended to mislead Estimates Committee C.

Conclusion

32. The committee finds that there is no breach of privilege or contempt in this matter. The committee recommends that the House take no further action in regard to the matter of the alleged contempt.

¹⁰ Note 3, at 21.

33. However, the MEPPC has previously commented on the duty of members to ensure that information they provide to the House is accurate.
34. The committee acknowledges, through the members' *Code of Ethical Standards* that: "Members may sometimes make incorrect or misleading statements in the House without actually intending to mislead the House".¹¹ The Code goes on to stress that members have a responsibility to correct the parliamentary record as soon as it becomes apparent that any of their statements were incorrect or could have been misleading.¹²
35. In a letter to the committee, dated 21 October, the Minister admits that his statement was 'not technically the appropriate term' and apologises for his mistaken description of the nature of the funding awarded to Expressions Dance Company.
36. The committee finds that it would be appropriate for the Minister to correct the parliamentary record and apologise to the House at the next opportunity, as set out in his letter to the committee.
37. The committee strongly reminds all members of their duty to ensure the correctness of their statements in the House and their responsibility to correct the parliamentary record as soon as it becomes apparent that any of their statements were incorrect or could have been misleading.

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

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

Recommendation 2: The committee requests that the Minister correct the parliamentary record and apologise to the House at the next opportunity, as set out in his letter to the committee.

Mike Horan MP
Acting Chair
December 2008

¹¹ Note 8.

¹² Note 8.

Membership — 52nd Parliament¹³

Mrs Linda Lavarch MP, Chair (from 11 November 2008) (from 6 February 2007)
Member for Kurwongbah

Mr Mike Horan MP, Deputy Chair
Member for Toowoomba South

Mr Phil Gray MP
Member for Gaven

Ms Anastacia Palaszczuk MP¹⁴
Member for Inala

Mrs Dorothy Pratt MP
Member for Nanango

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

Ms Karen Struthers MP (from 16 April 2008)
Member for Algeester

Secretariat

Mr Michael Ries, *Research Director*
Ms Kellie Moule, *Senior Research Officer*
Ms Andrea Musch, *Executive Secretary*

Contact

Telephone: 07 3406 7586
Facsimile: 07 3406 7691
E-mail: meppc@parliament.qld.gov.au
Internet: <http://www.parliament.qld.gov.au/view/committees/MEPPC.asp>

¹³ Mr Stirling Hinchliffe MP, Chair, *Member for Stafford*, to 1 November 2006. Mrs Jo-Ann Miller MP, *Member for Bundamba*, to 16 April 2008. Ms Rachel Nolan MP, *Member for Ipswich*, to 6 February 2007. Mr Lawrence Springborg MP, *Member for Southern Downs*, to 12 February 2008. Hon Dean Wells MP, *Member for Murrumba*, to 1 November 2006.

¹⁴ Ms Anastacia Palaszczuk MP, Chair, *Member for Inala*, to 11 November 2008.