



MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 100

Matter of Privilege Referred by the Speaker on 19 August 2009 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 23 April 2009.
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 19 August 2009, the Speaker, the Hon John Mickel MP referred to the committee an allegation made by the Deputy Premier and Minister for Health, the Hon Paul Lucas MP. The allegation was that the Member for Mudgeeraba, Ms Roslyn Bates MP, misled the House in a personal statement she made in the House on 4 August 2009.
4. The committee sought further information by writing to the Deputy Premier and the Member for Mudgeeraba, inviting each to make a submission.

The reference

5. On 19 August 2009, Speaker Mickel made the following statement in referring the matter of privilege to the MEPPC:

Mr SPEAKER: Order! Honourable members, I have ordered that a statement responding to a matter of privilege raised with me be circulated. The matter was raised by the Deputy Premier and relates to a personal explanation by the member for Mudgeeraba. I have decided to refer the matter to the Members' Ethics and Parliamentary Privileges Committee. I seek leave to have the statement incorporated in the parliamentary record.

Leave granted.

Honourable Members, on 6 August 2009, the Deputy Premier wrote to me on a matter of privilege, namely that the Member for Mudgeeraba in a personal explanation on 4 August 2009 may have deliberately misled the House when the member stated:

I was elected on 21 March 2009 and within days had removed both myself and my son as government and media relations consultants from the register of lobbyists for the Prime Minister and Cabinet.

The Deputy Premier points to a document tabled by him on 5 August 2009 which shows that both the Member and her son were listed as lobbyists on the register of lobbyists as at 18 July 2009.

The Deputy Premier also refers to the relevant code of the Department of Prime Minister and Cabinet which provides that:

- lobbyists must confirm their details are up to date within 10 business days of 30 September, 31 January and 30 March each year;
- lobbyists must provide new statutory declarations for each lobbyist who engages in lobbying activities within 10 business days of 30 June each year;
- a lobbyist who does not confirm their details as required may be removed from the register; and
- all lobbyists are reminded of their obligations before due dates.

The Deputy Premier has produced an extract from the Federal Lobbyist Register dated 6 August 2009, that the Member was still listed as a person who conducted lobbyist activities.

That document, stating that it was a cached extract from 18 July 2009, shows that the details were last updated on 20 March 2009.

I am aware that the Deputy Premier raised some of the information in his letter in the House the previous day. To the best of my knowledge, it has not been rebutted.

Unfortunately, I am restricted by current Standing Orders as to the investigations that I can undertake in considering a matter. I stress that I have not had the ability to ask the Member for an explanation that may rebut the matters being alleged.

On the face of the evidence, there is a clear discrepancy between the Member's statement in the House and the records available from the Federal Government. The relevant code requirements also appear at odds with this discrepancy being either an oversight or a quirk of timing.

In summary, I believe that there is sufficient evidence to justify further investigation.

I have, therefore, decided to refer the matter to the Members' Ethics and Parliamentary Privileges Committee.¹

Chronology of significant events leading up to the complaint

6. In the House of 4 August 2009, the Member for Mudgeeraba stated, "I was elected on 21 March 2009 and within days had removed both myself and my son as government and media relations consultants from the register of lobbyists for the Prime Minister and Cabinet".
7. In accordance with Standing Order 269, the Deputy Premier wrote to the Speaker on 5 August 2009 asking that the Speaker refer the matter to the MEPPC. The Deputy Premier tabled a document in the House that indicates that Ms Rosslyn Bates and Mr Benjamin Gommers were listed as lobbyists on the Department of the Prime Minister and Cabinet's

¹ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 19 August 2009, at 1695.

Register of Lobbyists as at 18 July 2009. The snapshot of the page notes that the details were last updated on 20 March 2009.

8. Also attached are provisions of the Department of Prime Minister and Cabinet (DPM&C) '*Lobbying Code of Conduct*' (Code), clause 5, which provides that:

- lobbyists must confirm that their details are up to date within 10 business days of 30 September, 31 January and 30 March each year;
- lobbyists must also provide new statutory declarations for each lobbyists who engages in lobbying activities within 10 business days of 30 June each year;
- a lobbyist who does not confirm their details as required may be removed from the register; and
- all lobbyists are reminded of their obligations before due dates.

Definition of contempt

9. 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

10. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004*² (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.³

11. 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

12. 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.⁵

² As amended on 26 May 2005, 30 March 2006, 30 June 2006, 8 February 2007, 1 May, 24 May 2007 and 12 February 2008.

³ Standing Order 266.

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

⁵ MEPPC, *Alleged Misleading of the House by a Minister on 14 November 1996*, Report No 4, Goprint, Brisbane, 1997, at 10.

13. 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."⁶
14. 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.⁷

Establishing a prima facie case of possible contempt

15. 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.
16. On 16 September 2009, the committee found that they had sufficient material before it from both parties to deliberate on the matter. This material included the Deputy Premier's submission to the Speaker dated 6 August 2009 and attached correspondence referred to above. Ms Bates also provided a response to the allegations dated 10 September 2009.
17. 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 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 Minister's intention to mislead the committee?

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

18. The Deputy Premier alleges in his letter to the Speaker that the Member's statement is factually incorrect. He supports his argument by stating that:

On 5 August 2009, I tabled a document in the House that show (sic) clearly that Ms Rosslyn Bates and Mr Benjamin Gommers were listed as lobbyists on the Department of the Prime Minister and Cabinet's Register of Lobbyists until at least 18 July 2009.
19. The Deputy Premier's letter also refers to clause 5 of the DPM&C '*Lobbying Code of Conduct*' which indicates that the Member for Mudgeeraba did not remove herself from the Lobbyist register until after the date on which she would have been reminded to do so, either by correspondence from the DPM&C or by virtue of her obligations under the Code to provide confirmation of her details at the beginning of July.
20. Ms Bates, in her submission, argues that the document tabled by the Deputy Premier on 5 August 2009 was a cached version (with a disclaimer that this is not necessarily the most recent version of the page). Ms Bates presents a copy of the actual version of the DPM&C

⁶ 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.

⁷ 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.

website of 6 August 2009 which does not list her or her son as lobbyists for Entree Vous Pty Ltd.

21. With respect to the provisions of clause 5 of the Code, Ms Bates explained that as the seat of Mudgeeraba was not declared by the Electoral Commission until 3 April 2009 she did not seek to update the register on the 30 March 2009 round of confirmations. Furthermore, Ms Bates has provided a copy of an e-mail from the Lobbyist Register on 19 March 2009 which states that failure to confirm her details by Thursday 16 April 2009 would result in her registration lapsing. Ms Bates indicates that she was of the understanding that her failure to confirm her details on the register by 16 April 2009 would have resulted in her registration lapsing.
22. The committee's view is that there are alternative explanations for the member's statement, however, Ms Bates submission provides an explanation of the facts that is consistent with her statement in the House.

Were any of the Member's statements misleading?

23. On one reading of Ms Bates' statement to the House that she had "*within days had removed both myself and my son as government and media relations consultants from the register of lobbyists*" it could be argued that it was potentially misleading in that the terms "had removed" create the impression of some positive action taken on her part to bring about their removal from the register.
24. However, the committee is of the view that as the failure to confirm details should have had the same effect as a request to remove (i.e. removal from the register), it is therefore difficult to say that the House was misled by the Member's statement.

(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 House?

25. On the material before the committee there is no evidence that in her statement to the House, the Member for Mudgeeraba intended to mislead the House.

Conclusion

26. 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.
27. However, the MEPPC has previously commented on the duty of members to ensure that information they provide to the House is accurate and clear.
28. The committee finds that it would be appropriate for the Member for Mudgeeraba to make a statement in the House clarifying that her earlier statement was based on her understanding that her decision not to confirm her details on the register by 16 April 2009 would have resulted in her registration lapsing. The committee notes that the Members' statement could have been worded more carefully to convey the correct information.
29. The committee reminds all members to ensure the accuracy of their statements in the House.

Conclusion:

The committee finds no breach of privilege or contempt in relation to the alleged deliberate misleading of the House by a Member.

Recommendation 1:

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

Recommendation 2:

The committee notes that the Member's statement could have been worded more carefully to convey the correct information. The committee requests that at the next opportunity the Member correct the parliamentary record by making a statement in the House clarifying that her earlier statement was based on her understanding that her decision not to confirm her details on the register by 16 April 2009 would have resulted in her registration lapsing.

Recommendation 3:

The committee reminds all members to ensure the accuracy of their statements in the House.

Mr Kerry Shine MP
Chair
October 2009

Membership — 53rd Parliament

Mr Kerry Shine MP, Chair
Member for Toowoomba North

Mr Tim Nicholls MP, Deputy Chair
Member for Clayfield

Hon Margaret Keech MP
Member for Albert

Ms Carolyn Male MP
Member for Pine Rivers

Mr Curtis Pitt MP
Member for Mulgrave

Dr Mark Robinson MP
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