



MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 97

Matter of Privilege Referred by the Speaker on 11 February 2009 Relating to the Alleged Deliberate Misleading of the House

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 11 February 2009, the former Speaker, the Hon Mike Reynolds MP AM referred to the committee an allegation the then Deputy Premier and Minister for Infrastructure, the Hon Paul Lucas MP that the Member for Gympie, Mr David Gibson MP, misled the House in a statement he made in a preamble to a Question Without Notice in the House on 11 September 2008.
4. Speaker Reynolds formally wrote to the Committee on 19 February 2009 and the previous committee was unable to formally consider the matter prior to the dissolution of parliament on 23 February 2009.
5. The current committee resolved to continue the matter referred to the previous committee in accordance with s. 105 of the *Parliament of Queensland Act 2001*.
6. The committee sought further information by writing to the Deputy Premier and the Member for Gympie, inviting each to make a submission.

The reference

7. On 11 February 2009, Speaker Reynolds made the following statement in referring the matter of privilege to the MEPPC:

Mr SPEAKER: On 9 January 2009, the Deputy Premier and Minister for Infrastructure and Planning wrote to me alleging that the member for Gympie had misled the House in a statement made to the House on 11 September 2008. The member for Gympie stated that the analysis of carbon costs in the supplementary environmental impact statement report for the proposed

Traveston Crossing Dam shows that, at a carbon price above \$30 per tonne, when you include the greenhouse gas emissions, the embedded carbon costs and the associated pumping costs, Traveston Crossing Dam is more expensive than a desalination plant. In support of his allegation, the Deputy Premier provided a copy of an extract from the supplementary EIS report and a letter from Marsden Jacob Associates which appear to contradict the statement by the member for Gympie. To date, the member for Gympie has not addressed the inconsistencies between his statement and the relevant information tabled in the House.

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. I have studied the relevant *Hansard*, the extract of the supplementary EIS report and the letter dated 12 September 2008 from Marsden Jacob Associates, which was tabled on 7 October and 25 November 2008. On the face of that material, there is evidence to suggest the member for Gympie's statement may have been incorrect. However, further investigation would be necessary before making a final determination.

Furthermore, whether the member for Gympie was deliberately misleading the House in making the statement is another issue. It might well be that there is a satisfactory explanation, but I am restricted by standing orders to 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

Chronology of significant events leading up to the complaint

8. The Member for Gympie asked the Premier the following Question Without Notice in the House on 11 September 2008 at page 2722 of the transcript:

Mr GIBSON: My question is to the Premier. I table a leaked copy of the supplementary EIS for the proposed Traveston Crossing Dam—a report that this government did not want released to the people of Queensland. But, thankfully, a public servant who believed in open and accountable government thought otherwise. I note with interest the analysis of the carbon costs in the report which shows that, at a carbon price above \$30 per tonne, when you include the greenhouse gas emissions, the embedded carbon costs and the associated pumping costs, Traveston Crossing Dam is more expensive than a desalination plant. I ask the Premier: is this the first example of the Premier not achieving her Q2 targets for Queensland's carbon footprint?

9. In accordance with Standing Order 269, the Deputy Premier wrote to the Speaker on 9 January 2009 asking that the Speaker consider referring the matter to the MEPPC.
10. The Deputy Premier's letter alleged that Mr Gibson deliberately misled the Parliament in his statement. The Deputy Premier attached a copy of a page from the Supplementary Environmental Impact Statement (EIS) Report which compares the actual energy acquisition costs of various desalination plant sites with Traveston dam.
11. In addition, the Deputy Premier enclosed a letter dated 12 September 2008, that the Deputy Premier had tabled in Parliament on 7 October and 25 November 2008, written to Queensland Water Infrastructure (QWI) Pty Ltd Chief Executive Officer Graeme Newton from Marsden Jacob Associates showing the outcome of its review.

In part this letter states:

If carbon credit costs are not taken into account the economic cost of developing Traveston Crossing Dam is an estimated \$345 million less than the cost of developing a desalination plant based on the assumption that both Traveston and the desalination plant producing identical volumes of water. If the cost of offsetting carbon emissions is assumed to \$30 per tonne, the cost

¹ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 11 February 2009, at 89-90.

advantage of developing Traveston increases to an estimated \$460 million (the increase in cost difference is directly attributable to the higher energy requirements for desalination).

Definition of contempt

12. 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

13. 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
14. 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
15. 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
16. 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
17. 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

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.

⁶ Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, as amended 30 June 2006, 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.

Establishing a prima facie case of possible contempt

18. 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.
19. On 3 June 2009, the committee found that they had sufficient material before it from both parties to investigate the matter. This material included the Deputy Premier's submission to the Speaker dated 9 January 2009 and attached correspondence referred to above. Mr Gibson also provided a response to the allegations dated 1 June 2009.
20. 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?

21. The Committee considered that there are two potential issues here—
 - i. Whether the Member for Gympie was incorrect in stating that the Supplementary EIS report indicates that the Traveston Crossing Dam is more expensive than a desalination plant; and
 - ii. Whether the Member for Gympie was incorrect in stating that the Traveston Crossing Dam is more expensive than a desalination plant.
22. With respect to the first issue, the Member for Gympie argued in his submission that in his preamble to the question he expressed his belief that when the costs of "*various excluded and omitted factors such as "greenhouse gas emissions, the embedded carbon costs and the associated pumping costs"* listed in the Supplementary EIS report are added to the other costs, then the cost of the Traveston Crossing Dam is more expensive than a desalination plant.
23. Mr Gibson submitted that he did not intend to convey that the Supplementary EIS report alone *indicated* that the Traveston Crossing Dam is more expensive than a desalination plant but rather if other costs not mentioned in the report are taken into account, it is more expensive.
24. With respect to second issue the Member for Gympie stated:

...any discussion regarding greenhouse gas emissions from the proposed dam are purely speculative and can only be supported by modelling based on various assumptions.
25. On the face of the material before the Committee, the factual correctness of the statement by the Member for Gympie is inconclusive.
26. The true costs of either initiative (including carbon costs and greenhouse gas emissions) cannot be conclusively determined by the Committee at this stage.

Were any of the Member's statements misleading?

27. It is clear from the Deputy Premier's material that he interpreted Mr Gibson's preamble to the Question as being misleading.
28. Mr Gibson's submission explained that his words could be interpreted in a way that was not misleading. In addition, the Member argued that the Premier's response to the question, indicated that she understood that he was referring to certain carbon costs that were not included in the supplementary EIS report, such as greenhouse gas emissions. In her answer to the Member's question the Premier stated:

In relation to greenhouse gas emissions from various sources, it is true that dams all over the place—all over the country and all over the world—do produce some greenhouse gas emissions.

29. On one view, the Member did signal that he was referring to additional costs such as greenhouse gases which were not included in the Supplementary EIS report by adding "when you include":

*...I note with interest the analysis of the carbon costs in the report which shows that, at a carbon price above \$30 per tonne, **when you include the greenhouse gas emissions, the embedded carbon costs and the associated pumping costs, Traveston Crossing Dam is more expensive than a desalination plant.** I ask the Premier: is this the first example of the Premier not achieving her Q2 targets for Queensland's carbon footprint?*

30. Another view, suggests that by first referring to the Supplementary EIS report and then his own reliance on other information concerning greenhouse gas emissions in the one sentence a reasonable person could assume that the Supplementary EIS report contained all of that information.
31. In the end, the Committee were of the view that the Member's statement was equivocal and left itself open to interpretation that he was misleading the House.
32. Accordingly, the Committee recommends that the Member for Gympie make a statement in the House clarifying that his statement in the preamble to the Question Without Notice relied upon additional sources to the Supplementary EIS report, and that he provide that additional information to the House.
33. In addition, the Committee takes the opportunity to remind the Member and all other Members to ensure the accuracy and clarity of their statements in the House and Speaker Mickel's instructions that Questions Without Notice should not contain lengthy preambles in accordance with the Standing Orders.

(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?

34. On the material before the committee there is no evidence that in his preamble to a Question Without Notice on 11 September 2009 the Member for Gympie intended to mislead the House.

Conclusion

35. 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.
36. However, the MEPPC has previously commented on the duty of members to ensure that information they provide to the House is accurate and clear.

37. The committee finds that it would be appropriate for the Member for Gympie to make a statement in the House clarifying that his preamble to the Question Without Notice relied upon additional sources to the Supplementary EIS report, and that he provide that additional information to 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 requests that at the next opportunity the Member correct the parliamentary record by making a statement in the House clarifying that his preamble to the Question Without Notice relied upon additional sources to the Supplementary EIS report and that he provide that additional material to the House, as set out in his letter to the committee.

Recommendation 3:

The committee reminds the Member for Gympie and all other members to ensure the accuracy and clarity of statements made in the House and Speaker Mickel's instructions that Questions Without Notice should not contain lengthy preambles in accordance with the Standing Orders.

Kerry Shine MP
Chair
June 2009

Membership — 53rd Parliament

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