



## **INTEGRITY, ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE**

### **Report No. 107**

#### *Matter of Privilege Referred by the Speaker on 25 March 2010 Relating to an Alleged Deliberate Misleading of the House by a Member*

#### ***Introduction and background***

1. The Integrity, Ethics and Parliamentary Privileges Committee (the IEPPC 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 IEPPC'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. The matter concerns an allegation that the Minister for Tourism and Fair Trading, Hon Peter Lawlor, deliberately misled the House in his answer to a question without notice on 25 February 2010.
4. In accordance with Standing Order 269, the Member for Mudgeeraba and the Member for Kawana wrote to the Speaker on 25 February 2010, and 8 March 2010 respectively, asking that the Speaker refer the matter to the IEPPC.
5. Recent amendments to Standing Order 269(5) allow that, in relation to the procedures for raising and considering complaints, the Speaker may request information from the member the subject of the complaint. Accordingly, the Speaker sought further information from the Minister regarding the complaints by the members. The Speaker duly received a submission dated 22 March 2010, from the Minister.
6. On 25 March 2010, after examining the information before him, the Speaker decided to refer the matter to the IEPPC.
7. On 14 April 2010, the committee resolved to invite all relevant parties to provide a supplementary submission to the committee.
8. On 23 April 2010, all relevant parties wrote to the committee providing individual supplementary submissions.

#### ***The reference***

9. On 25 March 2010, Speaker Mickel made the following statement in referring the matter of privilege to the IEPPC:

**Mr SPEAKER:** Honourable members, I refer to the matters of privilege raised by the members for Mudgeeraba and Kawana in the Legislative Assembly on 25 February 2010. I have also received correspondence from the members regarding the matter.

The members essentially allege that the Minister for Tourism and Fair Trading deliberately misled the House in his answer to a question without notice on 25 February 2010. The minister in his answer to the question made serious allegations that the members interfered, in a partisan way, in the process for congratulatory letters to constituents.

Recent amendments to standing order 269(5) allow that, in relation to the procedures for raising and considering complaints, the Speaker may request information from the member the subject of the complaint. Accordingly, in my absence, the Deputy Speaker sought further information from the minister regarding the complaints by the members, seeking a submission from the minister, which was duly received.

I also note that on 9 March 2010 the minister rose on a matter of privilege and made an apology in respect of the allegations he had raised on 25 February. The apology was largely directed towards the constituents. The minister stated that in respect of the member for Kawana he had been relying on advice that was incorrect and that there was therefore a misunderstanding.

There are three elements to be established where it is alleged that a member has committed the contempt of deliberately misleading the House. Firstly, the statement must 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. Thirdly, it must be established that, in making the statement, the member intended to mislead the House.

In this case there were serious allegations made against two members. Both members vigorously denied all of the allegations. In the House, and in his submission to me, the minister has admitted a mistake as regards one allegation against the member for Kawana. This mistake was, according to the minister, because of incorrect information provided to the minister.

While cognisant that the minister in his submission to me states that his apology in the House on 9 March included both members, there remains sufficient lack of clarity around the basis for the allegations raised by the minister which gives rise to an unsatisfactory air and considerable confusion hanging over this matter.

I cannot from the information before me determine the veracity of what has been claimed and continues to be claimed, and where the truth lays. For this reason, I am of the opinion that this matter should be referred to the Integrity, Ethics and Parliamentary Privileges Committee for consideration.<sup>1</sup>

### ***Chronology of events leading to referral***

10. In the House on 25 February 2010, the Minister for Tourism and Fair Trading (the Minister) stated:

*...There is no bigger scam, though, than that coming out of LNP offices at the moment. After last year's forged billboard fiasco, the members opposite are up to their old tricks again. There are documents coming out of LNP offices. This time they have disenfranchised their own constituents by bodgying up requests for congratulatory messages from the Prime Minister, the Governor of Queensland and the Premier. They have written into the applications that the constituent requests only congratulatory messages from the Queen and the Governor. Officers from the Department of the Premier and Cabinet, when checking those instructions with the constituents, have been told that they would welcome a congratulatory message from the Premier and also from the Prime Minister.*

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<sup>1</sup> Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 25 March 2010, at 1138.

*It seems that the member for Mudgeeraba and also the member for Kawana have taken it upon themselves to add additional criteria—apparently against the wishes of their constituents. Of course, we know that in this regard the member for Kawana has a bit of form. He was caught doctoring a letter of support for Peter ‘Slippery’ Slipper in November 2001. So he has form in that regard.*

...

11. On 9 March 2010, the Minister rose on a matter of privilege to correct the parliamentary record and apologise. The Minister stated:

*On Thursday, 25 February I answered a question without notice regarding consumer protection. In responding to the question, I drew members’ attention to two congratulatory letter requests that had recently been received by the Department of Premier and Cabinet from constituents via the electorate offices of the member for Kawana and the member for Mudgeeraba. I stated in my response that officers from the Department of Premier and Cabinet had contacted the constituents concerned to check the information provided in the forms.*

*In a matter of privilege later that day the member for Kawana informed the House that he had spoken to his constituent who advised that the notation on the form, which I referred to, was at his request. As a result of further investigation into the matter by the Department of Premier and Cabinet, I have since been advised that the information provided to me concerning this matter was not correct.*

*Whilst the constituent of the member for Mudgeeraba had been contacted to clarify the instructions, due to a misunderstanding in the department the constituent of the member for Kawana had not. I am now taking the opportunity to correct the record and apologise for any harm caused in particular to the constituents. To the extent that I suggested that other opposition offices may be involved in amending applications for congratulatory letters, I unreservedly apologise.*

12. The committee was of the view that there is a discrepancy between the Minister’s initial statement in relation to congratulatory letters and the facts of the matter.
13. The committee noted that the Minister has corrected the record and apologised. However, the committee noted that the unreserved apology was to opposition offices and not specifically directed to the Member for Mudgeeraba and Member for Kawana.

### **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*<sup>2</sup> (the Standing Orders) provide that the Legislative Assembly may treat deliberately misleading

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<sup>2</sup> As amended on 26 May 2005, 30 March 2006, 30 June 2006, 8 February 2007, 1 May, 24 May 2007, 12 February 2008, 28 October 2009, 26 November 2009 and 1 January 2010.

the House or a committee (by way of submission, statement, evidence or petition) as a contempt.<sup>3</sup>

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.<sup>4</sup>
17. The ethics committee of the 48<sup>th</sup> 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.<sup>5</sup>
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.”<sup>6</sup>
19. Previous ethics committees, 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.<sup>7</sup>

### **Committee Membership**

20. On 14 April 2010, the Chair advised the committee and the Speaker of his intention to stand down from the committee in accordance with standing Order 272 for consideration of the matter of privilege relating to an alleged deliberate misleading of the House by a member. The Chair stood aside as he had asked the relevant question without notice to the Minister. The Chair, while believing he was not directly concerned in the matter, did not want there to be any perception of a conflict of interest.
21. On 14 April 2010, the committee also noted that in line with Standing Order 198(3), the Deputy Chair, the Member for Clayfield, would act as Chair for consideration of this matter.
22. Additionally, On 18 May 2010, the Speaker appointed the Member for Yeerongpilly, Mr Simon Finn MP, to replace the Chair 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.

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<sup>3</sup> Standing Order 266.

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

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

<sup>6</sup> 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.

<sup>7</sup> 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.

24. On 19 May 2010, the committee found that they had sufficient material before it from all parties to deliberate on the matter. This material included the original and supplementary submissions from the Minister, the Member for Mudgeeraba and Member for Kawana.
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 House?

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

26. In an answer to a question without notice the Minister provided the statement above. The following five excerpts are reprinted below:
1. *this time they have disenfranchised their own constituents by bodgying up requests for congratulatory messages*
  2. *they have written into the applications that the constituent requests only congratulatory messages from the Queen and the Governor*
  3. *officers from the Department of Premier and Cabinet, when checking those instructions with the constituents, have been told that they would welcome a congratulatory message from the Premier and also from the Prime Minister*
  4. *the member for Mudgeeraba and also the member for Kawana have taken it upon themselves to add additional criteria – apparently against the wishes of their constituents; and*
  5. *he was caught doctoring a letter of support for Peter 'Slippery' Slipper in November 2001. So he has form in that regard*
27. In relation to the Member for Kawana and matters 1-4, the Minister has admitted that his answer was factually incorrect.
28. In relation to the Member for Kawana and matter 5, Hansard from 28 October 2009, includes a statement from the Member for Kawana which indicates that the member was never interviewed by police and the matter was not progressed. The Minister does not refute this claim in his submission and merely refers to a Courier Mail article dated 10 November 2001, that he relied upon. It appears on the face of the material before the committee that the Minister's answer in relation to matter 5 was also factually incorrect.
29. In relation to the Member for Mudgeeraba, in his letter to the Speaker the Minister apologises to 'the members concerned and the constituents involved', which appears to include both members. However, the Minister, in his submission further states that the advice he received regarding the Member for Mudgeeraba was that the constituent was contacted and 'was happy for a congratulatory letter to be sent from the Premier'. In his supplementary submission the Minister refers to his apology to the Member for Mudgeeraba outlined in his letter to the Speaker dated 22 March 2010.
30. It appears clear from the Member for Mudgeeraba's supplementary submission that the constituent originally requested to receive a congratulatory letter from the Governor only. Contrary to the Minister's statement, after contact from the Department of the Premier and Cabinet, the constituent was not happy to receive a letter from the Premier. There is nothing to suggest that the Member for Mudgeeraba 'took it upon herself to add additional criteria –

apparently against the wishes of her constituent'. The tabled papers database indicates that of all the congratulatory letter applications tabled by the Member for Mudgeeraba, this appears to be the only application with a notation.

31. On the face of the information before the committee it appears that the Minister's statements 1-4 are also incorrect in relation to the Member for Mudgeeraba.
32. In conclusion, the Committee finds that the Minister's answer contains factually (or apparently) incorrect matter, specifically in relation to the 5 excerpts reprinted above.

***Were any of the Minister's statements misleading?***

33. The committee is of the view that the nature of the Minister's answer goes to the character of the two members involved. Factually incorrect matter of this nature is highly likely to be misleading and therefore potentially damaging to the persons concerned.
34. In conclusion, the committee finds that the answer provided by the Minister on 25 February 2010, is misleading as it alleges a number of allegations that upon simple investigation, turned out to be incorrect.

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

35. In relation to the issue of the federal election in 2001 (statement 5), there is evidence of Hansard dated 28 October 2009, that the Member for Kawana had already addressed this issue. The Member for Kawana asserts that accordingly the Minister should therefore have been aware of this.
36. However, the fact that a matter was previously addressed in the House does not necessarily mean that the Minister was aware of it and does not prove that the Minister intended to deliberately mislead the House.
37. In relation to statements 1-4, there is no evidence before the Committee to indicate that the Minister intended to mislead the House.
38. In relation to all his statements (1-5), the Minister in his submission, asserts that he did not intend to mislead the House:

*I can assure you that at no time did I deliberately mislead the House.*

The Minister indicates that he was relying on factually incorrect information that he had gleaned from a Courier Mail article and discussions with officers of the Department of the Premier and Cabinet.

39. Accordingly, on the information before the committee, the committee finds no compelling evidence that the Minister intended to mislead the House in his answer to the question without notice.
40. As mentioned above previous ethics committees, and David McGee, the former Clerk of the New Zealand House of Representatives, in his book *Parliamentary Practice in New Zealand*,<sup>8</sup> 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.

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<sup>8</sup> Note 4.

### **Other issues**

41. In his submission, the Member for Kawana expressed concern in relation to privacy and how the Minister obtained the information regarding the request for congratulatory messages in the first instance.
42. The committee does not have jurisdiction to deal with this issue but notes that the Office of the Information Commissioner deals with complaints in relation to an agency's alleged breach of privacy. Under the *Information Privacy Act 2009* (Qld), an "agency" includes a Minister and a government department.

### **Conclusion**

43. 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.
44. However, the committee strongly reminds all members of the privilege afforded to members, in making statements in the House. This privilege needs to be balanced with the responsibility of members to check the accuracy of their statements in the House.
45. The committee finds that it would be appropriate for the Minister to make a statement in the House, unreservedly apologising to:
  - both the Member for Mudgeeraba and Member for Kawana in relation to the negative imputations contained in his answer to a question without notice on 25 February 2010; and
  - the constituents concerned, without directly naming the constituents.

#### **Conclusion**

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

#### **Recommendation 1**

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

#### **Recommendation 2**

**The committee strongly reminds all member of the privilege afforded to members, in making statements in the House. This privilege needs to be balanced with the responsibility of members to check the accuracy of their statements in the House.**

#### **Recommendation 3**

**The committee requests that at the next opportunity the Minister make a statement in the House, unreservedly apologising to:**

- **both the Member for Mudgeeraba and Member for Kawana in relation to the negative imputations contained in his answer to a question without notice on 25 February 2010; and**
- **the constituents concerned, without directly naming the constituents.**

### **Membership — 53rd Parliament**

Mr Kerry Shine MP, Chair<sup>9</sup>  
*Member for Toowoomba North*

Mr Tim Nicholls MP, Deputy Chair  
*Member for Clayfield*

Mr Glen Elmes MP  
*Member for Noosa*

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  
*Member for Cleveland*

Mr Simon Finn MP  
*Member for Yeerongpilly*<sup>10</sup>

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<sup>9</sup> Mr Shine stood aside from this matter in accordance with Standing Order 272.

<sup>10</sup> Mr Finn was appointed to the committee by the Speaker on 18 May 2010 for consideration of this matter in accordance with Standing Order 272.