



INTEGRITY, ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

Report No. 113

Matter of Privilege Referred by the Speaker on 23 November 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 then Minister for Natural Resources, Mines and Energy and Minister for Trade, Hon Stephen Robertson, deliberately misled the House in his Ministerial Statement on Tuesday, 5 October 2010.
4. In accordance with Standing Order 269, the Member for Callide wrote to the Speaker on 6 October 2010, 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 Member for Callide. The Speaker duly received a submission dated 20 October 2010, from the Minister.
6. On 23 November 2010, after examining the information before him, the Speaker decided to refer the matter to the IEPPC.
7. The committee subsequently resolved to invite all relevant parties to provide a supplementary submission to the committee.

The reference

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

Mr SPEAKER: Honourable members, on 6 October 2010 I received correspondence from the member for Callide relating to statements made by the Minister for Natural Resources, Mines and Energy and Minister for Trade in the House to the effect that the opposition had supported and voted for the wild rivers legislation in 2005. The honourable member for Callide alleges that the minister is deliberately misleading the House in relation to these statements.

In accordance with standing order 269(5), I sought a response from the minister. The minister denies deliberately misleading the House and points to various passages from the debate of the bill in 2005. I do not intend to canvass the details of the claims and counterclaims. Suffice to say that there is considerable examination of fact required to determine the matter. Unfortunately, the debate of the bill occurred prior to the archiving of audiovisual material by the House.

In addition, there are important issues of policy at play and in this respect I point to my statement in the House on 16 September 2009, where I stated—

I will also add a caution to all members about referring to how members have voted on previous occasions. Often members will vote against measures 'on the voices' but will not insist upon their right to a division. This decision is often pragmatic and saves the House countless hours counting divisions. Of course, because there is no division there is no definitive record of who voted for or against a matter, even though members' views are often discernible from their speeches in the matter.

If, however, members are misrepresented in subsequent debates as to their actions and votes on previous occasions, then I fear that members will resort to divisions on all questions that they oppose so as to ensure a definitive record. This will result in the House spending additional hours counting divisions. I ask all members, therefore, to be very careful about their representations as to another member's voting record.

I reiterate to all honourable members the prudence urged in my statement on that occasion. With regard to the current matter, I have decided to refer it to the Integrity, Ethics and Parliamentary Privileges Committee. In doing so, I emphasise that I have formed no view as to whether there has, in fact, been a breach of privilege but rather that there are sufficient issues in play to warrant that the matter be determined by the committee.¹

The event leading to referral

9. In the House on 5 October 2010, the Minister for Natural Resources, Mines and Energy and Minister for Trade (the Minister) stated when referring to the Wild Rivers Legislation:

...You voted for it. In a week when the LNP excelled itself in releasing various jokes for the people of Queensland, this is just another joke that shows up its hypocritical stance...

...

[the] Leader of the Opposition who put his hand up to support our wild rivers legislation in 2005, with consent, would allow a media release to go out last week saying that those laws were pushed through the parliament.

...

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.

Nature of the contempt of deliberately misleading the House

11. 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

¹ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 23 November 2010, at 4090.

² 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.

³ Standing Order 266.

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. The ethics committee 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
14. 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
15. 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.⁷

Establishing a prima facie case of possible contempt

16. 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.
17. On 16 February 2011, 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 and the original submission from the Member for Callide.
18. 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?

Voting for the Bill

19. In his supplementary submission, Minister Robertson argues that because the Opposition did not divide on the Bill, that this supports his statement “...you voted for it...” The committee notes that while there was no division on the second reading of the Bill, that there was one division on Clause 16 in the consideration in detail stage of the Bill.

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, 9 February 2009, 11 May 2009, at 25.

⁷ 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.

20. The committee accepts that on the one hand it can be argued that the statement "...you voted for it..." is factually correct in that the Opposition did not divide on the second reading. However, the committee also accepts that it is equally arguable that the statement is incorrect due to the division in consideration in detail.
21. There is nothing in Standing Orders or elsewhere that provides definitive and objective criteria to determine whether someone voted for or against a Bill.
22. Obviously, if there is a division on the second reading then it is clear that those members recorded in the record of proceedings have voted for or against the Bill as a whole. However, even in that situation there is a plethora of legitimate reasons as to why an individual member might not be present for a vote and therefore not recorded in the record of proceedings.
23. Similarly, in the situation where there is not a division on the second reading it is difficult to be definitive as to individual voting intentions.
24. On the one hand, an argument could be made, as the Minister has in this case, that if Opposition Members do not divide on the second reading they have effectively "voted for it".
25. However, the committee notes that there is a convention in the Queensland Parliament that the Opposition does not divide on every issue that they may in fact disagree with. That is, while the Opposition may be opposed to certain legislation they will not always exercise their right to a division. To insist upon their right to a division on each and every minor point of difference would be cumbersome to the processes of the House.
26. The committee notes in Mr Speaker's ruling to the House on 16 September 2009 (set out in paragraph 8), regarding members referring to how members have voted on previous occasions, Mr Speaker highlighted that "*often members will vote against measures 'on the voices' but will not insist upon their right to a division. This decision is often pragmatic and saves the House countless hours counting divisions. Of course, because there is no division there is no definitive record of who voted for or against a matter, even though members' views are often discernible from their speeches in the matter*".
27. Mr Speaker further ruled that "*If, however, members are misrepresented in subsequent debates as to their actions and votes on previous occasions, then I fear that members will resort to divisions on all questions that they oppose so as to ensure a definitive record. This will result in the House spending additional hours counting divisions. I ask all members, therefore, to be very careful about their representations as to another member's voting record.*" [Emphasis added].
28. Having considered all of the above, the committee is of the view that the statement is open to interpretation as to whether the Minister's statement "...you voted for it..." is correct. The committee finds that it is arguable that the statement is correct in that the Opposition did not divide on the second reading but equally arguable that it is not correct in that there was a division on clause 16.

Support for the Bill

29. In his first submission, Minister Robertson argued that the members for Callide, Southern Downs and Moggill have literally put their support for Wild Rivers legislation on the record.
30. Minister Robertson submits that the following statement by Mr Seeney implies that the Opposition supported the legislation:

...

The amendments that the minister has moved broadly achieve many of the purposes that we set out to achieve with our amendments. Because the minister's amendments broadly address the issues that I and other members identified in the second reading debate and that we had planned to address with the series of amendments that were circulated in my name, I am happy to lend

support to the minister's amendments and consider them in bulk. I think there is, contained in those amendments, a recognition of that series of issues that we raised in the second reading debate. On that basis I will not proceed with the amendments that I circulated. I will certainly not oppose—and I will lend some support to—the minister's amendments. [Emphasis added].

31. However, the Minister failed to address the following passages of Mr Seeney's speech which come directly after the above passage:

I will certainly not oppose—and I will lend some support to—the minister's amendments. They do not exactly mirror mine, but at least they address the series of issues that I identified.

32. It is noted that during his second reading debate, Mr Seeney stated:

...

I want to put on record on behalf of the National Party that we support the protection of areas that have environmental significance. We support commonsense conservation. It is our strong belief that the protection of the environment and sustainable development can occur at the same time, and that is where the philosophical difference is. We do not believe that sustainable development and environmental protection are mutually exclusive. We believe that properly managed sustainable development can coexist with environmental protection and not threaten the environmental values that so many of us in this House and so many of us across Queensland—in fact, all Queenslanders in my view—hold dear and respect.

Having said that, I have grave concerns about this bill's impact on sustainable development opportunities, particularly for the Indigenous communities in far-north Queensland. [Emphasis added].

33. The committee also specifically noted that the following passage from Mr Seeney's second reading speech is evidence that the Opposition did not support the Bill:

...

*The devil will be in the declaration details—that is, the declarations that are made by the minister as to the areas that are going to be declared under the wild rivers legislation. The devil will be in the assessment codes which are yet to be developed and which will be at the complete discretion and the complete control of the minister. **In that, honourable members, lies the essence of my opposition to this legislation. [Emphasis added].***

34. In his submission, Minister Robertson argued that the following passage from the Member for Southern Downs second reading debate, on the Environmental Protection and Other Legislation Amendment Bill 2005, debated on 5 October 2005, are evidence that the Opposition did not oppose the Bill:

...

We heard before from the honourable member for Indooroopilly when he talked about the wild rivers legislation as this great piece of legislation which was going to preserve the environment in Queensland. Principally, this piece of legislation sounds very good and could potentially have some good, practical application; and

Of course we supported it. Very good! The member is in parliament. He reads Hansard. He actually understood the vote that day. [Emphasis added].

...

35. However, the Minister alluded to only part of the Member's second reading speech. It is noted that the Member goes further in saying:

...

We heard before from the honourable member for Indooroopilly when he talked about the wild rivers legislation as this great piece of legislation which was going to preserve the environment in Queensland. Principally, this piece of legislation sounds very good and could potentially have some good, practical application. However, it is also a political sop in many ways. If the government introduces legislation and says that there are going to be 19 declared wild rivers, it needs to do that based on science. There has to be a scientific reason and justification for declaring those 19 wild rivers. [Emphasis added].

...

36. Minister Robertson argued that the following passage from the Member for Moggill's second reading debate of the Wild Rivers legislation is evidence that the Opposition did not oppose the Bill:

...

The Liberal Party supports the preservation of genuine wild river areas and is cognisant of the fact that this legislation will introduce a ban on activities such as mining, agriculture, animal husbandry, vegetation clearing, riverine disturbance, and dams and weirs. As is the case with many of these bills, there is the principal issue of environmental protection, which the Liberal Party is strongly committed to, and there is also the detail of the mechanisms under which a river is declared to be a wild river, with its attendant prohibition on mining, agriculture and other activities. [Emphasis added].

...

37. However, the Member for Moggill goes on to state:

...the Liberal Party has significant concerns about the way this bill has been structured and its arbitrary implementation and potential disproportionate impact on individuals and remote communities. We will support amendments that recognise these deficiencies of the bill and would view such amendments as efforts to improve the bill's general thrust. I do trust the minister will listen to suggestions that will improve the fairness and reduce the arbitrary nature of some of the provisions of the bill. As a party we share a strong commitment to the preservation of wilderness and natural areas in this state and therefore are in support of the general thrust. [Emphasis added].

...

38. On the face of the information provided to the committee by the Minister, it could be argued that the Opposition did not oppose and therefore supported the legislation. However, when the entirety of the three members' second reading speeches are read in context, it is equally arguable that the Opposition did not support the Wild Rivers legislation in its entirety.
39. Again, the committee notes that there is nothing in the Standing Orders or elsewhere that provides a definitive and objective criteria as to whether a member supports a Bill or otherwise.
40. Frequently, there are circumstances where a member supports some but not all parts of a Bill and the forensic examination of the members speeches as detailed above bears this out.
41. The committee is of the view that whether the Minister's statement that the Leader of the Opposition "put his hand up to support our wild rivers legislation in 2005" is correct or otherwise

can not be definitely and objectively determined. The answer to that question, to a large extent is subjective and depends on where you stand.

42. Accordingly, the committee finds that it is arguable as to whether Minister Robertson's statements contains factually (or apparently) incorrect matter.

Were any of the Minister's statements misleading?

43. As detailed above, the question of whether the statements contain factually (or apparently) incorrect matter is arguable. Similarly, the issue of whether the statements are misleading are also arguable based on the individuals perception of what constitutes support for a Bill. Again, the committee notes that whether failure to oppose should be considered 'support' is a subjective question and the answer will often depend on where you stand.

(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?

44. David McGee, the former Clerk of the New Zealand House of Representatives, in his book *Parliamentary Practice in New Zealand*,⁸ has 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.
45. The committee was not presented with any clear evidence of Minister Robertson's intent to mislead the House.

Conclusion

46. The committee finds that there is no compelling evidence to indicate that the Minister intended to mislead the House. The committee recommends that the House take no further action in regard to the matter of alleged contempt.
47. However, the committee recommends that the Minister (and all members) be reminded of the Speaker's ruling of 16 September 2009 and the need to be careful in making any representations about another members voting record.

Conclusion

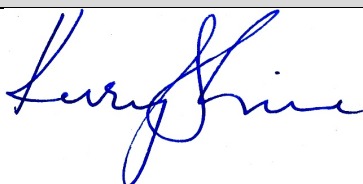
The committee finds no breach of privilege or contempt in relation to the alleged deliberate misleading of the House by the Minister.

Recommendation 1

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

Recommendation 2

The committee strongly reminds the Minister and all members of the Speaker's ruling of 16 September 2009 and the need to be careful in making any representations about another members voting record.



Mr Kerry Shine MP
Chair
March 2011

⁸ McGee, D, *Parliamentary Practice in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, at 653-655.

Membership — 53rd Parliament

Mr Kerry Shine MP, Chair
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

Mr Peter Lawlor MP
Member for Southport

Ms Carolyn Male MP
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