



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

### **Report No. 115**

*Matter of Privilege Referred by the Speaker on 17 February 2011 Relating to an Alleged Deliberate Misleading of Estimates Committee F by a Minister*

#### ***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 Community Services, Housing and Women, Hon Karen Struthers, deliberately misled Estimates Committee F on 21 July 2010.
4. In accordance with Standing Order 269, the Member for Burdekin wrote to the Speaker on 26 October 2010, asking that the Speaker refer the matter to the IEPPC.
5. Standing Order 269(5) provides 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 Burdekin. The Speaker duly received a submission dated 15 December 2010, from the Minister.
6. On 17 February 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.

## ***Committee Membership***

8. On 9 March 2011, Ms Male 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 an alleged deliberate misleading of Estimates Committee F by a Minister.
9. On 21 March 2010, the Speaker appointed the Member for Bulimba, Ms Di Farmer MP, to replace Ms Male during consideration of the matter.

## ***The reference***

10. The Member for Burdekin submitted that during the Estimates hearing, the Minister made statements to Estimates Committee F which were at odds with information obtained by the member, through a Right to Information application.
11. The statement made during the hearing, in its entirety, is as follows:

...

**Mrs MENKENS (Burdekin — LNP):** Thank you. Minister, I will go back to women and one of the very first questions I asked you. Can you guarantee that the Women's Infolink line is going to remain open as a separate entity?

**Ms STRUTHERS (Alger — ALP):** (Minister for Community Services, Housing and Women): My understanding of the way we are doing business in government now is giving people ready access. We are aiming over time to move to one entry point, one government, one number rather than having to look up a whole lot. We have Smart Service Queensland as the agency that delivers services on behalf of other agencies. So we all contribute funding to that. I mentioned some of the numbers for calls to the Office for Women—77,000 requests for information—

**Mrs MENKENS:** Sounds like it has been swallowed in the power generator.

**Ms STRUTHERS:** Sorry?

**Mrs MENKENS:** I said it sounds as though it has been swallowed by the power generation.

**Ms STRUTHERS:** The power generation?

**Mrs MENKENS:** That you are doing throughout your offices.

**Ms STRUTHERS:** Please explain.

**Mrs MENKENS:** I am re quoting you, Minister. Keep going.

**Ms STRUTHERS:** The power generation?

**CHAIR:** Perhaps if you answer the first question.

**Mrs MENKENS:** Or engine room.

**Ms STRUTHERS:** An engine room.

**Mrs MENKENS:** That generates power from the office.

**Ms STRUTHERS:** Sorry, I just did not understand what you were referring to. Seventy-seven thousand requests for information referral or advice were responded to by the Women's Infolink telephone service. So people will access a number. It will say 'Women's Infolink'. In they go. It is Smart Service Queensland that is the behind-the-scenes operator. Each of our agencies fund the component of our service delivery. Essentially, it is remaining open. It is open for business and it does a lot of business.

**Mrs MENKENS:** Good. Thanks, Minister.

...

### ***Subsequent statements in the House***

12. The committee notes that on 9 March 2011, the Minister made a personal explanation to the House. The statement, in its entirety, is as follows:

**Hon. KL STRUTHERS (Algeria —ALP):** (Minister for Community Services and Housing and Minister for Women): I rise to make a personal explanation regarding the matters raised last sitting concerning comments made by me during the 2010 estimates hearings about the Women's Infolink service.

As members are aware, the member for Burdekin and former shadow minister for women wrote to the Speaker claiming I had misled the House during the 2010 estimates hearing and that I be referred to the Integrity, Ethics and Parliamentary Privileges Committee. This matter has now been referred to that committee for consideration.

Mr Speaker, I wish to make it clear that at no time did I deliberately mislead the House. In response to a question from the member, I stated that the 77,000 requests for information were provided by Women's Infolink telephone service. The correct answer was that 72,000 requests for information and referral advice were responded to by the Office for Women and 5,000 by the Women's Infolink telephone service. I take this opportunity to correct the record and unreservedly apologise to the member for Burdekin and to all members for inadvertently misleading the House in this regard.

I would like to further put on the record that Women's Infolink is open for business, and I would like to take this opportunity on International Women's Day, the 100th anniversary of International Women's Day, to table a booklet developed by the Office for Women to provide information about the activities of the Office for Women including the Women's Infolink service.

13. On 10 March 2011, the Member for Burdekin rose on a matter of privilege. The statement, in its entirety is as follows:

**Mrs MENKENS (Burdekin—LNP):** I rise on a matter of privilege. Last year I referred statements made by the Minister for Community Services during the estimates committee process to the Speaker for his consideration in forwarding the matter to the Integrity, Ethics and Parliamentary Privileges Committee. During estimates the minister made a number of misleading statements concerning the Office for Women, one of which was the number of calls received by Women's Infolink.

Yesterday in this House the minister stood and apologised for that inaccuracy. However, by ignoring the other matters referred she compounded the gravity of the original misrepresentation of the status of the Women's Infolink.

14. The committee notes Mr Speaker's ruling in relation to the member's statement. Mr Speaker's ruling, in its entirety, is as follows:

**Mr SPEAKER:** I say to the member for Burdekin that this matter is already before the Integrity, Ethics and Parliamentary Privileges Committee. It is being determined there. This is a debate on a matter before the committee. Put it in writing to me. I will explain to the House why I allowed the minister to give an explanation yesterday.

It has always been my contention—and I have said this before—that I would rather have a minister correct the record as soon as practicable. I found out yesterday that that is what the minister wanted to do, even though the matter was before the Integrity, Ethics and Parliamentary Privileges Committee, because it does not stop the matter being determined

by that committee. However, there is an overriding principle that a member will correct the record in this House as soon as practicable. I am not going to entertain a debate on this matter. Put it in writing to the committee under standing order 269.

### ***The event leading to referral***

15. The Member for Burdekin argued the following points, having considered the documents in her Right to Information application (the RTI application), as evidence that the Minister misled Estimates Committee F:

- the Minister stated Smart Service Queensland was the agency that delivered the service (Women's Infolink telephone service), while documents show an impending termination of that contract;
- the Minister stated 77,000 requests for information referral or advice were responded to by the Women's Infolink telephone service when in reality, this is 5,000 requests per annum;
- the Minister stated people will access a number that will say 'Women's Infolink'. This is incorrect for the 13QGOV number as shown in the trial calls; and
- the Minister stated "...essentially, it is remaining open. It is open for business and it does a lot of business..." This is again contradicted by evidence in the documents, and the fact that the Women's Infolink line stopped being a white pages online entry as at 1 July 2010 – three (3) weeks before the Estimates Committee hearing.

### ***Definition of contempt***

16. 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***

17. The *Standing Rules and Orders of the Legislative Assembly: Effective from 31 August 2004*<sup>1</sup> (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.<sup>2</sup>

18. 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

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<sup>1</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.

<sup>2</sup> Standing Order 266.

- Thirdly, in making it, the member must have intended to mislead the House.<sup>3</sup>
19. 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>4</sup>
  20. 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>5</sup>
  21. 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>6</sup>

### ***Establishing a prima facie case of possible contempt***

22. 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.
23. The committee finds that it has sufficient material before it from all parties to deliberate on the matter. This material includes the original and supplementary submissions from the Minister and the Member for Burdekin.
24. 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?***

#### **Smart Service Queensland was the agency that delivered the service**

25. In her initial submission, the Member for Burdekin argued that the Minister’s statement “...we have Smart Service Queensland as the agency that delivers services on behalf of other agencies...” was at odds with information obtained through the RTI application.
26. The Member for Burdekin based her argument on a Briefing Note for Information (the Briefing Note) to the Minister, as provided by the RTI application. The Briefing Note states that “there are no issues in the Service Level Agreement with Smart Service Queensland impeding the termination of the Office for Women service delivery contract”.

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<sup>3</sup> McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

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

<sup>5</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>6</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.

27. The Minister noted that the Briefing Note was unsigned and undated and had been drafted after the hearing. Further, that the Briefing Note had only been endorsed by two executive officers of the Department of Communities on 28 July 2010 (after the hearing on 21 July 2010) and was not progressed to the Minister for her signature.
28. Regardless, on the information before the committee, it would appear that at the time of the hearing the contract with Smart Service Queensland was still running. Accordingly, it would appear that the statement "...we have Smart Service Queensland as the agency that delivers services on behalf of other agencies..." was factually correct.

### **77,000 requests for information referral or advice were responded to by the Women's Infolink telephone service**

29. In her supplementary submission, the Member for Burdekin acknowledged that the Minister, in her statement to the House on 8 March 2011, corrected the record when she advised that Women's infolink received 5000 requests for information and referral advice per annum, as opposed to her statement at Estimates Committee F that '...seventy-seven thousand requests for information referral or advice were responded to by the Women's Infolink telephone service...'
30. Minister Struthers accepts that this part of her statement was incorrect and noted that she made a personal explanation to the House to correct the record.

### **People will access a number that will say 'Women's Infolink'**

31. In her supplementary submission, the Member for Burdekin argued that the "...new access number is not Women's Infolink but 13QGOV..." and further that the number was not a direct access number.
32. It is noted that an RTI document dated 23 July 2010 (two days after the Estimates hearing) details two trial calls made to the 13QGOV line and that both calls were unsuccessful in that each attempt the caller made, the caller was offered to be *transferred* to the Women's Infolink.
33. In her supplementary submission, the Minister argued that she was advised by departmental staff "...on 2 March 2011, that at the time of the Estimates hearing, discussions regarding proposals to change operating arrangements for the Women's Infolink telephone service had only taken place between Office for Women, Community Partnerships and the 13QGOV team in Smart Service Queensland...".
34. On the evidence before the committee, it is not possible to definitely determine if the Minister's statement "...so people will access a number. It will say 'Women's Infolink...'" is factually correct or otherwise. It does appear however, that the Women's Infolink service was still in operation at the time of the Estimates hearing.
35. Importantly, the committee finds that there is, however, no evidence before the committee to indicate that the Minister was aware that Women's Infolink was no longer a direct access number.

### **"Essentially it is open for business"**

36. In her supplementary submission, the Member for Burdekin argued that Women's Infolink number "ceased to be listed in the White Pages on 1 July 2010, three weeks before the Estimates hearing..." The member further argued (in her initial submission) that the Minister's statement "...essentially, it is remaining open. It is open for business and it does a lot of business..." is misleading.
37. The committee noted that the fact that a service is not listed in the White Pages is not of itself conclusive proof that a statement that the service is remaining open is factually incorrect.

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

38. On the face of the material before the committee it would appear that the statement that Women's Infolink responded to 77,000 requests for information referral or advice was clearly incorrect as conceded by the Minister in her personal explanation.
39. In addition, it is possible that the statement that people will access a number that will say "Women's Infolink" may have been factually incorrect at the time of the Estimates hearing, however, it is not possible to definitely determine this on the information before the committee.

### ***(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?***

40. David McGee, the former Clerk of the New Zealand House of Representatives, in his book *Parliamentary Practice in New Zealand*,<sup>7</sup> 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.
41. There was no evidence before the committee to indicate an intention on the part of Minister Struthers to mislead Estimates Committee F.

### ***Conclusion***

42. On the information before the committee, the committee finds that Minister Struthers statements to Estimates Committee F on 21 July 2010, included one statement which was clearly factually incorrect and misleading.
43. However, the committee finds that there is no evidence to indicate that the Minister intended to mislead the committee.

#### **Conclusion**

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

#### **Recommendation**

**The committee recommends that the House note the Minister's personal explanation in relation to the factually incorrect statement and take no further action in relation to the matter.**

Mr Kerry Shine MP  
**Chair**  
April 2011

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<sup>7</sup> 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 <sup>8</sup>  
*Member for Pine Rivers*

Dr Mark Robinson MP  
*Member for Cleveland*

Ms Di Farmer MP <sup>9</sup>  
*Member for Bulimba*

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<sup>8</sup> Ms Male stood aside from this matter in accordance with Standing Order 272.

<sup>9</sup> Ms Farmer was appointed to the committee by the Speaker on 21 March 2011 for consideration of this matter in accordance with Standing Order 272.